

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 ANSWER TO PETITION OF MENTOR, KENTUCKY  
TO PARTICIPATE PURSUANT TO 10 C.F.R. §2.715(c)

On December 28, 1979, the City of Mentor, Kentucky ("City" or "Mentor") petitioned the Atomic Safety and Licensing Board ("Licensing Board") to admit it as a participant in the subject operating licensing proceeding pursuant to 10 C.F.R. §2.715(c). While such requests are usually treated in a pro forma manner by licensing boards, Applicant, The Cincinnati Gas & Electric Company, et al., submits that, for the reasons discussed below, this request should be denied and that, if admitted, conditions should be placed on Mentor's participation.

The Petition designates Mrs. Mary Reder as the "representative" of the Mentor City Council and fails to identify her as an attorney-at-law. The Petition states that Mrs. Reder's mailing address is California, Kentucky. Inasmuch as she is apparently not a resident of the City of Mentor, as the Petition indicates and is not an attorney-at-law, <sup>1/</sup>

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1/ As noted in the attached newspaper article, Mrs. Reder is not an attorney; in any event, no notice of appearance, as required by 10 C.F.R. §2.713(a), has been submitted by Mrs. Reder.

we are aware of no precedent which would permit her to represent a political subdivision participating in an NRC licensing proceeding under the special, liberal provisions of 10 C.F.R. §2.715(c).<sup>2/</sup>

Secondly, it appears the City of Mentor is not the real party in interest here. If so, the provisions of §2.715(c) are being misused to permit an anti-nuclear group opposed to the Zimmer Station to bypass the Commission's clearly established intervention procedures and slip in the back door through the liberal procedures established solely as an accommodation to governmental entities.<sup>3/</sup>

Attached is a copy of an article appearing in the January 3, 1980 edition of the Kentucky Post indicating that Mary Reder is head of the Zimmer Area Citizens of Kentucky ("ZACK"), an organization opposed to the licensing of the Zimmer Station. The second paragraph of that article indicates that the real party in interest is ZACK.<sup>4/</sup> As such, ZACK is using Mentor as a front to avoid the responsibilities

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<sup>2/</sup> See 10 C.F.R. §2.713(a). To the contrary, Commission decisions have limited representation to attorneys with the only exception being that a member of an unincorporated association which is an intervenor may represent it. General Electric Company (General Electric Test Reactor, Vallecitos Nuclear Center), Docket Nos. 50-70 and 70-754, Memorandum and Order dated October 9, 1979, slip op. at 9-12.

<sup>3/</sup> See Statement of Considerations accompanying miscellaneous amendments to Part 2, Rules of Practice, 43 Fed. Reg. 17798 (April 26, 1978).

<sup>4/</sup> While Applicant would never ask this Licensing Board to rely on a newspaper article in deciding a motion, we submit that there is sufficient basis for further inquiry in this instance.

which would rest upon it under the Commission's regulations if ZACK were admitted as a named intervenor.

The rationale for not permitting a private intervenor to represent a governmental entity was expressed by the Appeal Board in the Marble Hill proceeding:

It was one of the basic tenets of the dissent from the Appeal Board's majority decision in West Valley that a local government "might well view the demands of the public interest in a markedly different light than . . . private intervenors," and that accordingly, because it is governments, not private parties, who are charged with the responsibility of identifying and protecting the public interest, a private party—even though it may be advancing contentions identical to those proposed by the petitioning government—could not be said to represent adequately the petitioning government's interest. In reversing the majority's decision in that case, the Commission indicated agreement with this analysis, stating in its own West Valley decision that (1 NRC at 275):

We share the view of the dissenting member of the Appeal Board that the private intervenors herein advancing contentions substantially identical to those of the County may not effectively represent the County's presumably broader interests.  
[Footnotes omitted.] 5/

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5/ See Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-339, 4 NRC 20, 24 (1976).

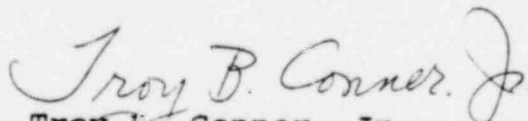
For these reasons, in the event the Board were to admit Mentor as a participant, it should require that it be represented by an elected official or through its counsel.

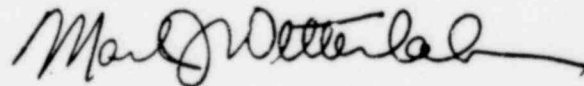
Furthermore, if the Board decides to admit the City, due to the fact that the petition was filed over five years after the notice of intent to issue an operating license appeared in the Federal Register and inasmuch as Mentor's expressed interest in this proceeding is limited to emergency planning, the City should be required to take the case as it finds it and its participation should be limited solely to that issue.<sup>6/</sup>

For the foregoing reasons, the petition should be denied or participation of the City of Mentor should be conditioned as discussed above.

Respectfully submitted,

CONNER, MOORE & CORBER

  
Troy B. Conner, Jr.



Mark J. Wetterhahn  
Counsel for the Applicant

January 11, 1980

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<sup>6/</sup> Id. at 26.

# Mentor asks say on nuke plant

By Christine Decker

*Kentucky Post Staff Writer*

The tiny Campbell County city of Mentor is concerned about its big neighbor, the unfinished Zimmer Nuclear Plant across the Ohio River.

Mary Reder, head of Zimmer Area Citizens of Kentucky, has filed an application through Mentor City Council to represent it in the summer Nuclear Regulatory Commission licensing hearings for Zimmer.

Her husband, Don Reder, who's also involved in ZACK, said if the application is accepted, Mrs. Reder will be the only Kentuckian involved in the hearings.

The Reders, Shaw Goetz Rd., are both math teachers. Mrs. Reder teaches at Campbell County High. Reder teaches at Walnut Hills High in Cincinnati.

"It's very important people from northern Kentucky get involved in these hearings. We are very intimately concerned. At least half of the surrounding area is in Kentucky," Reder said.

An evacuation plan is now being designed by Bob Alexander, Campbell County Disaster Coordinator.

## Gaps

"We need to discuss what we feel will be major gaps in the plan and also issues like storage facilities, monitors and who's going to pay for all this," Reder said.

Zimmer is located near Moscow, O. Reder said at least half of Campbell County and the eastern tip of Kenton County is within the ten-mile danger zone of the \$850 million plant.

The licensing hearings, to be held in Cincinnati, may be the last before a decision is made by the NRC whether to issue an operating license.

Cincinnati Gas & Electric Co., the plant's principal owner, has said

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Petition of Mentor, Kentucky to Participate Pursuant to 10 C.F.R. §2.715(c)," dated January 11, 1980, in the captioned matter, were served upon the following by deposit in the United States mail this 11th 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

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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

Mr. Ronald Strasinger, Mayor  
City Hall, The City of Mentor  
Mentor, Kentucky 41007

Mrs. Mary Reder  
Box 214  
Route 2  
California, Kentucky 41007

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



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Mark J. Wetterhahn