

DMB

MAY 25 1984

Docket No. 50-358

Cincinnati Gas and Electric  
Company

ATTN: Mr. J. R. Schott  
Site Manager

139 East 4th Street  
Cincinnati, OH 45201

Gentlemen:

This is in response to your letter of May 4, 1984, notifying the NRC of your intention to discontinue your preventive maintenance and quality assurance programs effective May 18, 1984.

In view of your ceasing work on the Zimmer Station as a nuclear plant, the lay off of plant personnel, and your Motion for Withdrawal of Application filed with the Atomic Safety and Licensing Board (ASLB), Region III finds your proposed actions acceptable. It is our understanding that you will maintain all quality related documents until such time as the NRC authorizes their disposal.

We will continue to monitor your site activities until the nuclear fuel has been removed and the ASLB has acted on your motion.

Sincerely,

Original signed by  
A. Bert Davis

James G. Keppler  
Regional Administrator

cc: See Distribution Next Page

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PDR ADOCK 05000356  
A PDR

OFFICE	RIII	RIII	RIII	RIII	RIII	RIII	RIII	
SURNAME	Forney/r1	Warnick	Nordhus	Lewis 5/25	Davis	for Keppler		
DATE	5/24/84		5/24/84	5/25	5/25	5/25		

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THE CINCINNATI GAS & ELECTRIC COMPANY

CINCINNATI, OHIO 45202

May 4, 1984  
LOZ-84-0039

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File has*

Docket No. 50-358

U.S. Nuclear Regulatory Commission  
Region III  
799 Roosevelt Road  
Glen Ellyn, Illinois 60137

Attention: Mr. J.G. Keppler  
Regional Administrator

Gentlemen:

RE: WM. H. ZIMMER NUCLEAR POWER STATION - UNIT 1  
W.O. 57300, JOB E-5590, FILE NO. 956C.

PRINCIPAL STAFF			
RA	shac	D/PRP	
D/RA		DE	
A/RA		DRMSF	
RC		DRVA	
PAO		SCS	<i>mg+3 ✓</i>
SGA		ML	
ENF		FILE	<i>shac</i>

On March 20, 1984, a Motion for Withdrawal of Application was filed with the Atomic Safety and Licensing Board in the matter of the Wm. H. Zimmer Nuclear Power Station. A copy of our Motion and NRC Staff's response are attached.

Because of our stated position in the Motion that the Applicants have no objection to the dismissal of the Application with prejudice against the future use of the site for a nuclear plant, it is no longer necessary to continue the preventive maintenance or quality assurance programs presently in effect. Therefore, it is our intent to discontinue both programs on May 18, 1984. Since the fuel will remain on-site, possibly up to August 31, 1984, the provisions of SNM-1823 will remain in effect.

This matter has been discussed with members of your Staff and it was agreed that written notification concerning these actions would be appropriate.

Very truly yours,

THE CINCINNATI GAS & ELECTRIC COMPANY

By

*J.R. Schott*  
J.R. Schott  
Site Manager

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GCF/jhl

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Mr. J.G. Keppler  
Regional Administrator  
May 4, 1984  
LOZ-84-0039  
Page 2

cc: NRC Office of Inspection & Enforcement  
Washington, D.C. 20555  
NRC Senior Resident Inspector  
ATTN: T.P. Gwynn  
NRC Office of Nuclear Reactor Regulation  
ATTN: D.G. Eisenhut

**RECEIVED**  
MAR 21 1984  
**LEGAL DEPT.**

1111  
MAR 20 1984  
ATTORNEY GENERAL  
NRC

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) )

MOTION FOR WITHDRAWAL OF APPLICATION

On January 21, 1984, The Cincinnati Gas & Electric Company, on its own behalf and on behalf of Dayton Power & Light Company and Columbus & Southern Ohio Electric Company ("Applicants"), announced that it was ceasing work on the Zimmer Station as a nuclear plant and the three companies would use their best efforts to convert the plant to a coal-burning unit.<sup>\*/</sup> Notice to the Commission was given on January 27, 1984, as set forth in the attached letter.

