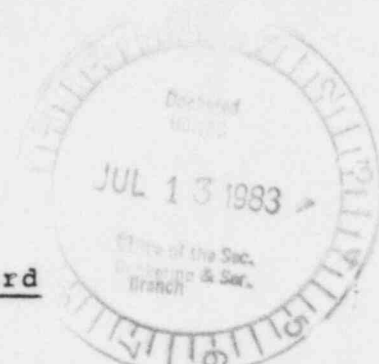


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board



In the Matter of: )  
 )  
CINCINNATI GAS AND ELECTRIC )  
COMPANY, et al. ) Docket No. 50-358  
 )  
(William H. Zimmer Nuclear )  
Power Station) )  
\_\_\_\_\_ )

MVPP'S MOTION TO REOPEN THE RECORD FOR  
ADMISSION OF EIGHT CONTENTIONS ON QUALITY ASSURANCE  
AND CHARACTER AND COMPETENCE

Pursuant to 10 C.F.R. §2.714 and to an Order of the Nuclear Regulatory Commission ("NRC") Commissioners served on February 22, 1983,<sup>1/</sup> intervenor Miami Valley Power Project ("MVPP") moves to reopen the record for a hearing on eight contentions on two fundamental issues yet to be considered by this Atomic Safety and Licensing Board ("Board" or "ASLB") -- (1) the systematic quality assurance ("QA") breakdown and its repercussions at the William H. Zimmer nuclear power station ("Zimmer"); and (2) the lack of corporate character and competence of the applicant Cincinnati Gas and Electric ("CG&E") to run a nuclear plant. In the alternative, MVPP petitions the Board to exercise its discretion to consider whether the standards for its July 15, 1982 exercise of sua sponte authority

<sup>1/</sup> Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-83-4, 17 NRC \_\_\_\_ (February 22, 1983) ("February 22 Order").

now have been met.<sup>2/</sup>

In support of its motion and/or petition, MVPP incorporates by this reference the following submissions by MVPP to the NRC:

<u>Submission</u>	<u>Date Filed</u>
Motion for Leave to File New Contentions ("May 18 Motion").....	5/18/82
Reply to Applicants' and Staffs' Responses to MVPP's Motion for Leave to File New Contentions ("July 8 Reply").....	7/8/82
Motion for Protective Order ("July 8 Motion")....	7/8/82
Motion to Strike Applicants' Answer to Intervenor's Motion for Protective Order ("July 26 Motion").....	7/26/82
Submission of Affidavits in Support of Eight New Contentions ("July 26 Supporting Affidavits").....	7/26/82
Petition for Reconsideration of Commission's Order of July 30, 1982 ("August 6 Petition")..	8/6/82
Petition for Reconsideration of the Commission's Order of July 30, 1982 ("August 20 Petition for Reconsideration").....	8/20/82
Petition to Suspend Construction of the Zimmer Station ("August 20 Petition to Suspend Construction").....	8/20/82
Reply to NRC Staff and Applicant Responses to MVPP's Petition for Reconsideration ("October 11 Reply").....	10/11/82
Motion for Leave to File Reply Brief to Applicants and NRC Staff Responses to MVPP's Petition for Reconsideration ("October 11 Motion").....	10/11/82
Supplement to MVPP August 20 Petition to Suspend Construction of the Zimmer Station ("October 18 Supplement").....	10/18/82
Notice of Correction to Intervenor MVPP's Petition for Reconsideration ("November 3 Notice of Correction").....	11/3/82
Opposition to Applicants' Motion to Strike MVPP's Reply Brief ("November 10 Opposition").	11/10/82

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<sup>2/</sup> Licensing Board "Memorandum and Order (MVPP's Motion for Leave to File New Contentions)" (July 15, 1982) ("July 15 Order"). In its February 22 Order, the Commission explained that this Board had "not set forth a sufficient justification to consider the eight contentions as Board issues." February 22 Order, at 2. MVPP submits that the evidence and analysis presented in this motion provide sufficient justification for this Board to again exercise its sua sponte authority under 10 CFR §2.760a. See, e.g., Union Electric Company (Callaway Plant, Unit 1), Memorandum and Order (on Motion for admission of additional evidence) (April 26, 1982).



Response in Support of Zimmer Area Citizens-  
Zimmer Area Citizens of Kentucky and the City  
of Mentor Petition for Appointment of a Con-  
sultant to Monitor Third Party Audit and  
Petition to Establish a Detailed Structure  
for Public Participation Throughout the Audit  
("November 30 Response and Petition")..... 11/30/82  
Supplemental Memorandum in Support of MVPP's  
Petition for Reconsideration of Commission  
Order of July 30, 1982 ("December 14 Supple-  
mental Memorandum")..... 12/14/82  
January 31, 1983 Letter to Nunzio J. Palladino,  
NRC Chairman, from Lynne Bernabei and Thomas  
Devine, Government Accountability Project..... 1/31/83

The submissions are attached.<sup>3/</sup> Additional evidence obtained since  
or not included in previous submissions by MVPP is also enclosed as  
exhibits in the context of relevant contentions and analysis.

#### I. BACKGROUND

On May 18, 1982, MVPP moved to reopen the record for admission  
of the eight contentions at issue, after learning that previous NRC  
staff reports had failed to disclose or address more than a small  
portion of the quality assurance breakdown at Zimmer, and had con-  
cealed CG&E management's complicity in the policies responsible for  
the breakdown.<sup>4/</sup> On July 15, 1982, this Board exercised its sua sponte  
authority to reopen the hearings on the identical issues raised by  
MVPP, although it ruled that MVPP had not submitted sufficient evi-  
dence to justify reopening the record. The Board explained that

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<sup>3/</sup> These submissions have already been submitted for the record,  
served on the parties, and are available in the Public Documents  
Room. Because of the voluminous nature and prohibitive expense of  
duplicating these materials again, MVPP requests leave to only file  
the complete record with this Board.

<sup>4/</sup> May 18 Motion.

hearings should be held due to the significance of the issues and the necessity of restoring public confidence in light of the staff's failure to discover the massive violations over the years.<sup>5/</sup>

On July 30, 1982, the Commission reversed this Board and refused to permit hearings.<sup>6/</sup> On August 20, 1982, MVPP petitioned the Commission to reconsider its July 30 Order. Simultaneously, MVPP petitioned the Commission to suspend construction of the Zimmer station and impose the following relief--

- (1) immediately suspend the construction permit at Zimmer;
- (2) replace the current Quality Confirmation Program with a comprehensive third-party reinspection program, with full authority to identify and impose corrective action on any nonconforming conditions; and
- (3) require an independent management audit of CG&E and KEI (Kaiser Engineering) management, which would include recommendations whether to replace the permanent CG&E/KEI QA programs with independent structures administered by an outside organization.

In support of these petitions, MVPP submitted over 3,000 pages of documentary evidence, including affidavits, internal documents issued by CG&E and/or its constructor Henry J. Kaiser Company ("HJK" or "Kaiser"), and records received under the Freedom of Information Act. The evidence documented specific MVPP allegations organized to support and amplify on the eight QA contentions proposed for licensing hearings. In a September 24, 1982 Demand for Information pursuant to 10 C.F.R. §50.54(f), the NRC directed CG&E to provide

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<sup>5/</sup>  
July 15 Order.

<sup>6/</sup>  
Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC \_\_\_\_ (July 30, 1982) ("July 30 Order").

written answers under oath to all of the specific allegations in support of MVPP's petition to suspend construction.<sup>7/</sup>

On November 12, 1982, the Commission suspended safety-related construction at Zimmer and ordered a quality verification program, including an initial third party management review.<sup>8/</sup> This action granted in part MVPP's petition to suspend construction. On February 18, 1983, the Commission denied the petition to reconsider its July 30 Order, but clarified the narrow scope of the previous decision as only applying to the Board's sua sponte authority. The Commission explained that it "has no view on whether MVPP has met the standards for reopening the hearing to consider late contentions and does not wish to entertain the matter out of the normal sequence. Thus MVPP may seek reconsideration or further relief from the Licensing Board or appellate review from the Appeal Board as appropriate under Commission rules."<sup>9/</sup>

On March 11, 1983, CG&E's February 28, 1983 response to the Demand for Information was placed in the Public Documents Room.<sup>10/</sup> In the response CG&E denied the factual and legal validity of every point raised by MVPP that is not already subject to NRC-imposed corrective action. In those instances CG&E denied MVPP's contention

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<sup>7/</sup>Letter to E. A. Borgmann, CG&E, from J. G. Keppler, Administrator, NRC Region III (September 24, 1982).

<sup>8/</sup>Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-33, 16 NRC \_\_\_\_ (November 12, 1982) ("November 12 Order"), published in 47 Fed.Reg. 51959 (Nov. 18, 1982).

<sup>9/</sup>February 22 Order, at 2-3.

<sup>10/</sup>Letter to Richard DeYoung, Director, NRC Office of Inspection and Enforcement, from E. A. Borgmann, CG&E (February 28, 1983) ("CG&E Response").

that corrective action programs at Zimmer empirically and inherently are inadequate. In public statements summarizing the response, CG&E stated that MVPP's submissions "didn't turn up anything new of any validity" and that any new allegations were "not valid." See March 1, 1983 news article, attached and incorporated as Exhibit 1. See also infra, at 38 - 41.

After careful study of CG&E's response and review of the issues with witnesses, MVPP concluded there is a very real danger that the plant will open without correcting many significant problems created by the effective abdication of quality assurance for the first 97% of construction at Zimmer. Although the Commission's November 12 Order delays construction, the QA program and the current Quality Confirmation Program have never stopped. They continue under CG&E's direction. CG&E proposals also are the foundation of the remedies in the Commission's November 12 Order. In short, CG&E remains firmly in control of the Zimmer QA program.

This does not foster confidence that the problems raised by MVPP will be solved, since CG&E continues to deny that there are any new problems which it is not already solving. As a result, MVPP submits that public hearings are necessary to substitute for CG&E's unwavering denial of everything, with the judgment of the ASLB after full and informed debate on the validity of MVPP's challenges. It would be a tragic failure of the Atomic Energy Act if the extraordinary revelations of the last 2.5 years served only to delay Zimmer while failing to make it safe.

## II. MVPP'S PROPOSED CONTENTIONS

Last May 18 MVPP submitted eight contentions for litigation in licensing hearings. During the previous year MVPP has obtained

considerable evidence to further refine, expand and strengthen the contentions. The original contentions are again presented below, refined with additional illustrations learned since May 18, 1982. The basis for each contention is the evidence in the previous MVPP submissions (supra, at 2). Examples of additional supporting evidence are attached, as specified. MVPP, by separate motion, will request a protective order for the identity of those witnesses who have supplied supporting affidavits under conditions of confidentiality.

1. CG&E and its contractors have failed to maintain sufficient quality assurance controls to ensure that the as-built condition of the plant reflects the final version of a design that complies with all applicable regulations and requirements for public health and safety, as required by 10 C.F.R. 50, Appendices A and B.

To illustrate, despite contrary commitments by the applicant and HJK since 1975, installation and quality control inspections have proceeded on the basis of construction aids rather than final drawings approved by the architect/engineer, Sargent and Lundy ("S&L"). Further, construction modifications have sometimes occurred before Design Document Changes ("DDC") were approved by S&L, reflecting a "trial and error" approach to the development of Zimmer's design. In some instances, the anticipated DDC's did not arrive. The result is that the NRC cannot state with confidence how CG&E's actions have changed the approved design.

Further, design revisions have not been fully incorporated and distributed to all relevant construction and QA personnel. Up to five different outdated versions of design specifications have been relied upon by various HJK personnel at the same time.



Even if the specified equipment were installed in the designated locations, however, S&L approved erroneous DDC's. In other cases, S&L permitted QA/QC-identified design deviations through erroneous "accept-as-is" determinations.

An April 1983 Report of the NRC Evaluation Team ["NET"] on the Quality of Construction at the Zimmer Nuclear Power Station ("NET Report") provides strong support for this contention. The report represents a systematic indictment of engineering decisions and design control at Zimmer. The report concluded that--

[g]iven [the] widespread nature of these concerns in aggregate there appears to be a clear need to verify the overall quality of the S&L design process. This effort was beyond the scope of the program described in this report. Therefore an independent design audit is recommended to resolve the issue of design adequacy satisfactorily. This audit is in addition to the <sup>OCP</sup> efforts currently in progress in the design area.<sup>11/</sup>

The conclusions and recommendations were based on 18 specific concerns, including design drawings that didn't take into account the effects of corrosion; and inadequate design practices for cable tray hangers, pipe supports, valves, instrumentation lines, all safety-related piping, and Heating, Ventilation and Air Conditioning system. In many cases, the hardware was the wrong size or in the wrong location, as with cable tray hanger supports in locations up to six feet 11 inches away from the designated locations on the drawings. To illustrate the severity of the breakdown, 11 out of 13 valves examined deviated from the drawings. The NET concluded that the inconsistencies and omissions are so severe that "it cannot be ensured that the orientation assumed in the piping analysis was properly translated in the as-built condition." <sup>12/</sup>

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<sup>11/</sup> NET Report, at 224.

<sup>12/</sup> Id., at 1-7, 180.

In addition to previously submitted evidence,<sup>13/</sup> this contention is supported by a May 25, 1983 letter from MVPP to the Commission and enclosures, attached and incorporated as Exhibit 2; affidavits; NRC documents received under the FOIA; NRC staff reports and analyses summarized at public meetings, and findings of the American Society of Mechanical Engineers ("ASME") audit team at Zimmer.

2. CG&E and its contractors have failed to maintain an adequate traceability system to identify and document the history of all material, parts, components and welds, as required by 10 C.F.R. Part 50, Appendix B, Criterion VIII.

To illustrate, it is impossible to identify and trace the history of items due to flaws such as inaccurate or overgeneralized blueprints, installation damage to materials; missing, incomplete or unreliable records and lack of identifying marks on electrical and other equipment; inferior traceability substitutes, such as purchase orders, that do not provide unique identification; use of the same identification record for distinct items; and falsified identification documents sometimes borrowed from items already discarded and used for work that was completed despite the absence of required traceability records.

In large part, the traceability breakdown occurred because of a mistaken decision only to require traceability to the point of receipt, rather than to the point of use. Therefore, CG&E and Kaiser were unable to keep track of items such as piping that were cut up and used in different parts of the plant, and other changes due to construction modifications.

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<sup>13/</sup> See, e.g., August 20 Petition to Suspend Construction, at 9-18, and relevant attachments.

The full scope of the breakdown is unknown, although internal audit documents have revealed traceability deficiencies on nearly 50% of items checked. To illustrate, significant quantities of materials have been upgraded from non-essential to essential status, despite the absence of traceability records to the point of use. Lack of traceability has been a systematic and recurring problem for control of weld rod filler material.

In addition to previously submitted evidence,<sup>14/</sup> this contention is supported by the NET Report and further affidavits from workers employed at the plant until the November 12, 1982 shutdown.<sup>15/</sup>

3. CG&E and Kaiser have failed to maintain an adequate quality assurance program for vendor purchases, as required by 10 C.F.R. Part 50, Appendix B, Criterion VII.

The QA breakdown for vendor purchases has been systematic, from selection of individual vendors to toleration of hardware defects discovered after installation.

To illustrate, vendors have been accepted for the approved vendors list ("AVL") -- already improperly shrunk to exclude material suppliers -- on the most superficial bases, such as unsupported memoranda from CG&E and/or Kaiser management, or a review

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<sup>14/</sup> See, e.g., August 20 Petition to Suspend Construction, at 18-25, and supporting attachments; October 18 Supplement, at 5.

<sup>15/</sup> These documents have been provided to the FBI and the NRC Office of Investigations ("OI"), and will be submitted to the Board if confidentiality can be maintained through a protective order.

of vendor QA manuals unsupported by on-site surveys to check whether the manuals reflect reality.

As a result, unqualified vendors have been placed on the AVL. For example, beams were purchased from a local junkyard that did not have a nuclear QA program, and after being improperly upgraded were installed for essential safety functions. The breakdown also extends to vendor purchases for services from contractors. One firm responsible for radiography, although bound by the Kaiser QA manual, worked for an extended period of time before obtaining a copy of the manual. Once on the AVL list, it has been unreasonably difficult to remove a vendor despite poor performance.

CG&E explicitly controlled the QA policy for vendor purchases and shrank it through budget restrictions, over the protests of Kaiser QA personnel who warned that the shortcuts violated NRC and professional standards. To illustrate, CG&E denied Kaiser the funds to conduct necessary vendor surveys and source inspections. As late as June 1982, CG&E president William Dickhoner dismissed these fundamental QA functions as "junkets that weren't required."<sup>16/</sup>

CG&E improperly made vendor purchases and then directed Kaiser to assume quality assurance responsibility for the purchases. CG&E improperly restricted Kaiser receipt inspections to a check for transit damage and thoroughness. CG&E and Kaiser did not maintain reliable, comprehensive identification records and documentation packages, which resulted in uncertain traceability.

After receiving vendor purchases, the items frequently were upgraded from "non-essential" to "essential" status. This phenomenon occurred for 80%-90% of structural materials purchased from vendors. As a result, items were installed in critical safety systems without

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<sup>16/</sup> August 20 Petition to Suspend Construction, Attachment 61.

first meeting the corresponding QA requirements. When quality control ("QC") inspectors found defects in vendor hardware, they were instructed not to write up Nonconformance Reports ("NR's").

The vendor QA deficiencies had a spillover effect on the rest of the plant. To illustrate, inadequate traceability has led to confusion over which items are vendor purchases and which are not. Vendor purchases at Zimmer are not examined by on-site QA inspectors. As a result, in a significant number of cases items fabricated on-site have been erroneously defined-out of the CG&E and Kaiser QA systems.

The flaws described above are illustrative, not exhaustive. This contention applies to safety systems throughout the plant. To illustrate the magnitude of the breakdown, an internal Kaiser audit survey estimated that inadequacies in the vendor QA programs cast doubt on the validity of some 42,000 purchase orders for materials alone.

In addition to previously submitted evidence<sup>17/</sup> this contention is supported by documents obtained under the Freedom of Information Act, and findings of the ASME audit team at Zimmer.

4. CG&E and Kaiser have failed to maintain an adequate quality assurance program to identify and correct construction deficiencies, as required by 10 C.F.R. Part 50, Appendix B. This contention challenges the structure and premises of the QA program at Zimmer, as well as illustrations of the effect in particular aspects of work such as welding.

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<sup>17/</sup> See, e.g., August 20 Petition to Suspend Construction, at 25-38, and supporting attachments.



In effect, Zimmer has not had a valid QA program during the first 97% of its construction. To illustrate, traditionally there has not been a valid quality assurance manual for CG&E and Kaiser QA/QC personnel. Training programs for QA/QC personnel have been inadequate, due to such flaws as instructing the staff in outdated procedures. Qualifications of personnel were suspect. To illustrate, students and enrollees in summer youth jobs programs assumed key inspection duties. When valid procedures were in effect, QA/QC management improperly circumvented them through contrary verbal instructions. Mandatory inspections and surveillances did not occur on safety-related items, were undocumented, superficial, were halted in the middle, and/or performed to the wrong procedures. Necessary audits were not conducted for unjustifiably long periods, as when CG&E stopped the audit program entirely, or when its coverage was restricted. CG&E and Kaiser management have not always made good faith efforts to comply with audit recommendations.

To illustrate the extent of the QA coverage gaps, the NET Report found nonexistent or inadequate QC coverage for turnover of equipment, cable trays and support systems, structural steel bolting, safety-related panel foundation welds, inspection and maintenance of pipe supports, and HVAC work. The report called for comprehensive reinspections of all Reactor Controls, Incorporated work, all accessible bolting, weld size for all pipe supports, and HVAC work, among other recommendations.<sup>18/</sup>

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<sup>18/</sup> NET Report, at 3-7.

The paperwork at Zimmer is hopelessly inadequate due to ineffective control of QA records. Tens of thousands of mandatory records have been lost or destroyed.

Due to deficiencies in corrective action, the same violations have occurred repeatedly, such as with training and control of weld rod materials. Corrective action efforts frequently failed to identify and/or address the causes of the violations. Further, corrective action programs have been addressed to individual examples of problems and prospective reform, while failing to determine the full extent of already-existing violations identified on the individual level.

Nearly until the plant was shut down, major construction repairs occurred without QC coverage, which can exacerbate the original deficiencies.

Similarly, the NET Report found a generic deficiency in maintenance of equipment during rework, modifications and generally. The NET concluded that these practices could degrade safety-related equipment in a manner not evident until sometime in the future.<sup>19/</sup> The potential hardware effects can be demonstrated on valves, which are extremely sensitive components. For example, on seven out of 18 valves checked, the NET found access covers open or missing entirely. The valves were excessively dirty, corroded from a packing leak, and had fuses pulled.<sup>20/</sup> On balance, NET recommended that "previously-conducted testing on most systems" should be considered invalid due to inadequate documentation and the high probability of damage,

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<sup>19/</sup> Id., at 219.

<sup>20/</sup> Id.

change or degradation resulting from original rework.<sup>21/</sup>

The primary foundation for the CG&E/Kaiser QA breakdown has been a decisive lack of independence from cost, scheduling and construction pressures. For example, from the earliest years of construction, Zimmer had the lowest ratio of QA/QC to construction personnel of any plant in the country being built under 10 C.F.R. Part 50, Appendix B. The lack of staff explains why QC coverage was skipped for entire construction shifts. CG&E refused to permit adequate QA staffing despite warnings from Kaiser QA managers that otherwise it would be virtually impossible to comply with minimum legal requirements. The unwillingness to respect QA programs may be continuing, as MVPP has received reports that CG&E has begun preparing its plan for the corrective action program in the second phase of the Commission's November 12, 1982 work stoppage, even before a management review organization had been selected to investigate the causes of the QA breakdown. (Exhibit 2, at 5.)

QC inspectors also do not have legally-required organizational freedom to report violations to the highest levels of management. To illustrate, an August 20, 1982 memorandum to all Kaiser QC personnel gave supervisors the effective authority to shield management from significant QC inspection reports. The memorandum imposed an immediate requirement that the inspection supervisors initial significant reports that leave the department.

As seen from the NET Report, the lack of an adequate QA program inherently has severe significance for the hardware in the plant. Further, to illustrate, at Zimmer uncontrolled hydrostatic tests have resulted in damage to piping and pressure vessels, as maximum

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<sup>21/</sup>Id., at 223.

allowable pressures have been exceeded by 100%. This defect leaves piping in wide areas of the plant in a quality-indeterminate state.

The absence of a minimally-adequate QA program has fatally flawed the entire welding program at Zimmer. Initially, CG&E and Kaiser cannot demonstrate that significant numbers of welders were qualified. Conservative estimates of welders who worked despite indeterminate qualifications range from 20% of active welders during 1982 and 50% throughout the life of the plant. Those percentages may severely underestimate the problem. Last July only 103 out of 470 active welders were required to take requalification tests, although the Kaiser QA staff's own unreasonably conservative estimate concluded that qualifications were indeterminate for 185 welders. These figures only apply to Kaiser welders. The faulty qualifications extend to other contractors.

CG&E's announcement that only 4 out of 103 welders failed the retesting program reflected questionable statistics and a crude program to rig the results. For example, some QC inspectors monitoring the weld test booth had no previous experience for the assignment. QC inspectors were prevented from continuing surveillances, after discovering violations. Testing procedures were waived through verbal directives to permit handicaps. Welders literally could take the examination as many times as necessary to pass; some who passed require four attempts. Welders who had been judged unqualified for specific procedures mysteriously received credit for those same procedures, despite the absence of evidence for the specific tests required. There is insufficient basis for confidence in the qualifications of welders who passed the retesting program.

The basis for the problem of indeterminate welder qualifications reflects the breakdown of QA paperwork at Zimmer. Records

are incomplete, signed by unqualified personnel, and falsified through almost a dozen techniques. At least 19,000 welding-related records, including 10,000 records related to welding qualifications, have been lost. See Memorandum to W. P. Christianson from T.P. Gwynn, NRC Region III, WHZ NRC 83-06 (January 31, 1983), Enclosure 2, attached and incorporated as Exhibit 3.

Even if welders are qualified, they must work to the proper procedure for a given task. Unless the qualifications of the procedure have been verified through tests that prove the strength of the welds under that approach, the ensuing work to the procedure in question is invalid and must be done over. At Zimmer, welding procedures were tested by a laboratory without a formal quality control program. The test results were so inherently unbelievable in some cases that Morris Udall, Chairman of the House Interior Subcommittee on Energy and the Environment, concluded they were "obviously phoney."<sup>22/</sup> Kaiser audits identifying the welding procedure problem have languished unresolved for almost two years.

The QA welding breakdown continued in the field. ASME heat treatment requirements, for treating the metal to achieve reliable bonding, were violated or replaced with less stringent rules. In the aftermath of a pattern of multiple, undocumented repairs, the strength of a significant quantity of welds is indeterminate. In many instances, QC coverage has been omitted during weld repairs. In other cases, QC personnel conducted uncontrolled "verbal" in-

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<sup>22/</sup> Quality Assurance at the Zimmer Nuclear Station: Oversight Hearing before the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, 97th Cong. 2d Sess. 24 (September 14, 1982) ("September 14 Udall hearings") (statement of Chairman Udall).



spection, instead of documenting their findings. In still other instances, the QC staff inspected the welds to the wrong procedures.

The NET Report confirmed the effect of QA violations on the quality of welding hardware. Although welding was evaluated as reliable in some areas, in others the identified deficiencies were gross. Overall, the NET admitted that original welding on structural steel was "poor." Shop welds were "fairly good."<sup>23/</sup> To illustrate the violations, in the cable tray system many required welds were not done at all. Others were undersized, had excessive undercut, overlap, unfilled craters, and excessive slag.<sup>24/</sup> Four out of 13 welds in three lines in the Reactor Building Closed Cooling Water System violated code requirements and standards of good workmanship.<sup>25/</sup> The NET neatly drew the relationship between poor QA practices and poor hardware when it observed that field weld "defects were easily detectable and indicate that an inadequate inspection program had been in effect."<sup>26/</sup> The NET extended the observation to other disciplines than welding, based on such practices as the "use of common hardware bolts in place of unspecified items, and evidence of the use of improper procedures such as flame cutting of holes in plates and beams."<sup>27/</sup>

In addition to the evidence already presented,<sup>28/</sup> the basis

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<sup>23/</sup> NET Report, at 4-5.

<sup>24/</sup> Id., at 98-99.

<sup>25/</sup> Id., at 150.

<sup>26/</sup> Id., at 3.

<sup>27/</sup> Id.

<sup>28/</sup> August 20 Petition to Suspend Construction, at 38-66, and supporting attachments; October 18 Supplement, at 5-12, and supporting attachments.

for this contention is NRC analyses and documents received publicly and under the Freedom of Information Act; congressional hearing records and correspondence; internal Kaiser and CG&E analyses, including the study that provided the grounds for the welder requalification retest program,<sup>\*/</sup> and further affidavits.

5. CG&E and Kaiser failed to maintain adequate controls to initiate, process and respond to internal Nonconformance Reports ("NR's") identifying violations of internal or government requirements. To illustrate the potential scope of the problem, within a November 1981 NRC report that resulted in a \$200,000 fine (IE Report No. 50-358/81-13) ("IE Report"), the staff analyzed in-depth 26 reports of nonconforming conditions out of over 1,000 that were voided between 1978 and 1981. The IE Report concluded that 25 out of the 26 reports were voided erroneously.

Over the life of the plant, potentially thousands of NR's have been mishandled under the QA program. For example, Kaiser QA inspectors in practice have been ordered not to write NR's on procedural or "software" deficiencies. A convoluted system of multiple approvals, opportunities for cancellation and twists such as the new classification "Draft NR" make it unreasonably difficult to issue and process NR's.

Procedures to ensure reliable corrective action have been violated. Hold tags have not always been issued or honored to stop work while the NR was being resolved. In fact, Kaiser QA inspectors have been explicitly ordered not to stop work when there is a disagreement on how to resolve an NR.

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<sup>\*/</sup>To protect the privacy of individual employees, MVPP will request that this evidence also be covered by protective order.

In the end, NR's have been improperly dispositioned, such as "accept-as-is" for serious violations and hardware deficiencies. Confidence in the resolution of NR's is undercut by historical dispositions such as "If it looks good, accept it." As a result, there is no basis for confidence that the QA program has adequately corrected nonconforming conditions identified by its personnel.

CG&E and Kaiser have developed a bewildering system of substitutes for NR's to disclose nonconforming conditions, including verbal reports, letters, inter-office memoranda, Requests for Information, Surveillance Reports, Inspection Reports, Corrective Action Requests and Reports, In-Process Inspection Deficiency Reports ("IIDR's"), punch lists and exception lists. Some of these channels are not part of the QA system at all.

To a varying degree, all of the NR substitutes have exacerbated the deficiencies of the NR program, further sacrificing accountability and violating 10 C.F.R. Part 50, Appendix B. To illustrate, "Authorized Engineers" from the construction department play a decisive role in the disposition of construction violations identified on IIDR's.

Despite the 1981 NRC findings, the NR program disintegrated further in 1982. A May 24, 1982 Kaiser "NR Action Plan" was developed to answer the query, "Why is there a bottleneck in the NR System?" Under "Areas to Consider" for the answer, the report offered one solution -- "Fewer NR's." It went on to list seven joint Kaiser/CG&E approaches to reduce NR's, relying on NR substitutes analogous to those previously found illegal for vendor and procedural violations.

Many NR's have been eliminated entirely from the QA system. For example, NR's have been voided as "Not Issued," and so expunged from the QA records system. In a significant number of cases, NR's voided as "Not Issued" cannot now be found. In other cases, responsible officials have lost track of NR's that were stockpiled.

Due to the high ratio of improperly voided, dispositioned or lost NR's, Zimmer contains an unknown number of dormant, identified deficiencies which had been found and later lost or dispositioned without correcting the identified defects. For example, the NET Report found that defects such as damaged wires, unsupported pipes, and broken conduits "may not" be on NR's or punchlists.<sup>29/</sup>

The breakdown in the NR system also has facilitated informal, undocumented repairs controlled by construction. The NET found that repairs at Zimmer may be causing more damage than the original deficiencies.<sup>30/</sup>

Due to these widespread violations of 10 C.F.R. Part 50, Appendix B, any decision to license Zimmer is premature until all QA reports on nonconforming conditions are located, entered into the NR system, and properly dispositioned through adequate corrective action.

In addition to evidence previously submitted,<sup>31/</sup> this contention is supported by further affidavits, staff analyses, and findings of the ASME audit team at Zimmer.

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<sup>29/</sup> NET Report, at 5.

<sup>30/</sup> Id., at 4, 219-222.

<sup>31/</sup> August 20 Petition to Suspend Construction, at 66-83, and supporting attachments; October 18 Supplement, at 13-15, and supporting attachments.

6. CG&E and Kaiser have engaged in illegal retaliation against QA/QC personnel who attempt diligently to perform their duties or who disclose QA deficiencies outside the chain of command, in violation of 10 C.F.R. Part 19 and Part 50, Appendix B, Criterion I.

Both CG&E and Kaiser openly tried to discourage or neutralize QA/QC initiatives, internal dissent, and employee disclosures to the NRC through this retaliation. To illustrate, construction personnel on at least one occasion physically attacked, and repeatedly intimidated QC inspectors. QC personnel attempting to conduct inspections were doused with buckets of water and scattered with high-pressure fire hoses. Management officials did not pursue and discipline the offenders, nor did they deter repeated harassment.

The inadequacy of the response became clear in May 1982, when the plant had to be closed for a few hours after three QC inspectors were doused with "dirty water" possibly containing human wastes. CG&E hired a private detective to solve the mystery but has not announced any corrective action based on findings from the still-secret report.

Physical abuse is only the crudest illustration of a history of harassment and retaliation at Zimmer. Top Kaiser management officials have berated QC inspectors and supervisors for writing up nonconformances. Both CG&E and Kaiser management retaliated against employees who pursued significant corrective action programs for QA violations, or disclosed serious violations to the NRC during



its 1981 reinvestigation. These reprisals included dismissal, demotions and job transfer. Employees who retracted or modified their NRC statements, after interviews with CG&E counsel, were promoted or kept their supervisory positions.

The harassment was not limited to QC inspectors. The reprisals have extended to those in positions of high responsibility in the QA program who challenged violations of 10 C.F.R. Part 50, Appendix B. Kaiser QA managers who defended the integrity of their program were dismissed.

Contractors were equally vulnerable. CG&E removed Butler Services, Inc. and Peabody Magnaflux, Inc. from responsibilities for certain QC inspections and radiographs, respectively, in a successful attempt to destroy the independence of these portions of the QA program.

The pattern of retaliation stretches from the early 1970's into 1983. If anything, retaliation through personnel actions intensified during 1982. This disturbing trend in part represented successful attempts to implement the May 24, 1982 "NR Action Plan" recommendations to solve the problem of "habitual NR writers and deficiency generators": "Identify individuals for corrective action."

Layoffs or transfers during 1982 eliminated or neutralized nearly all of the employees who challenged company policy. The assistant to the Kaiser QA manager was demoted to a documentation clerk after being suspected of disclosing significant evidence of QA violations to the NRC. He was laid off after testifying in Congress and filing a complaint with the Department of Labor. In an October 28, 1982 briefing of the Commissioners, the staff re-

ported that a QC inspector was "furloughed" from the site after Kaiser and CG&E learned of his disclosures to the NRC. He was laid off around the November 12, 1982 shutdown, along with other key potential witnesses for NRC and Federal Bureau of Investigation (FBI) investigations. At least some of these employees were immediately replaced with relatively inexperienced personnel who were unfamiliar with legal requirements. The layoffs could not be excused due to the shutdown, since QA activities continued after safety-related construction was halted.

Retaliation continues in 1983. In February Kaiser corporate auditor Sherrill Nolder was dismissed after challenging the non-response to significant QA abuses she had exposed. Ms. Nolder authored and co-authored reports revealing systematic violations such as fundamental defects in material traceability, improper upgrading of safety classifications, inadequate QA oversight of vendors, and unreliable qualifications for welding procedures. Pursuant to 42 U.S.C. §5851, Ms. Nolder challenged her dismissal through the Department of Labor.

These examples are illustrative, not exhaustive, of an environmental where it takes repeated acts of courage for QA/QC personnel to do their jobs right. QC inspections and findings that arose out of fear and pressure are an inadequate basis to satisfy public health and safety requirements.

In addition to previously-submitted evidence,<sup>32/</sup> the basis for this contention is NRC analyses presented to Congress and further affidavits.

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<sup>32/</sup> August 20 Petition to Suspend Construction, at 83-92, and supporting attachments; October 18 Supplement, at 15-17.

7. Reforms imposed by the April 8, 1981 Immediate Action Letter ("IAL"), such as the Quality Confirmation Program ("QCP"), have been inherently and empirically inadequate to adequately mitigate or solve the serious consequences of the QA breakdown at Zimmer.

The Quality Confirmation Program is an August 1981 outgrowth of an April 8, 1981 Immediate Action Letter. The QCP is the structural reform at Zimmer to neutralize the previous abuses. CG&E obtained NRC approval for the QCP program and administers it on an ongoing basis. The QCP has led to a welcome increase of QA personnel and has identified thousands of examples of problems. However, the QCP is fundamentally deficient, because its scope is too narrow, its implementation spotty, and its legitimacy inherently compromised by flaws such as conflict of interest. The effects of these structural weaknesses have been confirmed by empirical results.

The QCP has been compromised from the start because it is not comprehensive. Originally based solely on preliminary March 1981 NRC findings determined after the first three months of its reinvestigation, the QCP has largely failed to uncover the additional deficiencies identified by MVPP and the NRC. To illustrate, the most optimistic assessment the NET could offer is that the QCP had uncovered "many" of the problems found by the NRC hardware inspection. The NET Report conceded that two entire systems with significant violations, masonry walls and structural steel bolted connections, are not covered at all by an active QCP task. Significantly, while structural steel work is supposed to be covered

by the QCP, the deficiencies found by the NRC were outside the previous formal boundaries and therefore had not been covered by QCP inspections. The NRC's Evaluation Team also found defects not covered by QCP inspections, such as cable tray hanger supports in the wrong location, the absence of necessary pipe supports, panel and equipment foundation bolting instrumentation racks and identification of electrical equipment for location and color coding to distinguish their classifications.<sup>33/</sup> Similarly, at an October 28, 1982 briefing of the Commissioners, the NRC staff reported that 12 of 22 ASME audit findings were not covered by the QCP.

Neither the NRC nor the ASME have claimed that their audits are comprehensive. As a result, there is no way to determine how many flaws still are undetected. MVPP suggests that it is not enough for the QCP to find "many" of the hardware defects and design deviations at Zimmer. The plant should not be licensed without certainty that all potentially significant flaws have been addressed.

