



August 2, 1983

ADJUDICATORY ISSUE

SECY-83-312

(Affirmation)

For: The Commissioners
From: James A. Fitzgerald
Assistant General Counsel
Subject: INTERVENORS' MOTION TO DELAY RULING ON ZIMMER ALAB

Purpose:

Discussion:

On July 12, the Miami Valley Power Project, intervenor in the Zimmer operating license proceeding, filed a motion asking the Commission to delay ruling on whether to review the Appeal Board's decision in ALAB-727. The motion requested that before ruling, the Commission first allow the Licensing and Appeal Boards to act on pending motions to reopen the record and admit new contentions on quality assurance and character and competence. The motion asserted that if the Commission were to decline to take review of ALAB-727, the effect might be to "chill" the exercise of discretion by the Boards, or to give rise to the interpretation that the Boards no longer had jurisdiction to rule on the motions to reopen.

Contact:
Peter Crane, OGC, 41465

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Act, exemptions 5
FOIA- 92-436

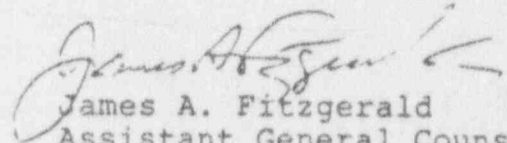
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When the motion was received, a poll of the Commissioners' offices indicated that most offices did not believe the motion merited extending the time in which the Commission could elect to review ALAB-727, then set to expire on July 13. The deadline therefore passed, effectively mooting the petition. At this point, some memorialization of the fact that the Commission has de facto denied the petition is in order.

It may be recalled that ALAB-727 was the Appeal Board's affirmation of a June 21, 1982 Licensing Board decision deciding all admitted contentions in favor of the applicant, with the exception of certain contentions relating to emergency planning. In that decision, the Licensing Board noted that it had pending before it requests to reopen the record on issues of quality control and management competence (the same issues on which reopening of the record is being sought today), but it saw no need to delay its decision on that account.

On July 15, 1982, the Licensing Board denied the motion to reopen, holding that the intervenors had failed to meet the standard for reopening the record. At the same time, however, it held that the issues raised in the proposed contentions warranted scrutiny, and it admitted them sua sponte as Board issues. On February 18, 1983, the Commission ruled that the Board had erred in admitting the contentions sua sponte, but it expressed no position on whether the Board had been correct in finding that the intervenors had failed to meet the standards for reopening the record. The Commission's order stated that the intervenors could pursue usual administrative means for seeking reversal of the Board's ruling on that point. Motions to reopen are now pending before both the Licensing and Appeal Boards.



James A. Fitzgerald
Assistant General Counsel .

Attachment: Draft Order

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Wednesday, August 17, 1983.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, August 10, 1983, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of August 22, 1983. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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