

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

CINCINNATI GAS AND ELECTRIC COMPANY, ET AL.

(William H. Zimmer Nuclear Power Plant,
Unit No. 1)

Place - Cincinnati, Ohio

Date - 21 May 1979

Pages 121 - 214

2276 175

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the matter of: :

CINCINNATI GAS AND ELECTRIC COMPANY, et al. : Docket No.50-358

(William H. Zimmer Nuclear Power Plant, :
Unit No. 1) :

Courtroom Number 2,
U. S. Court of Appeals,
U. S. Post Office and
Courthouse,
Fifth and Walnut Streets,
Cincinnati, Ohio 45202.

Monday, May 21, 1979.

The prehearing conference in the above-entitled matter was convened, pursuant to notice, at 2:00 p.m.

BEFORE:

- CHARLES BECHHOEFER, Esq., Chairman,
Atomic Safety and Licensing Board.
- DR. FRANK F. HOOPER, Member.
- MR. GLENN O. BRIGHT, Member.

APPEARANCES:

On behalf of the Applicants:

- TROY B. CONNER, Jr., Esq. and MARK J. WETTERHAHN, Esq.,
Conner, Moore and Corber, 1747 Pennsylvania Avenue,
N.W., Washington, D. C. 20006.
- WILLIAM J. MORAN, Esq. and DANIEL W. KEMP, Esq.,
Cincinnati Gas & Electric Company, P. O. Bcx 960,
Cincinnati, Ohio 45201.

1 On behalf of the NRC Regulatory Staff:

2 CHARLES A. BARTH, Esq. and LAWRENCE BRENNER, Esq.,
3 Office of the Executive Legal Director, U. S.
4 Nuclear Regulatory Commission, Washington, D. C.
5 20555.

6 On behalf of Intervenor David Fankhauser and Clermont
7 CountyCommunity Council:

8 JOHN D. WOLIVER, Esq., Box 181, Batavia, Ohio
9 45103.

10 On behalf of the City of Cincinnati:

11 W. PETER HEILE, Esq., THOMAS A. LEUBBERS, Esq. and
12 DONALD B. LEWIS, Esq., Room 214, City Hall,
13 Cincinnati, Ohio 45220.

14 On behalf of Intervenor Miami Valley Power Project:

15 LEAH S. KOSIK, Esq., JAMES FELDMAN, Esq. and STEVEN
16 SHANE, Esq., 3454 Cornell Place, Cincinnati, Ohio
17 45220.

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P R O C E E D I N G S

CHAIRMAN BECHHOEFER: I guess we're ready to begin.

This is a prehearing conference in the matter of the application for an operating license of the Cincinnati Gas and Electric Company. This conference was noticed some time ago in the Federal Register. I believe all parties are represented today.

I would like to introduce the Board first. On my left is Dr. Frank Hooper. He's an aquatic ecologist with the Ecology Fisheries and Wildlife Program of the School of Natural Resources of the University of Michigan.

On my right is Mr. Glenn Bright, a nuclear engineer with the Nuclear Regulatory Commission.

My name is Charles Bechhoefer. I'm an attorney and a full-time member of the Atomic Safety and Licensing Board Panel of the Nuclear Regulatory Commission also.

I would like the representatives of the parties to introduce themselves for the Reporter. We'll start from left to right.

Mr. Woliver.

MR. WOLIVER: I'm John Woliver, and I'm Counsel for David Fankhauser.

CHAIRMAN BECHHOEFER: The Applicant?

MR. CONNER: If the Board please, on behalf of the Applicant, my name is Troy B. Conner, Jr.

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b2 1 Appearing with me is Mark J. Wetterhahn, of our
2 firm of Conner, Moore and Corber.

3 Also appearing on behalf of the Applicants is
4 Mr. William J. Moran, General Counsel, and Daniel W. Kemp,
5 attorney for Cincinnati Gas and Electric Company.

6 Our addresses are in the record.

7 MR. HEILE: Mr. Chairman, may it please the Board,
8 on behalf of the City of Cincinnati, Mr. W. Peter Heile,
9 Assistant City Solicitor.

10 I would also like to enter the appearance of
11 Thomas A. Leubbers, City Solicitor, and of Mr. Donald B. Lewis,
12 who is with us today in these proceedings and who will act as
13 co-Counsel in the future. Our addresses are noted in the
14 filings.

15 Thank you.

16 MR. BARTH: Mr. Chairman, I am Charles A. Barth.
17 I'm employed by the Office of the Executive Legal Director of
18 the Nuclear Regulatory Commission.

19 I have with me today Mr. Lawrence Brenner of the
20 same office. Our office is located in Bethesda, Maryland.
21 Together we jointly represent the Nuclear Regulatory Commission
22 Staff in this proceeding.

23 MS. KOSIK: Mr. Chairman, my name is Leah Kosik.
24 I am representing Miami Valley Power Project.

25 With me as co-Counsel is Mr. Jim Feldman and

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b3 1 Mr. Steven Shane.

2 CHAIRMAN BECHHOEFER: As we know, several days ago
3 the Board ruled on the various motions before us to delay the
4 evidentiary hearing. The Board denied the motions insofar as
5 they dealt with certain issues which the Board felt would not
6 be affected by anything arising out of the Three Mile Island
7 incident.

8 The basis of the motions had been that Three Mile
9 Island required a delay of the proceeding. In responding to
10 both this motion and the Applicants' motion for summary
11 disposition, the NRC Staff indicated that there may be further
12 Commission action, particularly in certain areas such as
13 evacuation and monitoring which are the subject of a number of
14 the admitted contentions in this proceeding.

15 The Board would like to hear from the Staff insofar
16 as it knows what the progress of either the Staff or the Com-
17 mission is on either coming out with new standards or deciding
18 not to. What is the status?

19 MR. BARTH: Mr. Chairman, the Commission has ap-
20 pointed a Special Task Force to assess the consequences of Three
21 Mile Island and its implications upon existing operating reactors
22 and proposed reactors. As of this time, the Commission has not
23 made a final assessment of what has happened at Three Mile
24 Island.

25 The Staff, in lieu of this, looked at the contentions

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b4 1 submitted by the various parties and came to the conclusion that
2 the only possible impacts would be in the area of monitoring
3 and evacuation emergency plans.

4 This is why we took the position that it would be
5 precipitous at this time to go ahead. The Commission has taken
6 no action in those two areas, either in its Special Task Force
7 or the Commission itself has not given any indication that it
8 will make any changes.

9 We of course have a proposed amendment to Appendix
10 E which is the emergency plan section, but that will not be
11 impacted by Three Mile Island.

12 CHAIRMAN BECHHOEFER: That's in effect right now.

13 MR. BARTH: That's right.

14 So we took a look at the contentions, and we felt
15 strongly we should single out the radiological monitoring and
16 the emergency plans which are the only contentions that we felt
17 could be impacted by Three Mile Island.

18 Again, this does not represent the Commission's
19 position; it is only the Staff's position at the present time.
20 Such contentions such as need for the facility or whether or
21 not the control rods are properly manufactured we do not feel
22 can possibly be impacted by Three Mile Island. We felt we
23 should go ahead on all the issues which we can go ahead on, and
24 defer for the moment consideration of those issues which may
25 be impacted by Three Mile Island.

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eb5 1 CHAIRMAN BECHHOEFER: Do you have any idea when
2 the Commission is likely to come out with either a preliminary
3 assessment or a final assessment?

4 MR. BARTH: No, sir.

5 CHAIRMAN BECHHOEFER: I mean in the two areas that
6 you mentioned.

7 MR. BARTH: No, sir. The Commission's Special
8 Task Force has not yet completed a detailed chronology of
9 events that took place at Three Mile Island. Until this is
10 done, of course the Commission won't go forward with its
11 assessment. But I do not have any kind of date for you as to
12 when the Commission expects to, or the Commission Staff expects
13 to have a preliminary assessment made.

14 CHAIRMAN BECHHOEFER: Is it possible to come up
15 with any sort of a time-- What I'm trying to find out is when
16 we could perhaps plan to go to hearing on those issues.

17 MR. BARTH: I understand what you're asking,
18 Mr. Chairman, and I'm embarrassed to say that I have no firmer
19 answer than what we do have. Part of this of course you realize
20 will be impacted by the hearings before the various Congressional
21 committees, and I'm certain the Commission will not take a
22 final position until the Congressional hearings are fully done,
23 completed.

24 CHAIRMAN BECHHOEFER: One question I would like to
25 ask the Applicant and the Staff as well, if they have any other

1 knowledge, is what is the current status of construction? What
2 date, at this stage, are you aiming at for fuel loading?

3 MR. CONNER: The answer to the first question is
4 92.6 and the answer to the second is early December by the
5 present planning.

6 MR. BARTH: Mr. Chairman, we were not prepared to
7 answer this question. I would like the opportunity to consult
8 with our Chicago Inspection and Enforcement people who inspect
9 the plant as to the state of construction and to respond in
10 writing if I may as to when fuel load and operation will become
11 practical for the plant.

12 CHAIRMAN BECHHOEFER: These dates do have an impact
13 on how long a delay-- Certainly to make early December, there
14 can be some delay in the hearing date that we set for the
15 issues that you want reserved. What I'm trying to do is find
16 if there is a date when we could-- It doesn't have to be a
17 precise date as of now, but if we set a hearing we would like
18 to set it at sufficient time so that we could come out with a
19 decision in time for proposed fuel loading.

20 Mr. Barth, I do have ~~one~~ one more question on the
21 timeliness of new proposals. This is completely unofficial but
22 one of The Washington Post articles yesterday in the paper
23 said that the Staff was going to the Commission this week on
24 certain proposals. Do you have any idea-- Without identifying
25 what they were,-- I don't know how reliable the particular

1 Washington Post article was, or is.

2 MR. BARTH: We're familiar with the article,
3 Mr. Chairman, but the substance behind it we're not familiar
4 with. As you know, there has been a continuing dialogue be-
5 tween the five Commissioners and the Staff, almost on a weekly/
6 daily basis.

7 CHAIRMAN BECHHOEFER: At this stage there are a
8 number of motions outstanding dealing with discovery. It is
9 the Board's position that when one party moves for a protective
10 order and the other party doesn't respond, the protective order
11 ought to be granted because basically discovery is a matter
12 between the parties involved, and the Board will step in when
13 it is asked to do so. But if the party against whom the pro-
14 tective order is sought doesn't respond, the Board is inclined
15 to just grant the protective order. We did this on a couple of
16 motions in the past.

17 The motions that I have before me, there's an
18 April 9th motion of Miami Valley, objecting to certain of the
19 Applicants' third set of interrogatories. The Staff supported
20 that one. So far as I can see, the Applicants did not respond
21 to that one, so we would be inclined to grant that motion of
22 Miami Valley.

23 There's an Applicants' motion dated April 6th which
24 objected to certain of Miami Valley's second set of interroga-
25 tories. I don't think there has been any response to that

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1 motion, so we would grant the Applicants' motion in that re-
2 gard.

3 On April 16th, Miami Valley sought to extend the
4 discovery on its Contention 13, based on new requirements moti-
5 vated by Three Mile Island. We think we should await a ruling
6 on that until we see whether the Commission has any new require-
7 ments that could have a substantial financial impact. If there
8 are, then we would take action on that at that time.

9 The Board would like to hear the various parties'
10 positions on the next motion which we have on our list which
11 is Miami Valley's request to inspect certain portions of the
12 plant. The Applicants have objected to that and made some pro-
13 posals with regard thereto.

14 We would like to hear first Miami Valley's explana-
15 tion of what the inspection would be designed to reveal, and
16 whether it could be confined in any way from the fairly board
17 request which was in your motion.

18 I would like to hear from the Applicant on that
19 after you've had a chance on that.

20 The Staff also. We would like the Staff views on
21 that, if they have some.

22 MS. KOSIK: Miami Valley has requested to inspect
23 the cable trays, particularly the welds on the vertical fittings,
24 the control rods and the seals on the control rods. Now these
25 three items are the subject of three of our contentions and we

1 have evidence from individuals who have worked on these various
2 items and they have given us evidence from their own observa-
3 tions that the manufacturing has not been properly done.

4 The Applicant has responded to our discovery by
5 saying that these items are properly manufactured, and we felt
6 that the best way to determine the truth of that matter would
7 be to have an inspection and to look at these parts and see
8 exactly how they were manufactured.

9 CHAIRMAN BECHHOEFER: Do you expect that a visual
10 inspection could reveal whether they were properly manufactured
11 or not?

12 MS. KOSIK: We would be bringing with us experts
13 to do that observation, who hopefully could tell something
14 from the observation.

15 Now on the control rods and the seals, our conten-
16 tion is that the control rod blades do not meet the size
17 specifications and it seems that a measurement of those, the
18 blades, would reveal whether or not they do meet the specifica-
19 tions.

20 On the seals, we're contending that they are too
21 rough to meet specifications. And again it seems that an in-
22 spection would reveal whether or not they meet the specifica-
23 tions.

24 Admittedly it may be difficult at this point to
25 determine how well the welds that are in question have been

eb10 1 done because, as I understand, they've been galvanized. But
2 part of our contention that weighs very heavily on that matter
3 is how much cable has been loaded into those cable trays and
4 visual inspection would also give us some idea as to whether
5 or not there is too much cable in there for what it is designed
6 to hold.

7 Again, we have made some discovery on these ques-
8 tions but the answers have not really given us very clear
9 answers.

10 So for these reasons we would like to go in and
11 have a visual inspection of those items.

12 DR. HOOPER: As a result of these inspections, is
13 it possible that you would withdraw your contention on these
14 matters? Would that be one of your objectives?

