

for summary disposition would likely as not be granted. But an NRC licensing proceeding has another dimension: prior to closing out a safety issue such as is here involved, we must be assured not only that the parties' claims have been resolved but also that the public health and safety is satisfied. We would be remiss to settle for any less, particularly in the aftermath of the Three Mile Island accident. Furthermore, as we previously pointed out, the "special posture" of this proceeding lends support to the desirability of resolving safety issues after opportunity for public hearing and cross-examination.

The Applicants find fault in our failure to state explicitly that a "serious safety matter" exists, to justify making the adequacy of the insulation material a Board-sponsored issue. They claim that their affidavits, the Staff's answers to interrogatories, and the silence of MVPP "establish that there is no safety question." We disagree. The safety significance of an issue depends on the nature of the issue itself, not on the adequacy of measures proposed for resolving it. Protection of electrical cables from fire has safety significance. The adequacy of Kaowool, the material chosen by the Applicants for this purpose, including the sufficiency of the tests used to qualify this material, constitutes a serious safety matter. The apparent inadequacy of an early test used to justify the use of Kaowool (indicated by the Staff's rejection of such test), together with the litany

of alleged construction deficiencies which have accompanied the Zimmer construction project, constitutes an extraordinary circumstance within the meaning of 10 CFR §2.760a,^{1/} justifying our holding an evidentiary hearing on this question.

The Applicants alternatively seek other forms of relief "to avoid prejudice." As a result of MVPP's failure to respond to discovery requests, they would have us deny MVPP the opportunity to present direct testimony or conduct cross-examination. We agree that our October 1, 1979 ruling did not provide for discovery against MVPP. If MVPP is to present a direct case, the Applicants and Staff are entitled to pretrial discovery. We have already established October 30, 1979 as the date by which direct testimony on the fire protection issue must be filed. If MVPP is to file any direct testimony, we direct it also to provide, by the same date, responses to the Applicants' and Staff's previously filed discovery requests (except to the extent the answers are encompassed by the direct testimony itself). In particular, MVPP must identify and make available for inspection and copying any documents on which it intends to rely in its direct case.

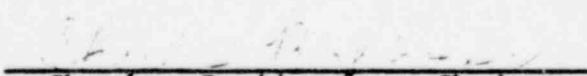
To preclude cross-examination on a Board-sponsored issue would be contrary to the practice sanctioned by Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2),

^{1/} 10 CFR §2.705(b)(2), cited by the Applicants in their motion, by its terms governs only issues sought to be raised by the Appeal Board.

ALAB-244, 8 AEC 857, 869 (1974), reconsideration denied, ALAB-252, 8 AEC 1175 (1975).^{2/} Moreover, the purpose of cross-examination in such circumstances is to assist the Board to resolve the issue before it. We welcome such assistance. We will insist that the cross-examination be strictly limited to the issue before us — the adequacy of Kaowool as an insulation material in the circumstances in which it is to be used at Zimmer, including the sufficiency of the tests used to establish such adequacy. In addition, MVPP is directed to identify (and make available) any documents it intends to use in its cross-examination, by Thursday, November 8, 1979 (assuming it is aware of the document by that date). The parties should be advised by telephone of such information.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland,
this 23rd day of October, 1979.

^{2/} In reviewing and affirming ALAB-252, the Commission itself emphasized the right of all parties to cross-examine on all issues in which they have an interest. CLI-75-1, 1 NRC 1 (1975). MVPP clearly has an interest in the fire protection issue.

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