

9/27/79

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
CINCINNATI GAS AND ELECTRIC  
COMPANY, et al.  
(Wm. H. Zimmer Nuclear Power  
Station, Unit No. 1)

Docket No. 50-358



NRC STAFF RESPONSE TO APPLICANTS' MOTIONS FOR SUMMARY DISPOSITION  
OF CONTENTION 17 AND TO VACATE THE ORDER SCHEDULING  
RESUMPTION OF THE EVIDENTIARY HEARINGS

The Licensing Board admitted on August 7, 1979 contention number 17 of Miami Valley Power Project (MVPP) which alleged, in summary, that the fire insulation material for cable trays was inadequate. MVPP stated it would produce Robert Hofstadter to testify in support of the contention. The NRC Staff and Applicant both served interrogatories upon MVPP and noticed Mr. Hofstadter for deposition. The Staff also served interrogatories upon Mr. Hofstadter. The MVPP informed the Staff and parties that Mr. Hofstadter would not appear as their witnesses on contention 17, would not appear for deposition, and would not answer interrogatories. In addition MVPP has not responded to the interrogatories of the NRC Staff or Applicants, although both the Staff and Applicants have responded to interrogatories of MVPP relating to their contention 17.

In view of the above, the Applicants have moved for summary disposition of, or to strike, contention 17.<sup>1/</sup> At the hearing the Licensing Board itself

<sup>1/</sup> The Applicants' motion for summary disposition was not served 45 days prior to the scheduled hearing as required by 10 CFR §2.749.

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expressed special concern that the matter of the adequacy of fire insulation material had not been resolved upon the record.

In view of the special posture of this proceeding where the Licensing Board has required a public presentation at hearing of alleged defects in the Zimmer facility (bolts on the traveling screen, damaged control rods, leaking pressure doors, etc.) it seems appropriate to hold an evidentiary hearing on fire insulation material. This would assuage the special concerns of the Licensing Board, permit the maximum possible public participation in the licensing proceeding, and, in pragmatic terms, it would take no more, or very little more, time and effort to resolve this matter in a day or two of evidentiary hearing than a day or two of arguments by counsel regarding the striking of the contention or summary disposition. Therefore, the Staff recommends that the Applicants' motions to strike and/or for summary disposition be denied. Staff counsel was informed by telephone on September 25, 1979 that MVPP is seeking expert witnesses (telephone call from Doug Gillman 9/25/79, 4:35 p.m.). It appears to the Staff that resolving the matter by hearing would be the most expeditious manner of treating the issue.

The Applicants have also moved to reschedule the hearing in November as its principal witness, Melvin S. Abrams, would not be available in October. The Staff recommends that the hearing be rescheduled in November. Mr. Abrams is an important witness as the author of Fire Protection Cable Tray Fire Test

performed by Construction Technology Laboratories, June 1979. This document provides a very important basis for acceptability of kaowool, the material proposed to be used in the Zimmer facility.

Respectfully submitted,

*Charles A. Barth*

Charles A. Barth  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 27th day of September, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANTS' MOTIONS FOR SUMMARY DISPOSITION OF CONTENTION 17 AND TO VACATE THE ORDER SCHEDULING RESUMPTION OF THE EVIDENTIARY HEARINGS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 27th day of September, 1979:

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