15 MS. KOSIK: If everything were done properly, we
16 would have no reason to raise the contention.

17 But as I pointed out, we have evidence from workers
18 that these items do not meet the specifications. Now if we see
19 they do meet the specifications, then some mistakes have been
20 made and we would withdraw.

21 DR. HOOPER: You would have technical expertise
22 there which could make some judgments as to whether the workers'
23 statements were correct or were incorrect? Is that right?

24 MS. KOSIK: Yes, if our motion to inspect is granted,
25 we will obtain expertise to accompany us to do the examinations.

b11 1 CHAIRMAN BECHHOEFER: Mr. Conner, do you want to
2 address that subject?

3 MR. CONNER: Yes, sir.

4 If your Honor please, we of course filed a response
5 to that motion dated, if I can find it, dated May 3rd, 1979,
6 which sets forth our basic position. But in the first place,
7 we think the motion is truly burdensome in that we believe that
8 these Intervenors have no idea of what they are talking about
9 in terms of examining control rods which are already in place,
10 for example.

11 They I do not believe have any idea that they're
12 talking about literally hundreds of feet of cable trays. I
13 don't think they appreciate the fact that the cable trays them-
14 selves are not even Class 1 equipment. I am sure they do not
15 appreciate the fact that all of these components, as well as
16 every other component in the plant, must meet the specifications
17 which are applicable to them, whether they be ASME or IEEE or
18 what-have-you, and that the NRC's Division of Inspection must
19 be satisfied with the adequacy of this equipment.

20 I am sure they do not understand that these must
21 meet our own QA/QC program which must assure that every compo-
22 nent in there meets specifications.

23 What they want to do would require I don't know how
24 many man-years of work which would be undone and have to be re-
25 done for something that they have shown no need to do.

1 Secondly, they have said technical expertise would
2 be available to examine it. However, I somewhat doubt that
3 they have technical expertise available or they would appre-
4 ciate the magnitude of their request and the fact that the de-
5 sign of the cable trays is quite different than they seem to
6 believe.

7 For these reasons and the other things that we have
8 stated in our motion, we think that it clearly should be denied.

9 It is also rather late in the game to do the kind
10 of -- oh, discovery, visual or otherwise, that they're talking
11 about doing here.

12 CHAIRMAN BECHHOEFER: Does the Staff have any
13 comment?

14 MR. CONNER: I would like to add one point.

15 If this were allowed, we would strongly urge that
16 it not be done without them posting bond under the protective
17 order we have talked about in this because there would be an
18 immense cost added to the plant which the ratepayers and the
19 people in this area will ultimately have to pay, so we don't
20 think that this type of mischief should be allowed except at
21 their own expense.

22 CHAIRMAN BECHHOEFER: Would the visual type of
23 inspection that they're talking about alone involve this ex-
24 pense?

25 MR. CONNER: Sir, the type of visual inspection of

013 1 control rods -- I don't have any idea what they mean there,
2 nor do we. Obviously some cable trays are more visible than
3 others and are more accessible than others. We don't know what
4 they want. This is an open-ended request. There is no parti-
5 cular specificity to it.

6 They are aware presumably if they read the material
7 we furnished of the strength tests that were performed by the
8 Commission on those cable trays, so I'm not really sure what
9 else they're looking for.

10 CHAIRMAN BECHHOEFER: Ms. Kosik, is your request
11 limited by any chance to those components of the type men-
12 tioned which could be visually observed without deconstructing
13 or....

14 MS. KOSIK: Obviously I don't have detailed infor-
15 mation on the whole setup, but my understanding is that not
16 all the control rods would have been already put into place.
17 And if so, I would guess that they could be removed without that
18 much difficulty since part of the operation of the plant does
19 involve removing the control rods and putting them back and
20 forth.

21 We're talking about measuring these rods, the
22 blades on the rods, to see whether or not they meet the size
23 specifications. That doesn't seem like it would require de-
24 constructing the plant.

25 The seals which are part of the control rods are

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b14 1 supposed to be a certain smoothness and it seems that a visual
2 examination or touching it and comparing it with a sample of
3 how smooth it's supposed to be, which is how the workers did
4 their examination in the first place, would be available to us
5 just as easily once these rods were simply made available.

6 Again, on the cable trays, we don't propose to rip
7 apart the welds right now. We would contend that that would
8 be necessary in light of the evidence that we received. But
9 we would at least want to visually inspect the cable trays and
10 see how much cable is loaded into those trays because if those
11 welds are even questionably improperly performed, overloading
12 of any nature would cause it to be an even greater safety
13 problem.

14 Now Mr. Conner has stated that the NRC inspectors
15 have to be assured of compliance before they allow a piece of
16 equipment to be installed and also that the Applicant is re-
17 quired to meet quality assurance. We would contend that this
18 is a circular argument. It is obvious that the Applicants are
19 going to say everything is properly done. There would be no
20 purpose for Intervenor if Applicants were going to come forth
21 with the problems that exist.

22 Regarding the burdensomeness of our request, we
23 feel that if our contentions are correct there's a great deal
24 of the safety of the citizens in the area involved and therefore,
25 the burden to these citizens certainly is as great as the

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1 burden to the Applicants in terms of meeting our request.

2 Again because of the burden to the safety of the
3 citizens that live in this area, we feel that no bond should
4 be required. Again, we're not looking to deconstruct the plant.
5 We don't anticipate any great expenses to the Applicants,
6 other than just going in there with some experts, measuring the
7 control rods, inspecting the seals, and inspecting the cable
8 trays and the loads in the cable trays.

9 MR. CONNER: I would ask the Board, in view of
10 Ms. Kosik's statement, to take official notice of the fact that
11 visual inspection would not be able to detect variations in
12 tolerances of thousandths of an inch or less, and that the same
13 would be true for the welds on cable trays which, by the way,
14 are largely bolted as well as a few welds here and there.

15 I would also note that if the Intervenors wanted
16 to get into this type of thing, inspect it at the last minute,
17 they could have done so earlier. They've been in this case
18 now for well over three years, and this is kind of late to get
19 into things, which, by the way, are all installed in terms of
20 the control rod drives.

21 CHAIRMAN BECHHOEFER: My understanding of that is
22 that they were only informed of what they consider potential
23 defects -- I think it was in March that they were informed by
24 workmen. They are new contentions.

25 Does the Staff have any comment on the inspection

1 request?

2 MR. BARTH: Mr. Chairman, I prefer to let the
3 Applicant and the Miami Valley fight this one out. We take no
4 position.

5 I would make an observation that we had people at
6 the plant on September 18th to the 22nd, and 28th and 29th.
7 These are three inspectors who are qualified in this kind of
8 thing. They spend 143 inspection hours on cable trays alone.
9 And I wonder whether the site visit which is normally held
10 approximately this time before a hearing is a proper place to
11 start going and trying to make this kind of an inspection.

12 This is a very complicated matter. It's the advan-
13 tage we have, and the technical expert on the Board will under-
14 stand it is not just a matter of going and looking at the plant.
15 It's a very, very difficult matter. We have a great many in-
16 spection hours, and 143 hours in September are only part of
17 our inspection effort on the cable trays.

18 Whether this is an inconvenience or a burden on
19 the Applicant, I think I had best leave to the Board to deter-
20 mine.

21 CHAIRMAN BECHHOEFER: Ms. Kosik, do you have any
22 reason or can you give us some reason why you think your ex-
23 perts, in a fairly limited type of inspection, could find out
24 more than the Staff's 143 hours, or whatever it was?

25 MS. KOSIK: Just that it would be an impartial

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eb17 1 inspection that would take place, and from an outside and im-
2 partial party which is an Intervenor.

3 Additionally, to respond to some of Mr. Conner's
4 remarks, we're not talking about just looking at it and seeing
5 whether, you know, it's within a thousandth of an inch. Ob-
6 viously some measuring devices would be used to do this testing.

7 What we're saying is we're not going to take
8 everything apart.

9 MR. BRIGHT: Mr. Conner, are all the trays fully
10 loaded now? I don't mean 100 percent but let's say 95 percent,
11 98 percent, --

12 MR. CONNER: Yes.

13 MR. BRIGHT: -- something like that? Have any of
14 them shown any evidence of any kind of failure during this
15 loading process?

16 MR. CONNER: No, sir. In fact, after these earlier
17 charges that Ms. Kosik referred to were made, the Staff came
18 in and did destructive tests and we provided--

19 MR. BRIGHT: You say did destructive tests?

20 MR. CONNER: Yes. And we attached that report to
21 one of our filings, if I can find it here....

22 Yes, we attached information from two tests. The
23 one we're finding right here is on the insulation material.

24 There are references to the destructive tests in the filing.

25 If you'll give us a minute I'll give you that reference.

eb18 1 This is attached to our response to MVPP's third
2 set of interrogatories dated May 14th, 1979. Attached to this
3 we have placed an Inspection Report by Region 3 of the NRC's
4 Office of Inspection and Enforcement on -- several dates. The
5 latest one is 12/21/78, which provides the type of inspection
6 and destructive testing which was performed on these cable
7 trays after they were originally charged by Mr. Hofstadter, I
8 think. And I think this answer is fully despositive, and if
9 we had time, we would make a motion for summary disposition
10 based solely on this report.

11 Does that answer your question?

12 MR. BRIGHT: Yes. Thank you.

13 Turning to the rods and the seals, now are all the
14 rods installed --

15 MR. CONNER: Yes, sir.

16 MR. BRIGHT: -- in the reactor?

17 MR. CONNER: Yes, sir.

18 MR. BRIGHT: I have to fault myself. When I
19 saw the request to inspect the seals, in my experience the seal
20 is usually not a part of the moving object, and now I find
21 something that I probably should have thought of some time ago,
22 that the seal is on the rod itself. It's a part of the rod.
23 It's a polished section of the rod?

24 MR. CONNER: That's my understanding, sir. It's
25 part of the mechanism, not the blade, I've just been informed.

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1 MR. BRIGHT: Part of the mechanism and not the
2 blade.

3 MR. CONNER: May we have just a minute?

4 (Pause.)

5 I'm not sure I can explain that. It's at the base--
6 Wait a minute.

7 (Pause.)

8 It's at the base of the control rod. It serves as
9 a back seat, I am informed, and protects the maintenance people.
10 It has no safety significance.

11 MR. BRIGHT: Well, let's see. If you remove a rod,
12 you would have to take the whole mechanism out to inspect the
13 seal?

14 MR. CONNER: If I may have a moment?

15 (Pause.)

16 You would have to take the whole rod out.

17 MR. BRIGHT: This includes the actuating mechanism?

18 MR. CONNER: No.

19 MR. BRIGHT: Not the actuating mechanism, just the
20 rod itself?

21 MR. CONNER: Yes.

22 MR. BRIGHT: One other question: Do you have any
23 spare rods?

24 MR. CONNER: Yes, sir.

25 MR. BRIGHT: Well, what is the condition of the

1 primary system? Does it have fluid in it?

2 MR. CONNER: Yes.

3 MR. BRIGHT: It is water full?

4 MR. CONNER: Yes.

5 MR. BRIGHT: Thank you.

6 MS. KOSIK: Mr. Chairman, I'd like to respond to
7 a couple of statements by the Applicant.

8 First of all, in regard to the destructive tests
9 that the Applicant performed or had performed, they never --
10 none of those tests included vertical fittings, and our con-
11 tention specifically relates to the vertical fittings of the
12 cable trays. Those welds are much more significant and those
13 are the welds that we are claiming were performed by uncertified
14 welders.

15 Those welds, to our knowledge, have never been tested
16 by destructive tests.

17 Additionally, referring to the report that Appli-
18 cant attached to their answers to Miami Valley's third set of
19 interrogatories, there are a few paragraphs in there that, by
20 my reading, indicate that the welders were in fact not fully
21 certified to do the welds.

22 Now the basis of our contention is that these welds
23 cannot at this point be visually inspected as many welds can
24 be often, and we're not talking about destructive tests, but
25 we're taking it a step back and saying that if the welders were

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1 unable to perform welds with fusion, we can therefore logically
2 assume that many or most of those welds are not welds with
3 fusion; therefore, they don't meet the specifications and they
4 can't be counted on to hold up under the pressure that they'll
5 be given.

6 MR. BRIGHT: Well, Ms. Kosik, I'm a little con-
7 fused. You said you can't really do a very good visual in-
8 spection because the things are galvanized or something like
9 that. If you can't do that, how are you going to tell whether
10 a weld has good fusion?

11 MS. KOSIK: What we hope to determine by visually
12 inspecting the cable trays is the degree of loading of cables.
13 We have information that customarily cable trays are not
14 loaded more than about two-thirds full, yet these cable trays
15 have been observed to be overloaded. If the sides come like
16 that, then the cables go like that (demonstrating), overloading
17 it. That's what we propose to see by visual inspection.

18 And again just speaking logically, the more weight
19 there is, the stronger the welds have to be and the more im-
20 portant it is that those welds are properly performed.

21 MR. BRIGHT: Well, let me ask you this: If you put
22 the cables in in nice, straight, level strings, very carefully,
23 say up to 70 percent or whatever the figure you quoted was,
24 and then on the other hand you kind of piled them in there,
25 which I understand some people are doing these days just to get

1 a little more circulation through and therefore, reduce the
2 chance of overheating the cables, it would appear to me that
3 with the same weight you would have a higher bunch of cables.

4 MS. KOSIK: It seems there would be a greater weight
5 if there are more cables.

6 MR. BRIGHT: I didn't say more. If they are piled
7 all over one another instead of being laid out in nice, neat,
8 orderly strings, then there is a possibility that the same
9 amount of weight could extend up above the top of the trays.

10 MS. KOSIK: In terms of how they're piled in there?
11 Is that what you're saying?

12 MR. BRIGHT: What I'm trying to do is get to the
13 bottom of what is the real value of the visual inspection with
14 some knowledge of how difficult it is.

