

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

4/13/82

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CINCINNATI GAS & ELECTRIC
COMPANY, et al.
(William H. Zimmer Nuclear
Power Station)

:
:
: DOCKET NO. 50-358
:
: APPLICATION FOR AN OPERATING LICENSE

'82 APR 15 11:02

emp

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicant, Cincinnati Gas and Electric Company, 139 East Fourth Street, Cincinnati, Ohio, seeks an operating license for the William H. Zimmer Nuclear Power Station located in Moscow, Clermont County, Ohio.

2. ZAC-ZACK, an intervenor in this proceeding, is a non-profit organization of citizens living in the Zimmer area in both Ohio and Kentucky.

3. The City of Mentor, an intervenor in this proceeding, is a governmental entity in the Commonwealth of Kentucky in Campbell County and is located approximately 2 miles from the Zimmer Nuclear Power Station at Moscow, Ohio.

4. Evidentiary hearings were held on January 25-29, 1982, February 2-5, 1982, and March 1-4, 1982, in Cincinnati, Ohio by this Board pursuant to contentions filed by Zimmer Area Citizens-Zimmer Area Citizens of Kentucky and the City of Mentor.

5. By the Board's Order of December 3, 1981, similar contentions which were raised by both intervenors were consolidated and ZAC-ZACK was appointed lead intervenor for those contentions.

6. The City of Mentor had four (4) separate issues which were not consolidated. Those issues dealt with standard operating procedures, plans for the State of Indiana, the prompt notification system and plans regarding the protection of the public water supply.

7. Contention 34 objected to the issuance of an operating license based on draft plans which disavow themselves as the plans and refer to Standard Operating Procedures as the implementing plans. The Standard Operating Procedures (hereinafter SOPs) were still unwritten as of the closing of the record.

8. Contention 35 objected to the issuance of an operating license based on the fact that the State of Indiana has no plan.

9. Contentions 36 I and K raised questions concerning the adequacy of the prompt notification system and plans regarding the protection of the public water supply. For these reasons and pursuant to the Board's wish (Tr. 7979-16) the City of Mentor is submitting Findings of Fact on these four issues only.

10. The City of Mentor seeks an order from this Board denying the Applicant an operating license.

CONTENTION 34
Standard Operating Procedures

11. The Campbell County and Kentucky Radiological Emergency Plans contain the following statement: "During an emergency, Standard Operating Procedures (SOPs), developed from the plan, will be employed to respond to the emergency rather than this planning document" (Board Exhibit 5, Plan Organization, p. V and Board Exhibit 3, Plan Organization, p. VI). The plans therefore disavow themselves and establish SOPs as the plans to be used instead.

12. There are no completed SOPs (Tr. 6140). General Buntin testified that the plan was for exercise purposes only (Tr. 6141) and that there were deficiencies in the plan (Tr. 6145).

13. "The plans should make clear what is to be done in an emergency, how it is to be done and by whom" (NUREG 0654, p. 29). There is no reference point in the plan to indicate to a user of the plan that an SOP is to be employed at any particular point (Tr. 6134). The Kentucky panel of planners indicated that

they did not have an answer as to how they would communicate with school bus drivers if an evacuation were ordered while children were enroute to home or to school. This was a problem that would be addressed later in an SOP (Tr. 6160). In fact the panel testified that the plan does not deal with any aspect of a school evacuation (Tr. 6043). SOPs are to be developed to deal with the following topics among others.

- 1) notification of bus drivers (Tr. 6071)
- 2) evacuation of people without transportation (Tr. 6102)
3. where children in school should be evacuated to and how parents are to locate their children (Tr. 6104)
- 4) an individual SOP for each school and one for the superintendent's office (Tr. 6157)

14. The panel could not agree whether fire personnel needed an SOP. One planner stated they would not have one (Tr. 6137). Another planner indicated that there should be a separate SOP for fire personnel in part because he felt that it was unrealistic to expect emergency personnel to respond if those personnel were unsure that their families were being taken care of (Tr. 7946). Another planner felt that it may be necessary to develop an SOP for the distribution of KI, or maybe those plans would go into the actual plan (Tr. 6180). Obviously these problems are not mere details, but areas for inclusion in the plan if that plan is to state what is to be done in an emergency, how it is to be done and by whom it is to be done.

