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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 Station))

APPLICANTS' MOTION TO STRIKE "INTERVENOR CITY
OF CINCINNATI RESPONSE TO APPLICANTS' SUPPLEMENTAL
RESPONSE TO CITY OF CINCINNATI'S MOTION FOR LEAVE
TO AMEND ITS PETITION FOR LEAVE TO INTERVENE"

The City of Cincinnati ("Intervenor") has filed an unauthorized reply brief in response to the supplemental response by the Cincinnati Gas & Electric Company, et al. ("Applicants") opposing Intervenor's proposed contentions 18 and 19, regarding transmission of air monitoring data to the City. Intervenor has not sought from this Atomic Safety and Licensing Board permission to file its reply brief, nor has leave to file been granted. Under the circumstances, this unauthorized pleading should be stricken.

The NRC Rules of Practice expressly provide that the moving party has no right to reply, except as permitted, under these circumstances, by the presiding officer. 10 C.F.R. §2.730(c). See generally Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-479, 7 NRC 470, 471 (1978); Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 745 n.9 (1978). Moreover, Intervenor must seek leave prior

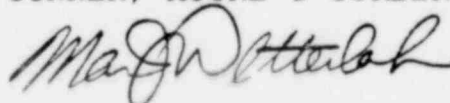
to filing its reply brief. Public Service Company of Oklahoma (Black Fox Station, Units 1 & 2), LBP-76-38, 4 NRC 435, 441 (1976). Thus, Intervenor cannot "cure" its failure to comply with the Commission's rules, since it has already filed its reply brief without first seeking permission.

Intervenor is represented by counsel, who is deemed to be fully conversant with the NRC Rules of Practice. Although certain allowances are made by licensing boards for pro se petitioners, counsel's disregard of the rules should not be countenanced.

Accordingly, it is appropriate that Intervenor's reply brief be stricken.

Respectfully submitted,

CONNER, MOORE & CORBER



Mark J. Wetterhain
Counsel for the Applicants

August 2, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion to Strike 'Intervenor City of Cincinnati Response to Applicants' Supplemental Response to City of Cincinnati's Motion for Leave to Amend its Petition for Leave to Intervene,'" dated August 2, 1979, in the captioned matter, were served upon the following by deposit in the United States mail, this 2nd day of August, 1979:

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