15 MS. KOSIK: Well, a visual inspection would also
16 show us whether or not they are neatly in there, or just neatly
17 in there but still overloaded. I think it would show us just
18 how much cable is in there, and therefore, how much weight
19 there is on these welds.

20 MR. BRIGHT: Thank you.

21 MR. CONNER: I hate to keep prolonging this, adding
22 on, but Ms. Kosik makes the point that she wants to talk about
23 the vertical cable trays. The vertical cable trays and the
24 other cable trays are all the same. One is put this way and
25 one is put that way (demonstrating), and they are still the same

023 1 cable trays. And these were the ones-- The test results would
2 be equally applicable to trays, whether they're vertical or
3 horizontal, except obviously the vertical trays would not have
4 any weight-bearing capacity.

5 On the overload point, they all have to meet the
6 spec of 40 pounds per square foot limit, and that would be
7 the governing factor to determine how many would be in there,
8 and that has been met and that is reflected here in our answers
9 to their interrogatories.

10 I want to go back to the point of certifying welders.
11 You don't have to certify welders because this is not Class 1
12 equipment. It is just not applicable. The requirements of
13 ASME for safety grade equipment is simply not applicable to
14 cable trays.

15 CHAIRMAN BECHHOEFER: Mr. Conner, would there be
16 much burden on the Applicant for the technical inspection
17 Ms. Kosik just described to look at the cable trays and see how
18 they're loaded? Maybe not 100 percent of them but a representa-
19 tive number?

20 MR. CONNER: As the Board will see tomorrow,
21 presumably, there are hundreds of feet of cable trays in here,
22 and they're installed and they are in rooms and places and not
23 exactly easily accessible places. And for someone to do what
24 the Intervenors say they want to do, inspect all of these, would
25 be quite a burden. It would be very disruptive to the job and

b24 1 would cost everybody a great deal of time and money and cer-
2 tainly impair getting it done without any advantage to safety.

3 Perhaps tomorrow, when I assume one of their
4 Counsel will go to the site visit with the Board, they might
5 realize what's involved here.

6 But I would come back to the point that Ms. Kosik
7 did not respond to my point on anybody having any real techni-
8 cal expertise to tell anything if we look at those trays. I
9 mean Ms. Kosik may be more of a technical expert than I am,
10 but if I went out there and looked at those trays, I wouldn't
11 be able to tell you much about them.

12 CHAIRMAN BECHHOEFER: One further question,
13 Mr. Conner. Does this Board have authority to impose a bond?

14 MR. CONNER: Yes, sir. I think receiving this
15 late request or the request given at the time it has been given
16 certainly allows -- would be an exercise of discretion to grant
17 it, and if the Board were going to grant it, I think it has a
18 duty to protect the people of the service area involved here
19 for the Applicants, and this would be a reasonable condition
20 of allowing such an examination to take place.

21 I don't know that you have authority to unilaterally
22 order the imposition of a bond, but I think you certainly have
23 the authority to impose it as a condition of a request that
24 somebody has made.

25 CHAIRMAN BECHHOEFER: I'd like to hear both Miami

1 Valley and the Staff on our authority, on the point relating to
2 our authority on this to impose a bond.

3 MS. KOSIK: Mr. Chairman, we're not at this moment
4 sure whether or not the Board would have authority to grant
5 this bond. We will look into that matter.

6 However, I would like to point out that granting
7 such a bond would be very burdensome to our group, which is a
8 citizens' group, without very many resources. And in light of
9 the type of inspection we're talking about, it doesn't seem
10 that there is really any need for it. It seems pretty clear
11 that we would be guided to the various items that we want to
12 examine by the Applicants' agents and so forth, and it appears
13 to us that it would be burdensome and unnecessary.

14 CHAIRMAN BECHHOEFER: Mr. Barth or Mr. Brenner, as
15 the case may be?

16 MR. BARTH: Mr. Chairman, the rules and regulations
17 do not provide for bond to cover expenses of discovery. I think
18 the normal course of experience in the agency has been that
19 those who are discovered against have to carry the reasonable
20 costs of discovery. If you discover against my agency, the
21 papers, the xerox, we understand the inspection reports, these
22 things cost money.

23 Whether the Board can impose a bond for costs in
24 excess of normal discovery costs, normal inspection costs, I
25 just do not know. I would prefer to request time to submit a

1 position by the Staff at a later date.

2 I do think there's no question you have the
3 authority explicit to control the conduct of the proceeding, and
4 should you determine that excessive costs are being incurred
5 in discovery, it seems to me you certainly have the authority
6 to protect the party by a protective order, an order which would
7 say discovery may be had if costs are paid. I would not think
8 you could order that costs be paid but you could prohibit
9 discovery in the absence of costs to the protective party. This
10 goes to any party.

11 But again, before we would take a definite position
12 on the bond I would certainly like to have permission to submit
13 a position in writing.

14 CHAIRMAN BECHHOEFER: The Board is not going to
15 rule on this particular motion this afternoon. We would like
16 to proceed.

17 I think the next document we have before us-- I
18 think Miami Valley inquired as to the form of the contention
19 we had admitted, and we had intended to admit the contention
20 in its revised form. I guess we didn't make it clear in our
21 order admitting it. We admitted it after we received your
22 revision and it was intended that that form be the one admitted.

23 MR. CONNER: I'm sorry, we couldn't hear you,
24 Mr. Chairman.

25 CHAIRMAN BECHHOEFER: I'm sorry. It was the Board's

eb27 1 intention that the form of-- Miami Valley inquired I think as
2 to the form of their -- I think it was Contention 17. Am I
3 right?

4 MS. KOSIK: Contention 14. We have pending a pro-
5 posed contention 17, but that's a different issue. 14 is the
6 one you're referring to.

7 CHAIRMAN BECHHOEFER: I just didn't remember the
8 number.

9 Contention 14, the form in which it was admitted,
10 was the form as in their revised -- the document which submitted
11 the support for their contention. It revised the form of that
12 contention, and Ms. Kosik had inquired, had written a letter to
13 the Board inquiring which form had been intended to be admitted,
14 and it was the revised form of that contention.

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C mp:bl 1 Now we have two other discovery motions, if my
2 count is correct. On May 9, Miami Valley objected to I think
3 two of the Staff interrogatories. And I wanted to inquire
4 whether the Staff planned to respond to that.

5 MR. BARTH: We do, Your Honor. We have until --

6 CHAIRMAN BECHHOEFER: I realize --

7 MR. BARTH: This would be an opportune time, at the
8 hearing. We have everybody here. We thought we would address
9 the motion of Miami Valley of May 9 at this hearing.

10 CHAIRMAN BECHHOEFER: You're welcome to do that.

11 Maybe Miami Valley would like to -- maybe, Ms. Kosik,
12 you would like to reiterate on the record what your objections
13 are to the Staff's interrogatory, the document you filed May 9.

14 MS. KOSIK: Mr. Chairman, my file seems to be miss-
15 ing on that objection we had filed.

16 CHAIRMAN BECHHOEFER: It's very short. I might say
17 it seems to be based on the fact that the responses would have
18 required you to summarize your expert testimony early.

19 MS. KOSIK: Yes. We really don't have anything
20 further to add. It's our understanding that June 8 is the dead-
21 line for submitting the direct testimony before the Board.
22 And we are simply objecting because to be required to summarize
23 all the testimony at this time would be giving the Intervenor
24 an earlier deadline on that requirement.

25 CHAIRMAN BECHHOEFER: Mr. Barth?

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mpb2 1 MR. BARTH: Mr. Chairman, in our discovery we asked
2 for the names of the experts of the intervenors, and they say
3 -- Ms. Kosik states that such a requirement has the effect of
4 moving the deadline ahead.

5 May I point out that 10 CFR Section 740(e)(1)
6 specifically provides for the disclosure of the names of expert
7 witnesses and a summary of their testimony.

8 I would further point out that Rule 26(b)(4)(a)(1)
9 of the Federal Rules of Civil Procedure provides that there
10 is an interrogatory requirement of the party to identify each
11 person whom the other party expects to call as a witness, and
12 to state the substantive facts and opinions.

13 We might say this is an administrative proceeding.
14 This is not a federal court. And therefore the Federal Rules
15 of Civil Procedure do not govern. I will point out that in
16 Allied General Nuclear Services, Barnwell Fuel Receiving,
17 which is a licensing board decision, 5 NRC 489, 1977, the
18 licensing board specifically considered this matter--..

19 CHAIRMAN BECHHOEFER: Off the record for a minute.

20 MR. BARTH: -- and stated that the appeal board
21 has recognized that 10 CFR Section 2.740 is patterned after and
22 parallel to the 26th Federal Rules of Civil Procedure, and
23 cites cases in support thereof from the appeal board.

24 A long standing position of the appeal board is
25 that the Federal Rules of Civil Procedure provide guidance

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1 insofar as they are parallel to the agency's rules. The
2 agency's rules in this regard are discovery and those discovery
3 rules do parallel the federal rules. The federal rules
4 explicitly provide for the disclosure of the names of
5 experts and a summary of their testimony.

6 This is also specifically referenced in 10 CFR
7 2.740(e)(1), and we feel that it's appropriate that the Miami
8 Valley Power Project comply with the agency's rules and provide
9 the Staff with the names of the experts it expects to call
10 and a summary of their testimony.

11 I would further point out, Your Honor, that the
12 opposition to the Staff's discovery refers to Interrogatories
13 14, 25, and 42. Omitted from that argument is the objection
14 in the text also to questions 15, 26, and 43.

15 At this time since we are covering their response
16 to our interrogatories, most of these answers provided are no
17 answers at all. And we would move that the Board require
18 responsive discovery to the Staff's interrogatories.

19 We further move that insofar as the manufacturing
20 of the control rods is deemed to be inadequate, that the Board
21 strike that portion of the contention. The response to
22 Interrogatory 18 was to identify and describe what aspects of
23 the manufacturing process was inadequate. The response was
24 that it's unknown. 10 CFR Section 2.714 requires that the
25 contentions have a basis. And if there is no basis for the

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1 contention, the contention cannot stand.

2 There is no basis for the contention as provided
3 in our answers to interrogatories. And that part of the
4 contention should be stricken.

5 I would point out, Your Honor, that specifically
6 with regard to our Interrogatories 24, 25, and 26, there are
7 simply no answers which are meaningful to the Staff. There
8 are good reasons for discovery.

9 I would point out that United States Supreme Court
10 considered this matter in US vs. Procter and Gamble, which is
11 356 US 677. They pointed out that the basic point of discovery
12 is to make trial less a game of blind man's buff and more a
13 game of contest with the basic issues and facts disclosed
14 to the fullest practical extent.

15 The purpose of our discovery is a very serious
16 purpose. The Nuclear Regulatory Commission is charged by
17 Congress with the licensing of nuclear power facilities.
18 granted we find reasonable assurance for the public health
19 and safety,

20 If Miami Valley or anybody else has evidence that
21 the Applicant, the power company, has failed to construct
22 this plant correctly, or that General Electric has produced
23 control rods which are improperly manufactured, or that welds
24 have been improperly made, or that seals were improperly
25 installed at the ends of the control rods, we asked what the

mpb5 1 seals were, we got their answer, my agency is entitled to know
2 so that we can perform our function to provide adequate safety
3 to the public health.

4 It's a very serious matter. We have an inspection
5 program and we welcome public comment. If something is wrong,
6 we will send investigators to find out. But we're also
7 entitled to some specificity as to what is wrong. And we have
8 not received that in response to our interrogatories.

9 Therefore I would ask that the Board order the
10 Miami Valley Power Project at the Board's earliest possible
11 convenience to disclose the names of its experts, summaries of
12 their testimony, and that they provide meaningful responses
13 to our interrogatories regarding contentions 14, 15, and 16.

14 Thank you.

15 CHAIRMAN BECHHOEFER: Ms. Kosik, I noticed that
16 answers to certain interrogatories said your experts were
17 unknown at whatever that time was. At some point you're going
18 to have to find out who your experts are. Presumably they're
19 going to have to start preparing testimony and that kind of
20 thing.

21 I was wondering at what point do you envisage
22 that perhaps you could respond to the Staff.

23 MS. KOSIK: Well, sir --

24 CHAIRMAN BECHHOEFER: A summary of testimony does
25 not have to be a verbatim description.

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1 MS. KOSIK: Can I consult with another member of
2 our group on this in terms of our time schedule? We have
3 other members who are seeking experts. We have a number that
4 we have been consulting, but we haven't selected our experts
5 yet.

6 In response to Mr. Barth, we recognize that we are
7 obligated to update our responses whenever we have the ability
8 to do so, and we intend to do so. So if I might consult, I
9 can give you a deadline on when we'll have our experts.

10 CHAIRMAN BECHHOEFER: Why don't we take a ten
11 minute break.

12 Will that give you enough time to talk to people?

13 MS. KOSIK: Yes. Thank you.

14 (Recess.)

15 CHAIRMAN BECHHOEFER: Back on the record.

16 The first thing, I've been informed that there's
17 a court order for these floors prohibiting the taking of
18 pictures. So if anybody is around who wants to take any more
19 pictures, I'm told it is not allowed.

20 I don't see anyone here, but....

21 Ms. Kosik, have you found out anything more about
22 when your experts will be identified?

23 MS. KOSIK: Mr. Chairman, we have targeted June 1st
24 as the date when we will have selected the experts and will be
25 submitting a summarization of the testimony after that date.

mpb7 1 CHAIRMAN BECHHOEFER: Is that satisfactory to the
2 Staff?

3 That's rushing it a little bit, but....

4 MR. BARTH: Mr. Chairman, we did file discovery
5 within the time limit provided. I would point out that any
6 kind of liberality of contentions carries with it concomitant
7 responsibilities to provide the details of discovery which we
8 need.

