

AFFIDAVIT OF LOUIS CLARK

Louis Clark, being first duly sworn on oath according to law, states the following:

1. I am the Executive Director of the Government Accountability Project (hereafter, "GAP" or "Project") of the Institute for Policy Studies (hereafter, "IPS"), a private non-profit organization located in Washington, D. C. I have been the Executive Director of GAP since September, 1978, and before that I was Staff Counsel for the Project. I am a member of the Bar of the District of Columbia. As Executive Director of GAP, I screen all requests for assistance from the Project, and supervise the activities of its staff and interns.

2. Thomas Devine is the Legal Director of GAP; Billie Pirner Garde is the Director of the Project's Citizens Clinic for Accountable Government (hereafter, "Citizens Clinic"); Lucy Hallberg is GAP's representative in the State of Michigan.

3. The origin of the Project can be traced back to the early 1970's when the Project on Official Illegality was formed. At first the Project concentrated solely on the problems faced by national security whistleblowers such as Daniel Ellsberg and Victor Marchetti. But in 1976 the Project widened its area of concern when research disclosed a pattern of illegality and whistleblowing which extended beyond the national security apparatus. Workers who were at odds with their managers over harmful and irregular practices were turning up at the Departments of Agriculture, Labor, and Health, Education and Welfare. The Project sought to encourage and support these moral, public-minded civil servants who spoke out about these practices in their agencies. In order to facilitate this and marshall the necessary support for government workers who speak out, the Project held a conference in June, 1977, designed to bring together federal employees, legislators, lawyers, journalists, union representatives and interested citizens to explore ways to protect disclosure rights of government employees. Shortly after the conference the name of the Project was

changed to Government Accountability Project to reflect IPS' expanded concerns about the effects of the breakdown in accountability of the whole government to the American public.

4. Today, the purpose of GAP's program is to broaden the public understanding of the role of the public employee, public and community interest groups, and private citizens in preventing waste and corruption; to offer legal, community organizing, investigative, and political counsel and skills to whistleblowers and private citizens; to provide a legal education to law students interested in First Amendment and civil service issues; to bring meaningful and significant reform to the government workplace and to select communities throughout the country; and to expose government and corporate actions that are repressive, wasteful or illegal, or that pose a threat to the health and safety of the American public. GAP provides multi-level assistance to public employees, private citizens and community-oriented groups who pursue illegal, wasteful, improper or negligent actions by government or corporate bodies. GAP's Citizens Clinic is a major component of this program. The Citizens Clinic, which was established in March, 1982, is a citizens training, consulting and social activist program for local grassroots, public interest, community and church groups. This program is designed to assist and direct citizen involvement. Its role is to provide a range of services to individuals or groups who begin to speak out about problems spawned by corporate or government corruption, health hazards, pollution and injustice.

5. GAP is not a political organization. Since its inception, the Project has consistently assisted whistleblowers regardless of their political persuasion. GAP's unvarying policy has been and remains one of evenhandedness in assisting whistleblowers regardless of the political affiliation of either the whistleblowers or those who might be affected by the whistleblower's revelations.

6. As the foregoing paragraphs indicate, historically GAP's purpose has been to defend or broaden the rights of all employees, public or private, to disclose fraud, abuse or public health and safety hazards; in addition, with the establishment of the Citizens Clinic, GAP has become active on behalf of citizens groups for greater access to information and for inclusion in vital government decisions affecting their health and safety. Consistent with those purposes, GAP has, since 1980, been involved in nuclear power safety issues. GAP is not an "anti-nuclear" organization. To the contrary, GAP has now assisted over a dozen pro-nuclear clients and three times that number of pro-nuclear whistleblowers and other witnesses who came to the Project because it is concerned about safety and other specific problems, not the issue of nuclear power, per se.

7. GAP's first nuclear whistleblower came to the Project in June, 1980. He was a detective hired by a utility company to clandestinely observe employees at the Zimmer nuclear power plant in Moscow, Ohio. In the course of his duties, he discovered that some workers were defrauding the company. In addition, however, he discovered that a number of quality assurance workers were concerned that the company was ignoring various safety-related problems, and that when they complained about the quality of certain construction, they were routinely overruled. He was then instructed to observe the quality assurance workers to determine if they were engaged in fraudulent activities as were a number of other workers at the plant. He did investigate the quality assurance workers, and concluded that they were diligent and honest employees. He was then terminated by the company. He went to the Nuclear Regulatory Commission (hereafter, "NRC") with his concerns and eventually came to GAP when he began to doubt whether the NRC intended to vigorously investigate safety-related problems at the Zimmer plant. Since then GAP has assisted over 36 whistleblowers who worked either at the utility company, the construction company

building the Zimmer plant, or at the NRC itself. The direct result has been the halting of all construction related to those aspects of the plant which might be hazardous to the public in the event of a malfunction, and an order from the NRC for a complete audit of the management of the project.

