UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
The Cincinnati Gas & Electric Company, et al.	)	Docket No. 50-358
	)	
	)	
(Wm. H. Zimmer Nuclear Power Station)	)	

APPLICANTS' RESPONSE TO THE REVISED CONTENTIONS OF ZIMMER AREA CITIZENS - ZIMMER AREA CITIZENS OF KENTUCKY, CITY OF MENTOR, DR. DAVID FANKHAUSER AND CLERMONT COUNTY

Preliminary Statement

As a result of the prehearing conference in the captioned proceeding held on October 29-30, 1981, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") ordered the intervenors to submit revised contentions which would be suitable for litigation and to give further support and bases for such contentions. Those governmental entities participating pursuant to 10 C.F.R. §2.715(c) were required to submit a specific statement of issues which they wished to pursue. The Board memorialized its actions in a Prehearing Conference Order dated November 5, 1981. This submittal responds to the proposed contentions and issues contained in the various pleadings. However, by way of introduction, certain observations are

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generally applicable to these submittals which should govern their disposition by the Licensing Board.

The contentions and issues submitted must be viewed in the context of the status of the proceeding. The original contentions were all admitted some one to five years previously with the understanding that the intervenors would pursue discovery to attempt to make them specific enough for litigation. Such discovery was not pursued. 1/

These revised contentions and issues are being submitted, in relative terms, extremely close in time to the designated date for an evidentiary hearing on emergency planning; in fairness to the Applicants and Staff, who must prepare testimony to address and rebut any contentions, the Board should apply a strict standard to decide whether they should be admitted, i.e., if the contention or issue is not now in a form which is proper for litigation, it should be denied. No further opportunity for revision should be given. Neither should the Licensing Board attempt, on its own, to create a contention or to winnow out extraneous or frivolous material; if the various parties and participants cannot state litigable issues at this point in the proceeding, it

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1/ The intervenors' complaint that the last of various emergency plans were not given to them until early October is no excuse for not having pursued discovery; a wealth of information about the plans and the contentions was available for the asking before that time. In any event, the Ohio plan was available in February of this year, and the Station plan was sent to the Board and parties in January.

is not the Licensing Board's obligation or function to do so. In Zion, the Appeal Board held that "there is no duty placed upon a licensing board by the Administrative Procedure Act, or by [the Atomic Energy] Act and the regulations promulgated thereunder, to recast contentions offered by one of the litigants for the purpose of making those contentions acceptable." 2/ This Board should therefore deny any improper contention or issue.

The contentions submitted demonstrate one fundamental misconception of which matters are to be considered by this Board concerning the detailed implementation of the emergency plan. At the recent prehearing conference, the Applicants noted that the intervenors seemed to have the idea that every aspect of actions to be taken in the event of an emergency must be spelled out at this stage of licensing or else the emergency plan is "inadequate." What the emergency plans themselves must contain is established by NUREG-0654. The Applicants submit that these standards have been met. However, the intervenors demonstrated by their contentions that they still adhere to the premise noted above. They do not understand that, just as operating

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2/ Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974). See also Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445 and 50-446, "Rulings on Objections to Board's Order" (October 31, 1980)(slip opinion at 7).

procedures to implement technical specifications are written when needed and changed as needed, this approach is equally applicable to the operating procedures to implement the emergency plan.

Moreover, they demonstrate a fundamental lack of understanding that an emergency plan for a nuclear plant, just like emergency plans for floods, tornadoes, etc., must be flexible to accommodate the varying circumstances that are likely to exist at any given time. Resources are to be used where needed, not rigidly located where they can be of no value in a given situation.

Obviously, the legitimate limit of the NRC's inquiry is whether the emergency plans developed pursuant to NUREG-0654 are capable of appropriate implementation. Unless a contention raises a genuine issue of fact that the capability for implementation does not exist, it should be denied.

The time for the Applicants to respond to these matters is extremely short, with three out of the four pleadings not received by undersigned counsel until late Monday morning. Therefore, it was not possible to deal with each subpart of every contention individually. A number of the contentions are treated in groups, with examples of deficiencies highlighted. Every effort has been made to keep from pleading the merits of the contentions, but this is

not always possible and, given the particular stage of this proceeding, not improper. The Board directed the parties and participants to revise their pleadings in the context of the specific Zimmer Station and state and local emergency plans. Thus, if the submittals ignore these plans or distort their content, this is certainly relevant in the Board's review and goes to the acceptability of the contention.

As a final general matter, it is Applicants' position that any contention which merely states that the plans are inadequate, or words to that effect, without giving a sufficient basis for such conclusion in the context of the Commission's emergency planning regulations, including NUREG-0654 (Rev. 1), and without giving authority for allegations, should be denied. Minutiae submitted in these contentions should not be permitted as a substitute for the specificity and basis required by the Licensing Board's Order. Neither should the Board permit contentions which would require a great deal of hearing time and not affect the overall emergency planning effort in the context of the standard by which the NRC must judge their adequacy.

We turn now to a discussion of individual parties' and participants' filings. In the interest of conciseness, where an issue has been considered previously, reference to the discussion will be made.

Contentions of ZAC-ZACK

On November 12, 1981, pursuant to the Atomic Safety and Licensing Board's Prehearing Conference Order dated November 5, 1981, Zimmer Area Citizens - Zimmer Area Citizens of Kentucky ("ZAC-ZACK") submitted revised contentions in the captioned proceeding. It must be recalled that ZAC-ZACK's contentions had only been conditionally admitted, with the burden being placed upon it to propose justification and specification in order to present litigable issues.

The Board's Prehearing Conference Order permitted the intervenors a period 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. 3/

Specifically, with regard to ZAC-ZACK, the Board noted that it should restate its contentions "in a specific manner so [as] to advise all the parties precisely what it desires to litigate, without being prolix." 4/ ZAC-ZACK has submitted a 63 page document which, while wordy and rambling, fails

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3/ Prehearing Conference at 3.

4/ Id. at 5.

in many instances, as discussed below, to provide the needed specificity and basis for contentions which are ripe for consideration at an evidentiary proceeding, particularly considering the short time available prior to the evidentiary hearing. 5/

The minutiae that ZAC-ZACK, as well as some of the other parties and participants, would have this Licensing Board consider goes completely beyond that standard of review which the NRC's regulations have placed upon the licensing boards, i.e., a finding of "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 6/ It is submitted that the Commission's emergency planning regulations contemplate that the details of implementation are properly left for the applicants and local jurisdictions in procedures which, because of their nature, are documents which are dynamic and are continually being updated over the lifetime of the facility based upon a number of factors, including the results of exercises and drills. In the absence of

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5/ It is Applicants' view that this material should have been submitted many months ago so that the orderly process of developing contentions for litigation could have proceeded. The submission of these contentions would have allowed the filing of a motion for summary disposition in conformance with the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981) and eliminated the need for lengthy hearings taking up the time of the Board and parties. The delay in the submission of these contentions has effectively eliminated this efficient alternative.