9 June 1st is 18 days before the hearing; allowing
10 for mail, that's June 4 we would receive it. And I'm told
11 now that they will reply thereafter.

12 We have a hearing scheduled for the 19th. We're
13 entitled to some kind of timely information. One of the argu-
14 ments this morning was they would like to go out to this power
15 plant tomorrow morning with their technical experts and look
16 at this stuff on contentions 14, 15, and 16. So they must have
17 their experts already selected, because we only have a few more
18 hours to go.

19 So the experts must be known at the present time.
20 Otherwise it would really be misrepresenting that they would
21 take experts along to look at the plant.

22 I can't tell the Board what to do, but I think
23 this is undue delay, Your Honor.

24 CHAIRMAN BECHHOEFER: Could you identify any of
25 your experts earlier? The Staff does have to prepare, and the

mpb8 1 Applicants have to prepare their case. I think the testimony
2 is due on the 8th. That doesn't give very much time.

3 MS. KOSIK: Mr. Chairman, the 28th of May would be
4 probably the earliest we could supply those answers to the
5 interrogatories.

6 In regard to what Mr. Barth has just said about
7 already having our experts lined up, because of the site tour,
8 we were informed that the site tour is not an inspection tour,
9 and therefore we are not intending to bring experts on the site
10 tour.

11 As I say, we have consulted with experts; but we
12 have not selected them yet for various reasons, including
13 limited resources and how and where to use those resources.
14 But we could provide it by the 28th.

15 CHAIRMAN BECHHOEFER: In other words, a week from
16 today they will be mailed to the Staff?

17 MS. KOSIK: Yes.

18 CHAIRMAN BECHHOEFER: The Board would urge Miami
19 Valley to identify its experts as soon as it can. If it has to
20 be as late as the 28th -- if you haven't ascertained your
21 experts before that, I suppose you can't answer the question.
22 But please make every effort to do so, and to give a summary
23 at least of what their testimony will be.

24 MR. BARTH: Mr. Chairman, may I request that if
25 you're going to so order, that if you could somehow say that

mpb9 1 the names and the summaries prepared by the 28th be available
2 here in Cincinnati, I'll try to make some arrangements to have
3 them picked up so that we can get them rather than going
4 through the mail circumstances.

5 CHAIRMAN BECHHOEFER: Right.

6 Could you arrange that, so that somebody from the
7 Staff could pick them up here?

8 MR. KOSIK: If the Staff has somebody here to pick
9 them up, yes.

10 CHAIRMAN BECHHOEFER: I think you and Mr. Barth
11 can confer on that and make some arrangements. I think that
12 would be desirable.

13 I can't recall: Has Miami Valley not answered
14 some of yours for the same reason?

15 MR. WETTERHAHN: Yes, sir. There were two
16 interrogatories in the same package under the title of Miami
17 Valley Power Project's Objections to Certain of Applicant's
18 Fifth Set of Interrogatories and Motion for a Protective
19 Order.

20 There were two interrogatories which the Miami
21 Valley Power Project did not answer, number 17 and number 23.
22 If you'd like to hear argument on those two, I'd be pleased
23 to proceed.

24 CHAIRMAN BECHHOEFER: Yes. We would like to hear
25 on those also.

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1 MR. WETTERHAHN: With regard to interrogatory 17,
2 the claim is made that this interrogatory is irrelevant. The
3 interrogatory reads -- asks for the basis for the assertion
4 that one of the workers at the site and two others were -- quote
5 -- "laid-off" -- unquote. These words "laid-off" came from
6 the supporting documentation from the Miami Valley Power
7 Project. And I believe that the Applicant is entitled to know
8 the basis of the assertion that two people, two or three people
9 were -- quote -- "laid-off" -- unquote -- for expressing
10 concern about lack of compliance with the specifications.

11 This Board should not allow these claims with no
12 basis to stand.

13 With regard to 23, which asks for a description in
14 detail of the number and location of all seals which the
15 Project alleges not to meet specifications, Ms. Kosik, in her
16 objections, seemingly has already answered this. On that
17 objection she states Miami Valley Power Project has no
18 knowledge of the numbers or present locations of the seals
19 which are claimed to be defective.

20 We would like a response under oath as required
21 by the NRC rules.

22 CHAIRMAN BECHHOEFER: Ms. Kosik, do you want to
23 respond?

24 MS. KOSIK: In regard to interrogatory 17, we
25 would simply reiterate that the laying-off of these workers

mpb11 1 is irrelevant to the contentions which state that certain
2 items were improperly manufactured, and therefore irrelevant
3 to the issues at hand.

4 In regard to --

5 CHAIRMAN BECHHOEFER: Couldn't it be relevant to
6 the validity of the material that you used?

7 MS. KOSIK: We would state that it's irrelevant.
8 But if the Board rules that the question is required to be
9 answered, we will provide an answer.

10 In regard to Question 23, we have stated that it
11 is burdensome. Our evidence in regard to the seals came from
12 a millwright who worked on the seals, particularly testing the
13 smoothness and working on improving that to meet specifications.

14 Mr. Conner has stated that the control rods which
15 the seals are part of have already been installed. It seems
16 obvious that we would have no way of knowing the exact loca-
17 tion or even the number of those seals, since they have been
18 removed from where they were at the time that we got our evi-
19 dence from the millwright.

20 And the Applicant would have the information, but
21 we wouldn't have that information.

22 (The Board conferring.)

23 MR. BRIGHT: Ms. Kosik, on this seal thing, now I
24 understand: your argument that you have absolutely no way of
25 knowing where those seals are physically. But it would appear

mpbl2 1 to me that you could make some kind of an answer in terms of
2 how many seals are alleged to be improper: all of them, one
3 out of 100, whatever, that kind of information. You could do
4 that?

5 MS. KOSIK: Yes, we could give the information
6 as to how many seals the millwright who had been giving us our
7 evidence did himself inspect. It wasn't an inspection; he was
8 working on them. He was told to check the seals to see if they
9 met certain requirements.

10 We could find out from him how many seals he
11 investigated and provide that information.

12 MR. BRIGHT: Mr. Wetterhahn?

13 MR. WETTERHAHN: Well, perhaps we could solve
14 something right now.

15 Is this millwright going to appear as a witness --
16 Maybe we can find that out -- on behalf of the Coalition --

17 MS. KOSIK: Yes.

18 MR. WETTERHAHN: -- I'm sorry, the Miami Valley
19 Power Project?

20 MS. KOSIK: Yes, he will appear as a witness.

21 MR. WETTERHAHN: We would like the discovery as
22 outlined by Mr. Bright.

23 CHAIRMAN BECHHOEFER: I think the Board thinks it
24 would be useful for an answer along the lines you and Mr.
25 Bright were just discussing. That would be useful.

mpb13 1 I also think the answer to the first one would
2 also be useful, number 17. I do see some relevance there.
3 I think Miami Valley should answer those two.

4 MS. KOSIK: Miami Valley will provide those answers.

5 CHAIRMAN BECHHOEFER: Do you have any time that --
6 Could we figure a time for that?

7 MS. KOSIK: In three days.

8 CHAIRMAN BECHHOEFER: Okay. That seems satisfactory.

9 MR. WETTERHAHN: If we could have the answer on
10 Wednesday that would be appreciated, since we'll be here any-
11 how.

12 CHAIRMAN BECHHOEFER: Is that possible?

13 MS. KOSIK: We will definitely attempt to do that.
14 If it is impossible we will provide it in three days. We should
15 be able to do that.

16 Mr. Chairman, if I may respond also to some state-
17 ments made by Mr. Barth, he had included into his remarks a
18 motion to require more responsive answers. I'm not sure if the
19 Board intends to rule on this now, but I would like to respond
20 to that.

21 Miami Valley provided the best answers it could
22 based on the direct observable evidence that we received from
23 the workers. In order to supplement that evidence to support
24 our contention, we also have been carrying on discovery against
25 the Applicants. At the time that we answered the Staff's

mpbl4 1 interrogatories we did not have the answers from the Applicant.
2 So, as I say, our answers were as responsive as they could be
3 based on the evidence that we had.

4 But better answers would be based on the discovery
5 that we have received from the Applicant. So we would move to
6 oppose that motion.

7 CHAIRMAN BECHHOEFER: Would the new information
8 that you got be in the form of updating material that you are
9 to be providing in any event?

10 MS. KOSIK: It may. A lot of the answers to our
11 questions were we would consider rather unresponsive. To the
12 degree that we could supplement and update our answers, we
13 will do so. But many of the answers to the questions were
14 reasonably unresponsive. We did not really get all the
15 information we were seeking.

16 CHAIRMAN BECHHOEFER: I have in my notes here that
17 the Applicant also objected to certain of Miami Valley's
18 third set of interrogatories. I wondered whether Miami Valley
19 would have comments ready at this time on that. They were only
20 filed May 1..

21 Do you wish to make any further statement in
22 support of your own interrogatories?

23 MS. KOSIK: Mr. Chairman, we at this time will not
24 present a response to their objections.

25 CHAIRMAN BECHHOEFER: Very well.

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mpbl5 1 Well, then, to that extent, we will grant their
2 request for a protective order on those.

3 The Board now would like to hear argument from all
4 the parties on Miami Valley's last contention. I guess it's
5 number 17, if I've got my numbers straight. There seems to be
6 some dispute over what form of insulation is actually going
7 to be used. And I would like to hear first from Miami Valley
8 and then from the Applicant and the Staff.

9 All of you I realize have filed papers. What I
10 would like to see is if there is some agreement as to what is
11 actually going to be used in the plant and whether there is
12 any issue with respect to the type of material that is actually
13 going to be used, if that has been determined -- assuming that
14 has been determined.

15 This is the type of information that I think the
16 Board would like to hear.

17 First, Miami, in support of your motion, the latest
18 contention.

19 MS. KOSIK: Our contention is based on information
20 that came out of the analysis of reports that have been
21 submitted, I believe revision 12. And we had a couple of
22 people go over that report. And they determined that the
23 test was not in fact favorable to the use of the material
24 that was proposed to be used.

25 There are two problems that we have with that.

mpbl6 1 The first is how the test was performed, specifically the
2 conditions that will be existing if the Zimmer Power Plant
3 were not adequately simulated in the test.

4 It appears by going over that test report that
5 one cable tray with a few cables in it was wrapped in the
6 insulation material and then the fire test was performed.
7 In fact, there will be three levels of cable trays on top of
8 each other in the plant. And there is much more cable in each
9 tray than there was in the cable trays when the tests were
10 performed.

11 There is going to be additional heat generated
12 from those additional cables. And therefore it would affect
13 the performance of the insulation material.

14 Additionally -- So we object to how the test was
15 performed.

16 Additionally we have a copy of the test that had
17 been performed by Sandia Laboratories on this fire insulation
18 material. And from our reading of this test, the test results,
19 it appears that the fire insulation material simply failed
20 the test entirely.

21 The material caught on fire. There was thermal
22 damage to the cables. Essentially it just was not of any
23 real value. Yet to the best of my knowledge, the Applicants
24 are going to go ahead and use this material.

25 Now, in some of the papers that have come to us

mpbl7 1 responding to our motion to admit the additional contention,
2 there is mention of the use of a fire barrier. And Miami
3 Valley would like to know a few more details about that
4 fire barrier because there could be some problem with that,
5 probably ventilation and so forth.

6 What we're contending is, first of all, the fire
7 insulation material that is being used is inadequate and did
8 not pass the proper tests. And secondly, we want to know if
9 something is being substituted in part or entirely for this
10 fire insulation material, exactly how that's going to fun-
11 ction. And we want to know the details of that.

12 MR. BRIGHT: When you say "this material", Ms.
13 Kosik, is that the Kaowool?

14 MS. KOSIK: Yes.

15 CHAIRMAN BECHHOEFER: Mr. Conner, would you like
16 to respond? Also, I really would like to find out: is this
17 material in fact what's going to be used? This was somewhat
18 unclear to me, particularly from the Staff's response, but
19 from yours also.

20 MR. CONNER: Okay.

21 Keeping in mind that there's an awful lot of
22 cable trays in the plant, and keep also in mind if you will
23 that the primary criterion is the separation requirements
24 as far as fire protection goes and the quality of the cables
25 themselves, in instances where the separation criteria of

mpbl8 1 five feet vertical and three feet lateral cannot be met, then
2 the Kaowool would be used under certain conditions to provide
3 fire protection for the 60 minutes that would be involved where
4 the need for 60 minutes exists.

5 In a couple of places the Staff and the Applicant
6 have conferred about where the physical barrier may be placed
7 at some point where there's a forklift involved. And in that
8 case the barrier would be used. Presumably there might be a
9 couple of others where there might be a barrier.

10 So the generalized statements that are made in
11 MVPP motions do not present the total picture, because there
12 are several pictures. It also does not understand the concept
13 of how these cables are arranged in their own series and in
14 their own divisions which provides a further degree of protec-
15 tion, where the redundancy criteria may be required.

16 In any event, it will meet all the appropriate
17 criteria provided for by the ASTM B-119 or UL standards where
18 the Kaowool is used, as we point out in our response. So I
19 think our answer shows that what we will do at the plant fully
20 meets applicable criteria.

21 Now our objection is based as much on the -- and
22 we have styled our answer of May 9 based upon the failure of
23 the Intervenors to justify the filing of this as lately as
24 they did. Their own documentation shows that they were aware
25 of our test, revision 12 test, when it was filed on March 1st.

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mpbl9 1 And of course, Mr. Hofstadter's information as to the test or
2 his association with Husky, he had to go back some distance.