8. A number of the workers from both the utility and the construction company at Zimmer requested that GAP act as an intermediary for the presentation of their information to the NRC, and some of those workers signed affidavits for confidential submission to the NRC. In order to protect the identities of these workers, GAP sought and obtained an agreement from the NRC that the confidentiality of their identities would be maintained by the agency. GAP subsequently requested and received from the NRC similar assurances to protect the anonymity of workers from the LaSalle nuclear power plant in Illinois, and from the Midland nuclear power plant in Midland, Michigan, who have communicated with the NRC through GAP. See June, 1982, letter from James G. Keppler, Regional Administrator, NRC Region III, to Ms. Billie Garde of GAP, which is annexed hereto as Attachment 1.


9. At the time GAP became involved in the Zimmer safety dispute, the licensing proceeding for the plant was nearly completed and a great deal of inspection and investigation by the NRC had already occurred. NRC officials later stated in congressional testimony that GAP had uncovered the real problems at Zimmer. The discoveries that GAP made about the Zimmer problems would have been impossible without the ability to make a pledge of confidentiality to whistleblowers both within the nuclear power industry and within the government. Without the confidentiality agreement between GAP and NRC, the number of whistleblowers at Zimmer and later at Midland, who made disclosures about safety problems at those nuclear power plants, would have been significantly decreased.

10. When newspaper articles and other publicity appeared about GAP's work at Zimmer, the Project began to receive requests for assistance from citizens groups and whistleblowers throughout the country about nuclear-related problems. When community groups contacted GAP for assistance, the Citizens Clinic would evaluate whether GAP should become involved. At Midland, Michigan, citizens groups had been contacted by a number of whistleblowers at the Midland nuclear power plant about safety problems at the plant. The citizens groups did not know how to deal with these whistleblowers; consequently, they sought the assistance of GAP's Citizens Clinic. These groups had heard of GAP's previous work with nuclear whistleblowers at Zimmer. GAP asked the Midland citizens groups to provide the Project with as much material as possible about possible safety problems at the plant. After GAP became convinced that the problems were indeed serious, the Project agreed to speak with the whistleblowers who had communicated with the Midland citizens groups about safety problems at the plant. Since becoming involved at Midland, GAP has submitted six affidavits to the NRC prepared by persons who believe that there are serious safety problems at the Midland plant.

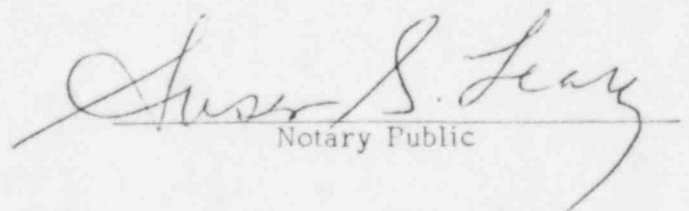
11. GAP has made it very clear to the Midland citizens groups from its first contact with them until today that any information that GAP received from whistleblowers was not for the benefit of the citizens groups, but rather that the information would be provided directly to the NRC if the whistleblowers so agreed. All affidavits GAP has received in its own investigation have been supplied to the NRC. One of GAP's purposes is to see that whistleblowers' grievances are dealt with effectively by the government; consistent with that purpose, GAP has turned Midland whistleblower information over to the NRC's Inspection and Enforcement Department and has then monitored the NRC to ensure that the agency deals with the information effectively. GAP has not shared such information with the Midland citizens groups, and no person

outside of GAP or the NRC has seen those affidavits in an unexpurgated form. The information contained in the affidavits was not meant for use in the licensing proceedings before the NRC, and GAP has not made the affidavits available to the intervenors in that proceeding.