6/ 10 C.F.R. §50.47(a). The Board's findings are, of course, limited to the contested issues in the proceeding.

specifics presented by an intervenor to how that a planning element cannot be implemented, it must be presumed a governmental agency will honor its commitment to implement its undertaking in specific terms. An intervenor cannot allege a general inadequacy. To hold otherwise would not give force and effect to the presumption of adequacy of a FEMA finding on the offsite plans. 7/ The plans must be capable of being implemented, under the prevailing standard, which is a far cry from the Licensing Board redoing FEMA's job ab initio, and attempting to write a cookbook to govern the civil authorities in this hearing. Viewed in this light, many of ZAC-ZACK's revised contentions are not cognizable.

At the outset, intervenor ZAC-ZACK makes the argument that Brown County, Ohio, must be included within the plume Emergency Planning Zone ("EPZ") even though the emergency planning authorities in Ohio have decided that it need not be included in its planning efforts for the Zimmer Station, and ZAC-ZACK has admitted that Brown County is over 10 miles from the Zimmer Station. In these circumstances, the assertion that Brown County must be included within the plume EPZ is a challenge to the NRC regulations, particularly 10 C.F.R. §50.47(c)(2), which sets ten miles as the

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7/ 10 C.F.R. §50.47(a)(2).

standard for the plume EPZ. Other licensing boards have struck down attempts to expand the ten mile EPZ. 8/

Section 50.47(c)(2) recognizes that a legitimate basis for setting the size of the EPZ would be a jurisdictional boundary between political subdivisions. The cited authority makes it clear that the EPZ could have been set at less than ten miles based upon the location of a political boundary. Thus, where the political boundary is greater than ten miles, a ten mile EPZ surely should suffice.

In any event, ZAC-ZACK has recited nothing which would raise any question concerning the selected EPZ. It is alleged that the "involved areas of Brown County [are] in an elevation plane in excess of 400 feet above the Zimmer Station . . .," but the intervenor has not attributed any significance to this fact in the context of emergency planning. In circular reasoning, ZAC-ZACK seemingly alleges that evacuation routes for Brown County residents would be the same as for Clermont County residents; however, inasmuch as there is no reason to include Brown County within the EPZ, no reason exists to plan for evacuation for that

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8/ South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1), 50-395, Memorandum and Order, September 14, 1981, slip op. at 5. See also Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), 50-361/362 OL, Order, September 14, 1981, slip op. at 9-10.

jurisdiction.

Significantly, ZAC-ZACK does not allege that there are any population concentrations near the edge of the present EPZ in Brown County which would require special planning. To the contrary, the area is generally rural in character. Nothing has been alleged which requires including any part of Brown County, let alone require planning for a large portion of the entire County, which is situated at a distance significantly greater than ten miles from the facility. Accordingly, revised Contentions 20(a)(1), (2), (3), (b)(1), (2)(3), (c)(4), (e)(1), (e)(2), and 31 and any other which seeks to litigate matters regarding Brown County should be excluded from consideration.

ZAC-ZACK attacks the legality under Ohio law of certain of the provisions of the emergency plan. Inasmuch as the submission of the plan by the State and County is an indication of its ability to carry out its provisions, this Licensing Board should not entertain such contentions. This is in line with the decision in Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 748 (1977), in which the Atomic Safety and Licensing Appeal Board recognized that questions of Ohio law should be decided by the Ohio courts and that the NRC's

"job is to decide the Federal issues before us." [9] For example, Contention 20(e)(6) should not be considered.

In a related matter, the administration of potassium iodide ("KI") to the public is a matter of individual state determination. ZAC-ZACK points to absolutely nothing which would render its distribution an NRC requirement. Such general distribution to the public is not contemplated in NUREG-0654. [10] Inasmuch as NUREG-0654 is incorporated both in 10 C.F.R. §50.47 and 10 C.F.R. Part 50, Appendix E, it comprehensively describes the required planning basis for emergencies. A state decision to use KI and its procedures for distribution and use are beyond matters to be considered at this hearing. In any event, ZAC-ZACK has shown nothing to indicate that reasonable plans cannot be implemented by the State and counties. As such, contentions related to this matter (see, for example Contention 21(b)(2)) should be denied.

In Contention 21(b)(1), ZAC-ZACK would have the Board deal with "emotional shock or trauma" occasioned by evacuation and separation. However, the NRC "has determined that psychological stress shall not be considered in reactor licensing proceedings." See Metropolitan Edison Company,

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9/ See also Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978) in which the Appeal Board stated that "[t]he requirements of State law are beyond our ken."

10/ See also testimony of FEMA dated February 23, 1981 in the Three Mile Island proceeding.

CLI-80-39, 12 NRC 607 (1980)(2-2 vote). In reconsidering this order, the Commissioners voted to adhere to its previous determination "to exclude psychological stress and community deterioration contentions." Id., CLI-81-20 (September 17, 1981)(slip opinion at 2).

A large number of revised contentions deal with planning for evacuation and alleged deficiencies because of inadequate roads, etc. The revised contentions recite in some detail the road system on both the Ohio and Kentucky sides of the Ohio River. See, for example, Contentions 20 c(1)-(14). Aside from a description of the evacuation routes and comments that these routes are inadequate, notwithstanding that they are utilized by the resident population on a daily basis, the contentions present nothing of substance with regard to any specific deficiency in emergency planning. The critical deficiency with these revised contentions is that they fail to allege what ZAC-ZACK considers to be "prompt and timely" evacuation. At one point, ZAC-ZACK utilizes the term "mandatory time limitations" in the context of evacuation. 11/

Absent some valid specification as to what these terms mean, there is no litigable issue before the Licensing Board.

11/ Revised Contention 20(c)(6) at 17.

Initially, Applicants are unaware of any mandatory time limitations as far as evacuation planning is concerned. There is no specificity as to what the intervenors contend evacuation time would be nor any demonstration as to the significance of any purported long evacuation times in the context of NRC regulations.

Moreover, evacuation is only one of the various possible protective actions contemplated by the NRC regulations; there is no showing that the overall protective actions contemplated by the emergency planning regulations, as implemented in the various emergency plans, are inadequate. Estimates of evacuation times such as the Stone & Webster study are merely that: they are to be utilized by planners for deciding the appropriate protective action to be taken. They are not, as ZAC-ZACK would have this Board believe, any absolute limit for evacuation times nor intended to be precise to the minute.

While considerable time may be taken up at a hearing discussing the worst combination of natural conditions or hypothesized multiple failures which could affect emergency planning, such postulation does not assist the Licensing Board in determining the adequacy of the emergency plan as it relates to the issues in the proceeding. The focus must be on conditions which may be realistically anticipated in deciding the adequacy of the planning efforts.

In a related matter, Contention 20(f)(1) recites that there are certain roadways which are alleged to be susceptible to flooding. However, no allegation is made that alternate routes are not available or that other protective actions cannot be taken. It should be noted that much of the discussion relates to the 1937 flood, the historical flood of record, and does not recognize that additional advances in controlling pool stages on the Ohio River have been made such that the conditions associated with the 1937 flood would not create the same crest. Nor does the discussion related to access to the plant recognize the contents of the Zimmer application which fully address access to the facility in case of a flood.[12/] It must be recognized, that once in a lifetime events, such as the flood of record, which may never again be encountered, cannot form the basis for overall emergency planning.

