

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

12/9/80

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NO OVERDISPENSATION
SERVICES UNIT

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	}	
CINCINNATI GAS AND ELECTRIC	}	
COMPANY, <u>et al.</u>	}	Docket No. 50-358
(Wm. H. Zimmer Nuclear Power	}	
Station, Unit No. 1)	}	

NRC STAFF OPPOSITION TO APPLICANT'S
MOTION TO REQUIRE JUSTIFICATION

By Memorandum dated September 17, 1980, this Board requested the NRC Staff to inform the Board whether the Staff could produce a supplement to the SER on financial qualifications at a time which would permit the holding of hearings in the fall or winter of 1980. In a letter to the Board on October 17, 1980, the Staff indicated that it was unable to predict a meaningful schedule at that time but committed separately to address financial qualifications and to propose a schedule as soon as possible.

On November 19, 1980, the Applicant filed a "Motion to Require Staff to Provide Justification of Its Inability to Proceed" alleging that the Staff's response was "entirely unacceptable." The Applicant moves that the Staff be ordered to submit a detailed explanation of why it is unable to proceed expeditiously in this matter or even determine a schedule for proceeding.

By separate letter to this Board, the Staff is providing the additional information promised in its October 17, 1980 letter. It is now apparent that

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the Staff's review of financial qualifications should be completed by the end of January 1981 and the Board can thereafter schedule a hearing on that limited issue if it so decides. The published schedules for Staff reviews of unresolved generic issues show two additional supplements to the SER to be issued in March and May 1981. Information concerning which issues will be treated in which supplement is not now available.

The Applicant places heavy reliance upon Offshore Power Systems to support its theory that the Staff can be directed to adopt a schedule by a licensing board.^{1/} Of course, that decision involved a case where the predicted completion date for a staff document had slipped more than two years. Here the Applicant complains of a period of two months elapsing after the Board had inquired about the possibility of a fall or winter 1980 schedule. The Staff was unable to provide a meaningful schedule within that time frame. There is nothing unreasonable about the Staff's position nor would it have been unreasonable to suggest that hearings should not commence until all matters necessary to a complete hearing were complete.^{2/} The Staff did not and does not suggest such a course. Rather the Staff is proceeding with reasonable dispatch to attend to its licensing review functions. In this case, the Staff plans to complete its review of financial qualifications so that early

^{1/} Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978).

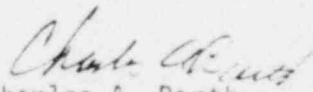
^{2/} Applicant has no inherent right to bifurcated hearings on issue after issue merely because no further information is anticipated before the Staff's total review is scheduled for completion. In this case, Applicant has yet to fulfill all requirements for an operating license (e.g., emergency planning and technical qualifications to operate the facility) and hearings on the application cannot yet be completed even if early consideration were had on financial qualifications issues.

hearings can be held on it. This approach is reasonable and certainly does not involve a situation analogous to what existed in the cases cited by Applicant.

In view of the fact that the Staff has indicated its review schedule, there is no need to comment further on Applicant's motion except to note that its attempt to distinguish on environmental versus safety grounds the Appeal Board's recognition in Offshore Power that the Staff is a necessary party whose dismissal would penalize the Applicant, is simply an error. The Staff's safety review is at the core of the Commission's licensing process. If the Staff is a necessary party to environmental hearings, it perforce is a necessary party to the Commission's safety hearings.

For the foregoing reasons, Applicant's motion should be denied.

Respectfully submitted,


Charles A. Barth
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 9th day of December, 1980

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NUCLEAR REGULATORY COMMISSION

POOR ORIGINAL

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF OPPOSITION TO APPLICANT'S MOTION TO REQUIRE JUSTIFICATION" 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 9th day of December, 1980.

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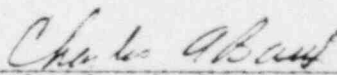
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