

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



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

APPLICANTS' MOTION TO DISMISS THE MIAMI VALLEY
POWER PROJECT AS A PARTY TO THE PROCEEDING

Introduction

On December 19, 1978, The Cincinnati Gas & Electric Company, Columbus & Southern Ohio Electric Company and The Dayton Power and Light Company, Applicants in the captioned proceeding, served Applicants' Second Set of Interrogatories to Miami Valley Power Project upon all parties and the Atomic Safety and Licensing Board in the captioned proceeding. Pursuant to the Nuclear Regulatory Commission's ("NRC" or "Commission") Rules of Practice, particularly 10 C.F.R. §§2.710 and 2.740(b), responses or objections were required to be filed by January 9, 1979.

On that date, counsel for the Applicants called the Miami Valley Power Project ("Project") to determine whether responses would be filed on time. Mr. Staiger, who identified himself as the representative of the Project responsible for answering the interrogatories, admitted that responses were

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due that day but had not been prepared, and stated that he had intended to request an extension of time to respond. ^{1/}

In order to expedite the proceeding, counsel for Applicant's stated that he would not object to a one week extension until January 16, 1979 for the Project to complete and file its response. ^{2/} The letter confirming that telephone conversation concluded:

I wish to emphasize that we expect complete responses to the interrogatories and would move the Licensing Board to impose sanctions, including possibly dismissal of the Project from the proceeding, should your response not be timely or responsive. ^{3/}

The responses were not filed within the extended period, and, to date, nothing has been received. The Project has not attempted to further communicate with the Applicants. Accordingly, for its complete failure to respond to the interrogatories, Applicants move that the Project be dismissed as a party.

Background

The Project's participation in this proceeding has been minimal. Aside from its intervention petition and an appearance at the prehearing conference in January, 1976, the Project has not taken an active role in this matter. It

^{1/} See letter from Wetterhahn to Staiger dated January 9, 1979, a copy of which was sent to the Board and parties.

^{2/} Id.

^{3/} Id.

has never answered any pleading filed by any party nor has it responded to any invitation for a submission to the Licensing Board.^{4/}

On October 31, 1977, the Applicants served a set of interrogatories upon the Project, but no response or objection was ever made. On November 23, 1977, the Applicants moved to compel discovery after contacting Mr. Schumacher, a spokesman for the Project who stated that the document had been received, but that "a final decision had not been made at this time whether to respond."^{5/} That motion noted instances in which other licensing boards had dismissed intervenors for failure to respond to interrogatories.

The Applicants' Response to the November 16, 1978 Order of the Atomic Safety and Licensing Board at p. 9, noted the pending Motion to Compel Discovery and their further efforts to contact the Project. Because of the time that had passed since the previous set of interrogatories had been sent to the Project, Applicants stated that a new set of interrogatories would be submitted. That pleading further stated:

If such interrogatories are not objected or responded to in the time prescribed in the Regulations, the Applicants would expect to renew their motion to compel discovery or move to dismiss.

4/ See, for example, Order dated November 16, 1978.

5/ See Applicants' Motion to Compel Discovery dated November 23, 1977.

Argument

As previously noted, the second set of interrogatories, a copy of which is attached, were served on December 19, 1978 and the Project has admitted receiving them. There were 21 interrogatories. The first three requested data on the Project, its officers, and spokesmen. The remainder of the interrogatories requested information related to the basis for each of the assertions contained in the Project's contentions and requested the names of witnesses, if designated. Each of these interrogatories is keyed to the Project's contentions and clearly within the scope of discovery permitted under the NRC's Rules of Practice.