The discussion of severe weather conditions contained in 20(h)(1) should be treated in a similar manner. One may always hypothesize weather conditions so severe that timely evacuation may be difficult or even impossible. However, this postulation, which may apply to almost any reactor site, does not render the emergency plan deficient. As previously

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12/ The spectre of flooding of the EOF at the Moscow School is also raised; however, ZAC-ZACK fails to reveal to the Board, as it must be aware, that the EOF is scheduled to be moved to Batavia, Ohio, well away from any possible flood hazard.

noted, NUREG-0654 recognizes that other protective actions may be taken and no assertion has been made that such alternative protective actions which may be implemented in case of severe adverse weather are not adequate. In any event, under severe adverse weather conditions schools would likely be closed.

While arguing the number of school buses needed and the alleged deficiency in the number of buses, the contentions related to evacuation of school children are based upon a false premise which renders the contention illusory, hypothetical and not capable of consideration. ZAC-ZACK contemplates that buses must be immediately available for evacuation and must be stationed at all schools. There is no technical or legal basis for intervenor's assertions. In fact, this premise is false. For example, there are a number of schools which are on the fringe of the EPZ in Campbell County, but outside of a ten mile radius of Zimmer. There could be no technical justification for requiring buses standing by these schools for immediate evacuation. To place the matter in perspective, the pupils could literally walk to the edge of the EPZ. Nor is there any basis for the implied assumptions that all sectors will need to be evacuated simultaneously or otherwise and that buses from unaffected sectors could not be utilized should any sector have to be evacuated. There is also no showing that the buses, in an emergency situation, could not be loaded beyond their seating capacity.

Certain of the subcontentions which relate to notification of the schools and school bus drivers are again based upon the premise that notification must be instantaneous. There is no such requirement. The intervenors have articulated no plant scenario which would require instantaneous evacuation. Furthermore, ZAC-ZACK completely ignores the fact that the Applicants have already agreed to provide National Oceanographic and Atmospheric Administration ("NOAA") radios to each school within the EPZ to assure notification of any action that must be taken.[13/] This commitment obviates many of the ZAC-ZACK contentions which allege that the use of the telephone system for notification of individual schools is somehow deficient. Instructions to particular schools to take protective action could be given via the NOAA radio. Thus, in this area ZAC-ZACK has failed to state a contention proper for litigation.

Aside from general deficiencies alleged regarding telephone communication, there is no specific basis provided for stating that the overall communications system envisioned by the plan is inadequate. Certainly neither the NRC nor FEMA has ever required that all communications among every agency having any role be by dedicated telephone

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13/ See August 11, 1981 letter to Denton from Borgmann re prompt notification in the event of an emergency.

or radio. Reference to the plans shows the extremely strong and redundant methods of communication among the emergency planning agencies, the states and the Applicants.[14] Even aside from NOAA radios, should telephone communications break down, police or other response units which have radio communications could be dispatched. No overall deficiency in the communications portions of the plans is alleged with specificity.

ZAC-ZACK also alleges some unidentified deficiency in the county communication system near Zimmer, but provides no basis for the assertion of inadequacy.[15] See Contention 20(b)(4). Elsewhere, statements are made as to the inadequacy of pagers (See Contention 20(b)(8)), but again, no basis for the assertion of alleged inadequacy is provided.

In Contention 20(e)(2)-(15), the organization of the various police, fire and life squads is discussed, with general assertions being made that the description in the plan is inadequate or that they are not capable of performing their assigned functions. The ZAC-ZACK petition alleges, without basis, that volunteers will not perform their functions according to the plans. This assertion has no basis

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14/ See, for example, Clermont County Plan at Section II.E and the Kentucky Plan for the Zimmer Station at Exhibit A.

15/ In fact, as stated in the Clermont County submittal, at p. 1, (first four items), the Applicants will provide two repeater stations to cover any possible dead area.

in fact; the Commission has never prohibited the use of volunteers in fulfilling emergency planning functions. Nor has ZAC-ZACK even given an example of situations where volunteers have not responded. ZAC-ZACK speculates that training will not be provided, e.g., regarding treatment of radiological injuries, but no basis is given for the the assertion that those individuals for whom special tasks are required will not be trained and retrained. These contentions should be denied.

In Contention 23(1), it is alleged that the populace will not follow actions outlined in the emergency plans for their health and safety. Initially, there is no showing that the area around Zimmer is not typical of other nuclear reactors or that there is some special propensity on the part of the citizenry near Zimmer not to react to instructions. In any event, nothing specific has been alleged which would in any way call into question the evacuation procedures and techniques for confirmation of evacuation to be employed by the response agencies. We fail to understand what issue ZAC-ZACK would litigate.

ZAC-ZACK generally attacks the publication, "Circle of Safety," but fails to allege any specific deficiency in its content vis-a-vis the requirements of NUREG-0654 (See Contention 23(3)-(4)). The method of distribution is then generally faulted, but no specific deficiency alleged.

The hypothesis that the informational booklet must be given to transients is asserted, but no basis is given.[16/] There is no specific fault alleged in the scope and method of distribution of "Circle of Safety." Furthermore, there is no allegation that the specific plans for notification and evacuation of transients are in any way deficient. Contention 23 presents no litigable issue.

Contention 24, even as revised, also presents no issue which is capable of litigation. While admitting that the hospitals which can provide treatment for contaminated patients are indicated, ZAC-ZACK seems to complain that the precise details of medical treatment is not covered in the plan. However, nothing in the NRC or FEMA regulations is indicated which would require that this detail be present.[17/] It should be noted that the State of Ohio Emergency Plan

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16/ In fact, NUREG-0654 at 50 requires that the information booklet need only be available at residences. ZAC-ZACK ignores the remainder of the Applicants' public information program.

17/ It should also be noted that the Station Emergency Plan at Appendix D provides detailed descriptions of the emergency planning efforts of St. Luke Hospital in Kentucky and the University of Cincinnati Hospital - Cincinnati General Division.

at Figure II-K-3 and II-K-3-1 contains a substantial additional listing of hospitals which could bt utilized. The fact that Ohio chooses not to plan to use potassium iodide at this time is a matter for the State, not the NRC. No specific deficiency or litigable issues is presented.

It is clear from an examination of Contention 25, as revised and specified, that no litigable issue has been raised. Subsection 1 alleges that certain information which, by agreement approved by the Licensing Board, has been given the City of Cincinnati will not be provided to Clermont County. This is fallacious and irrelevant and, in any event, presents no legitimate issue. The City is not within the plume EPZ. The Company's agreement with the City does not affect in any way the requirements with regard to Clermont County as to emergency planning. In any event, the post-accident data available to the City via a computer link is the same data as will be available to Clermont County via the same computer system in the Clermont County EOC which Applicants have committed to install.[18/] As required by NUREG-0654, detailed plans

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18/ By way of elaboration, while the County will get the data regarding service water discharge radiation levels after the declaration of an emergency, both historical, as stored in the computer, and "real time," it does not have any water intakes on the Ohio River and has no need for certain other data being provided to the City.

for prompt notification to State and local orficials have been made. No deficiency has been shown.

