

UNITED STATES NUCLEAR
COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING
BOARD

In the Matter of
THE DETROIT EDISON COMPANY

Enrico Fermi II

Docket 50-341
Amendment to
Construction
Permit CPPR-87

Amended Petition of Martha G. Drake

My name is Martha G. Drake, 230 Fairview, Petoskey, Mich. I am a member of Top O' Michigan, a retail rural electric cooperative, which with two other retail cooperatives, owns Northern Michigan Electric, Inc., a wholesale rural electric cooperative that is buying a part interest in the Enrico Fermi II plant. I am petitioning to stop this sale.

Amending the license of Detroit Edison to include NME and Wolverine Electric, Inc., brings up issues that are new and are different than those addressed in previous licensing situations that considered only the original license for nuclear plants. In view of the fact that the privately owned utilities cannot finance their billion dollar nuclear plants and are seeking public monies voted by Congress for rural development to the extent of \$5 billion makes these questions timely and it is imperative that they be answered.

1. Can ownership or part ownership of a nuclear plant be transferred to an entity that hasn't been licensed to construct or own a nuclear plant?
2. Does a member of a cooperative have standing to intervene when this cooperative buys into a nuclear plant? Is a cooperative member's interest different than that of a ratepayers?
3. Can public funds of a cooperative be invested in a privately owned utility?
4. Can an agency of the U.S. government guarantee a loan being invested in a private corporation?

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5. Is it necessary to issue a new and timely Environmental Impact Statement with a change of ownership with such a sale when factors such as impact on local governments, health facilities, jobs, as a result of loss of taxes are considered?
6. Can funds voted by Congress for rural development legally be invested in a plant located in and serving the industrial heart of the state?
7. Does an amendment to a license to include two new owners constitute a 'transfer', 'sale', or 'acquisition'?
8. Is the Environmental Impact of a sale different than the Environmental Impact of the plant itself?

Petitioner is asking for standing in this case. In *Pebble Springs Portland General Electric Co. et al v. Project Survival*, CLI-76-27, p.613) it was ruled that ratepayers do not have the right to standing simply because they are ratepayers. However, the distinction between a ratepayer and a cooperative member with equity in the cooperative is very real. NME exists only for cooperative members. It is fully owned by the three retail cooperatives. There is no other equity in it. The members are the cooperative.

The right to standing, if based on judicial precedent, requires 'injury in fact' in 'zone of interest to be discussed.

While petitioner agrees with Judge Fox in his Jan. 19, 1978 decision in G77-364 CA, that the NRC rules clearly state that Reg. 50-91.10 CFR "expressly states that in determining whether an amendment to a license will be issued the NRC must be guided by the same considerations that govern the issuance of initial license" which would include many issues, the zone of interest here appeared to have been narrowed to 'health and safety' and 'financial ability of coops'. Petitioner argues that all issues covered in original licensing hearing together with waste disposal, need for plant, whether

conservation has been tried, etc., should be considered.

However, in the two 'zones of interest' the pre-hearing was concerned with, petitioner contends that her family may be injured in fact because:

1) Dr. William Taylor, testifying on nuclear wastes being stored in Northern Michigan, said that if this area(Northern Lower Michigan) enjoyed the benefits of nuclear power,they should be willing to have the wastes stored there.

Northern Lower Michigan, the area served by NME, is the prime area under consideration for storage of nuclear wastes. Several counties voted about 10-1 against it. If we buy into this plant, we are more apt to have the wastes stored in our area and may be exposed to radiation as wastes are transported to the area and buried in it.

The 1977 Government Accounting Office study, Nuclear Energy's Dilemma: Disposing of Hazardous Radioactive Waste Safely, shows that the government has promised more than they can deliver and does not know how to dispose of wastes safely.

2) Daniel H. Drake, petitioner's son, has been admitted to the University of Michigan Medical School for the fall of 1978. He will be living in Ann Arbor when the plant is scheduled to open. Ann Arbor is about 30 miles from Fermi II. He has some asthma and has been subjected to considerable radiation from medical X-Rays and it could be injurious to his health to be exposed to more radiation. Dr. Alice Stewart, the eminent British epidemiologist, in Friends of the Earth, Jan., 1978, says 'low-level radiation cancer risk 'may be up to 20 times greater than currently accepted estimations.' If the (ERDA-Mancusso) study is valid, 'then clearly there is a serious health hazard for workers in the atomic industry and probably for the general public as well.'

