

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)	
)	
THE CINCINNATI GAS AND ELECTRIC)	
COMPANY, <u>et. al.</u>)	Docket No. 50-358
)	
(Wm. H. Zimmer Nuclear Power)	October 3, 1983
Station, Unit No. 1))	
)	
)	

MVPP's MOTION FOR EXTENSION OF TIME TO APPEAL
PENDING RESOLUTION OF MVPP
PETITION FOR RECONSIDERATION

On June 3, 1983, the Miami Valley Power Project (MVPP) filed with the Atomic Safety and Licensing Board a motion to reopen the record and to admit eight contentions concerning quality assurance at the Zimmer nuclear power plant.

On September 16, 1983, after receiving responses from Applicants and staff, and a reply brief from MVPP, the Board issued an Order denying MVPP's motion.

The normal deadline for filing an appeal to this ruling is October 3, 1983. (The Order, although dated September 15, 1983, was served, by first-class mail, on September 16, 1983. Adding five days for service by mail, pursuant to 10 CFR § 2.710, and the ten days contemplated by 10 CFR § 2.714(a), the first day which is neither a Saturday, Sunday nor holiday is October 3, 1983.)

MVPP considers it necessary and prudent -- for purposes of judicial economy and submission of legal arguments relevant for the Board's authority -- to request that the Licensing Board

reconsider its September 15 Order.

Therefore, MVPP respectfully moves the Atomic Safety and Licensing Appeal Board for a reasonable extension of time in which to file any appeal that may be necessary, up to and including the tenth day following the service of the Licensing Board's decision on MVPP's Petition for Reconsideration.^{1/}

This motion is submitted to insure against the possible loss of MVPP's rights. MVPP seeks to avoid loss of ASLB jurisdiction due to filing an appeal. On the other hand, if MVPP does not immediately appeal, it would risk losing the later right to appeal. Until the Licensing Board has ruled on MVPP's petition to reconsider, it would be speculative and premature to involve the jurisdiction of the Appeal Board.

Granting this request is reasonable and appropriate under Commission precedent. To begin with, the time limits in question are not jurisdictional, although the general policy is to enforce them strictly. Nuclear Engineering Co. (Sheffield, ILL. Low Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 160 (1980). Moreover, a reasonable extension of time is usually granted in a complicated case, such as this one, with a showing of good cause, as has been demonstrated here. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-154, 6 AEC 827 (1973).

If the Appeal Board chooses not to grant this motion, MVPP requests a reasonable time period following the Appeal Board's denial in which to appeal the Licensing Board's Order of September 16, 1983.

^{1/} This motion is submitted after consultation with the counsel to the Appeal Board to determine the proper course.

Respectfully submitted,

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Dated: October 3, 1983

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing "Miami Valley Power Project's Motion for Extension of Time to Appeal Pending Resolution of MVPP Petition for Reconsideration" have been served upon the following by mailing first-class, postage prepaid, this 3rd day of October, 1983.

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