Subsection 2 is beyond the scope of any requirement of NUREG-0654. It is alleged that no baseline program on neonatal hypothyroidism, infant mortality . . . etc., has been conducted; however, no basis in the regulations for such a program is offered by ZAC-ZACK and no relation to emergency planning action is shown. With regard to baseline data for water, milk, etc., the program described in the application (See FSAR §§11.3 and 11.6) has been fully completed and no deficiency has been demonstrated. 19/ The remainder of the specified contentions makes a number of unsupported assertions without any reference to a particular deficiency in meeting NUREG-0654. For example, records concerning Zimmer employees have nothing to do with emergency planning. Aside from a general slap at the post-operational environmental monitoring program, which is described fully in Table 11.6-5 of the FSAR, no specific deficiency is alleged. While ZAC-ZACK chides Clermont County for not undertaking some unspecified monitoring, the contention alleges no failure by Applicants to meet Commission

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19/ See also Preoperational Environmental Radiological Monitoring Program, Wm. H. Zimmer Nuclear Power Station, Unit 1, Moscow, Ohio, Final Report, dated August 28, 1978, and sent to the Licensing Board and parties on September 19, 1978.

requirements regarding radiological environmental monitoring.

ZAC-ZACK further alleges no specific deficiency regarding Clermont County's plans for control of livestock and dairy cattle. While, of course, protection of livestock is important, and considered in the planning effort, the role of emergency planning is primarily to protect the public health and safety. Livestock and dairy cattle are therefore considered in emergency planning requirements from the perspective of interdiction to prevent any contaminated foodstuffs from reaching the market (this is discussed in the State of Ohio Plan at Section IV and Section V). Moreover, the Ohio Plan demonstrates that its qualified health physicists can take such appropriate action as may be needed. It is not necessary that all of its protective actions in all hypothetical circumstances be set in concrete at this time. Nor would such inflexibility constitute good health physics procedure. The monitoring of milk at processing facilities is, contrary to the ZAC-ZACK assertion in Contention 25(4), discussed in the Ohio Plan (Id.). This contention should not be admitted.

Contention 26 again alleges that the City of Cincinnati is being given certain information that Clermont County is not being provided. Initially, such assertion has no basis in fact. As previously noted, Clermont County will be getting the same information via computer as is the City

if any emergency is declared.[20/] With regard to the record of "real time" readings of discharges into the Ohio River, these would be available via the microwave link from the Station computer. This raw data which will be sent upon the declaration of an emergency allows Clermont County, as well as Ohio and Kentucky, at the EOC to make whatever independent analyses they deem necessary, although cooperation among these groups and the Applicants is an essential part of the emergency planning effort for the Zimmer Station. The implied accusation that the Applicants cannot be entrusted to inform authorities of any condition which would warrant activation of the emergency plan is frivolous, without basis, and merely further evidence of the intent of the intervenor to stop Zimmer by making any unsubstantiated charge, however irresponsible. Certainly, there is no NRC requirement that local jurisdictions "provide independent exercise of judgement by local . . . personnel" or that local officials exercise a "failsafe judgment." This contention is in effect a prohibited attack on the NRC regulations which require that a licensee is responsible for operation of the facility. The contention also neglects the fact that the NRC has stationed Resident Inspectors at the site. In any event, no litigable issue is presented.

20/ See Clermont County Plan at II-D-3 and fn. 17.

Contention 27 relates to the assertion that every school within the EPZ must have a series of radiological monitors to be read daily in order to fulfill the NRC's requirements for a routine radiological monitoring program; however, no citation to any NRC regulation or other requirement is given. This matter is frivolous and should be denied as an issue in this proceeding. The operational Environmental Radiological Monitoring Program, as described in the FSAR, is completely adequate to meet all NRC requirements. No real issue is presented.

The revision to Contention 28 is equally frivolous. Without giving any authority, ZAC-ZACK asserts that a continuous staff must be present at each EOC in order to monitor Zimmer activities. There is no such NRC requirement. In any event, upon the declaration of any emergency condition, as previously described, raw data concerning plant status is sent to each EOC so that, to the extent necessary, independent judgments on status of the plant and releases can be made.

With regard to revised Contention 30, it is not clear what exact issue is being raised; while ZAC-ZACK argues that protective clothing and dosimeters should be given to members of the public, no basis is presented as to their necessity or any requirement under NRC or FEMA regulations. This revised contention is completely without basis and should be denied.

Contention 31, as revised, does not present a litigable issue and is particularly vague. The matter of whether a county receives tax benefits or that a coal burning plant would provide an equal tax benefit is entirely irrelevant to the proceeding. There is no reason to assume that the responsible governmental entities will not take those necessary actions to assure the public health and safety under their plans. Neither is there any support for the statement that the Applicants have not provided all necessary assistance in the development and implementation of the emergency planning effort. This contention is entirely lacking in specificity and basis and should be denied. Should in the future any part of the emergency planning effort fall below the minimum NRC and FEMA requirements, the planning bases which require periodic review and exercising of the plan would catch such deficiencies in a timely manner under the NRC rules. The matter should be considered at that time. See 10 C.F.R. §50.54(s)(2). It would be premature and speculative to try to anticipate such a situation at this time.

With regard to Contention 32, it is asserted that if the public is not involved in the emergency planning exercise, then the Commission's regulations cannot be met. This proposition is patently incorrect in that Section F.I of 10 C.F.R. Part 50, Appendix E does not require public

participation. Aside from generalities, ZAC-ZACK presents nothing which would call into question the design of the emergency planning exercise or its conformity with 10 C.F.R. Part 50, Appendix E.

Inasmuch as ZAC-ZACK has failed to meet the requirements of the Board's Prehearing Conference Order, its contentions as revised should not be permitted to be litigated.

Dr. Fankhauser's Revised Contentions

On November 13, 1981, Dr. Fankhauser submitted his "Revised Contentions and Requests for Additional Time Within Which to Submit Revised Contentions." Initially, Dr. Fankhauser requests additional time to review the emergency response plans, but provides no adequate basis for the request. A fair reading of Dr. Fankhauser's original contention relating to emergency planning, designated Contention 4, reveals that it is entirely related to the Applicants' Emergency Plan for the Zimmer Station. This plan had been submitted to the Board and parties during the month of January 1981.[21] Therefore, Dr. Fankhauser had over nine months to review this plan.

