



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
THE CINCINNATI GAS & ELECTRIC ) Docket No. 50-358  
COMPANY, et al. )  
 )  
(William H. Zimmer Nuclear )  
Power Station) )

APPLICANTS' RESPONSE TO THE NOVEMBER 16, 1978  
ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

On November 16, 1978, the Atomic Safety and Licensing Board ("Licensing Board") issued an Order which stated that several months had elapsed since the Licensing Board was last advised as to the status of this operating license proceeding and noted the fact that the membership of the Board had been changed. This pleading responds to that Order which requested the Applicants, at their earliest convenience, to apprise the Board of certain information relating to this proceeding:

1. The current progress of construction.

As of October 31, 1978, construction of the William H. Zimmer Nuclear Station ("Station") is 90.6% complete.

2. The currently projected fuel loading date.  
(The last advice on this subject in the record appears to be the Applicants' letter of March 20, 1978, advising that the fuel loading date would be June, 1979; the Board wishes to be advised whether this date is still realistic.)

For planning purposes, the target fuel loading date is still June, 1979. The Applicants' critical path analysis indicates that fuel loading can occur before the end of August. With increased use of the second shift and an increased effort to complete preoperational tests, it is believed that the fuel loading date can be improved to a date closer to the June target date.

3. The approximate schedule which the Applicants seek for the hearing (as well as remaining prehearing matters).

We have been advised by the Nuclear Regulatory Commission ("NRC") Staff that the Safety Evaluation in this proceeding would be issued in December. Considering this and the scheduled fuel loading date discussed in Item 2, above, the Applicants suggest the following schedule:

<u>Event</u>	<u>Date</u>
1. Close of discovery	10 days after issuance of the Safety Evaluation Report
2. Last day for filing motions for summary disposition	January 5, 1979
3. Prehearing Conference	January 8-19, 1979 <sup>1/</sup>
4. Exchange of Written Testimony	February 2, 1979
5. Evidentiary Hearing	February 19-23, 1979 <sup>2/</sup>

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1/ Per 10 C.F.R. §2.752. Any day within this period would appear suitable.

2/ While it is unlikely that the ACRS will consider any of the contested issues in this proceeding, the Board may wish to leave the record open for receipt of the ACRS report to the Commissioners and the Staff's supplemental Safety Evaluation Report.

6. Last day for filing of Applicants' Proposed Findings March 15, 1979
7. Last day for filing of Intervenors' Proposed Findings March 26, 1979
8. Last day for filing of Staff's Proposed Findings April 4, 1979
9. Last day for filing of any Applicants' Rebuttal Findings (Delivered to Board) April 16, 1979
10. Issuance of Initial Decision May 21, 1979.

4. A summary description of (1) contentions heretofore accepted by the Licensing Board and (2) matters not the subject of contentions as to which the Board has directed that evidence be presented. (In providing this description, the Applicants may wish to utilize the format which they followed in their letter of October 20, 1977 to the parties; they may, if they choose, merely update that letter and supplement it with a description of the other matters raised by the Board.

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There has been no change in the contentions accepted by the Licensing Board subsequent to Applicants' October 20, 1978 letter to the parties. For the convenience of the Licensing Board and parties, a copy of the attachment to that letter listing the admitted contentions is attached.

With regard to the second topic, we have examined the record of this proceeding beginning with the Order Granting Petitions for Intervenors and Providing for Hearing dated March 19, 1976. Below is the citation to the section of the Final Safety Analysis Report or Environmental Report, as appropriate where each matter is discussed.

1. In the "Order Denying Fankhauser Motion to Cease Construction in View of Sandia Test Data dated January 16, 1978," at p. 3, the Board stated that it wanted data respecting the Sandia tests and the applicability of the tests to the components of the Zimmer plant.

The Applicants' Fire Protection Report was originally submitted as amendment 44 to the Application. The documentation that the electrical connectors used in the Sandia tests are not utilized at the Zimmer Station is contained in Applicant's response to I&E Bulletins 77-05 and 77-05A dated January 13, 1978, and Applicant's response to I&E Bulletin 78-02 dated February 28, 1978.