Even when expanded, the QCP is fatally compromised by structural deficiencies. To illustrate, the program does not address the causes of problems it identifies. Further, the QCP program is premised on a paperwork review. Unfortunately, the paperwork at Zimmer is neither reliable nor complete. For example, Kaiser failed to provide some 19,000 welding-related records to the QCP, which the NRC staff has conceded could have a potentially major impact on the program. (Exhibit 3, supra.)

The most fundamental flaw is that the QCP is permeated by conflicts of interest. CG&E, Kaiser and S&L are all deciding for

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<sup>33/</sup> NET Report, at 3,6,52,58-9,67,83-4,92-3,101,121-23,167,178,180,211.

a second time whether their work was deficient the first time around. As Congressman Udall stated at September 14, 1982 oversight hearings, "It seems unrealistic that the Committee or the public would have confidence that the company that neglected quality assurance for so many years will, on its own, fully uncover deficiencies resulting from its neglect."<sup>34/</sup>

CG&E also faces a unique legal and financial conflict of interest due to the economic consequences of repairs necessitated by its previous QA violations. In addition to shareholder suits (see Efros v. Dickhoner, No.1-82-1310 (D. S.W. Ohio, filed Nov. 15, 1982), attached and incorporated as Exhibit 4), and Ohio Public Utilities Commission denials of proposed rate increases due to delays created by repairs of QCP-identified items, CG&E is now in the midst of litigation against its corporate partners on the Zimmer project, in an attempt to prevent arbitration proceedings that its partners initiated. The partners, Dayton Power and Light ("DP&L") and Columbus and Southern Ohio Electric ("C&SOE") are attempting to arbitrate such issues as whether CG&E must pay all remaining costs to complete Zimmer and whether CG&E should pay damages for mismanagement and violations of commitments in the BASIC Generating Agreement between the partners. As a result, every time CG&E admits to previous violations that demonstrate mismanagement or that now need to be corrected, it weakens its own case against arbitration claims that are based on unanticipated repair costs and delays. (Exhibit 3.) The arbitration ripple effect creates further economic pressure to avoid new costs. For Example, it partially explains why CG&E's outside auditor, Arthur Anderson & Co., recently only gave the utility a "qualified approval."

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<sup>34/</sup> September 14 Udall hearings, at 2 (statement of Chairman Udall).

See "Cincinnati G&E Auditors Qualify Financial Reports," The Wall Street Journal (May 6, 1983), p. 13.

Put simply, all of the "reforms" under the Immediate Action Letter are fundamentally compromised, because they do not provide a unique organizational structure. As a result, the QCP reflects the deficiencies in Zimmer's QA program, rather than solving them. To illustrate, inspections under the Immediate Action Letter reforms have not been performed; and have been superficial and/or limited to specifics identified on construction punch lists instead of the entire work packages and relevant QA records. Inspectors have been so inadequately trained that their work has been scrapped in over 1700 instances. They may have conducted inspections to inconsistent procedures for the same type of problems, according to the NET.<sup>35/</sup>

Empirically, the QA violations have accelerated since the IAL. The organizational flaws make the empirical failure of the IAL predictable, if no less significant. MVPP's August 20, 1982 petition alleged 101 QA violations since the IAL. Thirty-four (34) QA violations alleged in MVPP's October 18, 1982 supplement to the petition occurred since May 1982. Not surprisingly, the flaws have reflected the traditional weaknesses of the QA program. For example, the reporting is suspect. Monthly QCP status reports have provided data so inconsistent to be impossible. At an October 28, 1982 briefing of the Commissioners, the NRC staff was unable to explain all the inconsistencies.

CG&E's judgment has been similarly suspect. What is good enough for the utility has already been unsatisfactory for the NRC, ASME, and the whistleblowers who have challenged the program through MVPP. On a conceptual level, the NRC staff has dismissed the util-

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<sup>35/</sup> NET Report, at 101.



ity's optimistic, premature times estimates for completing the program as wild speculation, because it is impossible without prejudicing the result to predict the amount of rework until the problems have been identified.<sup>36/</sup>

QCP findings have been flatly rejected by other authorities. For example, CG&E has reported through the QCP that on-balance Zimmer's audit program has proven adequate. The NRC and the ASME have come to the opposite conclusion. The QCP has determined that there are "no problems" with S&L's work, such as design control and verification. The ASME has testified in Congress against S&L engineering judgments -- such as accepting a pressure vessel that had been ripped open. The NRC Evaluation Team found such conceptual flaws with S&L's design and controls that it has recommended an independent design audit in addition to the QCP. (Supra, at 8.)

As a result of these and many other examples, it is difficult to have confidence in the resolution of QCP inspection findings. Overwhelmingly, the final decision has been to "accept [the item] as is" or to conduct minor "rework."

Finally, the QCP empirical failures have extended to corrective action. Construction crews have engaged in corrective action work largely without QA/QC coverage. The results may have been to create worse problems than the original deficiencies, as even the NRC staff and Chairman Palladino have recognized. To illustrate, instead of minor rework such as polishing structural steel welds, construction crews engaged in major repairs or entirely replaced welds, with only visual QC inspection of the results. Ironically, in some cases the QCP has widened the QA/QC loophole at Zimmer.

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<sup>36/</sup> See, e.g., September 14 Udall hearings, at 12 (statement of Mr. Keppler).

In addition to evidence already submitted,<sup>37/</sup> this contention is supported by further affidavits, NRC staff analyses and exhibits, and testimony and documentation presented at congressional hearings.

8. CG&E lacks the necessary character and competence to operate a nuclear power plant.

In Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CLI-80-3212 NRC 281 (1980), the Commission held that abdication by a prospective licensee of responsibility for construction to its contractor or abdication of knowledge about construction activities by a prospective licensee is an independent, sufficient basis to deny an operating license.

In large part, decisions about licenses are predictive in nature, and the Commission cannot ignore abdication of responsibility or abdication of knowledge by a license applicant when it is called upon to decide if a license for a nuclear facility should be granted.

12 NRC at 291. This scenario is the most charitable explanation that has been offered for the Zimmer QA breakdown.

The lack of corporate character and competence by CG&E is the cause of the problems identified in the previous contentions. Region III Administrator James Keppler repeatedly has stated that "the real sin" of Zimmer is that it is in the ground and 97% complete, but the quality is indeterminate. MVPP submits that the real sin is CG&E's willingness to rush the plant to completion and operate it without first resolving all remaining questions about quality. This ongoing policy has been modified only grudgingly, to the minimum extent ordered by the NRC staff and Commissioners. CG&E's determined policy to gamble with public health and safety

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<sup>37/</sup> August 20 Petition to Suspend Construction, at 92-105, and supporting attachments; October 18 Supplement, at 17-23; and further affidavits.

is sufficient ground to deny it an operating license. This conclusion would be valid even if CG&E's original sin were merely blissful ignorance, as the applicant and the NRC staff have asserted.<sup>38/</sup>

In fact, CG&E has been well aware of Kaiser's QA program. CG&E management made key decisions about the QA program and has had a dominant role since 1971. MVPP's August 20, 1982 petition documented 129 instances where CG&E had knowledge of or participated in the QA decisions at issue. Kaiser QA managers and inspectors alike have protested repeatedly that the QA program did not meet legal minimums. An NRC resident inspector who realized the QA program was out of control, Terry Harpster, tried to warn CG&E before the Three Mile Island accident. In each case, rather than upgrading the program CG&E rejected the advice and retaliated against the messenger who made the warning. QA officials were dismissed or transferred. CG&E management complained to NRC Regional Administrator Keppler about Mr. Harpster.

Doubts that the Zimmer QA breakdown represents CG&E's breakdown should be dispelled by July 1981 NRC interview with former CG&E QA manager William Schwiers and former Kaiser QA manager Phillip Gittings. Mr. Gittings reported that he had to clear "everything" through Mr. Schwiers. Mr. Schwiers, for his part, admitted that CG&E's QA department labored under the same lack of independence from construction as did Kaiser's. In short, CG&E construction essentially ran Zimmer's QA program for the first 97% of construction. As seen above, the problems have deteriorated

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<sup>38/</sup> For example, at a June 16, 1982 briefing of the Commissioners CG&E Vice President Earl Borgmann explained that no one had ever warned top utility management of the consequences of Zimmer QA policies.

still further since the April 8, 1981 Immediate Action Letter, when CG&E officially assumed authority for the QA decisions it previously had made more informally.

The CG&E philosophy from the beginning has been to tolerate quality assurance as a necessary evil. The overall goal -- enforced by officials up to President Dickhoner -- has been to minimize QA/QC expenditures and delays. It is unfortunate that the utility was penny wise and pound foolish. The lack of adequate QA/QC staff contributed to immediate delays. It also contributed to more expensive, time-consuming repairs in the long run.

There is no indication that the utility has yet learned its lesson. Last June, for example, Messrs. Dickhoner and Borgmann both reaffirmed the company's QA decisions of the early 1970's. Mr. Dickhoner still believed that mandatory vendor surveys and source inspections were "unnecessary junkets" for QC inspectors. Mr. Borgmann continued to believe that Kaiser had not demonstrated that there would have been anything for QC inspectors to do, if the utility had approved 1974-76 personnel hiring requests. The utility has not yet repudiated these positions. In fact, it reaffirmed them in its response to the NRC Demand for Information.

Similarly, as of October 5, 1982, CG&E had still not hired the two additional Authorized Nuclear Inspectors ("AIA's") recommended by the ASME National Board in December 1981. The National Board concluded that the code violations at Zimmer were due to the shortage of AIA's. CG&E has not yet been sufficiently impressed to honor the recommendation.

The philosophy persists. Shortcuts in QC coverage rework explain why QCP rework may be creating worse problems than it was

designed to solve. To illustrate, the April 1983 NET finding of "a number of problems with work practices that indicated a need for the applicant to strengthen craft and supervisory foremen training"<sup>39/</sup> shatters confidence in CG&E's position after a September 8, 1982 plant tour that if the utility could do it over, there would be a "pretty massive retraining program." CG&E has had a chance to do it over, through QCP rework, and has failed again to provide adequate training. MVPP had learned and reported the sustained training deficiencies last October 18 in its Supplemental Petition to Suspend Construction.

MVPP has demonstrated that CG&E repeatedly has made false or inaccurate statements, sometimes despite prior knowledge. In many instances the false statements were in public statements to the press or to Congress. In light of these false and misleading statements to the public, CG&E should not receive a license to operate a nuclear plant. The license involves responsibilities to protect the health and safety of the same community it has deceived.

In scores of other stances, CG&E or its contractors have submitted false information to the NRC. For these disclosures, the law is clear. In Houston Power and Lighting, supra, the Commission emphasized that false statements to the NRC, and particularly intentional false statements, are grounds to deny an operating license.

MVPP has submitted evidence of numerous false statements to the NRC. In some cases where records have not been altered, they have been destroyed or significantly incomplete. MVPP's allegations

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<sup>39/</sup>NET Report, at 224.

have been supplemented with findings and disclosures from government agencies. For example, MVPP's August 20, 1982 petition summarized 30 instances of alleged falsification. At September 14, 1982 congressional hearings, House Interior Subcommittee on Energy and the Environment Chairman Morris Udall disclosed an additional six examples of falsification of Charpy tests for welder qualifications.<sup>40/</sup> In its October 18 supplemental petition, MVPP disclosed another six instances of falsification. Since that time, MVPP has submitted two additional affidavits to government authorities concerning deliberate falsification on contractor welding qualification tests and records, between 1979 and 1982, as well as for materials traceability. MVPP has also submitted evidence to government authorities of attempts by CG&E to have witnesses provide knowingly inaccurate responses to government authorities last fall.<sup>41/</sup>

The NRC staff increasingly has recognized the problem of falsified records at Zimmer. For example, the staff has retreated from its earlier confidence that CG&E was acting in good faith last July when it denied the absence of a significant problem with welder qualification records. (Exhibit 3, supra.) A March 25, 1983 NRC report applied the character and competence issue directly to the QCP task on welder qualifications. The staff found literally dozens of improper alterations, as well as "a potential generic problem which should be investigated by the licensee."<sup>42/</sup>

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<sup>40/</sup> September 14 Udall hearings, at 159-75.

<sup>41/</sup> MVPP will submit documentation for the issue of falsified statements after obtaining this Board's guidance on how to create the record without compromising ongoing NRC and law enforcement investigations.

<sup>42/</sup> NRC IE Report No. 50-358/82-10 ("March 25 IE Report"), at 30.



Even CG&E is now recognizing the problem of falsified records. In a January 14, 1983 interim report to the NRC under 10 CFR 50.55(e), CG&E described three methods by which at least 10 Kaiser welding procedures had been altered.<sup>43/</sup> Even if the alterations were sufficiently innocent to absolve CG&E's "character," its program should still be examined at hearings for "competence" to determine if it identified and corrected the full extent of inaccurate records at Zimmer.

There is significant evidence that many of the falsified records and statements were cynically deceptive. Some instances can be drawn from the public record. To illustrate, on August , 1982, CG&E denied emphatically that IIDR's had been dispositioned through Design Document Changes ("DDC's"). The March 25, 1983 IE Report noted, however, that from January through June, 1982, 17% of IIDR's on hanger installations were resolved through DDC's or CAR's.<sup>44/</sup>

Evidence of non-QA related criminal and non-criminal misconduct must also be examined before this Board in granting applicant an operating license. Witnesses have identified on-site criminal misconduct, including diversion of nuclear materials to underground businesses that sell belt buckles manufactured on-site. Witnesses have also provided affidavits detailing widespread illegal gambling including horseracing bets placed from the security guard's desk on the seventh floor where nuclear fuel is kept. Alcohol and narcotics

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<sup>43/</sup> January 14, 1983 letter to James Keppler, NRC Region III Administrator, from Earl Borgmann, CG&E.

<sup>44/</sup> March 25 IE Report, at 32.

use on-site further demonstrates CG&E's abdication of its duties. Rather than squarely confront the problem, management chose not even to visit work areas due to fears of physical violence from convicted felons, according to a former NRC inspector. The NET Report demonstrates that inadequate management control of the shop floor persists, which explains why so much equipment is being damaged during rework, due to practices such as using instrumentation lines and flexible electrical conduits for stairs.<sup>45/</sup>

The above overview helps explain why previous QA/QC retaliation and failure to respond adequately to identified deficiencies continues to date. The same management organizations are making the decisions. Through the CG&E-led Quality Confirmation Program, Region III in effect may have ordered the fox to strengthen its control over the henhouse.

CG&E and Kaiser still adamantly deny, however, that any mistakes were made knowingly. For example, at September 14, 1982 congressional hearings they insisted that falsified welding procedure test records were merely the innocent result of machine errors. By contrast, Chairman Udall characterized the records as "obviously phoney" and estimated the odds of accuracy in the neighborhood of "one in a billion."<sup>46/</sup>

MVPP's challenge to CG&E's character and competence is not frivolous. A federal grand jury in Cincinnati is considering

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<sup>45/</sup>NET Report, at 222.

<sup>46/</sup>September 14 Udall hearings, at 11, 22-24.

criminal violations. See November 9, 1982 subpoena, attached and incorporated as Exhibit 5. Even CG&E's corporate utility partners recognized the validity of this contention. CG&E has gone to court to prevent its partners from withdrawing their investment in Zimmer. The two other utilities involved have charged CG&E with mismanagement and violations of the basic partnership agreement. (Supra, at 27.)

With respect to public health and safety the necessary forum to resolve CG&E's character and competence is this Board, rather than proceedings to determine criminal or financial liability. It is imperative that an operating license not be granted without a full hearing into applicant's character and competence.

In addition to evidence already submitted,<sup>47/</sup> this contention is supported by further affidavits, documents and testimony from congressional hearings, and analysis of corporate, ASME and NRC public reports and/or correspondence.

### III. MVPP HAS MET THE STANDARD FOR ADMISSION OF ITS PROPOSED EIGHT CONTENTIONS

Last July 15 this Board reopened hearings on grounds that the public interest outweighs "legal niceties pertaining to acceptance of untimely contentions and reopening of records."<sup>48/</sup> MVPP continues to agree with that reasoning but submits that the "legal

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<sup>47/</sup> August 20 Petition to Suspend Construction, at 105-120, and supporting attachments; October 18 Supplement, at 23-24.

<sup>48/</sup> July 15 Order, at 7-8.

niceties" now leave no alternative but to reopen the record for litigation of these proposed contentions.

A. Standard for Exercise of Discretion

The law and the policy of the Commission requires hearings when there are substantial disputes of facts that have a significant bearing on safety. At October 1, 1982 congressional hearings, the NRC General Counsel testified that "a formal adjudicatory hearing is required [by the Act] on issues on which there is a genuine issue of material fact.... For revocation of a license, it is not as clear. For the license itself, it seems to me clear."<sup>49/</sup> In response to questions from Congressman Ottinger, there was unanimous agreement among the Commissioners in support of this interpretation.<sup>50/</sup>

MVPP does not contend that hearings are required for factual disputes when contentions are frivolous or so vague as to constitute fishing expeditions. In evaluating whether MVPP has met the standard for reopening, however, this Board may not determine whether MVPP has met any burden of proving its case. Rather, the contentions merely must be reasonable and sufficiently specific so as to permit a response.

There can be no question that the facts and the law are in dispute in this case. There is virtually unanimous disagreement. In response to the NRC staff's Demand for Information, CG&E has publicly stated that all new (MVPP) allegations are invalid.

Supra, at 5-6.

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<sup>49/</sup> Indian Point and NRC Safety Procedures, Hearings before the Subcommittee on Energy Conservation and Power of the House Energy and Commerce Committee (October 1, 1982), at 395 ("October 1 Ottinger hearings").

<sup>50/</sup> Commissioners Roberts and Ahearne extended the policy to disputes of law. Commissioner Gilinsky had left the hearing when Congressman Ottinger made his inquiry. Id., at 404-05.

To illustrate, in its February 28, 1983 response, CG&E flatly denied the allegation that the as-built condition of Zimmer does not reflect the proper final design.<sup>51/</sup> Similarly, CG&E denied unequivocally all allegations that it prevented Kaiser from maintaining an adequately-sized QA staff on the Zimmer Project prior to the NRC's April 8, 1981 Immediate Action Letter.<sup>52/</sup>

In disclosures to other government bodies CG&E went even further in its denials. For example, in an October 26, 1982 response to Cincinnati City Councilwoman Bobbie Sterne, CG&E contradicted MVPP's contentions that QA/QC/QCP coverage has been spotty and patchwork and that many required records are missing. "[T]he Quality Confirmation Program and the Quality Assurance Program guarantee a redundancy in checking each component and the accompanying paperwork on each component." See October 26, 1982 letter from Page Williams to Bobbi Sterne, attached and incorporated as Exhibit 6. Similarly, CG&E said that with respect to "every one" of the allegations involving retaliation, "neither the Company nor the NRC has found any evidence to support the claims." (Id., at 4.) CG&E rejected all the allegations in whistleblower affidavits submitted by MVPP as attempts "to retaliate against the Company and its contractors for personal grudges." (Id., at 4-5.) CG&E dismissed MVPP's proposed character and competence contention as "pure propaganda, an emotional ploy frequently used when hard evidence is lacking." (Id., at 5.)

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<sup>51/</sup>  
CG&E Response, at 38.

<sup>52/</sup>Id., at 118.

Despite the vehemence of CG&E's denials, MVPP's position clearly is reasonable. Findings by various authorities such as the ASME National Board and the NRC staff confirm specific examples of violations charged by MVPP. After holding a series of four public hearings, the City of Cincinnati Environmental Advisory Council recommended, inter alia, that the city support reopened licensing hearings based on findings that confirmed virtually all of the generic deficiencies charged in MVPP's contentions. See Report on the Findings and Recommendations of the City of Cincinnati Environmental Advisory Council (October 25, 1982), attached and incorporated as Exhibit 7.

In response to claims from a public relations support group for CG&E that the charges raised by MVPP and its counsel the Governmental Accountability Project ("GAP") are frivolous, NRC Region III Administrator Keppler put the reasonableness of MVPP's allegations in perspective:

We do not believe that any Region III staff member stated that most of the Zimmer allegations were frivolous, as you indicate in your letter. Certainly, there have been a number of very serious allegations concerning Zimmer. These allegations, coupled with the NRC's significant inspection findings, have formed the basis for the NRC Order suspending construction at Zimmer. Such a measure would not be taken over frivolous matters.

(December 30, 1982 letter from James G. Keppler to Robert Acomb, attached and incorporated as Exhibit 8.)

In short, the material facts remain in dispute on significant, reasonable safety concerns for the eight contentions raised by MVPP. The most basic premises of the Atomic Energy Act mandate a hearing on MVPP's proposed contentions.



Even if the criteria for reopening the record and admitting new contentions were not satisfied, this Board should properly exercise its discretion to admit them even if one or more of the formal requirements for late submission were not met. See Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2, ALAB-363, 4 NRC 631 (1976)).

B. Standards for Admission of New Contentions

Under 10 CFR 2.712(a), the following five criteria must be weighted in evaluating the admission of proposed new contentions:

- (1) Good cause, if any, for failure to file on time;
- (2) The availability of other means whereby the petitioner's interest will be protected;
- (3) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;
- (4) The extent to which the petitioner's interest will be represented by existing parties; and
- (5) The extent to which the petitioner's participation will broaden the issues or delay the proceedings.

Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 241 (1980); Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

On balance and with respect to each criterion, application of the above factors supports admission of MVPP's proposed contentions.

1. Good cause for failure to file on time

It is well-settled law that the availability of new documentary information is good cause justifying the admission of new contentions filed out of time. Indiana and Michigan Electric Company (Cook Nuclear Plant, Units 1 and 2), CLI-72-25, 5 AEC 13, 14 (1972). As the Commission explained, "Unless special considerations dictate otherwise in specific circumstances, new information appearing in previously unavailable documents would generally constitute good cause for amendment...." <sup>53/</sup>

MVPP meets this standard. MVPP did not actively investigate for an ongoing QA breakdown until after the record was closed, because it assumed that the NRC staff had the problem under control. MVPP began to investigate actively after corporate and NRC whistleblowers communicated credible, serious concerns to GAP that the staff's public reports failed to disclose significant portions of the QA breakdown at Zimmer. Rather than raise potentially frivolous allegations, MVPP waited to propose new contentions until it had investigated and gathered some three thousand pages of documentary evidence not previously available to the public. MVPP has also supported the issues raised in its contentions with affidavits and statements from witnesses who worked at Zimmer. MVPP submitted 15 such statements and/or affidavits either to this Board under protective order, to the Commission or to the NRC staff.

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<sup>53/</sup>Even in the absence of good cause, untimely submission of any intervention petition does not bar litigation of proposed contentions if the other criteria favor a hearing. West Valley, supra.

This documentary evidence was not previously available. Indeed, CG&E threatened publicly to pursue legal action, because MVPP had obtained the information which it has since placed on the public record.<sup>54/</sup> MVPP could not have submitted the worker statements and affidavits before the record was closed, because counsel had not yet met the witnesses.

MVPP should not be denied a hearing because it trusted the adequacy of the staff's 1981 reinvestigation. The Region III staff had promised a thorough effort, and the NRC took what appeared to be significant enforcement action -- a \$200,000 fine, the largest in history for a plant under construction -- compared to previous findings on Zimmer.

Further, as Commissioner Ahearne explained at October 1, 1982 hearings of the House Energy and Commerce Subcommittee on Conservation and Power, it is not the role of public interest groups to substitute for NRC staff investigators: "I don't see that we ought to transfer the investigatory role, for example, to the public interest group. I think that is our role."<sup>55/</sup> MVPP had no responsibility to second-guess the NRC staff until it received and verified evidence that the public record was incomplete and inadequate.

MVPP was also less tardy than the Commission in realizing that the staff was not uncovering or disclosing the full scope of QA deficiencies. As early as May 18, 1982, MVPP advocated this

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<sup>54/</sup> "CG&E documents obtained 'legally'," The Cincinnati Post (May 20, 1982), at 9A. CG&E also has attempted repeatedly to prevent the evidence submitted by MVPP from being included in the record. See, e.g., Applicant's Motion to Strike Miami Valley Power Project's Reply Brief, served October 26, 1982.

<sup>55/</sup> October 1 Ottinger hearings, at 400 (statement of Commissioner Ahearne).

position. Last July 30 the Commission still contended that the staff could adequately solve the QA breakdown at Zimmer. Not until October 28, 1982 did Chairman Palladino express his distress at the lack of assurance that the staff was on top of the job.

Finally, MVPP should not be denied a hearing because it waited to publicly file the evidence in support of its charges. MVPP was attempting to avoid interfering or compromising with the staff's ongoing investigation. MVPP only published the evidence after the Commission closed down the licensing hearing in part due to the relative absence of documentation not previously in the public record.<sup>56/</sup> After MVPP released the evidence, on October 28, 1982, Region III Administrator James Keppler complained to the Commissioners about the resulting complications. On January 10, 1983 the staff further requested that MVPP not publish certain interviews during the pendency of the Zimmer investigation. See January 10, 1983 letter from J. M. Felton to Tom Devine and Jay Rosenthal, attached and incorporated as Exhibit 9.<sup>57/</sup>

MVPP has good cause for the time that has elapsed until the current motion. Initially, the delay is in part due to the length of time consumed by the NRC adjudication process at the Board and Commission levels to resolve MVPP's request for relief. As a result, MVPP should not be charged with the entire responsibility

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<sup>56/</sup> July 30 Order, Additional Views of Commissioners Ahearne and Roberts.

<sup>57/</sup> MVPP currently has significant additional documentary evidence to support its proposed contentions. In light of the apparent inconsistencies between the Commission's interpretation of legal requirements and the staff's investigative requirements, MVPP will comply with the Board's direction for how to disclose documentary evidence not previously available to the public and not covered by MVPP's Protective Order.

for tardiness in filing its contentions. See Puget Sound Power and Light Company (Skagit Nuclear Power Project, Units 1 & 2), ALAB-559, 10 NRC 162 (1979), in which the Appeal Board acknowledged that at least part of the delay was due to difficulties encountered in determining whether the NRC should permit an untimely intervention.

Second, MVPP has attempted conscientiously to participate in the Commission's third party program. The inadequacy of the staff provisions for public participation as a substitute for licensing hearings only became clear in the middle of May. (Infra, at 47-52.)

Third, MVPP was entitled to and spent a reasonable amount of time reviewing CG&E's February 28, 1983 314-page Demand for Information response to MVPP's August 20, 1982 petition to suspend construction. MVPP did not receive the response until the middle of March, 1983. MVPP then diligently reviewed the response and sent it to the relevant witnesses whose allegations had been rejected by CG&E. Compared to the five months that CG&E took to prepare its position, MVPP contends that it had good cause to spend two months determining that the QA contentions have not been refuted or resolved.

Fourth, MVPP also had good cause to delay a final decision on whether to seek renewed licensing hearings until it received the results of the staff's NET Report on May 12. An intensive review revealed that the QCP and QA programs were still failing to identify significant deficiencies, but the staff did not endorse any structural reforms beyond a design audit and another CG&E assessment of itself.

In short, MVPP had good cause to wait until it did its "homework" before proposing licensing hearings again. In light of the significant developments at Zimmer, MVPP would have been precipitous to move again for reopened hearings until it studied whether the revised status quo yet offers a comprehensive, reliable response to the Zimmer QA breakdown.

2. Availability of other means to protect MVPP's interest.

Although Zimmer is now subject to the scrutiny of a variety of investigations and forums, none of these efforts can substitute for hearings before this Board to fully protect the public health and safety interest of MVPP's proposed contentions.

This criterion considers whether the petitioner's interest will be adequately protected by proceedings or activities other than ASLB hearings. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 575 (1980); Puget Sound Power and Light Company (Skagit Nuclear Power Project, Unit 1), ALAB-559, 10 NRC 162, 170 (1979); and Long Island Lighting Company (Jamesville Nuclear Power Station), 2 NRC 631 (1975). Significantly, this Board has held that the availability of "only partial relief" by other means does not satisfy this criterion. Zimmer, supra, at 576. See also Northern States Power Company (Monticello Nuclear Generating Station, Unit 1), LBP-75-45, 2 NRC 263 (1975).

MVPP's proposed contentions fill in the holes left by the other responses to Zimmer's QA breakdown. In combination, hearings and other remedies offer a complete program. Without hearings, the other responses combined will leave major questions unresolved, and will exempt significant policy decisions from public accountability.



Initially, when the Commission stopped licensing hearings last summer, it offered its own close oversight of the effort to neutralize Zimmer's QA breakdown. At the October 28, 1982 staff briefing Commissioner Ahearne reaffirmed this commitment as a reason why hearings did not need to be reopened.

The Commission has indicated by its actions that the previous commitment to maintain close personal oversight is no longer in effect. The Commission delegated authority to the Regional Administrator to implement the November 12 Order. To illustrate the contrast in the Commission's perspective toward Zimmer, on February 15, 1983 Commissioner Ahearne twice criticized the staff's request for the Commission's involvement in the decision whether the Bechtel Corporation should conduct the management review of Zimmer. He protested the Commission's involvement and said that he would not have objected to the staff's decision, despite concluding that its basis to approve Bechtel was "senseless." See February 15, 1983 memorandum to the Executive Director for Operations from Commissioner Ahearne, attached and incorporated as Exhibit 10.

Particularly in light of the Commission's less active role, MVPP believes that there should be a forum to examine staff policies that are questionable. For example, MVPP severely questions the basis for the staff's firm policy that CG&E should continue administering the QCP and QA reforms. MVPP contends that maintaining CG&E's control also perpetuates both an empirical failure and a structural conflict of interest due to the applicant's position in litigation with its partners. The ultimate findings of those programs will be an inadequate basis to grant an operating license.

MVPP also contends that the third party management

review and quality verification program in the Zimmer Action Plan to implement the November 12 Order are not effective substitutes for licensing hearings. MVPP does not challenge the competence or objectivity of Torrey Pines Technology to conduct the review. But Torrey Pines is so new to the problems at Zimmer that on April 25, 1983 Mr. Keppler suggested that it modify its generically sound methodology after it understood the particular problems at Zimmer. It is unrealistic to expect that a new organization can assimilate and evaluate the massive organizational breakdown at Zimmer in a few months sufficiently to do more than complement licensing hearings.

Second, it is highly likely that Torrey Pines' substantive contribution would be additive to MVPP's. To date, Torrey Pines has only conducted or scheduled courtesy meetings with members of the public and has not interviewed any whistleblowers. To illustrate, Torrey Pines did not meet with MVPP's counsel until May 25, 1983, the day before submitting its final methodology for NRC approval. At a May 26, 1983 public meeting Torrey Pines President George Wessman stated that the interview had not resulted in any change in Torrey Pines' plans. As a result, the \$500,000 Torrey Pines "review" will base its recommendations for the entire Zimmer project on a study of only four examples contained within MVPP's eight proposed contentions. In other words, the management review team will attempt to determine the causes of largely unknown effects.

One issue that Torrey Pines will review is welder qualifications, a topic already being intensively investigated by the NRC staff, the FBI, the Udall Committee and the state boiler inspector.

By contrast, Torrey Pines will not review in-depth the vendor QA breakdown, a generic policy deficiency which is the direct result of CG&E management decisions and dates back to the early 1970's. It is an issue on which the NRC staff has been backlogged for nearly two years. On May 26 Torrey Pines also announced that it would make its policy recommendations without first establishing either the approximate scope of the QA breakdown, or assessing who was responsible for the QA violations, and why.

Third, even if Torrey Pines fully identifies the causes of the management breakdown, it cannot enforce its findings under the November 12 Order. Rather, Torrey Pines can merely submit recommendations to CG&E, which itself will decide what structure is best to correct its own abuses. While CG&E's decisions on the proper organization are subject to staff approval under the Order, such approval would be routinely required anyway. Based on CG&E's previous attempts to institutionalize and the staff's willingness to tolerate conflicts of interest in the third party program, it does not guarantee an objective evaluation and comprehensive solution to the deficiencies at Zimmer. MVPP contends that CG&E's conclusions about Torrey Pines' recommendations are no substitute for this Board's own evaluation of the Zimmer QA program, the QCP, and CG&E's character and competence.

Fourth, the Zimmer Action Plan implementing the Commission's November 12 Order does not directly affect any QA/QC/QCP activities, which continue without significant new restraint. Indeed, the staff has explicitly permitted quality verification activities by CG&E and preparation of a new QA program by Bechtel. (See May 17, 1983

letter from James Keppler to D. David Altman and Thomas Devine, attached and incorporated as Exhibit 11 ("May 17 Letter"). Since the direct response to MVPP's QA and character and competence contentions has been to halt safety-related construction while keeping the applicant in control of the QA program, the Zimmer Action Plan bypasses many of the issues raised by MVPP.

Fifth, CG&E's continued control of the structure for the reforms means that it also retains effective control of the substantive findings.

Sixth, the opportunities for public participation under the Zimmer Action Plan are at the mercy of the staff's whims, and therefore erratic and unreliable. The Commission already has made clear that the ex parte rule does not apply to the Zimmer Action Plan, because it is an enforcement proceeding.<sup>58/</sup> The staff's own alternative, summarized in its May 17 Letter, does not even guarantee five days public notice of public meetings; gives itself a blank check whenever it deems "appropriate" to close CG&E/third party/NRC meetings from the public; and anticipates that documents related to the independent management review will be exempt from public disclosure. (Exhibit 11, supra, at 3-4.) In other words, the evidence will remain secret and the meetings will be secret at the staff's total discretion. At best, the public may have five days to prepare for even informal participation on significant issues.

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<sup>58/</sup> February 22 Order, at 3.

These concerns are not hypothetical. Many public participants, including MVPP, only received notice through a news article two days before the May 26, 1983 public meeting to consider Torrey Pines' final proposal. At the meeting, Region III Administrator Keppler refused to entertain public questions before offering the NRC staff's approval of the plan on the basis of a minimal, superficial discussion that last slightly more than a half hour. Only then, and after intensive protest from the public participants, did Mr. Keppler request (and receive) consent from Torrey Pines to answer public questions at the forum.

The NRC staff does not contend that the public participation it offers is intended as a substitute for hearings. Indeed, Mr. Keppler testified at the May 3, 1983 licensing hearings in Midland, Michigan that the level of informal public participation at Zimmer does not even match the opportunities for the public in the Diablo Canyon third party program. Mr. Keppler explained that the smaller scope of public input is because the Governor of Ohio has not taken as active a leadership role as did the Governor of California at Diablo Canyon. See May 3, 1983 testimony of James G. Keppler, attached and incorporated as Exhibit 12. MVPP submits that the public's right to participate in determining its own fate under the Atomic Energy Act should not be dependent upon the staff's assessment of political interest on the state level.

These weaknesses in the Zimmer Action Plan are particularly significant, because there have not yet been enforceable findings of fact and required corrective action on any of the specific allegations MVPP seeks to litigate. Although MVPP's disclosure

helped form the basis for the November 12 Order, the Commission only cited findings from previous NRC staff reports and the QCP. The Commission did not and still has not taken a formal position on the specific issues and evidence presented by MVPP.

On balance, the Zimmer Action Plan cannot fully protect MVPP's interest, because it provides for minimum public input and maximum decisionmaking control by CG&E. Since CG&E already has decided that all of MVPP's new allegations are wrong (supra, at 5-6, 38-41 ), the reform program is inherently biased against MVPP's interests.

The Commission in part based its decision to prohibit hearings last summer on confidence in an expanded staff program. MVPP believes that it is now beyond dispute that the NRC staff cannot fully substitute for ASLB hearings.

There are numerous grounds to legitimately criticize the NRC staff program at Zimmer. MVPP already has submitted evidence in federal court, to Congress, to the Commission and to this Board of the following staff misconduct--

- 1) failure to respond to evidence of a massive QA breakdown for years despite prior knowledge, until prodded into action by an embarrassing public whistleblowing disclosure in December 1980;

- 2) failure to suspend construction in the spring of 1981, despite contrary staff recommendations and a public petition;

- 3) turning over increased authority for quality assurance to the utility in April 1981, despite the utility's responsibility for or complicity in the previous violations;



4) suspending a criminal investigation in the summer of 1981, just as it was determining that the root causes of the QA breakdown rested with top CG&E management;

5) censorship of the highly-touted November 1981 NRC reports, so that the most serious abuses would not be revealed;

6) attempts to cover up this censorship illegally under the Freedom of Information Act by responding to requests with official denials that records existed, while privately the staff was ordered to destroy or remove the same records;

7) advance warning to the utility before hardware inspections;

8) misplaced reliance on utility records to minimize the scope of the welding recertification program;

9) lax oversight of the welder recertification test program;

10) inability to keep up with the pace of allegations, resulting in a large backlog on significant issues such as welding procedures and vendor QA;

11) continued unwillingness to work with whistleblowers and other non-management personnel in conducting investigations; and

12) failure to monitor CG&E's QCP program with more than spot checks except for one task.