15. Mr. Grimes testified that the NRC makes a recommendation as to whether or not a license should be issued based on a FEMA finding that there is a reasonable assurance that the plan can be implemented (Tr. 7416). The witness for FEMA testified that FEMA has not made such a finding and cannot make such a finding until the SOPs are provided because the plans as they stand are incomplete and incapable of being implemented (Tr. 7311). In fact, counsel for the

Applicant stipulated that the plan cannot be implemented without the SOPs (Tr. 7954).

16. The Board therefore has no choice but to find that the radiological emergency plans for the State of Kentucky cannot be implemented as they now stand and therefore the Board further finds that these plans do not provide that adequate protective measures can and will be taken in the event of a radiological emergency.

CONTENTION 35
Indiana Plan

17. Planners from the State of Ohio stated that they had a copy of a radiological emergency plan, dated May, 1980, revision IV, from the State of Indiana presumably written for the Marble Hill Nuclear Power facility (Tr. 5150). Planners from the State of Kentucky had likewise seen such a document (Tr. 6174-75). However, these planners had no knowledge as to which Indiana officials would be responsible for carrying out the provisions of that plan designed to protect the public from the consumption of contaminated foodstuffs (Tr. 5156).

18. More importantly, FEMA had no knowledge of the Indiana Plan whatsoever (Tr. 7820). Counsel for FEMA stated that the plan had not been submitted to FEMA for review (Tr. 7823-13). Counsel for FEMA further stated that it was his understanding that the Indiana Plan was in the process of being developed (Tr. 7825-12).

19. Therefore, this Board is unable to make a finding that the State of Indiana has a plan for the ingestion pathway capable of implementation or that the State of Indiana has a plan which will prevent contaminated foodstuffs from being shipped into the Northern Kentucky-Mentor area which would be consumed by the public.

CONTENTION 36 I
Prompt Notification System

20. The Prompt Notification System had not been installed as of the hearing

and therefore had not been tested (Tr. 7827).

21. FEMA testified that at the present there is no review or evaluation of the prompt notification system (Tr. 7838). The FEMA witness did state that wind direction on any given day would effect the results of a test and that it might be necessary to do several tests (Tr. 7836). However the FEMA witness had no idea if several tests would be made (Tr. 7837). Nor did the witness know if the testing would specifically test whether persons within brick structures could also hear the sirens as well as those in wood frame structures (Tr. 7834). The FEMA witness could not state what percentage of the test population would have to hear the sirens to indicate whether or not the system was properly designed (Tr. 7835).

22. NUREG 0654, Appendix 3, p. 3-6 states that "The system should be able to function notwithstanding adverse environmental conditions, such as floods and power outages". The Mayor of Mentor is a local public official who could order an evacuation (Tr. 7962). There is no notification process for the Mayor of Mentor or any other city public official in the event of a radiological accident at the Zimmer Nuclear Power Station (Tr. 7960). Notification would be by the prompt notification system or by commercial telephone (Tr. 7961).

23. The Kentucky state and county radiological emergency plans do not provide for any back-up power supply for the prompt notification system (Tr. 7840). It takes only 10% of the subscribers to overload the 635 telephone exchange (Tr. 6542). The 635 telephone exchange is almost coincidental with the 10-mile EPZ and is subject to overloading (Tr. 7964-5).

24. The prompt notification system then does not comply with the section of NUREG 0654 cited above.

25. In light of the foregoing the Board is unable to find that the prompt

notification system untested and not installed will meet the requirements of NUREG 0654 and therefore this Board cannot say that adequate protective measures can and will be taken to protect the public in the event of a radiological accident at the Zimmer Nuclear Power Station.

