

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

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In the Matter of :
: CINCINNATI GAS AND ELECTRIC :
COMPANY, ET AL. : DOCKET NO. 50-358
(William H. Zimmer Nuclear :
Power Station) :

INTERVENOR'S ZIMMER AREA CITIZENS-ZIMMER AREA CITIZENS OF KENTUCKY
MEMORANDUM IN SUPPORT OF MIAMI VALLEY POWER PROJECT'S PETITION
FOR RECONSIDERATION OF THE COMMISSION'S ORDER OF JULY 30, 1982

Intervenor Zimmer Area Citizens-Zimmer Area Citizens of Kentucky (ZAC-ZACK) has not previously taken a formal position on the issue of Miami Valley Power Project's (MVPP) motion for leave to file eight new contentions and the related memoranda filed on that subject. This intervenor now submits its memorandum supporting MVPP and urging that the Commission reconsider and reverse its decision of July 30, 1982.

ZAC-ZACK is a citizens group comprised of owners of property and parents of children attending schools within the Plume Exposure Pathway of the Emergency Planning Zone surrounding the Zimmer Nuclear Power Station. This citizens group sought and received intervenor status on several contentions dealing solely with the adequacy of off-site emergency plans. To that end this intervenor pursued those contentions within its expertise: its knowledge of its community; the capabilities and limitations of local government to create and implement off-site emergency response plans for the health and safety of the public. Although this intervenor received some information

concerning alleged safety defects within the plant, it did not feel comfortable with advancing contentions pertaining to plant construction. ZAC-ZACK did not have the requisite expertise, personnel or time to adequately pursue contentions relevant to such accusations.

As has been noted by the Atomic Safety and Licensing Board, this intervenor has neither sought nor caused delay in the hearing process and sincerely pursued its contentions through the January-March, 1982 hearings. The role of the citizen-intervenor is both an important and difficult one.

The input and productivity of the citizen presents a unique aspect to the licensing process in producing a sound and complete record and in permitting the public to be heard. The difficulty of the citizen is exemplified by the limitation of time, accessibility and acquisition of important documents and circumstances leading to information critical to the production of evidence and advancing contentions pertaining to the safety of the construction of Zimmer. This is demonstrated by MVPP's failure in the past to carry its evidentiary burden in safety-related contentions, e.g., MVPP Contention 14 [Adequacy of Welds on Cable Tray Transition Fittings].

From such a backdrop, ZAC-ZACK can emphathize with MVPP's time-consuming, but excellently documented, evidence supporting the eight contentions now sought to be heard. This intervenor appreciates the diligence and time required by MVPP to acquire and carefully prepare its evidence to support its position on the eight subject contentions.

It is observed that MVPP's contentions raise substantial and significant safety issues and to that extent all involved appear to

agree. At least both NRC Staff and the Atomic Safety and Licensing Board deemed those issues of such significance as to require reopening of the hearing process, albeit MVPP had not made a strong showing on the discharge of its burden to reopen the hearing. Staff's response to MVPP's petition for reconsideration remains to be seen.

These contentions and the overall situation of the safety aspects of the Zimmer plant are of grave concern to this intervenor, the citizens of Ohio and Kentucky who live, work and attend schools within the Plume Exposure Zone of the EPZ and the public and the City of Cincinnati who live nearby. The safety state of affairs at Zimmer is of grave concern to Region III, NRC Staff and this Commission.

This intervenor has been, perhaps, dilatory in not making its views known before now. However, time and other priorities intervened and hopefully it is not too late for ZAC-ZACK to make known its position for whatever weight may be assessed to it. ZAC-ZACK did not join MVPP in its original motion because it found little to be accomplished in a "me too" routine of intervenors joining one another on the same subject. Furthermore, this intervenor does not feel qualified to acquire or advance the evidence necessary to support the safety issues raised by MVPP. ZAC-ZACK does stand ready to support and assist MVPP in any way that it can, giving due regard for its resources.

The issue at hand, therefore, is the manner in which these safety aspects shall be addressed: through Staff review and this Commission's supervision solely; or coupled with the public forum of the hearing process afforded by the Atomic Safety and Licensing

Board in which the public may both observe and be heard on this critical safety issue.

ZAC-ZACK is aware of the Commission's majority position that the hearing process is essentially surplusage to Staff's control of the matter and that the adversary process is, perhaps, not the most efficient or best way to identify and correct the contended safety defects. As construed by this writer, central to the majority position is that MVPP did not articulate its reasons in an adequate fashion to surmount the untimeliness of its motion for leave to file new contentions and other justifications to discharge the difficult burden imposed upon it by rule. Both Staff and Board yielded to those failures by applying, respectively, the assumed priority of the significant concern for the issues raised which proceeded directly to the essence of the operating license itself: the safety of the plant.