These allegations are no less frivolous or serious than MVPP's challenge to the Zimmer QA program. To illustrate, the U.S. District Court for the District of Columbia permitted full discovery to examine the relevant actions of the Office of Inspector and Auditor ("OIA") response to a FOIA request submitted by

GAP on behalf of Mr. Thomas Applegate.<sup>59/</sup> On April 14, 1983, Commissioner Ahearne commented with respect to OIA's behavior that--

I can understand how a skeptical outsider might conclude there was a conspiracy to conceal information.<sup>60/</sup>

Commissioners Gilinsky and Asselstine added--

OIA's response to the Applegate FOIA request was not well managed and...several of the decisions made in this case exhibited very poor judgment on the part of the Director of OIA and on the part of other members of OIA management.<sup>61/</sup>

OIA's reluctance to reveal under the FOIA the evidence it had obtained was understandable. On May 18, 1983, House Interior and Insular Affairs Chairman Morris Udall evaluated OIA's action as follows--

I want to inform you that I am not satisfied with the Commission's handling of this matter. The Commission appears to have resorted to tortured logic to rationalize a position that it was insignificant that neither it nor the public were provided information that would have shed light on the true status of the Zimmer project. The lack of this information was a major contributor to the delay in recognizing that a stronger regulatory remedy was required than the action taken in November 1981.

I do not intend to engage in a protracted debate on this matter. I have taken note of your reference to

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<sup>59/</sup> Applegate v. NRC, No. 82-1829 (D.D.C. Jan. 19, 1983) (order denying protective order).

<sup>60/</sup> Additional Views of Commissioner Ahearne, attached to April 14, 1983 letter from Chairman Nunzio J. Palladino to Morris K. Udall, Chairman, Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs.

<sup>61/</sup> Additional Views of Commissioners Gilinsky and Asselstine, attached to April 14, 1983 letter from Chairman Nunzio J. Palladino to Morris K. Udall, Chairman, Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs.

the lawsuit -- Applegate v. NRC, D.D.C. No. 82-1829. I think it unfortunate that the controversy must now be resolved by the courts, but at this point I believe that is where lies the best hope for a full airing.

See May 18, 1983 letter from Morris K. Udall to Nunzio J. Palladino, attached and incorporated as Exhibit 13.

Because of the staff's repeated support for reopened licensing hearings, however, MVPP does not seek this forum to judge the adequacy of the NRC staff program. Further, MVPP commends the conscientious efforts currently underway by the staff to compensate for previous shortcomings. In short, the staff has not attempted to inhibit development of a full record before this Board on the problems at Zimmer. As a result, MVPP seeks renewed hearings to supplement the staff's current efforts to correct the full scope and effects of QA violations, rather than to assess the staff's previous blame for the breakdown.

Full litigation of the MVPP contentions could add significantly to the corrective action encompassed by the staff's conclusions to date. For instance, while the staff only required certification of 103 current welders last summer, MVPP seeks to present evidence of NR's and CAR's on 519 out of 527 welders reviewed by Kaiser. A conservative review of records from Kaiser's welder qualification review group suggests that qualifications were indeterminate for at least 185 welders. In light of this evidence, the boundaries of the staff's comparatively small welder qualification program should be expanded or the basis fully explained at public hearings.

Similarly, the NET did not speak with any of the whistleblowers who have identified problems through MVPP. Indeed, the

NET deliberately chose to audit randomly, rather than to closely examine specific areas with identified deficiencies. As a result, the NET did not consider the following examples of hardware deficiencies which witnesses have alleged to MVPP since August 20, 1982--

- 1) 300-500 snubbers in a specified system that were welded improperly to American Welding Society (AWS) instead of ASME standards, therefore skipping the ASME preheating treatment;
- 2) generic problems with certain hanger supports, because the design calls for 1.5-inch welds, but the as-built installation only left space for 1/2 to 3/4-inch welds;
- 3) cable tray supports that are rusted and corroded at specified locations;
- 4) excess tension at a specified location which may have overstressed cables when they were pulled originally;
- 5) excessive heat buildup from overpacked cable trays that is not being detected by QCP inspectors;
- 6) widespread use of improper reamer and dye tools for rework on stainless steel electrical conduits in the containment, that could result in rough edges, gauges and loose fits, and lead to electrical shorts, fires and other threats to reliable functioning of circuits on the multiple backup safety systems;
- 7) guides for cameras inside the reactor that were welded out of alignment;
- 8) shims placed haphazardly and sitting in water drain channels at a specified location;
- 9) use of the wrong size hoedown bolts to connect the circulating pumps motor to a concrete base at a specified location; and
- 10) damage during rework to brackets for fitpins that brace the reactor.

In short, despite a vigorous staff effort to determine the extent of the damage, renewed hearings almost certainly will add significantly to the total protection and relief afforded MVPP's

interest in neutralizing all the effects of the Zimmer QA breakdown.

MVPP recognizes that a number of other forums have played and continue to play a significant role in examining the QA violations. None are substitutes for hearings before this Board, however. Informal public hearings do not have the authority to compel CG&E's participation or to enforce findings. As a result, CG&E refused to participate in the Environmental Advisory Council hearings during September and October 1982. See August 26, 1982 newspaper article, attached and incorporated as Exhibit 14. Other forums address issues distinct from the public health and safety mission of this Board. Corporate arbitration and Public Utility Commission proceedings focus on the economic consequences of CG&E's misconduct. The grand jury investigation is secret and only examines criminal violations. Congressional hearings provide a significant survey of progress and problems, but are too abbreviated for a comprehensive examination of potential violations.

None of the alternative forums or vehicles for relief offer MVPP the ability to subpoena records and to publicly cross-examine witnesses under oath. This step is essential for MVPP to receive a fair opportunity to develop a record on the serious issues it has raised. It is also essential to protect the public from all potential health and safety threats. As Congressman Ottinger explained at his October 1, 1982 hearings,

I would advocate, and do very strongly, that the unresolved questions with respect to safety of the disputed parts as a part of the determining process in that ought to be determined in a public forum and I think in a formal adjudicatory public forum. Otherwise, I don't see how you can be satisfied or the public can be satisfied that the matters have

been thoroughly explored.

The best staff work in the world sometimes can't substitute for having a sworn witness on the stand and putting him through the paces. That your staff doesn't have the facility to do absent some kind of formal proceeding. 62/

The numerous Zimmer forums, audits and investigations all demonstrate the legitimacy of MVPP's QA and character and competence contentions. But none attempt to perform the same function as the reopened hearings MVPP requests before this Board.

At October 1, 1982 congressional hearings, Commissioner Asselstine put the comparison in perspective:

There really aren't meaningful opportunities outside of that licensing proceeding for [the public] to directly participate in our process. Sure, they can send us petitions, they can call us on the phone. They can send us letters saying that there are problems out there but there is a very limited opportunity beyond that point for their direct participation and involvement to directly raise issues and for them to have those issues directly addressed and resolved in a process that they can participate in.

It is a far different matter to send in a petition to the Commission and have the NRC staff review it and have the Commission reach a final judgment on it and from time to time discuss with those people what our resolution of it is than it is to provide a direct opportunity for them to raise issues and to be able to pursue those issues in a hearing format and to be able to directly cross-examine witnesses from the opposing party and present direct evidence on their behalf and have that evidence judged by an independent trier of fact who sits there and observes the procedures. 63/

The response to the Zimmer QA breakdown inherently will remain incomplete until it is fully explored before this Board.

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62/ October 1 Ottinger hearings, at 400.

63/ Id., at 402.



3. Assistance in developing a sound record.

As seen above, MVPP can be expected to assist in developing a sound record before this Board by raising additional issues for examination and helping provide a full review of the allegations it has raised to date. MVPP has already made a significant contribution outside the ASLB hearing process to neutralizing the public health and safety dangers from Zimmer. As Commissioner Asselstine,<sup>64/</sup> the NRC staff,<sup>65/</sup> the Environmental Advisory Council (Exhibit 7, supra, at 3), and various congressional leaders<sup>66/</sup> have recognized, whistleblowers speaking through MVPP and its counsel GAF identified the defects at Zimmer when all other official channels had failed. MVPP's allegations played a significant role in the events leading to the November 12 Order. (Exhibit 8, supra.) At February 22, 1983 oversight hearings, Chairman Udall put the public's contribution in perspective:

The plant reached 97% completion without the staff, or the ACRS or the Licensing Board recognizing that in significant respects it could not be determined whether the plant complied with the Commission's regulations. Had it not been for whistleblowers and outside organizations, Zimmer might now be operating.

(See Opening Statement of Chairman Udall, hearings of the House Interior Subcommittee on Energy and the Environment (February 22, 1983), at 3-4, attached and incorporated as Exhibit 15.)

Through hearings before this Board, MVPP seeks to follow

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<sup>64/</sup> October 1 Ottinger hearings, at 397.

<sup>65/</sup> June 10 Udall hearings, at 37 (statement of Mr. Dircks).

<sup>66/</sup> See, e.g., October 1 Ottinger hearings, at 397 (statement of Chairman Ottinger).

through and fully resolve the significant issues it has raised based on its record to date. MVPP has earned the right to a public hearing. Most important, the hearing can be expected to lead to further significant contributions by MVPP and the whistleblowers who would testify.

4. Extent to which petitioner's interest will be represented by existing parties.

Although all other parties to the proceeding who have taken a position (except CG&E) have supported MVPP's effort to reopen licensing hearings, r he has taken the initiative to raise the same issues. MVPP's interest cannot be represented by existing parties, because it is defined by the areas those parties did not present in-depth before this Board. Indeed, the staff opposes MVPP's interest in replacing CG&E with an independent manager of the quality assurance and quality verification programs.<sup>67/</sup>

5. Extent to which the petitioner's participation will broaden or delay the proceedings.

Although MVPP's proposed contentions will broaden the scope of the licensing proceeding, they cannot be ignored. The massive breakdown of the QA program at Zimmer, acknowledged by the NRC, and the NRC's unsuccessful 1981 IAL program to take corrective action mandate that this Licensing Board formally consider the quality assurance contentions. CG&E's false statements and the falsification of records during construction at Zimmer require this Board to consider the character of the licensee prior to issuing a license. As the

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<sup>67/</sup> Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station), Director's Decision Under 10 CFR 2.206, DD-83-02, 17 NRC \_\_\_\_ (February 10, 1983).

Commission wrote in Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281, 291 n.4 (1980), "[T]he Commission cannot ignore false statements in documents submitted to it," and "abdication of knowledge, whether at the construction or operating phase, could form an independent and sufficient basis for revoking...or denying a license.... 42 U.S.C. 2232a." Id. at 291.

More significant, the hearings will not cause further delays in completing the licensing process. At the October 28, 1982 staff briefing of the Commissioners, Commissioner Gilinsky stated that it could take years just to identify the problems at Zimmer. At a January 22, 1983 deposition NRC staff representative Robert Warnick estimated that the Quality Confirmation Program will not be completed until after 1983, and the NRC staff cannot complete its inspections until the QCP is finished. At the same hearing, Mr. Warnick could not state with confidence that Zimmer will begin commercial operations in 1984, or with certainty by the end of the decade.<sup>68/</sup> Under these circumstances licensing hearings will not contribute to net delays.

If anything, ASLB hearings may facilitate Zimmer's completion. They will help to ensure that the current quality verification effort is definitive. The effect of delays would be exacerbated if an incomplete quality verification program needs to be reinstituted again because the remaining issues were not resolved expeditiously before this Board. Ironically, the licensing hearings

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<sup>68/</sup> Deposition of Robert Warnick, Case Nos. 82-1402-EL-CRC, 81-1058-EL-AIR, 82-1416-EL-UNC, 82-485-EL-AIR, and 82-517-EL-AIR (January 14, 1983), at 38.

might now be complete and their contribution available to incorporate into the Zimmer Action Plan, if the Commission had not prevented the hearings from occurring in 1982.

C. Standards for Reopening the Record

The legal standards for reopening a record in Commission proceedings are described in Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978). MVPP must demonstrate that-- (1) the motion is timely, (2) the motion is directed to a significant safety or environmental issue, and (3) the moving party presents significant new evidence not included in the record which would have materially affected the Board's decision had it been considered originally. See also Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980).

Through the above analysis, MVPP clearly has satisfied the burden. The motion is timely, because the Zimmer Action Plan is far from complete. Indeed, the full identity, nature and loopholes of the evolving institutions in the status quo have only been defined sufficiently within the last month to demonstrate that CG&E's February 28, 1983 ongoing blanket denial of remaining problems must be remedied in part through ASLB hearings.

It should be beyond dispute that the issues in MVPP's proposed contentions are directed to significant safety and environmental issues. Since last May 18, they have been discussed at four congressional hearings, three briefings of the Commissioners, and through the November 12 Order helped lead to major changes in

the construction permit. On January 14, 1983, Mr. Warnick testified that Zimmer has more problems requiring staff resources than any other plant in Region III.<sup>69/</sup>

Finally, it is likely that the information presented by MVPP would have materially affected the results of the Board's initial decision if it had been presented. The MVPP information already has played a significant role in changing the position of the Commission and the staff. MVPP's submissions played a significant role both in raising and following through on the issues that led to the November 12, 1982 suspension of safety-related construction. (Supra, at 4.)

The staff also has shifted from the position it took in support of an operating license before MVPP first presented these contentions. In the January 14 deposition, Mr. Warnick stated that Region III would not recommend a license for Zimmer while the quality is indeterminate.<sup>70/</sup> Last September and October Mr. Keppler told the Cincinnati community and the Commissioners that the "real sin" is that Zimmer is in the ground 97% complete but the quality is indeterminate. The staff did not take this position until MVPP raised the issues in the proposed contentions it now seeks to submit to this Board.

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<sup>69/</sup> Id., at 19.

<sup>70/</sup> Id., at 39.

IV. CONCLUSION

MVPP has more than satisfied the grounds for reopening the record and admitting these proposed contentions. More significant, a hearing is necessary to prevent Zimmer from operating without every possible effort first being taken to neutralize the threat to public health and safety that this plant represents. Zimmer is a unique case in the nuclear industry. At the October 28, 1982 staff briefing of the Commissioners, Mr. Dorwin Hunter confessed that after a plant is nearly built he did not know how to substitute for a quality assurance program up front. MVPP agrees that there is no magic solution, but clearly there is no excuse to leave any stone unturned. A part of the necessary remedy must involve full public participation in this and all other available forums to resolve the issues raised by the public.

Respectfully submitted,

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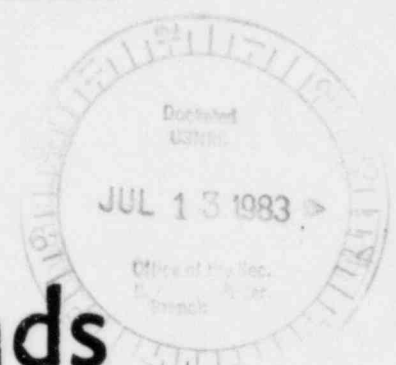
Dated: June 2, 1983.



CINCINNATI POST

March 1, 1983

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## CG&E responds to Zimmer critics

Cincinnati Gas & Electric Co. has filed a 341-page response to more than 200 allegations by the Miami Valley Power Project about the quality of construction at the William H. Zimmer Nuclear Power Station.

David Altemuehle said today CG&E met the March 1 deadline for filing the response with the Nuclear Regulatory Commission.

Last August, the Miami Valley Power Project, a Cincinnati anti-nuclear group, filed a lengthy petition with the NRC seeking immediate suspension of construction at the Zimmer plant near Moscow, Ohio.

**THE PETITION**, consisting of 172 pages of legal briefs and more than 200 exhibits, contained numerous allegations of quality assurance and construction deficiencies.

In September, James G. Keppler, NRC regional administrator, told the utility its response would be used in determining whether the construction permit should be "modified, suspended or revoked." He ordered

CG&E to respond in writing to all allegations by the Miami Valley Power Project.

CG&E was given until Dec. 31, 1982, to respond, but that deadline was later extended to March 1.

All safety-related work at Zimmer was halted Nov. 12 by the NRC.

**ALTEMUEHLE SAID** the "considerable document" giving CG&E's responses went out of the utility's Cincinnati office late Monday.

More than 7000 working-hours went into CG&E's answers to the allegations, and "the inquiry didn't turn up anything new of any validity," Altemuehle said.

He said any valid items of concern in the allegations were "previously identified and were already being addressed" and any new allegations were "not valid."

At the time of its filing, the Miami Valley Power Project said its document represented the results of a five-month investigation into Zimmer.

# GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

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— Exhibit 2

(202) 234-9382

May 25, 1983

Honorable Chairman Nunzio Palladino  
Honorable Victor Gilinsky  
Honorable John Ahearne  
Honorable James Asselstine  
Honorable Thomas Roberts  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Dear Commissioners:

Three recent developments concerning the William H. Zimmer nuclear power plant compel the Miami Valley Power Project ("MVPP") to request your modification of the proposed "Director's Decision under 10 CFR 2.206," DD-82-02, 17 NRC \_\_\_\_ (February 10, 1983) on MVPP's August 20, 1982 petition to suspend construction ("August 20 Petition"). MVPP requests that Cincinnati Gas and Electric ("CG&E") be removed from further control of the quality assurance ("QA") program at Zimmer due to major contradictions between Nuclear Regulatory Commission ("NRC") and CG&E findings on the same issues.

First, on May 12, 1983 MVPP received the Report of the NRC Evaluation Team on the Quality of Construction at the Zimmer Nuclear Power Station, NUREG-0969 (April 1983) ("NET Report"). The NET Report directly contradicts major findings in the February 28, 1983 CG&E response to the NRC staff's September 24, 1982 Demand for Information issued under 10 CFR 50.54(f) ("CG&E Response").

Second, this request is further supported by a new allegation that CG&E already has made serious organizational decisions on how to resume construction, while the Commission-imposed management review is barely underway. The net result is that CG&E lacks the corporate character and competence to maintain responsibility for the Zimmer QA program and related quality verification activities.

Third, on May 9, 1983 CG&E instituted a legal action to prevent arbitration proceedings initiated by its corporate partners on such issues as whether CG&E must pay all remaining costs to complete Zimmer and whether CG&E should pay damages for violation of commitments in the Basic Generating Agreement between the partners. As a result, CG&E is now in a unique legal conflict of interest. Every time CG&E admits to previous violations that demonstrate mismanagement or that now need to be corrected, it weakens its own case against arbitration claims that are based on unanticipated repair costs and delays.

Background

On August 20, 1982, MVPP petitioned the Commission to take three actions:

- 1) immediately suspend the construction permit at Zimmer;
- 2) replace the current Quality Confirmation Program with a comprehensive third-party reinspection program, with full authority to identify and impose corrective action on any nonconfirming conditions; and
- 3) require an independent management audit of CG&E and KEI [Henry J. Kaiser Company] management, which would include recommendations whether to replace the permanent CG&E/KEI QA programs with independent structures administered by an outside organization. Petition at 119.

On September 24, 1982 the staff issued a formal Demand for Information ("Demand for Information") to CG&E, pursuant to section 182 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). The Demand for Information required CG&E to answer the specific allegations in MVPP's August 20 Petition. On October 18, 1982 MVPP supplemented its August 20 Petition with 57 additional allegations, based on information that had been received since the original petition was filed. The staff did not require CG&E to respond to the new allegations, because "the staff did not identify any new allegations" in that supplement.\*/

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\*/ This conclusion raises serious questions about the adequacy of the staff's review. The October 18 supplement included, inter alia, allegations that quality control ("QC") inspectors had been ordered not to challenge CG&E management direction or stop work due to disagreements over disposition of an NR; substitution of verbal instructions for approved procedures; lack of access for QC inspectors to communicate with management unless approved by the relevant supervisors; QC inspections that were halted after uncovering significant violations; Quality Confirmation Program reinspections done only to check specific punchlist assignments; deteriorating problem of missing records; management orders for QC inspectors not to refuse document packages because of missing documentation; inadequate QC surveillance and cheating on welder recertification tests; inadequate training, sometimes deliberately inaccurate documentation, and holes in QC coverage for weld repairs; violations of hold tags; inaccurate statements to the Commission with respect to In-Process Inspection Deficiency Reports; intensified retaliation; further deterioration of the QCPs through failure to identify significant violations; suspect dispositions and uncontrolled rework; and thirteen (13) additional cases of false statements to the NRC. While these allegations covered the same type of abuses, they involved new generic violations in some cases and new examples of QA violations in every case. MVPP did not present these allegations on August 20, because it did not have the evidence at that time. In short, the staff's assertion that the October 18 supplement contained nothing new is incredible.

On November 12, 1983 the Commission issued an Order to Show Cause and Order Immediately Suspending Construction to CG&E, pursuant to 10 CFR 2.202. CLI-82-33, 16 NRC \_\_\_\_ (Nov. 12, 1982), published in 47 Fed. Reg. 51959 (November 18, 1982) ("November 12 Order"). The November 12 Order requires that CG&E obtain an independent management review of its management of the Zimmer project, including its quality assurance program and its quality verification program "as a prerequisite to resumption of construction." In addition, the independent reviewer must analyze and make recommendations to CG&E on a series of structural organizational alternatives. CG&E must then submit a comprehensive quality verification plan to the NRC staff for approval. 16 NRC at \_\_\_\_.

On February 20, 1983 the staff declined to take further action on the MVPP petition. It explained that the Commission's order "satisfies substantially all" of MVPP's requests for relief. (Director's Decision, at 3.) The Commission has not yet taken final action on the staff decision.

#### Continuing Breakdown in Corporate Character and Competence

The staff was mistaken to assert that the November 12 Order satisfies MVPP's concerns. The primary goal of the MVPP petition was to replace the CG&E-controlled, patchwork Quality Confirmation Program ("QCP") with a comprehensive third-party reinspection program. Although the Commission suspended safety-related construction, the QCP and other QA activities continue without significant changes. As explained in the Director's Decision, "[t]he staff sees no basis for removing the licensee from responsibility for the quality verification program." (Director's Decision, at 5.)

Unfortunately, the staff ignored the bases presented by MVPP -- CG&E's lack of corporate character and competence. The staff explained, "Under the Commission's regulations, the licensee is ultimately responsible for the establishment and execution of its quality assurance program." (Id.) MVPP does not accept that the regulations require an unfit utility to exacerbate its previous mistakes through continued control of a deficient QA program. The following developments indicate that at Zimmer the traditional approach of licensee control can be accomplished only at the expense of undue risks to public health and safety.

#### 1. Conflicts between CG&E and NRC findings

The drastic differences in assessments between the NET Report and the CG&E response cast serious doubt upon CG&E's judgment. The review of design adequacy is illustrative of numerous inconsistencies. The NET Report concluded that--

[G]iven the widespread nature of these concerns when taken in aggregate, there appears to be a clear need to verify the overall quality of the S&L design process. This effort was beyond the scope of the program described in this report. Therefore, an independent design audit is recommended to resolve the issue of design



May 23, 1983

adequacy satisfactorily. This audit is in addition to the QCP efforts currently in progress in the design area.

(NET Report, at 224.) For example, with respect to valve orientation, the NET Report found that "it cannot be ensured that the orientation assumed in the piping analysis was properly translated in the as-built condition." (Id., at 180.)

By contrast, in its response to the Demand for Information, CG&E claimed that "Sargent & Lundy ensures that the proposed change will satisfy all applicable design criteria. As a part of Quality Confirmation Program Task IX, essential DDC's [Design Document Changes] are being reviewed at the site to assure that they have been properly dispositioned." (CG&E Response, at 36.) The licensee's overall position was clear: "CG&E denies the allegation that 'there can be no assurances that the as-built condition of Zimmer reflects a proper design.'" (Id., at 38.)

CG&E's assessment contrasts with the NRC staff's as night does to day. In light of these findings, it is hard to understand how the staff maintains confidence in CG&E's stewardship of the QCP. The licensee is refusing to concede the most glaring generic deficiencies, let alone the more hidden defects that could endanger public health and safety.

Even where the conclusions did not conflict, the NET findings demonstrate the inherent inadequacy of the QCP's patchwork approach to checking the quality of Zimmer. After a two-month audit, the best the NET could report was that the 19-month QCP had found "many" of the same deficiencies. (NET Report, at 6.) MVPP submits that in light of Zimmer's massive QA breakdown, it is not enough to find "many" of the defects. There must be confidence that the quality verification program will be sufficiently comprehensive to identify all significant deficiencies.

The findings on structural steel bolting are particularly revealing. The NET found such numerous deficiencies that it called for "[i]nspection of all accessible slotted connections to determine that the torques and fit-up conditions are compatible with design assumptions..." as part of a new "inspection and engineering evaluation program for safety-related bolting to ensure its overall adequacy and essential compliance with the intent of the design specifications." (Id., at 58.) Although structural steel welding has been such a major and controversial part of the QCP that the work has been judged twice,<sup>\*</sup> somehow in their isolated reviews of welds the inspectors failed to notice a systematic deficiency with the bolts and connections.

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<sup>\*</sup>/After QCP inspectors wrote 1,685 Nonconformance Reports identifying 7,170 deficiencies, CG&E put the findings "on hold for reinspection." (August 20 Petition, Attachment 188.)

## 2. Prejudging the results of the independent management review

In theory, the independent management review required by Section IV.B.(1) of the November 12 Order is supposed to identify the causes of the QA breakdown and assess the adequacy of alternative plans for corrective action. In fact, MVPP has received reports that CG&E plans to circumvent the independent management review process in order to avoid time delays. It is our concern that CG&E will attempt to develop the verification and construction completion plans while Torrey Pines Technology is conducting the management review to recommend the appropriate reforms.

If the allegations are correct, these secret plans undercut the legitimacy of the publicly-conducted work in the Commission's November 12 Order. It would mean that while the names of executives and reform plans may have changed, the old philosophy remains intact at CG&E: lip service to quality assurance while rushing the plant to completion. This is the philosophy that led to the QA breakdown and the November 12 Order. It would mean that CG&E has decided that it has the solutions before Torrey Pines has determined the causes of the problems. It also would be further evidence that CG&E does not have the corporate character and competence to administer the QCP, nor the objectivity to implement the recommendations from the management review.

## 3. Litigation between Zimmer's corporate partners

On May 9, 1983 CG&E filed suit in the Hamilton County, Ohio Court of Common Pleas, seeking a stay of arbitration proceedings instituted by its corporate partners Dayton Power and Light Company ("DP&L") and Columbus and Southern Ohio Electric Company ("C&SOE"). CG&E also sought a declaratory Judgment that the issues raised by its partners are not subject to arbitration. Court papers and a relevant news article are attached as Exhibits 1 and 2.

As background, on January 20, 1983 DP&L demanded arbitration on the following questions:

1. Whether DP&L must continue to pay all costs of completion of Zimmer Station that CG&E bills to it in view of the history and current status of the project, and in view of CG&E's inability or refusal to specify a completion date or a defined completion cost, or develop a satisfactory scheduled program for such completion.
2. Whether CG&E had sufficient knowledge that actions against suppliers for failure to comply with contractual obligations should have been initiated or other available remedies pursued.



3. Whether the percentage of undivided interest of DP&L in the project and in DP&L's entitlement to the capacity of Zimmer Station in relation to that of CG&E shall remain as stated in the Zimmer Basic Generating Agreement in light of the resolution of the issues raised in this arbitration.
4. Whether the rights, obligations and duties of the parties under the Basic Generating Agreement and the Zimmer Operating Agreement should be modified in light of the resolution of the issues raised in this arbitration.
5. Whether DP&L should be awarded damages resulting from CG&E's performance under the Basic Generating Agreement. In this regard we have received two demand letters from attorneys representing certain of our shareholders. We further demand arbitration of the issues and demands raised in the letter dated December 20, 1982 and the letter dated December 22, 1982, copies of which are attached.

On January 26 C&SOE joined the action. On May 9 CG&E went to court. In addition to seeking a declaratory judgment and a stay, CG&E announced that it would "prepare for and defend against [the] claims" raised in the arbitration. (Exhibit 1, Complaint, para. 11.)

DP&L and C&SOE's initiatives further support MVPP's challenge on character and competence. It is ironic that CG&E's corporate partners may have less faith in its ability to safeguard their treasuries than the NRC has in CG&E's ability to safeguard the public health and safety.

More significant, CG&E's is now in a unique legal conflict of interest. DP&L's initiative in part was based on the necessity to put a "cap" on Zimmer's cost. (Exhibit 2.) Each CG&E finding through the QCP or its own QA program weakens its legal position if the results evidence previous mismanagement or neglect, or require expensive and time-consuming corrective action. The stakes at Zimmer are too serious to gamble that CG&E is so objective it will make disclosures that could defeat its lawsuit.

#### Conclusions and Requested Relief

Incongruously, the staff's response to CG&E's record has been to recommend that CG&E examine the adequacy of its own QCP, and that S&L maintain control of QCP design decisions while its work is being independently reviewed. MVPP believes that these policies are self-defeating. Nothing will be gained by giving CG&E another opportunity to exonerate itself. Nor will the basic problems of biased, inadequate

QCP design decisions be solved through another audit. The quality verification program itself must be legitimate.

As a result, MVPP requests that the Commission modify the November 12 Order by--

- 1) suspending the QCP and related QA activities;
- 2) removing CG&E from any decisionmaking role with respect to the Torrey Pines recommendations, which should be submitted directly to the NRC for approval; and
- 3) prohibiting Torrey Pines from considering any alternatives that would involve continued CG&E control of the quality verification and QA programs until Zimmer is completed.

MVPP recognizes that this relief would modify the traditional policy that a utility should assume responsibility for construction, because it has responsibility to operate the plant. But Zimmer is an unprecedented case in the nuclear industry of, at best, a tradition of corporate neglect. There is no "new" CG&E. As a result, the licensee's continuing control of QA/QCP work is the Achilles heel which threatens to neutralize the rest of the Commission's November 12 Order.

Respectfully submitted,

THOMAS DEVINE  
Counsel for Miami Valley Power  
Project

TD/my

Exhibits

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

Clerks Fees 50.00 - 1.50

Paid by R.G. Stachler

THE CINCINNATI GAS & ELECTRIC  
COMPANY  
139 E. Fourth Street  
Cincinnati, Ohio 45202

Plaintiff,

vs.

Case No. A5303788

THE DAYTON POWER & LIGHT COMPANY  
Courthouse Plaza S.W.  
Dayton, Ohio 45401

and

COLUMBUS & SOUTHERN OHIO  
ELECTRIC COMPANY  
215 N. Front St.  
Columbus, Ohio 43215

Defendants.

VERIFIED COMPLAINT FOR  
DECLARATORY JUDGMENT AND  
STAY OF ARBITRATION  
PROCEEDINGS

For its Complaint in this action, The Cincinnati Gas &  
Electric Company ("CG&E") says as follows:

COUNT I

1. Plaintiff CG&E is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Cincinnati, Ohio. Defendants The Dayton Power & Light Company ("DP&L") and Columbus & Southern Ohio Electric Company ("C&SOE") are also corporations organized and existing under the laws of Ohio.

2. CG&E, DP&L and C&SOE have entered into a Basic Generating Agreement (the "Agreement"), dated as of August 29, 1969,

a copy of which is attached hereto and incorporated herein as Exhibit "A". Pursuant to the Agreement the parties agreed to participate jointly in the design, purchase of materials for and construction of the Wm. H. Zimmer Nuclear Power Station near Moscow, Ohio (the "Zimmer Plant").

3. Pursuant to Paragraph 4 of Article 5 of the Agreement, CG&E, DP&L and C&SOE agreed that:

Any controversy, claim, counterclaim, dispute, difference or misunderstanding arising out of, or relating to, this Agreement or the breach thereof, or the Special Warranty Deed to be delivered pursuant to this Agreement, shall be submitted to arbitration upon the request of any party or parties hereto in the manner provided.

4. On or about January 20, 1983, DP&L purported to invoke arbitration of certain "questions" allegedly relating to the Agreement and/or design and construction of the Zimmer Plant. A copy of the letter, together with attachments, is attached hereto as Exhibit B, and includes:

1. Whether DP&L must continue to pay all costs of completion of Zimmer Station that CG&E bills to it in view of the history and current status of the project, and in view of CG&E's inability or refusal to specify a completion date or a defined completion cost, or develop a satisfactory scheduled program for such completion.

2. Whether CG&E had sufficient knowledge that actions against suppliers for failure to comply with contractual obligations should have been initiated or other available remedies pursued.

3. Whether the percentage of undivided interest of DP&L in the project and in DP&L's entitlement to the capacity of Zimmer Station in relation to that of CG&E shall remain as stated in the Zimmer Basic Generating Agreement in light of the resolution of the issues raised in this arbitration.

4. Whether the rights, obligations and duties of the parties under the Basic Generating Agreement and the Zimmer Operating Agreement should be modified in light of the resolution of the issues raised in this arbitration.

Additional "questions", the arbitration of which are demanded by DP&L, are also set forth in the attachments to Exhibit B.

5. On or about January 26, 1983, C&SOE requested, by virtue of the letter attached hereto and incorporated herein as Exhibit C, arbitration of certain "matters" allegedly related to the Agreement and/or the construction of Zimmer.

6. Plaintiff CG&E disputes the position of DP&L and C&SOE that some or all of the matters listed in Exhibits B and C are arbitrable, and also disputes the sufficiency of the Defendants' demands for arbitration. CG&E responded to the demand of DP&L described at Paragraph 4 above and the request of C&SOE described at Paragraph 5 above in a letter dated February 8, 1983, a copy of which is attached as Exhibit D. In that letter, CG&E expressly reserved its right to question the sufficiency of the Defendants' demands for arbitration as well as the arbitrability of each and every issue raised therein.

7. Many of the "questions" and "matters" sought to be arbitrated by Defendants are not subject to arbitration because

they: (1) do not concern issues or matters which the parties to the Agreement intended to fall within the scope of the arbitration clause described above; (2) seek relief which would be in direct conflict with the express terms of the Agreement and would, in essence, require an extensive rewriting of said Agreement; (3) seek relief which is outside of the powers of the arbitrator to grant; (4) seek relief which is in contravention of the public policy of the state of Ohio and (5) fail to set forth, in detail, the subject or subjects to be arbitrated as required under paragraph 4 of Article 5 of the Agreement. "Questions" or "matters" sought to be arbitrated by DP&L and C&SOE which are not subject to arbitration for one or more of the foregoing reasons include any and all of the said "matters" and "questions" described at Paragraphs 4 and 5 above and set forth in Exhibits B and C hereto.

8. An actual controversy has arisen and now exists between the parties relating to their respective rights and duties under the arbitration clause contained in the Agreement; and more specifically with regard to the arbitrability of said "questions" and "matters." DP&L and C&SOE have persisted in their demands for arbitration of said "questions" and "matters" as described above, and CG&E has no other adequate remedy at law.

## COUNT II

9. CG&E hereby incorporates, as if fully set forth herein, the allegations contained in Paragraphs 1-8 inclusive of its Complaint herein.



10. Preparations for the commencement of arbitration proceedings between Plaintiff and Defendants are under way, subject to CG&E's reservation of rights as described at Paragraph 6 above. At present, the Parties are engaged in the process of selecting an arbitrator. Hearings may be held and relief could be granted in said arbitration proceedings before this Court can act with respect to the declaratory relief sought by CG&E herein.

11. If the arbitration proceedings are permitted to continue prior to this Court's entry of final judgment herein, CG&E will suffer irreparable harm and prejudice in that it will be required to expend the time of its officers and employees, as well as expend substantial sums, in order to prepare for and defend against claims which are not subject to arbitration; and, further, by virtue of such effort, may be alleged to have waived its objections to the arbitrability of said claims by participation in said arbitration proceedings. Upon information and belief, Defendant DP&L will take the position that CG&E has made such a waiver once an arbitrator has been chosen. Other than the relief sought herein, CG&E has no adequate remedy which would enable it to avoid said harm and prejudice.

WHEREFORE, Plaintiff CG&E respectfully requests that this Court enter judgment herein, declaring the rights, status and other legal relations between the Parties herein, pursuant to §2721.02 Ohio Rev. Code, as follows:

1. That CG&E is not obligated to arbitrate the demands of DP&L as set forth at Paragraph 4 above;
2. That CG&E is not obligated to arbitrate any question, demand or other claim raised by DP&L or C&SOE, which does not set forth in detail the subject or subjects to be arbitrated as required under the terms of the Agreement between the parties.
3. That CG&E is not obligated to arbitrate any question, matter or other claim raised by DP&L or C&SOE which necessarily seeks to require the arbitrator to rewrite or otherwise modify the Agreement, to exceed his powers thereunder, or to violate the public policies of the state of Ohio;
4. That Defendants be temporarily and permanently enjoined from requiring or insisting upon any arbitration proceedings between the parties herein, and that any such proceedings be stayed until such time as this Court has entered a final judgment declaring the rights of the parties regarding arbitration;
5. That the Court grant such other and appropriate relief as may be required under the circumstances; and
6. That CG&E be awarded its costs of this suit.

