

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

'81 NOV -6 AIO:12

John H Frye, III, Chairman
M. Stanley Livingston
Frank F. Hooper

OFFICE OF SECRETARY
DOCKETING & SERVICE
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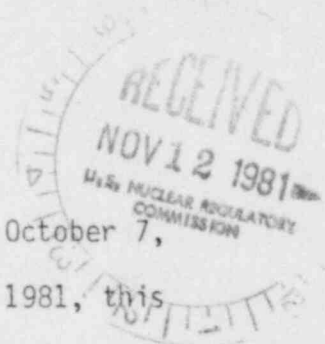
In the Matter of
CINCINNATI GAS & ELECTRIC COMPANY, et al.
(Zimmer Nuclear Power Station, Unit 1)

Docket No. 50-358-0L

November 5, 1981

PREHEARING CONFERENCE ORDER

Pursuant to a notice dated October 2, 1981 (46 F.R. 49691, October 7, 1981), and an unpublished Memorandum and Order dated October 9, 1981, this Atomic Safety and Licensing Board conducted a prehearing conference on October 29 and 30, 1981, in Cincinnati, Ohio.



The matters which this Board wished the parties to address at the prehearing conference included the identification of any of the remaining contentions which the sponsoring party no longer intended to pursue, the revision and further specification of the remaining contentions in light of discovery and evolving emergency plans, and the consolidation of contentions and the appointment of lead intervenors, either as a result of negotiations among the parties or upon the order of this Board.

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This Prehearing Conference Order summarizes the rulings made by the Board at the conference and resolves some of the remaining outstanding matters.

I. City of Cincinnati Settlement Agreement

In response to a joint motion of the City of Cincinnati and The Cincinnati Gas & Electric Company, et al., the Chairman signed the Settlement Agreement between these two parties on October 30, 1981, thus signifying the Board's unanimous approval.

Neither the NRC Staff nor any other party had opposed this Settlement Agreement and this Board, after review, concluded that its ratification would be in accordance with 10 CFR § 2.759 and the Commission's Statement of Policy on Conduct of Licensing Proceedings, 46 F.R. 28533 (May 27, 1981), both of which encourage the use of settlement negotiations in contested licensing proceedings.

Pursuant to this settlement, the Board entered an Order accepting the withdrawal of the City as a party to this proceeding and dismissing the City's contentions, both with prejudice.

II. Contentions of Other Parties

In general, the other parties to this proceeding had neither formally revised nor further specified their contentions in writing prior to the prehearing conference. As directed, the parties conferred prior to the conference but were unable to reach agreement with respect to contentions.

Therefore, in light of the assertions and representations made by the parties at the prehearing conference, and with the limitation expressed by the Board at that time, the Board now orders that the parties shall be granted the following extensions of time for the sole purpose of revising their present contentions so as to clarify and further specify those issues which they wish litigated. The revisions are to be limited to matters which were fairly within the scope of the contentions as originally filed.

A. Dr. Fankhauser

In the course of the prehearing conference, Dr. Fankhauser voluntarily withdrew Contentions 2(a), 2(d), 3 and 4(a).

At the prehearing conference, the Board permitted Dr. Fankhauser to revise those remaining portions of his Contention 4 (pertaining to offsite emergency planning) which he maintains are still viable in light of the recent issuance of the Clermont County Radiological Emergency Response plan.

Because the circumstances surrounding the monitoring issues discussed in the remaining portions of his Contention 2 have not been shown to have significantly changed since the time that contention was first raised in this proceeding, and in light of the extensive discussion of this contention at the conference, the Board denies Dr. Fankhauser's request for permission to revise that contention.

As agreed at the conference, Dr. Fankhauser is to deliver his revised Contention 4 to the offices of the Applicant by Friday, November 13, 1981, so that Applicant may promptly forward a copy to its attorneys in Washington, D.C. who will, in turn, provide a copy to the NRC Staff and the Board Chairman. Otherwise, service of the revised contentions is to be accomplished in accordance with the Rules of Practice. Applicant's and Staff's responses must be filed by November 20, 1981.

B. ZAC-ZACK.

In its July 2, 1980 Memorandum and Order Ruling on Contentions of ZAC-ZACK (LBP-80-19, 12 NRC 67), the Board determined to admit all of ZAC-ZACK's contentions for purposes of discovery, stating that "prior to hearing they will be subject to modification or reconsideration to take into account, inter alia, the current status of NRC rules and regulations and the emergency and monitoring

plans then before us." 12 NRC at 68. This step was taken as a result of the uncertainties in the regulation of these matters in the aftermath of the Three Mile Island accident.

At the prehearing conference, Staff and Applicant both asserted that the time had come for ZAC-ZACK to further refine, specify and support its contentions, as this Board had previously ordered be done before going to hearing. 12 NRC at 72. ZAC-ZACK demonstrated to this Board at the conference that it is capable of restating its contentions in a specific manner so as to advise all the parties precisely what it desires to litigate, without being prolix. ZAC-ZACK also agreed that all contentions which it desires to pursue would be so restated, those not restated will be considered withdrawn. ZAC-ZACK also agreed to supply references to the specific portions of the emergency response plans its contentions question where possible.

