UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
The Cincinnati Gas & Electric Company, et al.	)	Docket No. 50-358
	)	
	)	
(Wm. H. Zimmer Nuclear Power Station)	)	
	)	

APPLICANT'S MOTION FOR DISMISSAL OF CONTENTION 13

Applicant in this proceeding, The Cincinnati Gas & Electric Company, et al., moves the Atomic Safety and Licensing Board ("Licensing Board") for dismissal of Contention 13 for failure of the Miami Valley Power Project ("MVPP") to respond to discovery. On November 21, 1979, the Applicant promulgated a set of interrogatories to MVPP[1/] relating to Contention 13 concerning the financial qualifications of the Applicant. On November 13, 1979, intervenor MVPP had submitted sets of interrogatories to the Applicant and the NRC Staff regarding Contention 13. Such interrogatories were permitted by the Licensing Board's Memorandum and Order Ruling on Various Motions and Rescheduling Evidentiary Hearing dated October 1, 1979 at 4-5. Pursuant to that order and the Commission's Rules and Regulations, responses

---

1/ Applicant's Seventh Set of Interrogatories to Miami Valley Power Project.

8001160 142

or objections to Applicant's interrogatories to MVPP were to be filed on December 10, 1979, but, to date, nothing has been received. As is evident by the most recent exchange, MVPP views discovery as a one-way street. On one hand, the Applicant and Staff have complied with the NRC's regulations and, on the other hand, MVPP has repeatedly flouted the Commission's rules and the Board's authority by failing to make any reply whatsoever.

Applicant believes that dismissal of this contention is an appropriate sanction for MVPP's complete failure to adhere to the Commission's rules. Applicant need not remind the Board that this is not the first instance of this conduct.[2/] By this point in the proceeding, counsel for MVPP must be considered to be familiar with the Commission's rules and should be held accountable for their actions. Even considering the Licensing Board's stated reluctance to dismiss contentions, this sanction is now mandated. The question of the financial qualifications of an applicant for an operating license is not a serious safety matter which would require independent Licensing Board review should the contention be dismissed.[3/]

2/ Memorandum and Order Concerning Applicant's Motion for Reconsideration or for Alternate Relief dated October 23, 1979.

3/ See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 17-21 (1978); cf. the Licensing Board's Memorandum and Order of October 23, 1979 at 2-3.

If the Board is disinclined to grant the motion for dismissal, we would ask alternatively for the same relief as granted in the previously noted October 23, 1979 Memorandum and Order, i.e., that if MVPP is to present a direct case with regard to Contention 13, it should by January 21, 1980 be required to respond to all discovery requests, and as a condition to being permitted to cross-examine, it must identify and make available for inspection and copying, any documents upon which it intends to rely or utilize during cross-examination.

For the above stated reasons, the requested relief should be granted.

Respectfully submitted,

CONNER, MOORE & COREER

Troy B. Conner, Jr.

Troy B. Conner, Jr.

Mark J. Wetterhahn
Counsel for the Applicant

January 8, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
The Cincinnati Gas & Electric Company, et al.	)	Docket No. 50-358
	)	
	)	
(William H. Zimmer Nuclear Power Station)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Motion for Dismissal of Contention 13," dated January 8, 1980, in the captioned matter, were served upon the following by deposit in the United States mail this 8th day of January, 1980:

Charles Bechhoefer, Esq.
Chairman, Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Frank F. Hooper, Member
Atomic Safety and Licensing Board
School of Natural Resources
University of Michigan
Ann Arbor, Michigan 48109

Mr. Glenn O. Bright, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Richard S. Salzman, Esq.
Chairman, Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Lawrence R. Quarles
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Michael C. Farrar, Esq.
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chairman, Atomic Safety and Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chairman, Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Charles A. Barth, Esq.
Counsel for the NRC Staff
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

William J. Moran, Esq.
General Counsel
Cincinnati Gas & Electric Company
Post Office Box 960
Cincinnati, Ohio 45201

Mr. Chase R. Stephens
Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

William Peter Heile, Esq.
Assistant City Solicitor
City of Cincinnati
Box 214
Cincinnati, Ohio 45202

Leah S. Kosik, Esq.
Attorney at Law
3454 Cornell Place
Cincinnati, Ohio 45220

John D. Woliver, Esq.
Clermont County Community
Council
Box 181
Batavia, Ohio 45103

Mark J. Wetterhahn