3 There seems to be some confusion about, at least
4 in the motion that MVPP filed, as to what underwriters lab
5 tests they might have been talking about. So we do not feel
6 that they have shown a 2.714 justification for this conten-
7 tion, particularly since it is late.

8 We feel that they have not made a proper showing
9 for filing this when they did, two months after they were
10 aware of it, when we are so close to a hearing.

11 We don't believe they have met the criterion of
12 suggesting that their public interest would not be represented
13 by the Staff in this area because, as our motion lays out, the
14 Staff is following this very carefully and on a sophisticated
15 and knowledgeable basis.

16 Thirdly, we do not believe they have met the
17 criterion of 2.714 in that they have not shown how they have
18 any expertise that would assist the Board in developing the
19 record. Apparently Mr. Hofstadter, who is a welder, is their
20 witness, although there may be someone else, I don't know. In
21 any event, they have certainly not shown that they have any
22 expertise in evaluating the fire protection in general or
23 Kaowool in particular, in fact any insulating material in
24 particular.

25 So we think that their motion fails completely.

mpb20 1 I will not go into the matter again of their misunderstanding
2 about vertical and horizontal sections of the cable trays,
3 but it's clear that adding this issue at this time would
4 broaden the issues by adding a new one, and it would delay
5 on the basis the Intervenors have stated because they say
6 once it is admitted they will begin discovery. And we feel
7 on this basis the contention should be denied.

8 CHAIRMAN BECHHOFFER: If it proves necessary, and
9 it appears it will, to have at least an additional hearing
10 session after the one that begins on the 19th to handle the
11 various Three Mile Island related issues, could this one be
12 handled along with those?

13 MR. CONNER: If you forced me to choose, I would
14 say that this would probably be much better the subject of
15 summary disposition because I truly don't believe they have
16 shown any facts that are involved here. We would propose to
17 take the depositions of their people and I think we can show
18 that they don't know really what's involved here.

19 So I don't think they have a genuine issue of
20 fact. Certainly you can't tell it from the contention.

21 But if that alternative that I hope does not come
22 to pass does, we would have time to take such other action
23 between, say, the end of the presently scheduled June
24 hearings and, say, the resumed hearings in July I would hope
25 at the latest. But there would be several ways to control

mpb21 1 this issue.

2 CHAIRMAN BECHHOEFER: And I take it that if we
3 should admit this issue you would want us to provide a chance
4 for summary disposition motions with respect to it?

5 MR. CONNER: I would propose simply to -- This has
6 taken so long now to date, and I think the quickest way to
7 resolve it is to simply bring some witnesses in to testify to
8 the facts and wipe it out of the hearing rather than crawl
9 through the discovery process which really isn't working in
10 terms of finding out what the issues are or what evidence we're
11 supposed to meet.

12 I mean, if they would -- they're hiding their
13 witnesses, if they have them. They won't tell us exactly
14 what they have in mind. If we knew that then summary
15 disposition would be the ideal way to go. But I think it
16 might be well to simply put this on as an evidentiary issue
17 on June 19 and litigate it.

18 MR. WOLIVER: May I address the Board?

19 I think the issue -- I may misunderstand it, but
20 I assume it's whether or not this contention should be
21 addressed or should be admitted at this point.

22 CHAIRMAN BECHHOEFER: That's correct.

23 MR. WOLIVER: So would think at this point that
24 Mr. Conner's statements or proposals as to how the contention
25 should be dealt with are really irrelevant right now.

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mpb22 1 We're also concerned with the question of the
2 Sandia tests. Approximately a year ago we asked the Board
3 for a temporary halt in the construction, pending further
4 study as a result of the Sandia tests. So in the very least
5 we would ask that -- We feel also and we would join with the
6 Miami Valley Power Project that this contention be admitted.
7 And if necessary that it be heard at the later hearings so that
8 adequate discovery, be it depositions or interrogatories, could
9 be had.

10 I don't think that there could be sufficient
11 discovery on both sides and on our part within the next four
12 weeks.

13 CHAIRMAN BECHHOEFER: Mr. Barth, any comment?

14 MR. BARTH: Mr. Chairman, I think we are really
15 very far afield of what has transpired. The Miami Valley
16 Power Project filed a request to admit a contention based
17 upon revision 12, the fire protection evaluation report. We
18 filed a piece of paper including a letter of John Stoltz in
19 which we rejected these tests, revision 12, in toto, whether
20 good, bad, or indifferent. Mr. Stoltz's letter so says.

21 Revision 12 was a test for Kaowool for those areas,
22 that is the wires themselves with internally generated heat.
23 They tried to qualify Kaowool through a 60 minute test in
24 those areas and we rejected the tests. We required another
25 measure.

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mpb23 1 Now if the Board admits the contention they're
2 going to put us to the trouble of bringing John Stoltz out
3 here to say "I reject the tests." and then go back home.
4 That's all that's going to happen, because revision 12 has
5 nothing to do with the way the plant is going to be built.
6 It's totally apart from it.

7 Now the Sandia test is not included or encompassed
8 by Revision 12, the fire protection. Sandia is another word
9 brought out of nowhere which has nothing to do with the
10 proceeding anyway. Babcock and Wilcox originally conducted
11 tests on Kaowool to qualify it for 60 minutes fire barrier
12 protection. It was not challenged by the Intervenors or
13 anybody else. And if the Board does admit this contention, the
14 only thing we can do is bring out John Stoltz, who represents
15 NRR, who would come on the stand, be sworn, and say, "I reject
16 revision 12," and walk off. And that ends the contention.

17 And it seems to me that this is an opportune time
18 to have this contention admitted, which can be solved in such
19 a manner.

20 CHAIRMAN BECHHOEFER: What's the alternative?
21 What if revision 12 is rejected; what's left?

22 MR. CONNER: If Your Honor please, could I maybe
23 say something?

24 MR. BARTH: Let me address the Chairman's question.

25 CHAIRMAN BECHHOEFER: What I really mean is

mpb24 1 this test tended to show that Kaowool would not provide the
2 protection that it was being held out to provide. What should
3 be relied on for determining what the adequacy of the insula-
4 tion is?

5 MR. BARTH: This test was only for a very limited
6 purpose, not for the entire cable trays and not for the fire
7 protection throughout the plant, Your Honor. It was only very
8 limited.

9 CHAIRMAN BECHHOEFER: But if you confine it to --

10 MR. BARTH: The purpose of the contention is to
11 raise a defect in issue, and this is not an issue, so that
12 there is nothing. To answer your question, there is nothing
13 left.

14 Now if the Board independently wishes to raise a
15 substantial question as to how will fire protection be provid-
16 ed in areas where there is a passage problem, and the Board
17 wishes to exercise its jurisdiction to frame such an issue,
18 please do so and we will address it. Bear in mind that my
19 own people have no problem with the passage problem and with
20 the barriers, and we will get the company to agree to a fire
21 protection system which is satisfactory to the director of NRR.

22 The Board does have some jurisdiction for some
23 special conditions to raise inquiries. I see no reason why
24 this would be a real problem.

25 Coming back to your earlier

mpb25

1 question, Mr. Barth, what would be left if we reject the
2 contention, I point out that the Applicant, as I previously
3 stated, has now committed to provide the structural barrier --

4 CHAIRMAN BECHHOEFER: If you reject the test --
5 we said what would be left if we reject the contention.

6 MR. BARTH: You asked the question what will be
7 left if we reject the contention, now?

8 CHAIRMAN BECHHOEFER: No, I meant if we rejected
9 the test.

10 MR. BARTH: We've already rejected the test. The
11 director of NRR rejected the test.

12 CHAIRMAN BECHHOEFER: I'm asking you what --

13 MR. BARTH: The company has committed to provide
14 a structural barrier made out of steel and concrete in those
15 areas which were covered by the attempted qualification of
16 Kaowool under revision 12; that is in those areas where they
17 have a passage problem they will provide a steel and concrete
18 structural barrier to separate the wiring.

19 That final design has not been submitted, but the
20 final design will be submitted to the director of NRR as is
21 any other matter which they have to submit.

22 (The Board conferring.)

23 CHAIRMAN BECHHOEFER: Ms. Kosik, do you have
24 anything to add?

25 MS. KOSIK: Well, first of all, there's been mention

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mpb26 1 of the Babcock and Wilcox test. Again, I'd like to reiterate
2 that the conditions that will exist at Zimmer with the piggy-
3 backed, the three piggy-backed cable trays with the trays
4 loaded, let's say well loaded, there will be more than a few
5 cables in there at any rate, does not even come close to
6 simulating those conditions.

7 The Babcock and Wilcox test did not simulate the
8 real conditions that are going to exist. And if there's
9 going to be a passage problem, those trays are going to have
10 to be fully loaded when the test is performed.

11 Now an additional problem, though, that we have
12 with the Babcock and Wilcox test is that it was the manufactur-
13 er's test. And I think admittedly there would be some prob-
14 lems with the manufacturer providing the test of its own
15 product.

16 That's why we would like the Board to take
17 recognition of the Sandia tests and recognize the fact that
18 the Kaowool in that test did not pass the test.

19 There are statements in here that the Kaowool
20 caught fire when they were testing it, and that there was
21 thermal damage to the cable. So there is a valid test that
22 was performed that shows that the material is not adequate
23 for the purpose.

24 And, again, we don't understand how this
25 structural barrier is going to function in keeping fire off

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mpb27 1 of the cables. We want to have some more information on that.
2 And if the Applicants propose a new design for their fire
3 insulation, we would like to have the opportunity to evaluate
4 that and decide whether it appears to be adequate.

5 One last statement: The person that we will be
6 using if this contention is admitted, as an expert, was
7 formerly the project engineer in the fire protection
8 department at Underwriters Laboratories. So we do have
9 someone who is expert in this area who can provide us with
10 the information required.

11 MR. CONNER: Is that Mr. Hofstadter's son?

12 MS. KOSIK: Yes.

13 CHAIRMAN BECHHOEFER: At this point I would like
14 to turn to Miami Valley's very recent motion to allow some
15 of its non-attorney members to appear and participate in the
16 licensing hearing.

17 MR. CONNER: Could I interrupt?

18 On the last topic I started a comment. I was wait-
19 ing my turn. I wanted to clarify something that might help
20 the Board.

21 What Mr. Barth said about revision 12, of course,
22 is correct and we will not be relying on it for that particular
23 purpose for which it was run. And that is true. But I want
24 to make clear that my remarks are addressed to Ms. Kosik's
25 much broader challenge to fire insulation material, which is

mpb28 1 also part of the proposed contention 17. I just wanted to
2 get that in the record.

3 CHAIRMAN BECHHOEFER: Well, I wanted to turn to
4 Miami Valley's motion to allow its non-attorney members to
5 represent it.

6 Ms. Kosik, am I correct in saying that you will
7 only have one -- you will only put forth one representative
8 at a time on a particular issue?

9 MS. KOSIK: Yes, that's correct. We did not
10 raise this motion to confuse anything or to cause any kind
11 of delays. It's purely an empirical problem we have, which
12 is that everyone is working on a voluntary basis. Schedules
13 obviously may conflict. We don't know at this time how many
14 days the hearings will take and what times those hearings
15 will be scheduled for.

16 And therefore it may turn out to be impossible
17 that any one of the three attorneys now sitting here could
18 be there at all times. As I stated in the motion, the members
19 of the Committee which we presented the names of in our motion
20 are all familiar with the issues and would not delay the
21 proceeding.

22 CHAIRMAN BECHHOEFER: I was assuming you would
23 only have one of them at a time.

24 MS. KOSIK: That's correct.

25 CHAIRMAN BECHHOEFER: Do the Applicant and the

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1 Staff have any objection?

2 MR. CONNER: We certainly do, Your Honor. It's
3 clearly contrary to the regulations.

4 In our view the right to participate, if somebody
5 decides, public interest or whatever they may choose to
6 characterize their efforts, they have the responsibility of
7 parties in a proceeding. And 2.713(a) in particular makes it
8 very clear that a person should appear by counsel. The
9 decision in ALAB-428, I think it is, also discusses that even
10 further, and in effect says that where counsel appears laymen
11 are not to appear also except in the peculiar situation where
12 they are qualified as an expert interrogator under 2.733.

13 It's ALAB-474, excuse me.

14 I don't propose -- we will respond to this further,
15 time permitting, if the Board wants a formal answer filed.
16 But certainly it is contrary to the rules to allow a parade
17 of people to come in and do whatever. The concept of the
18 rules, as pointed out by the appeal board in this ALAB-747,
19 and in here it refers to the single exception I just mentioned
20 of the expert interrogator, footnote 4 on page 748 of that
21 decision says:

22 "The single exception is that the party
23 may request the licensing board to permit
24 examination and cross-examination of expert
25 witnesses by a "qualified individual with

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mpb30 1 scientific or technical training and
2 experience". It should be noted that
3 the party employing the technical interro-
4 gator and his attorney nonetheless are
5 responsible for the manner in which the
6 examination or cross-examination is conduct-
7 ed."

8 And then in the text following that it points out
9 that this is because it is expected that counsel would be
10 present and would participate. It says:

11 "Although Section 2.713(b) does not in
12 its terms apply to non-lawyer representa-
13 tives of a party, the likely reason is
14 the rules do not appear to contemplate
15 the appearance in a representative capa-
16 city of other than lawyers."

17 Now we feel that in a case where an Intervenor has
18 three lawyers whom we understand are hired by the Legal Aid
19 Society of Claremont County or someplace that certainly that
20 is no excuse to allow a number of people who are identified
21 by the motion as non-attorneys to come into the proceeding and
22 to participate in some undefined way.

23 I don't really understand that at all and I think
24 it is clearly outside the rules.

25 CHAIRMAN BECHHOEFER: One of the provisions of the

mpb31

1 rules -- I understand that the rules do permit a party to
2 represent itself. It's my understanding that the Commission
3 has routinely allowed a group to be represented by a member.