2. In its Order Denying Motion to Admit Additional Contentions dated September 23, 1977, the Board noted that it wished data to be presented on the design and construction of the spent fuel pool (p. 3) and the Applicants' financial capability to decommission the Station (p. 5). The design of the spent fuel storage pool is described in §§9.1.2 and 15.1.30 of the FSAR. The financial qualifications of the Applicants, including their ability to decommission the facility, is discussed in "Information in Response to the Request for Additional Financial Information in the Commission's letter dated November 23, 1977"<sup>3/</sup> dated December 14, 1977.

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<sup>3/</sup> On November 27, 1978, the NRC Staff requested an update of the information contained in that section. That information is scheduled to be submitted by January 9, 1979.

3. In its Order Sustaining Objections to Certain Interrogatories from Intervenor David B. Fankhauser dated September 23, 1977, the Board requested data regarding emergency plans; including provisions for evacuation (p. 3), the technical qualifications of the Applicants and their personnel and data respecting past performance (p. 4) and compliance with 10 C.F.R. Part 20 and Appendix I of 10 C.F.R. Part 50 (p. 5). The Emergency Plan for the Station, including provisions made for evacuation, is contained in Appendix F to the FSAR. The technical qualifications of Company management and station personnel are addressed in Chapter 13 of the FSAR and response to NRC questions relating to Chapter 13 contained in Volume 12 of the FSAR. Compliance with 10 C.F.R. Part 20 and 10 C.F.R. Part 50, Appendix I are demonstrated in Appendix G to the FSAR.

5. Recommendations as to whether a further prehearing conference would be desirable.

Applicants have, in the schedule suggested above, made provision for a prehearing conference to be held. The schedule and procedure for presentation of evidence may conveniently be discussed and set by the Board at that time. It could also be determined whether the Board wishes further evidence concerning matters not in contention discussed in §4, supra. See also Other Matters, Section I, infra.

In that the NRC Rules of Practice have been recently amended to permit the receipt of limited appearances at a prehearing conference, Applicants would suggest that such statements be taken at that time to avoid delay at the evidentiary hearing. If necessary, a special evening session

of the prehearing conference could be planned.

Other Matters

I

The Board's Order invited comment on any additional matters which the parties believe should be dealt with by the Board and specifically invited the parties to comment on the following:

[W]hether outstanding generic safety issues applicable to this reactor, if any, within the meaning the Appeal Board's decisions in Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC (August 25, 1978) and Gulf States Utilities Co. (River Bend, Units 1 and 2), ALAB-444, 6 NRC 760 (1977), have been or will be satisfactorily resolved (and, if so, in what manner).

The holding in the River Bend and North Anna decisions cited by the Board is that there must be some explanation contained in the NRC Staff Safety Evaluation Report ("SER") for the facility why construction or operation can proceed even though an overall solution to a so called "unresolved generic safety issues" has not been found. The Staff's soon to be published SER will undoubtedly discuss these generic issues.

In the North Anna proceeding, the Appeal Board recognized that the Commission's regulations limit the Appeal Board's consideration of matters which are uncontested at the operating license stage:

In this connection, we cannot overlook that the role of NRC adjudicatory boards

in operating license proceedings--as distinguished from those involving construction permits--is quite limited insofar as uncontested matters are concerned. The Commission's regulations tell both the licensing boards and us that, while we may give "appropriate consideration" to a "serious safety, environmental or common defense and security matter \*\*\* that has not been raised by the parties," we are to exercise that authority "sparingly and only in extraordinary circumstances." 10 C.F.R. 2.760a, 2.785(b)(2). 4/

In reviewing the outstanding generic matters, the Appeal Board carefully delineated the scope and depth of its review:

We wish to say precisely what we have and have not done. In view of the limitations imposed by regulation, and the fact that our review was necessarily unaided by any of the parties, we have not probed deeply into the substance of the reasons put forth by the staff for allowing operation to go forward. Rather, we have only looked to see whether the generic safety issues have been taken into account in a manner that is at least plausible and that, if proven to be of substance, would be adequate to justify operation. Scrutiny of the substance of particular explanations will have to await a contested proceeding. [emphasis supplied] 5/

We take this statement to mean that, in the absence of an admitted contention relating to the subject matter, the Board need only satisfy itself that the generic issue has been taken account in a plausible manner, and without inquiry into the substance of the proposed solution, see that such solution would be sufficient to permit operation to begin.