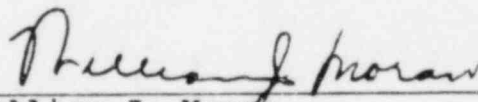
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425 Walnut Street  
Cincinnati, Ohio 45202  
(513) 381-2838


Trial Attorney for Plaintiff  
The Cincinnati Gas & Electric  
Company

STATE OF OHIO            )  
                              ) SS:  
COUNTY OF HAMILTON )

WILLIAM J. MORAN, being first duly cautioned and sworn,  
states that he is General Counsel of The Cincinnati Gas & Electric  
Company; that he has read the foregoing Verified Complaint For  
Declaratory Judgment And Stay of Arbitration Proceedings and that,  
based upon his own knowledge, information and belief, the facts set  
forth herein are true and accurate.

  
\_\_\_\_\_  
William J. Moran

Sworn to and subscribed in my presence this 9<sup>th</sup> day of  
May, 1983.

  
\_\_\_\_\_  
Notary Public

JAMES J. MAYER, Attorney at Law  
Notary Public - State of Ohio  
My Commission has no expiration  
date, Section 147.09 R.C.

OF COUNSEL:

William J. Moran, Esq.  
The Cincinnati Gas & Electric Company  
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Cincinnati, Ohio 45202

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1800 First National Bank Center  
425 Walnut Street  
Cincinnati, Ohio 45202

BASIC GENERATING AGREEMENT  
AMONG  
THE CINCINNATI GAS & ELECTRIC COMPANY  
COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY  
AND  
THE DAYTON POWER AND LIGHT COMPANY

RE  
WM. H. ZIMMER NUCLEAR POWER STATION  
Dated as of August 29, 1969

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# BASIC GENERATING AGREEMENT

RE

## WM. H. ZIMMER NUCLEAR POWER STATION

This Agreement, dated as of August 29, 1969, among The Cincinnati Gas & Electric Company (Cincinnati), Columbus and Southern Ohio Electric Company (Columbus) and The Dayton Power and Light Company (Dayton), Ohio corporations, sets forth the parties' basic agreement respecting the Wm. H. Zimmer Nuclear Power Station near Moscow, Ohio.

### ARTICLE ONE

#### Definitions

1. Zimmer Station means the Wm. H. Zimmer Nuclear Power Station.
2. Unit 1 means all of the equipment, facilities, and structures making up and housing the 840,000 kW nominal gross electric generating unit, and all of the related facilities, including the nuclear steam supply system, to be constructed and used for the generation of electricity at Zimmer Station.
3. Zimmer Real Estate means certain unimproved real estate in or on which Unit 1 will be located; Zimmer Real Estate is described in the granting clause in the attached Exhibit A. A drawing showing the Zimmer Real Estate as of January 11, 1973, is attached hereto as Exhibit B.



ART. TWO

ARTICLE TWO  
Property Interests

1. On or before May 1, 1974, for payment of \$55,899.62 received from Columbus and of \$61,783.79 received from Dayton, Cincinnati will transfer, and Columbus and Dayton will respectively pay for and receive, undivided interests, as tenants in common, with Cincinnati, in the Zimmer Real Estate, as follows:

Party to which Cincinnati  
is to convey undivided  
interest

Undivided Interest

Columbus  
Dayton

28.5%  
31.5%

with the result that Cincinnati will retain a 40.0% undivided interest in the Zimmer Real Estate. The above amounts to be paid to Cincinnati by Columbus and Dayton, respectively, reflect the book costs, including applicable allowance for funds used during construction and property taxes of Cincinnati for the Zimmer Real Estate to and including April 30, 1974, and are to be increased to reflect (i) the cost of any additional real estate acquired by Cincinnati to complete the Zimmer Real Estate (proportionate interests in which are to be conveyed to Columbus and Dayton, respectively), and (ii) additional charges on the books relating to Zimmer Real Estate up to, and including, the actual date of transfer of, and payment for, the Zimmer Real Estate. The instrument for such transfer shall substantially contain the provisions of, and be in the form of, that attached hereto as Exhibit A, which is part of this Agreement. The

provisions of this Agreement shall survive the execution and delivery of the foregoing instrument.

2. Either prior to, or shortly after, the conveyance provided for in Section 1 above, Cincinnati shall obtain the release of the undivided interests to be conveyed, or conveyed as the case may be, from any liens created by, through or under Cincinnati (in such manner that the trustee under Cincinnati's first mortgage shall be bound by Cincinnati's covenants respecting such interests as set forth in the instrument provided for in Section 1).

3. Prior to the conveyance provided for in Section 1, Cincinnati shall furnish Columbus and Dayton with satisfactory evidence of title to the property to be conveyed.

### ARTICLE THREE

#### Construction

1. The parties shall cause to be undertaken, in the manner hereinafter provided for, the design, the purchase of materials, equipment and services for, and the construction of Zimmer Station, including the initial installation of Unit 1, substantially in accordance with the Scope of Project set forth in Exhibit C which is a part of this Agreement. The parties seek to complete the construction of Unit 1 and commence its full-scale operation on or before January 1, 1978.

2. The parties shall own the following undivided interests in Unit 1 as tenants in common:

<u>Party</u>	<u>Undivided Interest</u>
Cincinnati	40.0%
Columbus	28.5%
Dayton	31.5%

3. Each of the parties shall, taking into account the time schedule set forth in Section 1 of this ARTICLE THREE, enter into contracts (which may be purchase order contracts) providing for (a) the design of, the procurement of materials, equipment and services for and construction of Unit 1 in accordance with the Scope of Project, and (b) insurance to insure all work under construction against risks usually insured against for such work. Each such contract shall, among other things, provide that: Cincinnati shall be the agent for Columbus and Dayton, as to the respective interest of each, concerning all relations between such parties and the contractor; the performance of the contractor shall be for the account of, and the charges therefor shall be billed to, and paid by, each of the parties hereto in proportion to its undivided interest set forth in Section 2 of this ARTICLE THREE; and further, the invoices for such billing (Contractor's Invoice or Invoices) shall be so submitted in the names of the parties in care of the Disbursing Agent referred to in Section 5 of this ARTICLE THREE. Each of the parties shall execute and deliver on its own behalf the contracts providing for the procurement of the following: the nuclear steam supply system, natural uranium hexafluoride, nuclear fuel enrichment services, nuclear fuel fabrication, turbine-generator, condenser, large pumps, cooling tower,

structural steel, piping fabrication, consulting engineering work, construction and construction management services, and Builders Risk and nuclear insurance. For the convenience of the parties, Cincinnati is hereby granted power of attorney by each of the other parties to execute and deliver on behalf of each such other party all other contracts to be entered into pursuant to this section.

4. Cincinnati, on its own behalf as to its own interest, and as agent for Columbus and Dayton as to theirs, respectively, shall supervise and perform engineering and other services in connection with, may provide materials and supplies from its inventory for, and shall pay taxes properly levied against, the construction of Unit 1. In performing such services Cincinnati may delegate responsibilities to such of its employees as it deems appropriate. Such services shall be for the account of each of the parties in proportion to its undivided interest set forth in Section 2 of this ARTICLE THREE and the charges therefor shall, as provided for in Section 10 of this ARTICLE THREE, be paid by each of the parties in proportion to its undivided interest. In carrying out its work as agent for Columbus and Dayton under the provisions of this Agreement, Cincinnati shall not be liable to Columbus or Dayton except on account of its gross negligence.

5. The parties shall open a bank account or accounts

in the names of the parties (Zimmer Station - Cincinnati - Columbus - Dayton Account) at a convenient bank, or banks, in Cincinnati, Ohio. Each of the parties hereby grants power of attorney to such person, or persons, as the Treasurer of Cincinnati shall hereafter from time to time appoint to act as disbursing agent for each of the parties (Disbursing Agent) with power to draw checks or drafts upon the Zimmer Station - Cincinnati - Columbus - Dayton Account. Such Disbursing Agent shall be bonded in favor of Cincinnati, Columbus and Dayton, as their respective interest may appear, for not less than \$500,000, the cost of which shall be part of the cost of construction.

6. Each of the parties shall pay its share of the cost of Unit 1 as determined by its undivided interest set forth in Section 2 of this ARTICLE THREE, under the procedures hereinafter set forth.

7. Within 60 days after the date hereof Cincinnati shall submit to Columbus and Dayton a schedule, setting forth the estimated costs of construction of Unit 1 by months. From time to time, Cincinnati shall submit revisions of such schedules to Columbus and Dayton, to the end that they shall have reasonable notice of the need for construction funds.

8. From time to time (which will ordinarily be monthly) the Disbursing Agent shall request advance remittances from the parties, in proportion to their respective undivided interests set forth in Section 2 of this ARTICLE THREE, aggregating the estimated expenditures which Cincinnati



advises the Disbursing Agent will be made in the following month. The estimated expenditures shall include Cincinnati's estimated monthly cost for services and other matters referred to in Section 4 of this ARTICLE THREE. The parties shall forthwith make such remittances to the Disbursing Agent for deposit in the Zimmer Station - Cincinnati - Columbus - Dayton Account.

9. After the Disbursing Agent has received a Contractor's Invoice and determined its propriety, the Disbursing Agent shall draw, and cause to be delivered, checks or drafts in the name of the parties in payment of the Contractor's Invoice. Funds shall be disbursed from the Zimmer Station - Cincinnati - Columbus - Dayton Account in accordance with sound accounting and disbursement procedures.

10. Cincinnati shall submit statements to Cincinnati, Columbus and Dayton in care of the Disbursing Agent for their respective shares of the charges incurred by it under Section 4 of this ARTICLE THREE (as determined by application of their respective undivided interests of 40.0%, 28.5% and 31.5% to the total of such charges). Each such statement shall specify the nature of the work. The Disbursing Agent shall effect reimbursement therefor to Cincinnati from funds of Cincinnati, Columbus and Dayton in the Zimmer Station - Cincinnati - Columbus - Dayton Account, in proportion to their respective undivided interests. Such charges shall include the following (insofar as applicable to the work performed hereunder):



Payroll of the employees, including the cost of social security taxes, unemployment insurance expenses, group life insurance, group hospitalization and medical insurance, pension plan contributions, employee incentive thrift-plan contributions, workmen's compensation and other insurance and the cost to Cincinnati of other fringe costs of its employees; applied overheads, including administrative and general expense; materials and supplies; stores handling cost; transportation expense; all taxes; and other miscellaneous costs.

In arriving at amounts of overhead items, Cincinnati will use its own Company experience and policy.

11. Not later than the 25th day of each month during the period ending with the sixth full month after the date of full-scale operation of Unit 1, Cincinnati shall submit to Columbus and Dayton a statement in reasonable detail setting forth the total amount of the cost of construction of the unit through the end of the prior month.

12. Cincinnati shall accord to Columbus and Dayton reasonable access to Zimmer Station in order that their representatives may, during the construction period, fully inspect Unit 1 and the other equipment, facilities and structures at Zimmer Station. Cincinnati shall supply Columbus and Dayton with copies of progress reports and such other reports on construction as they may reasonably request. Further, the parties shall informally consult with each other from time to time respecting any matters which are the subject of this

ARTICLE THREE.

13. Cincinnati shall keep accurate books of account containing in detail the items of cost applicable to the construction of Unit 1. Cincinnati shall permit the books of account to be examined from time to time by Columbus and Dayton, or on their behalf by their respective independent public accountants, to the extent necessary to verify the assignment of costs to Columbus and Dayton pursuant to the provisions of this Agreement.

14. Cincinnati shall furnish Columbus and Dayton with counterparts of such documents and records as are necessary in order that each may properly maintain its books and records. Cincinnati shall maintain the basic documents as a part of its continuing property records and make the same available to Columbus and Dayton as may be reasonably required.

15. During the period of construction of Unit 1 and until the date of full-scale operation, taxes applicable to such unit shall be borne by the parties in the ratio of the undivided ownership interests set forth in Section 2 of this ARTICLE THREE, regardless of the name or names in which the tax bills are rendered.

#### ARTICLE FOUR

##### Operation Agreement

Prior to the start of full-scale operation of Unit 1, the parties shall enter into an Operation Agreement, the outline for which is attached as Exhibit D. This exhibit is a part of this Agreement.

## ARTICLE FIVE

### General

1. Upon satisfactory completion of appropriate tests, Cincinnati shall give written notice to Columbus and Dayton of the date of full-scale operation.

2. Each of the parties shall observe the following accounting principles relative to the construction of Unit 1:

- (a) except as to the treatment of liberalized tax depreciation, investment tax credit and such other issues as may arise from time to time in the future, each party shall follow the provisions of the Uniform System of Accounts prescribed by the Federal Power Commission for Public Utilities and Licensees, as such provisions may be in effect from time to time, provided that any party may, in its use of the same, substitute its own, or appropriate Public Utilities Commission of Ohio, account numbers for the F.P.C. account numbers;
- (b) each party shall employ uniform procedures as to the capitalization of allowance for funds used during construction, including the use of a uniform percentage rate per annum;
- (c) all overheads shall be capitalized on the basis of Cincinnati's experienced costs; and
- (d) each party shall use its best efforts to agree upon and employ from time to time uniform rates for determining the annual provision for depreciation.

3. All notices under this Agreement shall be in writing, and shall be sufficient in all respects if delivered in person to the President or Vice President of any party, or sent by registered mail or certified mail addressed to it, in care of its President, at its head office.

4. Any controversy, claim, counterclaim, dispute, difference or misunderstanding arising out of, or relating to, this Agreement or the breach thereof, or the Special Warranty Deed to be delivered pursuant to this Agreement, shall be submitted to arbitration upon the request of any party or parties hereto in the manner hereinafter provided.

The party or parties submitting such request shall serve notice in writing upon the other parties or party setting forth in detail the subject or subjects to be arbitrated, and the parties thereupon shall endeavor to agree upon and appoint one person to act as sole arbitrator. If the parties fail to agree upon such an arbitrator within fifteen days from the receipt of such notice, any one or more of the parties may apply within five days thereafter to the Chief Judge of the United States Court of Appeals for the Sixth Circuit for the appointment of the sole arbitrator. In the event that the Chief Judge does not within 30 days make such appointment, any one or more of the parties may request the American Arbitration Association to appoint the sole arbitrator pursuant to its rules then obtaining.

The arbitration shall be conducted in accordance with

the rules of the American Arbitration Association then in effect. The findings and award of the sole arbitrator, as it may be confirmed, shall be binding and conclusive with respect to the matter or matters submitted to arbitration, except as such findings and award may be modified, corrected or vacated as provided in Sections 2711.10 and 2711.11 of the Revised Code of Ohio, or the successors to such sections, in effect at the time under consideration. The costs of arbitration shall be divided equally among the parties.

Performance of this provision shall be a condition precedent to the institution of any proceeding in any court concerning any controversy, claim, counterclaim, dispute, difference or misunderstanding arising out of, or relating to this Agreement or the breach thereof.

5. The failure of any party hereto to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to take advantage of its rights hereunder, shall not be construed as a waiver of any such provisions, or the relinquishment of any such rights, but the same shall continue to remain in full force and effect.

6. The performance of each provision of this Agreement is conditioned upon the due receipt of all regulatory approvals, in form and substance satisfactory to the parties, necessary to permit the performance thereof, and each party shall use its best efforts to obtain any such necessary regulatory approval.

7. No party will, without the prior written consent of the others, assign this Agreement, except as the same may be assigned

voluntarily or otherwise, under its first mortgage. Subject to such provision, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

THE CINCINNATI GAS & ELECTRIC COMPANY

By John Yeager  
President

Date

4-29-74

Wm.  
4/24/74

COLUMBUS AND SOUTHERN OHIO ELECTRIC  
COMPANY

By Al Hearn  
President

Date

4-30-74

THE DAYTON POWER AND LIGHT COMPANY

By Robert H. Beilman  
Chairman and President

Date

5-8-74

JR  
5-8-74



SCOPE OF PROJECT

FOR

WM. H. ZIMMER NUCLEAR POWER STATION - UNIT 1

THE CINCINNATI GAS & ELECTRIC COMPANY  
COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY  
THE DAYTON POWER AND LIGHT COMPANY

March 1, 1972

Reference No. GED/E-5590

THE CINCINNATI GAS & ELECTRIC COMPANY  
COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY  
THE DAYTON POWER AND LIGHT COMPANY

SCOPE OF PROJECT  
FOR  
WM. H. ZIMMER NUCLEAR POWER STATION  
UNIT 1

GENERAL

The Wm. H. Zimmer Nuclear Power Station will be built approximately 25 miles southeast of Cincinnati on the Ohio side of the Ohio River in Clermont County between the towns of Point Pleasant and Moscow. The station will be designed as a steam electric generating plant utilizing nuclear fuel as a heat source. Unit 1 of the station will have a capacity of approximately 840,000 kilowatts. The unit is scheduled for initial fuel loading during the first quarter of 1977 and for full commercial operation by January 1, 1978.

GENERAL PLANT ARRANGEMENT

The general plant arrangement will consist of a Service Building, Reactor Building, Auxiliary Building, Turbine Building, and Radioactive Waste Treatment Building. These structures will be supported on reinforced mat foundations.

Service Building

The service building will contain offices for plant personnel, washrooms, locker rooms, first aid room, and nuclear physics room along with a storeroom and machine shop. The service building will be designed with a structural steel frame with

masonry exterior and will be approximately 170 feet by 150 feet.

#### Reactor Building

The reactor building will be approximately 150 feet by 130 feet and 200 feet tall; 150 feet of the height will be above station grade. The structure will be of reinforced concrete up to the refueling floor. Above the refueling floor the structure will be of steel with insulated siding. The primary containment located inside the reactor building will employ an over-and-under prestressed concrete steel-lined design and will house the reactor vessel along with the nuclear safety and engineered safeguard systems.

#### Auxiliary Building

The auxiliary building will be located between the reactor building and the turbine building. It will be approximately 100 feet wide and approximately 220 feet long. The structure will extend 72 feet above grade. The auxiliary building will house the diesel generators used to provide back-up power for the reactor safety systems as well as the plant control room, computer room, electrical switchgear, and station batteries.

#### Turbine Building

The turbine building will be directly west of the auxiliary building and will be approximately 130 feet wide and 320 feet long. The building will be a combination of reinforced concrete and structural steel superstructure with metal siding.

A bay extending to the west of the main turbine building will contain the feedwater heaters and condensate demineralizers.

#### Radwaste Building

The radioactive waste treatment structure will be connected to the west side of the turbine building. This building will be approximately 85 feet by 140 feet and will house both the liquid and solid radwaste processing systems.

#### Intake Structure

The intake will be a circular reinforced concrete structure and will contain the service water and cooling tower make-up pumps as well as bar grills and traveling water screens. The intake structure will be set back from the river and will be connected to the river by means of an intake flume constructed from sheet piling. The intake flume and screens will be conservatively designed to ensure low water-intake velocity.

#### Cooling Tower

The circulating water for the condenser cycle of the generating unit will be provided by a closed system utilizing a natural draft hyperbolic cooling tower. The cooling tower will be 383 feet in diameter at the base and 479 feet high. The tower will cool 448,000 gallons per minute of circulating water. Make-up water to the system will be provided from the Ohio River replacing water lost by evaporation, drift, and blowdown.

#### Unloading Facilities

A barge unloading facility will be located on the site. The unloading facility will be constructed of sheet piling and

reinforced concrete. Provisions will be made to unload a railroad car from a barge. A railroad spur will be constructed connecting this facility with the turbine building and the reactor building.

#### Security

Adequate fencing and other security measures will be installed on the site.

#### Flood Protection

The reactor building and intake structure along with the auxiliary building will be flood protected to an elevation of 546 feet. This provides flood protection 28 feet above the historical flood of record which occurred in January, 1937. The remaining structures will be flood protected to an elevation of 520 feet.

#### Fire Protection System

A fire protection system will provide a reliable water distribution system both outside and inside the station buildings. A motor driven fire pump will be used for normal service and a diesel engine driven fire pump will serve as backup. A yard fire hydrant system will be installed. Individual water deluge systems will be used to protect the transformers. Wet pipe sprinkler systems will provide protection to other critical areas inside the station. Hose reels with fire water valves will be located throughout the station.

## NUCLEAR STEAM SUPPLY SYSTEM

Steam will be supplied from a single cycle forced circulation boiling water reactor. The reactor will be designed for a rated steam flow of 10,477,000 pounds per hour and 985 psia saturated steam conditions based on a feedwater inlet temperature of 420° F. The reactor will be rated at 2436 MW thermal at rated steam conditions. The reactor vessel will be designed and fabricated in accordance with applicable codes. The vessel will be of carbon steel and will be clad internally except for the top head with stainless steel. The fuel for the reactor core will consist of slightly enriched uranium dioxide pellets contained in sealed zircaloy tubes. These fuel rods will be assembled into individual fuel assemblies of 64 rods each. The complete reactor core will contain 560 fuel assemblies. Control of the core will be achieved by movable bottom entry control rods. The control rods will be of a cruciform shape dispersed throughout the lattice of the fuel assemblies. The rods will be positioned by individual hydraulic drive systems.

## TURBINE GENERATOR

The turbine will be an 1800 rpm tandem compound with four-flow low-pressure elements with 40-inch last stage blades. The approximate rating of the turbine generator will be 840,000 kilowatts with 1.5 inches Hg. absolute back pressure and 0% makeup. The generator will be a direct driven three-phase 60 Hz 22,000 volt, 1800 rpm hydrogen intercooled synchronous generator rated at 975,000 KVA at 0.90 power factor and 0.458 short circuit



ratio with a rated hydrogen maximum pressure of 60 psig. It will be equipped with a shaft-driven excitation system.

#### MAIN STEAM CONDENSER

The condenser will maintain vacuum at the turbine exhaust with a constant rated circulating water flow of 448,000 gpm. The condenser will include provisions for accepting auxiliary steam from the reactor feed pump turbines and steam bypassed from the main turbine generator. The condenser will be of the multi-pressure single pass design containing 550,000 square feet of heat transfer surface.

#### AUXILIARY AND RESERVE POWER TRANSFORMERS

An auxiliary power transformer will be provided directly connected to the generator's main bus for supplying the 6.9 and 4.16 kV auxiliary power systems. A 345 kV reserve transformer will be connected by transmission line circuit to the 345 kV substation for supplying off-site 6.9 and 4.16 kV auxiliary power. A second reserve transformer connected to CG&E's 69 kV transmission system by high voltage underground and overhead connections will also supply off-site power to the plant auxiliaries for starting and shutting down the plant.

#### MAIN POWER TRANSFORMER

One 875 MVA three-phase, 60 Hz, oil immersed, 22-345 kV main power transformer will be provided. The high side of the main power transformer will be connected directly to the station switchyard which will be located on the hillside east of the station.



The Dayton Power and Light Company  
Courthouse Plaza Southwest, Dayton, Ohio 45401

Robert E. Frazer  
Chairman  
and Chief Executive Officer

Certified Mail - Return Receipt

January 20, 1983

Mr. W. H. Dickhoner  
President and CEO  
Cincinnati Gas &  
Electric Company  
139 East Fourth Street  
Cincinnati, Ohio 45202

ATTN	RECEIVED	NOTED
	W. H. DICKHONER	
	JAN 24 1983	
FILE		
RETURN TO:		

Dear Mr. Dickhoner:

I am writing to you concerning several issues relating to Zimmer Nuclear Station. My December 15, 1982 letter to you described our concerns and demands. Your January 3, 1983 letter of response both failed to address the concerns that were raised in my December 15 letter and recommended only that no action be taken at this time. We found this response unsatisfactory.

After our Board of Directors on January 6 authorized us to commence arbitration proceedings, we entered into intensive negotiations in an effort to deal with the issues between us. Our inability to resolve these issues resulted in our Board reaffirming the need for immediate arbitration and requesting that outside members of our Boards meet with members of your Board so that we might explain why this action is necessary. These meetings took place last week and did not result in any changes in our respective positions.

Accordingly, we demand that you arbitrate, in accordance with the Zimmer Basic Generating Agreement, the following questions:

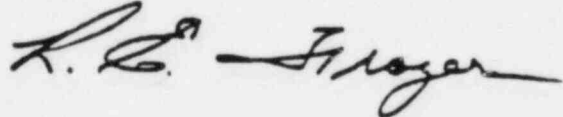
1. Whether DP&L must continue to pay all costs of completion of Zimmer Station that CG&E bills to it in view of the history and current status of the project, and in view of CG&E's inability or refusal to specify a completion date or a defined completion cost, or develop a satisfactory scheduled program for such completion.
2. Whether CG&E had sufficient knowledge that actions against suppliers for failure to comply with contractual obligations should have been initiated or other available remedies pursued.

Exhibit B

Mr. W. H. Dickhoner  
January 20, 1983  
Page - 2

3. Whether the percentage of undivided interest of DP&L in the project and in DP&L's entitlement to the capacity of Zimmer Station in relation to that of CG&E shall remain as stated in the Zimmer Basic Generating Agreement in light of the resolution of the issues raised in this arbitration.
4. Whether the rights, obligations and duties of the parties under the Basic Generating Agreement and the Zimmer Operating Agreement should be modified in light of the resolution of the issues raised in this arbitration.
5. Whether DP&L should be awarded damages resulting from CG&E's performance under the Basic Generating Agreement. In this regard we have received two demand letters from attorneys representing certain of our shareholders. We further demand arbitration of the issues and demands raised in the letter dated December 20, 1982 and the letter dated December 22, 1982, copies of which are attached.

Sincerely,



REF/rab

Attachments

cc: Mr. W. S. White

BERGER & MONTAGUE, P.

DAVID BERGER  
HAROLD BERGER  
J. LADDIE MONTAGUE JR.  
WARREN B. MULLOY  
STANLEY R. WOLFE  
MERRILL S. DAVIDOFF  
SHERRIE R. SAVETT  
DANIEL BERGER  
JAY ROBERT STIEFEL  
GARY E. CANTOR  
RICHARD L. EPPINGER  
HOWARD I. LANGER  
E. DANIEL LARKIN, III  
MARTIN I. TWERSKY  
PETER R. KAHANA  
TODD S. COLLINS  
RUTHANNE GORDON  
ALAN M. SANDALS  
MARIA A. DASPINO  
STEPHEN D. RAMOS  
PATRICIA A. FANELLI

1622 LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19103

(215) 875-3000

TELEX 834-300

TELECOPIER (215) 875-3025

December 22, 1982

WRITER & DIRECT  
DIAL NUMBER  
(215) 875-3075

VIA FEDERAL EXPRESS

Board of Directors  
Dayton Power & Light Company  
P.O. Box 1247  
Dayton, Ohio 45401

Gentlemen:

Our firm and the firm of WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A., 1318 Central Trust Tower, Cincinnati, Ohio 45202, represent Carol V. Miller, who currently owns 150 shares of Dayton Power & Light Company ("DP&L") common stock and has owned such shares since 1974.

We believe that Cincinnati Gas & Electric Company ("CG&E") of Cincinnati, Ohio and Kaiser Engineers, Inc. of Oakland, California ("Kaiser"), a wholly-owned subsidiary of Raymond International of Houston, Texas, have engaged in wrongdoing and harm to DP&L and its shareholders in connection with the construction of the William H. Zimmer Nuclear Power Station (the "Zimmer Nuclear Station"). As you well know, CG&E is the builder and Kaiser is the general contractor for the Zimmer Nuclear Station, and DP&L is a 31.5% owner.

Specifically, we believe that the following actions or omissions by CG&E and/or Kaiser in connection with the construction of Zimmer Nuclear Station have harmed DP&L and its shareholders:

1. Failure to provide reasonable assurances that the construction complies with federal safety standards and that construction problems have been corrected, which failure resulted in November 1982 in an order by the Nuclear Regulatory Commission (the "NRC") halting construction. The NRC order will delay the construction schedule by as much as one year and will further increase construction costs payable by DP&L.

2. Failure to control construction costs and to adhere to construction schedules. The construction is now several years behind schedule, and estimates of the total cost of construction have soared from \$240 million in 1969 to \$500 million in 1977 to \$1.7 billion in August 1982. Current estimates are presumed to be well in excess of \$1.7 billion.
3. Endangering the ratings of DP&L's securities by bond rating agencies, which has occurred and is occurring as a result of CG&E's and Kaiser's errors, misjudgments and intentional misconduct in connection with the construction.
4. Failure by CG&E to exercise adequate oversight or control over the Quality Assurance Program conducted by Kaiser as general contractor, which resulted in November 1981 in an NRC Notice of Violation and fine against CG&E.
5. Obstruction by CG&E of Kaiser in its conduct of the Quality Assurance Program, including, inter alia, CG&E's refusal in March 1976 of Kaiser's request for 10 additional inspectors for the Quality Assurance Staff.
6. Improper implementation of the Quality Assurance Program subsequent to the November 1981 Notice of Violation.
7. Permitting or requiring the hiring of Quality Assurance inspectors whose qualifications are suspect or inadequate.
8. Permitting or requiring the relaxation of standards for Approved Vendors in order to allow CG&E to supply Kaiser even though CG&E could not qualify as an Approved Vendor.
9. Permitting or requiring an inadequate program for identifying and tracing materials used in construction.
10. Permitting or requiring deviation from Quality Assurance Program requirements.
11. Permitting or requiring the cover-up of problems.
12. Permitting or requiring the discharge or demotion of Kaiser personnel who object to or seek to inform



the NRC of problems, including, inter alia, Dave Jones and Jeffrey M. Nichols.

13. Permitting or requiring only cosmetic repairs where applicable safety standards require large-scale repairs or new construction, including, inter alia, cosmetic repairs in the case of badly cut and welded beams and cracks in the drywell around the reactor.

14. Permitting or requiring deviations from crucial safety analyses or plans.

15. Permitting or requiring Quality Assurance manuals that do not clearly delineate responsibility between CG&E and Kaiser.

16. Permitting or requiring sloppy quality control over suppliers.

17. Permitting or requiring inaccurate blueprints that do not reflect actual construction.

18. Permitting or requiring inadequate training and certification of Quality Assurance personnel and welders.

19. Permitting or requiring inadequate and infrequent inspections and tests.

20. Permitting or requiring the circumvention or avoidance of "Hold Tags" and Nonconformance Reports.

21. Permitting or requiring the intimidation of Quality Assurance inspectors and document reviewers.

22. Permitting or requiring faulty record-keeping.

23. Permitting or requiring faulty welding procedures.

24. Permitting or requiring improper heat treatment for welds, including the elimination of required follow-up heat treatments.

25. Permitting or requiring the purchase of "non-essential" structural materials intended for non-safety-related uses despite subsequent utilization of these materials for essential or safety-related uses.



26. Permitting or requiring transfer of steel beams in sections without identifying numbers, having the effect of preventing proper tracing of the steel for purposes of Quality Assurance.

27. Permitting or requiring use of inferior studs and nuts in lieu of proper, permanent fasteners.

28. Permitting or requiring use of an outdated Approved Vendors' list that led or leads to the use of unqualified vendors.

29. Permitting or requiring the improper maintenance of site records.

30. Permitting or requiring acceptance of vendors on the basis of CG&E's experience rather than on the basis of independent audits and investigations by Kaiser.

31. Permitting or requiring excessive and improper delegation of supervisory duties to Kaiser.

32. Permitting or requiring the preparation of excessive numbers of drawings or blueprints that lack necessary heat numbers for identification of parts used in construction.

We demand, on behalf of our client, that the Board of Directors of DP&L request and compel CG&E and Kaiser to reimburse DP&L for all funds that have been expended by DP&L that would not have been expended had Zimmer Nuclear Station been completed (a) within its original construction budget, and (b) according to the original schedule. Further, it is demanded that the Board of Directors of DP&L request and compel CG&E and Kaiser to reimburse DP&L for all funds that have been expended by DP&L to repair, reconstruct or add safety or Quality Assurance devices or measures, to the extent that such funds would not have been expended had CG&E and Kaiser refrained from the wrongful acts and omissions outlined at paragraphs 1-32 above. Finally, it is demanded that the Board of Directors take all necessary action, including legal action on behalf of CG&E, to effectuate these demands.

If these demands are not satisfied within 20 days, this demand will be considered denied. We will consider your failure to satisfy these demands to be a mismanagement of

December 22, 1964  
Page 5

DP&L and a waste of DP&L's assets, and appropriate legal action will be commenced to enforce the rights of DP&L and its shareholders.

Very truly yours,

*Stanley R. Wolfe*

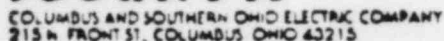
Stanley R. Wolfe,  
BERGER & MONTAGUE, P.C.

and

*Stanley M. Chesley*

Stanley M. Chesley,  
WAITE, SCHNEIDER, BAYLESS &  
CHESLEY

SRW/h1  
cc: Carol V. Miller



7-7A TSCM	<b>RECEIVED</b>	<b>NOTED</b>
	<b>W. J. BICKNOR</b>	
	<b>JAN 29 1983</b>	
<b>PAGE</b>		
<b>RETURN TO:</b>		

Exhibit C

William H. Dickhoner, President  
and Chief Executive Officer

Robert E. Frazer, Chairman and  
Chief Executive Officer

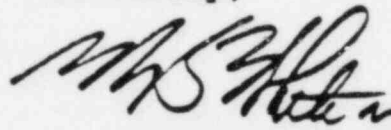
- 2 -

January 26, 1983

Such consolidation is necessary in order to enable all parties to the Basic Generating Agreement to participate in the selection of an arbitrator and the arbitration of common issues.

In seeking consolidation of the two requests for arbitration, CSOE does not join in the demand by DP&L for arbitration with respect to certain of the matters referred to in DP&L's letter of January 20, 1983 and expressly reserves the right to challenge the arbitrability of such matters and to be heard with respect to such matters to the extent they may be determined to be arbitrable.

Sincerely,



W. S. White, Jr., Chairman  
and Chief Executive Officer

WSW:lm

THE CINCINNATI GAS & ELECTRIC COMPANY



WILLIAM J. MORAN  
VICE PRESIDENT AND  
GENERAL COUNSEL

February 8, 1983

FEB 9 1983

James Cotter, Esq.  
Simpson, Thatcher & Bartlett  
One Battery Park Plaza  
New York, New York 10004

A. W. Gilliam, Esq.  
Smith & Schnacke  
2000 Courthouse Plaza NE  
Dayton, Ohio 45401

Gentlemen:

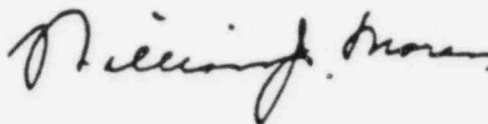
This letter will acknowledge receipt of the demand for arbitration, dated January 20, 1983, and the Notice of Request for Arbitration, dated January 26, 1983, which have been served upon The Cincinnati Gas & Electric Company (CG&E) by The Dayton Power and Light Company (DP&L) and by Columbus and Southern Ohio Electric Company (CSOE), respectively. Joint acknowledgment is being made for the reason that both DP&L and CSOE purport to seek resolution of issues relating to the construction of Wm. H. Zimmer Nuclear Power Station in accordance with Article V. paragraph 4 of the Basic Generating Agreement, dated August 29, 1969. CSOE has proposed consolidation of the arbitration proceedings being sought, as above stated, to which CG&E has no objection, if, indeed, arbitration, as demanded, is in order. However, our review of the separate arbitration demands discloses disagreement between CSOE and DP&L with respect to the arbitrability of the issues raised by DP&L in its demand, which may have a bearing upon the question of consolidation.

In an effort to conform to the spirit and intent of Article V. paragraph 4 of the Basic Generating Agreement, we have been in contact with representatives of both DP&L and CSOE regarding the selection of an impartial arbitrator and will continue to coordinate efforts to reach unanimous agreement as to an acceptable arbitrator. However, we wish it to be clearly understood that in doing so, CG&E does not agree to the adequacy or to the arbitrability of any of the issues purportedly raised by them. Instead, CG&E expressly reserves the right to question the sufficiency of either or both of those demands, from the standpoint of both form and content, as well as the right to

A. W. Gilliam, E ..  
February 8, 1983  
page 2.

question the arbitrability of each and every issue thereby intended to be raised. In addition, CG&E reserves the right, in the event that any aspect of any issue raised by either DP&L or CSOE is determined to be a proper subject of arbitration, to present its own demand or demands for the arbitration of any other aspect of any such issue, or its own demand or demands for arbitration of any other question involving any phase of the Basic Generating Agreement.

