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June 3, 1983



CABLE ADDRESS: ATOMLAW

Samuel J. Chilk  
Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

In the Matter of  
The Cincinnati Gas & Electric Company  
(Wm. H. Zimmer Nuclear Power Station)  
Docket No. 50-358

Dear Mr. Secretary:

By letter dated May 25, 1983, Miami Valley Power Project ("MVPP") requested the Commission to modify the decision of the Director of the NRC Office of Inspection & Enforcement, DD-82-03, issued February 10, 1983, with respect to the petition dated August 20, 1982 by MVPP seeking an immediate suspension of construction at the Wm. H. Zimmer Nuclear Power Station ("Zimmer").

In essence, the request by MVPP to the Commission seeks reconsideration of its Order of November 12, 1982, which established the framework for the Applicants, The Cincinnati Gas & Electric Company, et al., to restart safety related construction at Zimmer. The Order established an orderly and comprehensive multi-stage process for evaluating the management of Zimmer, the quality of construction of the plant, and the programs for continuation of construction; public participation is provided at each stage. MVPP seeks to preempt this process by prejudging the results of these evaluations and by imposing a course of action upon in disregard of this process.

The petitioner makes three points, all of which it alleges, go to the "corporate character and competence" of Applicants. First, it alleges conflicts between Applicants and NRC findings reflected in the NRC evaluation Team Report ("NET") (NUREG-0969). Only one such "conflict" is identified among the hundreds of pages of the NET report. Even there, MVPP points to no actual contradiction between the NRC and Applicants' presentations. In any event, this matter, as well as others identified in the NET report, will

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be dispositioned under the updated comprehensive plan to verify the quality of construction and the comprehensive plan for the continuation of construction, both of which are required to be completed prior to resuming safety related construction under the Commission's November 12, 1982 Order. To assert that the NRC Staff would ignore information in its possession, including the NET report, in judging the adequacy of the Applicants' corrective program is simply without basis.

Next, MVPP alleged that "secret plans undercut the legitimacy of the publicly-conducted work in the Commission's November 12, order." Although obscured in inflammatory rhetoric, we believe that the charge refers to the fact that Applicants have engaged well qualified technical consultants to assist it in reviewing the present situation at Zimmer and examining possible alternatives so that it may better respond to the recommendations of the independent management reviewer, Torrey Pines Technology. As the Administrator of Region III noted at the public meeting on May 26, 1983, it would be surprising if the Company were not considering such matters. Contrary to the assertion of MVPP, Applicants have completely abided by the terms of the November 12, 1982 Order.

Third, MVPP makes the groundless and speculative assertion that certain litigation involving the Zimmer facility would cause CG&E to withhold disclosures to the NRC required by the Atomic Energy Act and the implementing regulations. The NRC should give this matter short shrift; it is completely speculative and without support. Litigation regarding nuclear projects is, in today's environment, neither unique nor even unusual. Litigation, as such, provides no basis for withholding any information to which the NRC is entitled. In any event, the Commission has an adequate arsenal of remedies if an applicant should fail to live up to its responsibilities regarding disclosure and of absolute candor in dealing with it.

Finally, the Commission, under its own regulations, need not consider the merits of MVPP's submission. The Commission's regulations under 10 C.F.R. §2.206 do not provide authority for any such communication, and indeed the communication is in conflict with 10 C.F.R. §2.206(c)(2) which states:

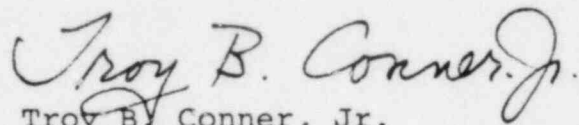
No petition or other request for Commission review of a Director's decision

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under this section will be entertained  
by the Commission.

Accordingly, the Commission should simply ignore the letter dated May 25, 1983 from MVPP. If, however, the Commission should undertake to consider the matters addressed by MVPP in its unauthorized request, Applicants respectfully request an opportunity to reply.

Sincerely,

  
Troy B. Conner, Jr.  
Counsel for the Applicant

TBC/dlf