Dr. Fankhauser's request for additional time carries the implication that an intervenor may sit back and wait until all documents are presented to him on a silver platter. This view is fallacious and not in accordance with the Commission's Rules of Practice. Dr. Fankhauser has had the complete tools of discovery available to assist him in providing specificity to his contentions such that they would be in proper form to be considered at an evidentiary hearing. He has chosen not to pursue this course. It must be obvious to anyone that the information necessary to write

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21/ A revision was sent in July, 1981.

the various emergency plans predated their issuance and that substantial back-up information was available. Furthermore, Dr. Fankhauser is a resident of Clermont County. His stated interest in this proceeding is limited to the protection of the health and safety of his family. Therefore, Dr. Fankhauser's contentions should be limited to the scope of his interest, i.e., at most emergency planning within Clermont County as it affects his family. 22/

Finally, Dr. Fankhauser has made no showing that the time granted by the Licensing Board in its Prehearing Conference Order is in any way unreasonable. Therefore, Dr. Fankhauser's motion for additional time should be denied and those parts of Contention 4 for which further specificity

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22/ Under the Commission's rules, which incorporate judicial concepts of standing, intervenor's contentions must fall within the area of his stated interests. Standing depends upon a factual showing that the intervenor will suffer "a distinct and palpable harm," Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977), indicating that he "will or might be injured in fact by one or more of the possible outcomes of the proceeding." Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 740 (1978). Thus, the "injury in fact" necessary for standing to participate in the proceeding must be personal to the intervenor and not merely related to "broad public interests said to be of particular concern" to him. Sheffield, supra, at 741. Conversely, a party "generally must assert his own legal rights and interests, and cannot base his claim to relief on the legal rights or interests of third parties." Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 166 (1972).

is not given should be denied in accordance with the Prehearing Conference Order.

In his revisions, Dr. Fankhauser essentially seeks to substitute his judgment on emergency planning, in which he has no demonstrated expertise, for that of the Commission and of the states and counties, particularly Clermont. It is submitted that these jurisdictions are well able to speak for themselves. His revised contentions should be rejected.

Dr. Fankhauser would change the plain meaning of the words contained in his Contention 4 related to emergency planning. He would expand, contrary to 10 C.F.R. §2.714, the meaning from a discussion of Applicants' on-site plans to include all emergency plans pertaining to the Zimmer Station. Such an attempt was clearly prohibited by the Licensing Board at the prehearing conference whose Order at page 4 required that any revised contentions should be fairly within the scope of the previously admitted contention. Likewise, to the extent that Dr. Fankhauser attempts to modify Contention 2, such action is also prohibited by the Board's Order at 4. [23/] Although Dr. Fankhauser has so substantially changed each of the subparts of Contention 4 that they bear no relation to their previous form

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23/ A motion for summary disposition relating to Contention 2 will be filed early next week.

and should be denied for that reason, Applicants will discuss each of the items raised and demonstrate that even in their revised form they are inappropriate for consideration at an evidentiary hearing.

Contention 1 alleges that the emergency planning zone is inadequate because it does not contain the "heavily populated areas which are immediately proximate to a 10 mile radius from the proposed Zimmer Station." As previously discussed, the designation of an emergency planning zone is a function of governmental jurisdictions. An intervenor must sustain a heavy burden in propounding a contention that such EPZ is inadequate. Dr. Fankhauser does not specify the size of the population areas which he would include, their exact population, nor their geographical relationship to the EPZ. To require that the EPZ be expanded to these areas would be an impermissible attack on the regulations. 24/ In any event, no basis is provided for this contention inasmuch as there is no allegation of any specific deficiency because of the alleged exclusion of these areas. Nor does Dr. Fankhauser demonstrate that these contentions would affect him. This revised contention should be denied.

In Contention 2, it is alleged there is no reasonable

24/ See n. 8, supra.

assurance that fiscal support for the Clermont County Emergency Response would be provided. Absolutely no basis is given for this generalized assertion, particularly in the light of the fact that over one million dollars in equipment and other assistance is being given by the Applicants and that the County will receive millions of dollars in taxes from the plant during its operational lifetime. The participation of Clermont County in the preparation of the emergency plan and its participation in the emergency planning exercise belie this assertion. Dr. Fankhauser points to absolutely no specific reason why the Clermont County plan in its present form cannot be implemented. Moreover, as previously discussed, this is a matter which must be considered, if at all, at a later time. Should, at some point in time, the emergency response capability of a local jurisdiction become inadequate, the Licensee would be given sufficient time, i.e., four months, in order to correct this deficiency or take compensating actions. 25/ As such, the Licensing Board should deny this contention.

Contentions 3 and 4 allege generally that the Clermont County Sheriff and the Clermont County disaster service agency do not have adequate training or equipment to carry

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25/ See p.25, supra.

out their functions. These contentions are entirely without basis or specificity and should be denied.

Contention 5 is an equally generalized attack on the "agency responsibility matrix." Of the numerous organizations involved in the County's response organization, the sole example given is that the two amateur radio organizations are given responsibility for monitoring public exposure. As previously noted, volunteers may properly be given responsibility to implement the emergency plan.[26] Furthermore, the assertion that the extension agent in Clermont County has inadequate capabilities to assume responsibility for protective action involving food, water, livestock control, and feed is entirely without basis or specificity and should be excluded from consideration. This contention should be denied.

With regard to Contention 6 regarding the food pathway exposure, Dr. Fankhauser mixes two concepts incorrectly. While, as previously discussed, provisions are made regarding protection of livestock within a ten mile radius, the most important element in the emergency plan is the protection of the public health and safety. In accordance with the requirements of NUREG-0654, the Ohio Emergency Plan[27]

26/ A number of the individuals involved have already been fully trained and the remainder are undergoing such training.

27/ See Sections IV and V.C.

contains an identification of particular food pathway chains within 50 miles and permits interdiction to protect the public food supply. It must be recognized that these protective actions occur over a relatively long period of time and that, in accordance with NRC requirements, provisions need not be developed to the same extent as for other emergency planning elements. To the contrary, appropriate protective actions depend upon conditions existing after a hypothetical release had occurred. This contention should be denied.

Contention 7 is merely a generalized attack on the ability of the emergency plan to cope with the "mobility impaired." The only basis given is that certain unidentified agencies do not have the appropriate capabilities. The statement that no reliable survey of the population has been taken in order to ascertain the number and location of persons seeking evacuation assistance flies in the face of the method which will be utilized by the Applicants, i.e., return of mailers to indicate if additional assistance in evacuation is needed. (See Circle of Safety). Moreover, nothing is shown to support the charge that the authorities could not do their duty as in any other assumed emergency condition. No relation to Dr. Fankhauser's interest has been shown. This contention should be denied.

Contention 8 relates to the Clermont County Hospital and its ability to provide radiation exposure treatment.

The facilities for providing treatment to those who may have been exposed to radiation are noted in the Ohio Plan, including a listing of those hospitals in the vicinity which have the capability for such treatment. 28/ The naked assertion that Clermont County's capabilities are limited is not a sufficient statement of a specific contention at this stage of the hearing. Similarly, the general statement that Clermont County Hospital would not continue to operate in case of a general emergency is completely without foundation. The contention should be denied.

Contention 9, which assumes that if the Department of Energy is eliminated, its functions regarding emergency planning will be eliminated, is completely speculative and without foundation. It should be noted that the responsibility for the Federal radiological response effort has previously been shifted from one agency, but the capability has never been affected. The NRC regulations contemplate that the emergency plan should be flexible and that changes can be made in the future if events so dictate (See 10 C.F.R. §50.54(q). This contention should be denied.

