

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
DETROIT EDISON COMPANY)	Docket No. 50-341
(Enrico Fermi 2))	

NRC STAFF'S RESPONSE TO
 DOCUMENT DATED OCTOBER 17, 1978

The NRC Staff received on November 2, 1978, a document addressed to the Director of Regulation and Secretary of the Commission, dated October 17, 1978 and signed by Dr. Robert Asperger requesting that notice of "any prehearing conference" be given to some forty-three "people and local units of government" so that they have the opportunity to "submit appropriate affidavits spelling out their contentions".

On November 8, 1978 during a telephone conference between Dr. Asperger and the undersigned, Dr. Asperger explained that he filed the instant document because he believed the NRC had failed to give "local governments" notice of their rights pursuant to 10 CFR §2.715(c). The basis for his request, he asserted, is that 10 CFR §2.715(c) requires that these local governmental units or persons representing them be given a reasonable opportunity to participate in NRC hearings. Although, as he explained, some of the persons listed in his motion may not represent local governmental units he believes for the most part that they do^{1/}

^{1/} These individuals, he said, have in the past expressed to him their interest in participating in this proceeding.

Power Plant, Unit 2. 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 instant document is devoid of any information regarding the interest of the forty-three "people and local units of government" listed in the document. 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 document contains other deficiencies, if it is considered a petition for leave to intervene, which include a failure to set forth the specific aspect or aspects of the subject matter of the proceeding to which the forty-three "people and local units of government" seek intervention (see 10 CFR §2.714) and any authorization of Dr. Asperger to represent any of the listed persons or governmental units.^{4/} Finally, the document is defective as a petition for leave to intervene because it was filed after the date petitions were due^{4/} and the document does not address the factors set forth in 10

^{4/} The notice provided that by October 10, 1978 any persons 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. The instant document is dated October 17, 1978.

and that to assure that 10 CFR §2.715(c) is complied with, a notice of any prehearing conference should be provided each of them. For the reasons set forth below, the NRC Staff opposes the instant request.

This document appears to be a supplemental filing to the request of Dr. Asperger seeking republication of the notice of hearing and display ads. By response dated November 1, 1978,^{2/} the NRC Staff opposed that request for the reasons that (1) Dr. Asperger is without standing to raise this concern (any allegation of prejudice resulting from failure to detail the local governmental unit's right to participate, as provided in 10 CFR §2.715(c), should be asserted by a local governmental unit),^{3/} (2) the local governmental units were given constructive notice of their rights to participate as provided by 10 CFR §2.715(c), and (3) the request challenged the Commission regulation (10 CFR §2.105) governing the contents of notices of proposed actions. The Staff submits that the same reasons, with the exception of reason (3), support denial of the instant request.

If the instant document is intended to be treated as a petition requesting a hearing and leave to participate in such proceeding, it must fail.

On September 11, 1978, the Commission published in the Federal Register (43 Fed. Reg. 40327) a notice of "Opportunity for Hearing" with respect to the application for an operating license for the Enrico Fermi Atomic

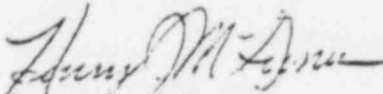
^{2/} "NRC Staff's Response to Motion for Republication of Notice For Opportunity of Hearing", dated November 1, 1978 ("Response").

^{3/} See Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977).

CFR 52.714(a)(1) and (d) for consideration of petitions not timely filed.

For the above reasons, the request contained in the document filed by Dr. Asperger should be denied.

Respectfully submitted,


Henry J. McGurren
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 13th day of November, 1978

Oct 17, 1978

Director of Regulations & Secretary of the Commission
Nuclear Regulatory Commission
Washington, D.C. 20555



Sirs;

The following persons are planning to enter the hearings Docket No 50-344 the construction license hearings for Detroit Edison's Fermi II unit. They hereby request sufficient notice of any and all hearing conference in relation to said plant's hearings. All these people and local units of government plan to submit appropriate affidavits spelling out their contentions under oath as per the rules of May 26, 10 CFR. revised.

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op at

Acknowledged by card. 10/25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
Detroit Edison Company) Docket No. 50-341
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(Enrico Fermi Atomic Power Plant,)
Unit 2))



CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION TO FILE, OUT-OF-TIME
"NRC STAFF'S RESPONSE TO DOCUMENT DATED OCTOBER 17, 1978" and "NRC STAFF'S
RESPONSE TO DOCUMENT DATED OCTOBER 17, 1978" in the above-captioned pro-
ceeding have been served on the following by deposit in the United States
mail, first class, or, as indicated by an asterisk, through deposit in the
Nuclear Regulatory Commission's internal mail system, this 13th day of
November, 1978:

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Respectfully,

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Oct 17, 1978

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