Very truly yours,



WJM/ijy

cc: A. Joseph Dowd, Esq.  
Steven F. Koziar, Esq.

bcc: Robert G. Stachler, Esq. ✓





# newsrelease

P.O. BOX 1247 • COURTHOUSE PLAZA S.W. • DAYTON, OHIO 45401

FOR IMMEDIATE RELEASE

CONTACT: Stephen F. Koziar  
(513) 224-6214

DAYTON, OHIO, January 20, 1983 - Dayton Power and Light Company announced today that it had initiated arbitration proceedings in accordance with the construction agreement entered into with The Cincinnati Gas & Electric Company at the inception of the Zimmer Station project. DP&L Chairman, Robert Frazer, said, "DP&L's action calling for arbitration is to facilitate the timely completion of Zimmer consistent with the high standards established by the Nuclear Regulatory Commission (NRC) and to assure that the best interests of DP&L's customers and shareholders are considered."

The parties anticipated when the project started that an undertaking of the magnitude of the Zimmer Station might well develop difficult and complex questions. Accordingly, all parties agreed to arbitrate such issues rather than enter into court proceedings. Certain issues relating to the construction of the Zimmer plant have arisen out of the NRC's order stopping safety-related work on Zimmer.

RECEIVED LEGAL DEPARTMENT  
DEC 21 1982  
DAYTON POWER & LIGHT CO.

*Law Offices*  
FROUG & FROUG  
502 HULMAN BUILDING  
DAYTON, OHIO 45402

Dec. 20, 1982

R. E. Frazier,  
President and Chief  
Executive Officer, and Member  
of the Board of Directors,  
The Dayton Power & Light Company,  
Court House Plaza S.W.,  
Dayton, Ohio 45401

In re:  
Demand by Shareholders  
to bring action against  
The Cincinnati Gas &  
Electric Company -  
Zimmer Nuclear Plant

Gentlemen:

I represent, as Attorney at Law, a number of Shareholders of your corporation. It is their belief, in which I concur, upon information and facts which are matters of public record, that the corporate assets of The Dayton Power & Light Company have been and will continue to be wrongfully wasted by the present and past Officers and Directors of The Dayton Power & Light Company, in its continued participation under a certain contract between The Cincinnati Gas & Electric Company, The Dayton Power & Light Company and the Columbus & Southern Ohio Electric Company, by reason of the unconscionable, negligent, wrongful, illegal and fraudulent acts and breach of trust on the part of The Cincinnati Gas & Electric Company in the construction of the Zimmer Nuclear Plant which is owned jointly by The Cincinnati Gas & Electric Company, The Dayton Power & Light Company and the Columbus & Southern Ohio Electric Company, resulting in the probable refusal on the part of the Nuclear Regulatory Commission to issue a license for the operation of said facility, thereby making it impossible to open the Plant for operation in the year 1983 or thereafter.

The Dayton Power & Light Company has had knowledge of the imperfections in the construction, the inefficient management, defects and lack of control, failure to meet target dates, and consistent lack of approvals from the Nuclear Regulatory Commission which resulted in a fine of \$200,000.00 against The Cincinnati Gas & Electric Company by the said Nuclear Regulatory Commission, and further, an investigation by Governmental Agencies, by reason of the aforementioned acts, and that at present, said Nuclear Regulatory Commission has issued an Order, stopping all construction and work at the Zimmer Nuclear Plant.

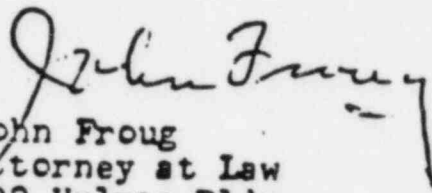
Based upon the above facts and public information, I am requesting that the corporation commence an action against The Cincinnati Gas & Electric Company, and for the cancellation and termination of the Agreement entered into, hereinabove set forth, and notify The Cincinnati Gas & Electric Company that The Dayton Power & Light Company will not be responsible for any further costs of any kind, in the future, and for damages and costs of financing the investment made by your

R. E. Frazier,  
The Dayton Power  
& Light Company - #2 (Letter 12/20/82)

Company under said Agreement, and for the reimbursement by  
The Cincinnati Gas & Electric Company to The Dayton Power &  
Light Company of all the moneys and value of services hereto-  
fore invested in said project, and that said legal action be  
commenced by January 10, 1983.

I shall expect to receive an answer as to whether or  
not your company intends to take the action hereinbefore set  
forth.

Very truly yours,



John Froug  
Attorney at Law  
502 Hulman Bldg.,  
Dayton, Ohio 45402

JF:MM

cc: P. H. Foster,  
Executive Vice-Pres. &  
Chief Operating Officer

cc: Stephen F. Kozier  
Sec'y. & General Counsel

CERTIFIED MAIL #2602698  
RETURN RECEIPT REQUESTED

# Zimmer discord seen in records

By Wes Hills

Staff Writer

Discord has been mounting for months between Dayton Power and Light Co. and Cincinnati Gas and Electric Co. over the troubled W.H. Zimmer Nuclear Power Plant, according to records and comments obtained Tuesday from DP&L officials.

DP&L chose to reveal private communications exchanged over the past five months after CG&E, the plant's operating partner, filed suit Monday against DP&L and Columbus and Southern Ohio Electric Co. C&SOE is the third co-owner of the long-delayed and increasingly costly plant 30 miles upstream from Cincinnati on the Ohio River.

CG&E's lawsuit seeks to limit questions involving terms of Zimmer ownership agreement that could be taken by DP&L and C&SOE to an arbitrator for binding resolution.

DP&L had not taken CG&E to task publicly in November 1981 when a record \$200,000 fine was levied against the plant's operating partner by the federal Nuclear Regulatory Commission because of construction problems. The commission cited falsified quality assurance records, harassment and intimidation of inspectors, and failure to adequately oversee construction by contractors.

As late as September, DP&L Board Chairman Robert E. Frazer continued to maintain publicly that Zimmer was "the biggest bargain in our list of assets," despite the cost overruns and delays.

And DP&L continued to publicly maintain a stiff corporate upper lip in November when the NRC shut down all safety-related construction at the plant until a review of CG&E's con-

struction management program is completed.

But a Jan. 20, 1983, letter from Frazer to CG&E President W.H. Dickhoner — released Tuesday by DP&L — refers to "concerns and demands" Frazer made of CG&E as early as Dec. 15, 1982.

Those demands came one week before a law firm representing DP&L shareholders warned that DP&L's refusal to initiate action against CG&E to recover cost overruns related to Zimmer's construction would be considered "to be a mismanagement of DP&L and a waste of DP&L's assets, and appropriate legal action will be commenced to enforce the rights of DP&L and its shareholders."

Frazer's Jan. 20 letter said CG&E's response to demands he had made on Dec. 15 "failed to address the concerns ... and recommended only that no action be taken at this time. We found this response unsatisfactory."

"After our board of directors on Jan. 6 authorized us to commence arbitration proceedings, we entered into intensive negotiations in an effort to deal with the issues between us," Frazer continued. "Our inability to resolve these issues resulted in our board reaffirming the need for immediate arbitration ..."

In his Jan. 20 letter, Frazer demanded that CG&E "arbitrate, in accordance with the Zimmer Basic Generating Agreement," the following questions:

- "Whether DP&L must continue to pay all costs of completion of Zimmer station that CG&E bills to it in view of the history and current status of the

project, and in view of CG&E's inability or refusal to specify a completion date or a defined completion cost, or develop a satisfactory scheduled program for such completion.

- "Whether CG&E had sufficient knowledge that actions against suppliers for failure to comply with contractual obligations should have been initiated or other available remedies pursued."

- Whether DP&L's interest in the plant and the parties' "rights, obligations and duties" should be modified and whether DP&L "should be awarded damages."

Despite the tone of Frazer's letter, the arbitration proceeding was characterized at that time as a friendly action that would ultimately aid in the completion and safe operation of Zimmer.

On Jan. 26, Zimmer's C&SOE reluctantly joined DP&L in the arbitration action against CG&E.

In response to both DP&L and C&SOE's demands for arbitration, CG&E General Counsel William J. Moran stated in a Feb. 9 letter — released Tuesday by DP&L — that CG&E "does not agree to the adequacy or to the arbitrability of any of the issues purportedly raised" by the two utilities.

Meanwhile, in March, DP&L Vice President and Treasurer Allen M. Hill warned the Public Utilities Commission of Ohio that the company's security ratings would be in jeopardy if it was not permitted to begin recovering its investment from Zimmer of its customers.

"The rating agencies ... have clearly stated that their quality ratings of DP&L securities are heavily dependent upon the outcome of this proceeding," Hill told the PUCO in reference to DP&L's request to increase electric rates by about \$46 million because of its investment in Zimmer.

"Thus, I feel that our ability to at-

(See Zimmer on Page 11)



tract needed capital in sufficient quantities and at reasonable cost and terms will be severely jeopardized without the inclusion of the requested ... allowance."

But, as in earlier rate cases involving CG&E and C&SOE, the PUCO denied DP&L any allowance for Zimmer.

The PUCO observed that CG&E "cannot even provide an estimate as to when the project might be placed in service or as to what additional costs might be incurred as a result of the most recent NRC order" shutting down construction at the plant.

DP&L general counsel Koziar said Tuesday, "Cincinnati (CG&E) is the constructor and potential operator of that plant and we've been asking all of these questions for the last year or so and now they're suing us. It's just unbelievable."

"There's got to be some cap to this thing (Zimmer's cost). We've got over \$400 million invested in this plant and I think we're entitled to know" the answers to questions posed by DP&L's shareholders, Koziar said.

The shareholders allege 32 separate "actions or omissions" by CG&E and Kaiser Engineers Inc., general contractor on the project.

They include failures to provide "reasonable assurances that the construction complies with federal safety standards," failure to control construction costs and adhere to construction schedules, and "endangering the ratings of DP&L's securities ... as a result of ... errors, misjudgments and intentional misconduct."

Koziar said DP&L will base its demand for relief on the information it obtains from CG&E in the arbitration action.

DP&L's percent share of Zimmer's costs has increased from about \$7 million, based on an original total estimated construction cost of \$240 million, to more than \$472 million, based

on the current estimated cost of \$1.9 billion.

CG&E maintains in its lawsuit, as it did in the Feb. 9 letter, that at least some of the issues being raised by DP&L are "not subject to arbitration." It asks the court to prohibit arbitration until the court decides what may be arbitrated.

Charles Komanoff, a New York City-based utility analyst who testified about Zimmer in the recent PUCO hearing, said the Zimmer owners and other utilities struggling with nuclear plant problems now are entering "a legally uncharted course."

"Things are starting to get so weird and unravel so fast that they're beginning to leave even me behind," he said.

Komanoff said he doesn't believe CG&E should be held solely responsible for Zimmer costs related to infla-

tion, interest and expenses connected with regulatory changes enacted by the NRC over the past decade.

However, he did estimate that Zimmer eventually would cost from \$2.5 billion to \$3 billion and not become commercially operational until at least 1986, if ever.

"In recent months I've come to conclude that the best thing for everybody is to quit (Zimmer's construction) now, and I'm not accustomed to saying that," Komanoff said.

DP&L treasurer Hill said the arbitration action is an effort to determine precisely what is wrong with the Zimmer plant, which the NRC contends has more than 15,000 administrative and other flaws, and how much it will cost to complete it.

"I don't know of any problems that are not fixable," Hill said.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

Exhibit 3

February 25, 1983

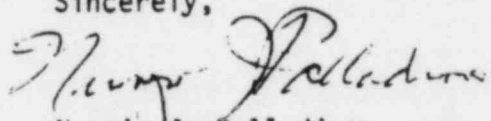
The Honorable Morris K. Udall, Chairman  
Committee on Interior and Insular Affairs  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Your letter of December 20, 1982 requested additional information concerning the Zimmer project. At the Commission's direction, our Region III office and the NRC Resident Inspector assigned to the Zimmer site have compiled the attached memorandum (WHZ NRC 83-06) in response to your request. Enclosures 1 and 2 of the attached memorandum provide specific responses to your request. Attachments 1 through 8 provide necessary backup information.

We trust this information will be of assistance to the Subcommittee.

Sincerely,

  
Nunzio J. Palladino

Enclosures:  
As stated

cc: Rep. Manuel Lujan





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

WHZ  
NRC 83-06

January 31, 1983

Docket No. 50-358

MEMORANDUM FOR: D. R. Hunter, Chief, Section 1, Office of  
Special Cases, NRC Region III

THRU: W. F. ~~Christianson~~ <sup>Christianson</sup>, Senior Resident Inspector,  
Wm. H. Zimmer Nuclear Power Station

FROM: T. P. Gwynn, Resident Inspector, Wm. H. Zimmer  
Nuclear Power Station

SUBJECT: LETTER FROM M. K. UDALL TO N. J. PALLADINO DATED DECEMBER  
20, 1982, REQUEST FOR INFORMATION

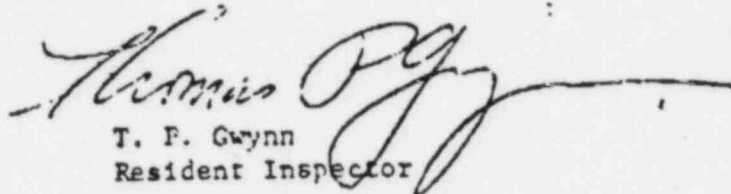
The enclosures to this memorandum provide the information requested in the subject letter. Each enclosure with referenced attachments responds to one of the two requests.

The information provided was obtained from a number of sources including site procedures, NRC inspection reports, internal licensee and contractor documents, and informal interviews of available personnel. Information collection was hampered by lack of availability of several key personnel, including the former H. J. Kaiser Records Control Manager and the former H. J. Kaiser document review lead in the welder qualification review task force, and by alternative assignments such as providing administrative coordination for the NRC Evaluation Team.

The enclosed information was not readily available; in particular, the response to question 1 of the subject letter required as a prerequisite that the licensee respond to an NRC concern documented in Draft Inspection Report No. 50-358/82-12. This licensee response (which required many engineering and clerical man-hours) was then combined in part (by the NRC resident staff) with information previously provided by the NRC resident staff to the staff of the House Subcommittee on Energy and the Environment (transmittals dated November 23 and December 6, 1982). The combination of this information revealed several discrepancies, five of which were pursued by this inspector. Of these five discrepancies, three were resolved as clerical errors, one was due to incomplete information, and one required further investigation by the licensee's contractor which will probably result in a nonconformance report (see enclosure 1, attachment 1, page 43 of 103, welder symbol LVN).

January 31, 1983

Further requests for specific documentation and/or clarification of the information provided should be directed to T. P. Gwynn at (513) 533-2052/2053.

  
T. P. Gwynn  
Resident Inspector

TPG/mh

Enclosures: As stated

- Attachments:
- (1) Tabulation of Zimmer welders qualified under the H. J. Kaiser "Special Welder Qualification Program".
  - (2) Excerpt from H. J. Kaiser Welding Construction Procedure (WCP) - 2, "Welding Performance Qualification Testing"; Exhibit E, "Welding Procedure Qualification Cross Reference Matrix".
  - (3) CG&E Quality Assurance Procedure 19-QA-21, "Quality Confirmation of Welder Qualification Records".
  - (4) Excerpt from H. J. Kaiser Procedure WCP-2, Appendix B, "Welder Qualification/Review, Testing and Training Procedure".
  - (5) Excerpts from NRC Inspection Report 50-358/82-10 concerning maintenance of welder qualification listing and transmittal of quality assurance records.
  - (6) Excerpts from Draft NRC Inspection Report 50-358/82-12 concerning transmittal of records and the special welder qualification program.
  - (7) Excerpt from the CG&E Quality Confirmation Program Status Report dated December 31, 1982 - Task 11
  - (8) 10 CFR 50.55(e) report M-73 dated January 14, 1983, "Possibly Altered Welding Procedures".

1. A list of Zimmer welders who were requalified as a result of the welder qualification review. The list should indicate for each welder the specific procedures for which requalification was required, and the procedures for which welders were decertified as a result of the review. The list should also include, for each welder and each procedure, the date on which qualification tests were taken, and, where appropriate, the number of times a welder failed to pass the test, and was either decertified as a result of that failure or was required to retake the test.

Response to item (1):

Attachment (1) to this memorandum presents a tabulation of 103 Zimmer welders who were qualified under the H. J. Kaiser Special Welder Qualification Program (SWQP). This program resulted from the welder qualification review performed by a task force under direction of the H. J. Kaiser Records Department Manager.

The purpose of the SWQP was to provide objective evidence (where objective evidence was lacking) that ASME/AWS code requirements had been met prior to a welder performing production welding in the field. It was recognized at the beginning of the program that the SWQP results could not be used to disposition past performance since the welder may have either improved his performance through field experience or degraded his performance through decreased manual dexterity due to age. The code requirement states that the welder must demonstrate his ability to produce a sound weld prior to performance in production. Thus a second program was instituted to disposition past performance related to the welder qualification review.

The following definitions apply to the columns of the tabulation in Attachment (1), and to the data contained in those columns:

Column 1 - This column denotes the specific procedures for which documentation was reviewed and the position(s) in which requalification tests were taken, where applicable. The prefix "Special Process Procedure (SPP) 3.1." applies to each entry. For example, on page 1 of Attachment (1), the entry "7/6G" should be read as "SPP 3.1.7 in the 6G position". An asterisk (\*) after the procedure number denotes a substitution made by weld engineering. A copy of the H. J. Kaiser Weld Construction Procedure - 2, "Procedure Qualification Cross Reference Matrix", is provided as Attachment (2) for clarification. For example, on page 6 of Attachment (1), welder symbol NFL was reviewed under Special Process Procedure (SSP) 3.1.6 and 3.1.21, but was tested under procedures 3.1.7, 3.1.28, and 3.1.56 (substituted by weld engineering) in the 6G position. Note from Attachment (2) that qualification to SPP 3.1.28 qualifies a welder to perform the completion portion

(shielded metal arc welding portion) of SPP 3.1.18 and 3.1.21, and all portions of SPP 3.1.51.

- Column 2 - This column denotes the document review group characterization of the documentation as acceptable (A), resolveable (R), Indeterminate (I). In the case of a weld engineering substitution an (N) in this column denotes that documentation was not reviewed.
- Column 3 - This column denotes the weld engineering decision to either decertify (D), requalify (R), or no apparent action (N). Where no action was apparent, the condition identified by the document review group may have been dispositioned accept-as-is, or in some cases the man may have terminated his employment, in which case he was no longer applicable to the SWQP.
- Column 4 - This column denotes the dates of testing, from the date the man arrived in the test shop until the date of final acceptance (or rejection) of the test. Where multiple tests were utilized, the dates extend over the entire period of testing.
- Column 5 - This column denotes the final test results, accept (A) or reject (R), and the method by which those results were obtained, such as visual examination (V), bend test (B), or radiography (R).
- Column 6 - This column denotes the number of attempts required to achieve the final test results. One test coupon corresponds to one attempt.
- Column 7 - This column denotes the status of this welder to the listed procedure from the H. J. Kaiser 10-18-82 Current Welders List; active (A) or not listed (N).
- Column 8 - This column provides any clarifying remarks provided by the H. J. Kaiser welding engineering department.

The data provided in Attachment (1) was derived from a number of sources, as follows:

- Columns 1, 2 - (a) H. J. Kaiser document review welder status listing (provided to the House Subcommittee on Energy and the Environment on November 23, 1982).
- (b) H. J. Kaiser memorandum from M. F. Albertin to B. K. Culver dated January 14, 1983. Subject:

Evaluation of "Active Welder Requalification Program" requested by H. R. Sager.

- Columns 3, 8 - (a) H. J. Kaiser memorandum from M. F. Albertin to B. K. Culver dated January 14, 1983. Subject: Evaluation of "Active Welder Requalification Program" requested by H. R. Sager.
- (b) Weld Engineering Department memoranda (marked up copies) from J. W. Flaherty to Discipline Superintendents (provided to the House Subcommittee on Energy and the Environment on December 6, 1982).
- Columns 4, 5, 6 - H. J. Kaiser memorandum from M. F. Albertin to B. K. Culver dated January 14, 1983. Subject: Evaluation of "Active Welder Requalification Program" requested by H. R. Sager.
- Column 7 - H. J. Kaiser Current Welders List dated October 18, 1982.

Where no action was indicated by the information source, that condition is denoted in the tabulation.



2. A description of the criteria used to determine, for each welder and each procedure for which that welder had been certified as of July 9, 1982, whether the documentation was sufficient to demonstrate that the welder was in fact qualified to perform the procedures indicated on his certification card.

Response to item (2):

Welder qualification document review was performed by a joint task group of individuals from H. J. Kaiser Quality Records Department and the CG&E Quality Confirmation Program (Task II) under CG&E Quality Assurance Procedure 19-QA-21 (Attachment (3)). Deficiencies identified under this review were documented on nonconformance reports (NRs) and corrective action reports (CARs). These corrective action documents were processed in accordance with applicable site procedures (i.e., H. J. Kaiser procedure ZAPO-5, "Nonconformance Reporting", and GQP-10, "Corrective Action Reports"). These procedures essentially depend on the good engineering judgement of the dispositioning organization with independent overview by a material review board or equivalent.

The Special Welder Qualification Program was conducted in accordance with Appendix B to Weld Construction Procedure - 2 (refer to Attachment (4)). This procedure includes a general description of the review process and the criteria used by weld engineering to determine the need for retest of a welder.

In addition, an H. J. Kaiser Interoffice Memorandum from G. L. Fones (H. J. Kaiser Quality Records Manager) to W. A. Hedzik (Site Quality Assurance Manager) dated July 28, 1982 provides further clarification of site policy concerning this matter. This memorandum (Subject: Basis for Welder Qualifications) stated in part that the criteria in question were set by welding/engineering. In particular, the following criteria were stated: "If a current onsite welder has one of the below qualification deficiencies against a particular welding procedure, welding/engineering has determined that they need not be sent to the qualification booth as long as there are no other NRs or CARs against that particular procedure:

CAR #147, 068, 085, NR #4144, 4495, and other NRs which address clerical non-essential problems and those which generated a closed CAR."

These specific documented criteria, in addition to the individual corrective action statements and dispositions to CARs/NRs issued under 19-QA-21, formed the basis for the determination as to whether the documentation was sufficient to demonstrate that the welder was in fact qualified to perform the procedures indicated on the H. J. Kaiser active welders list (the document which was used by the Task II review group to determine where documentation was missing). The corrective action documents involved (CARs/NRs) are too numerous to include in this response, however, they are available for review onsite.



The NRC resident inspector has identified several deficiencies which did and do impact the validity of the QCP Task II document review and the documented results of the Special Welder Qualification Program (refer to Attachments (5) and (6)). The impact of these findings are reflected in the QCP Task II Status Report (refer to Attachment (7)) and in a licensee report initiated under 10 CFR 50.55(e) (refer to Attachment (8)). Of particular importance are findings related to inadequate control of the active welders list and the failure of H. J. Kaiser Welding Engineering to transmit all applicable quality documents to the Records Management System.

The failure of H. J. Kaiser to adequately maintain an accurate listing of qualified welders resulted in discrepancies between the active welders list and the man's qualification card. Since the active welders list was used by the the Welder Qualification Review Group to determine where documentation was missing, there are potential errors on their current Welder Status Listing (both conservative and nonconservative). When this problem was identified by the NRC, the H. J. Kaiser Project Weld Engineer recalled all qualification cards for verification purposes. Some of these cards were destroyed and the evidence was lost.

The failure of H. J. Kaiser Welding Engineering to transmit approximately 19,000 welding-related documents to the Quality Records Management System (of which approximately 10,000 are related to welder qualification issues) has a potential major impact on the validity of the initial QCP Task II review. Corrective actions taken by CG&E in response to H. J. Kaiser CAR No. 84 (lack of objective evidence of the radiographic acceptability of welder qualifications) resulted in obtaining a large number of previously unavailable radiographic reader sheets from Peabody-Magnaflux Corporation which also has a potential impact on the validity of the initial QCP Task II review.

The NRC resident staff is maintaining a continuing overview of QCP Task II Welder Qualification Review activities.

FILED

NOV 15 1982

4-54

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BELLE EFROS,  
New York, New York  
Derivatively on behalf of  
the Cincinnati Gas and  
Electric Co. and its  
shareholders,

Plaintiff,

vs.

Case No. C-1-82-1310

RUBIN, J.

VERIFIED COMPLAINT

DERIVATIVE ACTION

JURY DEMAND

WILLIAM H. DICKHONER,  
B. JOHN YEAGER, EARL  
A. BORGMANN, ARTHUR  
EHRNSCHWENDER, JACKSON  
H. RANDOLPH, B. RALPH  
SYLVIA, NEIL A. ARMSTRONG,  
ELMER R. BEST, OLIVER W.  
BIRCKHEAD, RALPH E. BONI, Ph.D  
JAMES P. HERRING, GEORGE  
C. JULIFS, WILLIAM N.  
LOGGETT, DONALD I. LOWRY,  
HENRY E. POGUE, III, JANE  
L. REES, Ph.D, WILLIAM  
S. ROWE, RICHARD E. WAGNER  
and KAISER ENGINEERS,  
INC.,

Defendants

and

CINCINNATI GAS & ELECTRIC CO.  
139 East Fourth Street  
Cincinnati, Ohio 45202

Nominal Defendant

Plaintiff, by and through her attorneys upon information  
and belief, except for paragraph 1, states for her complaint as  
follows:

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

### JURISDICTION AND VENUE

1. Plaintiff, Belle Efros, is a resident of the State of New York and has been a shareholder of Cincinnati Gas & Electric Co. (C,G&E) at all time relevant hereto.

2. This Court has jurisdiction of this action under:

(a) Section 27 of the Securities and Exchange Act of 1934 as amended ("1934 Act"), 15 U.S.C. §78aa;

(b) 28 U.S.C. §1332 in that there is complete diversity of citizenship between plaintiff Efros and the defendants herein and the amount in controversy is in excess of \$10,000; and

(c) Principles of pendant jurisdiction.

3. This action is also brought pursuant to Section 14 of the 1934 Act, 15 U.S.C. §78n and Rule 14a-9 promulgated thereunder.

4. Venue is proper in this judicial district because of principal executive offices of C,G&E are located in this judicial district, many of the individual defendants reside in this judicial district, the plaintiffs reside in this judicial district, and the acts and transactions complained of by plaintiff arose in this district.

### THE DEFENDANTS

5. Nominal Defendant, C,G&E is an Ohio Corporation with its principal offices in Cincinnati, Ohio; Kaiser Engineering, Inc. are the principal contractors of the Zimmer Nuclear Facility (Zimmer) now under construction by C,G&E.

6. Defendants Dickhoner and Yeager are directors and

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

executive officers of C,G&E and held such positions at all relevant times hereto.

7. Defendants Borgman, Ehrchwender, Randolph, and Sylvia are executive officers of C,G&E.

8. The officers and directors identified in paragraph 6 above are also members of the Executive Committee of C,G&E; and defendant Dickhoner is also a member of the Finance Committee and an Ex-Officio member of all standing committees of C,G&E; all other defendants are directors of C,G&E.

#### NEED FOR DERIVATIVE ACTION

9. This claim is brought pursuant to Rule 23.1, F.R.Civ.P., on behalf of plaintiff and all other shareholders of C,G&E and is not collusive in any respect.

10. Demand to bring a portion of this action as set out in paragraphs 12 to 27, hereafter sometimes called the Zimmer claims made on behalf of C,G&E has been made upon the directors of C,G&E. The directors have not commenced the action as requested by plaintiffs as the defendants herein appointed two new directors to the Board of C,G&E and these two new directors are going to investigate the Zimmer claims and report their findings to the Board at some indeterminate future date, such Board then or whenever to act upon the demands of plaintiff to sue themselves as to the Zimmer claims, if at all. Counsel has also requested that he be permitted to review all documentation simultaneously with the Special Litigation Committee, but has been denied such request for reasons unknown to him. Plaintiffs have thereby failed to obtain the requested action because the defendants have no intention now or forever of bringing such an action and are simply stalling for

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

time to do nothing and have not set a time period by which the defendants will act. Copies of the correspondence requesting C,G&E to commence part of this action referring to the construction of the Zimmer Nuclear Plant, the Zimmer claims, are attached hereto as Exhibit A. Additionally, the proxy claims set out in paragraphs 28 to 33 are not subject to demand because it would be futile to do so as the very persons who received financial benefits such as stock options and executive compensation benefits (now sought to be rescinded) pursuant to the false proxies are the defendants herein and they would not sue themselves.

11. Plaintiff has not made a demand on the shareholders of C,G&E to commence this action because such is not necessary under the circumstances and such would be burdensome, in any regard, because of the large number of C,G&E shareholders.

FACTS UPON WHICH CLAIMS  
FOR RELIEF ARE BASED

12. C,G&E originally announced plans in 1969 of their decision to participate in the construction and ownership of the Zimmer Nuclear Power Station ("Zimmer"). At that time C,G&E agreed to ownership of 40% of Zimmer and had prepared a financing plan which indicated that C,G&E would be required to pay \$96 Million of the \$240 Million total cost to build the facility.

13. Because of repeated delays, construction deficiencies and staggering cost overruns associated therewith the total cost to complete the construction of Zimmer has substantially escalated.

The following figures represent the escalation of the costs expenditures required to complete the construction of Zimmer since C,G&E's initial announcement to participate in the project.

1969	\$ 240 Millions
1971	300 Millions
1972	315 Millions
1973	320 Millions
1977	500 Millions
1978	664 Millions
1979	850 Millions
1981	1.0 Billions
1881	1.5 Billions
1982	1.7 Billions

14. As a result of these increased and escalating costs to complete the construction of the project, C,G&E has been forced to raise a portion of the money for construction of Zimmer on the open market, either by going into debt through bond issues or through the sale of additional common stock and preferred stock. Since construction of Zimmer began in 1972, C,G&E has been involved in the following offerings of common stock and debt securities.

- DATES?*
- a. 10 bond issues, which raised a total of \$650 Millions;
  - b. 5 issues of preferred stock, which raised approximately \$205 Millions; and

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229



c. 7 issues of common stock which raised approximately \$322 Millions.

15. These offerings have substantially increased the number of shares of common stock outstanding and have diluted the shareholders interest in the corporation. Specifically, the number of shares of common stock outstanding has risen from 17,000,000 in 1971 to 34,466,000 at the end of 1981. The intricate financing of Zimmer has also strained the cash reserves of C,G&E and lowered C,G&E's bond ratings.

16. In addition, the long term debt of C,G&E has climbed from \$417 Millions in 1971 to \$1.1 Billion in 1981; and the percentage of earnings that is retained by C,G&E and not paid to shareholders has gone from 76.5% in 1971 to 90.7% in 1981. Dividends to common stockholders of C,G&E shareholders has only risen from \$2.04 to \$2.40 in 10 years (18% increase), while the interest payments on debt has gone from \$400 Million to over \$1.1 Billion in the same time period (300% increase)

17. The market value of C,G&E common shares as a result of the dilution and debt service engendered by Zimmer as described above has gone from approximately \$28 to \$14 per share over the last ten years, or a decrease of 50% per share.

DATE 18. Before November, 1981 and for several years prior thereto the defendants knew or should have known of the design and of the safety problems at the Zimmer plant and the inadequacies in the

design and construction of the facility resulting in an impractical facility not capable of producing energy or revenue. In November, 1981 the "United States Nuclear Regulatory Commission (NRC) levied a fine against the facility in the amount of \$200,000 for a breakdown in the quality assurance program at Zimmer.

19. Before November, 1981 and for several years prior thereto a number of structural components at the facility and the quality of work done in the construction of the facility came under review by the NRC all the knowledge of the defendants. Some of the problems include the following:

- Q.A. BUD-  
STANFING-  
QUALIF
- a. That the defendants including Kaiser Electrical, Inc. ("Kaiser") failed to maintain sufficient quality assurance measures to insure that the plant was being built to design.
  - b. That the defendants did not maintained adequate control of materials coming into the plant;
  - c. That defendants did not properly check the quality of materials and labor purchased from outside companies;
  - d. That defendants failed to maintain a system to identify and correct construction deficiencies;
  - e. That defendants and Kaiser did not adequately process and respond to internal reports criticizing the construction of Zimmer; and
  - f. That defendants illegally retaliated against inspectors and that C,G&E did not properly reject past inefficient and incorrect work.

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

20. In addition, reviewers at the site have found that many of the welders employed at Zimmer are not and have not been qualified under the standards set by the NRC and national building codes for such work. Further, the NRC has found various other problems effecting the competency of the welders at the site. Some of the specific problems include:

- a. Test results of welders were not signed by the welding supervisor as required, but by subordinates;
- b. Radio graphs (pictures of welds) from past welding tests necessary to test the quality of the welds were missing;
- c. Welders were being tested for the wrong procedures; and
- d. Improper alteration of data on weld test reports through "cross-outs" and "white-outs" rendered the documents and the tests invalid.

PROCEED-  
QUAL. 21. For several years prior to November, 1981 the defendants knew or should have known of the defects in construction and design of Zimmer as well as the safety problems at Zimmer.

22. In spite of such knowledge of the aforesaid facts including knowledge of the rapidly escalating costs of construction of Zimmer and the repeated delays at introducing such escalated costs into the rate base of the sales of gas and electricity by C,G&E, the defendants continued to permit diminution of the values of the shareholders interest in C,G&E, by permitting and insisting on putting good money after bad pursuing the Zimmer construction.

CHARGES  
QA WORKING  
GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

2. ASIC WDN 9/ACCORD

23. Before any nuclear fuel can be placed inside the reactor to begin testing the facility in an effort to go on line, and produce revenue, the NRC must issue Zimmer an operating license.

24. In spite of the undisclosed problems with the safety and construction of the facility defendants have been continuing to expend funds and have publicly but improperly stated that the facility will be completed with the loading of nuclear fuel to occur in July of 1983 and the sale of such fuel to occur in late 1983 or early 1984. In fact, the very right to complete the construction of Zimmer is in danger. On November 12, 1982, the NRC ordered C,G&E to halt construction of Zimmer and required an independent review as to whether the facility meets the United States government's safety requirements. In addition, there has been a federal grand jury investigating possible federal criminal violations, including the deliberate violations of federal statutes by the defendants as a result of the acts complained of herein at Zimmer which may result in criminal indictments, but this fact was intentionally not disclosed by the defendants until November 12, 1982.

25. This course of conduct described hereinabove and the continuation of expenditures, dilution of the common stockholders interest in the corporation, and investment of corporate assets of C,G&E for the construction of Zimmer, putting a strain on C,G&E's cash resources, without correcting construction and safety problems vital to the proper completion of Zimmer, should have been detected

WAN ALERTED.

and corrected by proper management, safety and auditing procedures, and thereby disclosed to the shareholders of C,G&E, in its full scope prior to the NRC reviews by the defendants, but this was not done.

26. The defendants should have reconsidered the investments by C,G&E in Zimmer years ago and either stopped such investments, written off their early losses and commenced investments in conventional energy facilities which would have enhanced value of the common shares, but they did not.

27. The shareholders of C,G&E and the corporation itself have been damaged in the amount not less than the difference between the initial cost to C,G&E to complete the Zimmer project reported by C,G&E and 1969 and the amount of the total necessary investment to complete the project, plus additional amounts not yet determined but which amounts result from the loss of other income, payment of interest, the loss of income of alternative sources of energy, and the loss of stature of the management of C,G&E and C,G&E itself and the waste of corporate assets put into the construction of a defective and unsafe nuclear facility.

#### FIRST CLAIM

28. Plaintiff realleges and incorporates by reference paragraphs 1 through 27 as if fully rewritten.

29. C,G&E by and through the acts of the defendants caused to be published and disseminated to the public and its shareholders as well as filed with the Securities Exchange Commission the following documents:

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

and corrected by proper management, safety and auditing procedures, and thereby disclosed to the shareholders of C,G&E, in its full scope prior to the NRC reviews by the defendants, but this was not done.

26. The defendants should have reconsidered the investments by C,G&E in Zimmer years ago and either stopped such investments, written off their early losses and commenced investments in conventional energy facilities which would have enhanced value of the common shares, but they did not.

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#### FIRST CLAIM

28. Plaintiff realleges and incorporates by reference paragraphs 1 through 27 as if fully rewritten.

29. C,G&E by and through the acts of the defendants caused to be published and disseminated to the public and its shareholders as well as filed with the Securities Exchange Commission the following documents:



- a) Annual Reports for fiscal 1980 and 1981;
- b) Proxy Solicitations and Statements for the Annual meetings held in 1981 and 1982;
- c) Form 10-K's for fiscal 1981 and 1982;
- d) For 10-Q's for fiscal 1981 and 1982; and
- e) Various communications to the shareholders.

30. None of these aforementioned documents accurately disclosed problems involved in the construction and design of Zimmer, safety problems of Zimmer, the dilution of common shareholders interest in C,G&E, and strain of C,G&E's cash reserves, nor the full financial impact upon C,G&E and its shareholders because of the additional expenditures to obtain a license and finances to complete construction of Zimmer so that it will be safe when and if operational.