This proceeding is coming to a critical stage. The Applicants are preparing to file a motion for summary disposition. In the event evidentiary proceedings are required, they must begin shortly in order to prevent any delay in fuel loading. Without answers to these interrogatories, it makes answering the general allegations contained in the Project's contentions, either in a motion for summary disposition or at any hearing, extremely difficult. In the Tyrone proceeding, the licensing board stressed the importance of the discovery process to an applicant:

The Board notes that, without discernible exception, the interrogatories and document requests were attempts by the Applicants and the Staff to learn about the bases for each intervenor's own affirmative contentions. The Applicants in par-

particular carry an unrelieved burden of proof in Commission proceedings. Unless they can effectively inquire into the positions of the intervenors, discharging that burden may be impossible. To permit a party to make skeletal contentions, keep the bases for them secret, then require its adversaries to meet any conceivable thrust at hearing would be patently unfair, and inconsistent with a sound record. [footnotes omitted] 6/

As in that proceeding, intervenors here have failed to assume a significant participational role in the proceeding. 7/

As discussed above, Applicants have, on several occasions, warned the Project that they intended to move for their dismissal from the proceeding if responses were not given and have indicated instances where licensing boards have granted that remedy.

Other licensing boards have dismissed intervenors or individual contentions for failure to respond to discovery requests. Offshore Power Systems (Manufacturing License for Floating Nuclear Plants, 2 NRC 813 (1975); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1) Order Granting NRC Staff Motion of August 18, 1978 to Impose Sanctions, October 27, 1978 (unpublished); Ohio Edison Company (Erie Nuclear Power Plant, Units 1 and 2), Order Related to Applicants' Motion for Dismissal of Certain Contentions and the Coalitions Motion for Additional Time,

6/ Northern States Power Company (Minnesota) (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300-1 (1977).

7/ See Id. at 1301, Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-358, 4 NRC 558 (1976).

dated April 20, 1978 [unpublished].^{8/} Considering the Project's contentions, the discovery requests directed to it, their potential for making a contribution to the proceeding and the requirement of a fair hearing for the Applicants, the Project should be dismissed.^{9/}

For the reasons stated above, in the event the Licensing Board decides that dismissal not be granted at this time, Applicants move, in the alternative, pursuant to 10 C.F.R. §2.740 for an order compelling responses to the attached interrogatories.

Respectfully submitted,

CONNER, MOORE & CORBER

Troy B. Conner Jr.

Troy B. Conner, Jr.

Mark J. Wetterhahn

Mark J. Wetterhahn
Counsel for the Applicants

January 29, 1979

^{9/} See Tyrone, LBP-77-37, 5 NRC at 1300.

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))

APPLICANT'S SECOND SET OF INTERROGATORIES
TO MIAMI VALLEY POWER PROJECT

Pursuant to 10 C.F.R. §2.740b of the Nuclear Regulatory Commission's Rules of Practice, Applicant, The Cincinnati Gas and Electric Company, by its attorneys, hereby propounds the following interrogatories to intervenor, Miami Valley Power Project, to be answered fully in writing, under oath, within fourteen (14) days after service hereof in accordance with the following definitions and instructions:

Definitions and Instructions

1. For each interrogatory, please state the full name, address, occupation and employer of each person answering the interrogatory and designate the interrogatory, or part thereof, he or she answered.
2. The following definitions shall apply:
 - (a) "Intervenor" or "Project" shall mean Miami Valley Power Project.
 - (b) "Person" shall mean an individual, person, corporation, proprietorship, partnership, or any other entity.

- (c) "Identification" or "identity," when referring to an individual, corporation, or other entity, shall mean that intervenor shall set forth the name, present or last known address, and if a corporation or other entity, its principal place of business or if an individual, his or her title or titles and by whom employed. Once an individual, corporation, or other entity has been thus identified in answer to an interrogatory, it shall be sufficient thereafter when identifying that individual, corporation, or other entity to state merely his, her or its name.
- (d) "Description" or "describe" when referring to a document as hereinafter defined, shall mean that the intervenor shall set forth the author or originator, addressee(s), date, title and subject matter, the present custodian of any copy thereof and the last known address of each such custodian. In lieu of describing the document, intervenor may attach a copy thereof to its answers, indicating the question to which the attached document is intended to be responsive. If the information requested in this paragraph does not appear on the face of such attached document, then intervenor shall indicate that information for each document so attached.

