

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



In the Matter of )  
 )  
THE CINCINNATI GAS & ELECTRIC ) Docket No. 50-538  
COMPANY, et al. )  
 )  
(Wm. H. Zimmer Nuclear Power )  
Station) )

APPLICANT'S RESPONSE TO THE PROPOSED CONTENTIONS  
SUBMITTED BY ZIMMER AREA CITIZENS/ZIMMER AREA  
CITIZENS OF KENTUCKY

On May 15, 1980, Zimmer Area Citizens/Zimmer Area Citizens of Kentucky (hereinafter collectively referred to as "ZAC") submitted proposed contentions pursuant to the Memorandum and Order of the Atomic Safety and Licensing Board issued April 22, 1980 "for the purpose of alleviating delay and to attempt to reach agreement between applicant, staff and ZAC/ZACK as to the acceptability of the submitted contentions." By Order dated May 29, 1980, the Licensing Board granted a request for an extension of time until June 16, 1980 for ZAC to file its "final" contentions and for the Applicant, The Cincinnati Gas & Electric Company, et al., and NRC Staff to comment on these contentions. The request for additional time was made by counsel for the Staff in order to permit additional time for discussions concerning the contentions.

Counsel for the Applicant, Staff and ZAC have discussed the proposed contentions in various bilateral communications. On June 13, 1980, counsel for ZAC submitted the text of a modified statement of the contentions which resulted from these conversations. This pleading will present Applicant's position with regard to these restated contentions.

On June 16, 1980, the Commission approved a Statement of Policy, "Further Commission Guidance for Power Reactor Operating Licenses," in which it, inter alia, set a strict standard for the admission of late-filed contentions which were TMI-related, such as the proposed ZAC contentions before the Board at this time. Thus, at least for contentions related to TMI, the Commission has apparently chosen to overrule the Appeal Board's decision in ALAB-590, discussed infra. The Commission stated:

The Commission believes that where the time for filing contentions has expired in a given case, no new TMI-related contentions should be accepted absent a showing of good cause and balancing of the factors in 10 CFR 2.714(a)(1). The Commission expects strict adherence to its regulations in this regard [emphasis supplied].

Thus, inasmuch as all of the ZAC contentions are admittedly TMI related, they must be denied as having failed to demonstrate good cause for the belated admission of each such contention under this Statement of Policy. Moreover, Applicant submits that the contentions are prohibited as

asserting that additional supplementation of existing regulations beyond that covered in NUREG-0694, "TMI-related Requirements for New Operating Licenses," are required.

Even if the Licensing Board were to find that the Commission's Policy Statement does not bar consideration of these contentions, Applicant remains of the view that under the Rules of Practice none of the contentions has merit. It also believes that under any reasonable interpretation of the Commission's rules regarding the statement of reasonably specific contentions and their bases, particularly those which were filed some four and a half years late, none is admissible. It is noted that the recent decision by the Atomic Safety and Licensing Appeal Board would seemingly interpret §2.714 such that no contentions can be barred in a proceeding, except perhaps any which are res judicata. For the record, however, for purposes of possible appeal, the Applicant does not waive any objections.<sup>1/</sup> Under this decision, it might be more expeditious to respond to the ZAC contentions on the merits either through a motion for summary disposition or at an evidentiary hearing. The Applicant will selectively discuss only certain points raised by ZAC's

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<sup>1/</sup> In particular, Applicant submits that the restatement on pp. 2-5 of ZAC's June 13, 1980 submittal of various statutes, regulations, proposed regulations, or other government-issued material does not constitute a sufficient basis for the statement throughout the statement of contentions that various measures are "inadequate."

restatement of contentions. Applicant submits, even under the Appeal Board interpretation,<sup>2/</sup> these should not be admitted as issues in this proceeding.

References are made throughout the proposed contentions to various Ohio and Kentucky counties. Under present and presently proposed Commission rules, emergency measures regarding evacuation, etc. are limited to the plume exposure pathway Emergency Planning Zone ("EPZ") of approximately 10 miles.<sup>3/</sup> We submit that all of ZAC's proposed contentions regarding evacuation and other appropriate protective actions should be limited to such EPZ. If the EPZ, as set forth by the Commission, should in the future change, that matter could be addressed in accordance with Commission procedures. Specifically, since no portion of Brown County is within the plume exposure pathway EPZ, reference to it in the introductory portion of Contention 1 should be deleted.

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2/ Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Units 1 and 2), ALAB-590, 11 NRC (April 22, 1980). Cf. Memorandum from Robert M. Lazo to Leonard Bickwit, General Counsel, dated May 16, 1980. But see Memorandum for Robert M. Lazo from certain members of the Atomic Safety and Licensing Board Panel dated May 27, 1980.

3/ 44 Fed. Reg. 75167 (December 19, 1979). While perhaps obvious, Applicant would nevertheless note that, the issue before the Board is the adequacy of the planning efforts and facilities related to a potential emergency situation at the Zimmer Nuclear Power Station and all contentions should be read as applying only to such situations and not emergency planning as a whole.

With regard to subparagraph f of Contention 1, Applicant objects to the inclusion of the section which alleges that the access roadway to the Zimmer Station would be inaccessible under certain flooding conditions. The design conditions for access, including the specially designed bridge to assure access to the plant during even the probable maximum flood, was settled at the construction permit stage. There is nothing resulting from the Three Mile Island accident which would cause any change in the design basis for access to the facility; neither is there any basis stated by ZAC in its pleading for raising this matter at this time. This contention is not based upon new matters and, in the absence of good cause, should be denied.