CONTENTION 36 K
Water Supply

26. There are two ways in which a public water supply could become contaminated with radioactive materials; the first being a release of radioactive material directly into the Ohio River and the second being an airborne release of radioactive material with radioactive particulates settling back into the water, thereby contaminating it (Tr. 6170). Contamination under either scenario could be immediate (Tr. 7883).

27. It is important that uncontaminated water be available to the general public in the event of an accident at Zimmer (Tr. 7860). The State of Kentucky has no water monitoring equipment, only air monitoring equipment (Tr. 7880). It is the State's responsibility to plan for the regulation of public and private water supplies in the event of a radiological accident (Tr. 6173), although the witness for FEMA stated that he did not know who had the responsibility for this particular function (Tr. 7862).

28. NUREG 0654 on page 10 in a discussion for the planning basis for the ingestion exposure pathway states "For the ingestion exposure pathway, the planning effort involves the identification of major exposure pathways from contaminated food and water and the associated control and interdiction points and methods". The witness for FEMA stated that the Kentucky Radiological Emergency Plan does not identify what methods are to be used in meeting the requirements of NUREG 0654 (Tr. 7862). For instance, the State of Kentucky has no specific procedure for notifying the public whether or not the water is safe

to drink (Tr. 7879). Kentucky has no plan for the transportation of uncontaminated drinking water (Tr. 7857) nor does the State have a plan for the rationing of uncontaminated water (Tr. 7858). The State Plan makes no provision for the monitoring of well or cistern water (Tr. 7855) nor does it address what procedures a waterworks is to follow to insure that contaminated water is not sold to cistern users or that contaminated water does not reach the general public (Tr. 7864-5). The Campbell County Radiological Emergency Plan likewise does not address these topics (Tr. 7865).

29. Moreover, the FEMA witness was unable to identify what other types of beverages could be substituted for water, or what the source of any other type of beverage might be (Tr. 7873). The plan does state that water monitoring teams from Frankfort should be mobilized and in the field within $3\frac{1}{2}$ to 4 hours of notification (Tr. 7846). The plan does have a list of monitoring sites, however the witness stated that since he was not from the area, he had no knowledge about the roads or places sited, nor did he make any inquiry as to whether monitors from Frankfort would be familiar enough with the area to identify the sites (Tr. 7874). After the samples are taken they are to be returned to Falmouth, Kentucky for testing (Tr. 7849). Falmouth is an hour to an hour and one-half away from Mentor and Newport respectively (Tr. 7849-7850). Therefore it would take the State anywhere from 5 to $7\frac{1}{2}$ hours just to find out whether or not some water supplies were contaminated (Tr. 7850). In light of the foregoing, FEMA was unable to make a finding that the State of Kentucky is capable of implementing its protective action guides with regard to the protection of the public water supply (Tr. 7878).

30. The Board also is unable to make a finding that the Kentucky Radiological Emergency Plan, as written, is capable of being implemented or that it provides a reasonable assurance that the public will be protected from drinking contaminated

water in the event of a release of radioactive material from the Zimmer Nuclear Power Station.

CONSOLIDATED CONTENTIONS

31. The City of Mentor hereby adopts and incorporates by reference the findings of fact as propounded by ZAC-ZACK.

CONCLUSIONS OF LAW

32. The City of Mentor hereby adopts and incorporates by reference the conclusions of law as propounded by ZAC-ZACK.

33. Pursuant to 10 C.F.R. 50.47 (a)(1) this Board finds as a matter of law that the offsite Radiological Emergency Plans for the State of Kentucky, counties of Pendleton, Bracken, and Campbell are incomplete documents, as they are in draft form and refer to SOPs as the implementing plans. The SOPs which are not yet written deal with topics such as the evacuation of school children, evacuation of those without transportation and the distribution of KI. The plans in their present state do not provide a reasonable assurance that adequate protective measures will and can be taken in the event of a radiological emergency.

