

## Court Grants Summary Judgment in Favor of Detroit Edison and DTE Energy in NSR Enforcement Case

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On August 23, 2011, the United States District Court for the Eastern District of Michigan granted summary judgment in favor of Detroit Edison and DTE Energy in a New Source Review (NSR) enforcement action. The United States filed its complaint against the utility companies in August 2010, alleging that between March and June 2010 DTE Energy had replaced two major boiler components – the economizer and high temperature reheater – at Unit 2 of its Monroe, Michigan power plant without first obtaining a NSR permit. In accordance with the 2002 Reasonable Possibility rule, DTE Energy notified the Michigan DEQ before beginning the project.

The court held that the DTE Energy had not violated the Clean Air Act by commencing its project without first obtaining a NSR permit from the Michigan Department of Environmental Quality (DEQ). The court held that DTE Energy had followed the 2002 Reasonable Possibility rule by submitting a notification to the DEQ with post-project emissions projections before beginning the project at Monroe Unit 2. In light of the 2002 Reasonable Possibility rule, the court held that a determination of whether DTE Energy's project constituted a major modification was premature because the United States filed its enforcement action less than a year after the completion of the project. Because the determination of whether the project was a major modification could not be made, the court granted summary judgment in favor of DTE Energy and Detroit Edison.

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