

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 Station))

Docket No. 50-358 OL

MEMORANDUM AND ORDER RULING ON VARIOUS
MOTIONS AND RESCHEDULING EVIDENTIARY HEARING
(October 1, 1979)

1. By our Order Scheduling Resumption of Evidentiary Hearing, dated September 10, 1979, we scheduled the evidentiary hearing on MVPP's Contention 17 to be held on October 24-26, 1979. Subsequently, both the Applicants and Staff moved to strike Contention 17, and the Applicants have moved for summary disposition of that contention. MVPP has not responded to any of these motions (and we were advised by telephone last Friday that it does not intend to do so).

There might be ample justification for us to grant these motions. MVPP has advised us that its only proposed witness on this contention will not appear; and, indeed, he has refused to appear for the depositions sought by the Applicants and Staff. Moreover, MVPP has declined to answer interrogatories on Contention 17 propounded by the Applicants and Staff, respectively.

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Notwithstanding these considerations, the Staff, in its September 27, 1979 response to the Applicants' motion for summary disposition, makes the point that, in view of the "special posture" of this proceeding, it would seem appropriate to hold an evidentiary hearing on fire insulation material. By "special posture," the Staff was referring to the concern expressed by the Board at the last hearing that the matter of the adequacy of the fire insulation material had not been resolved on the record, as well as to the extensive hearings already held concerning alleged construction defects. (In its own previous motion to strike Contention 17, the Staff had indicated that, should the Board wish to hold a hearing concerning the protection of the cable trays from fire, the Staff would be prepared to address the issue at the next hearing session.)

We find the Staff's position advocating an evidentiary hearing to be well taken. In particular, we note that, in our Memorandum and Order which admitted the contention, we pointed out that the Staff was then not yet entirely satisfied with the Applicants' proposals concerning the cable tray insulation material (LBP-79-22, 10 NRC ____ (slip op., p. 4)). Although the Applicants have submitted substantial affidavits in support of their motion for summary disposition, nothing therein indicates that the Staff has approved the fire protection method chosen by the Applicants. (The most that they state is that the Applicants consulted with the Staff with respect to the most recent test of the insulation material.) In these circumstances, we believe that the

motions to strike or for summary disposition of Contention 17 should not be granted and that a public hearing on this issue should be held.

2. The Applicants and Staff each have moved that any hearing on this issue be rescheduled for no earlier than November. Availability of witnesses is the primary reason assigned. Good cause having been demonstrated, the hearing is rescheduled for November 14-16, 1979. The session on Wednesday, November 14, 1979, will extend from 2 p.m. - 9 p.m. (with a break for dinner). The sessions on November 15 and 16 (to the extent necessary) will commence at 9 a.m. and that on November 16 will adjourn no later than 4 p.m.

On November 14, 1979, prior to the evidentiary hearing, the Board will hear limited appearance statements from 9:30 a.m. until 12 noon, if necessary.

All sessions of the hearing will be held in the United States District Court, Room 805, U. S. Post Office and Courthouse, 5th and Walnut Streets, Cincinnati, OH 45202.

Direct testimony on the fire protection issue must be filed by Tuesday, October 30, 1979.

3. At the previous hearing on MVPP Contention 15, we granted the Staff permission to present additional information which was not then available, regarding the size of particles where welds on control rods have been ground. We have been advised by

telephone that the information in question is now available and that the Staff wishes to present it at the forthcoming evidentiary session. We grant the Staff permission to do so. This matter is tentatively scheduled for the evening session on November 14. Direct testimony on this matter should also be filed by October 30.

4. MVPP has filed a motion for us to schedule evidentiary hearings solely during evening hours, on the ground that MVPP's representation is being carried out on a voluntary, non-paid basis by individuals who have other employment obligations. The Applicants oppose the motion, on the grounds that the Board is available in Cincinnati only for limited periods of time, that the number of evening hours is limited, and that the Board and parties cannot be expected to perform up to their capacity during evening hours. The Applicants offer no objection to holding evening sessions in addition to daytime sessions.

We have elected to follow this latter course for the forthcoming hearing sessions. Although we sympathize with MVPP's position, we could not conduct the hearings efficiently if we were to limit hearing sessions to evening hours. MVPP's motion is accordingly denied.

5. MVPP has filed two motions (both dated August 24, 1979) which would have the effect of reopening formal discovery on

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Contention 13 (financial qualifications). As a basis for these motions, MVPP cites the increased costs and delayed fuel loading date reflected in Applicants' announcement of July 30 on this subject. The Applicants oppose the motions, noting that cost increases for nuclear power plants are the rule rather than the exception. If discovery is to be reopened, Applicants ask us to limit both the time available for and the scope of discovery. The Staff recommends that we authorize discovery relating to the ability of the Applicants to finance the recently announced increases in cost, including work yet to be performed and costs yet to be incurred.

We find that additional discovery on Contention 13, to the extent outlined by the Staff, is warranted, and we grant MVPP's motion on that basis. We note that additional costs arising from the Three Mile Island investigations, if any, will specifically be considered as relevant and open to discovery. Discovery may commence immediately and will extend until November 9, 1979, or 10 days following service of the Staff's SER Supplement (dealing with financial qualifications), whichever is later. Responses to interrogatories should be filed no later than 14 days after service of the interrogatories.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Charles Bechhoefer
Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland,
this 1st day of October, 1979.

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