31. These aforementioned documents are misleading and fail to state material facts necessary to make them not misleading. These documents were promulgated in order to preserve and maintain the defendants as directors and officers of C,G&E and to permit the defendants to continue to enjoy the benefits of their offices.

32. If the aforementioned documents had disclosed the full facts, the defendants would not have been elected directors of C,G&E, nor appointed as officers. In addition there would not have been any effectuation of the defendants stock option plans or pension and profit sharing plans for the defendants' benefit

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

nor would the defendants have received any other bonuses or benefits during this period, because most if not all of such plans and bonuses sought shareholders approval pursuant to requests contained in the proxy statements referred to above.

33. As a result of publishing and disseminating the aforesaid false documents, the defendants have violated Section 14 of the 1934 Securities and Exchange Act, 15 U.S.C. §78n, and Rule 14a-9 promulgated thereunder, all to plaintiff's damage.

#### SECOND CLAIM

34. Plaintiff realleges and incorporates by reference paragraphs 1 through 33 as if fully rewritten.

35. As a result of the aforementioned course of conduct, the defendants participated in the acts of mismanagement alleged herein, or acted in reckless disregard of the acts alleged herein, or in the exercise of due care should have been aware of and prevented additional expenditures of money and corporate assets and dilution of the shareholders interest in C,G&E. As a further result of the aforementioned course of conduct, the defendants became aware of the acts alleged herein and failed to accurately disclose them to C,G&E shareholders in order to keep themselves in corporate office with all of the benefits attendant thereto, thereby breaching their duties of care, loyalty, accountability and disclosure to the shareholders of C,G&E, C,G&E itself and this plaintiff.

36. Plaintiffs have been thereby damaged.

WHEREFORE, plaintiff seeks the following relief:

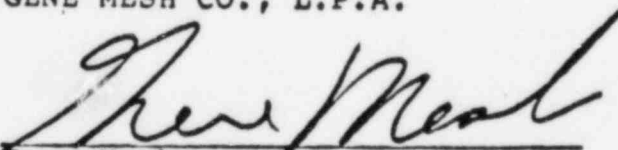
- A. Return to the C,G&E from the defendants of an amount not less than the difference between the original estimate by C,G&E of its cost to complete the Zimmer facility and the actual amount expended to date to complete construction of Zimmer;
- B. A full accounting by the defendants of the total financial losses to C,G&E as a result of the acts complained of and the return thereof by the defendants;
- C. Rescission of all contributions made to any Pension and Profit Sharing Plans, Stock Option Plan or any other executive compensation plan at C,G&E for their behalf the benefit of any of the defendants;
- D. All other just and further relief as the Court may order, together with his reasonable attorneys fees, reasonable accounting fees for experts, costs and expenses.

GENE MESH CO., L.P.A.

OF COUNSEL:

Stull, Stull & Brody  
6 East 45th Street  
New York, NY 10017

By:

  
Gene Mesh  
Gene Mesh Co., L.P.A.  
3133 Burnet Avenue  
Cincinnati, Ohio 45229  
(513) 221-8800  
Trial Attorneys for Plaintiff

DATED: November 15, 1982  
Cincinnati, Ohio

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

Exhibit A

JOHN L. MUETHING  
DONALD P. KLEKAMP  
TIMOTHY A. GARRY  
BARRY P. KREIDER  
DON R. GARDNER  
MICHAEL J. BURKE  
LOUIS F. GILLIGAN  
JOSEPH P. ROUSE  
RICHARD D. SIEGEL  
DENNIS M. DOYLE  
JOSEPH L. TRAUTH, JR.  
JAMES R. WHITAKER  
J. DAVID ROSENBERG

KEATING, MUETHING & KLEKAMP  
ATTORNEYS AT LAW

18TH FLOOR PROVIDENT TOWER  
ONE EAST FOURTH STREET  
CINCINNATI, OHIO 45202

TELEPHONE 579-8400

November 1, 1982

RICHARD L. CREIGHTON, JR.  
PAUL V. MUETHING  
JEROME S. RANDOLPH  
WILLIAM A. ROSEY  
WILLIAM J. KEATING, JR.  
GENINA C. BOWMAN  
MARK J. WEDER  
KEVIN E. IRWIN  
JAMES E. BURKE  
GREGORY M. UTTER  
WILLIAM J. KEATING  
COUNSEL  
\* ALSO ADMITTED TO  
PRACTICE IN KENTUCKY

Direct Dial: 579-6421

Mr. Gene I. Mesh  
Gene Mesh Co., L.P.A.  
3133 Burnet Avenue  
Cincinnati, Ohio 45229

Dear Gene:

This letter is for the purpose of advising you that the Special Litigation Committee of C. G. & E., which was established by the Board of Directors in response to your recent communications, has engaged me as its counsel. I have commenced our investigation of all matters which I believe relevant to the statements contained in your recent communications.

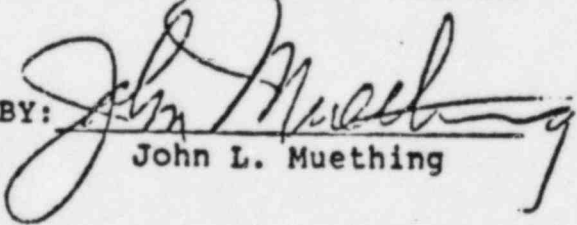
I am writing you at this time to request that you submit to the committee through me any facts, data or documentation which you believe would be supportive of the claims which you have made concerning the conduct of C. G. & E.'s directors and officers in connection with the Zimmer Nuclear Plant and with respect to C. G. & E.'s relationship with Kaiser Engineering and other contracting parties on the Zimmer project. I would expect any such submission to be in writing and you may be assured that I will give such submission my close attention as the investigation proceeds.

I am not in a position at this time to estimate when the work of the Committee will be completed.

Yours very truly,

KEATING, MUETHING & KLEKAMP

BY:

  
John L. Muething

pl

EXHIBIT "A"

THE CINCINNATI GAS & ELECTRIC COMPANY



WILLIAM J. MORAN  
VICE PRESIDENT AND  
GENERAL COUNSEL

November 4, 1982

Gene Mesh, Esq.  
3133 Burnet Avenue  
Cincinnati, Ohio 45229

Dear Mr. Mesh:

In response to your letter of October 27, 1982, the purpose of the election to the Board of Directors of the two new members was to fill vacancies created by retirements. The new members were appointed to the Special Litigation Committee in order to give that Committee a majority of disinterested directors to investigate the allegations of your client.

The Committee is independent of management and the Board and will determine the scope and depth of its investigation, therefore I have no idea how much time the Committee will require to complete its investigation.

Again, I would appreciate you informing me of the names of your clients.

Sincerely,

*William J. Moran*

WJM:mbp



GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURKET AVE.  
CINCINNATI, OHIO 45229

TELEPHONE  
513 221-8500

GENE I. MESH  
RICHARD S. WAYNE  
RICHARD GANULIN  
OF COUNSEL:  
HARRY GENLER

October 27, 1982

Mr. William Moran  
Cincinnati Gas & Electric  
139 East 4th Street  
Cincinnati, OH 45202

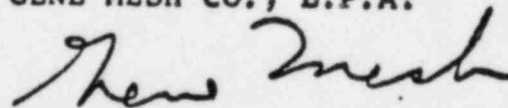
Dear Mr. Moran:

In reference to the previous correspondence regarding the Zimmer Nuclear facility, you advised me that two directors have been elected to the Board and appointed to a newly established Special Litigation Committee for the purposes of conducting an independent review, analysis and investigation of facts and circumstances relating to the matters discussed in my previous letters. I would appreciate it if you advise me specifically and more completely as to:

- a. The purpose of the appointment and election to the Board and appointment to the Special Litigation Committee of the two new directors; and
- b. When their work regarding the subject of my previous letters will be completed.

Very truly yours,

GENE MESH CO., L.P.A.

  
Gene Mesh

GM:mm

THE CINCINNATI GAS & ELECTRIC COMPANY



WILLIAM J. MORAN  
VICE PRESIDENT AND  
GENERAL COUNSEL

October 4, 1982

Gene Mesh, Esq.  
3133 Burnet Avenue  
Cincinnati, OH 45229

Dear Mr. Mesh:

In reply to your letter to me dated September 23, 1982, it would be totally inappropriate to include a non-Board member upon the Special Litigation Committee. In addition, the independent review, analysis and investigation with which the Committee is charged would not be furthered through participation in its deliberations by anyone with your expressly stated bias.

Upon completion of its investigation, the Committee's report of its findings and deliberations will be made known to all shareholders.

I wish to call your attention to the fact you have not informed me as to the names of the shareholders whom you purport to represent. I would appreciate your furnishing this information to me at your earliest convenience.

Sincerely,

WJM:mbp

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

GENE I. MESH  
RICHARD S. WAYNE  
DENNIS R. COOPER  
—  
OF COUNSEL:  
HARRY GEHLER

TELEPHONE  
513 221-8800

September 23, 1982

Mr. William J. Moran  
Cincinnati Gas & Electric  
139 East Fourth Street  
Cincinnati, OH 45202

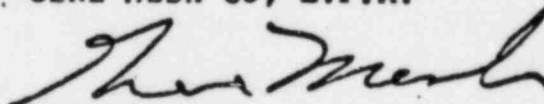
Dear Mr. Moran:

I am writing to acknowledge receipt of your September 16, 1982 letter in which you advised me that Dr. Reiveschel, Jr. and Mr. John L. Strubbe have been elected to the Board of Directors of C,G&E and that both have been appointed to a newly established Special Litigation Committee. I understand that the resolution establishing this Committee contains a directive that the Committee conduct an independent review, analysis and investigation of the facts and circumstances relating to the substance of my letters to the company dated July 15 and 30, 1982.

I am requesting that I be appointed to this Committee as an outside independent member to monitor the investigation of the facts and circumstances surrounding the construction of the Zimmer Nuclear facility and the issues relating thereto. In the alternative, I request that I be kept informed and given the option to review any and all documents and/or other materials that the Committee reviews in the course of its litigation as well as the final report.

Very truly yours,

GENE MESH CO., L.P.A.

  
Gene Mesh

GM:mm

THE CINCINNATI GAS & ELECTRIC COMPANY



WILLIAM J. MORAN  
VICE PRESIDENT AND  
GENERAL COUNSEL

September 16, 1982

Gene Mesh, Esq.  
3133 Burnet Avenue  
Cincinnati, Ohio 45229

Dear Mr. Mesh:

On September 16, 1982, Dr. George Rieveschl, Jr. and Mr. John L. Strubbe were elected to the Board of Directors of this Company and both were appointed to a newly established Special Litigation Committee. The resolution establishing the Committee also contains a directive to that Committee to conduct an independent review, analysis and investigation of all facts and circumstances in any way relating to the requests contained in your letters to this Company dated July 15 and July 30, 1982, respectively. On the basis of their investigation the Committee is to exercise its independent good-faith business judgment and determine whether it is in the best interest of the Company to initiate the litigation your clients request. Any decision or action of the Committee shall constitute a final action of the Board. I will advise you of the Committee's decision when their investigation is complete.

Again, I request you inform me of the names of your clients. They are invited to submit to the Committee any information which they deem relevant to the Committee's determination.

Sincerely,

*William J. Moran*

WJM:mbp

THE CINCINNATI GAS & ELECTRIC COMPANY



WILLIAM J. MORAN  
VICE PRESIDENT AND  
GENERAL COUNSEL

August 5, 1982

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Gene Mesh, Esq.  
3133 Burnett Avenue  
Cincinnati, Ohio 45229

Dear Mr. Mesh:

This is to acknowledge receipt on August 3, 1982,  
of your letter to me dated July 30, 1982.

It has been the custom of the Board of Directors  
of this Company not to hold meetings during July and August,  
since many members take extended vacations in those months.  
Nevertheless, the Secretary of the Company attempted to convene  
a meeting of the Board on July 29 but he was unable to secure  
a quorum. The complexity of the allegations and the conse-  
quences of the action demanded by your client are such that  
the Board of Directors should deliberate as a body before  
reaching a decision, therefore, a Written Action by the Board  
instead of a meeting, as requested by your client, is not in  
the best interest of the Company.

Your client's additional request, that the Board  
commence action against Kaiser Engineers, Inc., also will be  
presented to the Board at its meeting in September.

In the meantime, please advise me of the names of  
the shareholders of this Company whom you represent.

Sincerely,

*William J. Moran*

GENE MESH CO., L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

GENE I. MESH  
RICHARD S. WAYNE  
RICHARD GANULIN

OF COUNSEL:  
HARRY GEHLER

TELEPHONE  
513 221-8800

July 30, 1982

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. William Moran  
Vice President  
Cincinnati Gas & Electric Co.  
P.O. Box 960  
Cincinnati, OH 45201

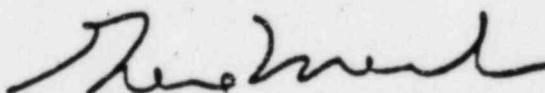
Dear Mr. Moran:

I am writing this letter as a followup to my letter of July 15<sup>th</sup> to Mr. William Dickhoner, and in response to your letter of July 27. It is the position of my clients that you should present their request that the corporation commence an action against the present and past directors and officers of Cincinnati, Gas & Electric Company, responsible for the continuation of expenditure and investment of corporate assets for construction of the Zimmer Nuclear Power Plant ("Zimmer"), to the Board of Directors by Special Meeting and/or by Written Action, rather than waiting for the regular meeting of the Board in September.

At the time of the Special Meeting my clients also request that the Board move to commence an action against Kaiser Engineers Inc., the principal contractor of Zimmer, for their negligence in the design and construction of Zimmer.

Very truly yours,

GENE MESH CO., L.P.A.

  
Gene Mesh

GM:mm



THE CINCINNATI GAS & ELECTRIC COMPANY



WILLIAM J. MORAN  
VICE PRESIDENT AND  
GENERAL COUNSEL

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

July 27, 1982

Gene Mesh, Esq.  
3133 Burnett Avenue  
Cincinnati, Ohio 45229

Dear Mr. Mesh:

Your letter of July 15, 1982 to Mr. William Dickhoner, President, was referred to me for reply.

Your request, that the corporation commence action against certain directors and officers of this corporation for alleged negligence, will be presented to the Board of Directors of the corporation at the Board's regular meeting in September. I will communicate to you at that time their decision relative to your request.

Any further communication in reference to this matter should be directed to me.

Sincerely,

*William J. Moran*

GENE MESH CO. L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE.  
CINCINNATI, OHIO 45229

TELEPHONE  
513 221-8800

GENE I. MESH  
RICHARD S. WAYNE  
RICHARD GANULIN  
OF COUNSEL:  
HARRY GEHLER

July 15, 1982

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. William Dickhoner  
President  
Cincinnati Gas & Electric Co.  
P.O. Box 960  
Cincinnati, OH 45202

Dear Mr. Dickhoner:

The writer represents several shareholders of C,G&E. These shareholders believe that corporate assets have been wasted, by the present and past officers and directors of C,G&E, in the planning and building of the Zimmer Nuclear Power Plant ("Zimmer"). It is their opinion, and I share it, that it was unconscionably negligent and a breach of trust by those responsible to proceed over the past several years with the substantial investment of C,G&E assets in view of the knowledge of the imperfections in the construction, inefficient management, deficiencies of and lack of controls, failures to meet target dates and consistent lack of approvals from the Nuclear Regulatory Commission.

Based upon what the writer considers facts, as well as public information, I am requesting that the corporation commence an action against those directors and officers responsible for the continuation of the expenditure and investment of corporate assets for the construction of Zimmer, whether they are members of the present Board or not, seeking recovery of the amount of money improperly expended, as well as interest thereon. I might add that it has only recently come to the attention of the public of the extent of what I consider

GENE MESH CO., L.P.A.

Mr. William Dickhoner  
July 15, 1982  
Page 2

a coverup and misrepresentation of the real facts regarding the waste of corporate assets and mismanagement of C,G&E.

Very truly yours,

GENE MESH CO., L.P.A.

A handwritten signature in dark ink, appearing to read "Gene Mesh", written in a cursive style.

Gene Mesh

GM:mm

GENE MESH CO. L.P.A.  
ATTORNEYS AND COUNSELORS AT LAW  
3133 BURNET AVE  
CINCINNATI, OHIO 45229

GENE I. MESH  
RICHARD S. WAYNE  
RICHARD GANULIN  
OF COUNSEL  
HARRY GENLER

TELEPHONE  
513-221-6800

November 24, 1982

Ms. Catherine M. Wood  
Miami Valley Power Project  
2270 Vine Street  
Cincinnati, OH 45219

Dear Ms. Wood:

My office is in receipt of your kind letter dated November 19, 1982 and I am taking the liberty of enclosing a copy of the CG&E complaint. We are most anxious to take advantage of your offer and will be in touch with you shortly. In that regard, will you be so kind as to forward the extra copy of the complaint to Mr. Thomas Devine as well as a copy of this letter. I would appreciate his address, however.

Very truly yours,

GENE MESH CO. L.P.A.

  
Gene Mesh

3/11/83  
encs.



- Exhibit 5

U.S. Department of Justice

United States Attorney  
Southern District of Ohio

220 United States Post Office & Courthouse (FTS/513) 684-3711  
100 East Fifth Street 684-2755  
Cincinnati, Ohio 45202 684-3961

November 10, 1982

Thomas Devine

Dear Mr. Devine:

This letter is supplied to a witness scheduled to appear before the Federal Grand Jury in order to provide helpful background information about the Grand Jury.

The Grand Jury consists of from sixteen to twenty-three persons from the Southern Judicial District of Ohio. It is their responsibility to inquire into federal crimes which may have been committed in this District.

As a Grand Jury witness, you will be asked to testify and answer questions concerning records you are ordered to produce. Only the members of the Grand Jury, attorneys for the United States, and a stenographer are permitted in the Grand Jury room while you testify.

As a matter of good practice, we advise you that the Grand Jury is conducting an investigation of possible violations of Federal criminal laws involving, but not necessarily limited to, false statements.

You may refuse to answer any question if a truthful answer to the question would tend to incriminate you. Anything that you do or say may be used against you by the Grand Jury or in a subsequent legal proceeding. If you have retained counsel, who represents you personally, the Grand Jury will permit you a reasonable opportunity to step outside the Grand Jury room and confer with counsel if you so desire.

Sincerely,

CHRISTOPHER K. BARNES  
United States Attorney

*Ann Marie Tracey*  
ANN MARIE TRACEY  
Assistant U.S. Attorney

United States District Court  
FOR THE

SOUTHERN DISTRICT OF OHIO-WESTERN DIVISION

ISSUED IN BLANK

to Thomas Devine

You are hereby commanded to appear in the United States District Court for the Southern  
District of Ohio Room 229, Post Office & Courthouse at Fifth & Walnut Streets in the city of  
Cincinnati on the 7 day of December 19 82 at 9:30 o'clock A.M. to  
testify before the Grand Jury and bring with you<sup>1</sup> any and all statements, documents, and  
records pertaining to the William H. Zimmer Nuclear Power Station.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer  
acting on behalf of the court.

This subpoena is issued on application of the United States. If you have any questions,  
call Assistant U.S. Attorney Ann Marie Tracey at 684-3711.

Date November 9, 19 82  
By JOHN D. LYTER Clerk.  
M. H. Chippa Deputy Clerk.

<sup>1</sup>Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case  
the documents and things should be designated in the blank space provided for that purpose.

## RETURN

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ I served it on the  
and on \_\_\_\_\_ at \_\_\_\_\_ within named \_\_\_\_\_  
by delivering a copy to \_\_\_\_\_ and tendering<sup>2</sup> to \_\_\_\_\_ the fee for one day's attendance and the mileage  
allowed by law.

Date \_\_\_\_\_, 19 \_\_\_\_\_ By \_\_\_\_\_

## Service Fees

Travel \_\_\_\_\_ \$

Services \_\_\_\_\_

Total \_\_\_\_\_ \$

<sup>2</sup>Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency  
hereof, 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

82-44 "S"  
63-1-82-1



THE CINCINNATI GAS & ELECTRIC COMPANY



October 26, 1982

The Honorable Bobbie Sterne  
Cincinnati City Hall  
8th and Plum Streets  
Cincinnati, Ohio 45202

Dear Ms. Sterne:

Thank you for the opportunity to provide the Company's response to the eight allegations submitted by the Miami Valley Power Project (MVPP) to the Nuclear Regulatory Commission (NRC), in the MVPP petition requesting further licensing hearings on the Wm. H. Zimmer Nuclear Power Station. I shall attempt to be as concise as possible in answering the allegations based on complex areas of the Company's quality assurance program. My response is based upon legal briefs filed by the Company in its rebuttal to the allegations, from testimony of senior CG&E officials and from my personal discussion with the Manager of the Quality Assurance Department in Wm. H. Zimmer Nuclear Power Station.

First, we are unable to respond to all the documents the MVPP submitted to the NRC in an attempt to support its allegations. Some of the documents are still undergoing investigation by our own staff and the NRC. Too frequently, the statements submitted came from anonymous persons claiming to be current or former employees. We have no way of refuting or confirming some of these allegations because they are vague. I can assure you when reasonable evidence is presented we investigate the allegation. This response to you is based on what the Company and the NRC have been able to confirm.

The first allegation accuses the Company of having failed "to assure the as-built condition of the plant reflects the final version of an acceptable design." The allegation is misleading because in all nuclear power generation construction the as-built condition will frequently differ from the original approved design. There are a number of reasons for the changes in design.

Wm. H. Zimmer Nuclear Power Station has been under construction since 1972. During that time the regulations governing construction have continually been updated as information from operating facilities indicate that changes in construction and design will assure greater safety and efficiency of operation. No nuclear power generation station under construction meets the design criteria originally approved. Nor should they. They reflect the state-of-the-art improvements learned by industry experience or required by the regulations.

All nuclear power plants are required to verify that the final construction is consistent with safety analysis regulations. Both the NRC and the American Society of Mechanical Engineers (ASME) codes require a final as-built drawing for all safety classifications, such as piping systems, prior to the facility's being approved. We are in the process of providing as-built drawings and receiving the approval for various components from both of these organizations. The procedure is standard and, so far, we have identified no major construction changes which must be made prior to licensing approval.

I shall incorporate our response to allegations 2, 3, and 4 into one response by outlining our Quality Confirmation Program which addresses areas of concern, including material traceability, vendor quality confirmation and identifying and correcting deficiencies.

As we stated in November, 1981 when CG&E was fined by the NRC for problems in the quality assurance program, the paperwork required by the NRC to confirm and track every component in the project was inadequate. We were aware of the problems as early as April, 1981 and in our total commitment to quality assurance, we initiated changes to correct any problems in the areas identified by the NRC.

First, we re-structured our Nuclear Operations and completely separated it from other Company operations. Top management of the Company is now directly involved with quality matters and is directly overseeing the many improvements and corrective actions needed to make Zimmer one of the finest built nuclear generating facilities in the nation. We hired a new manager with extensive experience in Quality Assurance and increased the size of the control staff to 212 by adding quality engineers, quality specialists, document reviewers and inspectors with applicable experience in these areas.

In addition to the increased commitment of the Company's management and the enhancement of Quality Assurance manpower, specific corrective actions have been undertaken to assure full compliance with quality requirements.

The quality confirmation program addresses eleven areas of concern expressed by the NRC and with past quality assurance activities at Zimmer Station. Many of the concerns expressed in these eleven areas would have been evaluated in the document review required for final system turnover. The quality assurance documentation verification and quality confirmation program jointly assure adequate systems and procedures are in place to verify the adequacy of construction of Zimmer. Any deficiencies identified will be documented, properly dispositioned or resolved and verified in accordance with NRC and ASME requirements for corrective action.

The Company has also improved its procedures for the handling and storage of quality records. A new permanent site facility has been constructed for their handling, storage and protection. The procedures have been implemented to ensure that all quality records are properly received and maintained as well as to verify the completeness and accuracy of essential records.

As part of the final acceptance program of the contractors' work, the Quality Assurance Document Verification Division of the CG&E QA Department performs a review of documentation required to provide objective evidence that the activities during all phases of design, procurement, manufacture, fabrication, construction, erection and testing for the Zimmer Nuclear Power Station were performed in accordance with prescribed requirements. Verification of adequate documentation precedes final turnover of systems, structures and components for station operation and startup. The entire document verification program consists of the following steps:

1. A review of all specifications and licensing commitments to regulatory guides, codes and standards to identify all required quality verification documentation to be generated during each phase of activity.
2. Developing a computer based matrix system to match actual documentation found during the review with requirements.
3. Systematic review of documentation for completeness and accuracy including some system walkdowns or inspections to confirm accuracy of records or resolve inconsistencies.
4. Turnover to nuclear production department for computer data base indexing and permanent record retention in the station record management system.

Verification of documentation generated during the procurement phase includes review of purchase orders for quality related requirements prior to issuance, review of manufacturers' documentation, and review of site receipt inspection documentation.

Verification of documentation generated during construction and installation includes material issue and material identification traceability, either on documents traceable to the item or the item itself. This review will assure that any material issued as essential which was purchases non-essential or from an unapproved supplier, has been properly upgraded to allow its use in an essential system. Inspection and installation records required to be generated are verified.

As you may gather from this lengthy outline of the system, the Quality Confirmation Program and the Quality Assurance Program guarantee a redundancy in checking each component and the accompanying paperwork on each component. The redundancy is part of a check-and-balance system which assures that qualified personnel representing the Company, the contractor, sub-contractors and the NRC inspectors approve the quality of the work and assure that the component meets necessary requirements.

Ironically, this system also leads to situations raised in allegation 5, which claims a "failure to maintain adequate controls to process and respond to internal nonconformance reports." Not all the inspectors agree upon the work performed, or the interpretation of the code requirements for components. Therefore, the nonconformance reports have caused some disputes among workers and inspectors.

In order to have an adequate number of qualified personnel for the quality assurance program, we hired people with inspection knowledge in a variety of construction skills. When possible, we hired those with extensive knowledge of nuclear safety. However, not all of them had prior experience in the specific requirements of nuclear generation construction. At times, an inspector places a nonconformance report into the system and the report is rejected by either the contractor, or the NRC because the report has no bearing on the required codes. I assure you that each report is put through the system, and differences are resolved by the qualified supervisors who have the necessary nuclear construction background to determine the validity of each nonconformance report.

Frequently, when a nonconformance report is put into process, a corrective action is prescribed which precludes the report's being submitted to the NRC headquarters. However, each one is handled, documented, reviewed and stored should the NRC wish to track the report. As you probably know, there are three fulltime NRC inspectors at the Zimmer site. In the extensive review conducted by the NRC, no specific evidence has been produced to support the allegation that nonconformance reports have been mishandled or deliberately diverted or destroyed.

Despite the evidence of the proper handling of these reports and the response to worker allegations, some former workers at Zimmer have charged the Company or the contractor with "retaliation" against them for reporting violations of codes. The Company and the NRC have investigated every one of the allegations brought to our attention. To date, neither the Company nor the NRC has found any evidence to support the claims. We have found that disgruntled workers, who were dismissed for causes such as falsifying resumes, involvements in fraudulent activity or incompetence, have made allegations to the Government Accountability Project and others. When a qualified worker reports a legitimate violation, we act upon it and correct the



problem. Many currently employed workers have reported problems, which were addressed and resolved. Somehow, these workers are never interviewed by the Government Accountability Project; or if they are, the affidavits of resolution are not included in petitions. We hope all workers will have the courage of their convictions to report problems through the channels established since the first day of construction on the site. Unfortunately, a few seek the other methods which, in their minds, retaliate against the Company and its contractors for personal grudges.

Allegation 7 refers to an "inherent and empirical failure of the quality confirmation program as the final solution to the Zimmer quality assurance breakdown."

The MVPP repeatedly has called for an independent, third party audit of quality assurance at the Zimmer Nuclear Power Station. We maintain that the quality confirmation program we are currently conducting is more than adequate to assure the integrity of the plant.

We believe our ongoing cooperation with the NRC and the Company's total commitment to quality are reflected in the NRC's concurrence with the corrective actions taken. However, should the NRC decide to authorize an independent third party audit, the Company will fully cooperate with the firm or firms chosen to conduct the audit.

We believe the success of the Quality Confirmation Program is reflected in a recent NRC decision to reduce the 100 percent re-inspection of all inspections performed by Kaiser and other contractors to a 50 percent re-inspection program. Also, the NRC has noted a significant reduction in the number of non-compliances cited by the NRC inspectors since 1981. Even some of the recently cited areas of non-compliance reflect violations which occurred prior to the Company's corrective action.

Further support of the quality assurance program is included in data compiled by the American Nuclear Insurers. Its report shows that even though Zimmer had the highest total of inspector hours for the year 1981 (over 6500), more than six times the number of hours at one nuclear plant under construction, and four times the number of hours at another plant, the number of items in non-compliance per 100 inspector hours at Zimmer is about one-fourth the number of items of non-compliance at those plants. Both plants are also within NRC Region III and are of similar design and at a similar stage of construction.

Allegation 8 accuses CG&E of "failure to achieve the necessary character and competence to operate a nuclear power plant." This allegation is pure propaganda, an emotional ploy frequently used when hard evidence is lacking.

CG&E has provided the Greater Cincinnati area with safe, reasonably priced, reliable energy for more than 100 years. It's record as a corporate citizen, interested in maintaining the health, safety and well being of all of us who live in this community, is well documented.

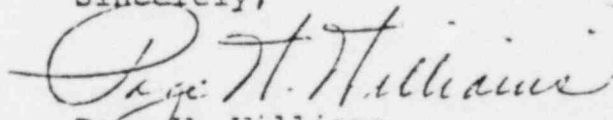
Our record as efficient operators of power generating stations is among the best in the nation. We are confident that we have attracted highly qualified personnel to operate the Wm. H. Zimmer Nuclear Power Station. In fact, our operator training program has one of the best documented records in the nation. The operators undergo continuous training and are submitted to re-qualifying tests by the NRC periodically to assure that all are capable and knowledgeable. Many undergo periodic training at operating facilities to strengthen their practical experience in preparation for the operation of Zimmer.

In conclusion I would like to mention that the NRC Commissioners considered these same eight allegations in July of this year. Their conclusion was that the basis for the eight contentions was simply a repetition of some of the problems revealed in the reports of the investigation which have already been released to the public and that no new information had been identified. We concur with that decision because our own investigation has confirmed that the allegations are generally based on hearsay or misinterpretation of internal documents.

We certainly appreciate your sense of responsibility in looking into these matters. If you would like, I'd be happy to arrange a meeting with one of our senior officers to discuss these items in greater detail. We also welcome you to tour Zimmer Station and see the work for yourself.

Many thanks for your interest in obtaining our answers to the allegations.

Sincerely,

  
Page W. Williams



REPORT  
ON THE  
FINDINGS AND RECOMMENDATIONS  
OF THE  
CITY OF CINCINNATI  
ENVIRONMENTAL ADVISORY COUNCIL

FOLLOWING  
PUBLIC HEARINGS  
INTO THE  
SAFETY AND RELIABILITY  
OF THE

WILLIAM H. ZIMMER NUCLEAR POWER STATION

OCTOBER 25, 1982  
CINCINNATI, OHIO

## INTRODUCTION

During the month of September, 1982, the 23-member Environmental Advisory Council ("EAC") of the City of Cincinnati conducted hearings into the safety and reliability of the Zimmer Nuclear Power Station. The facility, which is still under construction, is located in Moscow, Ohio, about 20 miles up river from Cincinnati.

The EAC has had a long-standing interest in the progress of the construction at Zimmer and the related issues of safety. This interest intensified when the Nuclear Regulatory Commission ("NRC") levied the largest fine in the history of the nuclear industry against Cincinnati Gas and Electric ("CG&E", the "Licensee"), grew as plant workers began coming forward at Congressional hearings to talk about safety problems and peaked when each daily paper in Cincinnati ran a special series on the status of the plant. Most of the information uncovered was at variance with CG&E's position that all of the problems at Zimmer were "just paperwork".

The EAC's hearings were an attempt to separate factual allegations from unsubstantiated claims. There was broad public interest in this attempt and there was extensive radio, TV and newspaper coverage of the hearings, including "gavel to gavel" coverage of each hearing on Warner Amex Cable Television in Cincinnati.

In general, the hearings avoided the broad debate about the problems and promises of nuclear power. Instead, the Advisory Council's inquiry focused on whether this specific plant was being properly built and whether any of its problems were serious enough to present a safety hazard to the public.

In order to answer these questions, the EAC reviewed many important aspects of CG&E's quality assurance program (the "QA program"). The QA program of the licensee at a nuclear construction site is the system which assures the licensee, the regulator and the public that a power station has been constructed properly and that it will operate safely. CG&E declined to aid in this review. The licensee refused several invitations to take part in the hearings, citing legal and public relations considerations.

Now that the four three-hour hearings have ended, it is clear that the safety of Zimmer is indeterminate and that there is a strong evidentiary basis for continuing public concern about Zimmer's safety. In other words, the "total breakdown" in quality assurance, which was noted during the hearings by NRC Region III Director James Keppler, presents a threat to public safety. At this stage, the NRC does not know whether the plant's problems can be corrected. No one can say what the ultimate cost of the plant will be.

These observations contradict the public relations image which CG&E has projected of Zimmer over the years. The observations are, however, consistent with the recent positions which the NRC has taken

with respect to Zimmer. In fact, most of the forty QA findings contained in this report were drawn directly from the testimony of the NRC staff. The nine QA recommendations in the report follow from these findings.

The audio and video tapes of the hearings are available at Cincinnati's City Hall and present an excellent primer on quality assurance and the problems at Zimmer. This report is not an attempt to review the hundreds of valuable, educational themes clarified during the more than twelve hours of testimony. The City Manager, City Council and members of the public may make reference to the tapes for further background.

The hearings made it clear that there are two sets of construction risks connected with any nuclear plant. There are the normal risks which are connected with the construction of any facility and there are the unusual risks associated with the need to harness and contain the radioactive by-product of a nuclear reaction.

It is striking that the general construction problems at Zimmer are the same problems which are now being discussed in connection with the Kansas City Hyatt Regency disaster. Unapproved design changes, improper welds and poor construction techniques are common concerns on both projects. It appears as though the questions at Zimmer are on a much larger scale than the questions which exist about the Hyatt Regency project.

Great emphasis is given to the quality of the general construction at a nuclear plant because of the need to deal with the special problem of containing radiation. This set of concerns was thought to be largely theoretical until the incident at Three Mile Island.

Some believe that the worst-case accident at a nuclear facility, such as Zimmer, would lead to portions of several states being rendered uninhabitable for an extremely long period of time. While others consider such a disaster highly unlikely, it is still prudent for us to do everything in our power to make sure that we never have to find out whether the scenario is accurate.

Even in the case of lesser nuclear accidents, the health risks are much higher than in accidents at more conventional power plants. For example, the otherwise harmless act of venting steam from an overpressurized system is of a health concern when the steam is radioactive. The discharge of waste water into a river or ground water becomes a health concern of greater magnitude when the waste water is, to one degree or another, radioactive.

Because of the deep concern about these two sets of risks it is easy to understand why NRC Commissioner James Asselstine and industry representatives who testified at the hearings underscored the critical importance of quality assurance in the nuclear industry. All agreed that quality assurance is an important safety-related concept and that all licensees must adhere to the QA guidelines of federal law or risk not being licensed.

The hearings went beyond the QA issue and looked at the present state of effectiveness of the emergency plans of Hamilton County, Clermont County, the State of Ohio and the State of Kentucky. There is a set of findings and recommendations in connection with these issues. It is obvious that these matters are of increased importance in the event that the Zimmer plant goes on line. Finally, there is a series of findings and recommendations with reference to the role of the Office of the State Boiler Inspector and the National Board of Boiler and Pressure Vessel Inspectors. The role of these entities at Zimmer has been misunderstood by the public and by the press.

As a result of all of these findings, the EAC believes that the City, which has long been the socio-political center of the region, has a strong responsibility to take direct steps to protect the health, safety and welfare of its citizens. The City cannot delegate this responsibility to others. The NRC does not see greater participation by other units of government as a hindrance to its regulatory task. In fact, the NRC seems to be crying out for greater public participation in the licensing process at Zimmer.

