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June 1, 1983 **ADJUDICATORY ISSUE** SECY-83-213
(Information)

For: The Commissioners

From: James A. Fitzgerald
Assistant General Counsel

Subject: APPEAL BOARD ORDER DISMISSING APPEAL OF
LICENSING BOARD ORDER DENYING LATE
INTERVENTION IN ZIMMER O.L. PROCEEDING

Facility: Wm. H. Zimmer Nuclear Power Station,
Unit No. 1

Purpose: To inform the Commission.

Discussion: By Memorandum and Order of May 10, 1983
(attached), the Appeal Board dismissed
Mr. Doug Gillman's appeal of the Licens-
ing Board order denying him late inter-
vention in Zimmer on five new con-
tentions that the Licensing Board had
found were fatally deficient. The
Appeal Board took this course of action
because Mr. Gillman's "appeal" displayed
near total disregard of agency require-
ments.

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Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
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EX 5


James A. Fitzgerald
Assistant General Counsel

Attachment: May 10, 1983 Memorandum
and Order

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In late January of this year -- some seven months after the initial decision was handed down -- the Office of the Secretary of the Commission received an undated document from Doug Gillman, setting forth five contentions that he desired to have considered in the proceeding. Ultimately, the document reached the lawyer representing the NRC staff. Because it had been neither filed with the Licensing Board nor served by Mr. Gillman on any of the parties to the proceeding as required by 10 CFR 2.701(b), staff counsel made the document available to them.

On March 19, following the responses of the applicants and staff, Mr. Gillman mailed to staff counsel an addendum that endeavored to address the objections to the late-filed contentions raised in those responses. About three weeks later, on April 8, Mr. Gillman sent another letter to staff counsel, enclosing a replacement addendum. Neither of these communications was filed with the Licensing Board or served on the parties by Mr. Gillman. Thus, as before, it was left to staff counsel to fill the breach.

The Licensing Board chose to treat Mr. Gillman's filings as an untimely intervention petition. In an unpublished memorandum and order entered on April 14, the Board denied the petition on two independent grounds. First, on a balancing of the five factors that must be considered in passing upon an untimely petition (see 10 CFR 2.714(a)(1)), the Board concluded that the grant of

intervention was not warranted. Second, the proffered contentions were found fatally deficient. The Board went on, however, to suggest that Mr. Gillman might wish to seek relief under 10 CFR 2.206. That provision of the Rules of Practice authorizes "any person" to request the Director of Nuclear Reactor Regulation to institute a show cause proceeding "to modify, suspend or revoke a license, or for such other action as may be proper."

2. We are now in receipt of an unsigned, undated document bearing the caption "10 CFR 2.206 Appeal of Doug Gillman's Five Contentions and Addendum." The envelope in which it was transmitted bears an April 28 postmark and was addressed to the "Director of Nuclear Reactor Regulation, ATTN: Atomic Safety and Licensing Appeal Board." The document itself is similarly addressed and includes two sheets of note-sized (6" x 9") paper containing two and one-half pages of single-spaced, typewritten material. What it does not include is a certificate of service or any other indication that copies were simultaneously furnished to the parties.

On the face of the document, it is unclear whether Mr. Gillman is attempting to appeal the Licensing Board's denial

of intervention³ or, instead, is following the Board's suggestion that he might seek relief under 10 CFR 2.206. For present purposes, however, we may fairly assume that he has the former objective in mind. Apart from the fact that the document was explicitly directed to our attention,⁴ its content (as best we can understand it) appears to constitute a challenge to the Licensing Board's application of the factors governing late intervention petitions.

Treating his papers accordingly, we summarily dismiss the appeal. To begin with, Mr. Gillman has made virtually no effort to comply with the Commission's Rules of Practice governing written submissions in adjudicatory proceedings. Among other things, those submissions must be "typewritten, printed or otherwise reproduced in permanent form on good unglazed paper of standard letterhead size" and "bear the docket number and title of the proceeding". 10 CFR 2.708(a) and (b). The text must be "double-spaced". 10 CFR 2.708(b). The original of each document must be "signed in ink". 10 CFR 2.708(c). Each pleading must be filed in an original and two conformed copies. 10 CFR 2.708(d).

