

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
John H Frye, III, Chairman
Dr. M. Stanley Livingston
Dr. Frank F. Hooper

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In the Matter of
THE CINCINNATI GAS & ELECTRIC
COMPANY, et al.

(Wm. H. Zimmer Nuclear Power
Station, Unit 1)

Docket No. 50-358-0L

March 10, 1983

MEMORANDUM AND ORDER

On March 4, 1983, Counsel for NRC Staff forwarded to this Board and the Appeal Board for this proceeding a copy of five contentions ". . . submitted to the United States Nuclear Regulatory Commission . . . regarding the Zimmer Power Station - Unit 1 . . ." by Doug Gillman of Cincinnati, Ohio.

In his letter, Staff counsel noted that the Commission's regulations do not directly address the question of when jurisdiction passes from a hearing to an appeal board for purposes of considering a new intervention petition. Counsel noted that a hearing board has the inherent right and duty to determine its own jurisdiction in the first instance, citing Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3) ALAB-591, 11 NRC 741, 742 n.3 (1980); ALAB-597, 11 NRC 870, 873-4 (1980). Counsel indicated his intent to submit a response to these contentions to this Board.

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We agree that we possess the right and duty to determine our jurisdiction in the first instance, and hold that we have jurisdiction over the five contentions submitted by Mr. Gillman.

In this proceeding, we rendered an Initial Decision on all outstanding issues on June 21, 1982 (LBP-82-48, 15 NRC 1549). In that decision in addition to certain license conditions, we held that further proceedings with respect to certain emergency planning issues are necessary prior to the authorization of an operating license and retained jurisdiction to conduct those proceedings. That holding was appealed and is currently pending before the Appeal Board for this proceeding.

Because none of the five contentions submitted by Mr. Gillman appear to be related to any matter pending before the Appeal Board, the holding in Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1) ALAB-699, 16 NRC ____ (October 27, 1982) is distinguishable. There, a party sought to reopen the record with respect to a matter pending before an appeal board. Consequently that board, on referral from the Licensing Board (LBP-82-86, 16 NRC ____, Sept. 29, 1982) took jurisdiction of the matter.

In contrast, Mr. Gillman's contentions appear to raise totally new matters, not previously considered in this proceeding. In these circumstances, it is appropriate that their admissibility in this proceeding should be decided by this Board. As noted in ALAB-699, we are ". . . empowered to reopen a proceeding at least until the issuance of [an] initial decision, but no later than either the filing of exceptions or the expiration of the period during which the Commission


or an appeal board can exercise its right to review the record." (Slip op. p. 4-5.) Because of our familiarity with the record of this proceeding developed to this point (cf. Perkins, supra, ALAB-591, 11 NRC at 874) we are in the best position to judge whether any of Mr. Gillman's contentions should be taken up. And, should any of Mr. Gillman's contentions require further proceedings, those proceedings should be conducted by the hearing board designated by the Commission. This conclusion, of course, is dependent upon the fact that these contentions raise new matters not heretofore considered in this proceeding, and upon the fact of our continuing jurisdiction pursuant to 10 CFR § 2.717(a).

ORDER

In consideration of the foregoing, it is this 10th day of March, 1983, ORDERED

1. Responses to the five contentions should be submitted to this board in accord with the time limits stated in 10 CFR § 2.714 for responses to petitions to intervenor; and
2. The aforesaid time limits shall commence to run as of the date of service of this Memorandum and Order.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


John H. Rye, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
March 10, 1983