

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

Before Administrative Judges:
John H. Frye, III, Chairman
Gustave A. Linenberger
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-OL
(ASLBP No. 76-317-01-OL)

August 29, 1984

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MEMORANDUM AND ORDER
(Ruling on Applicant's Motion to Withdraw Application)

On March 20, 1984, Applicants moved for an Order authorizing withdrawal of their application for an operating license for this facility and dismissing this proceeding. In support of their motion, Applicants represented that:

- 1) All fuel would be removed from the site by August 31, 1984;
- 2) The nuclear steam supply system would be modified to prevent its operation as a "utilization facility" (defined by § 11(cc) of the Atomic Energy Act) by:
 - a) severing and welding caps on the two main feedwater lines and four main steam lines; and
 - b) removing the control rod drive mechanisms;
- 3) The balance of the plant will be used to the extent possible as part of a fossil-fired generating station; and

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4) Applicants have no objection to the dismissal of the application "with prejudice."

Only the NRC Staff responded to this motion. In its April 9, 1984, response, Staff points out that § 11 (cc) of the Atomic Energy Act defines a "utilization facility" as one which is capable of making use of special nuclear material. Therefore, according to Staff, because the facility is essentially complete, it must be disabled so that it cannot make use of special nuclear material. Staff found that the modifications which Applicants represented they would make would accomplish this purpose. Staff therefore urged that the motion be granted subject to the condition that these modifications be made and to the condition that the fuel be shipped from the site by August 31, with implementation of the conditions to be verified by Staff.

Staff also noted that it had no objection to dismissal of the application with prejudice and urged that we include such a condition. Staff gave no reasons for this position.

Finally, Staff noted that it was reviewing the site to determine whether conditions for the protection of the environment were necessary. Staff indicated that it would advise the Board of its conclusions in this regard.

On August 2, 1984, Applicants filed certain information with the Board relevant to their motion. In this filing, Applicants advised us that they had shipped their fuel off-site and had accomplished the modifications to the nuclear steam supply system which they represented they would make. Applicants therefore renewed the request contained in

their motion. On August 7, the Board Chairman wrote counsel for Applicants indicating that the Board would act on the motion promptly upon receiving Staff's conclusions with regard to the need for conditions to protect the environment.

On August 17, the Staff filed a further response to the Applicants' motion. Staff noted that it had conducted an inspection and verified that the feedwater and main steam lines had been severed and capped, and that the Applicants were in the process of removing the control rod drive mechanisms. During the inspection, Staff verified that the fuel had been removed from the site. This inspection was conducted from April 27 through July 16, 1984. Staff attached a copy of Inspection Report 50-358/84-05 to its response.

Staff also advised us that it had reviewed certain additional information relevant to environmental protection which Applicants furnished in response to Staff's request and had visited the site. Staff concluded that, based upon this review, withdrawal of the application should be conditioned on implementation of Applicants' June 1, 1984, restoration plan (which was furnished with the information Staff requested), such implementation to be verified by Staff. Staff furnished its environmental review and the affidavit of Germain La Roche in support of its conclusion.

After receiving Staff's August 17 response, we inquired of Applicants' counsel whether he wished to reply and were informed that he did not.

We agree with Staff that it is necessary that the nuclear steam supply system be modified to prevent its utilization of special nuclear material and that the reactor fuel be shipped off-site. We are satisfied that these steps have been accomplished. Having heard no objection from Applicants, we will condition our authorization to withdraw the application on implementation of the June 1, 1984, site restoration plan, such implementation to be verified by Staff.

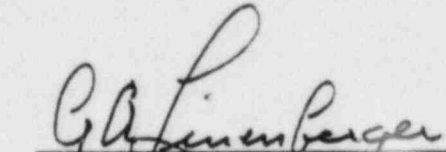
Applicants do not object to the authorization of withdrawal of the application with prejudice and have included such a provision in the draft order accompanying their motion. That provision states that the authorization is ". . . with prejudice to future reapplication by the Applicants for the construction and operation of any nuclear power facility at the same site." Staff, without elaboration, urges that the authorization be so conditioned. Ordinarily such a condition would only be imposed if substantial prejudice would otherwise result to a party who opposed the application. See Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 1) ALAB-662, 14 NRC 1125 (1981) and Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2) ALAB-657, 14 NRC 967 (1981). Here no party has seen fit to attempt to make such a showing. And despite years of consideration of both the construction permit and operating license, no final agency decision has been rendered which disapproves these applicants, this site, or this reactor. In these circumstances, we view the attachment of such a condition to the authorization to withdraw the application as unnecessary. Therefore we have not included such a condition.

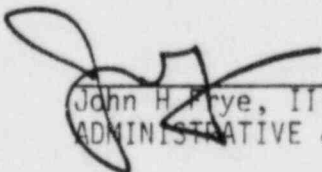
In consideration of the foregoing, it is this 27th day of August, 1984, ORDERED that:

Applicants' motion for authorization to withdraw their application and for termination of this proceeding is granted subject to the condition that Applicants are to implement their June 1, 1984, site restoration plan and Staff is to verify that this has been accomplished within six months of the date of this Memorandum and Order.

Dr. Hooper concurs but was unavailable to sign this Memorandum and Order.

THE ATOMIC SAFETY AND
LICENSING BOARD


Gustave A. Linenberger
ADMINISTRATIVE JUDGE


John H. Frye, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
August 29, 1984