Accordingly, in accordance with 10 C.F.R. §2.107, the Applicants request the issuance of an order authorizing the withdrawal of the application in the captioned proceeding and dismissing the proceeding.

\*/ Because of the present limited jurisdiction of the Licensing Board, Applicants considered whether the Appeal Board or even the Commission had jurisdiction over this matter. However, it appears that in this case from the second sentence of §2.107(a) that the  
(Footnote Continued)

~~84-32107-8~~



All fuel will be removed from the site not later than August '31, 1984.

The existing nuclear steam supply system will be modified so that it cannot operate as a "utilization facility" by isolating the system inside the reactor building by severing and welding caps on two main feedwater lines and the four main steam leads. In addition, control rod drive mechanisms will be removed from the reactor vessel. The balance of plant will be used to the extent possible as part of the new fossil fuel-fired electric generating plant. As such, there will be no change in the fundamental character of the Zimmer site as one for the generation of electric power.

Because the Applicants will not use the Zimmer site for a nuclear plant at any time in the future, Applicants have no objection to the Licensing Board's dismissal of the application with prejudice against the future use of the site for a nuclear plant.

On the basis of the foregoing, Applicants move that the

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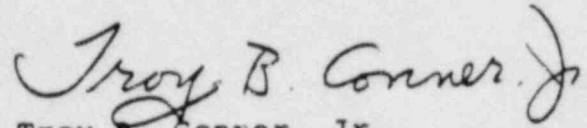
(Footnote Continued)

Commission has specifically delegated withdrawals of applications to licensing boards.

Board issue an order authorizing withdrawal of the application subject to the aforesaid conditions. A copy of a proposed order is attached.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

  
Troy B. Conner, Jr.  
Counsel for the Applicants

March 20, 1984

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MAR 21 1984  
LEGAL DEPT.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD



Before Administrative Judges:  
John H. Frye, III, Chairman  
Dr. Frank F. Hooper  
Mr. G.A. Linenberger, Jr.

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

ORDER  
(Granting Motion to Withdraw Application  
and Terminate Proceeding)

On January 27, 1984, the Applicants informed the Commission that they would not pursue their application for an operating license for the Wm. H. Zimmer Nuclear Power Station. Accordingly, Applicants moved this Board on March \_\_, 1984 to authorize the withdrawal of the application and to terminate the proceeding, advising us that the application may be dismissed with prejudice because Applicants do not intend to use the Zimmer site in the future for any nuclear facility.

The Applicants state that the existing nuclear steam supply system will be rendered incapable of operation. All fuel will be removed from the site not later than August 31, 1984.

Applicants state that the balance of the plant will be used to the extent possible as part of a new fossil electric generating plant. Accordingly, there will be no change in the fundamental character of the Zimmer site as one for the generation of electric power.

Because the Applicants have agreed to dismissal of the application with prejudice as stated below, it is hereby ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1984:

1. That Applicants' request for withdrawal of their application and for termination of the proceeding for an operating license for the Wm H. Zimmer Nuclear Power Station is granted, subject to the following conditions:

- A. Dismissal is with prejudice to future reapplication by the Applicants for the construction and operation of any nuclear power facility at the same site;
- B. All fuel must be removed from the site not later than August 31, 1984;
- C. The existing nuclear steam supply system must be rendered incapable of operation;
- D. The balance of the plant may be used to the extent possible as part of a new fossil electric generating plant.



