

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

THE CINCINNATI GAS AND ELECTRIC  
COMPANY, et. al.

(Wm. H. Zimmer Nuclear Power  
Station)

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
Docket No. 50-358

CITY OF MENTOR'S MEMORANDUM IN SUPPORT OF MVPP'S PETITION  
FOR RECONSIDERATION OF THE BOARD'S SEPTEMBER 15, 1983 ORDER

Pursuant to 10 CFR §2.771(b) the City of Mentor files this memorandum in support of MVPP's Petition for Reconsideration. Mentor, by virtue of its proximity to the Zimmer Nuclear Power Station has always been extremely concerned over charges that relate to the safety of the plant and the consequent protection of its citizenry. Mentor has always taken the view that full public participation in the context of adjudicatory hearings is the only means available to fully protect the interests of the public, particularly in this case. Mentor once more urges the Board to place substance over procedure by reconsidering its Order of September 15, '1983.

First, Mentor would urge the Board to reconsider its findings regarding the third and fifth criteria under Mississippi Power and Light Company, et al. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725 (1982). The fifth criterion turns on whether a new proceeding would delay operation of the plant. The Board finds that a new proceeding probably would not cause delay but does not find that MVPP has made a compelling showing

to that effect. By virtue of a letter to the board dated October 5, 1983, subsequent to the Board's Order of September 15, 1983, from counsel for applicant, in which applicant estimates the time for completion of the plant to be two to three years hence, a finding that new proceedings will not delay operations is now warranted. The third criterion deals with whether MVPP may reasonably be expected to assist in developing a sound record. It is this intervenor's belief that without MVPP the very issues we are concerned with would not have been raised and would have gone unaddressed. Since the Board refuses to raise these issues sua sponte the public is left with no one other than MVPP to raise these issues and accordingly develop a record. The choice is one of having a record or having no record on admittedly serious issues. The criticisms by the Board of MVPP of tardiness and disorganization ring with a double standard that must be addressed. Staff and Applicant can hardly be considered model participants in these proceedings on either score. Disorganization and failure to keep to their own timetables have been hallmarks of the Applicant's participation, as evidenced by staff and applicants insistence to go to hearing prematurely in emergency planning contentions. Yet the Board would impose exacting standards on intervenors who represent the public's interest. MVPP deserves more than an indication that this criterion weighs in its favor. MVPP has made the required compelling showings that it can and will assist in developing a sound record and likewise that new proceedings will not delay the

operation of this plant. Accordingly Mentor urges the Board to reconsider these two findings as well as the conclusion that would flow from them.

The Board pivots its decision on the Commission's statement with "Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations." (Emphasis added.)(Board's Memorandum and Order (September 15, 1983), at 36). Again, this intervenor cannot help but feel the blade of the double standard being honed to a fine point. The utility may distort, cover-up, swear to self-serving time schedules, withhold information, destroy its credibility with everyone involved, yet is still afforded full participation in the adjudicatory process. Staff is equally guilty of manipulating the flow of information. The Board is not blind to the respective conduct of these parties in this proceeding and has heard many complaints to this effect. Yet the Board seems to require more of the public than it would of the other participants. If MVPP has not fulfilled its obligations, then surely the other parties to the proceedings have been far more remiss, and fairness to all can hardly be used as a basis to deny MVPP participation.

Finally, Mentor would urge the Board to fully address the standards for reopening the record. Although this intervenor observes with the Board that none of the issues have been litigated, it nevertheless maintains that the standards for reopening still applicable. Long Island

Lighting company (Shoreham Nuclear Power Station, Unit 1), CBP-83-30, 17 NRC \_\_\_\_\_, \_\_\_\_\_, slip op. p. 16 (June 22, 1983). Those standards for reopening the hearing are (1) whether the motion is timely, (2) whether it addresses significant safety (or environmental) issues, and (3) whether a different result might be reached if the proffered material were considered. Pacific Gas and Electric Co., (Diablo Canyon Nuclear Power Plant, Units 1 and 2) ALAB-598,11 NRC 876,879 (1980). This case represents a unique situation as to timeliness but as to the second and third prongs of the standards there can be no doubt that the subject matter deals with significant safety issues and that a different result might be reached if the material were to be considered in an adjudicatory setting. When balancing all the factors, a different result is indicated.

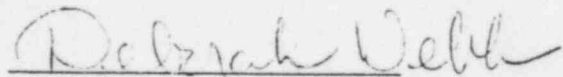
In short the Board has placed procedure over substance, legal niceties over the safety of the public. In spite of Applicant's and Staff's delays and obfuscations, the Board has chosen to single out the public and preclude them from participation. The results of this decision are not consistent with the totality of the findings, nor are the results consistent with public, national or NRC policy that protection of the public is paramount. Accordingly, Mentor urges the Board to:

1. find that MVPP has made a compelling showing that the operation of the plant will not be delayed by virtue of new proceedings,

2. find that MVPP has made a compelling showing that MVPP will assist in developing a sound record,

3. admit the eight contentions of quality assurance and character and competence by virtue of the above findings and to allow litigation upon proper refinement of those issues, or in the alternative, to find that, upon balancing the standards for reopening the record and the criteria for admission of late contentions, the public interest demands admission of the eight contentions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Deborah Webb", written over a horizontal line.

DEBORAH FABER WEBB  
Attorney for City of Mentor

Dated: October 13, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

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DOCKET NO. 50-358

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OFFICE OF SECRETARY  
LICENSING & SERVICE  
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APPLICATION FOR AN OPERATING LICENSE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing "City of Mentor's Memorandum in Support of MVPP's Petition for Reconsideration of the Board's September 15, 1983 Order" have been served upon the following by mailing first class, postage prepaid, this 13th day of October, 1983.

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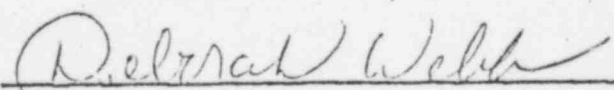
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