3) By buying into Fermi II on the Michigan Power Pool, the demand on Big Rock is stimulated. Big Rock nuclear plant is less than 10 miles from petitioners home. It emits 175,000 curies of radiation a year. Building ^{cooperative owned} wood or coal plants in this area would not stimulate demand on the pool and therefore on Big Rock.

In the opinion of Judge Fox in G77-364 supra p. 8, attached, a case with the same parties, "There is no doubt that plaintiffs here are within the class for whose especial benefit the statute was enacted." He quotes from Crowther v. Seaborg, 312 F. Supp 1205, 1216 (D. Colo.1970), 'it was the intent of Congress in passing the (Atomic Energy) Act to protect the health of the class of which plaintiffs are members, then when they allege disregard of that interest, they are persons allegedly aggrieved or adversely affected within the meaning of the statute and have standing to sue.'

Judge Fox argues, p.9, supra, that plaintiffs have demonstrated injury in fact by alleging that as members of the purchasing cooperatives their utility rates will increase owing to the interest payable by the cooperatives on the loans they received to cover the cost of the purchase of 20% of Fermi II.

This is 'injury in fact' in the zone of interest of financial ability of cooperatives to enter into this sale.

There is the serious consideration that the cooperative may go bankrupt because there is no provision for them to recover their money if DE is not able to complete the financing of the plant.

Mr. Groves, Vice President of DE on the stand before the MPSC said that in the event the DE couldn't finance the rest of the plant, and it has been stalled since 1974 for lack of funds, the cooperatives could borrow more money and own a greater share. This is no solution

as it would only burden the coops with a larger share of a 'lemon'. There is no provision for them to get their money back in such a case and it is hard to see how NME with a gross income of only \$12 plus million in 1975 can take on the interest on a debt of \$129 million (\$10 million a year) let alone the interest on a larger amount.

No accounting has been made to the cooperative members as to what this sale will do to their rates, which are already a high 6¢ a kwh. Already one of their largest users (Boyne Country) is threatening to build their own wind generating system. This sale could well bankrupt the cooperative with just the interest payments and disrupt our supply of electricity.

The NME area will certainly be harmed by the loss of some \$4 million a year in property taxes, 500 construction jobs, and 100 operating jobs that would have accrued to the NME area if plants were built there instead.

Petitioner contends that it is not the environmental effect of the plant but the environmental effect of the sale of the plant that we are considering and its impact with a new EIS is essential.

Should the above contentions not qualify, in the Boards opinion, this petitioner for standing by right, the Pebble Springs decision states that discretionary standing may be granted. Six conditions govern this standing.

- 1) Petitioner can assist in developing a sound record because she has been involved in this sale for over a year and has made presentations to the Boards of Directors and has intervened before the Michigan Public Service Commission and before Judge Fox' Court.

In U.5182, Michigan Public Service Commission, Judge Sheridan in his 'Proposal for Decision' said that "Mr. Drake....raises questions....that are valid and necessary considerations that the Commission must face before determining that this project is in the public interest."

Petitioner is a cooperative member and has served on public boards in her area. She is an accountant and has recently received an advanced degree that included utility economics. She has access to funds to bring in witnesses and has contacted public service commissioners from nearby states and other experts.

- 2) Plaintiff owns three pieces of property in the area but her interest lies with the well being of the area as a whole and of the cooperative members who were not given a vote on this purchase.
- 3) An order affecting this sale may affect the plaintiffs' source of electricity and the health and safety of the area in which she lives.
- 4) Petitioner knows of no other place where her interests will be protected. DE maintained in G77-364A that hearings before the NRC were the proper place to bring our objections to the sale. There is no E.I.S. in Public Service Commission hearings.
- 5) Petitioner will be represented by CEE but she would like to have standing because she lives in the cooperative area, has been in U-5182 and U-5408 and G77-364 which CEE was not, and can enter some data from those cases. Also she lives 250 miles from the man representing CEE which makes communications difficult.
- 6) Petitioners participation will not prolong proceedings unduly because the legality of this sale is being protested in the courts and until that is settled, the sale will be legally 'clouded'.

Therefore, petitioner asks for standing to object to the sale and to contribute to a sound record on the new questions that the participation of the REA cooperatives in a private utility raises.

Because Michigan has been immobilized since Jan. 26 and I was marooned 200 miles from my home and papers and the mails have not brought the documents I need, I ask permission to add to this within 5 days if material I have sent for arrives and would add weight to my petition.

Respectfully,

Martha G. Drake
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Feb. 1, 1978