Contention 10 relates to vague charges regarding the emergency classification system. It is clear that such emergency classification system is based entirely on the

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28/ See p. 19, supra.

requirements of NUREG-0654 and no deficiency in meeting that standard is demonstrated. The declaration of one of the emergency levels is the responsibility of Applicants and this function is fully and completely described in the Zimmer Station Emergency Plan at Section 4.0. This document is available at the County EOC. In any event, detailed information on any accident would be made available and followed up, as necessary, in accordance with the forms contained in Section II-D of the Clermont County Emergency Plan. The statement that there is no time-table for notification of "unusual events to local authorities" is completely without foundation. See, e.g., Zimmer Station Emergency Plan Figures F.5-4 and F.5-5. This contention should be denied.

Contention 11 also contains several unrelated statements. The first statement that there is no reasonable assurance that the public notification system described in the application in the emergency plan will be sufficient is wholly conclusory and provides no concrete deficiency in the plan or notification system. The Applicants' submittals describe in detail the siren locations and plans for providing home receivers which are activated by the NOAA weather radio signal. Specific criteria for acceptance of siren levels are given and the commitment is made that those residences where the siren acceptance criteria cannot

be met will receive the in-home NOAA radio. This demonstrates that this contention has no basis.[29] In fact, each residence within five miles of the Station will receive the NOAA radios irrespective of the siren coverage.[30]

The assertion that there is no clear statement of the information that the Clermont County EOC will receive for purposes of accident assessment is completely without basis. Initially, the verification messages giving the known details of any accident or release are set forth in two forms to be utilized informing outside agencies of an emergency (See Attachments D-1 and D-2 of the Clermont County Emergency Plan). Moreover, upon the declaration of an emergency, information in a station computer would be transmitted by microwave to, inter alia, the Clermont County EOC. Therefore, the contention is without supporting basis and should be denied.

Contention 12 is another generalized attack on the Applicants' emergency plan. Dr. Fankhausser attacks the document entitled "Circle of Safety" which is appended to the emergency plan as vague and "calculated to insure that the population will not take appropriate protective measures in the event of a general emergency." However, there is no mention of any specific critical deficiency in this booklet. The assertion is made in Contention 12 that not all elements

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29/ See fn. 13, supra.

30/ Id.

of the emergency plan are in place at this time. This only states the obvious in that emergency planning does not have to be completed under the Commission's rules until license issuance or other time established by the NRC regulations. This contentions should be denied.

Contention 13 is entirely speculative and presents no issue which may be litigated at a public hearing. The Applicants and local authorities are required to take reasonable steps to protect the public health and safety. The various emergency plans as integrated are certainly capable of fulfilling this function. The assertion that there will be "public disobedience or indifference or indifference to evacuation instructions" is entirely without foundation. Dr. Fankhauser gives no idea of what actions he would propose be taken for such individuals. If individuals fail to utilize the "I have been notified" sign, the procedures call for the residence to be checked. This contention is full of generalizations and presents nothing specific which can be considered by the Licensing Board. It should not be admitted as an issue.

Contention 14 asserts that volunteers will not act according to the plan when faced with a radiological emergency. This attack upon the volunteers in Clermont County is entirely without basis. Dr. Fankhauser gives no basis for this assertion nor any instances in the past where

volunteers have failed to fulfill their functions in all types of emergencies. This contention should be denied.

Contention 15 related to evacuation and school children and Contention 16 related to evacuation routes are completely lacking in specificity and basis. The governing principles have also already been discussed, supra, in the context of ZAC-ZACK's contentions. For similar reasons and because of the lack of specificity or basis, they should be denied.

Therefore all of Dr. Fankhauser's proposed revised contentions should be denied.

Revised Contentions of Clermont County

On November 13, 1981, Clermont County, a participant in these proceedings pursuant to 10 C.F.R. §2.715(c) submitted its revised statement of issues that it desired the Licensing Board to consider. The submittal correctly reflects the fact that intensive discussions have occurred between Applicants and Clermont County over the last several years and that, as recently as the week in which the submittal was made, a meeting was held.

As indicated in the Applicants' charts attached to the pleading, the Applicants have already provided to Clermont County and its subsidiary agencies a significant amount of equipment related to communications, radiological monitoring and other emergency plan functions. As also reflected in the tables, much of this equipment has been delivered and is already operational. However, it must be recognized that equipment provided to a governmental agency as the result of bilateral discussions may, for a number of reasons, go beyond what is required as a minimum by NRC or FEMA regulations to fulfill emergency planning requirements. Thus, any discussions or even a tentative agreement regarding equipment already provided or to be provided is by no means an admission that without such equipment or other assistance the applicable emergency planning regulations could not be met.

While the Applicants fully intend to be responsible in their discussions with the County and will work diligently towards a fair resolution of outstanding issues, we also must be prepared for the contingency that the County's demands will cause an impasse to be reached at some point.

If the question of resolving any dispute between the Applicants and the County is brought before the Atomic Safety and Licensing Board by virtue of the County's submission of issues, the Board's resolution is constrained by the requirements of the NRC regulations. It must apply the litmus test of necessity to each item which the County demands that the Applicants supply, pay for or maintain, i.e., not whether it is desirable to do so, but whether it is absolutely necessary to fulfill NRC or FEMA requirements.

The Atomic Safety and Licensing Board's Prehearing Conference Order directed the County to serve a list of "only those specific, litigable contentions which it asserts remain an issue between them." 31/ The instant pleading by Clermont County completely fails to carry out the Licensing Board's directive. Nothing is presented in the petition in a manner which defines a litigable issue. The "contentions" do not contain an explanation as to how the failure of the Applicants to provide each piece of equipment for which agreement has not been reached represents a deficiency in

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31/ Prehearing Conference Order at 6.

the emergency plan because a specified NRC or FEMA requirement has not been met.

A few examples will demonstrate that the matters raised by Clermont County are not in a litigable form. As such, the Board should not consider them. On page three of its pleading, the County described certain recording communications equipment which records incoming and outgoing calls to the Clermont County Sheriff's office. While such equipment may have legitimate needs in law enforcement, no support is given for the proposition that failure to provide such equipment would render any aspect of emergency planning inadequate. The general references to the regulations given are misleading, because no specific deficiencies are ever discussed.

A second example is the standby power generator demanded by Clermont County. While such a generator might provide a useful role, during certain conditions, there is no explanation as to how the emergency plan would be deficient under NRC or FEMA regulations if such generator were not provided to the Sheriff. The County cites Appendix E §IV-E9 for the authority that such generator is required. However Appendix E deals with the licensee's emergency plan and the reference is clearly to onsite and offsite communications between the licensee's facilities, i.e., the EOF, and not to the facilities of any outside agency.

In paragraph four on page four of its pleading, Clermont County states that the emergency plan is defective because a telecopier has not been provided. The County, however, does not state how the entire public information program hinges upon the provision of a telecopier or why failure to provide it would render the entire emergency plan defective. Common sense dictates that this position could not be supported.

It is also difficult to understand how an emergency plan could be deficient because the Applicants have not agreed to provide a vehicle or provide the market value of such vehicle.[32/] It is one thing for the two parties to agree bilaterally that certain equipment should be provided. What is being advanced by Clermont County here in its present adversarial role, however, is that the Atomic Safety and Licensing Board would have to find the emergency plan defective if a vehicle were not provided. The County has not provided sufficient justification as required by the Licensing Board's Prehearing Conference Order to demonstrate that this or any of the other matters should be considered as an issue by the Board.