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4/ Slip op. at 2-3.

5/ Id. at 6, n. 7.

Because, as discussed previously, the Staff's Safety Evaluation will be published shortly, and will presumably resolve each of the "unresolved generic safety issues," on the basis of the North Anna test, the Board should await such issuance and determine whether it can make the findings called for by North Anna or whether something additional might be needed in the record.

II

On April 14, 1978, the NRC published in the Federal Register (43 Fed. Reg. 15613) clarifying amendments to Table S-3 of 10 C.F.R. Part 51. This action amended the prior regulations to remove the value contained in Table S-3 for releases of radon and to clarify that Table S-3 does not include health effects from the effluents described.

In response to such rulemaking, the NRC Staff has submitted evidence in the form of affidavits or written testimony relating to these matters in cases pending before licensing boards. We would expect that, inasmuch as this is a generic issue, similar, if not identical material would be submitted in this docket. If so, Applicants are familiar with such evidence, would support its admission and would not submit any independent testimony.

III

There are two outstanding motions pending in this proceeding.



On October 31, 1977, the Applicants filed a Motion for Summary Disposition relating to certain aspects of the emergency planning issues. No response by any party to that motion has been filed.<sup>6/</sup> Because of the passage of time and intervening developments, Applicants would withdraw that motion and would expect to substitute an updated and more comprehensive motion for summary disposition on the granted contentions.

On November 23, 1977, the Applicants filed a Motion to Compel Discovery against the Miami Valley Power Project which had not responded in any way to interrogatories directed it on October 31, 1977. Because the Project had not participated in this proceeding in any manner since the prehearing conference held on January 23, 1976, Counsel for the Applicants attempted unsuccessfully to contact Mr. Schumacher, the representative of the Project, in order to determine whether that organization had an interest in continuing its participation in this proceeding. Because of the long time that has passed since the previous set of interrogatories were sent to the Project, Applicants will, within the next few days, submit a renewed set of interrogatories to the Project. If such interrogatories

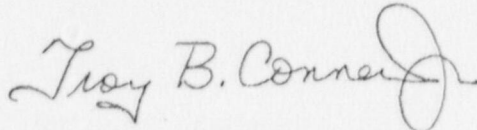
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<sup>6/</sup> At that time, the NRC rules permitted answers to motions for summary disposition to be filed until two days prior to a hearing. Section 2.749 of Title 10 has been amended to require a response within 20 days of service of the motion.

are not objected or responded to in the time prescribed in the Regulations, the Applicants would expect to renew their motion to compel discovery or move to dismiss.

Respectfully submitted,

CONNER, MOORE & CORBER



Troy B. Conner, Jr.



Mark J. Wetterhahn  
Counsel for the Applicants

December 5, 1978

Wm. H. Zimmer Nuclear Power Station  
Docket No. 50-358  
Contentions of the Intervenors as Granted  
by the Atomic Safety and Licensing Board

CONTENTIONS OF DR. FANKHAUSER

1. The Applicants will not meet the design objectives of Appendix I to 10 CFR Part 50 because too great a volume of spent fuel will be allowed to accumulate at the site to keep the emissions below said design objectives.

2. The Applicants' plans for monitoring radiological releases from the plant are inadequate because:

- (a) no provisions have been made to monitor said releases at the Moscow Elementary School which is approximately 800 meters from the proposed site,
- (b) no provision has been made for directly involving the citizenry in the vicinity of the site in the monitoring of the plant's activities,
- (c) it is unclear from the Applicants' plans whether all radioactive emissions will be monitored or whether only certain isotopes will be monitored,
- (d) no monitoring readouts are provided at the City Water Works,

- (e) the statement by Applicants that the monitoring will be "as comprehensive as possible" is vague and monitoring methods are unclear,
- (f) no monthly assays of isotopic concentrations in area food-stuffs are provided for, and
- (g) there are no plans for a ring of monitoring stations around the site to continuously monitor gaseous emissions.

3. The Applicants' plans for monitoring radioactive effluents from the plant are inadequate to prevent contamination of the City of Cincinnati's drinking water supply because no direct links are planned between monitoring equipment at the plant and the City Water Works.

