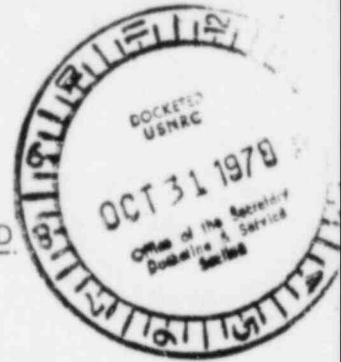


10/30/78

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
Detroit Edison Company)
)
(Enrico Fermi Atomic Power Plant,)
Unit 2))

Docket No. 50-341

NRC STAFF'S ANSWER TO PETITION FOR
LEAVE TO INTERVENE FILED BY MARTHA DRAKE

On September 11, 1978, the Nuclear Regulatory Commission (NRC) published in the Federal Register (43 Fed. Reg. 40327) a notice of "Opportunity for Hearing" with respect to the application for an operating license to Detroit Edison Co., Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc. (applicants) for operation of the Enrico Fermi Atomic Power Plant, Unit 2. The notice indicated that by October 10, 1978 any person whose interest may be affected by this proceeding may file a petition for leave to intervene in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2.

As required by 10 CFR § 2.714 and the notice, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of

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the petitioner's right under the act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Pursuant to the notice, Martha Drake filed a timely petition to intervene. The petition purports to seek intervention on behalf of Martha Drake of Petoskey, Michigan and her son Dan Drake, of Ann Arbor, Michigan (Petitioners). Following is the Staff's answer to the petition.

STANDING AS A MATTER OF RIGHT

As stated in the notice, 10 CFR § 2.714 requires that a petition for leave to intervene "shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding." 43 Fed. Reg. 40327. The requirement that interests be set forth with particularity must be strictly observed to assure that the adjudicatory process is invoked only by those persons who have real interests at stake. Virginia Electric & Power Company (North Anna Power Station, Units 1 & 2), ALAB-146, 6 AEC 631, 633-34 (1973). This is especially true in operating license proceedings where a hearing is not mandatory. In these circumstances, Licensing Boards must take utmost care to assure that potential

intervenors have the required interests to warrant a hearing. Cincinnati Gas & Electric Company, et al. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

The Commission has indicated that there is a "functional need for well-defined and specific interests, which will lend concrete adversity to the decision-making process." Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 570 (1976). The determination by the Atomic Safety and Licensing Board (Board) of whether the interests asserted by Martha Drake entitle her to status as a party is governed by judicial concepts of standing. Edlow, supra at 569-72. Thus, the petitioner must show (1) "injury in fact" and (2) that the interest is "arguably within the zone of interest" protected by the relevant statutes. Portland General Electric, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976). As set forth below, Petitioners have failed to set forth with particularity an interest which would entitle them to participate as a party.

The Petitioners claim that they are residents and citizens of the State of Michigan and that they are members of one of the cooperatives which is co-owner, co-applicant of the Fermi 2 facility. In addition, Dan Drake lives within 50 miles of the Fermi 2 site. The Petitioners assert that they will be "affected by the safety and economic health of the plant."

First of all, Martha Drake's assertion of standing appears to be predicated on the fact that she is a member of the cooperative and that its participation in this project will cause her economic harm, presumably as a member and ratepayer of one of the cooperatives.^{1/} However, it is now well-settled that the interest of a ratepayer is not arguably within the zone of interests sought to be protected by either the Atomic Energy Act or the National Environmental Policy Act and that ratepayer status will not confer standing as of right in NRC licensing proceedings. Pebble Springs, supra; Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977); Th; Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426, 428 (1977).

Furthermore, relying on the Commission's decision in Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976), the Appeal Board has previously determined in this proceeding (Amendment to Construction Permit CPPR-87) that "neither the Atomic Energy Act nor the National Environmental Policy Act embraces within its 'zone of interests' economic concerns even remotely akin to those which Mrs. Drake would press as a member and ratepayer of a cooperative that purchases power from a proposed Fermi co-owner." Detroit Edison Co. (Enrico Fermi Atomic

^{1/} Even though Mrs. Drake alleges that she is a member of one of the cooperatives that is a co-owner of Fermi 2, it is the Staff's understanding that she is a member of the retail cooperative, Top O'Michigan, Inc., which buys all of its electrical power from Northern Michigan Electric Cooperative, Inc., one of the co-owners of the Fermi 2 facility.

Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 475 (1978) (footnote omitted).