- (e) "Document" shall mean any written, printed, typed or any other graphic matter of any kind or nature, and all mechanical and electronic sound recordings or transcripts thereof, in the possession, custody, or control of intervenor, or its officials, employees, or agents; it shall also mean all copies of documents by whatsoever means made.
- (f) "Date" shall mean exact day, month and year, if ascertainable, or, if not ascertainable, the best approximation (including the relationship to other events).
- (g) "Zimmer Station" shall mean the Wm. H. Zimmer Nuclear Power Station.

3. These interrogatories request all knowledge or information in intervenor's possession and/or knowledge and information in the possession of intervenor's agents, representatives, and, unless privileged, attorneys.

4. The following interrogatories apply to the contentions as admitted as issues in controversy in this proceeding by the Atomic Safety and Licensing Board's "Order Granting Petitions for Intervention and Providing for Hearing" dated March 19, 1976. The following interrogatories utilize the numbering system of the granted contentions contained in "Applicants' Response to the November 16, 1978 Order of the Atomic Safety and Licensing Board" dated December 5, 1978, the relevant portion of which is attached. .

Interrogatories

1. List the full name and address of each person who will represent, be a spokesman for, or conduct examination or cross examination of any witnesses during the course of this proceeding for the Project and his position with or relationship to the Project.

2. State the number of members the Project has at the present time.

3. Provide a list of the officers of the Project, indicating the office held by each.

4. With regard to Contention 11, specify and describe the "current data" that you rely upon to demonstrate "that there is no need for the Zimmer Station at this time because Dayton Power and Light's peak demand is not and will not be sufficient to justify the added power until after 1985." Describe the source of this data.

5. With regard to Contention 11, has the Project estimated the load growth of Dayton Power and Light Company [hereinafter "DP&L"] for the years 1978-1985? If so, describe and provide the projected peak loads for each year and all calculations and assumptions used in such projections. If not, describe the projections of load growth for DP&L that the Project relies on as its basis for this contention. State the measure of uncertainty which is present in the load growth projections made by or relied upon by the Project.

6. With regard to Contention 11, state the new capacity additions the Project considered available to DP&L for each

year between 1978 and 1985. Describe and provide the evaluation, study, calculations and/or investigation upon which these values are based.

7. With regard to Contention 11, state the values for necessary and predicted reserve requirements for DP&L for each year between 1978 and 1985 the Project utilized or has relied upon in support of this contention. Describe the source and basis for the reserve requirements utilized by the Project, including the methodology and all assumptions and calculations.

8. Identify the expert witnesses that the Project intends to call to testify on its behalf regarding Contention 11. Provide a statement of each witness's professional qualifications and an outline of the facts and opinions to which he will testify.

9. With regard to Contention 12, if the Project has conducted or relies upon an evaluation, analysis, study, calculations and/or investigation regarding the number of U.S. commercial nuclear power generating stations and the total electrical output of such stations which will be competing for available uranium with the Zimmer Station, describe and provide the usage of uranium (in tons U_3O_8) of these U.S. commercial nuclear power generating stations predicted by such evaluation, analysis, study, calculation and/or investigation. Provide a breakdown of this usage on an annual basis (in tons U_3O_8). Describe the methodology, all assumptions, calculations, including those regarding

years of operation of such units, and the capacity factor for each year of operation utilized.

10. With regard to Contention 12, if the Project has information requested by Interrogatory 9 for foreign or worldwide nuclear power generating stations, provide the information called for by Interrogatory 9 for these categories.

11. With regard to Contention 12, describe the uranium resources and the corresponding price per pound of U_3O_8 assumed, i.e., the total uranium available for use in U.S. commercial nuclear power stations (in tons U_3O_8), which the Project relied upon in concluding that an adequate fuel supply would not be available, and describe the evaluation, analysis, study, calculation and/or investigation which is the basis for the Project's response to this interrogatory. State what portion of such uranium resources are assumed to be U.S. reserves and what portion foreign.

12. With regard to Contention 12, state the level of exploration activity in the U.S. (in tons U_3O_8) the Project utilized for the years 1980-2020 in evaluating the amount of uranium which would be available. Describe the evaluation, analysis, calculations and/or investigation which is the basis for the Project's response to this interrogatory.