Paragraph 2b seeks to raise the psychological trauma of the aftermath of the accident as an issue in this proceeding. Because of the pendency before the Commission of the question of whether this subject should be treated by licensing boards, this Licensing Board should refrain from admitting this contention until a decision dispositive of this matter has been issued by the Commission and after having given further opportunity for the parties to address it after the Commission has spoken.<sup>4/</sup>

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<sup>4/</sup> The Commission received a "Certification to the Commission on Psychological Distress Issues" on February 22, 1980 in the TMI-Restart Proceeding; as of the date of this pleading, it had not yet determined whether such issues should be considered.



Contention 4 is incomprehensible. Considering the accepted meaning of the word "demography" and its use in NRC proceedings, it is a non sequitur to say that the demography can somehow affect "adequate, effective and positive education, training and advice to the public . . . ." This contention should be denied.

With regard to Contention 6, to the extent it speaks to the monitoring of releases into the Ohio River, this matter is entirely unrelated to the Three Mile Island occurrence, and raises nothing which could not have been raised in a timely manner at the instigation of the proceeding. We further submit that this portion of Contention 6 is subsumed by the contentions of the City of Cincinnati and that there is no reason shown why it should be separately admitted. <sup>5/</sup> To the extent this contention addresses "anticipated radiation releases," it is unrelated to emergency planning and should be denied. This Board has already considered and disposed of "Appendix I" issues in

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<sup>5/</sup> We submit that the correct standard for admission of late-filed contentions similar to contentions which had been previously admitted was set by the Atomic Safety and Licensing Board in the Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1 (Restart)) in its March 18, 1980 Memorandum and Order Rejecting CEA Contentions Pursuant to Review of NUREG (CR-1270) where it stated at 5:

In this complex, multi-party proceeding, we are unhappy with the fact that the parties and the board have had to spend time on a filing . . . which totally lacks any explanation set forth by the filing party and which, upon even cursory examination, totally lacks any justification for granting

this proceeding and to admit this contention would be tantamount to relitigating this matter. Contentions 6, 7 and 8 merely assert general inadequacies in the monitoring or meteorological equipment; however, no basis is given as to why the Applicant's proposed programs are inadequate.

Contention 9 speaks to independent monitoring by other sources, including local and state agencies. There is no basis for the contention that duplicate independent monitoring by anyone is a necessary part of the Applicant's emergency planning as required by 10 C.F.R. Part 50, Appendix E, as in effect or as publically proposed. Furthermore, to the extent that the contention assumes that individuals must have training and equipment to allow them to monitor radiation, it has no basis in the Commission's emergency planning regulations.

Contention 11 is entirely without foundation or basis. There is no basis given for the statement that "protective

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5/ (continued)

the relief requested--in this case the admission of late contentions. In the future, we will deny similar requests for relief which are not expressly and well-supported by the moving party. In particular, absent extraordinary circumstances, late-filed contentions will have an almost insurmountable burden to overcome when there are previously admitted similar contentions [emphasis supplied].

Under this standard, ZAC has failed to meet its burden with regard to any of the contentions.

equipment and gear including clothing" is necessary should an emergency arise at the Zimmer Station. There is also no basis stated as to how such clothing might protect an individual from a "whole body" exposure. This contention lacks specificity and should be denied.

Contention 12 which states that the "funds or the financial means for the purchase, installation, and maintenance of required equipment, facilities and the training of personnel are not available to the involved counties" should be denied. This contention is irrelevant to the ultimate issues of emergency planning before the Board. If findings on the substantive portions of the emergency plan as challenged by the intervenors are made, then the Board need not even reach this question since it will have satisfied itself that the plans are adequate to assure the health and safety of the public. Any contention which seeks to look at the financial condition of the counties independently is irrelevant and would lead to significant delay without any corresponding additional value.

In paragraph 13, the test of the emergency plan which is proposed goes significantly beyond that which is required by NRC emergency planning regulations. Therefore, Applicant submits that this contention is a challenge to the Commission regulations, without the showing required by 10 C.F.R. §2.758, and should be denied.

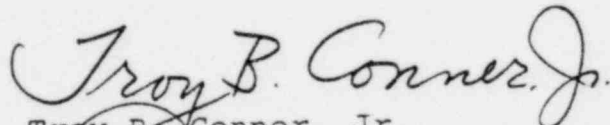
To the extent that the Board admits any of ZAC's contentions, it should, in order to expedite this pro-

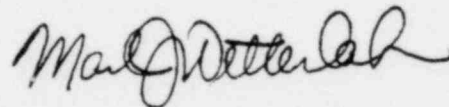


ceeding, consolidate these contentions for purposes of consideration at an evidentiary hearing with those contentions of the other intervenors already admitted in this proceeding. Furthermore, for each of these contentions, as provided by §2.715a, the Licensing Board should designate a lead intervenor to be held responsible for presenting the consolidated case and for conducting cross-examination of the witnesses of other parties or participants.<sup>6/</sup>

Respectfully submitted,

CONNER & MOORE

  
Troy B. Conner, Jr.



Mark J. Wetterhahn  
Counsel for the Applicant

June 16, 1980

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<sup>6/</sup> For convenient reference by the Board and parties, Applicant suggests that any amended contentions be restated by the Board, continuing the numbering previously utilized.

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NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Response to the Proposed Contentions Submitted by Zimmer Area Citizens/Zimmer Area Citizens of Kentucky," dated June 16, 1980, in the captioned matter, were served upon the following by deposit in the United States mail this 16th day of June, 1980:

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