

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

8/1/80

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)

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Docket No. 50-358

NRC STAFF RESPONSE TO LICENSING BOARD
ORDER OF JULY 14, 1980 RELATING TO
OFF-SITE SHIPMENT OF SPENT FUEL

On July 14, 1980 the Atomic Safety and Licensing Board issued a Memorandum and Order inviting the parties to address the question "...whether, under the Commission's amended regulations, any sort of plan for the shipment of spent fuel need be submitted prior to the grant of an operating license." (Order at 3.) If, as the Applicant had asserted, no such plan was required, then the Board wished to be apprised "...of the manner, if any, in which an interested member of the public (or the Board, sua sponte) can question a licensee's compliance with the new regulations...prior to an actual shipment taking place." The questions arose as a result of the Board's consideration of Applicant's Motion for Summary Disposition of contention number 5 of Dr. Fankhauser concerning plans to notify and train affected communities of shipments of radioactive materials. The NRC Staff does not believe that a plan for shipment of spent fuel is required at this time.

The spent fuel pool for the Zimmer facility is designed to contain two full cores of spent fuel bundles. Assuming, for purposes of this reply, the fuel

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is loaded in October 1981 as now projected by the Applicants, there will be no necessity to ship spent fuel off site until 1989 and, if the new high density racks were installed at Zimmer, it would be 1991 to 1992 when spent fuel would need to be shipped off site.

Neither the rule (10 C.F.R. § 73.37) nor its accompanying explanation in the Federal Register, 45 Fed. Reg. 37399, nor NUREG-0651, Rev. 1, "Physical Protection of Shipments of Irradiated Reactor Fuel," require NRC approval of a shipping security plan prior to the issuance of an operating license.

There are not now reprocessing or permanent offsite storage facilities which could receive spent fuel and thus, today, it is impossible for the Applicants to provide a plan to satisfy the offsite shipment objectives as stated in 10 C.F.R. § 73.37(b).

The rule, its explanation appearing in 45 Fed. Reg. 37399, NUREG-0651 and common sense make it clear that there is no present pre-operating license requirement for applicants to provide a security plan for the shipment of spent fuel some nine to eleven years in the future to facilities now unknown upon presently unidentifiable roads. Instead, although not categorically, the regulation indicates that no plan need be submitted prior to the issuance of an operating license. 10 C.F.R. § 73.37(b)(1) requires notification of intended shipment with routing and security plans in accord with 10 C.F.R. § 73.72, which section requires notification ten days in advance of the shipping date. Reading 10 C.F.R. § 73.37 in para materia with 10 C.F.R. § 73.72, it is clear that the earliest date

for which a shipping and security plan is required is ten days prior to shipment, a time, in Zimmer's case, which may be some 8-11 years after issuance of an operating license.

The Congress has recently amended the Atomic Energy Act of 1954 by adding a new Section 147 which provides that the Commission may not withhold from public disclosure routes to be used to transport source material. P. L. 96-295, 94 Stat. 780, effective June 30, 1980, see House Rep. No. 96-1070, June 4, 1980, p. 10. The Staff is presently in the process of reviewing routes used historically and intends to issue prior approval for routes to be used in the future. This new section 147 does not affect our answer to the Board's question as there will be no disclosure as to the particular route and time for a shipment of spent fuel from Zimmer.

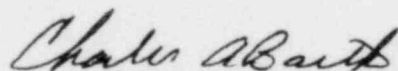
It is the Staff's view that no shipping and security plan need be submitted to, or reviewed and approved by, the NRC as a precondition to issuance of an operating license for Zimmer.

The Licensing Board also "wishes to be apprised of the manner, if any, in which an interested member of the public (or the Board, sua sponte) can question a licensee's compliance with the new regulations...prior to an actual shipment taking place." Present NRC policy is to withhold from public disclosure information on routes and schedules (see 45 Fed. Reg.

37406, item 12). Thus, prior notice to the general public of specific route information prior to a shipment is not required. Prior to shipment, it should be noted that the NRC Staff reviews the application to insure compliance with 10 C.F.R. Part 73 and that review will be conducted to assure compliance with the regulations existing at the time of shipment. Detection of failure of a licensee to perform the conditions of a shipping plan is the function of the Office of Inspection and Enforcement. See Arkansas Power and Light Co. (Arkansas Nuclear One Unit 2), ALAB-94, 6 AEC 25, at 28 (1973) for the proposition that the law presumes an administrative agency will properly discharge its duties.

If some member of the public has reason to believe that a licensee has violated NRC regulations, such member has the option of informing I&E which will investigate the allegation or a petition under 10 C.F.R. § 2.206 can be filed requesting the NRC to take some affirmative action.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charles A. Barth".

Charles A. Barth
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 1st day of August, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LICENSING BOARD ORDER OF JULY 14, 1980 RELATING TO OFF-SITE SHIPMENT OF SPENT FUEL" 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 1st day of August, 1980.

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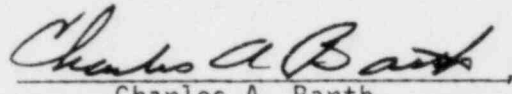
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