UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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)

Docket No. 50-358



NRC STAFF RESPONSE TO MOTION OF
MIAMI VALLEY POWER PROJECT TO RE-OPEN
THE HEARING IN REGARD TO APPLICANTS' FINANCIAL QUALIFICATIONS

On April 21, 1981, the Miami Valley Power Project (MVPP) filed a motion to reopen the proceeding, alleging in its motion and supporting memorandum:

"for the reason that new and material evidence unavailable to intervenor at the time of the last evidentiary hearing has just been made available to intervenor and for the further reason that such information may indicate that witnesses for the applicants may have perjured themselves at the last evidentiary hearing concerning contention 13 [Motion]

"At the evidentiary hearing in this matter during the week of March 2, 1981, counsel for the intervenor of Miami Valley Power Project inquired of witnesses for the applicants as to the costs they would incur in order to provide replacement power in the event of a total shut-down of the Zimmer Plant. Defendant's answered that there would be little or no costs since the power from Zimmer was not necessary due to the applicant's reserve capacity.

On April 6, 1981, counsel for intervenor MVPP received in the mail a letter from Mr. E. A. Borgmann to Mr. Harold Denton, dated April 2, 1981, in which Mr. Borgmann provided information as to the monthly costs to maintain the Zimmer Plant in an inactive status. In that letter (a copy of which is attached hereto as Attachment 1) he indicates a 5.3 million dollar monthly cost for the replacement power in the event that Zimmer Plant is inactive." [Memorandum]

Staff counsel has reviewed the transcript of the hearing held on March 2, 3 and 4, 1981 and is not able to find testimony on behalf of the applicants' that if Zimmer were shut-down there would be little or no cost for replacement power (as MVPP alleges to have occurred). MVPP cites no tr script page or other identification as to where this alleged perjury took place.

As to the April 8, 1981 letter from Borgmann (CG&E) to Denton (NRC) referencing a 5.3 million dollar monthly replacement power cost, this does no more than reiterate what is already in the record. See testimony of Wayne Britz, page 4, following transcript page 2967; See also, testimony of Kevin Rooney page 7, following transcript page 2937. Mr. Borgmann's letter of April 8, 1981 far from being new material, merely repeats the testimony already in the record. The transcript for August 9, 1979 indicates that Mr. Feldman, counsel for MVPP was present during the testimony of Mr. Rooney and Mr. Britz, both of whom were cross-examined by MVPP.

Standards for reopening the record are set forth in Kansas Gas and Electric Company et al (Wolf Creek Generating Station, Unit I), ALAB-462, 7 NRC 320, 338 (1978), and Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2) CLI-81-5, April 1981, 12 NRC-. The movant has a heavy burden to show that there is new and significant information which would require that a different result be reached. The Commission further stated "We emphasize that bare allegations or simple submission of new contentions is not enough" Diablo Canyon, CLI-81-5, supra. Here, there is no new information - rather, the intervenors' only restate the same information that was introduced into the record at

the hearing held in Tuesday, August 9, 1979. The Intervenors have done no more than simply allege without fact or basis or citation that a perjury was committed. For the foregoing reasons, the Intervenors' Motion to Reopen should be denied.

Respectfully submitted,

Charles A. Barth Counsel for NRC Staff

Dated at Bethesda, Maryland this 7th day of May, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE TO MOTION OF MIAMI VALLEY POWER PROJECT TO RE-OPEN THE HEARING IN REGARD TO APPLICANTS' FINANCIAL QUALIFICATIONS 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 7th day of May, 1981.

Charles Bechhoefer, Esq., Chairman Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washing D.C. 20555 *

Dr. Frank F. Hooper School of Natural Resources University of Michigan Ann Arbor, Michigan 48109

M. Stanley Livingston Administrative Judge 1005 Calle Largo Santa Fe, New Mexico 87501

Troy B. Conner, Esq.
Conner & Moore
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

James H. Feldman, Jr., Esq. 216 East 9th Street Cincinnati, Ohio 45220

W. Peter Heile, Esq. Assistant City Solicitor Room 214, City Hall Cincinnati, Ohio 45220

Mrs. Mary Reder Box 270, Rt. 2 California, Kentucky 41007 Timothy S. Hogan, Jr., Chairman Board of Commissioners 50 Market Street, Clermont County Batavia, Ohio 45103

John D. Woliver, Esq. Legal Aid Society P.O. Box #47 550 Kilgore Street Batavia, Ohio 45103

William J. Moran, Esq. General Counsel Cincinnati Gas & Electric Company P.O. Box 960 Cincinnati, Ohio 45201

Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555 *

David Martin, Esq.
Office of the Attorney General
209 St. Clair Street
First Floor
Frankfort, Kentucky 40601

George E. Pattison, Esq. Clermont County Prosecuting Attorney 462 Main Street Batavia, Ohio 45103 Lawrence R. Fisse, Esq. Assistant Prosecuting Attorney 462 Main Street Batavia, Ohio 45103

Atomic Safety and Licensing Appeal Eoard U.S. Nuclear Regulatory Commission Washington, D.C. 20555 *

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Andrew B. Dennison, Esq. 200 Main Street Batavia, Ohio 45103

Charles A. Barth

Counsel for NRC Staff