4 MR. CONNER: When there's no attorney present.

5 CHAIRMAN BECHHOEFER: Well, I think that has been
6 -- I don't know whether that has been applied on a day by day
7 basis or on a proceeding by proceeding basis.

8 MR. CONNER: I admit there is a confused opinion
9 in Catawba on that subject which I'm sure you're familiar
10 with. ALB-37328. But that was a special case, as shown by
11 the facts themselves.

12 There is also a special case in North Anna in an
13 order dated October 12, '76, where it was held that that could
14 not be done. And we pulled out another one so far. This is
15 also from Catawba.

16 But I believe the better view has always been
17 with boards that 2.713 is intended to be mutually exclusive.
18 Where some organization comes in without counsel and makes a
19 showing that it cannot get counsel, however much the board
20 urges them to get proper representation, then they will let a
21 layperson appear on behalf of the organization. The boards
22 have shown a great deal of lenience, patience, and the need to
23 guide such persons in such cases.

24 But I think the better rule is that it's clearly
25 intended to be mutually exclusive. Certainly I think this

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1 case is justifiable on its facts, that where you have three
2 attorneys sitting there at counsel table saying that they want
3 to have eight or nine-odd people appear instead of them, it
4 is grounds alone for denying the motion. Certainly it would
5 lead to chaos in appearing if you had twelve people rotating
6 trying to keep up with what may be going on and having to
7 interrupt proceedings to find out what happened that morning
8 and so forth.

9 So where you have three lawyers I don't think
10 there's any need to entertain that motion. We would like, if
11 the Board wishes, to submit a formal response to it because of
12 course we just got it Friday.

13 CHAIRMAN BECHHOEFER: I recognize that. We just
14 got it also.

15 MR. WOLIVER: Your Honor, I would like to respond
16 to that too on several points.

17 First of all, I would make the same moral motion
18 on behalf of Dr. Fankhauser. It will be necessary for Dr.
19 Fankhauser and his credentials are a matter of record in this
20 proceeding to represent himself. I think a couple of facts
21 have been mischaracterized here, and the law.

22 I don't think that 2.713(a) suggests that non-
23 attorneys can't participate just because there is an attorney
24 in the case. That would put a person, an intervenor such as
25 Dr. Fankhauser in the precarious position where he would have

mpb33 1 to choose to do totally without an attorney or at least have
2 some guidance and some representation by an attorney who may
3 not be able to participate throughout the entire hearing on a
4 daily basis.

5 I'm sure Your Honor is more familiar with the
6 extent and the length of the hearings than I am.

7 Another point that was brought out which is
8 totally untrue, as a member of the Clermont County Legal Aid
9 Society, I can assure you that none of the counsel for Miami
10 Valley Power Project are employed by our Legal Aid Society.
11 I'd be very happy if they were, but they just aren't.

12 As a member of the Legal Aid Society of Clermont
13 County we would not have the resources to continue to provide
14 representation at all points during the hearing. So we would
15 make the same motion for ourselves and ask that the motion
16 for Miami Valley Power Project be granted at this time.

17 CHAIRMAN BECHHOEFER: Mr. Conner?

18 MR. CONNER: I'm quite willing to accept the
19 clarification. I don't know by which Legal Aid Society
20 learned counsel are employed, if any. I accept the amend-
21 ment that they are not from Clermont County. But perhaps
22 they're from Hamilton County, I don't know. But that should
23 be clarified, perhaps.

24 So if I inadvertently said they were from Clermont
25 County, I apologize.

mpb34 1 While I'm at it, I would like to speak to Mr.
2 Woliver's contention. Since we have the new motion he just
3 made, I assumed everybody has read 2.713(a), which says:

4 "A person may appear in an adjudication
5 on his own behalf or by an attorney at
6 law in good standing, admitted to practice..."

7 Et cetera. It doesn't say "and/or", it says "or".
8 And that's a clear reading of that language, which I believe
9 is dispositive, absent some peculiar showing of facts.

10 I think a peculiar showing of facts is just the
11 opposite. Mr. Woliver has been Mr. Fankhauser's for three-
12 odd years, perhaps more. And it's kind of unusual to ask this
13 Board to relieve him of his professional responsibilities just
14 before the hearing.

15 MS. KOSIK: Mr. Chairman, may I also respond to
16 Mr. Conner's remarks?

17 First of all, none of the three attorneys here
18 are associated with any legal aid society of any kind any-
19 where. We are all here as individual attorneys and as
20 volunteer attorneys. We are not receiving any remuneration
21 for the work that we're doing. And that's the basis of the
22 reason we made the motion, because we also have to go out and
23 work during the day. And there are times -- we foresee that
24 there may be times when none of the three of us can be present.
25 That's why we made the motion before the hearing began, so that

mpb35 1 we would not be faced with an emergency situation where at
2 one time none of the three of us could be here and we would
3 need someone else who is a non-attorney but has been involved
4 in the intervention proceedings all along.

5 In regard to Mr. Conner's interpretation of
6 2.713, he originally stated that 2.713(a) says that inter-
7 venors should appear by counsel. I don't find any reading
8 of "should" in there at all. I don't think it says that one
9 should or should not.

10 It does have -- it is an either/or situation, that's
11 true. But our interpretation of that would be that the reason
12 it allows an intervenor to represent him or herself is in
13 case of minimal resources, in case the organization or
14 individual cannot retain an attorney.

15 Now Miami Valley has been able to retain volunteer
16 attorneys, and therefore we would feel the need to make use
17 of the part of 2.713 which does allow an intervenor to repre-
18 sent itself by a non-attorney in certain instances.

19 Now when it's at all possible that one or more of
20 the three of the attorneys sitting here can be available,
21 they certainly will be. But we're simply trying to foresee
22 an emergency situation and deal with it before the hearings
23 proceed.

24 CHAIRMAN BECHHOEFER: The City of Cincinnati?

25 MR. HEILE: I would like to indicate the City has

mpb36 1 no objections if the Miami Power Project or Dr. Fankhauser
2 represent themselves at the hearing and to the extent that the
3 attorneys may be unable to be present.

4 We recognize they may have problems in that regard.
5 I would only advance this is an administrative tribunal. I
6 think the authority lies with the Board to make any determina-
7 tion as to whether they will allow this to occur. And I think
8 at least we established that the parties are capable of sub-
9 mitting valid contentions to the proceedings that will assist
10 in developing a sound record.

11 We think it would be proper for the Board to allow
12 various members one at a time as the Board indicated before,
13 to carry on the proceedings on behalf of the various
14 intervenors.

15 We have no objections to it. We are not concerned
16 with delay of the hearing.

17 CHAIRMAN BECHOEFER: Mr. Barth.

18 MR. BARTH: The Staff does object to the motion,
19 Your Honor, on several grounds.

20 We feel that 10 CFR 2.713(a) is dispositive. Miami
21 Valley Power Project has elected to be represented by counsel.
22 We didn't elect that, they elected it. It was done by their
23 election.

24 Secondly, we are well mindful that Intervenor
25 associations have problems with scheduling of attorneys. At

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mpb37

1 the same time, we have problems with a billion dollar power
2 plant and cannot accomodate every kind of problem that comes
3 up by the Intervenors.

4 To the extent that special expertise is needed
5 to examine or cross-examine one of their own witnesses or a
6 witness for the Staff or a witness for the Applicant, 10 CFR
7 Section 2.733 provides upon proper qualification that they
8 may have an expert so examine or cross-examine.

9 We have no objection to that kind of situation.
10 But once they have elected an attorney, in this case they
11 elected three attorneys, we would really have administrative
12 chaos to have seven laymen who are unmindful of the rules
13 come in and try to conduct the proceeding on their behalf.

14 I think it would be chaos when we find attorneys
15 who refuse to disclose the names of experts because they
16 don't feel they should, and the rules provide it, think how
17 much worse it would be for laymen to inject themselves in this
18 proceeding and legal machinations. We are opposed to it. We
19 do not think it is advantageous. The contentions of the --

20 CHAIRMAN BECHOEFER: Are not laymen involved in
21 the group? Isn't this fairly routine?

22 MR. BARTH: I've been with the Commission seven
23 years; I've never seen it, Your Honor, when an association
24 has elected to be represented by counsel.

25 CHAIRMAN BECHOEFER: That's not the question I'm

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1 asking.

2 Aren't groups fairly routinely represented by
3 lay-members when they choose to do so?

4 MR. BARTH: The answer is yes, Your Honor, in
5 many cases they have been.

6 CHAIRMAN BECHHOEFER: Do the results that you
7 are picturing now necessarily apply?

8 MR. BARTH: I think they do. I think I can recall
9 a recent example: When a coalition decided it would be
10 represented by itself and decided the Federal Water Pollution
11 Control Act amendments of 1971 controlled radioactive releases
12 under 401 discharge permits, which they do not, which a lawyer
13 would have known and would have aided these people in coming to
14 a little better conclusion.

15 I think also -- the point is they have three
16 lawyers, Your Honor. And they would like to be represented
17 by these three attorneys. I have no question as to the
18 competency of the attorneys.

19 Now I think that they can't have it both ways.
20 I think they have elected to be represented by counsel and
21 I think they should stick by this. Plus I think the rules
22 so provide.

23 CHAIRMAN BECHHOEFER: Now if it turns out that
24 none of the three of them could appear on a day, would you
25 prefer that we grant a continuance as to that date?

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mpb39 1 MR. BARTH: I think, Your Honor, these people
2 are obligated, if they have such a situation, to inform you
3 when they can and cannot. We've already scheduled the hear-
4 ing to commence on June 19th, and I think between the three
5 of them they can come up with when they cannot be present.
6 And we can probably arrange for those contentions to be heard
7 on days when they can be present.

8 But this is a very serious matter. This is not a
9 matter of -- We're not here to play games. It's an important
10 matter for the Staff.

11 Now if there is good and absolute convincing
12 reasons that these three people cannot be present when their
13 contentions are being heard, I think we should take that up
14 at the time. If they know now that they cannot be here on
15 June 20th, all three of them, I think they should so inform
16 the Board, and we can perhaps try to schedule their contentions
17 to accomodate them.

18 I think it really goes back to the old English
19 words: They are stopped by their own actions. They said
20 they'd be represented by counsel. They're responsible for
21 their actions, I'm not.

22 MR. WOLIVER: Your Honor, I'd like to respond to
23 that because I think this is a very serious matter, not only
24 here but in the way the NRC perceives its task and the amount
25 of input, meaningful input it will lend or permit citizens to

mpb40 1 have in the NRC processes.

2 I think this is a very serious problem. We're not
3 talking about chaos. I think the example that was brought up
4 here shows very simply that if an irrelevant matter is brought
5 up the NRC can respond to that and handle that situation. But
6 when we're talking about provisions where citizen groups can
7 meaningfully participate in this procedure which is highly
8 technical, special provisions have to be made. And I believe
9 that they are made by your own regulations.

10 But to simply say once you have decided to have
11 an attorney, that is how you must proceed when there is no
12 provision for remuneration of attorneys' fees or provisions
13 for providing intervenors with expenses to carry on in this
14 proceeding creates a tremendous burden for any public member
15 of any income status to continue on.

16 The NRC is aware of the highly technical aspects
17 that are required to be brought before this Board. Therefore
18 I think that this motion is very serious and it must be granted.

19 MR. CONNER: If the Board please, I would like to
20 respond to that.

21 I think this comes down to an even more fundamental
22 point. This is a matter of professional responsibility we're
23 dealing with. I am really shocked that counsel for the
24 intervenors would expect the NRC in general and this Board
25 in particular to treat them any different as counsel than a

mpb41 1 court would treat them. They know perfectly well that if they
2 are counsel for clients in a court, no judge in the world
3 would let them wander in and out as they might pick and choose.
4 And I think it's an insult to the Commission to suggest that
5 the procedures before the NRC should be otherwise.

6 And I think this goes beyond accomodating an
7 organization. I think this goes to the heart of the matter,
8 responsibility of counsel. I think we do want to file a
9 formal response to this with citations of authority. For
10 example, I remember in the McGuire case counsel wanted to
11 leave -- intervenors' counsel wanted to leave after some days
12 of the hearing, and he was ordered not to. He was not allowed
13 to depart from his professional responsibilities and leave
14 just because he decided it was time, and have a layman take
15 over for him, by the way. The board denied that in the
16 McGuire case, and I think that is good and ample precedent.
17 As I say, we just got this motion and I haven't had time to do
18 any thorough research on it.

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bl 1 MS. KOSIK: Mr. Chairman, if I may respond, first
2 of all there have occurred situations in the judicial proceed-
70 3 ing where an individual who was represented by Counsel and
4 aided in that representation by participating in the proceed-
5 ings.

6 Secondly, this is not a judicial proceeding. It's
7 an administrative proceeding, and the rules are different in
8 an administrative proceeding regarding Counsel. The regula-
9 tions allow for an individual to represent himself.

10 The Counsel for Miami Valley Power Project are not
11 in any way trying to get out of their professional responsi-
12 bilities. We will be representing the Project throughout the
13 proceeding. We are simply talking about a possibility that
14 none of the three Counsel could be here at one particular time.
15 Now no one at this time even knows how long the proceedings are
16 going to last. We can't say whether we're going to be here on
17 June 26th or not because we don't know if the hearings are
18 going to be happening on June 26th. We know when they're going
19 to start; we don't know when they're going to finish. So it is
20 impossible to say exactly when we can be here and when we can't.

21 If there are small periods of time when Counsel
22 cannot be here in person, we will still be doing our best to
23 advise the Project and members of the Project, who are as well
24 informed about our contentions as we are, will be doing an
25 adequate job of questioning, cross-examining and so forth.

