7/24/81

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

Charles Bechhoefer, Chairman
Dr. Frank F. Hooper, Member
Dr. M. Stanley Livingston, Member

In the Matter of	:	
	:	
CINCINNATI GAS AND ELECTRIC COMPANY, ET AL.	:	DOCKET NO. 50-358
(William H. Zimmer Nuclear Power Station)	:	APPLICATION FOR OPERATING LICENSE.

INTERVENOR ZAC-ZACK'S RESPONSE TO APPLICANTS' MOTION TO BEGIN HEARINGS ON EMERGENCY PLANNING, ET CET.

Applicant seeks from this Board the establishment of a hearing on specified contentions, generally dealing with monitoring, "in approximately 30 days." However, applicant candidly admits that no local or state plans are currently in existence and that neither staff nor the ~~Federal~~ Emergency Management Agency (FEMA) have, or can, take a position on the adequacy of such plans at this time. Therefore, so applicant reasons, Contentions 2, 3, 4(a), (b), (g), (h), 7, 8, 9, 10, ~~18, 19,~~ 22, 25, 26, 27, 29 and 32 are ready for hearing.

Secondly, applicant seeks a determination at this time from the intervenors of which contentions that are no longer an issue in this proceeding.

Thirdly, applicant seeks to consolidate the contentions remaining for hearing and the selection of a single, lead intervenor to conduct all phases of the hearing process, thereby grouping all intervenors, private and government, into one with one counsel.

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Fourthly, applicant seeks a pronouncement of accellerated times following the announcement of a hearing date. The foregoing requests made by the applicant will be discussed in the above order.

Establishment of Hearing on the Enumerated Contentions.

The contentions set forth by applicant and appended to its motion deal with emergency plans as governed by 10 CFR §§50.33, 50.47, 50.54 and 10 CFR Part 50, Appendix E (45 Fed. Reg. 55403, et seq.) and as assisted by NUREG-0654/FEMA-REP-1. The foregoing authorities deal with all phases of emergency planning, including monitoring, and are inclusive of applicant's on-site plans as well as local and state plans which involve two states, five (perhaps six) counties, and several municipalities.

Applicant seeks to bifurcate the hearing in one instance and in the other seeks to proceed to hearing before intervenors have knowledge of, or can assess, local and state plans and before NRC and FEMA review.

10 CFR §50.33(g) clearly provides that it is the responsibility of the applicant to submit radiological emergency plans of state and local governments that are within the plume exposure pathway and within the ingestion pathway of the Emergency Planning Zone. Applicant has not done so to date, but nonetheless seeks a hearing at this point in time.

Within the category of emergency plans is the provision that adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use. 10 CFR §50.47(b)(9). Furthermore,

10 CFR §50.47(a)(2) provides as a prerequisite to hearing that the NRC and FEMA first find that state and local plans are adequate and capable of being implemented, as well as the NRC's assessment of whether applicant's onsite plans are likewise adequate and capable of being implemented. It is specifically provided in that section that "[i]n any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on a question of adequacy."

Applicant is soliciting an order to schedule a hearing "in approximately 30 days" which seeks to bifurcate the contentions pertaining to emergency plans, to bifurcate the plans themselves, to proceed before NRC/FEMA review of adequacy, and to prejudice intervenors by putting them in the position of proceeding absent any knowledge of state and local plans and before NRC/FEMA review.

While the applicant suggests that only state and local plan adequacy must await NRC/FEMA review, 10 CFR §50.47(a)(2) speaks to the contrary and ~~appli~~cant provides no authority for its proposition.

This intervenor is in no position to commence hearings on its Contentions 22, 25, ~~26, 29~~ and 32 at this time absent any review of state and local plans from which this intervenor can analyze independently the adequacy of such plans and its respective challenge. Once such plans are available and reviewed and if adequate, ZAC-ZACK may well be in a position to withdraw contentions which are no longer in issue; if not adequate, to then proceed.

Contention 22 pertains to the adequacy of warning devices to advise and alert the community within the EPZ. That contention is clearly within the planning of state and local government and of which no plan is currently available. This intervenor cannot be placed in the position of proceeding upon a negative proposition that plans not in existence are inadequate, unless applicant is in a position to confess error or to consume a great deal of time in hearing only to have a subsequent plan alter the basis of such hearing.

Contention 25 deals with both onsite and offsite monitoring selection and placement, a circumstance which again must await submission of local and state plans and agency review.

Contention 26 addresses offsite and onsite independent monitoring which again involves state and local plans.

Contention 27 directs itself to monitoring within the schools within the plume exposure pathway of the EPZ and again is dependent upon submission of ~~local plans~~.

Contention 29 involves meteorological monitoring which again involves what if any local involvement is to be considered.

Contention 32 is ~~clearly~~ within the circumstances of the testing of emergency plans in which the earliest date to which this counsel has been advised that such plans will be tested is November, 1981, and until the plan itself is employed, this intervenor is precluded from advancing its contention.

In short, the applicant in its quest to speed the hearing is premature as to the status of the position for hearing and is in

essence advocating a wasteful approach of both this Board's and intervenor's time by attempting to commence a hearing before it can be appropriately addressed as to the evidentiary prospects of such a hearing.

Determination of Contentions upon which Intervenor will proceed.

As previously discussed, the current posture of the emergency planning is such that this intervenor is in no position to consider the merit vel non of any contention to correctly advise this Board of its position. At the appropriate time in the future — and that time is not within the control of this intervenor, it is in control of the applicant whose duty it is to provide emergency plans from the state and local governments — this intervenor can appropriately advise this Board.