The first contention of Part B of the County submittal asserts that certain additional TLD badges, face masks and

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32/ See Item 6, page 6 of Revised Contentions of Clermont County.

antidecontamination suits must be given to the County, but provides no basis for the Board to determine how the plan would be inadequate without these items. Neither does the pleading discuss why the equipment of this type which the Applicants have already agreed to provide is inadequate. General references to the regulations are insufficient to meet the specificity and basis requirements mandated by the Licensing Board. This matter should not be considered.

Items 2-7 consist of generalized assertions that the County does not have sufficient money to fulfill its functions as part of the emergency plan. Several matters must be borne in mind. Initially, as discussed previously, since much of the equipment being provided by the Company is more than required by the NRC and FEMA regulations to fulfill emergency planning requirements, it has not been shown that the failure to provide full funding by the Company to maintain all equipment would constitute noncompliance with the regulations so as to invalidate the emergency plan. Moreover, it is extremely difficult to believe that the County would not, as part of its obligation to its citizenry to protect the public health and safety, meet its governmental responsibilities regarding the Zimmer Station, including the maintenance of the emergency planning function.

A fundamental distinction must be drawn between consideration of the adequacy of the emergency plan under Commission

regulations, and the funding by which governmental agencies may perform their governmental functions in the future. In this instance, Clermont County seems to believe the Applicants should provide funds above and beyond the taxes it will pay to the County for performing its governmental functions. In our view, this matter is not a proper issue before the NRC. In this context, the Zimmer facility is conceptually no different than any other industrial facility. The financing of governmental functions by any sub-jurisdiction of any state must be performed within the well-established and understood mechanisms provided by a state's constitution and implementing statutes. The NRC is not the proper forum.

Clermont County has stated nothing which would demonstrate that the amounts for maintenance are in any way burdensome or extraordinary. It should be noted that the Zimmer facility will provide significant payments to the County by way of taxes.

As a final matter, this Board should not have to speculate regarding the hypothetical question as to whether the emergency planning function will run into funding problems in the future. The Commission's regulations, particularly 10 C.F.R. §50.47(c)(1) and 10 C.F.R. §50.54(s)(2), allow this matter to be deferred and considered by the NRC only should it arise. Therefore, such contentions are premature and should not be admitted as issues in the proceeding.

Contention 9, which would require the Applicants to fund substantial portions of the relocation of the Clermont County Emergency Operations Center, is premised on a remote and speculative contingency. There is no assertion that relocation of the EOC is likely. Moreover, the cost of moving an EOC should be assumed by the County itself; This does not raise a matter for which this Atomic Safety and Licensing Board could grant relief; there is no authority for it to require a licensee to provide the monetary assistance requested. In any event, as noted, supra, the Commissions regulations contemplate that this type of question be deferred until a concrete issue arises in the future.

Contention 8 relates to the County assertion that it needs the means "to conduct or have access to random and weekly samples and information related to onsite plant air and water radiation discharge levels . . . ."[33/] Initially, this matter is not fairly within the scope of the contentions as originally filed on October 27, 1981, as required by the Prehearing Conference Order. It should be denied for this reason. While not entirely clear as to what is actually being requested, this matter apparently relates to routine monitoring and thus bears no relationship to the County functions on emergency planning. The regulation of the

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33/ Revised Contentions of Clermont County at 13.

radioactive discharges during normal releases is clearly a matter for the Federal government and particularly the NRC; Clermont County has no authority to control or regulate offsite releases from the Zimmer Station. 34/

Furthermore, the County has neglected to inform the Licensing Board that the Applicants have agreed to provide a system which would be activated in case of a declaration of even the lowest emergency classification which would provide significant data on plant status, past releases, and any ongoing releases, as well as a variety of meteorological functions and the data from the real-time ring monitoring system. As required by NUREG-0654, the declaration of the lowest classification of an accident would assure that conditions which could potentially cause releases beyond NRC limits would be reported to offsite authorities, including, inter alia, the County. As such, this contention is a red herring and it should be denied. There is no authority

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34/ Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1981), aff'd without opinion, 405 U.S. 1035 (1972); Washington State Building & Construction Trades Council v. Spellman, 2 CCH Nucl. Reg. Rept. ¶20,193 (E.D. Wash. June 26, 1981); United States v. City of New York, 463 F. Supp. 604 (S.D. N.Y. 1978); City of Cleveland v. Public Utilities Commission, 64 Ohio St.2d 209, 414 N.E.2d 718 (1981); Marshall v. Consumers Power Co., 65 Mich. App. 237, 237 N.W.2d 266 (1975); Northern California Association to Preserve Bodega Head & Harbor, Inc. v. Public Utilities Commission, 61 Cal. 2d 126, 390 P.2d 200, 209, 37 Cal. Rptr. 432 (1964).

for this Atomic Safety and Licensing Board to impose a requirement that the Applicants provide instantaneous data regarding routine releases to the County. This contention presents nothing which may be litigated.

In conclusion, Clermont County has failed to comply with the Atomic Safety and Licensing Board's Prehearing Conference Order to further specify the issues it wishes to litigate in this matter and to provide a sufficient basis such that the Applicants and Staff know what issues they must meet and the evidence they must present. The County has failed to tie the issues which it wishes to raise to specific deficiencies in the Applicants' emergency planning effort. For these reasons, the Licensing Board should not permit these matters to be raised by Clermont County.

The City of Mentor

On November 13, 1981, the "Revised Contentions of the City of Mentor" were submitted to the Licensing Board and parties. Initially, it is noted that the City of Mentor asserts that it should be permitted to raise issues relating to all aspects of emergency planning and not just those affecting the City of Mentor. The City of Mentor is a participant in this proceeding pursuant to the special provisions of 10 C.F.R. §2.715(c), which permits state and local jurisdictions to participate with less formality than required of intervenors admitted pursuant to 10 C.F.R. §2.714.[35/] The City's request to participate in this manner effectively prevented Applicants from objecting to the participation by raising matters such as lateness or the inability to specify contentions meeting the requirements of §2.714. However, once being given special status to represent its citizens, the City of Mentor is limited in the proceeding to pursuing only those issues relating to the protection of its unique municipal interests.

It seems clear, under the Commission's rules for participation in its adjudicatory proceedings, which incorporate judicial concepts of standing, that the City of Mentor is not permitted to represent the interests of third parties, i.e.,

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35/ However, many of the principles in the response to the intervenor parties are also applicable to the City of Mentor, a participant pursuant to 10 C.F.R. §2.715(c).

other governmental units or their citizens. See Warth v. Seldin, 422 U.S. 490, 499 (1975), in which the Court stated that a party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties" and Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 166 (1972), wherein the Court stated that a party "has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others." In Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977), the Commission adopted the Warth test for standing.

Thus, the City of Mentor's issues must be limited to those which directly and specifically affect its citizens. All contentions filed which go beyond this standing limitation must be stricken by the Licensing Board.

