



UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

DOCKET NUMBER
PROD. & UTIL. FAC. 50-329,330

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
CONSUMERS POWER COMPANY)
(Midland Plant, Units 1 and 2))

Docket Nos. 50-329
50-330

AEC REGULATORY STAFF ANSWER TO PETITION TO
INTERVENE OF STEVE J. GADLER

On December 20, 1971, Steve J. Gadler (petitioner), who appears to be a resident of St. Paul, Minnesota, filed a timely petition to intervene in the captioned proceeding pursuant to the Supplementary Notice of Hearing published in the Federal Register on November 29, 1971 (36 F.R. 23169). The Supplementary Notice identified additional issues for consideration and determination by the presiding Atomic Safety and Licensing Board in this proceeding. These additional issues relate to the implementation of the National Environmental Policy Act of 1969 as provided in Appendix D, 10 CFR Part 50 of the Commission's regulations. The Supplementary Notice granted a thirty day period from date of publication in the Federal Register for the filing of petitions to intervene on the additional issues specified.

The bases for the intervention of Mr. Gadler are stated in seven generally worded contentions regarding the effects of the operation of the proposed Midland Plant.

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The Supplementary Notice provides that petitions to intervene are to be filed pursuant to 10 CFR Section 2.714 of the Commission's "Rules of

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Practice." Under 10 CFR Section 2.714 a petition to intervene must (1) set forth the interest of the petitioner in the proceeding; (2) show how that interest may be affected by Commission actions; and (3) the contentions of the petitioner in reasonably specific detail.

In our view the petition to intervene of Mr. Gadler fails to meet the requirements of 10 CFR Section 2.714 in all three respects.

As to the first two requirements of Section 2.714, petitioner's naked assertion of an affected interest does not give him standing even under the broadest interpretation of recent judicial pronouncements. We note that petitioner does not claim to be a resident of Michigan, nor does he claim to own or live on property in the vicinity of the plant. The interest alleged by petitioner is no different from the interest of any other member of the general public. The Supreme Court in Jenkins v. McKeithen, 395 U. S. 411, 423 (1969) has stated that persons challenging agency action must show both an "adversary interest" and "some connection between the official action challenged and some legally protected interest of the party challenging that action." Petitioner has alleged no such "legally protected interest."

In addition, the petition of Mr. Gadler is inadequate under the third requirement of 10 CFR Section 2.714, in failing to set forth contentions in reasonably specific detail. The petitioner's statements as to the

basis for his being granted intervenor status in this proceeding are unduly broad and vague and provide no reasonable basis under 10 CFR Section 2.714 for granting the petition.

Finally, most if not all of petitioner's assertions could have been raised under the earlier Notice of Hearing (35 F.R. 16749) in this proceeding. The Supplementary Notice of Hearing expressly states that it does not provide an additional opportunity to any person to intervene on the basis of, or to raise matters encompassed within, the issues pertaining to radiological health and safety and the common defense and security specified for hearing in the prior notice.

Accordingly, for the above stated reasons, we believe the present petition to intervene should be denied.

Respectfully submitted,

Robert Newton

Robert Newton
Counsel for AEC Regulatory Staff

Dated at Bethesda, Maryland,
this 3rd day of January, 1972.