Consolidation of Contentions and Selection of Lead Counsel.

This intervenor has no difficulty in accepting that similar contentions ought to be consolidated as authorized by 10 CFR §2.715a, provided that there is absence of prejudice and where the contention is similar. However, such matter is ill-advised by the approach taken by applicant. The matter ought to be addressed, as this Board previously indicated, at a pretrial conference before hearing and after the completion of discovery.

Every intervenor has been waiting for applicant to complete its emergency planning, which remains incomplete. Once applicant has discharged its responsibility to this Board, then intervenors can engage in discovery as needed from the circumstances of each plan. At that point in time consolidation can be considered.

The secord point advanced is simply that there is a divergence of interest among the intervenors from which prejudice will result. The matter of interest, prejudice, posture of the proceedings to afford a competent hearing, the similarity of contentions, and consolidation, are all matters more appropriately addressed at a pre-hearing conference than by memoranda.

This intervenor is prejudiced and cannot adequately represent the citizens' interest if he is precluded from participation by consolidation and required, for instance, to be represented by the City of Cincinnati which does not have the direct interest of the citizens of Clermont County, Ohio, or of the Kentucky counties within its sphere of concern. Should consolidation be advisable in some areas, it must await more development before such a delicate balance could be struck.

Acceleration of Times.

This intervenor has been present as a participant for one year and during that period it awaited the production of emergency plans. On the anniversary of its admission as an intervenor the applicant presented its supplemented emergency plans. No plans for local and state response to emergency have been presented and it appears that they will not be presented for some time in the future.

Applicant nonetheless suggests that upon notification of a scheduled hearing, intervenor is to, within five days thereafter, provide the information to applicant is simply too narrow and unjustified time period to be considered reasonable. Fundamental

fairness dictates that where applicant consumes months in the preparation of its plans and upon their submission obtains a hearing, and then seeks the imposition of a five-day period for the intervenor to respond is untenable.

This intervenor simply requests that the Board establish reasonable time periods consistent with the circumstances.

Conclusion.

The thrust of applicant's motion is totally presumptious. The delays of the past have all been occasioned by the applicant's inability to discharge its responsibilities in construction of the Zimmer station and in the creation of emergency plans. To date the applicant is yet to fulfill its responsibility to provide state and local government emergency plans and to advance any plan to a degree which would afford a test drill of the emergency plans.

Applicant requests a hearing in approximately 30 days in the face of no state and local plans and in the face of a test drill tentatively set for November, 1981, and including circumstances in which the requisite emergency equipment is yet to be provided or to be in place.

The presumptiveness of the applicant is demonstrated by its past attempts to conduct a test drill as early as April 1, 1981 upon the faulty basis that such a drill could be conducted absent any emergency equipment being in place or to be utilized and absent any plans pertaining to onsite procedures and offsite assistance.

Applicant now boldly contends that hearings on emergency preparedness can be accommodated in a piecemeal fashion and absent

the completeness of emergency planning. To acquiesce in applicant's suggestion is to again consume time upon a theme of timeliness where applicant is in no position to proceed.

A hearing ought not to be contemplated until the applicant has fulfilled its responsibilities for the production of plans and the implementation of emergency equipment. In short, any hearing before the presentation of the complete emergency plans must be deemed premature.

The applicant, while suggesting similarity of contentions, it has failed to establish that similarity, the absence of non prejudice, and the unanimity of interest necessary for consolidation. The matter of consolidation is one which ought to be addressed at a pre-hearing conference involving applicant and all intervenors to introspect the circumstances of such contentions and the advisability of consolidation, giving due regard for prejudice and the respective diverse interests among the intervenors.

At the pre-hearing conference suggested by this intervenor all parties and the Board may review and determine what contentions may not be at issue, which presumes that the applicant has discharged its responsibilities by establishing the sufficiency of all emergency plans.

Applicant in its quest to obtain a hearing, no matter what the cost, has suggested that the intervenors should be placed in a position of operating under five day limitations in the face of the applicatant's consumption of many months in discharging its responsibilities to this Board. The applicant has misplaced the

emphasis of time as addressing it to a portion of time after announcement of hearing rather than the more appropriate establishment of times before hearing in which disclosures must be made.

It is therefore urged that the Board deny all aspects of applicant's motion and to proceed to hearings in an orderly fashion in which the applicant may direct the timeliness of such hearings based upon its presentation of all plans and the obtainment and placement of equipment so that a hearing is subject to the close scrutiny required to preserve the health and safety of the citizens.

Respectfully submitted,

Dated July 24, 1981

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

Charles Bechhoefer, Chairman
Dr. Frank F. Hooper, Member
Glenn O. Bright, Member

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Intervenor ZAC-ZACK's Response to Applicants' Motion to Begin Hearings on Emergency Planning, et cet." in the above-captioned proceeding have been served on the following persons by posting the same in the U.S. Mails, postage prepaid, this 24th day of July, 1981.

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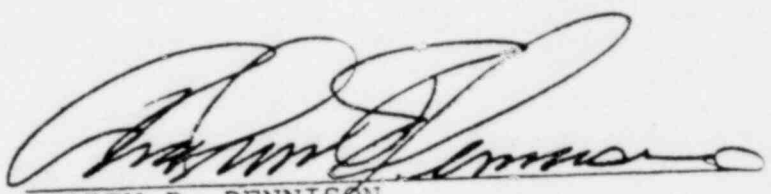

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