Turning now to the specific contentions filed by the City of Mentor, the first contention states that emergency plans are null and void because the Commonwealth of Kentucky has failed to contact the City. It is clear that the development of emergency plans offsite is a function left to the states and there is no specific requirement as to how these states and counties must go about their tasks. The question of whether the City of Mentor should have been contacted is thus a matter within the discretion of the state and county planning authorities. There has been no demonstration that any specific deficiency in the emergency plan has resulted. It must be borne in mind that the City of Mentor has a population of only 250 people (Tr. 4819), has no police force

of its own or a separate fire department. This contention points to no substantive deficiency in the emergency plan and should be rejected.

As a second contention, Mentor asserts that the Campbell County plan references Standard Operating Procedures to be employed in responding to an emergency. This contention fails to raise an issue which may be litigated before the Atomic Safety and Licensing Board. As previously discussed, the Commission's regulations contemplate that emergency plans would be supplemented by Standard Operating Procedures for use in an emergency, e.g., 10 C.F.R. Part 50, Appendix E, IV, G (notation of separate provisions for updating the emergency plan and its implementing procedures).

These procedures are analogous to the plant operating procedures developed to implement the Commission's requirements regarding technical specifications. While the Commission issues technical specifications as part of the license which describe limiting conditions for operation and safety limits, such documents do not prescribe the details by which the facility must be run in order to meet these NRC requirements. Operating procedures are developed for use at a facility which go into detail as far as the implementation of the NRC requirements. They are changed from time to time as necessary within the scope of the technical specifications. These are not submitted as part of the application for a license.

Analogously, SOP's are developed in order to flesh out the objectives and criteria contained in the emergency plans. Mentor points to nothing in the regulations which would prohibit or even limit the use of such SOP's. As such, this contention should be denied.

In Contention 3, the City of Mentor would litigate the planning activities for that part of the State of Indiana which is within the 50 mile ingestion pathway EPZ. As previously stated, the City of Mentor has no authority to litigate this matter pursuant to its special status in this proceeding. In any event, the matter of contacting the State of Indiana should the need arise is covered in the Ohio plan.[36/] Thus, the Board should not consider this contention.

Contention 4 asserts that the emergency response plans for Kentucky and Campbell County are deficient in meeting NUREG-0654 and 10 C.F.R. §50.47, 10 C.F.R. Part 50, Appendix F. It is first asserted that neither plan is cross-referenced to the evaluation criteria in NUREG-0654. As admitted by Mentor, they were given a copy of NUREG-0654 cross-references. This matter appears to have been eliminated as an issue. The remainder of the contention is given over to the critique of the evacuation time estimates provided by the Applicants.

36/ See Figure II-D-1.

The City purports to compare the contents of the evacuation time estimates with Appendix 4 of NUREG-0654. However, the introductory language in that appendix makes it clear that such appendix is exemplary rather than a definite requirement for submittal of evacuation time studies. Thus, on page 4-1 of Appendix 4, it is stated that "[t]he requirements are intended to be illustrative of necessary consideration and provide for consistency in reporting."

It is Applicants' position that the City has not pointed to any substantive problem regarding the evacuation time estimates as submitted. As previously discussed in conjunction with the contentions of ZAC-ZACK, evacuation time estimates are just that, to be used by planners in deciding what protective action to take. The City has failed to allege that the present evacuation time estimates do not fulfill this function.

Importantly, the City of Mentor fails to point out how its municipal interests are affected by any alleged deficiency in this contention. This contention is significantly broader than that which may be properly pursued by it.

Elements of Contention 4, e.g., C through H are similar to the ZAC-ZACK contentions, including those relating to alleged deficiencies in evacuation of school children and the administration of potassium iodide. As discussed in response to the ZAC-ZACK contentions, these matters fail to raise a litigable issue and should be denied.

Subsection I of this contention speaks to alleged deficiencies in the prompt notification system. The statement of the contention is misleading and presents no issue which can be litigated. The statement is made that the siren system is designed to warn only 40% of the people within the 10 mile EPZ. What the City fails to state, however, is that tone alert (NOAA) weather radios will be provided to those persons outside the range of the sirens within the plume EPZ and to all persons living within 5 miles of the facility, which includes the inhabitants of Mentor. The City has not shown that the emergency plan provisions for notification, including the special provisions and the followup for those persons who have problems, as exemplified by the predesignation of handicapped individuals (See Circle of Safety), are in any way inadequate. The idea that an acceptable emergency plan under the NRC regulations requires the Applicants to "recompense the people for the electricity used by the radios or for the rental of the space in their homes"[37/] is completely frivolous.

A further deficiency in this contention is illustrated by subsection K. Initially, Mentor has shown nothing to tie this subsection to its interests. It has not attempted to demonstrate the source of its water supplies or how the Zimmer Station could realistically affect those supplies. In the meeting between Applicants and the Reders which is referenced

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37/ Revised Contentions of the City of Mentor at 12.

in Mentor's filing, the fact that the water treatment facilities for Kenton and Newport (which are near the City of Cincinnati waterworks) were to be supplied with direct radio communications was discussed.[38/] The Reders have chosen to ignore this information and still make the assertion that no direct radio communications exists. It is stated that the present plans are too undeveloped and too clumsy and time consuming to assure that prompt and protective action can be taken. However, the City fails to even recognize that, considering the distance between the Station and these facilities, travel time from any postulated radioactive release to the intake of any waterworks would be on the order of hours, thus providing ample time to close the intakes in the unlikely event of such an occurrence. Thus no real deficiency in the plan is alleged.

In subsection L, the City of Mentor alleges that it needs a direct radio communications link for communications between the City and the Zimmer plant. It fails to state what purpose this radio would have and under what regulation the absence of such a radio link would make the plan deficient. Again, in the meeting with Mr. and Mrs. Reder, it was recognized by them that the City has no full time police force nor any 24 hour-a-day, 7 day-a-week location that would be manned by

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38/ The letter of agreement with the City of Newport (Station Emergency Plan, Appendix D) specifically notes this arrangement. See also the letter from the Ohio River Valley Water Sanitation Commission in the same appendix.

a City employee to whom such radio communication could be directed. This subsection is frivolous and should not be admitted.

Equally without merit is the assertion that the City of Mentor must be an observer or critic of the scheduled emergency planning exercise. The City has pointed to absolutely no requirement in the regulations which would mandate this result. This contention should be denied.

It is not clear what purpose the addenda seeks to fulfill. It is argumentative and without foundation. In any event, it adds nothing to the other contentions which would improve their admissibility. The matters raised by the City of Mentor should not be permitted to be raised as issues in the proceeding.

Conclusion

As discussed above, the requirements of the Atomic Safety and Licensing Board's Prehearing Conference Order have not been met by any of the parties or participants.

Respectfully submitted,

CONNER & WETTERHAHN

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November 20, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'81 NOV 23 P1:42

In the matter of	)	
	)	
The Cincinnati Gas & Electric Company, et al.	)	Docket No. 50-358
	)	
	)	
(Wm. H. Zimmer Nuclear Power Station)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to the Revised Contentions of Zimmer Area Citizens - Zimmer Area Citizens of Kentucky, City of Mentor, Dr. David Fankhauser and Clermont County," dated November 20, 1981, in the captioned matter, have been served upon the following by deposit in the United States mail this 20th day of November, 1981:

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