This intervenor will not argue the fine points of law addressed by MVPP and applicant (and assumed to be addressed by NRC Staff) for this Commission's consideration in deciding the petition for reconsideration. ZAC-ZACK will not quibble with the announced views of the majority and dissenting opinions of the Commission members. Rather, this intervenor will address the point without authority from the backdrop of how the citizen who lives within the specter of this plant views the issue.

Congress, through its recognized committees, has and probably will continue to make inquiry into the safety aspects of Zimmer. The

City of Cincinnati, through an environmental committee, is currently conducting hearings on those issues. The citizen observes the media treatment of the subject. Any or all of those processes results in the public's impotency to share in its destiny — the citizen continues to question — and those with the greatest stake in the outcome favor the opportunity to be heard and to hear the matter in the public forum created by law to hear the issue: the Atomic Safety and Licensing Board; the sole tribunal empowered to publicly adjudicate the issue. Congress, the City of Cincinnati and the media all hear and inform, but each is powerless to adjudicate the issue. The Staff has limited, and this Commission total, power to decide the issue, but alas, absent public input, and more importantly absence of information to the public of how and why and by what means the issue was resolved. This leads to a confused, ill-informed and damned scared public.

Mr. Justice Holmes once remarked that the law is not based upon logic but upon experience. The logic of this issue is to strictly apply the regulations and to deny public observance within the adversary process afforded by the Atomic Safety and Licensing Board's hearing of the significant contentions advanced by MVPP. Logic dictates that Staff's addressing of the issues with the overview of this Commission is the best way to make safe that which is currently unsafe, or at least that which is currently claimed to be defective. Logic directs that the economics and time consumption of the quest for the answer to the safety of Zimmer be best served by Staff review and Commission supervision. Logic further concludes that the adversary system may not be the most useful way of finding the truth and providing the remedy.

Experience, to the contrary, musters its priority on the side of liberal construction of the regulations and addressing the spirit and not the language of the rule. Experience teaches that where the public has a stake in the outcome, it ought to be afforded the opportunity to participate. Experience establishes that societal interests are best served, and preserved, in the public forum through robust debate of the issue through the adversary process, in which the public can both participate and observe, albeit not the perfect mode for resolving the issue but the best of humankind's approach to the subject, especially where the critical issue is subjected to the scrutiny of all concerned. It is for that simple reason that experience requires that all courts and administrative agencies of this land be conducted publicly. Nothing is intended in a derogatory sense, but experience is clearly noted in the jaundiced view taken of ex parte procedures and the historically condemned courts of Star Chamber and Inquisition. To be sure, experience is the benchmark from which we address the simple proposition that not only is the accused entitled to a fair trial in a criminal tribunal, but it is important that he know that he has received a fair trial.

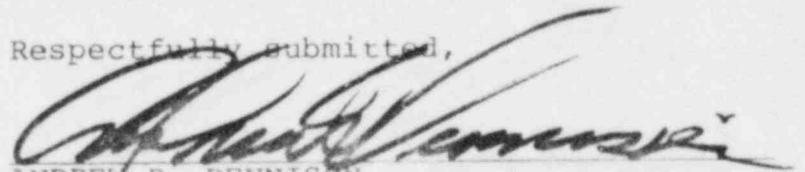
It is, thus, this simple approach to the authority of obvious experience that requires that MVPP's contentions be heard in the public forum afforded by the Atomic Safety and Licensing Board and that the public be assured that its stake in the outcome has survived and been preserved and that that public can then be content with the determination of the matter. This is so, even though admittedly the issue might be more carefully and economically determined in the

non-public arena, without potential duplication, to the ultimate benefit of that public.

Perhaps the experience of which this counsel speaks is that same experience that this Commission announced in its policy statement pertaining to expediting the hearing process to alleviate the delays occasioned by the Three Mile Island accident, when this Commission stated its desire to avoid and reduce hearing delays "whenever measures are available that do not compromise the Commission's fundamental commitment to a fair and thorough hearing process"; and where this Commission "wishes to emphasize though that in expediting the hearing, the board should ensure that the hearings are fair, and produce a record which leads to high quality decision that adequately protects the public health and safety and the environment." 46 Fed. Reg. 28533 (May 27, 1981), at page 28534.

It is aspired that the comments presented here may prove of some benefit to this Commission in deciding whether to permit the MVPP contentions to come to hearing before the Atomic Safety and Licensing Board. ZAC-ZACK respectfully requests that this Commission reconsider its initial decision and, in that reconsideration, decide that the MVPP contentions be presented within the public forum afforded by the hearing process before the Atomic Safety and Licensing Board either as sua sponte Board contentions, or as MVPP contentions.

Respectfully submitted,



ANDREW B. DENNISON
Attorney for Intervenor ZAC-ZACK

Dated: September 21, 1982
Batavia, Ohio

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document entitled "Intervenor's Zimmer Area Citizens-Zimmer Area Citizens of Kentucky Memorandum in Support of Miami Valley Power Project's Petition for Reconsideration of the Commission's Order of July 30, 1982" was served by ordinary U.S. Mail, postage prepaid, upon the following persons this 22nd day of September, 1982:

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