³ The Licensing Board's April 14 order called his attention to the fact that the denial was subject to appeal. See 10 CFR 2.714a.

⁴ We have no jurisdiction to entertain Section 2.206 requests.

Moreover, all documents offered for filing are required to be accompanied by proof of service upon all parties to the proceeding or their attorneys of record. 10 CFR 2.701.

Except for being typewritten, Mr. Gillman's submission satisfies none of these requirements. The compelled inference is, therefore, that he either is unaware of the requirements of the rules or is under the impression that he has no obligation to observe them. But giving him the benefit of the doubt on that score does not alter matters. This is not the first time we have had occasion to call attention to the "imperative necessity that all participants in NPC adjudicatory proceedings -- whether lawyers or laymen representing themselves or organizations to which they belong -- familiarize themselves at the outset with" the Commission's Rules of Practice. Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980), quoting from Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-609, 12 NRC 172, 173 fn. 1 (1980). By doing so, "participants will both (1) enhance their ability to protect adequately the rights of those they represent; and (2) avoid the waste of time and resources which inevitably accompanies the taking of action forbidden by the Rules." Ibid.

Mr. Gillman's submission is a perfect case in point. In this connection, it is worthy of passing note that, had an effort been made to do so, he would have encountered

little difficulty in ascertaining what was expected of him. Although perhaps not a party to other NRC licensing proceedings, Mr. Gillman participated in this one in the capacity of an "expert interrogator" for an intervenor⁵ and, additionally, was in direct communication with staff counsel with regard to the addendum to his filing below. Given that he is a graduate of one of this country's distinguished colleges,⁶ it is not unreasonable to assume an appreciation on his part both that adjudicatory proceedings perforce are subject to at least some procedural requirements and that, if in doubt as to where those requirements might be found, a simple inquiry of staff counsel would have provided the answer. See Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-563, 10 NRC 449, 450 fn. 1 (1979).

In these circumstances, a refusal to accept Mr. Gillman's submission would have been entirely justified. See 10 CFR 2.709. Nonetheless, we have examined the content of the submission. That examination persuades us that, leaving aside its failure to conform to the requirements of the Rules of Practice, no good reason exists for freighting

⁵ See, e.g., Tr. 3397-3407; 3426-34; 3441-43; 3452; 3457-89; 3553-81.

⁶ See Tr. 3397.

the parties to the proceeding with the burden of preparing and filing a response. We set out in the margin below a representative excerpt from the submission.⁷ As it reflects, Mr. Gillman's assertions lack coherence and, as such, present nothing warranting a further expenditure of time on the part of either this Board or the parties.

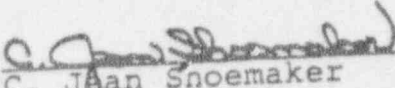
Appeal dismissed.⁸

⁷ "The development of a sound record has serious epistemological problems if the issue under inspection is radiation. Radiation is known to be an aversive conditioning phenomenon in the laboratory. When radiation of the environment is selected for or deployed, this is the same as saying that it is desired to obliterate the continuity of human knowledge. The development of a sound record can only occur by maintaining that environment of natural background radiation. Any increase in the radiation will be speeding the protoplasmic transition to a new form, not necessarily any more free from hysteria, emotionalism, or institutional chattel schemes, than our present form. Furthermore, what is the sound record that the USNRC is maintaining shall exist after 104 years? After 104 years will our children see sanctimonious church, temple and mosque attending, sperm bank owners, pillars of their communities, buying radioactive sites to build schools to teach mosaic cloning of human cell lines? And won't they be speculating protoplasm up and down on margin as well? What is the sound record the USNRC claims will exist after 104 years?"

⁸ Mr. Gillman remains free, of course, to act upon the Licensing Board's suggestion regarding the availability of the Section 2.206 procedure.

It is so ORDERED.⁹

FOR THE APPEAL BOARD


C. Jean Snoemaker
Secretary to the
Appeal Board

⁹ The Docketing and Service Branch of the NRC Office of the Secretary is being instructed to serve a copy of Mr. Gillman's submission upon the parties in conjunction with service of this memorandum and order.