

2/3/81

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD



In the Matter of :

THE CINCINNATI GAS & ELECTRIC  
COMPANY, et al. :

Docket No. 50-358-OL

(Wm. H. Zimmer Nuclear Power  
Station) :

APPEAL BY INTERVENOR DR. FANKHAUSER  
OF ORDER GRANTING SUMMARY DISPOSITION  
OF CONTENTION FIVE



Pursuant to 10 C.F.R. Section 2.762 Intervenor Dr. Fankhauser submits to the Commission the following exceptions to the Board's Order Granting Summary Disposition of Contention 5.

1. Dr. Fankhauser excepts to the above-referenced Board's ruling at page 9 which states: "we interpret the recently amended provisions of 10 C.F.R. Part 73 as requiring licensees to prepare a plan for the physical protection of spent fuel shipments against sabotage. 10 C.F.R. Section 73.37. There is no requirement, however, that such a plan be submitted and reviewed prior to (and as a condition of) the grant (sic) of an operating license." Dr. Fankhauser states that this ruling is in violation of the following: 10 C.F.R. §50.40, 50.57; 42 U.S.C. 2131, et seq.; 42 U.S.C. 5841, et seq., and the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution.

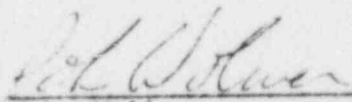
2. Dr. Fankhauser further takes exception with the following ruling contained in the above referenced order at page 12 which states: "thus we decline to consider Contention 5 in the context of the generalized findings

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required by 10 C.F.R. §§50.40 and 50.57." Dr. Fankhauser states that this ruling is in violation of the following: 10 C.F.R. §50.40, 50.57; 42 U.S.C. 2131, et seq.; 42 U.S.C. 5841, et seq., and the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution.

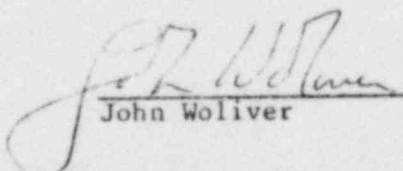
3. Dr. Fankhauser takes exception to the above-referenced order and ruling contained at page 13 which states: "our holding here will necessarily put the consideration of the adequacy of a plan for the transportation of spent fuel submitted under 10 C.F.R. §73.37 beyond the purview of this operating license proceeding. In our Memorandum and Order of July 14, 1980, we asked the parties whether there is any other procedure by which compliance with Part 73 can be questioned by member of the public prior to the occurrence of a shipment. Taking into the account the limited, 7-day period for review of a proposed plan, the answer is obviously negative." Dr. Fankhauser states that this ruling is in violation of the following: 10 C.F.R. §50.40, 50.57; 42 U.S.C. 2131, et seq.; 42 U.S.C. 5841, et seq., and the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served upon all parties to this proceeding by deposit in the United States mail this 3rd day of February, 1981.

  
John Woliver