2. That this Order shall be effective immediately upon issuance and shall constitute the final action of the Board upon the application herein. The withdrawal, pursuant to 10 C.F.R. §2.107, shall be final upon the Regulatory Staff's determination that conditions 1-B and C have been carried out.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

John H. Frye, Chairman

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SECY-NRC  
MAR 20 1984

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) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion for Withdrawal of Application," and accompanying proposed "Order" dated March 20, 1984 in the captioned matter, have been served upon the following by deposit in the United States mail this 20th day of March, 1984:

Judge John H. Frye, III  
Chairman, Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Chairman, Atomic Safety  
and Licensing Appeal  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Frank F. Hooper  
Chairman of Resource  
Ecology Program  
School of Natural  
Resources  
University of Michigan  
Ann Arbor, MI 48104

Chairman, Atomic Safety  
and Licensing Board  
Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Mr. G.A. Linenberger, Jr.  
Administrative Judge  
1005 Calle Largo  
Sante Fe, NM 87501

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Stephen H. Lewis, Esq. U.S.  
Nuclear Regulatory  
Commission  
Region III  
799 Roosevelt Road  
Glen Ellyn, Illinois 60137

  
Troy B. Conner, Jr.

cc: Robert F. Warnick  
Director, Enforcement  
and Investigation  
NRC Region III  
799 Roosevelt Road  
Glen Ellyn, Illinois 60137

4/9/84

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

RECEIVED  
APR 12 1984  
W. J. MORAY  
LEAD DEPT.  
TO

In the Matter of

CINCINNATI GAS AND ELECTRIC  
COMPANY, ET AL.

Docket No. 50-358

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

NRC STAFF'S ANSWER TO MOTION  
FOR WITHDRAWAL OF APPLICATION

Introduction

By motion dated March 20, 1984 filed with the Licensing Board,<sup>1/</sup> The Cincinnati Gas & Electric Company, on its own behalf and on behalf of Dayton Power & Light Company and Columbus & Southern Ohio Electric Company ("Applicants"), in accordance with 10 C.F.R. § 2.107, requested "the issuance of an order authorizing the withdrawal of the application in the captioned proceeding and dismissing the proceeding." Motion at 1. A copy of a proposed order was attached to the Motion. The NRC Staff's ("Staff") Answer to the Motion is set out below.

<sup>1/</sup> The Staff concurs that the Motion properly is directed to the Licensing Board. Not only does the Staff agree that the Licensing Board has jurisdiction to consider the Motion, but, in any event, the Licensing Board would be the proper adjudicatory Board to determine the question of its jurisdiction to entertain the Motion. Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-668, 15 NRC 450 (1982); ALAB-591, 11 NRC 741 (1980).

*[Handwritten signature]*



### Background

On September 10, 1975, the Applicants filed an application for an operating license for the Wm. H. Zimmer Nuclear Power Station ("Zimmer Station"). Hearings were held on the application and the Licensing Board issued an Initial Decision on June 21, 1982, LBP-82-48, 15 NRC 1549 (1982), aff'd as modified, A1AR-727, 17 NRC 760 (1983).<sup>2/</sup> That Initial Decision decided all outstanding contentions but provided for further hearings on certain aspects of the Intervenor's Emergency Planning Contentions relating to school evacuation matters. To date, further hearings have not been held.

Miami Valley Power Project ("MVPP"), an intervenor in this proceeding, filed on May 18, 1982 a motion seeking to reopen the record and to file eight new contentions concerning quality assurance and management's character and competence to operate a nuclear power station. Following a number of pleadings and decisions on this subject, the Motion to reopen has now been denied by the Licensing board and MVPP has pending before the Licensing Board a motion for reconsideration of the Board's September 15, 1983 Memorandum and Order denying the motion to reopen the record (LBP-83-58, 12 NRC 640 (1983)). MVPP also petitioned the Commission to suspend construction at the Zimmer Station. The Commission referred this petition to the Staff for consideration under 10 C.F.R. § 2.206. On November 12,

<sup>2/</sup> Shipment to and possession of unirradiated fuel at the Zimmer site was authorized by a Commission license issued pursuant to 10 C.F.R. Part 70 on June 26, 1979 (Materials License SNM-1823). During the hearings in the proceeding, the Licensing Board denied Intervenor's motion to delay delivery of unirradiated fuel to the site. See LBP-79-24, 10 NRC 226 (1979).