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1 Again, it's a question of resources. Miami Valley
2 cannot afford to hire a law firm like CG&E can. And because
3 we have to have other obligations so that we can support our-
4 selves, there may be times when none of the three of us can be
5 here because we're volunteers. We're simply trying to foresee
6 a contingency and deal with it before it comes up.

7 We can deal with it at the time it comes up if the
8 Board so requires, but it will cause delay of the proceeding.
9 We would rather have this matter ruled upon at this time than
10 to have to make motions each time there is difficulty with
11 scheduling.

12 CHAIRMAN BECHHOEFER: We cannot take statements at
13 this time from others in the room.

14 VOICE: I believe I can solve the whole
15 controversy and bantering back and forth with a couple of
16 statements.

17 CHAIRMAN BECHHOEFER: Well, I think it's between
18 the parties here. And I think we had better limit it to that.

19 VOICE: Very easily this question can be
20 solved and only by me.

21 CHAIRMAN BECHHOEFER: Please try to keep it short,
22 will you, please?

23 VOICE: Thank you very much.

24 I'm not sure I heard the names correctly, something
25 about a Mr. Bart and Mr. Conner. And I don't know the young

1 lady's name.

2 Mr. Bart referred to going by the rules because
3 this is a very serious situation. No one knows that better
4 than I do, that it's a very serious situation. Not to allow
5 certain people to come in that aren't attorneys and that aren't
6 scheduled will create chaos.

7 I believe that when the utilities steal people's
8 property with a judge sitting on the bench and a law firm 25
9 years representing CG&E's partner and one of the attorneys is
10 his brother-in-law on the case, that was chaos and a total
11 disregard and a destruction to a person's constitutional rights.

12 Now if they can do that, you can change the rules
13 about the witnesses. It's that simple. When the utilities
14 destroy people's rights, it can be changed now.

15 CHAIRMAN BECHHOEFER: I don't think this is in
16 order.

17 I do think we will permit the parties to file briefs
18 on this matter. Briefs can be filed either in support of or in
19 opposition to the motion. I think we will wait until we re-
20 ceive those to rule on this. I guess there is no necessity for
21 us to rule before the commencement of the hearings themselves.

22 The Board would like to go through the various con-
23 tentions for which motions for summary disposition have been
24 filed, and we have some questions.

25 I might add we may have to continue this discussion

1 on Wednesday because I don't know if the building formally
2 closes but most of the people leave fairly soon, and I think
3 we could go on for a little period of time further, but there
4 may be a time when we'll have to cut it off and continue on
5 Wednesday. I don't know whether we'll get through all of the
6 contentions.

7 I would like to consider two of these together, 1
8 and 6, the ones that deal with Appendix I.

9 I have a few questions, I guess of Mr. Woliver. I
10 wanted to find out what really was the basis for your conten-
11 tion concerning first the spent fuel pool and then the Appendix
12 I, the effect of radiation at the school.

13 You said in your response to the motion for sum-
14 mary disposition merely that it's a lack of offsite storage.
15 Well, it is my impression that the license to be granted or
16 being requested only authorizes the storage of a certain amount
17 of fuel and when that storage is filled up, that's it. The
18 fuel pool exists and is a certain size, and I guess there could
19 be a little bit more fuel in the reactor itself beyond that. I
20 would think the Applicants would have to ask for an amendment
21 to their license to store more fuel.

22 Therefore, I wanted to inquire what exactly your
23 contention was driving at. That was the major point your res-
24 ponse seemed to make.

25 MR. WOLIVER: I think you've characterized it

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1 correctly. We would be concerned with that if the Applicant
2 has to go back later and ask for an amendment so that it can
3 store additional spent fuel at the site. This would be a very
4 large concern that we would have.

5 We would think before proceeding --

6 CHAIRMAN BECHHOEFER: That's actually the case that
7 many, many utilities have requested such an expansion. There
8 are a good many proceedings involving such requests.

9 MR. WOLIVER: We would think at this point it would
10 be more appropriate to address the issues, since we're talking
11 about a potential operating life of the plant for some 30-odd
12 years, that we should address what is going to happen in eight
13 or eleven years.

14 If the spent fuel pool at that point is at what
15 now is stated capacity, the only logical thing, which is what
16 we're asking, is that plans be developed and explained just
17 how -- what will be done with the excess spent fuel. It seems
18 folly to continue or proceed with licensing now when we don't
19 know or there are no plans by the Applicant -- and I'm not
20 talking about the generic plans, whichever the NRC may develop,
21 which isn't in issue here.

22 But there are no other plans, as I understand it,
23 to ship fuel anywhere offsite. So logically right now, as we
24 start the proceeding, there has to be a violation of the regula-
25 tions, maybe not now and maybe not for several years, but this

6 1 should be addressed now.

2 CHAIRMAN BECHHOEFER: The alternative of course is
3 that the plant shuts down. It wouldn't be allowed to operate
4 if it didn't have a place to store its fuel. That's my im-
5 pression and I think maybe the Applicant could confirm this
6 for me.

7 Am I not correct that if your fuel pool gets filled
8 up, that if you haven't made plans by that time to expand the
9 storage and if there's no place to ship fuel offsite, you would
10 be forced to stop operation?

11 MR. CONNER: Unless somebody comes up with some
12 other alternative by that time, --

13 CHAIRMAN BECHHOEFER: Right.

14 MR. CONNER: -- you're obviously right that if the
15 spent fuel pool is filled, as presently contemplated, there is
16 nothing else to do, unless you go offsite.

17 So you know, we can sit here and speculate for years
18 about what would happen, but it hasn't happened. You're exactly
19 right that in the event there were a need to seek some enlarge-
20 ment of the spent fuel pool, as has been done in 20 or 30-odd
21 facilities, it has to be the subject of a license amendment,
22 and it is something that would be handled like any technical
23 problems.

24 MR. WOLIVER: If this is the case that the plant
25 potentially would shut down, this is a very serious question

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1 which should be addressed now. We're talking-- I think this
2 also deals with the financial ability contentions because
3 there would be a tremendous burden on all of the ratepayers
4 of the three Applicants, and we would hope that the NRC and
5 the Applicants would have more foresight to deal with this
6 issue now before talking about something a mere ten years down
7 the line.

8 This is very relevant now. It could be very rele-
9 vant to the school, the Moscow Elementary School if in the
10 future there is going to be an expansion of the spent fuel
11 repositories. Again, we ask that this should be addressed now.
12 It would be folly just to assume that something will happen ten
13 years down the line when we know that these spent fuel reposi-
14 tories will be or presumably will be filled long before the
15 life of the plant terminates.

16 CHAIRMAN BECHHOEFER: Now, on this same contention,
17 I have some questions to ask the Applicants about their motion
18 for summary disposition.

19 There's a statement here that it is a fact as to
20 which there is no genuine issue to be heard. Well, it is stated
21 that it is conservative to assume that the fuel pool is full
22 and that approximately one-fourth of the elements are added
23 on an annual basis.

24 In the FSAR, in Section 9.1.3.2, the way I read it
25 it seems to say that every year 25 percent to 29 percent of a

eb8 1 full core will be added, so I'm asking why 25 percent is con-
2 servative.

3 MR. WETTERHAHN: 25 percent is an approximation
4 for an equilibrium off-load. Whether it be 25 or 29, if you
5 look at the unrebutted calculations, it shows it is insignifi-
6 cant with relationship to Appendix I. So whether it's 25 or
7 29 wouldn't change the answer an iota.

8 CHAIRMAN BECHHOEFER: Well, then I turn farther on
9 and it says -- Section 9.1.3.3 apparently contemplates that when
10 reactor fuel is removed from the reactor for inspection pur-
11 poses, a considerably greater amount might be put in the pool.
12 Couldn't that be 50 percent, or 75, or 100 percent of the pool?
13 What is conservative?

14 I mean the motion before us states 25 percent is
15 conservative and I'm just trying to test that.

16 MR. WETTERHAHN: What was shown was the normal
17 situation where you off-load approximately one-quarter of a
18 core. Most of the dose of course is due to the last group off-
19 loaded. If you were to take a whole core and off-load it, it
20 probably would not stay in there for a full year and therefore,
21 the dose would be much less.

22 But in any event, if the pool was full with fuel off-
23 loaded from the reactor, the reactor wouldn't be in operation
24 and you would come nowhere near Appendix I, so it's conservative
25 from both directions. If it is in the pool it's not in the

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1 reactor and there are no effluents from the reactor. Therefore,
2 it is a conservative calculation.

3 CHAIRMAN BECHHOEFER: Now concerning Contention 6,
4 which is the one concerning the dose at the school, there is
5 the statement that the motion relies on methodology, Regulatory
6 Guide 1.109. As I read that Guide there should be separate
7 calculations for not the maximum individual but the maximum
8 individual at four different age groups, and I would think that
9 the age group at the school would be pretty relevant to this
10 contention.

11 The very first page of Regulatory Guide 1.109 says
12 the population is considered to be made up of infants, children
13 from one to eleven, teen-agers and adults, and I wondered why
14 we don't get a calculation of a dose to a maximum exposed school
15 child rather than an individual.

16 MR. WETTERHAHN: I believe I can explain that. For
17 certain dose assessments, particularly ingestion of iodine
18 through the cow-milk cycle, yes, it does make a difference
19 whether the individual is a child or an infant. We're not dis-
20 puting that.

21 But the dose which was calculated was the dose due
22 to the individuals being at the school. His milk consumption
23 and where he lives does not impact upon the length of time that
24 he's at the school. Yes, he'll get an iodine dose due to where
25 he lives or what kind of milk he drinks but I don't believe that

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10 1 the different age categories is relevant to the type of dose
2 calculation that was done here.

100 3 CHAIRMAN BECHHOEFER: When you made those calcula-
4 tions did you use an age group at all, or which of the four did
5 you use?

6 MR. WETTERHAHN: I don't believe I have the details
7 of the calculations. I don't believe that they considered an
8 age group. I can check that in a minute, or I can supply that
9 on Wednesday if you would like.

10 CHAIRMAN BECHHOEFER: It will be satisfactory if
11 you let us know by Wednesday.

12 MR. WETTERHAHN: Fine. We'll supply that informa-
13 tion.

14 CHAIRMAN BECHHOEFER: Okay.

15 I was also interested in-- There's an assumption
16 as to the number of hours that the school children will be in
17 school, and I wondered whether that included any consideration
18 for summer school, play ground activities, or whether such things
19 occur at the particular school.

20 You rounded it off at 25 percent I think.

21 MR. WETTERHAHN: That's correct. It's rough. I
22 believe considering the amount of time the children are at home
23 and are sleeping, and even if you included any reasonable
24 margin for summer school or even playing in the play ground,
25 it is still conservative.

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11 1 I may note that this is not the critical individual.
2 dual. There's another individual in another sector, whether
3 it be a child or an adult I don't think makes a difference as
4 far as the type of radiation which has a higher dose, and the
5 dose to school children doesn't even approach that dose.

6 So even if you changed the assumptions slightly,
7 assuming half time, I don't think it would make a difference
8 to the critical individual so far as this offsite does is con-
9 cerned.

10 MR. WOLIVER: I'm not clear on that statement, your
11 Honor.

12 What do you mean, there's another individual or
13 another critical area?

14 MR. WETTERHAHN: As far as calculation of Appendix I
15 doses, those school children are not the critical individual
16 as contemplated by the methodology of Appendix I. That's all
17 I'm saying.

18 CHAIRMAN BECHHOEFER: Does the Staff have any
19 comments on the summary disposition motion on these two matters,
20 the Appendix I matters? These are ones which would not be
21 affected by Three Mile Island, so that I wondered whether the
22 Staff had any particular views on motions before us there.

23 MR. BARTH: Mr. Chairman, the Staff has had con-
24 siderable rethinking since we filed our document. We concur
25 with your remark that Appendix I and Contention Number 1 and

b12 1 Number 6 of Mr. Fankhauser would not be impacted by Three Mile
2 Island.

3 Having filed no document either in support or oppo-
4 sition to the Applicants, all you have before you are the re-
5 marks of Counsel which are of no evidentiary value. I think
6 we would have to say we have no position on these and would
7 suggest that they be put down for hearing in the Board Notice
8 of Hearing commencing on June 19th.

9 I will point out for Mr. Woliver's benefit Section
10 5.4 of the FES, which is not in evidence, reaches the same con-
11 clusions as does the Applicant, the critical dose is not at the
12 school but elsewhere, and the methodologies are described, which
13 is the methodology suggested by NUREG 1.109. But again, these
14 are Counsel comments and are of no evidentiary value.

15 I believe it would be appropriate to set these two
16 contentions down for hearing commencing the 19th.

17 CHAIRMAN BECHHOEFER: Are you telling me that we
18 should not grant summary disposition?

19 MR. BARTH: We have no position on the motion for
20 summary disposition, as a factual matter. As a legal matter
21 we point out Duquesne Light Company, Beaver Valley, ALAB-109,
22 which states that the Board must be satisfied with respect to
23 each contention which the Petitioner seeks to litigate where
24 a genuine issue of fact exists. As a legal matter, I'm not
25 certain that there is a real issue presently before the Board.

b13 1 If I might point out, your Honor, in 6 NRC 471 the
2 Appeal Board considered these matters-- I beg your pardon.
3 I have the wrong citation. It's 6 NRC 753, the River Bend
4 decision. At page 750 the Appeal Board considered motions for
5 summary disposition. It made it very clear that they must be
6 supported by matters raised to a degree of evidence which, under
7 the Administrative Procedures Act, is reliable, substantial
8 and probative.

