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GEORGE E. PATTISON
CLERMONT COUNTY PROSECUTING ATTORNEY

462 Main Street Batavia, Ohio 45103
(513) 732-7313

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COMMENT ON PROPOSED AMENDMENTS TO NRC'S
RULES OF PRACTICE, 10 CFR, PART 2

SUBMITTED BY: Prosecuting Attorney's Office, Clermont County, Ohio

PARTICIPANT: In the matter of Applications for Operator's License, Zimmer Nuclear Power Station., No. 50-358

NOTE: Because of the unique character in which state and local governmental agency and body participants are treated in licensing application proceedings before the NRC, comment is limited to those proposed amendments which this commentator feels would most directly affect the ability and quality of the participation of those bodies in the licensing application proceedings.

The interest (of the NRC) in minimizing the time lag between NRC adjudicatory decision and plant completion(s) and thus attempting to alleviate and/or reduce the resultant costs to utilities and ratepayers is justified and necessary. However, assurances of community safety and full, fair, informed, knowledgeable and effective participation should in no way be sacrificed to attempt to minimize these costs.

Commentator's comments are restricted to the areas of the proposed amendments as they relate to the areas of discovery time limitations and discarding formal discovery requests directed to the staff.

Commentator has no problem with the concept of placing the use of discovery under certain time restrictions. However, it is felt that limiting discovery to 25 days after publication of the Final Supplemental SER is unduly restrictive and would have a negative affect on the content and subject matter of the hearings when related to the number of days which would elapse prior to the proposed date of the beginning of the hearing.

It is also felt that such a short time period in which to engage in discovery is inconsistent with the proposal that summary disposition requests be permitted at any time. Permitting such requests to be filed at any time and permitting a responding party "to respond to new facts and arguments presented in any supporting statements which were not presented in the papers of the moving party", while prohibiting the use of discovery after 25 days, would probably result in the (mis)use of summary disposition

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requests as tools of discovery, thus reducing the effectiveness of said requests and consequently prolonging and complicating the hearing procedure itself. Given that the proposed hearing would not begin until the 95th. day after the publication of the proposed final supplemental SER, and that it is proposed that summary disposition requests be permitted at any time and it is proposed that testimony need not be filed until the 80th. day after publication, discovery should at least be permitted to extend to about the 65th. day.

The proposal that the staff be exempted from responding to formal discovery requests with the view that "most of the discoverable information can ultimately be produced at the hearing on cross examination of staff witnesses", also suffers from similar defects as the above. To intermingle the hearing procedure, cross examination and the discovery process will inevitably lead to uninformed and ineffective participation, confusion, "fishing" expeditions and endless conflicts about the limits of cross-examination and discovery among the participants and the Board and will only serve to delay and prolong the hearing and most likely give rise to innumerable appeals. If the staff is subject to discovery type examination at the hearing itself, without prior notice or knowledge of the staff as to what information the participants seek of the staff, without a doubt innumerable requests for relevant information will be made at the hearing which the staff will be unable to provide at that time. Likewise, if participants must partake in the hearings without the benefit of knowing what information is in the staff's possession, then any such participation will be potentially uninformed, unknowing, ineffective and without substance, and subject to an attack based upon defective due process considerations.

GEORGE E. PATTISON,
Prosecuting Attorney

By: Larry R. Fisse,
Assistant Prosecuting Attorney

Larrence R Fisse