

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
The Cincinnati Gas & Electric)	Docket No. 50-358
Company, et al.)	
)	
(William H. Zimmer Nuclear)	
Power Station))	

APPLICANTS' OPPOSITION TO INTERVENOR MIAMI VALLEY
POWER PROJECT'S MOTION TO AMEND ITS PETITION
FOR LEAVE TO INTERVENE

Miami Valley Power Project ("MVPP") has moved the Atomic Safety and Licensing Board ("Licensing Board") for permission to amend its Petition for Leave to Intervene pursuant to 10 C.F.R. §2.714. MVPP wishes to add a proposed Contention 17 alleging that the tests of fire insulation material used to cocoon cable trays were improperly performed. For the reasons stated below, the Cincinnati Gas & Electric Company ("Applicants") opposes this new contention.

1. The Proposed Contention is Unduly Late. MVPP acknowledges that proposed Contention 17 has been submitted out of time, but seeks to justify its tardiness by explaining that new information has been recently received from one Edwin Hofstadter, a former employee of Husky Products, Inc., which performed the tests on the cable tray insulation reported in Revision 12 to the Applicants' Fire Protection Evaluation Report. However, it is clear that no such "new" evidence exists.

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Revision 12 was submitted to the Commission on March 1, 1979, and was shortly thereafter examined by the representative of MVTP. In fact, Mr. Hofstadter, as reflected by his letter to the Office of Enforcement and Inspection of the Commission, dated August 18, 1978,^{1/} left the employ of Husky almost one year ago. In its pleading, MVPP implies some direct connection between Revision 12 and the test by Underwriters Laboratories which allegedly failed, subsequently described in its "Support" document as Report R#8758, dated September 5, 1978.^{2/} Hence, all of the information was available to MVPP through Mr. Hofstadter more than two months ago. As such, there is no justification for the delay in seeking this additional contention.

Moreover, there is no new evidence to support the proposed contention based upon either Mr. Hofstadter's examination of the cable tray component while an employee of Husky or from Report #R8758. There is no deficiency shown in Report #R8758 which would reflect adversely upon the tests conducted in Revision 12.

Test Report #R8758, dated September 6, 1978, is attached for the Board's examination. It negates MVPP's claim. The purpose of the test was to obtain information on the performance

1/ We have appended a copy of a letter dated December 21, 1978, attaching IE Investigative Report No. 50-358/78-21 and the related Notice of Violation, which includes Mr. Hofstadter's letter dated August 18, 1978 (Exhibit I, pp. 1-3).

2/ The report was actually dated September 6, 1978, and will be further discussed below.

of certain electrical raceway systems protected by ceramic fiber blanket insulation and perlite-cement insulation when subjected to controlled fire exposure (p. G1). Specifically, the test was to determine whether the material would provide greater than 30 minutes of fire resistance when subjected to the fire exposure specified. Report #R8758 reflects that the results were successful with the exception of test #2 in which the location of the fasteners on the material was different. Hence, MVPP's proposed contention has no basis in fact and should be denied as untenable on its face. Also, MVPP has been unable to sustain its substantial burden in explaining the delay.

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 615 (1977); Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 643 (1977); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977).

2. The Staff Will, in Any Event, Fully Represent the Public Interest in Assuring that Adequate Fire Protection Exists. The Staff is currently pursuing the matter of fire insulation for cable trays. As noted in its letter to the Applicant dated April 19, 1979, the Staff wishes additional testing to be performed to assure that all insulating material, including Kacwool, meets the philosophy of ASTM E-119 or UL/FM listings. The Staff notes the need to resolve this question finally for certain cable trays prior to the issuance of an operating license. Thus, more sophisticated tests of the material may be conducted or additional physical barriers may be provided in

appropriate areas. The Staff will be closely reviewing this to assure that the most exacting standards have been fully met, and the concerns expressed in Intervenor's proposed Contention 17 are therefore being fully considered by the Staff. See Applicants' Responses to Question 7, p. Q7-1 and Question 12, p. Q12-1, Revision 11 (February 1979). Accordingly, the interests expressed by MVPP's proposed contention will be fully represented by the Staff.

3. MVPP Has Not Shown Any Knowledge or Expertise That Would Assist the Licensing Board in Developing the Record. It is patent that MVPP does not understand the nature of the fire protection tests or the applicable requirements for cable trays. Had the Intervenor been following this proceeding in such a way as to provide assistance to the Board (which, of course, is a criterion to be considered in evaluating late intervention), it would have been aware of the continuing colloquy by the Staff and Licensees in this area, particularly in noting the letter dated April 19, 1979 referred to above. Obviously, the third criterion for admitting late contentions under 10 C.F.R. §2.714(a) has not been met.

As noted, part of the justification for MVPP's action lies merely in Mr. Hofstadter's examination of Revision 12. MVPP apparently relies upon Mr. Hofstadter as an expert to support this contention with expert testimony. Although Mr. Hofstadter worked as a welder for Husky, he is not shown to have any expertise in evaluating the adequacy of fire

with the adequacy of the cable tray structural capabilities. Finally, as noted above, MVPP is simply incorrect in stating that Underwriters Laboratories Report #R8758 showed that the Kaowool failed those tests.

In sum, MVPP has wholly failed to show that it "may reasonably be expected to assist in developing a sound record." South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), LBP-78-6, 7 NRC 209, 213 (1978); Gulf States Utilities Co. (Blue Hills Station, Units 1 & 2), Docket Nos. STN 50-510, 511, "Order Denying Petition for Leave to Intervene" (December 27, 1978). If MVPP's cryptic reference to Mr. Hofstadter's reading of Revision 12 is the only technical expertise MVPP intends to bring to this proceeding, it is obviously insufficient to show the requisite competence to assist the Licensing Board. Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 764 (1978).

4. MVPP Has Not Shown That Its Interests Will Not Be Represented By Existing Parties. As noted above, the Commission Staff has been following developments of all areas of fire protection and has imposed newer and stricter requirements. Hence, it is clear that MVPP's interests in this matter are more than adequately represented by the Staff.

5. Adding This Contention Will Broaden the Issues and Delay the Proceeding. Although the Motion itself reflects that MVPP had knowledge of the subject matter of the proposed contention in early March, no contention was proposed until this time. The Motion reflects that if the contention is

admitted, MVPP will begin discovery. Inasmuch as the hearing is to commence on June 19, it is obvious that admitting this additional issue and permitting discovery related thereto could not conclude prior to that date.

Conclusion

For the reasons discussed more fully above, the motion to admit a new Contention 17 should be denied.

Respectfully submitted,

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May 9, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Opposition to Intervenor Miami Valley Power Project's Motion to Amend its Petition for Leave to Intervene," dated May 9, 1979, in the captioned matter, were served upon the following by deposit in the United States mail this 9th day of May, 1979:

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