12. With but one exception, all of the Midland affiants requested that their information be provided to the NRC on a confidential basis, and based upon GAP's June, 1982, agreement with NRC's Region III Regional Administrator, GAP assured the affiants that their anonymity could and would be preserved. If GAP representatives are deposed and forced to reveal the identities of these affiants, the inevitable consequence will be to deter many potential whistleblowers from divulging information to GAP in the future, either because of fear of retaliation and reprisals by their employers or because of fear of censure by co-workers, associates, neighbors and others. If GAP cannot provide an assurance of confidentiality to potential whistleblowers, many will simply avoid those risks by remaining silent. If that occurs, the ultimate damage will be to the public interest in full and free flow of information on matters pending before governmental bodies and agencies which are of major concern to the American citizenry.


LOUIS CLARK

Subscribed and sworn to before me this 24th day of June, 1983.


Notary Public

My Commission Expires May 31, 1988



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

Ms. Billie Garde
Government Accountability Project
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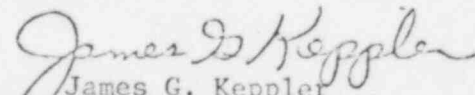
Dear Ms. Garde:

In a telephone conversation between you and Mr. A. Bert Davis of my staff on June 7, 1982, you requested a letter regarding our policy of protecting confidentiality of persons alleging problems at the Midland site.

It is the NRC's policy not to divulge the identity of persons making allegations, when they request anonymity, either during or subsequent to an investigation. This includes omitting the allegers name from the agency's report of the investigation. However, it must be recognized that, on occasion, the nature of the allegations or the limited number of individuals aware of the subject information may provide a basis for suggesting the alleged's identity. Furthermore, if the allegations result in highly visible issues that are the subject of, for example, congressional oversight committee review, it may not be possible to assure the alleged's anonymity, in that identifying information may have to be released to the committee(s).

I trust this is responsive to your request. Please contact me with respect to the Midland allegations.

Sincerely,


James G. Keppler
Regional Administrator

Attachment 1
to Affidavit of Louis Clark

GAP AT MIDLAND Background

On June 29, 1982 the Government Accountability Project (GAP) held a press conference announcing allegations by former workers at the Midland Energy Center made about construction activities. Affidavits containing the allegations were turned over to the U.S. Nuclear Regulatory Commission, but have never been made available to Consumers Power Company. To date, the NRC has completed only part of its investigation into the charges. In the meantime, GAP has kept up a steady stream of publicity implying problems at Midland.

Although Consumers Power has never been made privy to the allegations, we have, based on press reports, been able to either conduct our own investigations of some of the charges. We have also located information about the people involved with the GAP-sponsored activities that would lead any reasonable person to question their credibility.

Attached in this section are samples of newspaper clippings that indicate the origin and evolution of the GAP campaign against Midland. Subsequent sections contain clips regarding the specific charges about Midland or GAP actions at other nuclear plant sites in the country.

Exhibit B

WELDING ALLEGATIONS

One of the series of allegations compiled by GAP was that welding at the Midland Plant did not meet industry standards and welding inspectors were inexperienced and inadequately trained. Although most of the former workers making the charges have remained anonymous, one, E. Earl Kent, has made a number of public appearances reiterating his charges against Midland.

He had made similar allegations about work done at the San Onofre Nuclear Plant in California. As some of the attached clippings indicate, those claims were found to be false.

While the NRC has not completed its investigation of Kent's claims about Midland, an investigation of earlier allegations he made about specific welds turned up nothing to substantiate his assertions. Furthermore, interviews with welding experts at Midland turned up some serious questions about his competence.

In the meantime, news representatives have looked into Kent's background and have turned up stories (a sample of clips attached) showing a history of similar accusations against his employers. Not surprisingly, he and GAP feel he has been treated "shabbily" because his allegations at San Onofre were disproven.

ALLEGATION OF IMPROPER CABLE SUBSTITUTION

One of the former workers at Midland is an electrician who has played a prominent role in publicity critical of work at the Midland Plant, but whose identity has not been revealed. In two major television appearances he has been filmed in shadow and the sound of his voice was purposely distorted. In an affidavit given to an advisory committee to the Nuclear Regulatory Commission, his name and all references to his background were masked.

As the attached transcript of one of the television interviews shows, he alleged that "hundred" of electrical cables were improperly substituted, creating a potentially serious safety problem at the plant. As the attached news releases and clips show, a great deal of time and effort was expended to determine the validity of his charges. The overinspection (earlier inspections had been done and future inspections and tests will be conducted as part of the overall quality assurance and testing programs for all plant systems) was done in our own self interest; if the electrician's charges were true, we wanted to take corrective action now rather than having to make modifications just as the plant was ready for operation. The inspection for cable substitution is now complete; nine cables out of the total population of over 9,000 cables that were re-inspected were found to be improperly labeled, and none of them, not one, had the incorrect insulation.

