

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
THE DETROIT EDISON COMPANY) Docket No. 50-341
(Enrico Fermi Atomic Power) (Operating License)
Plant, Unit No. 2))

AFFIDAVIT IN SUPPORT OF APPLICANTS' MOTION FOR LEAVE TO
COMMENCE LIMITED DISCOVERY AGAINST PETITIONERS
DRAKE AND CEE AND ALTERNATIVE REQUEST FOR WAIVER

DISTRICT OF COLUMBIA) ss.

EUGENE B. THOMAS, JR., being duly sworn, says:

1. I am a member of the firm of LeBoeuf, Lamb,
Leiby & MacRae, counsel to The Detroit Edison Company. My
office is located at 1757 N Street, N.W., Washington, D.C.
20036. I make this affidavit in support of "Applicants'
Motion for Leave to Commence Limited Discovery Against
Petitioners Drake and CEE and Alternative Request for
Waiver".

2. By virtue of the terms of the Participation
Agreement entered into between The Detroit Edison Company,
Northern Michigan Electric Cooperative, Inc., and Wolverine
Electric Cooperative, Inc. (collectively, "Applicants"),
concerning the construction, operation, licensing, and
utilization of electric power from the Enrico Fermi Atomic
Power Plant, Unit No. 2, ("Fermi 2"), The Detroit Edison

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Company is authorized to represent the interests of the two Cooperatives in this proceeding.

3. On October 22, 1974, The Detroit Edison Company filed its "Amended and Substituted Application for Licenses", seeking Commission approval for the operation of the Fermi 2 facility. On March 17, 1978, that application was amended to add as co-Applicants the two Cooperatives identified above.

4. On September 11, 1978, the Commission published in the Federal Register a notice of opportunity for hearing in connection with the issuance of an operating license to Applicants. That notice extended an opportunity to interested members of the public to file petitions for leave to intervene.

5. On October 10, 1978, I was served with a copy of a joint petition for leave to intervene, filed on behalf of Mrs. Martha Drake and Mr. Dan Drake. Mrs. Drake apparently signed the petition; Mr. Drake did not. Mrs. Drake also personally served the petition, and to my knowledge, information, and belief, did so alone.

6. Although Mrs. Drake has opposed Detroit Edison's attempt to construct and operate Fermi 2 in many proceedings as detailed in Applicants' Motion to Commence Discovery, to my knowledge, information, and belief, Mr. Dan Drake has not previously joined in these efforts. Accordingly, and based on

similar arguments regarding standing made by Mrs. Drake in the Fermi 2 construction permit amendment proceeding, it is possible that the real party in interest in the instant proceeding is Mrs. Drake herself. Applicants therefore seek to take the deposition of Mr. Dan Drake to inquire further into allegations made on his behalf concerning his standing. Applicants are prepared to hold the deposition in Ann Arbor, Michigan where Mr. Drake allegedly resides, and will confine this deposition to the issue of his standing.

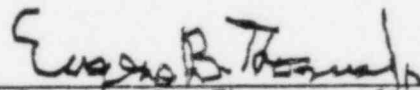
7. On October 12, 1978, I received a copy of a petition for leave to intervene filed by mail on October 9, 1978 and prepared by a Mr. David Hiller on behalf of an unincorporated association, Citizens for Employment and Energy ("CEE"). Mr. David Hiller is, to my knowledge, information, and belief, a student at the University of Michigan Law School and a member of the Environmental Law Society at that law school. According to Mr. Hiller, with whom Affiant has spoken, the petition to intervene was prepared at the request of Dr. Asperger. Mr. Hiller informed Affiant that neither he nor the Environmental Law Society represents CEE in this proceeding.

8. Applicants seek also to depose the CEE member alleged in the petition to reside within one mile of the Fermi 2 plant on the issue of the organization's standing to intervene in this proceeding. The allegations in CEE's

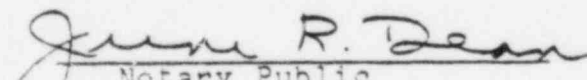
petition are too vague to determine whether CEE has met the intervention requirements of 10 C.F.R. § 2.714. The requested deposition may help resolve this question well in advance of the first prehearing conference.

9. As set forth in Applicants' accompanying Motion to Commence Discovery, Applicants contend that the requested discovery is permissible under the Commission's Rules of Practice and analogous Federal practice. Should this Board disagree, however, Applicants request that pursuant to 10 C.F.R. § 2.758(b), their motion be treated as a petition for waiver of 10 C.F.R. § 2.740.

10. Applicants contend that the time limitation contained in § 2.740(b)(1) is directed only to discovery on the merits of a party's case. As set forth above and in Applicants' Motion to Commence Discovery, Applicants seek only limited discovery on the issue of petitioners' alleged interests. Application of the limitation in § 2.740(b)(1) to cut off needed discovery on the initial question of petitioners' standing would not further the purposes for which the rule was adopted.


Eugene B. Thomas, Jr.

Sworn to before me
on October 20, 1978.


Notary Public

My Commission expires: May 31, 1983 .