4. The Applicants' plans for dealing with an emergency situation precipitated by an accidental release of radioactivity are inadequate to protect the populace in the vicinity of the proposed reactor because:

- (a) the Applicants leave to the discretion of the emergency coordinator when and whom to notify in case of an emergency,
- (b) there are inadequate provisions for notifying public authorities when a situation is developing which could lead to an emergency,

- (c) inadequate provisions are made for a training and information program directed at the populace in the vicinity of the reactor to prepare it to deal with a possible emergency,
- (d) no contingency plans for emergencies are presently available involving the Clermont County Disaster Service,
- (e) inadequate provisions are made for sufficient training of local safety officials and agencies to enable them to cope with emergencies precipitated by accidental releases of radioactivity,
- (f) inadequate provisions are made to equip local agencies with safety apparatus adequate to cope with emergencies,
- (g) inadequate provisions are made for notification of local safety officials of occurrences which might result in an emergency situation.
- (h) inadequate access to the plant is permitted by Applicants to local safety officials for the purposes of inspecting safety precautions and procedures established and carried out by plant personnel.

5. There are no plans to provide knowledge and training of the populace in communities through which radioactive

materials will be transported sufficient to allow them to be able to cope with transportation accidents.

6. The Applicants will not meet the design objectives of Appendix I to 10 CFR Part 50 because the dose levels to the children at the Moscow Elementary School will exceed those which are permissible.

CITY OF CINCINNATI

7. The surface-water monitoring system proposed by the Applicants is inadequate to protect the populace in the Cincinnati area because Applicants do not provide sufficient information regarding permanent monitoring stations and may not provide for monitoring with continuous frequency of the Ohio River upstream from the City of Cincinnati water works intakes.

8. The Applicants' emergency plans are inadequate to provide reasonable assurance that the health and safety of the citizens of Cincinnati will be protected because the Applicants do not provide sufficient or adequate emergency notice communications to the City's water treatment facilities in the event of accidental leakages or discharges from storage areas of excessive radioactive materials into the receiving waters of the Ohio River.

9. The Applicants have not provided for independent members of its Environmental Review Board who are responsible to the interests of the citizens of Cincinnati. The Applicants' plans for monitoring radioactive emissions from the Zimmer plant are inadequate because the Environmental Review Board created by the Applicants fails to include any members who would be directly responsible to the interests and welfare of the City of Cincinnati, and not solely to the interests of the Applicants.

10. The Applicants have made no provisions for the transmission of monitoring data to the City for surveillance of upstream levels of radioactive materials in the Ohio River. The Applicants' plans for surface-water monitoring are inadequate because no provisions have been made for the transmission of surface-water monitoring data directly to the City for surveillance of upstream levels of radioactive materials in the waters of the Ohio River.



MIAMI VALLEY POWER PROJECT (PROJECT)

11. Current data demonstrates that there is no need for the Zimmer plant at this time because Dayton Power and Light's peak demand is and will not be sufficient to justify the added power until after 1985.

12. The Project alleges that the Applicants cannot guarantee an adequate supply of nuclear fuel for the plant in question. The Board construes this allegation to be that Applicants will not have an adequate fuel supply to operate the plant which is sought to be authorized for operation.

13. The equipment used in the construction and operation of the plant will be excessively costly and, in effect, beyond the financial capability of Applicants. Applicants are financial unqualified to operate the plant because of escalating costs.

MRS. MARI B. LEIGH (SNELL) \*

14. Applicants' plans for coping with an emergency situation precipitated by an accidental release of radioactivity from the Zimmer plant are inadequate because:

- (a) there are no plans for publicizing evacuation routes, or places where the public affected by an accident can seek refuge and emergency care, and
- (b) there are no plans to educate the public by providing them with information, in advance, which will prepare them for possible emergency situations.

\* Listed for completeness only.

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THE CINCINNATI GAS & ELECTRIC ) Docket No. 50-358  
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(Wm. H. Zimmer Nuclear Power )  
Station) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to the November 16, 1978 Order of the Atomic Safety and Licensing Board," dated December 5, 1978, in the captioned matter were served upon the following by deposit in the United States mail this 5th day of December, 1978:

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