

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))

APPLICANTS' ANSWER TO VARIOUS MOTIONS TO FILE AN
AMICUS CURIAE BRIEF IN SUPPORT OF MIAMI VALLEY
POWER PROJECT'S MOTION TO REOPEN

Preliminary Statement

Various non-parties to the captioned proceeding have filed petitions with the Atomic Safety and Licensing Board ("Licensing Board" or "Board") each seeking leave to submit an amicus curiae brief in support of the motion by Miami Valley Power Project ("MVPP") to reopen the record for admission of its eight late contentions on quality assurance at the Wm. H. Zimmer Nuclear Power Station ("Zimmer"). These various groups are Appalachia-Science in the Public Interest ("ASPI"), Cumberland Chapter of the Sierra Club ("Sierra Club"), Nuclear Study Committee of the Church of the Brethren ("Church of the Brethren"), and Coalition for Affordable, Safe Energy ("CASE").^{1/} As discussed below, the

^{1/} In an order dated June 7, 1983, the Board set the time for filing responses to the requests of ASPI and Sierra
(Footnote Continued)

proposed amicus submissions are not authorized by the Rules of Practice of the Nuclear Regulatory Commission ("NRC" or "Commission"), substantively do not constitute a legal brief, and provide no assistance to the Board in determining the legal issues before it. The requests of these non-parties should be denied.

Argument

The Commission's Rules of Practice do not authorize the filing of an amicus brief with an Atomic Safety and Licensing Board. The only authority cited by these non-parties as a basis for their submissions is 10 C.F.R. §2.715. Under the express terms of Section 2.715(d), however, amicus briefs may be submitted only to the Appeal Board or the Commission. No authority exists for the receipt of an amicus filing by a Licensing Board. Additionally, the proposed amicus submissions substantively do not resemble an appropriate amicus brief, nor are they submitted for an appropriate purpose. None of the submissions discusses, as would a brief, the governing legal authorities or standards for the admission of late contentions or for the reopening of a closed proceeding. In essence, the proposed

(Footnote Continued)

Club to coincide with the time for filing responses to MVPP's motion to reopen. The time for filing responses to other requests is to be governed by 10 C.F.R. §2.730(c). Because the issues raised by these requests are identical, Applicant addresses all of them in this answer.

submissions merely state the generalized interest of these particular organizations in the Zimmer facility. Thus, the motions fail to offer any assistance to the Licensing Board in determining the legal issues before it. Rather, these submissions are a transparently orchestrated attempt to create the impression that grass roots support exists for MVPP's motion to reopen.^{2/} The premise of the motions, that a hearing is necessary as a vehicle by which the NRC can improve its public relations, has been explicitly rejected by the Commission.^{3/} At most, these views should be accepted as a limited appearance statement pursuant to 10 C.F.R. §2.715(a). Accordingly, these motions should be denied.

^{2/} As indicated by the motion for extension of time filed on June 10, 1983, by ASPI and the Sierra Club, the efforts of these organizations are closely coordinated, if not in fact a joint effort.

^{3/} The Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC 109 (1982).

Conclusion

For the reasons discussed above, the motions of these non-parties should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn", written in a cursive style.

Troy B. Conner, Jr.
Mark J. Wetterhahn
Robert M. Rader

Counsel for the Applicants

June 20, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer to MVPP's Motion to Reopen the Record for Admission of Eight Contentions on Quality Assurance" and "Applicants' Answer to Various Motions to File an Amicus Curiae Brief in Support of Miami Valley Power Project's Motion to Reopen"* both dated June 20, 1983, in the captioned matter, have been served upon the following by deposit in the United States mail this 20th day of June, 1983:

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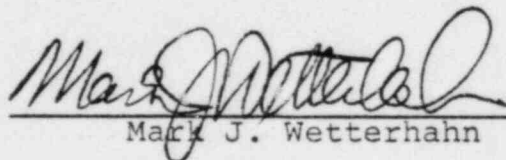
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* Copies of this pleading are also being sent to:

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