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D. David Altman, Chairperson  
Cincinnati Environmental Advisory Council  
October 20, 1982

CITY OF CINCINNATI  
ENVIRONMENTAL ADVISORY COUNCIL  
ZIMMER HEARINGS  
FINDINGS AND RECOMMENDATIONS

QUALITY ASSURANCE FINDINGS

The Breakdown, the Fine and the Current Dilemma

1. The safety of the public and workers is dependent upon good Quality Assurance ("QA").
2. The commitment of the licensee's top management is the single most important element of a good QA Program.
3. The licensee's adherence to the U.S Nuclear Regulatory Commission ("NRC") QA guidelines is the principal means of demonstrating the integrity of the construction and the safety of the operation of a nuclear power plant.
4. Precise and accurate documentation of the construction history of a nuclear facility is necessary for there to be an assurance of quality. In case of failures, such records are important in locating weaknesses elsewhere in the facility.
5. If the QA guidelines have not been followed throughout the construction of a plant, the NRC audit of the licensee is rendered meaningless and the public cannot and should not be confident that the plant has been built properly and that it will operate safely.
6. The unique dangers of radiation require heavy emphasis on the integrity of the construction and the safety of the operation at a nuclear power plant. Failure of equipment at a coal-fired plant represents no comparable threat to the public safety. Nuclear power plants therefore, must be built to be more substantial in order to withstand such hazards as tornadoes, earthquakes, reactor core damage, fires, loss of electric power upon shutdown, leaks and deterioration of materials caused by radiation.
7. Cincinnati Gas & Electric ("CG&E" and "Licensee") appears not to have recognized the different safety requirements of nuclear plants as compared to fossil fuel plants.
8. NRC QA regulations have been in effect, without substantial changes, since 1970.
9. Management of CG&E knew of the QA requirements of federal law during the construction of the plant. These requirements did not change even though the enforcement of various provisions of the law has intensified over the last ten years. It was CG&E's clear responsibility to follow the law, regardless of whether or not the NRC was actively enforcing all of its provisions.

10. The QA program at Zimmer was "out of control" over at least the first 97% of the construction of the plant. The NRC now admits that the breakdown is more severe than the NRC believed it to have been when the \$200,000 fine was levied in November, 1981.
11. The QA breakdown at Zimmer is evidenced by undocumented repairs, lost non-conformance reports, the lack of a system-wide documenting source and uncontrolled hydrostatic testing which may have weakened piping.
12. The NRC's \$200,000 fine of CG&E resulted from the NRC's initial appraisal of CG&E's responsibility for false QA documents, intimidation and harassment of QA inspectors and multiple failures to implement the QA program.
13. Since the \$200,000 fine was levied, it has been learned that there are definitely hardware problems at the plant, but it is impossible to tell the degree of these problems as of this time.
14. Major weld rework and replacement will have to be done at Zimmer; there is evidence that a substantial amount of this work has already been done without the approval of the engineering firm, without proper QA supervision and without NRC knowledge.
15. CG&E's recent assertion that the plant's problems were "just paperwork" is, at best, inaccurate. To the contrary, the plant's hardware problems are compounded by CG&E's failure to maintain documents and its failure to assure their accuracy.
16. The breakdown of QA at Zimmer appears to be caused by the same cause as the breakdown of QA programs at other plants, i.e., the lack of commitment of top licensee management to quality assurance.
17. There are over 300 serious safety related allegations still pending in connection with construction at Zimmer. There are both civil and criminal investigations pending in connection with these and other allegations concerning the construction at Zimmer. These investigations will not be completed this year.
18. The NRC cannot, at this time, determine the safety of Zimmer. This is due, in part, to an inability to determine the quality of construction. CG&E's QA program has not demonstrated that the plant has been built properly.
19. In light of these early NRC findings, it is clear that a convincing case has not been made that would cause the public to have confidence in the new "quality confirmation program" which is being administered by CG&E. There is simply an inherent conflict in asking the same top management to correct its own earlier mistakes, especially if top management has shown a resistance to acknowledging that it had made any mistakes in the past.
20. An independent, impartial third party QA audit would be useful in demonstrating that certain selected components of the plant are safe



and that problems have been corrected, but it cannot assure the public that other untested components are safe. This is a special concern because of the troubled construction history of the plant.

21. Independent third party review of construction is one means of uncovering deficiencies; licensing hearings are another means of uncovering deficiencies. Both methods may be used, as they are not mutually exclusive.

#### The Nuclear Regulatory Commission's Role

22. Although the NRC has the primary legal responsibility to protect the public, it has insufficient staff to do more than cursory safety audits at any plant. NRC regulations require utilities to carry out QA programs; the NRC, itself, only spot checks or audits a small percentage of safety-related materials, construction and systems.
23. Since the NRC, by its own admission, cannot do a thorough job of inspection before licensing, the public must look to the utility to carry out the QA program in accordance with the spirit and letter of the NRC regulations.
24. The NRC should have recognized, but did not recognize, the extent of the QA problems at Zimmer throughout the early years of the construction of the plant. Despite its acknowledgement that the symptoms of the breakdown were there, the NRC failed to diagnose the magnitude of the QA breakdown.
25. The NRC cannot conduct a proper audit if there has been a breakdown of the licensee's QA program.
26. CG&E was warned of many problems by the NRC even though the NRC failed to aggressively pursue some of those problems.
27. The NRC resident inspector program did not discover most of the major problems at Zimmer. Evidence indicates that most major problems were uncovered by "whistle blowers" and not by the NRC staff.
28. There is no evidence that the emphasis on safety voiced by NRC Region III Director Keppler and NRC Commissioner Asselstine is shared by all of the members of the NRC staff. To the contrary, there is evidence that both regional-level and Washington-level NRC staff people ignored clear warnings of the breakdown and failed to investigate leads which would have uncovered the "total breakdown".
29. The NRC Commissioners' recent 3 to 2 vote turning down new licensing hearings was not an indication that the Commission deemed the safety problems of the Zimmer plant to have been solved. To the contrary, there is every indication that the NRC Commissioners regard the safety problems of the plant as serious enough to merit special attention by the Commission.

#### Vendor, Welding and Document Problems

30. Many safety and operational problems at nuclear plants can be directly linked to substandard materials purchased from both approved and unapproved vendors.
31. There is credible evidence that 80% to 90% of Zimmer's structural materials were purchased as "non-essential" (i.e., not safety-related) and later upgraded to "essential" (i.e., safety-related). This effectively avoids the QA program and calls into question the integrity of the materials.
32. CG&E purchased numerous important components from unapproved vendors. This error is complicated by the fact that there are numerous missing documents which could verify from which vendors components were purchased. Hence, there are at least two vendor related breakdowns at Zimmer. However, the full scope of vendor problems cannot be determined until an NRC internal investigation is completed.
33. Because of problems with welder qualifications and missing weld documents, extensive testing of welds will have to be done. This will include destructive testing.
34. Certain structural steel welds will have to be cut out and replaced. In fact, it appears that some of this replacement has already come about without necessary approval of the engineering firm (Sargent & Lundy) and without proper inspection. Such shortcuts could later lead to structural and safety problems.
35. The full dimension of the weld problems will not be known until the NRC internal investigation and the federal criminal investigations are completed.
36. There has been a widespread failure to issue Non-Conformance Reports.
37. There is evidence that information which should have been recorded on Non-Conformance Reports was intentionally or unintentionally recorded on Inspection Reports. This practice effectively by-passes the QA program.

#### Harassment and Intimidation Problems

38. There is inadequate protection of "whistle blowers" against harassment and intimidation at Zimmer.
39. An atmosphere of fear and intimidation appears to be pervasive on the plant site and appears to have been a substantial factor at Zimmer for years. Zimmer is NRC Region III's largest scale harassment and intimidation problem.
40. The Chief Boiler Inspector for the State of Ohio and his agents were subjected to personal and political intimidation in an attempt to cause them to ignore safety violations at Zimmer.

#### QA RECOMMENDATIONS

1. Representatives of the City should immediately begin attending, in the interest of the health, safety and welfare of the citizens of Cincinnati, the public meetings between the licensee and the NRC on the safety of Zimmer.
2. The City should ask CG&E to attend formal public meetings or hearings with City Councilmembers to respond to statements by the NRC and others critical of the safety of the plant and to explain which of these allegations were known by CG&E at the time that it negotiated the monitoring agreement with the City.
3. The City Council should ask the City Solicitor's Office to advise it of various ways in which the air and water monitoring agreement can be interpreted to allow the City to act in the interest of the health, safety and welfare of its citizens with respect to this plant without jeopardizing the enforceability of the provisions for air and water monitoring.
4. As a means of joining with the NRC and the licensee in assuring the safety of the plant, the City should support the immediate appointment of, and should aid in the selection of, an independent third party to do a comprehensive review of the safety of the plant. Such action by the City would not constitute an interference with the licensing process but would increase public confidence in the licensing process.
5. The City should recommend to the NRC that the Zimmer Nuclear Power Station be included in the pilot program described in HR 2330 (see Conference Report no. 97-884, pp. 8-10, sec. 13) which provides for a study of three existing nuclear plants in order to improve quality assurance programs.
6. The City Administration and the individual City Councilmembers should communicate, by formal and informal means, with members of Congress, members of the NRC staff, NRC Commissioners and other appropriate government officials to express the City's interest in the reopening of the Zimmer licensing hearings. The City believes that additional hearings will increase public confidence in the fact that the regulatory authority and the licensee are doing all that is necessary to assure the correction of safety problems at the plant. The City is neither supporting nor opposing, at this time, the ultimate licensing of the plant.
7. If new Zimmer licensing hearings are scheduled due to new and compelling information, the City should participate in the licensing hearings to insure the health, safety and welfare of the citizens of the City of Cincinnati.
8. The City should request that the U.S. Attorney for the Southern District of Ohio seek assistance from the U.S. Attorney General and from the U.S. Attorney for the District of Columbia in pursuing the investigation of criminal allegations that have been raised concerning activities in connection with construction of the Zimmer Nuclear Power Station.

9. The City should solicit opinions from experts to determine the cost of converting the Zimmer Nuclear Power Station to an alternate form of energy, including the cost of converting the station to a coal-fired power plant.

#### NATIONAL BOILER INSPECTION FINDINGS

1. The State of Ohio has adopted certain regulations of the American Society of Mechanical Engineers (ASME) Code to assure the citizens of Ohio that any pressure vessels, including those in a nuclear plant, are safe because they meet ASME Code safety standards. To help enforce its regulations, the State has asked the National Board of Boiler and Pressure Vessel Inspectors ("National Board") to inspect the Zimmer Station.
2. The NRC has the ultimate responsibility for nuclear plant licensing and any rules which the State enforces or adopts cannot reduce or pre-empt the NRC regulations. The NRC has welcomed the involvement of the National Board at Zimmer.
3. The State asked for an inspection by the National Board because of specific safety concerns. The concerns were based upon unauthorized deviations from standards and improper safety practices. For example, there is a question as to whether Zimmer's containment vessel is in compliance with the ASME Code. Further, there is evidence of improper repairs of other pressure vessels at Zimmer.

#### NATIONAL BOILER INSPECTION RECOMMENDATION

1. The City should strongly support the retention of the National Board at Zimmer even if an independent third party quality assurance team is installed by the NRC.

#### EMERGENCY PLANNING, MONITORING AND HEALTH RISKS FINDINGS

1. Local and state officials bear the responsibility for devising emergency preparedness plans. Plan guidelines are contained in a set of rules called "New Reg 064".
2. These standards define the types of emergencies and the scope of planning and preparedness required in the two prime zones for planning: the plume exposure pathway (within the 10 mile radius around the nuclear power station) and the ingestion exposure pathway (within the 50 mile radius around the nuclear power station).
3. Nuclear power stations can be constructed properly and operated safely. Nuclear power still remains, however, problematic because of the long-term issues involved, e.g., the long-term storage required for radioactive wastes from the nuclear power station and the problem of what to do with the radioactive-contaminated site after the plant is decommissioned and subsequently dismantled.
4. The quality of construction at the Zimmer Nuclear Power Station cannot now be determined. The public has not yet been convinced that the plant has been properly constructed for long-term reliability. The plant must either be brought into a safe status or it should not be licensed.



5. Because of the serious doubts raised by evidence produced at the E.A.C.'s hearings, at Congressional hearings and by other evidence concerning the quality of construction, plant safety and long-term reliability, emergency planning for the communities around the Zimmer Nuclear Power Station site is of the utmost importance.
6. In order to increase public confidence, government must assure that emergency planning is completely adequate to meet each contingency, e.g., radioactive fallout from Zimmer could contaminate goat's milk within the 10 mile radius around the Station.
7. It would appear that small and rural communities, even those closest to Zimmer, have had minimal input into the planning process.
8. It remains unclear who triggers the emergency response for Hamilton County, i.e., in the event of an accident at Zimmer, who "blows the horn". As an additional safeguard, the City of Cincinnati needs access to radiation monitoring and meteorological data from Zimmer.
9. There appears to be poor liaison between those in charge of emergency planning at various levels of government, e.g., Clermont County and Hamilton County, the Commonwealth of Kentucky and State of Ohio, and Hamilton County and the State of Ohio. These problems must be resolved for there to be public confidence in the emergency planning process.
10. The Hamilton County Office of Disaster Preparedness has held emergency preparedness drills in coordination with Clermont County's drills. There is a substantial question as to whether some volunteer evacuation personnel (such as fire and life squad personnel) or even regular police employees would remain on duty in the disaster area during an emergency at Zimmer.
11. The emotional and psychological health of those in Zimmer's plume and ingestion exposure pathways is an important public health concern.
12. Radioisotopes of iodine are among the most abundant by-products of nuclear fission, and a large release of radioactive iodine from a crippled nuclear reactor would result in the public inhaling or ingesting amounts that could be of health significance.
13. The possible health effects of low-level radiation emissions from Zimmer need to be carefully evaluated by radiation-health scientists. These scientists now disagree as to the ultimate health risk posed by such emissions.
14. Hamilton County disaster agencies will not, at present, monitor the food chain in the County for radioactivity.
15. Air radiation monitors presently used by local civil defense agencies are inadequate for the determination of low level radiation; hence, the City of Cincinnati needs to maintain on-line monitoring of the Zimmer Station.

16. The ten-mile radius which is presently used for most evacuation planning may not adequately cover the true "risk zone" of Zimmer.

#### EMERGENCY PLANNING, MONITORING AND HEALTH RISKS RECOMMENDATIONS

1. The City of Cincinnati should host a series of meetings of Ohio, Kentucky, Hamilton County and Clermont County officials and other regional groups responsible for emergency planning. The City should actively participate in the coordination of the emergency plans of these layers of government. The approval and publication of a comprehensive regional plan would help increase the effectiveness of the plan and improve public confidence in government's ability to respond to an emergency at Zimmer.
2. The City should formally communicate to the NRC, to congressional groups and other appropriate entities of government, the request that the NRC create a computer model, containing all of the relevant variables, on the safety impact of Zimmer on the Cincinnati Metropolitan area. The NRC Commissioners have the power to request such a special study.
3. Each City Councilmember and appropriate members of the City Administration should learn the names of the individuals who activate the Zimmer emergency response plan. City officials should assure themselves that each essential member of the response team knows precisely what his or her role will be in an emergency. The City should also be assured that there are "back up" emergency response systems in the event of systemic failures.
4. The City should see that the food chain is monitored by a responsible research group for high and low level radiation. Baseline studies should begin soon.
5. Those in charge of radiation air monitoring should be equipped with radiation detectors capable of measuring low-level radiation.
6. The City should take all practicable steps to get continuous data from CG&E's on-line air and water monitors at the station.

#### CITY OF CINCINNATI ENVIRONMENTAL ADVISORY COUNCIL - 1982-83

Mr. D. David Altman  
Ms. Helen C. Black  
Mr. J. Floyd Byrd  
Mr. Kevin P. Costello  
Mr. L. H. Fremont  
Ms. May Germann  
Dr. Richard Goldsmith  
Dr. Channing R. Meyer  
Mr. Daniel B. Quinn  
Mr. Greg Rowe  
Dr. Judith Schultz  
Mr. Thomas E. Carpenter

Mr. Arthur P. Anninos  
Mr. Alexander C. Brown  
Mr. George Carpenter  
Mr. Timothy A Fischer  
Ms. Helene Genser  
Ms. Jacqueline Gibb  
Dr. Stanley Hedeem  
Mr. Dale Miller  
Mr. Brewster Rhoads  
Dr. Pasquale V. Scarpino  
Mr. David F. Surber





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

— Exhibit 8

December 30, 1982

Mr. Robert Acomb, President  
Energy Ratepayers United, Inc.  
1045 W. 8th Street  
Cincinnati, OH 45203

Dear Mr. Acomb:

This is in reply to your December 20, 1982, letter, inquiring about allegations received by the Nuclear Regulatory Commission concerning the Zimmer and Midland construction sites.

Approximately 550 separate allegations concerning the Zimmer site have been received by the NRC in the past two years. These allegations have come from a variety of sources, some directly from the individuals involved and others through an intermediary organization like the Government Accountability Project. It is NRC policy to keep the identification of allegeders' confidential.

The details of allegations are not released by the NRC, as a matter of investigatory policy, until the investigation has been completed. The most significant allegations received in 1981 were covered in the November 1981 investigation report, which provided the basis of a \$200,000 fine levied against Cincinnati Gas and Electric Company. This report is available for your review at the Clermont County Public Library in Batavia, Ohio. Other documents pertaining to the regulation of the Zimmer site are also available for examination there. No subsequent investigation reports have been issued.

Some of the allegations, however, were listed in a petition filed by the Government Accountability Project on behalf of the Miami Valley Power Project. A copy of the petition is enclosed.

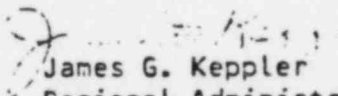
December 30, 1982

Over the years, the NRC has occasionally received allegations concerning construction activities at the Midland construction site, and these have been investigated as they have been received. In June, 1982, the NRC received allegations from six individuals, forwarded by the Government Accountability Project. The investigation of these allegations is still underway. The identity of the alleged is being withheld at their requests.

We do not believe that any Region III staff member stated that most of the Zimmer allegations were frivolous, as you indicate in your letter. Certainly, there have been a number of very serious allegations concerning Zimmer. These allegations, coupled with the NRC's significant inspection findings, have formed the basis for the NRC Order suspending construction at Zimmer. Such a measure would not be taken over frivolous matters. A copy of the Order, including the basis for the Order, is enclosed.

I hope this is responsive to your interests. If I can be of further assistance, please let me know.

Sincerely,

  
James G. Keppler  
Regional Administrator

Enclosures:

1. GAP Petition
2. NRC Order

cc w/ encl:

N. J. Palladino  
Sylvester Murray  
✓ D. David Altman  
Guy Guckenberger



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

— Exhibit 9

January 10, 1983

Docket No. 50-358

Mr. Tom Devine  
Mr. Jay Rosenthal  
Government Accountability Project  
Institute for Policy Studies  
1901 Que Street, NW  
Washington, DC 20009

IN RESPONSE REFER  
TO FOIA-82-206

Dear Messrs. Devine and Rosenthal:

This is in further response to your letter dated April 20, 1982, in which you requested, pursuant to the Freedom of Information Act (FOIA), documents concerning IE Report No. 50-358/81-13.

The documents listed on Appendix A are being placed in the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC. The documents listed on Appendix B are being withheld in whole or in part as explained herein. Segregable nonexempt portions are being placed in the PDR. Document 9 on Appendix B is being withheld in its entirety pursuant to the exemption cited. The only segregable factual portions (the originator, the addressee, the date and the subject line) are listed on the appendix. Portions of documents 1 through 8 and 10 through 12 on Appendix B are being withheld pursuant to the exemptions cited.

Attached to document 3 on Appendix B were copies of five interview statements. One statement, the Schwiers interview, was released by NRC, as an attachment to an I&E report on Zimmer. Since you have obtained and published a copy of the Gittings interview, the NRC has chosen at this time to make that particular interview officially available to the public. However, we are continuing to withhold three other interviews. Furthermore, in the event you possess the remaining interviews, we request that you refrain from publishing them during the pendency of the ongoing Zimmer investigations. You should know that copies were also provided to the NRC oversight committee, the House Subcommittee on Energy and the Environment. NRC requested that the Subcommittee maintain the interviews in confidence so as not to interfere with the ongoing investigation of construction deficiencies at Zimmer.

Information withheld pursuant to exemption (3) consists of unclassified safeguards information. The statutory authority for withholding this information is found in Section 147 of the Atomic Energy Act (42 U.S.C. 2167). This information is being withheld from public disclosure pursuant to exemption (3) of the Freedom of Information Act (5 U.S.C. 552(b)(3)) and 10 CFR 9.5(a)(3) of the Commission's regulations.

Information withheld pursuant to exemption (b) is contained in predecisional interagency or intra-agency memoranda which contain sensitive advice about an ongoing investigation, the release of which would inhibit the exchange of views on such matters between agencies of the Federal government and within NRC. This information is being withheld from public disclosure pursuant to exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations.

Information being withheld pursuant to exemption (6) consists of names and other identifying information of persons, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This information is being withheld from public disclosure pursuant to exemption (6) of the Freedom of Information Act (5 U.S.C. 552(b)(6)) and 10 CFR 9.5(a)(6) of the Commission's regulations.

Information being withheld pursuant to exemptions (7)(A) and (C) is contained in records compiled for law enforcement purposes, the release of which would interfere with a continuing investigation by alerting the subject of the investigation to the NRC investigator's concerns and by inhibiting individuals from providing information to investigators, and would also constitute an unwarranted invasion of personal privacy. This information is being withheld from public disclosure pursuant to exemptions (7)(A) and (C) of the Freedom of Information Act (5 U.S.C. 552(b)(7)(A) and (C)) and 10 CFR 9.5(a)(7)(i) & (iii) of the Commission's regulations.

Mr. Albert Puglia, Senior Criminal Investigator, Office of Inspector and Auditor, has maintained a box of material by the side of his desk which contains duplicates of documents which have already been provided to you and a collection of his own personal notes, made for his own purposes during the course of his investigative work. Those documents not already released are not agency records and are not subject to the FOIA.

The review of three documents (approximately 100 pages) which Sargent & Lundy Engineers and Pullman Power Products Corporation claim contain confidential business (proprietary) information, and one document (several hundred pages) which consists of McCarten's notes (primarily handwritten) is ongoing. We will advise you of our disclosure determinations at a later date.

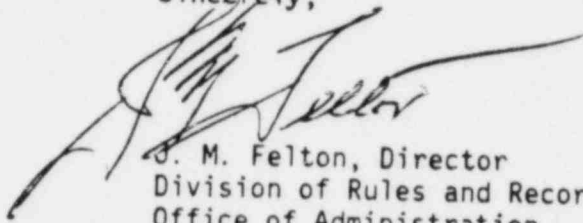
Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for this denial is Mr. James A. Fitzgerald, Acting Director, Office of Investigations.

Messrs. Devine and Rosenthal

-3-

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

Sincerely,

A handwritten signature in dark ink, appearing to read "J. M. Felton", with a long, sweeping horizontal line extending to the right.

J. M. Felton, Director  
Division of Rules and Records  
Office of Administration

Enclosures: As stated

Appendix A

<u>Document Description</u>	<u>Date</u>	<u>Pages</u>
1. Memo to file from D. H. Gamble re: Zimmer Plant - Allegations of Deficient Construction	6/15/81	3
2. Memo for Chairman Palladino from J. J. Cummings re: Zimmer (Attachment referred to Executive Office for United States Attorneys)	6/17/82	1
3. Letter to A. M. Tracey from J. J. Cummings re: Draft Report of Investigation Completed by NRC's Office of Inspection and Enforcement (Enclosure not found with file copy)	8/18/81	1
4. Letter to A. M. Tracey from J. J. Cummings re: List of exhibits (Enclosure not found with file copy)	8/26/81	1
5. Letter to A. M. Tracey from J. J. Cummings re: IE Report of Investigation (Enclosures not found with file copy)	12/3/81	1
6. Memo to file from J. R. Sinclair re: Region III Computer Listing of Zimmer Allegations (Enclosure not found with file copy)	5/5/82	1
7. Note to the Commission from J. J. Cummings re: May 14, 1982 letter to Congressman Ottinger from Chairman Palladino (Enclosure 1 referred to Executive Office for United States Attorneys; Enclosure 2 already in the PDR)	6/4/82	1
8. Memo for Chairman Palladino, et al., from C. Kammerer re: Request for Interview Regarding Zimmer (See B-10 for attachment)	7/12/82	1



Appendix B

<u>Document Description</u>	<u>Date</u>	<u>Pages</u>	<u>Exemptions</u>
1. Letter from P. S. Gittings to W. W. Schwiers re: NRC Audit Report 50-358/8-14-80	8/15/80	16	6
2. Two allegations and responses prepared by T. Madedo and Gerry	Undated	2	3
3. Memo to B. Davis from J. J. Cummings re: Zimmer Interviews and Corporate Correspondence (Interviews of three individuals withheld)	11/18/81	73	7(A)
4. Memo to File from J. R. Sinclair re: Meeting with Representatives of U.S. Attorney, Cincinnati, Ohio	5/5/81	3	7(A)
5. Letter to an individual from A. A. Schnebelen re: Handwritten Statement and Typed Transcript	5/27/81	12	7(A) & (C)
6. Letter to P. J. Hanley from J. J. Cummings re: Criminal/Civil Investigation (Enclosure referred to Department of Justice - DOJ Responded to you on 10/13/82; Letter from Hanley has been referred to Executive Office for United States Attorneys)	9/17/81	2	5
7. Note to J. Blaha from J. R. Sinclair re: Interview at Zimmer Site (See B-3 for attachment 1; other attachments neither identified nor found with file copy)	11/9/81	1	7(A) & (C)
8. NRC Form 218 "Telephone or Verbal Conversation Record" between P. Gwynn and D. Gamble re: Zimmer Plant - Allegations Regarding Deficient Construction	7/10/81	1	7(A)
9. Memo to A. Gauthier, DIA, from J. J. Cummings re: Zimmer	6/23/82	1	5
10. Memo for B. Davis from J. J. Cummings re: Zimmer Nuclear Plant	6/24/82	2	7(A) & (C)

Appendix B

<u>Document Description</u>	<u>Date</u>	<u>Pages</u>	<u>Exemptions</u>
11. Note to A. Schnebelen from D. Gamble re: Zimmer Investigation	5/29/81	1	7(A)
12. Memo for file from D. H. Gamble and A. Puglia re: Zimmer; Suspected Recent Etching of Heat Numbers on Pipes	6/19/81	16	7(A) & (C)
13. Heat Numbers for Weld Rod and Piping	Undated	1	7(A)

February 15, 1983

SECRETARIAT RECORD COPY

OFFICE OF THE  
COMMISSIONER

— Exhibit 10

MEMORANDUM FOR: Executive Director for Operations  
FROM: John Ahearne *John Ahearne*  
SUBJECT: ZIMMER INDEPENDENT MANAGEMENT REVIEW

As I had argued in several Commission meetings, the choice of an "independent" reviewer for Zimmer management, to meet the requirement of the Commission's November 12, 1982 order, was a decision for NRC line management. Had line management made that decision, I was prepared to support the decision, regardless of its outcome, as being consistent with your delegated authority.

However, your February 10 memo makes clear you believe the Commission should be involved in that decision. Therefore, the following are my positions with regard to the proposals made in your memo:

- (1) to have the project manager also perform a role requiring independence violates the spirit if not the letter of the NRC policy as outlined in the Dingell/Ottinger letter;
- (2) to bring in a third party, also to be "independent"--I guess to be really independent--is senseless.

Therefore:

- (3) Bechtel should be either the reviewer or the project manager, not both.
- (4) If Bechtel is to be the project manager, then either another group should be chosen to be the independent reviewer of management or you should propose to modify the primary order (an approach I would not agree with at this late date).

I reiterate--had line management decided to do what is proposed, I would not have objected. However, since the Commission was asked to endorse the proposal, the Commission has now become part of the line in this case.

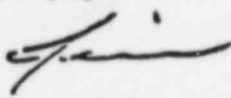
cc: Chairman Palladino  
Commissioner Gilinsky  
Commissioner Roberts  
Commissioner Asselstine  
Secy ✓  
OGC  
OPE  
OCA



OFFICE OF THE  
COMMISSIONER

February 17, 1983

MEMORANDUM FOR: William J. Dircks, Executive  
Director for Operations

FROM: James K. Asselstine 

SUBJECT: ZIMMER INDEPENDENT MANAGEMENT REVIEW PLAN

After reviewing your February 10, 1983 memorandum and its attachments, I have concluded that I would not find Bechtel acceptable to perform both the management audit and the subsequent project management for the Zimmer plant. I would find Bechtel acceptable for either function but not for both, although my preference would be for an organization other than Bechtel to conduct the management review. I note that CG&E's submittals indicate that they believe Bechtel is best qualified to manage the project and that they intend to propose Bechtel as project manager even if another firm is chosen to conduct the management review. If an organization other than Bechtel is chosen to conduct the independent management review, I would be willing to permit CG&E to retain Bechtel as its consultant for the purpose of providing information, analysis and recommendations to the management review organization. Any such communications would be subject to the controls contained in the protocol attached to your memorandum.

cc: Chairman Palladino  
Commissioner Gilinsky  
Commissioner Ahearne  
Commissioner Roberts



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

February 18, 1983

MEMORANDUM FOR: Commissioner Gilinsky  
Commissioner Ahearne  
Commissioner Roberts  
Commissioner Asselstine

FROM: Nunzio J. Palladino

SUBJECT: ZIMMER

I have reviewed the votes of the Commission majority. In this case I believe it is preferable for the management reviewer to also do the project management because the reviewer is in a better position to know the pitfalls to be avoided. Concerns related to possible lack of independence would appear to be overcome by the staff's proposal to have an independent reviewer for the Bechtel management review.

cc: SECY  
OPE  
OGC  
OIA  
EDO

February 17, 1983

MEMORANDUM FOR THE EXECUTIVE DIRECTOR FOR OPERATIONS

SUBJECT: ZIMMER INDEPENDENT MANAGEMENT REVIEW  
EDO MEMORANDUM OF FEBRUARY 10, 1983

As I stated in my memorandum of January 13, 1983, I do not agree that Bechtel should be allowed to do the management review if they are also going to be the project manager.

Victor Gilinsky

cc: Chairman Palladino  
Commissioner Ahearne  
Commissioner Roberts  
Commissioner Asselstine  
✓ SECY  
OGC  
OPE





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

Exhibit 11

MAY 17 1983

Docket No. 50-358

D. David Altman, Esq.  
Chairperson, Cincinnati  
Environmental Advisory Council  
Room 142 - City Hall  
801 Plum Street  
Cincinnati, OH 45202

Government Accountability Project  
ATTN: Mr. Thomas Devine  
Associate Director  
Institute for Policy Studies  
1901 Que Street N.W.  
Washington, DC 20009

Gentlemen:

At the public meeting in Cincinnati on March 28, 1983, the NRC Staff indicated that it would review the comments submitted by the Environmental Advisory Council on March 21, 1983, and by the Government Accountability Project (GAP) at the public meeting, as documented by letter of April 5, 1983, to address those questions to which we were not able to respond at the public meeting. The purpose of this letter is to respond to your questions in two areas: (1) concerns regarding the Regional Administrator's approval of certain activities to be undertaken by Cincinnati Gas and Electric Company (CG&E), using Bechtel as a consultant on those activities, and (2) a request for explanation of certain provisions of the "Protocol Governing Communications Between CG&E and Independent Organizations Conducting Reviews or Audits Under the Commission's Order." This letter is also responsive to other commenters who have raised concerns regarding the activities of Bechtel.

Responses to other questions raised in your letters and in your comments at the March 28 meeting have been provided by one of the following means:

1. Responses provided at the March 28 meeting.
2. Mr. Keppler's letter to CG&E of April 15, 1983, concluding that Torrey Pines Technology (TPT) meets the criteria for the competence and independence of third party reviewers as set forth in Chairman Palladino's letter of February 1, 1982, to Congressmen Ottinger and Dingell, and the accompanying Staff Evaluation.
3. The presentation made by TPT at the meeting held in Cincinnati on April 25, 1983, which you attended, and the ensuing discussion regarding the Program Plan for the Independent Review of Zimmer Project Management (March 1983). That discussion included responses by the Staff, and in some cases by TPT, to questions which you posed.

The concerns addressed in this letter are paraphrased below, followed by the Staff's response:

Concern: The activities authorized in Mr. Keppler's letter to CG&E of March 10, 1983, violate the Commission's Order, or at least the spirit of the Order, in that they constitute the verification of the quality of construction under Section IV.B(2)(a) of the Order.

Response: The NRC Staff does not consider the activities which it authorized by the letter to be safety-related construction activities which have been suspended by the Commission. Rather, the activities are reviews to determine the present status of the facility and its documentation and certain steps to improve the licensee's control over the project. In the Staff's view, the Commission did not intend that CG&E, as the managing licensee of the Zimmer facility, should be prohibited from undertaking such activities. The Staff also believes that CG&E could have obtained the services of whatever consultant it chose to assist with these activities and that the use of Bechtel in this role is consistent with the Commission's memorandum of February 18, 1983.

Certain commenters have focused upon Mr. Keppler's statement in his March 10 letter that the activities authorized include "...certain preparatory steps to the submission of the comprehensive plan for the verification of the quality of construction (IV.B(2)(a))...." The Staff does not believe the Commission intended to prohibit CG&E from undertaking these preparatory steps. Additionally, CG&E has acknowledged that these activities are undertaken with the risk that they may have to be subsequently modified based upon the results of the independent management review.

Concern: The authorization to CG&E, using Bechtel as its consultant, to "...establish programs to organize the data available on...", among other things, welder qualifications, threatens the integrity of evidence necessary to the NRC's investigations and inspections regarding Zimmer.

Response: The activity in question is the development of programs to organize the available data on elements necessary to determine the verifiability of the quality of construction of the facility. Bechtel will not be "reorganizing" any data as part of this activity. During a site visit made by Region III personnel to the Zimmer facility on March 28, 1983, and discussions with Bechtel personnel at the site, this understanding of the activity was confirmed. The Staff does not view this activity as constituting any threat to the NRC's ability to conduct investigations and inspections on matters related to the Zimmer facility.

Concern: The NRC Staff has not developed adequate regulatory safeguards to assure that the activities undertaken by Bechtel do not violate the Order.

Response: The Staff has no basis to question the integrity of Bechtel in undertaking these activities and does not consider any specific "safeguards" to be necessary. Region III will, of course, monitor Bechtel's activities.

Concern: Whether the Protocol will be applied to the March 2, 1983, initial meeting between CG&E and TPT.

Response: CG&E advised Mr. Keppler by letter dated March 7, 1983, that his letter sending the Protocol was not received until after the March 2 meeting with TPT. The meeting was not, therefore, documented as it would have been under the provisions of the Protocol. Region III has, however, been advised by CG&E that some documentation regarding the March 2 meeting exists in CG&E files and this documentation will be made available for Region III review pursuant to the Protocol.

Concern: Whether the public will have sufficient notice of meetings under the provisions of paragraph 3 of the Protocol.

Response: In drafting the Protocol, the Staff attempted to accommodate both the need for flexibility in the scheduling of meetings between CG&E and the independent management reviewer and the desirability of making meetings of a substantive nature open to public observation. Thus, paragraph 3 of the Protocol requires CG&E to provide at least five days notice to the Regional Administrator of any such meeting. The Regional Administrator is to make reasonable efforts to notify representatives of interested members of the public of the meeting. The Protocol does not require CG&E to take responsibility for notifying the public of such meetings at the time it notifies Region III. The NRC Staff cannot predict precisely how much notice will be available to the public. If the notice provided pursuant to the Protocol does not prove sufficient, we will determine what further steps are necessary.

Concern: GAP has asked for an explanation of the following provisions of the Protocol:

Sub-Concern: The statement in paragraph 3 that "Any portion of such meetings which deals with proprietary information may be closed to the public."

Response: This is a standard statement made with respect to meetings held between the NRC Staff and licensees. The Staff does not necessarily expect any of the information developed

during the course of the management review to be proprietary in nature. Whether any information to be discussed is proprietary would be determined by reference to 10 CFR 9.5(a)(4) of the Commission's regulations.

Sub-Concern: Paragraph 4, which states: All meetings, between the Staff and CG&E, the independent reviewer, and/or the independent auditor will be open to public observation, except where the Staff determines that it is appropriate to conduct a meeting(s) in private with CG&E, the independent reviewer, and/or the independent auditor.

Response: Paragraph 4 expresses the Staff's intent generally to make meetings with CG&E, TPT, or the independent auditor (to be selected under Section IV.B(2)(a) of the Order) open to public observation. Officials of CG&E, TPT, or the auditor may, however, request to meet with officials of the Staff in private to discuss matters which they consider to be confidential (e.g., possible personnel changes) or to be briefed by the Staff on an informal basis.

The Protocol recognizes the Staff's flexibility to honor the request for such a meeting. The Staff would, however, document in the Public Document Room (PDR) that the meeting had been held and identify the areas discussed.

Sub-Concern: The statement in paragraph 5 of the Protocol that documents submitted to, or transmitted by, the NRC under the Protocol but "exempt from mandatory public disclosure" will not be placed in the PDR.