Based on this previous decision, we conclude that Martha Drake's economic interests in this proceeding are insufficient to confer standing to intervene as a matter of right. As previously indicated by the Appeal Board, under the Atomic Energy Act, this Commission's responsibility is to protect the public health and safety -- not the pocketbooks of owners or customers of the electric utilities involved. Economic interests are the appropriate concern of state public utility commissions or similar bodies. See ALAB-470, supra, p. 476.

Also in connection with Martha Drake's standing, we would note that her residence in Petoskey, Michigan is approximately 300 miles northeast of the Fermi site. Accordingly, her residence is not "within the geographical zone that might be affected by an accidental release of fission products." Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 311, 372 n.6 (1973). It has been previously determined that the longest distance which could support "geographical" standing is approximately 50 miles from the reactor. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977); see also Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 192-94, (1973). On the other hand, distance of 125 miles and "several hundred" miles have been found to be outside the zone affected by a reactor accident. Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977) (125 miles); Duquesne Light Co.

(Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244, n. 2 (1973) ("several hundred" miles). With these standards, it is clear that Martha Drake's residence in Petoskey and her citizenship of the State of Michigan are too remote to confer standing on this basis.

Next we turn to the question of Dan Drake's interest in this proceeding. Allegedly, he is located in Ann Arbor, Michigan, some 50 miles from the site. However, the NRC Staff is unable to ascertain exactly what interests Dan Drake is alleging will be affected by this proceeding since they are neither specified (other than the general allegation that his safety and economic health will be affected) nor is the petition signed by Dan Drake. In addition, we would note that Martha Drake, in the Fermi 2 construction permit amendment proceeding, attempted to premise her intervention on the interests of Daniel H. Drake. On the strength of Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977), both the Licensing Board and the Appeal Board held that she could not acquire standing to intervene on the basis of the interests of a third party. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387, aff'd, ALAB-470, 7 NRC 473, 474-75, n.1 (1978).

Based on the unspecified interests, the unsigned petition, and the previous attempt by Martha Drake to establish her standing through the close residency of Dan Drake to the Fermi 2 site, it appears that Dan Drake is not a real party

in interest in this proceeding. It is our opinion, therefore, that Dan Drake's interest has not been established in this petition with sufficient specificity, as required by 10 CFR § 2.714.

Accordingly, we submit that the petition is defective because it does not establish with sufficient particularity either of the Petitioners' interest that would confer standing to intervene as a matter of right.

DISCRETIONARY INTERVENTION

Even though a petitioner cannot establish standing as of right, it may nevertheless be permitted to participate as a matter of discretion where it can "make some contribution to the proceeding." Pebble Springs, supra, CLI-72-21, 4 NRC at 612. The Appeal Board has determined that discretionary intervention will be allowed when such participation is likely to produce "a valuable contribution ... to our decision-making process." Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633 (1976); Black Fox, ALAB-347, supra; Watts Bar, ALAB-413, supra.

Petitioners claim that "they can contribute to a full hearing" and that a full hearing cannot be accomplished without a "cooperative member from northern Michigan." It is the NRC Staff's opinion that these assertions fall far short of establishing whether the Petitioners can make a valuable contribution to the decision-making process. In addition, the stated contentions -- 1) unresolved

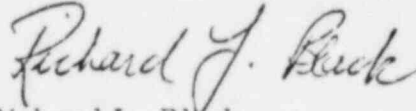
safety matters, 2) unresolved problems with the amount and effects of low-level radiation from the plant, 3) health effects from radon due to mining uranium for the plant are hazardous, and 4) the financial qualifications of the cooperatives -- are not set forth with sufficient particularity for us to determine if the Petitioners could make a valuable contribution to the decision-making process. In essence, this petition is void of any facts that would enable the Staff to assess whether the Petitioners have the expertise, the resources, or the interest to make any sound contribution to this proceeding in order to be allowed intervention as a matter of discretion. Specifically the petition must identify with particularity the issues on which the petitioners are prepared to contribute and the contributions which they expect to make. Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978). The Petitioners have failed to meet these prerequisites and therefore intervention as a matter of discretion should be denied.

CONCLUSION

In conclusion, the Petitioners have advanced no interest which would entitle them to intervention as a matter of right and have given no indication that they could make a substantial contribution to the development of the record which might justify intervention at the discretion of the Board. Consequently, it is the NRC Staff's position that the petition for leave to intervene submitted

by Martha Drake should be denied. Should the Petitioners wish to cure the above-noted defects in the petition they, of course, may do so as of right until 15 days before the special prehearing conference. 10 CFR § 2.714(a)(3).

Respectfully submitted,

A handwritten signature in cursive script, reading "Richard L. Black".

Richard L. Black
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of October, 1978