34. Pursuant to 10 C.F.R. 50.47 (a)(2) this Board finds as a matter of law that FEMA has determined that the Radiological Emergency Plans for the State of Kentucky, counties of Pendleton, Bracken, and Campbell are not capable of being implemented as they are presently constituted.

35. The Board finds as a matter of law pursuant to 10 C.F.R. 50.47 (b)(5) that the means to provide early notification are not yet in place and have not been tested and therefore have not been established.

36. The Board finds as a matter of law pursuant to 10 C.F.R. 50.47(b)(5) that local city officials have the power to order an evacuation but no procedures have been established for notifying any local officials of an accident.

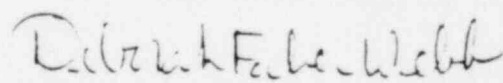
37. The Board finds as a matter of law pursuant to 10 C.F.R. 50.47 (b)(9)

that the State of Kentucky does not have adequate methods, systems or equipment for assessing or monitoring public or private water supplies and that this omission endangers the public's health and safety in the event of a radiological emergency.

38. The Board finds as a matter of law that the Applicant has not submitted any radiological emergency plans for the State of Indiana as is required by 10 C.F.R. 50.33 (g). The application is therefore deficient and the application for a license is hereby denied.

39. FEMA has not seen the Radiological Emergency Plan for the State of Indiana and therefore FEMA cannot make a finding that said plan is adequate and capable of implementation. Neither can this Board. The Board therefore finds as a matter of law pursuant to 10 C.F.R. 50.47 (a)(2) that the Radiological Emergency Plan for the State of Indiana is inadequate and is not capable of implementation.

Respectfully submitted,



Deborah Faber Webb
Attorney for the Intervenor
City of Mentor
7967 Alexandria Pike
Alexandria, Kentucky 41001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CINCINNATI GAS & ELECTRIC
COMPANY, et al.
(William H. Zimmer Nuclear
Power Station)

DOCKET NO. 50-358

APPLICATION FOR AN OPERATING LICENSE

CERTIFICATE OF SERVICE

It is certified that the proposed findings of fact and conclusions of law for the City of Mentor was posted by U.S. mail to the persons indicated below, and where asterisk is noted, personally delivered, this 13th day of April, 1982.

John H. Frye, III, Esq.
Chairman, Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Frank F. Hooper
Atomic Safety & Licensing Board
School of Natural Resources
University of Michigan
Ann Arbor, Michigan 48109

Dr. M. Stanley Livingston
Atomic Safety & Licensing Board
1005 Calle Largo
Santa Fe, New Mexico 87501

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Charles A. Barth, Esq.
U.S. Nuclear Regulatory Commission
Room NMBB 9604
7735 Old Georgetown Road
Bethesda, Maryland 20014

Atomic Safety & Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety & Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Troy N. Conner, Esq.
Conner, Moore & Corbet
17-7 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

* William J. Moran, Esq.
General Counsel, Cincinnati Gas & Electric Co.
P.O. Box 960
Cincinnati, Ohio 45201

* John D. Woliver, Esq.
P.O. Box 47
550 Mulgore Street
Batavia, Ohio 45103

* George E. Pattison, Esq.
462 E. Main Street
Batavia, Ohio 45103

* James H. Feldman Jr., Esq.
Fifth Level
216 East Ninth Street
Cincinnati, Ohio 45202

David K. Martin, Esq.
Office of the Attorney General
209 St. Clair Street
Frankfort, Kentucky 40601

* Andrew E. Dennison
200 Main Street
Batavia, Ohio 45103

Deborah Faber Webb

Deborah Faber Webb
7967 Alexandria Pike
Alexandria, Kentucky 41001
Attorney for Intervenor City of Mentor