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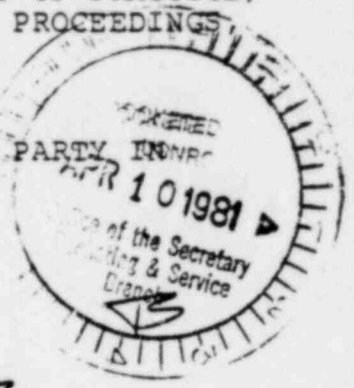
COMMENT ON PROPOSED AMENDMENTS TO THE COMMISSION'S RULES OF PRACTICE, 10 CFR PART 2, RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS, SUGGESTED AS EXPEDITING THE NRC HEARING PROCESS.



COMMENTS PRESENTED BY ZIMMER AREA CITIZENS, INTERVENING PARTY, IN

In the Matter of:

CINCINNATI GAS & ELECTRIC COMPANY, ET AL.
(William H. Zimmer Nuclear Station,
Operating License Proceeding)

Docket No. 50-358 OL

PR-2
46FR17316

Comments present by ANDREW B. DENNISON, Counsel for Zimmer Area Citizens
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COMMENTS OF INTERVENOR:

The reason, justification, if you will, for the suggested amendment of the Rules of Practice, 10 CFR Part 2, is to expedite hearing before Licensing Boards. The basis for the expedition offered is that since the TMI accident (March 28, 1979), the NRC reassigned most of its staff to other tasks, primarily investigating causes of the TMI accident, assuring the safety of other operating reactors and developing new generic safety requirements arising from TMI lessons learned. The reasoning then proceeds that in view of the time consumed on TMI investigation delay will be occasioned between presumed construction completion and licensing of a number of plants. Thus, as the reasoning proceeds, time can be made up, so to speak, by shortening the hearing process times: removal of all discovery posed to Staff; remove the necessity of the Licensing Board to render written orders on submitted motions, permitting in its stead oral decisions, at any time; removing reconsideration motions directed to prehearing orders; permit one member, rather than two, of the Board

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to participate in any prehearing order; remove the opportunity for applicant's reply to other party's submitted proposed findings of fact and conclusions of law; and removal of the current time limitation of 45 days for filing summary disposition motions prior to hearing, to permissible motions for summary disposition for filing at any time.

The suggested amendments will severly affect the quality of the proceedings and alter the parties' participation in such proceedings.

For a substantial period of time the Federal Civil Rules of Procedure have presented several forms of discovery to be utilized for the singular purpose of focusing and thereby limiting the issues for trial to shorten trial time. To a similar degree the present NRC rules under scrutiny are designed to accomplish that same end. The converse, and as proposed, has the direct impact of presenting licensing hearing as a "fishing expedition" in the guise of cross examination involved in a quest for relevancy, which rather than shortening will elongate the hearing process, belabored by a combination of blind inquiry, objection as to relevancy and quest to "tie-up" with subsequent questioning. The time consumed in argument pertaining to such an ill-disciplined procedure will probably outweigh any assumed time savings.

Discovery is rather new to the ancient form of litigation and has through experience firmly established its mark as a time consumer in litigation and the overall litigative process, although perhaps somewhat time consuming in its origins necessary to save time while in the litigative arena. The contrary, while conserving time in the discovery process elongates the hearing process because of the inability to focus on issues and limit the necessity for elongated cross examation.

It is therefore submitted that designed means do not support the desired end of conserving hearing time.

The proposed rules present as to one party a privileged position not attained by the other parties. Assuming a three-party process of applicant, staff and intervenor; applicant and intervenor are subject to discovery response by all three assumed parties; intervenor and application can obtain information from one another, and staff can seek but not respond to inquiry of the applicant and the intervenor. This at first blush present an unequal application of law among litigants, providing to one party benefit without detriment, and to two parties detriment without benefit. No justifiable reason is advanced for such applications.

The circumstances of removing written orders, removal of orders concurred in by at least two Board members, removal of motions to reconsider prehearing orders, and summary disposition motions to be considered at any time, significantly alters the hearing process. Oral orders as opposed to written orders invites ill-reasoned decisions readily spoken but difficult to write, or in the writing the exposure of the basic flaw. Single Board member rulings often invite the dissent to become the majority decision. Striking of reconsideration of prehearing orders removes the opportunity to advise and remove potential error, especially after the test of time. Summary disposition invites ill-prepared motions and responses at points in which the responding party is taken completely by surprise and essentially invites error to the record and with such error a great deal of time wasted for naught.

Flexibility is to acknowledge little or no standard and the

absence of standard is to cast the boat adrift upon the proverbial boundless sea. Standard must be the test for application, flexability invites abuse of discretion.

The quest of the licensing process — to assure a full and complete record to satisfy a safe and functional plant in operation — is not an exercise in time consumption nor is it an exercise in limiting discovery as a trade-off for an elongated hearing attempting to focus issue and a time consuming quest for information which ought to have already been achieved; but it is an effort to satisfy a standard evolving from lessons learned, and hopefully not repeated, by the TMI accident. If the process consumes time as necessary to a full and complete record, then so be it, but to sacrifice safety and full hearing for expediency is foolhardy indeed. If applicant must wait to be licensed until the matter can be appropriately pursued, then wait it must; the necessity of the matter is that a full hearing be had and the matter fully investigated pursuant to the present rules.

The standard held up as the model is the discovery process of the Federal Rules of Civil Procedure which have established that the most efficient means of litigation is to afford a full and robust discovery as to all parties. The proposed amendments remove that standard and direct a course of time consumption, not time conservation. The remaining amendments invite error.

For the reasons advanced it is submitted that the rules remain as presently constituted.

Respectfully submitted,

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Attorney for Intervenor Zimmer Area Citizens