

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
THE CINCINNATI GAS & ELECTRIC) Docket No. 50-358
COMPANY, et al.)
)
(Wm. H. Zimmer Nuclear Power)
Station))

APPLICANT'S RESPONSE TO MIAMI VALLEY POWER
PROJECT'S MOTION FOR EVENING HOURS

On August 24, 1979, the Miami Valley Power Project moved to schedule evidentiary hearings in the captioned proceeding during evening hours. As discussed below, Applicants, The Cincinnati Gas & Electric Company, et al., oppose the motion.

A similar motion by the Project has already been denied by the Licensing Board.^{1/} The Project has presented nothing new which compels the holding of evening sessions at the expense of day sessions.

This Licensing Board has bent over backwards in an effort to accommodate the attorneys for the Project. Initially, during the course of the proceeding, it has juggled consideration of matters to suit the convenience of

1/ Tr. 550.

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the Project's attorneys. Secondly, it has permitted the Project as well as the other intervenors to be represented by lay members during certain phases of the proceeding.^{2/} Thirdly, the Project is represented by at least five attorneys who have rotated their attendance during the hearing. As a result, there is no hardship on any one of the Project's counsel. To the contrary, more than one Miami Valley Power Project attorney has been present at the same time for most of the twelve days of hearings.

It is simply not practical to hold hearings only during the evening hours. The Licensing Board (and counsel for the Staff and Applicants) must travel to Cincinnati for the convenience of the intervenors and stay for the duration of the session. It would be ludicrous to require the Board to sit idly by during the day waiting for an abbreviated session during the evening hours. The same may be said of the court reporters and witnesses. In addition, experience has shown the difficulty in making logistical arrangements for evening sessions at the Court House.

Hearings during the evening hours are not productive. First, the number of hours reasonably available to hold hearings are limited. This proceeding has moved at a snail's pace. The limitation of the number of hours in each

^{2/} Memorandum and Order Concerning Intervenors' Requests to Utilize Lay Representatives dated June 13, 1979.

hearing day would slow the pace even more. It is also naive to expect that the Board and parties could perform up to their capacity during the evening hours, particularly if the attorneys for the Project seek to attempt to pursue their "livelihood" during the daytime hours.

As we have stressed in the past and as the Board has recognized,^{3/} having elected to participate, some sacrifices on the part of the intervenors' attorneys will be necessary during the course of the proceeding. As the Atomic Safety and Licensing Appeal Board has stated, "the right of participation in an administrative proceeding carries with it the obligation of a party to assist in 'making the system work' and to aid the agency in discharging the statutory obligations with which it is charged."^{4/} The absurdity of the Miami Valley Power Project motion is apparent if one considers the reception it would receive in any court.

This response should not be interpreted as opposing the holding of evening sessions in this proceeding. The Applicants have consistently proposed extending the hours of the hearing into the evening and have also suggested Saturday sessions as a means for moving ahead. These extended hours, together with a focused cross-examination by intervenor's counsel, instead of the meandering examination seen

3/ Id. at 5.

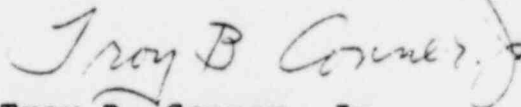
4/ Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 332 (1973).

to date, would significantly shorten the number of days of hearing and limit intervenors' counsels' absence from their other pursuits.

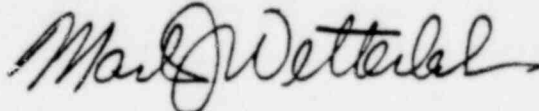
For these reasons, the motion to schedule evidentiary hearings solely during the evening hours should be denied.

Respectfully submitted,

CONNER, MOORE & CORBER



Troy B. Conner, Jr.



Mark J. Wetterhahn
Counsel for the Applicants

September 7, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Miami Valley Power Project's Motions to Reopen Discovery for Contention 13 and for Full Disclosure," and "Applicant's Response to Miami Valley Power Project's Motion for Evening Hours," both dated September 7, 1979, in the captioned matter, were served upon the following by deposit in the United States mail this 7th day of September, 1979:

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