

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
CINCINNATI GAS AND ELECTRIC )  
COMPANY, et al. )  
(Wm. H. Zimmer Nuclear Power )  
Station, Unit No. 1) )

Docket No. 50-358

NRC STAFF RESPONSE TO THE MOTIONS OF INTERVENORS  
FANKHAUSER AND MIAMI VALLEY POWER PROJECT TO POSTPONE HEARINGS  
AND THE APPLICANT'S SUPPLEMENTAL MOTION FOR SUMMARY DISPOSITION

On April 17, 1979 David Fankhauser filed a motion to postpone hearings on the operating license for Zimmer until the NRC review of the accident at Three Mile Island is complete.

On April 17, 1979 Miami Valley Power Project (MVPP) filed a motion to postpone hearings on the operating license for Zimmer until the reports of the Task Forces appointed by President Carter and Governor Rhodes to study the Three Mile Island accident have been completed.

The City of Cincinnati has filed a motion to defer the licensing of Zimmer until an analysis of Three Mile Island has been made public.

The Staff interposes its objection -- in part -- to the pending motions to stay the proceeding in that many of the issues involved in this proceeding are not affected by the accident at the Three Mile Island Plant and should therefore proceed to hearing. Specifically, the contentions unaffected by Three Mile Island are:

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Contention 1: This contention involves whether the increased storage of spent fuel will prevent meeting the design objectives of Appendix I to Part 50, 10 CFR. As this contention does not relate to accidents it is not effected by the Three Mile Island accident and no reason appears why it cannot be presently litigated.

Contention 6: This contention again involves conformance with Appendix I of 10 CFR Part 50 of normal discharges from the plant in non-accident situations. Again, there does not appear to be any nexus between the requests for delay in the hearing and the referenced accident.

Contention 11: This contention involves need for the power to be generated by the subject facility. The need for power in the applicant's service area is not related to the accident, and no reason appears to justify delay in litigating this contention.

Contention 12: This contention involved the availability of fuel for the Zimmer facility. Again, the happenings at Three Mile Island have nothing to do with alleged shortages of fuel for Zimmer and this contention may be litigated.

Contention 13: This contention involves the financial capability of the Cincinnati Gas and Electric Co. and the other applicants to

construct and operate the Zimmer facility. The relevance of the Three Mile Island accidents and various investigations into that accident to this issue is not obvious and no cause exists to delay hearings on this contention.

Contention 14: This contention involves the alleged inadequate welding of cable trays for the Zimmer facility. This contention involves whether particular equipment fabricated for this plant meets design specifications. The Three Mile Island accident is irrelevant to this matter and this contention can be litigated.

Contention 15: This contention involves whether the control rods manufactured for this reactor meet specifications. As it involves the conformance of equipment at this plant, no reason appears why it may not now be litigated.

Contention 16: This contention involves whether seals on control rods meet specifications. For the reasons stated in relation to contention 15, this contention too should be litigated now.

Certain other contentions (2, 3, 4, 5, 7, 8, 9 and 10) involve off-site monitoring or emergency preparedness. The Staff is not prepared to litigate these matters at this time, in that the accident at Three Mile

Island requires a further examination of these matters. This, of course, is not to say that the Staff's position on these issues will change but, rather, only that more time is necessary to consider the ramifications, if any, of the accident with respect to the issues involving off-site monitoring and emergency planning.

In Offshore Power Systems (Floating Nuclear Plant), ALAB-489, 8 NRC 194, 207 (1978), while recognizing the Licensing Board's duties to encourage the prompt dispatch of Commission business, it was held a Licensing Board may not force the Staff to take a position or give evidence when it is still performing its independent duty of evaluating an application. See also Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 523-526 (1977). Although that case involved the preparation of an environmental impact statement, its reasoning applies here to issues involving off-site monitoring and emergency planning. The Staff must consider new information, and consider the public interest. As stated in Potomac Electric Power Co. (Douglas Point, Units 1 and 2), ALAB-277, 1 NRC 539, 547 (1975), in relation to the scheduling of issues for hearing, "The paramount consideration is where the public interest lies."

The Staff does not contemplate that it will be necessary to defer consideration of these issues and the testimony thereon until either its official review and analysis of all issues relating to the Three Mile Island accident is completed (as sought in Dr. Fankhauser's and the City of Cincinnati's motions) or until the studies initiated by

President Carter or Governor Rhodes are completed (as sought in MVPP's motion). The Staff will inform the parties and the Licensing Board of the results of the further examination of our contemplated testimony on off-site monitoring and emergency preparedness as soon as possible so that these issues may go forward.

It has been the general position of this Commission and its Boards, that all issues in a proceeding that may be presently resolved go to hearing, while reserving other issues for future hearings. See 10 CFR 2.761(a), 50.10(e), Appendix A, para. I(c)(1); Douglas Point, supra, at 539, 552. Therefore, it is the Staff's position that all those issues that are not impacted by the Three Mile Island accident may and should proceed to hearing. As we have stated these are Contentions 1, 6, 11, 12, 13, 14, 15 and 16.

Further, it is noted that a previous Licensing Board order gave notice that limited appearance statements would be accepted at the prehearing conference scheduled for May 21, 1979. In fairness to members of the public who might rely on that notice, the conference scheduled for that day should go forward so public statements might then be taken.

For the above stated reasons the Staff opposes the motions of Dr. Fankhauser and the City of Cincinnati to defer proceedings until NRC review and

analysis of the Three Mile Island accident is completed, and opposes the motion of MVPP to postpone hearings until the studies initiated by President Carter and Governor Rhodes are completed. The NRC Staff feels that the presently scheduled prehearing conference, and the scheduled hearing to consider those contentions upon which the Staff is not examining its contemplated testimony in the light of the Three Mile Island accident (Contentions 1, 6, 11, 12, 13, 14 and 15) should proceed. However, as to those contentions involving off-site monitoring and emergency preparedness (Contentions 2, 3, 4, 5, 7, 8 and 9), we ask the Board to defer consideration of them until the Staff has determined what, if any, impact the Three Mile Island accident may have upon those issues and communicates that position to the Board and the parties.

Respectfully submitted,

  
Edwin J. Reis  
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland  
this 7th day of May, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO THE MOTIONS OF INTERVENORS FANKHAUSER AND MIAMI VALLEY POWER PROJECT TO POSTPONE HEARINGS AND THE APPLICANT'S SUPPLEMENTAL MOTION FOR SUMMARY DISPOSITION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of May, 1979:

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