

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF THE WILLIAM H. ZIMMER NUCLEAR POWER STATION.

DOCKET NO. 50-358
INTERVENOR MIAMI VALLEY POWER
PROJECT'S MEMORANDUM IN SUPPORT
OF ITS MOTION TO ALLOW NON-
ATTORNEYS TO PARTICIPATE IN
THE LICENSING HEARING

Firstly, MVPP is and has been without funds since the inception of these proceedings and the three present counsel: Leah Kosik; James Feldman; and the undersigned have not requested or received a single cent as compensation. This is in contrast to the counsel representing the applicants who are obviously working for a corporation with large financial resources, and are being compensated for everything which they do in behalf of their client.

Counsel for the applicant speaks of "professional responsibility" and, coming from his mouth, smacks somewhat of hypocrisy. The undersigned cannot help but wonder whether Mr. Conner would be devoting all his time and effort if his client was without any resources to pay him.

With regard to our professional responsibility toward MVPP, each of us made it clear from the inception, to our client that we would have problems with our time and that we would have to give priority to other matters. This critical disclosure is what allows us to draw a distinction between the present situation and one wherein the client is told one thing and a commitment is subsequently broken.

Being that each of us may have other commitments which we consider as having a greater priority, there may come a time when none of the present three will be available and, therefore, a negative ruling on this Motion will, in essence, deny MVPP participation at these hearings.

Secondly, the regulations of Board, 10 C.F.R.S2.713(a), specifically provide for non-attorneys being able to participate at hearings such as the one in question.

Specifically, 10 C.F.R.S2.713(a) states as follows:

"A person may appear in an adjudication on his own behalf or by an attorney-at-law in good standing admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any state, territory, or possession of the United States."

This regulation was promulgated by the Nuclear Regulatory Commission pursuant to authority from Congress and has the full force and effect of being law. It clearly stands for the proposition that MVPP has the right to represent themselves with or without counsel.

Opponents of this motion argue a strained and illogical interpretation of this section. They claim that its meaning dictates an "either - or" kind of situation in that MVPP can either represent themselves, or, if they have counsel, they must have counsel represent them. This is truly an absurd view and one not supported by the regulations.

Thirdly, the staff contends that through Mr. Barth, non-lawyers will not be qualified or competent to handle their interests at the forthcoming hearing. This attitude is illogical, elitist, and dangerous.

It is significant that the Licensing Board is composed of three members, only one of which happens to be a lawyer. In a court of law, which follows very strict rules of evidence and procedure, obviously it is important that both the trier of fact and the participants be trained in the law. At the very foundation of administrative law, is the premise that the regulatory agencies are not going to be bound by strict rules of evidence and procedure.

The membership of the Board itself, is a manifestation that it is helpful to have the expertise of individuals with other than the legal perspective. As an attorney, the undersigned counsel is somewhat embarrassed at Mr. Barth's essentially elitist view expressed at the recent pre-trial hearings. It is this attitude that drives a wedge between the public and the legal profession and creates such a bad image for our profession. [REDACTED]
[REDACTED]
[REDACTED]

Most significantly, the non-lawyers involved with the MVPP have a much greater understanding of the technical aspects of its contentions. They are much better suited to the formulation of questions than their counsel.

Finally, in a matter which has such an enormous potential impact on the public, it would be folly to accept the view of this Motion's opponents. It could result in a total loss of confidence in this agency, which would certainly be bad timing.

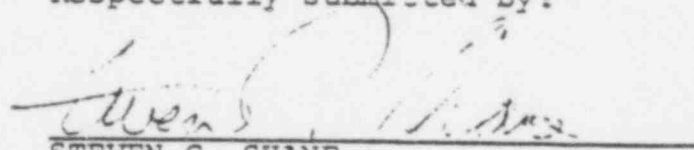
CONCLUSION

The Nuclear Regulatory Commission is for the protection of the public, not simply for the protection of the legal profession.

Failure to comply with its own regulation with regard to the subject of this Motion, will certainly be grounds for reversal of any of its rulings in federal district court.

For this and for all of the above-mentioned reasons, the undersigned counsel urges that its motion be granted.

Respectfully submitted by:



STEVEN C. SHANE
ATTORNEY FOR MIAMI VALLEY POWER PROJECT
SHANE & REBEL
SUITE 202, GWYNNE BUILDING
602 MAIN STREET
CINCINNATI, OHIO 45202
(513) 241-4030