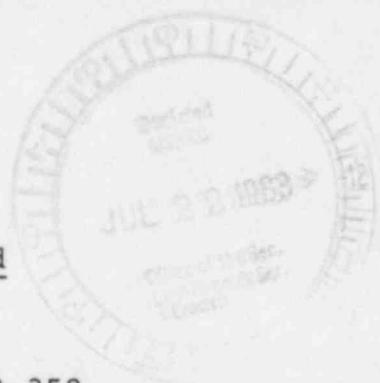


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
The Cincinnati Gas & Electric ) Docket No. 50-358  
Company, et al. )  
 )  
(Wm. H. Zimmer Nuclear Power )  
Station) )

MIAMI VALLEY POWER PROJECT RESPONSE  
TO APPLICANTS' MOTION FOR LEAVE TO RESPOND  
TO REPLY BRIEF OF MIAMI VALLEY POWER PROJECT

On July 19, 1983, counsel for Intervenor Miami Valley Power Project ("MVPP") received a copy of "Applicants' Motion for Leave to Respond to Reply Brief of Miami Valley Power Project" in the above-captioned matter. Applicant asserted the need to file another brief in part because "MVPP's reply severely distorts the record and Applicants' position." Applicants also stated that the MVPP submissions contained a "number of points which could not have been anticipated...." (Applicants' motion, at 1).

There is no provision in the rules for Applicants to file further legal pleadings before this Board on MVPP's motion. Nor should any response be necessary. The burden-of-proof to reopen the record to admit new contentions is on MVPP. That burden cannot be met through distorting Applicants' position, which should speak for itself. The same is true if MVPP has distorted "the record."

MVPP does not oppose Applicants' motion, however. Initially, MVPP does not seek to inhibit a full debate on the issues. Further,

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Applicants' extraordinary request puts to rest their longstanding position that MVPP's June 3 motion represents nothing new, either legally or factually.

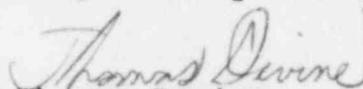
MVPP also requests that this Board go a step further and direct Applicants in their response to reply -- with affidavits and available evidence -- to the merits of MVPP's proposed contentions. There is little to be gained merely by offering Applicants another opportunity to restate their vehement objections to jurisdiction and Intervenor's grounds to reopen the record at this date. Although MVPP does not object, it believes those issues have been briefed exhaustively by both sides.

By contrast, requiring Applicants to respond to the substance of the proposed contentions would contribute significantly to the record. Applicants have not yet made a serious response to the issues contained in the eight proposed contentions. Despite over 7,000 person-hours of effort and more than 300 pages of text, Applicants either evaded or offered inaccurate assertions to respond to MVPP's August 20, 1982 petition to suspend construction, which constitutes a major portion of the substance of MVPP's contentions. Further, Applicants have been totally silent with respect to all allegations which have been submitted since August 20, 1982 for the contentions. The additional allegations were contained in an October 18, 1982 supplemental petition, the June 3 motion to reopen the record and the July 12 reply brief. Applicants' response on the merits could resolve any remaining doubts whether there are unresolved issues or genuine disputes of fact about significant safety considerations at Zimmer. Ultimately,

this is the decisive standard to evaluate all of Applicants' legal objections to renewed hearings.

In short, Applicants have been attempting to avoid the safety issues at Zimmer since MVPP first sought reopened licensing hearings. If Applicants are to file still another brief, MVPP believes that pleading should address the merits in this proceeding as well as the legal niceties of MVPP's initiative. Applicants' determined silence is an inadequate basis to end the litigation on whether Zimmer's quality assurance program continues to unacceptably threaten the public health and safety, despite the status quo reform programs.

Respectfully submitted,



Thomas Devine  
Counsel for Intervenor MVPP

July 21, 1983

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Miami Valley Power Project Response to Applicants' Motion for Leave to Respond to Reply Brief of Miami Valley Power Project" has been served upon the following by mailing first class postage prepaid this 21st day of July, 1983.

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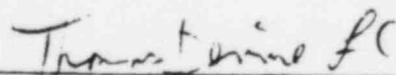
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