

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

SERVED APR 15 1983

April 14, 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 . . ." (Contentions, p.1) by Doug Gillman of Cincinnati, Ohio.

On March 10, we asserted jurisdiction over the five contentions for purposes of determining whether any of the five contentions should be admitted and set a schedule for responses. Staff responded opposing admission of any of the five contentions on March 16. Applicant similarly opposed admission and asked that the Board reconsider its ruling with regard to jurisdiction.

On March 24, Staff Counsel forwarded to the Board and parties an addendum to the contentions which he had received from Mr. Gillman.

This addendum addresses the five factors to be evaluated in considering late filed contentions and Mr. Gillman's standing. It was prompted by the objections raised in Staff's March 16 filing. Subsequently, on April 8, Mr. Gillman wrote Staff Counsel to "recant" the March 19 addendum and substitute a new addendum.

We have considered Applicants' arguments made in connection with their motion to reconsider our jurisdictional ruling. We adhere to our ruling.

With respect to Mr. Gillman's communications to Staff Counsel, we have reviewed the contentions and the April 8 supporting addendum. We treat the contentions together with the addendum as an untimely petition to intervene. While it appears that Mr. Gillman has standing based upon residence in Cincinnati, we find that he has not satisfied the substantial burden facing one who wishes to intervene and reopen a record to admit new contentions many years after the original notice of opportunity for hearing (40 Fed. Reg. 43959, Oct. 24, 1976) and many months after the closing of the record (Mar. 4, 1982; Tr. 7979).^{*/} Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350 (1880); Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 337-9 (1979). Mr. Gillman furnishes only conclusional statements with respect to the five factors of 10 CFR § 2.714(a)(1). While it may

^{*/} While our Initial Decision (LBP-82-48, 15 NRC 1549) held that further proceedings on this application are necessary, those further proceedings involve matters not encompassed by Mr. Gillman's five contentions.

be that Mr. Gillman's interest is not represented by other parties, his conclusional statements with regard to good cause for his delay, the extent to which he can assist in developing a sound record, and the extent to which he will delay the proceeding dictate that those factors be balanced against him. Furthermore, at this stage of the proceeding the appropriate means for him to protect his interest is a 10 CFR § 2.206 petition. We are unable to balance the five factors in his favor.

Moreover, we agree with Applicants and Staff that the five contentions themselves are not worded in a manner which would permit litigation. Consequently we are unable to conclude that the contentions raise significant matters which should be examined in an adjudication. Cf. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 21 (1978).

In consideration of the foregoing, it is this 14th day of April, 1983,

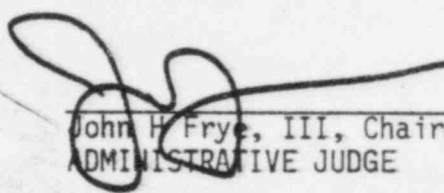
ORDERED;

1. Applicant's request for reconsideration of our Memorandum and Order of March 9, 1983, is denied;
2. The five contentions and April 8 addendum (which we treat as a petition to intervene) advanced by Mr. Doug Gillman are denied admission to this proceeding; and
3. Within ten days of the date of service of this Memorandum and Order, appeals may be lodged with the Atomic Safety and Licensing

Appeal Board by the filing of a notice of appeal and accompanying supporting brief.

Judges Hooper and Livingston concur.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



John H. Frye, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

April 14, 1983