13. With regard to Contention 12, describe the estimates of the price of uranium for the years 1980-2020 (in dollars per pound U_3O_8) that the Project utilized in its projection of available fuel supply from U.S. sources. State what assumptions regarding price escalation the Project utilized

regarding the price of uranium for the years 1980-2020. If the Project has analyzed or relies upon an analysis of available resources as a function of price, describe such analysis and detail the methodology, all assumptions and calculations made.

14. With regard to Contention 12, state how the Project's analysis of uranium resources and utilization takes into account the uranium already purchased for the Zimmer Station.

15. Identify the expert witnesses that the Project intends to call to testify on its behalf regarding Contention 12. Provide a statement of each witness's professional qualifications and an outline of the facts and opinions to be included in such testimony.

16. With regard to Contention 13, describe specifically the equipment used in the operation of the plant that the Project alleges will be "excessively costly." Describe specifically each such piece of equipment, the Project's estimate of its cost, and its basis for such estimate and the cost for such piece of equipment utilized by the Cincinnati Gas and Electric Company (hereinafter "Company"), if known to the Project. Describe the sources of the Project's estimates and state any reasons of which the Project is aware for the differences in such estimates from the cost to the Company.

17. With regard to Contention 13, describe specifically the equipment used in the construction of the plant that the Project alleges will be "excessively costly." Describe spe-

cifically each such piece of equipment, the Project's estimate of its cost, and its basis for such estimate and the cost for such piece of equipment utilized by the Company, if known to the Project. Describe the sources of the Project's estimates and state any reasons of which the Project is aware for the differences in such estimates from the cost to the Company.

18. With regard to Contention 13, describe specifically each of the "escalating costs" associated with the operation of the Station referred to in that contention. Provide the estimate of each such cost made by the Project or upon which it relies, and the basis, assumptions, methodology and detailed calculations for such estimates. Describe the comparable estimates used by the Company, if known to the Project, and state the reasons of which the Project is aware for the difference in such estimates.

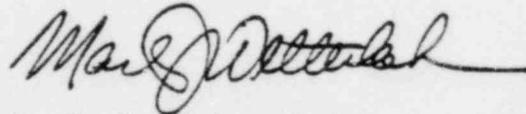
19. With regard to Contention 13, state and describe the revenue that you projected from the operation of the Station for each of its owners on an annual basis. Do the Project's estimates or the estimates upon which it relies take into account future rate increases? If your answer is in the affirmative, identify the timing and amount of rate increases assumed for each owner. If your answer is in the negative, state the specific reasons why rate increases were not assumed.

20. With regard to Contention 13, has the Project made any estimates, or does the Project rely on any estimates, of costs already sunk into the Zimmer Station and costs which must be expended to complete the Station? If so, describe such estimates, the basis for such estimates, and the dates on which the estimates were made or are based.

21. Identify the expert witnesses that the Project intends to call to testify on its behalf regarding Contention 13. Provide a statement of each witness's professional qualifications and an outline of the facts and opinions to be included in such testimony.

Respectfully submitted,

CONNER, MOORE & CORBER



Mark J. Wetterhahn
Counsel for the Applicants

December 19, 1978

MIAMI VALLEY POWER PROJECT (PROJECT)

11. Current data demonstrates that there is no need for the Zimmer plant at this time because Dayton Power and Light's peak demand is and will not be sufficient to justify the added power until after 1985.

12. The Project alleges that the Applicants cannot guarantee an adequate supply of nuclear fuel for the plant in question. The Board construes this allegation to be that Applicants will not have an adequate fuel supply to operate the plant which is sought to be authorized for operation.

13. The equipment used in the construction and operation of the plant will be excessively costly and, in effect, beyond the financial capability of Applicants. Applicants are financially unqualified to operate the plant because of escalating costs.

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Station))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion to Dismiss the Miami Valley Power Project as a Party to the Proceeding," dated January 29, 1979, in the captioned matter were served upon the following by deposit in the United States mail this 29th day of January, 1979:

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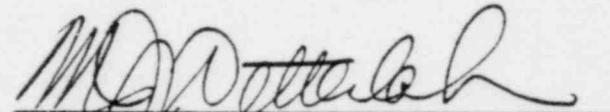
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