1982, the Commission halted safety-related construction at Zimmer (Order to Show Cause and Order Immediately Suspending Construction, CLI-82-33, 16 NBC 1489 (1982)).

On January 21, 1984, Applicants announced that they were ceasing work on the Zimmer Station as a nuclear plant and the three companies would use their best efforts to convert the plant to a coal-burning unit. Notice to the Commission was given on January 7, 1984.

#### Discussion

The Commission's regulations provide a license issued by the Commission is required by a person who possesses a utilization facility.

10 C.F.R. § 50.10(a). The definition of a utilization facility in the Atomic Energy Act of 1954, as amended, is essentially technical.<sup>3/</sup>

It focuses on the capability of the facility to make use of special nuclear material. The utilities' intentions regarding the reactor and a prohibition on loading fuel in it are not controlling under the definition of a utilization facility. Thus, in the circumstances of this case where the nuclear plant is essentially completely constructed, unless the plant is "disabled" so that it no longer has the capability to make use

<sup>3/</sup> The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or regularly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; and (2) any important component part especially designed for such equipment or device as determined by the Commission. 42 U.S.C. 2014(cc).



of special nuclear material, the Applicants would have to have a facility license to possess the facility.

The Applicants state that they will modify the Zimmer plant so that it cannot operate as a "utilization facility." The modifications they propose are (1) to remove the control rod drive mechanisms from the reactor vessel and (2) to isolate the nuclear steam supply system inside the reactor building by severing and welding caps on two main feedwater lines and the four main steam leads. Motion at 2. The Staff finds that these modifications will sufficiently "disable" the Zimmer plant so that it no longer has the capability to make use of special nuclear material.

Accordingly, the Staff urges that any order authorizing termination of this proceeding contain the condition that Applicants modify the plant as described in the Motion. Indeed, absent such disabling, upon termination of the construction permit, Applicants would be required to apply for and receive a possession only license, 42 U.S.C. 2131.

Applicants currently hold a license to possess nuclear material pursuant to 10 C.F.R. Part 70. Applicants currently have new fuel on site. They state that all fuel will be removed from the site not later than August 31, 1984. Motion at 2. The Staff intends to inspect the site to ensure that all fuel has been removed by that date. Following removal of the fuel off-site, it would be appropriate for the Applicants to have for termination of their "Part 70 license." Accordingly, the Staff urges that any order authorizing termination of this proceeding be conditioned upon removal of all fuel from the Zimmer site not later than August 31, 1984 with such removal to be verified by NRC Staff inspection.

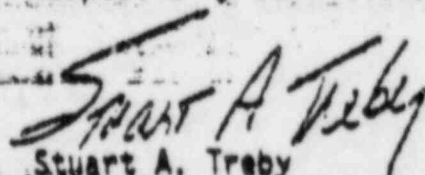
Applicants state they have no objection to the Licensing Board's dismissal of the application with prejudice against the future use of the site for a nuclear plant. Motion at 2: Staff has no objection to dismissal with prejudice and urges that any order authorizing termination of this proceeding contain such a condition.

Finally, the Applicants assert there will be no change in the fundamental character of the Zimmer site as one for the generation of electric power. Motion at 3. The technical Staff is conducting a review of the site to determine whether any conditions for the protection of the environment are necessary. The Staff promptly will advise the Board upon completion of its review. At that time, the Staff will submit to the Board its recommendations as to any conditions it believes necessary to protect the environment.

#### Conclusion

For the reasons set forth above, the Staff urges that any order terminating this proceeding contain the conditions stated herein. Further, the Staff will submit to the Board, upon completion of its review of the site, its recommendations of any conditions necessary for protection of the environment.

Respectfully submitted,



Stuart A. Treby  
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland  
this 9th day of April, 1984