As agreed at the conference, ZAC-ZACK is to deliver its revised contentions, to the offices of Applicant by Thursday, November 12, 1981, so that Applicant may promptly forward a copy to its attorneys in Washington, D.C., who will, in turn, provide a copy to the NRC Staff and the Board Chairman. Otherwise, service of the revised contentions is to be accomplished in accordance with the Rules of Practice. Applicants's and Staff's responses must be filed by November 20, 1981.

C. Clermont County

Clermont County, participating in this proceeding pursuant to 10 CFR § 2.715(c), was directed by this Board's October 9, 1981 Memorandum and Order to indicate at the prehearing conference the subjects upon which it intended to participate in these proceedings and the anticipated scope of such participation. The County did this in the form of its "Motion to Submit Specific Contentions, Issues on Subject Matter of Participation", which was served upon the Board at the opening of the initial session of the prehearing conference.

In its filing, the County noted that it and the Applicant had been and were still engaged in settlement negotiations. In the course of the conference it became apparent that the County's proposed contentions did not reflect the current status of settlement negotiations between the parties.

In light of 10 CFR § 2.759, the Commission's Statement of Policy, supra, advocating the use of settlement negotiations in contested licensing proceedings, and the discussion at the conference, the Applicant and the County of Clermont are directed to continue their settlement negotiations toward resolving those conflicts which remain outstanding between them. Should they be unable to settle the remaining outstanding issues, the County is directed to serve a list of only those specific, litigable contentions which it asserts remain in issue between them. Such service must be accomplished by November 13, 1981, in the

same manner as indicated for Dr. Fankhauser's and ZAC-ZACK's revised contentions. Similarly, Applicant's and Staff's responses must be filed with the Board by November 20, 1981.

D. City of Mentor

A second participant in this proceeding pursuant to 10 CFR § 2.715(c), the City of Mentor, also served a Motion to Submit Specific Contentions upon this Board in response to the Board's October 9, 1981 Memorandum and Order. Applicant and Staff both questioned at the prehearing conference whether the City's contentions, as initially drafted, possess that degree of specificity required so as to adequately apprise the parties of those matters to which they are expected to respond.

This Board chose not to rule on the question of the specificity of the City's contentions at that time, believing it to be more profitable to offer the City the same opportunity given to Dr. Fankhauser and ZAC-ZACK to revise its contentions to the extent the City wished. Any revisions should be designed to more adequately apprise the other parties and the Board of the ways in which the City contends that the current emergency response plans are inadequate, or incomplete, or the manner in which particular proposed emergency procedures are dangerous or inappropriate. In this regard, the City's attention is drawn to the Applicant's and Staff's responses to its contentions and the discussion of ZAC-ZACK's and Dr. Fankhauser's contentions.

Now that the City has filed contentions which could provide a basis for discussions between the City and Applicant, the Board desires these parties to meet in an effort to resolve the City's concerns prior to hearing.

This Board directs that the City of Mentor re-examine its contentions and, if it deems it necessary, serve revised contentions by November 13, 1981. Service should be accomplished in the same manner as indicated for Dr. Fankhauser's and ZAC-ZACK's revised contentions. Applicant's and Staff's responses must be filed by November 20, 1981.

III. Discovery

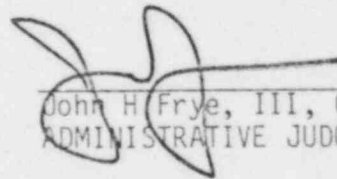
At the prehearing conference the Staff moved that this Board issue an order precluding all discovery after Monday, November 30, 1981, except for permission of the Board for good cause shown. There having been neither opposition to this motion nor need shown for allowing general discovery after that date, the Board hereby grants the Staff's motion.

At the conference, the Staff announced that, through agreement with FEMA, interrogatories directed to FEMA should be served on Spence W. Perry, Acting Assistant General Counsel, Federal Emergency Management Agency, 500 "C" Street, S.W., Washington, D.C. 20427. Discovery directed to FEMA is included with the above restriction. Staff Counsel emphasized that FEMA has voluntarily agreed to answer interrogatories to the extent that its resources permit.

Following submittal of the revised contentions and responses, this Board will issue a Second Prehearing Conference Order ruling on the acceptability of contentions, the consolidation of contentions, and the appointment of lead intervenors. The Board will also address the questions of hearing dates, the final dates for the exchange of witness lists, and similar matters in this subsequent Order.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING BOARD

A handwritten signature in black ink, appearing to read "John H. Frye, III", is written over a horizontal line. The signature is stylized and somewhat cursive.

John H. Frye, III, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,
this 5th day of November, 1981.