Again, it should be noted, GAP representatives question the accuracy and credibility of those who find its claims invalid.

GAP AT THE LASALLE NUCLEAR PLANT

GAP continually boasts of its involvement in looking into construction flaws at the Zimmer Nuclear Plant in Ohio which eventually lead the Nuclear Regulatory Commission to order construction work to be halted. However, GAP's record for accuracy at other nuclear plant sites is usually ignored by the GAP publicity wielders.

We have already noted that, based on the limited information available regarding the charges made about the Midland Plant, there is good reason to question the accuracy of at least some of the claims. We have also cited the disproving of the claims made about the San Onofre Nuclear Plant. A further example of GAP's questionable methods occurred last year in connection with charges about the LaSalle Nuclear Plant in Illinois just as it was to begin operating. As the attached clips show, investigation of the allegations cost the owner of the plant up to \$500,000, while costs for buying power to replace the energy that could have been produced by the LaSalle Plant could have reached \$10 million. Again, there was no substance to the claims.

material upon which several safety related structures are founded, either wholly or partially.

Primarily because of the soils problem, the NRC in testimony before this Subcommittee on November 1981 identified Midland as one of five nuclear construction projects having serious quality assurance problems with broad project repercussions. Historically, most of the construction problems at the Midland Plant have been detected as a result of Consumers' and Bechtel's own quality assurance programs. Moreover, the problems we have detected have been properly reported to the NRC. In addition, over the past few years we have actively solicited information concerning any possible construction deficiencies from site workers through our quality assurance program, which includes procedures for protecting the identity of any informants who request confidentiality.

Consumers Power Company's response to the quality assurance problems which have been identified has been positive and comprehensive. In a series of steps we have assumed direct responsibility for most quality assurance and quality control functions for the project. We have continued to increase the management attention and other resources devoted to the project. We have hired independent, technically qualified third-party reviewers to assess the adequacy of construction to date and to provide another layer of audit and overview for future construction. The NRC too has maintained significant oversight and control over plant design and construction. All of these activities are being exhaustively litigated before an NRC Atomic Safety and Licensing Board which is currently reviewing the adequacy of Consumers Power Company's proposed remedial soils measures, its quality assurance program and its proposed Construction Completion Plan in contested adjudicatory hearings.

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STATEMENT BY
JOHN D. SELBY
Chairman, President and CEO Consumers Power Company
before
The Subcommittee on Energy and the Environment
of the
House Committee on Interior and Insular Affairs
June 16, 1983

I. Introduction

Mr. Chairman and members of the Committee, my name is John D. Selby. I am Chairman of the Board, President and Chief Executive Officer of Consumers Power Company. I am pleased to have the opportunity to speak to you about Consumers Power Company's Midland Nuclear Cogeneration Plant.

Consumers Power Company is a public utility that supplies electricity or gas, or both, to a service area in the State of Michigan with more than 5.3 million residents, including suburban Detroit and most other metropolitan areas in Michigan's Lower Peninsula except Detroit itself. Industries in the territory served by Consumers Power Company include automobiles and automotive equipment, primary metals, chemicals, fabricated metal products, pharmaceuticals, machinery, oil refining, paper and paper products, food products, and a large agricultural segment.

Consumers Power Company has been one of the nation's leaders in developing commercial nuclear power. The Company's Big Rock Point Plant, a 63 megawatt boiling water reactor located near Charlevoix, Michigan, has been operating safely and reliably since 1962. The Palisades Nuclear Plant, a 757 megawatt pressurized water reactor, achieved commercial operation in 1971. During 1982, Palisades and Big Rock Point accounted for 18.7% of the Company's electric generation.

Exhibit C

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion To Quash Subpoenas were mailed this 27th day of June, 1983, to the following persons:

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Counsel for the NRC Staff
U. S. Nuclear Regulatory Comm.
Washington, D.C. 20555

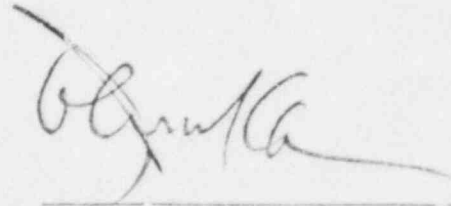
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A handwritten signature in dark ink, appearing to read "John W. Karr", written over a horizontal line.

John W. Karr

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