



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
CINCINNATI GAS & ELECTRIC)	Docket No. 50-358 OL
COMPANY, ET AL.)	
(William H. Zimmer Nuclear Station))	

MEMORANDUM AND ORDER CONCERNING
MOTIONS TO POSTPONE EVIDENTIARY HEARING

By motion dated April 16, 1979 (filed on April 17, 1979) the Miami Valley Power Project (MVPP), an intervenor in this proceeding, seeks a delay in the evidentiary hearing which is scheduled to begin on June 19, 1979. MVPP also seeks additional time for discovery. On April 17, David Fankhauser, another intervenor, filed a motion seeking similar results. Finally, on May 1, 1979, we were advised by telephone by the City of Cincinnati, also an intervenor, that it was filing a motion seeking postponement not only of the evidentiary hearing but also of the prehearing conference scheduled for May 21-23, 1979. We have not yet received such motion. Because of the imminence of the prehearing conference, we are treating what we understand to be Cincinnati's motion at this time.

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The Applicants oppose all of the motions. The Staff objects to postponing the hearing on certain issues, as well as the prehearing conference, but asks us to defer ruling on various other issues. We find this approach to have merit. Accordingly, we deny the motions to postpone the commencement of the evidentiary hearing, although we reserve judgment on the precise issues which will be considered at that time. We also deny Cincinnati's motion to defer the prehearing conference.

The genesis of each of the motions before us is the recent Three Mile Island (TMI) incident. MVPP claims that no evidentiary hearings should be held prior to the availability of the report on TMI being prepared by a special committee appointed by the President, and a report on nuclear safety motivated by TMI being prepared by the Governor of Ohio. Dr. Fankhauser would delay the hearing pending the completion of NRC's own review of the TMI incident. Both intervenors recognize that the reactor under consideration here is dissimilar in many respects to the TMI reactor. But they claim that new requirements applicable to all reactors may eventuate from the reports in question and that those requirements may well impinge on areas which are the subject of the intervenors' contentions. MVPP

mentions the implications of new requirements on the Applicants' financial capability to operate the reactor, whereas Dr. Fankhauser points to monitoring requirements, warnings to the public of an accident, emergency and evacuation procedures, and the licensing of nuclear power station operators. We assume that Cincinnati's area of concern must be monitoring and emergency notification requirements, which are involved in all of its contentions.

The areas mentioned by the intervenors may well be candidates for new requirements. Particularly is this so with respect to monitoring and evacuation. We also recognize that, as MVPP points out, TMI-inspired requirements could have a financial impact on the Applicants. But it must be remembered that, as the Applicants point out, the Commission thus far has taken no action to impose new requirements on licensees of reactors other than those manufactured by Babcock & Wilcox Co., the TMI manufacturer, or to postpone the holding of evidentiary hearings or prehearing conferences. We, of course, must follow the regulations in effect at any given point in time. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 82-83 (1974). For that reason alone, we would elect not to postpone the prehearing conference.

There are also other reasons why we are electing not to postpone the prehearing conference. We previously announced that, at that conference, we would receive limited appearance statements pursuant to 10 CFR §2.715(a). See 44 Fed. Reg. 22229 (April 13, 1979). Significant numbers of persons have requested the opportunity to make such statements. We agree with the Staff that fairness to persons relying on our notice regarding limited appearance statements calls for that aspect of the conference to take place as scheduled.

At the forthcoming prehearing conference, we intend to discuss with the parties the likelihood of new standards in the areas pointed to by the intervenors. We ask the Staff in particular to update the discussion appearing in its response to the instant motions as to whether new standards in various areas are under consideration and, if so, the projected timing for their release. After such inquiry, we will better be able to judge whether the hearing on some or all of those issues should be postponed.

Finally, the Board has a number of questions concerning the Applicants' motions for summary disposition and MVPP's request to add a new contention. We would expect to discuss these matters with the parties at the conference.

We are, of course, under an obligation to conduct proceedings expeditiously, consistent with achieving an appropriate record for decision. The developments at TMI might well require postponement of the hearing on certain issues in the public interest. But, as the Staff points out, there are several issues as to which TMI seems to have no bearing — e.g., the conformance of the facility to the design objectives of 10 CFR Part 50, Appendix I (contentions 1 and 6), need for power (contention 11), uranium supply (contention 12), the welding of cable trays (contention 14), the manufacture of control rods (contention 15), and the control rod seals (contention 16). It has long been Commission policy to hold evidentiary hearings on subjects which are ripe for resolution but to defer hearings on other issues. See 10 CFR §§2.761a; 50.10(e); Part 2, Appendix A, para. I (c)(1); Douglas Point, supra, ALAB-277, 1 NRC 539, 550, 552 (1975). We see no persuasive reason why at least these issues should not be heard at the time previously scheduled. Absent explicit directions to the contrary from the Commission or the Appeal Board, we decline to postpone these issues. Our decision on the others is deferred until after the prehearing conference.

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For these reasons, the motions for postponement of the evidentiary hearing are denied insofar as they bear on contentions 1, 6, 11, 12, 14, 15 and 16. With respect to other contentions (which are the only ones as to which TMI would seem to have any bearing), we reserve judgment.

We are issuing a Notice of Evidentiary Hearing, providing for the commencement of the evidentiary hearing on June 19, 1979.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland,
this 11th day of May, 1979.

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