9 I think that the affidavits supplied by the Applicant
10 provide with them credentials which would lead to the conclu-
11 sion that the people making those affidavits are qualified
12 experts and that their evidence is substantial and probative.
13 This, under the agency's rule, 10 CFR 7.9, must be met and
14 countered in such a way as to show that there is indeed a fact
15 in issue.

16 I think at the present state of the record that
17 there is no showing of a factual dispute in issue in opposition
18 to the Applicants' motion. As a matter of law, I think it is
19 well taken.

20 May I correct my citation to the Perry Nuclear,
21 which commences at 6 NRC 741 at page 753. This was not River
22 Bend. I apologize for the mis-citation.

23 CHAIRMAN BECHHOEFER: Okay.

24 Contention 2, insofar as it raises the question of
25 monitoring at the Moscow Elementary School, this is one that

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1 would seem to me and the Board to be susceptible of settlement.
2 What I wanted to inquire of was that the Applicant seemed to
3 have no objection to putting one at the school. Dr. Fankhauser
4 is advocating one, a monitoring device, at the school.

5 Is there not some way that at least the Applicants
6 and Dr. Fankhauser could not try jointly to get the School
7 Board to modify its, at least two years ago, opposition?

8 MR. WETTERHAHN: Mr. Chairman, as you correctly
9 stated, some two years ago the company requested the School
10 Board to put instrumentation on the school property. They
11 denied it at that time. And subsequently, a monitoring station
12 was established near the school. We believe that's perfectly
13 adequate, but we have expressed our willingness, if the School
14 Board gives us permission, to place the monitoring equipment
15 on the School Board property.

16 So we would agree there is no issue of fact to be
17 heard here. All that is needed is the School Board's permission
18 which Dr. Fankhauser and his attorney are seeking, I would
19 assume. So if that permission is granted, we would gladly
20 move the equipment onto the school site.

21 CHAIRMAN BECHHOEFER: Mr. Woliver, would that remove
22 this as an issue to be heard? The Commission favors settlement
23 where that can be reached.

24 MR. WOLIVER: I would hope so. I might say a
25 couple of things about the School Board.

eb15 1 I personally know that the School Board's makeup
2 has changed since 1976. It has a new Superintendent. It's
3 possible that the School Board's position would change from
4 early 1976.

5 I want to make clear that we're talking about the
6 same thing. Not only do we want a device on the school or at
7 the school location, but we want a device set up so that the
8 school could be warned by that device and not have to have the
9 device read out at the operator's or the Applicants' plant.
10 We want the school with the device to be immediately able to
11 know if there is some threat to the health and safety of the
12 school children, and be able to act without any further delay;
13 that is, without the Applicant or any of its employees having
14 to then advise the school of the particular emergency that may
15 arise.

16 So as long as we understand that, I agree. I think
17 approaching the School Board would be the proper matter at this
18 point.

19 MR. WETTERHAHN: Mr. Chairman, I believe we are
20 straying from your statement of the contention. I believe you
21 were speaking about the normal operation of the plant, and the
22 normal environmental monitoring program, and the particular
23 station which is now located near the school.

24 The only thing we're talking about, as I understand
25 it, is moving that particular station as discussed in the FSAR

1 onto the School Board property. I don't think we are going to
2 address emergency planning issues right now.

3 CHAIRMAN BECHHOEFER: That's correct. This monitor-
4 ing here is for routine releases, not in the event of an acci-
5 dent. That's part of another contention.

6 MR. WOLIVER: I'm not clear on that. Are you saying
7 there's another contention relating to monitoring at the school?

8 CHAIRMAN BECHHOEFER: I thought that was under
9 Contention 4, really 4-B.

10 MR. WOLIVER: It's very possible that it could be
11 interpreted to encompass that, but apparently we're not talking
12 about the same thing then. Merely placing a monitor device on
13 the school would not in itself give the school children any
14 added protection if there's a need to react -- or presumably may
15 not if there's a need to act quickly, even with low level re-
16 leases.

17 MR. WETTERHAHN: If I can respond, this contention
18 has been in this case for three years. It was talking about
19 a particular set of monitoring devices at a particular location.
20 I think that's how the Board admitted it over three years ago,
21 and now we're trying to raise a new contention, to fit it into
22 a contention where it otherwise does not fit.

23 I believe our motion for summary disposition was
24 clear and we are entitled to summary disposition because there's
25 no question of fact which relates to that particular monitoring

17 1 station.

2 MR. WOLIVER: Mr. Chairman, on this point I think
3 the Applicant may have misinterpreted our position, but in
4 response to what the Applicant has stated, we'd have diffi-
5 culty at this time understanding why, if the Applicant is will-
6 ing to put a monitoring device on the school, that it would not
7 be willing to share that information with the school authori-
8 ties as an added safety protection for the school children.

9 CHAIRMAN BECHHOEFER: I'd like to find out from
10 the Applicant, Mr. Wetterhahn, what kind of readout does this
11 monitoring device have?

12 MR. WETTERHAHN: Let me make it clear that these
13 are not real time monitors. They're not reading out some place.
14 They're monitors which are collected on a periodic basis and
15 read for the content, the radioactive content, the various
16 isotopes.

17 The information with regard to the results of the
18 monitoring program is sent to the NRC and it's made available
19 publicly, both here and at the local Public Document Room in
20 Washington. We're not trying to hide it. It's just that this
21 is not the type of monitoring station that we're talking about.
22 We're talking about monitoring samples. This type of monitoring
23 is necessary to record and correctly evaluate the very low
24 levels of radiation coming from the site.

25 CHAIRMAN BECHHOEFER: Are there other types of

1 monitoring systems available, or is it possible to have a real
2 time monitor that would read, say, Part 20 levels?

3 MR. WETTERHAHN: As I indicated before, we were
4 talking about compliance with the "as low as reasonably
5 achievable" standard of the NRC, and it's indicated in a motion
6 for summary disposition that there are no monitors capable of
7 reading accurately the very low levels. We are not talking
8 about Part 20 levels which are considerably higher. We're talk-
9 ing about "as low as reasonably achievable" levels which are
10 guidelines for this Applicant to meet as far as its routine
11 releases.

12 CHAIRMAN BECHHOEFER: Would there be any utility
13 in using a monitoring device that recorded Part 20 levels?

14 MR. WETTERHAHN: There is adequate instrumentation
15 for monitoring releases from the facility itself. This proba-
16 bly would give you more accurate information. These various
17 monitoring devices, as part of the radiological monitoring
18 program, are confirmatory. They give you more definite infor-
19 mation and that's the reason why they exist at various locations
20 around the site.

21 But the primary means of detecting releases from
22 the facility is from the plant instrumentation prior to its
23 release.

24 CHAIRMAN BECHHOEFER: Well, is it possible that
25 Intervenors are more worried about how much radiation exists

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b19 1 at a given location than about how much is released from the
2 plant? The release measures may be perfectly adequate but it
3 seems, not only from Dr. Fankhauser's contention but one of
4 the City of Cincinnati's contentions also, they are more
5 worried not about releases but about how much radioactivity
6 exists at a given location.

7 MR. WETTERHAHN: As I tried to explain, the Appli-
8 cant is also interested in the amount of deposition, the amount
9 of radioactivity at various locations, and that is the purpose
10 of its comprehensive monitoring program which monitors milk,
11 water samples, soil samples, a number of different things,
12 leafy vegetables perhaps, and grass in another location. And
13 this is all adequately described in both the FSAR and the
14 Environmental Report. And the conduct of this program will be
15 part of the technical specifications for the facility.

16 Yes, the Applicant is very interested in confirming
17 the releases from the station, and the monitoring program he
18 has proposed, which the Staff I believe has accepted, is more
19 than adequate to do that, to confirm what is known about the
20 releases from the facility.

21 That's the reason why, in particular, the location
22 near the elementary school was chosen, and it is merely con-
23 firmatory.

24 MR. WOLIVER: I want to make sure that we stay on
25 the same point. Maybe in the interests of settlement we would

b20 1 suggest that maybe it's more important or would be more impor-
2 tant, since the school is only approximately 800 yards from
3 the reactor site, possibly it would be more relevant to have
4 a readout of what's being monitored at the site, continuously
5 monitored at the site, have a readout at the school so the
6 school would have direct access to this information.

7 Granted if there are any problems at the reactor
8 site, the children at the school are going to have a very short
9 time to act and put themselves in a position of safety and
10 therefore, to cut down on the time between a potential hazardous
11 release occurring at the plant and the time the school is
12 notified, we would ask that there be access, direct access to
13 this information on a continuous basis at the school site.

14 MR. WETTERHAHN: Mr. Chairman, let me try for I
15 believe the third time to explain my point. On one hand we're
16 speaking about releases from low-level radiation. Mr. Woliver
17 keeps straying to the area of emergency plans and notification.
18 We believe our emergency plans are adequate, but we'll get into
19 that at another point in time.

20 My point is that with regard to the routine re-
21 leases, the system and the environmental monitoring program
22 and the instrumentation at the plant proposed by the Applicant
23 is adequate. We have, in our motion for summary disposition,
24 some 108 different factual assertions, and as far as I read,
25 none are rebutted specifically by Dr. Fankhauser and by

021 1 Mr. Woliver here.

2 And I believe that under the rules, the Applicant
3 is entitled to summary disposition, both on 1 and 6, in that
4 the dose rates, the doses calculated using NRC criteria have
5 not been rebutted. And again, there is no factual issue with
6 regard to moving a particular monitoring station for low-level
7 releases onsite.

8 CHAIRMAN BECHHOEFER: I'd like to ask you, would
9 you make a statement that certain devices be part of the pre-
10 operational environmental monitoring program, it will be con-
11 tinued throughout the operating life of the station? By that
12 comment or commitment, do you intend to disavow the statements
.470 13 that are I know in the FSAR which says that, depending on ex-
14 perience, certain parts of the monitoring program will be cut
15 back? When you make those statements specifically with res-
16 pect to certain monitorings, do you mean you won't cut those
17 back?

18 MR. WETTERHAHN: Yes, with regard to this monitoring
19 station at the school, the Applicant has committed to continue
20 this throughout the lifetime of the station, no matter what the
21 results of the monitoring program are, even though they show
22 very little, and if they don't show any detectible dose, the
23 Applicant is committed to continue this particular monitoring
24 station.

25 CHAIRMAN BECHHOEFER: And with regard to the raw

1 water intake station, I assume that's the case?

2 MR. WETTERHAHN: That's correct.

3 CHAIRMAN BECHHOEFER: It's getting to be 5:30, and
4 I'm not sure we should stay too late in the building. I think
5 the Board will adjourn for the afternoon. We have a few more
6 of these summary disposition issues. We also are going to
7 inquire of the various parties as to what their intentions are
8 for evidentiary presentations. I guess we have to assume for
9 that purpose, if we didn't grant summary disposition, we would
10 want to find out from the parties what their plans are for
11 what type of cases they would plan to put on.

12 We will carry that over until Wednesday. Although
13 we had made available most of Wednesday for limited appearances,
14 we will devote such time Wednesday as is necessary to finish
15 these matters, and any other matters the parties believe should
16 be brought up and discussed.

17 I might say there are three or four people who have
18 requested to make limited appearance statements early on
19 Wednesday, about nine o'clock. I would assume that we would
20 take their statements, and I think there are only three, maybe
21 four, and then begin on the continuation of this, and then we'll
22 go into limited appearances after we finish the rest of these
23 contentions.

24 So for the afternoon, we are now adjourned.

25 MR. CONNER: Mr. Chairman, on the site visit, do we

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eb23 1 understand correctly that you will arrive at the gate tomorrow
2 at about ten o'clock where the guide will meet you?

3 CHAIRMAN BECHHOEFER: You understand correctly if
4 you get me on the right road.

5 MR. CONNER: All right, I'll show you how to get
6 there, but I want to make sure, because of the question of
7 security and so forth.

8 MR. WOLIVER: We intend to be there, too.

9 CHAIRMAN BECHHOEFER: Yes. We expect that all
10 parties will be there

11 MR. CONNER: Sir, we wanted to get some idea.
12 Counsel for each party of course normally can attend. I don't
13 know if any of the Intervenors plan to bring or think they can
14 bring more people because if it's an unreasonable number it
15 can't be done. So I assume that at the moment only Counsel will
16 attend. I've not heard anything to the contrary.

17 MS. KOSIK: Mr. Chairman, our group would like to
18 have three additional people.

19 CHAIRMAN BECHHOEFER: Would that pose a problem?

20 MR. CONNER: You mean a total of four people?

21 MS. KOSIK: That's correct.

22 CHAIRMAN BECHHOEFER: What about Dr. Fankhauser?

23 MR. WOLIVER: Dr. Fankhauser will be there with me,
24 so there will be at least two in this group.

25 MR. HEILE: And the City, Mr. Chairman, would bring

b24 1 three. I have already discussed this with the company myself,
2 and perhaps Mr. Miller or Mr. Neimeyer who is associated with
3 giving advice on the City's contentions. And Mr. Lewis.

4 MR. BARTH: The Staff will have three, Mr. Chairman.

5 MR. CONNER: That's too big for one group, I've
6 just been advised. Obviously we would rather have it all in
7 one. I for one don't plan to go. I'll cut it down by at least
8 one, therefore.

9 It's a total then of 16 people. Will it be just
10 the three Board members?

11 CHAIRMAN BECHHOEFER: Yes.

12 MR. CONNER: We'll get the names. If you will give
13 Mr. Wetterhahn the names, except for the Board, obviously,
14 we'll get them on the register and so forth. Obviously, every-
15 body would have to wear hard hats and observe security regula-
16 tions.

17 CHAIRMAN BECHHOEFER: That's correct.

18 CHAIRMAN BECHHOEFER: We're adjourned.

19 (Whereupon, at 5:35 p.m., the hearing in the
20 above-entitled matter was recessed to reconvene the
21 following day.)

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