Response: The staff was referring to the criteria in 10 CFR 9.5(a) for exemption from disclosure under 10 CFR 9.4. The Staff does not, however, anticipate that documents related to the management review would be exempt from public disclosure. It should also be noted that the name of any person providing information to the independent management reviewer will not, if the person so requests, be included in the documentation required under the Protocol to be maintained by the independent management reviewer.

Concern: Has the Staff held any private meetings with CG&E and/or TPT since March 3, 1983?

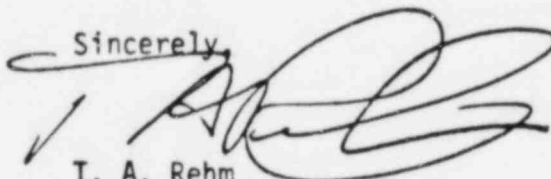
Response: The Staff has held one such meeting. At the request of Mr. Joe Williams, Jr., newly appointed CG&E Senior Vice President for Nuclear Operations, Mr. Keppler met with him at Region III on April 21, 1983 to aid Mr. Williams in his understanding of the problems at Zimmer. Mr. A. Bert Davis, Deputy Regional Administrator, also attended a portion of the meeting. A memorandum regarding that meeting has been transmitted to the PDR.

Mr. D. David Altman  
Mr. Thomas Devine

- 5 -

I trust that these comments have been responsive to your concerns, if not I would appreciate hearing from you.

Sincerely,

A handwritten signature in dark ink, appearing to be 'T. A. Rehm', written over a horizontal line.

T. A. Rehm  
Assistant for Operations  
Office of the Executive Director  
for Operations

Enclosures:

1. Ltr dtd 3/21/83 from  
Altman to Keppler
2. Ltr dtd 4/5/83 from  
Devine to Keppler

cc: See next page



Mr. D. David Altman  
Mr. Thomas Devine

- 6 -

cc w/ enclosures:

J. R. Schott, Plant  
Superintendent

J. D. Flynn, Manager  
Licensing Environmental  
Affairs Department

DMB/Document Control Desk (RIDS)

Resident Inspector, RIII

Harold W. Kohn, Ohio EPA

Citizens Against a Radioactive  
Environment

James W. Harris, State of Ohio

Robert H. Quillin, Ohio  
Department of Health

Thomas Applegate

Dave Martin, Office of  
Attorney General

Mark Wetterhahn, Esq.

Jerome A. Vennemann, Esq.

Gretchen Hummel, Ohio  
Consumers' Counsel

James R. Williams, State  
Liaison Officer, Ohio  
Disaster Services Agency

Paul Ryder, Ohio Governor's Office

Edward J. Parish, Clermont County  
Chamber of Commerce

H. R. Hoerr, cHc Fabricating Corp.

Robert Acomb, Energy Ratepayers  
United, Inc.

Phil Amadon, C.A.S.E.

Mary Reder, C.A.S.E.

Stan N. Nassano, C.A.S.E.

Dr. Richard A. Anderson, MVVP

Bonnie Pence, Chair, Sierra Club

Drew S. Diehl, Conservation Chair,  
Sierra Club

Mary B. Davis, Nuclear Energy  
Chair, Sierra Club



# GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

April 5, 1983 *ENG*  
*TI*

PRINCIPAL STAFF			
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Mr. James G. Keppler  
Regional Administrator, Region III  
U. S. Nuclear Regulatory Commission  
799 Roosevelt Road  
Glen Ellyn, Illinois 60137

Dear Mr. Keppler:

This letter responds to your request to put in writing Miami Valley Power Project's (MVPP) comments at the March 23, 1983 public meeting on the Torrey Pines nomination to conduct the Zimmer management review. Although the transcript of the public meeting will have all the details of MVPP's concerns, I hope that the summary below will be helpful. As you may recall, we raised questions about the scope and methodology of the virtually undefined Torrey Pines program. Further, we questioned Torrey Pines' functional independence from Cincinnati Gas & Electric (CG&E) -- particularly in light of the Bechtel Corporation's activities that parallel the third party program -- as well as the Nuclear Regulatory Commission's (NRC) program for oversight and public participation.

## I. SCOPE OF THE PROGRAM

1. Will the review investigate to determine the causes of the quality assurance (QA) breakdown?
2. Will the review cover all the issues both in the Commission's September 1982 Demand for Information, as well as MVPP's October 18, 1982 brief raising serious allegations not covered in the Demand?
3. What is the time frame for the review? Will it cover Bechtel activities on-site since the November 12 NRC Order that could affect the integrity of evidence, documentation and hardware covered by the Torrey Pines review?

## II. METHODOLOGY

1. Will Torrey Pines speak with whistleblowers, intervenors and others who raised the QA challenges which helped lead to the Commission's November 12 Order? (On March 23 you explained that they would.)

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✓ 2. What confidentiality guarantees will be afforded witnesses, other than protection triggered by CG&E's own written request? (On March 23 you explained that the same standards as NRC's own confidentiality regulations would govern the review.)

✓ 3. What controls will Torrey Pines employ to verify whether documents examined in the review are authentic and comprehensive? This is particularly significant in light of the extensive work done with QA records since the November 12 shutdown. The third party should have controls to ensure that no party has tampered with the evidence.

4. Will Torrey Pines conduct both unannounced and announced interviews and record searches? If so, what will be the criteria to choose and the program to implement the former?

5. What controls will Torrey Pines employ to verify the authenticity of interview statements? For example, will the assertions of utility witnesses on material issues be checked with critics and compared to all relevant documentation?

6. What relevant professional codes will Torrey Pines use for its standard of review?

### III. INDEPENDENCE

1. Will Torrey Pines be required to check for personal conflicts of interest with respect to all of the general partners who own Zimmer including Dayton Power and Light and Columbus and Southern Ohio Electric, as opposed to its offer merely to verify the absence of conflicts with CG&E and the Zimmer project?

2. Will Torrey Pines be permitted to allow conflicts of interest among employees working less than half-time, up to 10% of the total effort on the project? The significance of the conflict pertains to the activity performed, rather than the amount of time involved. As a result, this loophole threatens the functional independence of the entire program.

✓ 3. What topics will Torrey Pines be permitted to discuss with CG&E during their "[c]lose communication...to expedite [sic] problem areas that could impede the review process"? (Proposal, p. 7.) Will the utility be permitted to discuss or make recommendations on the specific topics, locations or records to include in its program? The prohibition against collusion in the proposal only covers the Torrey Pines output -- its findings and recommendations. The input for the scope and methodology of its program is equally significant.

✓ 4. What limitations on the third party program could CG&E impose as "additional or different terms proposed by purchaser" with Torrey

April 5, 1983

Pines' written consent? (Proposal, p. 18.) (At the meeting you explained that the NRC would not permit Torrey Pines and CG&E to significantly alter the program in the middle.)

5. Will the NRC rescind its permission for the Bechtel Corporation to start preparing for the second phase of the Commission's November 12 Order before any third party completes the first phase? Bechtel's program has assumed effective control of the quality assurance records that will be covered in the second phase, and Bechtel will be conducting walkdowns to identify safety-related work.

Initially, this program is premature. The first phase of the review is designed to define the necessary scope of subsequent factfinding and organizational responsibility. Second, the program raises questions about the integrity of the evidence when it is examined later. Finally, Bechtel's project threatens the functional independence of the Torrey Pines review. Bechtel's records reviews and walkdowns inherently will establish informal boundaries for what the licensee and Bechtel believe should be covered in the second phase. These parameters could compete with Torrey Pines' own findings. No third party should be placed in a position of having to rebut Bechtel's competing assessment of the final scope for the quality verification effort. Bechtel dominates the industry, and its findings cannot help but influence the judgment of a contractor who wants jobs on other Bechtel sites.

#### IV. NRC OVERSIGHT AND PUBLIC PARTICIPATION

1. Will the NRC enforce its March 2, 1983 protocol governing communications between CG&E and third parties for the March 2 CG&E-Torrey Pines meeting? CG&E has promised to honor the protocol for all meetings after its March 3 receipt of the NRC standards. The March 2 meeting, however, laid the cornerstone for CG&E's relationship with Torrey Pines.

2. Item 3 in the protocol requires public meetings with five days notice to the NRC. How much notice will the public receive, and in what form? Will the NRC require CG&E to release its public meeting announcement to the public, simultaneous with notice to the NRC?

3. Please define the following terms in the March 3 protocol which are loopholes exempting public disclosure of significant information on the third party program--

- (1) "proprietary information" (CG&E/third party meetings);
- (2) "appropriate to conduct a meeting(s) in private with CG&E, the independent reviewer, and/or the independent auditor (NRC staff meetings); and

Mr. James G. Keppler

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April 5, 1983

(3) "exempt from mandatory public disclosure" (documents transmitted to the NRC).

✓ 4. How many private meetings has the NRC had with CG&E and/or Torrey Pines to date since March 3?

The basic concern that underlies our questions is Torrey Pines' failure to provide more than the vaguest hints of how it will review the Zimmer management. This non-proposal is an inappropriate basis for approval, especially since on March 23 the NRC staff was unable to provide any instances where Torrey Pines has found any significant problems at plants it has reviewed.

In this respect, MVPP applauds your March 23 promise to require specific Torrey Pines responses to questions raised on the scope and methodology of its program. We also appreciate your pledge to publicly distribute the answers and accept written public comments prior to any staff decision on the nomination. In this manner, the NRC will help restore public confidence by refusing to sign a blank check for Torrey Pines, or any other organization.

Sincerely,

Thomas Devine  
Legal Director

TD/my





# City of Cincinnati

## ENVIRONMENTAL ADVISORY COUNCIL

March 21, 1983

Mr. James G. Keppler  
Regional Administrator, Region III  
U.S. Nuclear Regulatory Commission  
799 Roosevelt Road  
Glen Ellyn, Illinois 60137

Dear Mr. Keppler:

The members of the Environmental Advisory Council of the City of Cincinnati (the EAC) appreciate the opportunity to comment on the nomination of Torrey Pines Technology (Torrey Pines) as the organization to conduct the independent management review required by the Commissioners' November 12, 1982 Order (the Order). The EAC will also comment on the scope of the review and on an apparent attempt to evade the spirit of the Order.

The EAC has not found any evidence that Torrey Pines lacks the competence and independence necessary to conduct the management review required by the Order. However, it is still the NRC's responsibility to confirm Torrey Pines' claim that it is: (a) an organization free of significant direct ties with any past, present or foreseeable future company performing work on site; (b) an organization which has not been preconditioned by the licensee, its contractors or intervenors; (c) an organization having no interest in construction time-tables or any other incentive to take shortcuts in the review; and, (d) an organization able to base the review solely on objective, technical considerations, free of even the appearance of a conflict of interest.

In order to assure the public that Torrey Pines Technology meets the standard noted above, we ask that the NRC disclose to the public, at the March 28 meeting, the NRC's official evaluation of Torrey Pines' performance at the Palo Verde, San Onofre and Shoreham nuclear plants. We also ask that the NRC provide detailed information concerning the extent of Torrey Pines' prior dealings with the Bechtel Power Corp., the Cincinnati Gas & Electric Company and other companies which have performed significant work at Zimmer.

Mr. James G. Keppler

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March 21, 1983

Notwithstanding a demonstration of the degree of competence and independence noted, the public will find the review deficient unless, at a minimum, it: (a) addresses management's responsibility for the quality assurance breakdowns and the hardware deficiencies noted in the Order, (b) ascertains the degree and the depth of the problems by interviewing "whistle blowers" and other workers, past and present NRC personnel who have had assignments at Zimmer, members of the National Board of Boiler Pressure Vessel Inspectors and representatives of intervenors having information concerning management problems, (c) requires interviews with current and past CG & E management and current and past management of contractors and subcontractors which have worked at the site, and (d) analyzes the informal management structure which may have actually governed behavior at the site.

Further, we believe that the \$350,000.00 cost of the management review can only be justified if the review findings can serve as a basis for the construction/hardware audit which is required by the Order. For example, if a series of management errors led to the installation of piping of questionable quality in a safety system and an additional series of errors led to the loss of the exact location of the installation of the piping, it may be advisable for the construction audit to locate and test similar piping to assure that the management breakdown was not broader than originally suspected.

Finally, the delay brought about by the NRC's decision on Bechtel's role in the management review has opened the door to maneuvers which are contrary to the spirit of the Order. CG & E and Bechtel appear to be attempting to circumvent the Order by implementing a plan, designed by Bechtel, even before the management review has started.

The NRC is aware that Bechtel completed its "management review" of Zimmer in December. Media-reported statements of Bechtel officials indicate that Bechtel has already prepared a plan for reorganizing the work at the site. There is strong public suspicion that the seven tasks to be carried out by Bechtel as a "consultant", which were approved by you on March



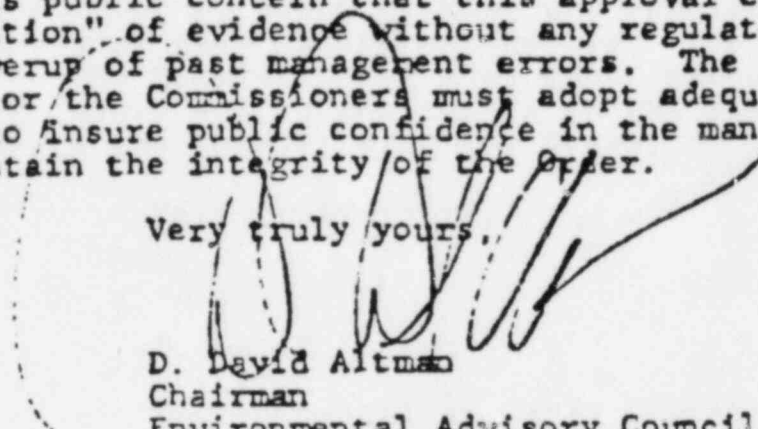
Mr. James G. Keppler

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March 21, 1983

10, 1983, are the beginning of the implementation of the Bechtel plan. Further, there is public concern that this approval could lead to the "reorganization" of evidence without any regulatory safeguard against a coverup of past management errors. The Regional Administrator or the Commissioners must adopt adequate regulatory safeguards to insure public confidence in the management review and to maintain the integrity of the Order.

Very truly yours,



D. David Altman

Chairman

Environmental Advisory Council  
City of Cincinnati

DDA:ls

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

In the matter of:

CONSUMERS POWER COMPANY  
(Midland Plant, Units 1 & 2)

Docket No.

50-329 OM  
50-330 OM

50-329 OL  
50-330 OL

Location: Midland, Michigan  
Date: May 3, 1983

Pages: 15394 to 15692

**TAYLOE ASSOCIATES**

Court Reporters  
1625 I Street, N.W. Suite 1004  
Washington, D.C. 20006  
(202) 293-3950

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3 ATOMIC SAFETY AND LICENSING BOARD

4 -----x  
5 In the Matter of: :  
6 CONSUMERS POWER COMPANY : Docket Nos. 50-329 OM  
7 (Midland Plant, Units 1 & 2) : 50-330 OM  
8 : Docket Nos. 50-329 OL  
9 : 50-330 OL  
10 -----x

11 Tuesday, May 3, 1983

12 Quality Inn Central  
13 1815 South Saginaw Road  
14 Midland, Michigan 48640

15 Evidentiary hearing in the above-entitled  
16 matter was resumed pursuant to adjournment, at 9:15 a.m.

17 BEFORE:

18 CHARLES BECHHOEFER, Esq., Chairman  
19 Administrative Judge  
20 Atomic Safety and Licensing Board

21 DR. FREDERICK P. COWAN, Member  
22 Administrative Judge  
23 Atomic Safety and Licensing Board

24 DR. JERRY HARBOUR, Member  
25 Administrative Judge  
Atomic Safety and Licensing Board

1 BY MS. SINCLAIR:

2 Q There was a further requirement in Question 3  
3 for criteria that was set for BG&E and that was to  
4 provide the acceptance criteria for this team to  
5 the Governor and to the Intervenors in that case.

6 Was any effort made to provide the acceptance  
7 criteria for this team to our state officials, our  
8 Governor or to the Intervenors?

9 A No.

10 Q Would you like to tell us why you overlooked  
11 that part of the acceptance criteria?

12 A The staff intentionally did not wish to  
13 apply this whole package that was used for the Diablo  
14 Canyon to either the Zimmer case or the Midland case.  
15 Each case is being handled on its own merits. And the  
16 only criteria that is being utilized out of this pack-  
17 age is for the competence and independent project  
18 review.

19 Q Has the Commission been made aware that you  
20 are making a selective use of their acceptance  
21 criteria for third party review?

22 MR. MILLER: I would object, I don't believe  
23 that has got any foundation in it about acceptance  
24 use of --

25 MR. PATON: I also object, unless she wants

1 to ask the witness first whether he agrees what he  
2 just testified to is selective use.

3 THE WITNESS: The Commission is aware that  
4 we are not following the Diablo Canyon in both  
5 Zimmer and Midland, yes.

6 BY MS. SINCLAIR:

7 Q Is there anything in writing about that to  
8 the Commission?

9 A The only -- not specifically, but the plan  
10 of action that was used at and is being used at  
11 Zimmer is a public document and the Commission has  
12 been provided a copy of that. We don't have a similar  
13 document at this time for Midland. We may ultimately  
14 develop one.

15 Q I think that would be useful.

16 A I guess we look at it, Mrs. Sinclair, is  
17 that each case has its own unique problems and at one  
18 point in time we were even considering that we probably  
19 would not require the same criteria for independence  
20 at all three places, but we decided it was simpler to  
21 do that right now. So, we are doing it, but the Staff  
22 feels there is a need for flexibility in treating each  
23 case on its own merits.

24 Q That the acceptance criteria for reaching  
25 the state officials and intervenors was followed at

1 Diablo Canyon which has unique problems, but don't  
2 you believe that the Midland plant has the potential  
3 for just as many severe problems because of the unique  
4 soils breakdown here as was true at Diablo Canyon,  
5 and there require just as rigorous an overview by  
6 both the staff and through public comment?

7 MR. MILLER: I'm going to object to that.  
8 I believe there is at least three questions in that  
9 one statement. I think the question --

10 BY MS. SINCLAIR:

11 Q Do you believe that -- do you agree with  
12 Inspector Gallagher that he said during the hearings  
13 here that the problems at Midland are unique and  
14 without precedent in the country?

15 A Yes, I do believe that.  
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1           Q     Based on that observation and conclusion ,  
2     don't you think that the Midland site is -- needs  
3     as thorough and critical a review of its third party  
4     assessment groups as Diablo Canyon's were?

5           A     I think that in the case of Diablo Canyon,  
6     my recollection of the process was that it was bogged  
7     down terribly bad. And Intervenors and state and NRC  
8     people and the licensee couldn't get together on  
9     any decisions. I'm a strong believer that these  
10    matters have to be reviewed. That I'm the advocate  
11    of having a third party involved in the work at  
12    Midland, and I'm not going to take that selection  
13    lightly. I believe in getting public comments and  
14    input into decisions, but input, I don't mean in  
15    the shared process of decision-making. And I intend  
16    to resist that kind of effort as long as I have  
17    this job. I just can't have a big handle in this  
18    section making decisions. None get made that way.  
19    And so that is my viewpoint on the subject.

20          Q     Now, to what extent is this attitude of  
21    yours a leading factor in why you overruled your  
22    staff as far as shutting down the plant?

23          A     That is a ridiculous statement.

24               MR. MILLER: Yes. I object. There's no  
25    testimony in the record about Mr. Keppler overruling

1 anybody.

2 CHAIRMAN BECHHOEFER: That is correct.  
3 There is plenty of testimony about staff votes and  
4 that kind of thing. I think the record will  
5 establish that Mr. Keppler followed the recommendation  
6 at least, with the majority of his staff.

7 MR. PATON: May I require of the reporter?  
8 Did you get Mr. Keppler's response?

9 THE REPORTER: Yes.

10 MR. PATON: Thank you.  
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1 BY MS. SINCLAIR:

2 Q My question was, should there be as rigorous  
3 a criteria for third party review at Midland as there  
4 was for Diablo Canyon on the basis of the fact that  
5 you agreed that the problems at Midland are without  
6 precedent in the country, especially in soils?

7 MR. MILLER: The question is asked, I think,  
8 somewhat vague. I think the witness has testified  
9 that the same criterias are in place and perhaps what  
10 Mrs. Sinclair is asking is the application of the  
11 criteria. The questioning, at least to me, would  
12 make some sense. But as stated, I think it has very  
13 little foundation in the record.

14 MS. BERNABEI: I would note two things, the  
15 testimony of Mr. Keppler is that two criterias were  
16 considered, not the whole Diablo package. And I think what  
17 Mrs. Sinclair is asking is whether all criterias, that  
18 is the criteria applied at Diablo, should be applied to  
19 Midland.

20 MR. MILLER: Miss Bernabei and I are in  
21 agreement that it's the application criteria rather  
22 than criteria.

23 MS. BERNABEI: He did say that at least two  
24 of the criterias was not considered at all?

25 THE WITNESS: No, I didn't say that. They

1 asked the question whether or not the results of our  
2 review had been provided to the Governor of Michigan  
3 and the Joint Intervenors for comments. That is part  
4 of a response to one of the questions in the response  
5 to Congressman Dingell and Ottinger. The staff--  
6 let me try to just clarify a point. And you will have  
7 to forgive me, because I'm not really that familiar  
8 with the details of Diablo Canyon. But my understand-  
9 ing was that at least initially much of this involve-  
10 ment with the State of California resulted from  
11 Governor Brown's heavy involvement with Diablo Canyon  
12 and that I believe they were an Intervenor in the  
13 proceedings.

14 Our Attorney General is too.

15 MR. MILLER: Who hasn't seen fit to show up  
16 for one session.

17 THE WITNESS: And the Staff and the Agency,  
18 anyway, chose to involve the state the way they did.  
19 Again, I'm aware that major problems were encountered  
20 in trying to have multiple groups involved in the  
21 decision making, and ultimately the staff had to,  
22 I believe, appointed the third party, but that didn't  
23 really evolve from everybody trying to get together.

24 BY MS. SINCLAIR:

25 Q I think that is a question I raised earlier

MORRIS K. UDALL, ARIZ., CHAIRMAN

PHILIP BURTON, CALIF.  
 ABRAHAM KAZIN, JR., TEX.  
 JOHN F. SEIBERLING, OHIO  
 ANTONIO BORJA WON PAT, GUAM  
 JAMES WEAVER, OREG.  
 JAMES J. FLORIO, N.J.  
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## COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515

STANLEY SCOVILLE  
STAFF DIRECTOR  
AND COUNSEL

ROY JONES  
ASSOCIATE STAFF DIRECTOR

LEE MC ELVAIN  
GENERAL COUNSEL

TIMOTHY W. GLIDDEN  
REPUBLICAN COUNSEL

May 18, 1983

Exhibit 13

The Honorable Nunzio Palladino  
Chairman  
United States Nuclear Regulatory Commission  
Washington, D. C. 20555

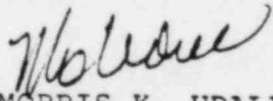
Dear Mr. Chairman:

I am writing in regard to your April 14, 1983 response to my letter of December 7, 1982 and the letter of March 2, 1983 signed by Mr. Seiberling and me. Both letters related to the Inspector and Auditor's handling of information acquired in the course of his Zimmer inquiry.

I want to inform you that I am not satisfied with the Commission's handling of this matter. The Commission appears to have resorted to tortured logic to rationalize a position that it was insignificant that neither it nor the public were provided information that would have shed light on the true status of the Zimmer project. The lack of this information was a major contributor to the delay in recognizing that a stronger regulatory remedy was required than the action taken in November 1981.

I do not intend to engage in a protracted debate on this matter. I have taken note of your reference to the lawsuit -- Applegate v. NRC, D.D.C. No. 82-1829. I think it unfortunate that the controversy must now be resolved by the courts, but at this point I believe that is where lies the best hope for a full airing.

Sincerely,

  
MORRIS K. UDALL  
Chairman

# CG&E Won't Take Part In Hearings

BY CAMILLA WARRICK  
Enquirer Reporter

Cincinnati Gas & Electric Co. won't play a part in a series of public hearings on the safety of Zimmer Nuclear Power Plant.

Although its participation was pursued by organizers in the city's Environmental Advisory Council (EAC), the utility announced Wednesday that it's not coming because the meetings, "which will include appearances by groups unalterably opposed to Zimmer station and nuclear power, will serve no useful purpose."

Company spokesman David Altemuehle said, "There doesn't

seem to be any point at all to get back in an arena with intervenors who are more than happy to sing their song against Zimmer."

EAC chairman D. David Altman said, "We're very disappointed that they're not going to show up, especially since the Nuclear Regulatory Commission has seen fit to make a trip into town."

ALTMAN SAID he learned of CG&E's decision in a telephone conversation Wednesday morning with company President William Dickhoner, whom he described as being "very, very co-operative" in a series of conversations about the hearings.

"He said he agonized over the decision, but checked with local and national public-relations firms who told them not to appear," Altman said. "It's sad that this is being presented as a PR (public-relations) issue."

(See ZIMMER, Page B-2)

## ZIMMER

CONTINUED FROM PAGE B-1

In his initial announcement of the hearings, Altman had said all parties concerned with the plant's adequacy would be invited and stressed that the meetings will be conducted in a "calm, rational and dignified setting."

He said the EAC, an advisory body for Cincinnati City Council, wanted a "simplified" public forum that would allow local residents to learn more about the plant and have many of their questions answered.

ALTMAN ARGUED that recent congressional hearings in Washington and the utility's licensing hearings, which were formal and "highly technical," did not satisfy a local need for more information.

But CG&E said its participation in the hearings "would set a precedent whereby any group could decide to convene a public meeting on any subject and expect CG&E to participate, even though the group would have no expertise, authority or jurisdiction in the matter."

Altman admitted he was stung by that comment because "it ignores our track record and the background of the organization. They have no idea of the huge amount of time we've put into these hearings."

Within days of issuing its Aug. 10 invitation, the EAC received confirmation that James Keppler, head of the NRC's Region III in Chicago, would come to Cincinnati for one session.

Among others who agreed to participate were City Councilman Guy Guckenberger and representatives of the Government Accountability Project (GAP), which represents the Miami Valley Power Project, one of the chief intervenors in the licensing process.

The hearings in city council chambers will begin at 7 p.m. Thursday, Sept. 9 and will run for three consecutive Thursdays. Keppler is tentatively scheduled for the Sept. 23 meeting.

IN ANOTHER matter relating to Zimmer, the NRC's Atomic Safety and Licensing Board on Tuesday decided that when members of NRC's Office of Nuclear Reactor Regulation are satisfied that the plant has been completed according to specifications, they can issue CG&E a fuel-loading and low-power testing license.

*City Enq 8/26/82*



U.S. HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT  
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Oversight Hearing on the Nuclear Regulatory Commission's  
Budget Request for Fiscal Years 1984 and 1985

STATEMENT OF THE HON. MORRIS K. UDALL

Tuesday, February 22, 1983

INTRODUCTION

The purpose of this hearing is to receive testimony on the Nuclear Regulatory Commission's authorization request for fiscal years 1984 and 1985.

As I have in the past few years, let me begin by sharing a few of my own thoughts on the present state of the nuclear regulatory process and the NRC.

PUBLIC CONFIDENCE IN NUCLEAR POWER

I have remarked before that I had once hoped that a consensus might develop as to the role of nuclear power in our economy. I thought the strong proponents of the nuclear enterprise might agree to placing breeders and reprocessing on the back burner. I thought the opponents might accept the presence of a limited number of light water reactors. I had hoped that people on all sides would agree that our first priority should be the safe and reliable operation of the light water reactors to which we were already committed.

It has been apparent for some years that, except in the area of nuclear waste, the hoped for consensus has not developed. | Nuclear proponents have not diminished their push for reprocessing and breeders. And on the other side there appears to be growing opposition even to reactor projects which are either operating and nearing completion.

In at least six instances, we are seeing manifestations of lack of confidence in the nuclear technology, in nuclear utilities, and in the NRC itself. Suffolk County on Long Island has committed \$3 million of public funds for the purpose of intervening in the Shoreham proceeding. Citizens in the vicinity of the two Indian Point reactors (thirty miles north of New York) are calling for the shutdown of these plants. In a referendum taken last May in three counties surrounding Three Mile Island a 2 to 1 majority voted against restart of the undamaged reactor. At Zimmer in Ohio and Midland in Michigan the NRC and owner utilities have been strongly criticized for having allowed a breakdown in quality assurance. Many citizens living near Diablo Canyon in California have lost faith in the process that is supposed to assure the safety of nuclear plants; the result has been that they have repeatedly turned to the Congress to impress upon you the need for stringent enforcement of your regulations.

I hope the Commission is attempting to understand what people out there are saying because while it is true that reactors cannot be licensed on the basis of public opinion polls, it is simply a fact that nuclear will have no future in the absence of substantially increased confidence in the technology and those responsible for managing it. I want to take this opportunity to share with you some of the specifics of the concerns that have been brought to our attention. I would hope that you will reflect upon these and perhaps learn lessons from them that might be applied in the future.

First is the fact that many participants in the NRC's licensing proceedings believe their contentions do not receive a fair hearing; that what they say matters little; and that the outcome is preordained. I think it would be useful to compile and respond to the specific criticisms of the process voiced by the various parties in proceedings such as Shoreham, TMI-1 restart, Diablo Canyon, Comanche Peak, Zimmer and Midland.

In the case of Zimmer, for example, there has long been a feeling that the seriousness of the situation was not directly confronted. The plant reached 97% completion without the staff, or the ACRS or the Licensing Board recognizing that in significant respects it could not be determined whether the plant complied

with the Commission's regulations. Had it not been for whistleblowers and outside organizations, Zimmer might now be operating. In view of the breakdown in quality assurance and the system that was supposed to detect such failings, it seems to me that the Commission has a particular responsibility as it considers proposals affecting Zimmer's future. I think it important that your Zimmer policies be established and carried out in a manner that creates public confidence that the plant will not be allowed to operate until such time that you yourselves have determined the plant to be in substantial compliance with your regulations. A positive step in this regard would be to reexamine the basis for rejection of your staff's recommendation that the Zimmer hearing be reopened.

I think another item worth reflecting upon is your having declined to review the findings of the Appeal Board concerning the earthquake motion used as the basis for the Diablo Canyon design. Since the assumptions upon which the earthquake design was based were a focus of much of the Diablo controversy, your having declined to review the Appeal Board's decision is puzzling. This refusal, I suspect, creates the suspicion that you were reluctant to confront the possibility of finding the earthquake design to be deficient.

Having made those general comments, I would like to make some more specific observations about the budget request which is the subject of this hearing.

CLEAN AUTHORIZATION

The purpose of the authorization process is to enable the Congress to give careful and focused attention to proposed expenditures of Federal taxpayer's dollars. Given the disastrous condition of our nation's economy, and that nearly \$200 billion is proposed to be added to the Federal deficit in FY 1984, the fulfillment of this congressional responsibility must not be treated lightly.

I intend to have the Interior Committee develop a familiarity with the details of the NRC budget; make informed recommendations to the Budget Committee by the March 15th deadline; report a clean bill to the House before Easter; and, urge final House action before Memorial Day.

If my friends on other House Committees and in the Senate are willing to stick to this schedule, we will have authorizing legislation in place to provide guidance to the Appropriations committees and the NRC before the end of the current fiscal year. Clearly, this schedule will provide ample time beginning later this spring to give close attention to separate nuclear policy initiatives such as licensing reform and Price Anderson.

"SHOLLY AMENDMENT"

Let me say a few words about your plans to implement the so-called "Sholly" provision which gives NRC new authority to approve license amendments in advance of public hearings when no significant hazards consideration exists. I am troubled by reports I have heard that some on the NRC staff believe this authority might be used to approve steam generator repairs at Three Mile Island Unit-1. Congress enacted the Sholly provision so that NRC could redirect its attention and resources away from trivial matters, and concentrate instead on matters of great public concern and safety significance such as TMI-1 steam generator repair work. Any use of this authority to approve an issue related to TMI-1 restart would fly in the face of congressional intent.



"BINGHAM" AMENDMENT

You might recall a provision in the 1980 NRC Authorization Act that was offered as an amendment by our former colleague, Congressman Jonathan Bingham. The Commission was asked to spend a modest sum of money, take a few months to audit NRC files, and report back to Congress on the extent to which operating reactors meet current key safety regulations. The NRC response was to combine the Bingham study with other ongoing reviews into a multimillion dollar bureaucratic exercise that will not give final answers about the safety of today's operating plants until sometime in the 1990's.

This issue has come to mind again. I notice in the NRC budget book that ten "NREP" reviews (i.e., National Reliability Evaluation Program) are expected to be completed per year beginning in FY 1985. These reviews are the final step in the Commission's response to the Bingham amendment. This means that if 100 reactors are in operation by the end of 1985, NRC's evaluation will not be finished until the end of 1995. I have trouble comprehending the practical value of such a program. As an original supporter of the Bingham amendment, I urge the Commission to go back and reconsider the usefulness of a "quick and dirty" look to complement your long-term reviews.

NUCLEAR DATA LINK

Last year the Congress rejected NRC's request for a fully funded Nuclear Data Link program. I led the fight to cut those funds because I felt some basic questions regarding the Commission's

role during a reactor accident should be answered before a commitment was made to unnecessarily complex hardware. Those questions (which were spelled out in the NRC Authorization Act) still have not been answered, and yet, the new budget request asks for five million dollars for this program. I continue to doubt the wisdom of this expenditure, and will pursue this matter further as we review your proposed authorizing legislation.

#### QA PILOT PROGRAM

Another subject of interest to me is the NRC's plans to implement the Ford Amendment to the FY 82-83 Authorization Act. This provision called for a pilot program to study existing and alternative means for improving quality assurance and quality control in the construction of nuclear plants. It is my understanding that the Commission is considering a proposal that this study be "folded" together with the staff's ongoing "Long-Term Review." On its face, this approach sound similar to the way NRC responded to the Bingham Amendment to the FY '80 Act which I discussed a moment ago. I look forward to a status report on the Ford Amendment.

#### SAFETY GOAL

I know the Commission has been hard at work on development of a safety goal. In view of the controversy over this matter, I would like to want to say where I stand on it.

For some years I have supported the principle of having a safety goal that would help with judgements as to when a reactor was safe enough. I believe, however, that a safety goal would not serve a useful purpose if the validity of the goal itself became a focus of controversy.

I have taken note of the critical comments concerning the safety goal made to the Commission by the ACRS. And I am concerned that the Commission may have authorized the use of Probabilistic Risk Assessment (PRA) techniques for purposes where the validity of such techniques is questionable.

In sum, I hope that you will consider carefully whether the proposed safety goal will create more issues than it resolves.

#### Clinch River, Reprocessing and Licensing Reform

I have said before that I think the Commission's top priority must be the safety of operating reactors. In view of the uncertain prognosis of several reactor projects, I believe time expended upon such matters as Clinch River, reprocessing and licensing reform to be an unfortunate diversion of resources from more useful activities.

I am aware that the Commission majority and some of my friends in the industry do not share my skepticism regarding the need for licensing legislation. I have therefore agreed to hold hearings on the proposals that you send to us.

As to the question of reprocessing, I simply see no need for it for the foreseeable future. It makes no sense to me that the Administration advocates reprocessing at the same time the uranium industry is pressing us to restrict uranium imports. I would like you to submit the for the record information indicating the Commission's proposed expenditures in FY 84 and 85 NRC funds that would be expended upon activities related to reprocessing of spent fuel.

I recognize that you must expend efforts on Clinch River as long as the Congress appropriates funds for that project. I would hope, however, that this year we will be able to muster the votes to terminate it. I believe, however, that as long as the project continues, it should not be exempt from requirements that pertain to water reactors. To grant exemptions defeats the rationale that we should proceed with the project to demonstrate the licensability of a plutonium breeder reactor.

There may be a time in the future when breeders, reprocessing and licensing reform are deserving of attention. But that time is not now. These matters will be worth addressing only if our existing reactors show themselves to be safe and reliable. It will be unfortunate if preoccupation with Clinch River, reprocessing and licensing reform deflects our focus from light water reactor safety with the result that accidents occur because we were looking elsewhere.

#### NRC BUILDING CONSOLIDATION

Finally, let me mention a problem on which the Commission and this Committee have worked together for many years: NRC building consolidation. A significant step was taken last December when the Congress authorized funds for an interim consolidation. Unfortunately, nothing has happened since. I intend to continue to help the Commission find a solution to this intolerable situation, and welcome any suggestions you have as to how this Committee can assist your efforts.

GPU LITIGATION

I want to comment here on the TMI related litigation involving the \$4 billion claim of General Public Utilities (GPU) against the Babcock and Wilcox (B&W) Company. In the course of the New York trial of this lawsuit, GPU asserted that B&W's failure to provide certain information to GPU was a "frightening episode of corporate misconduct" which caused "horrendous damage" and created "unthinkable risks to human life." B&W said that GPU was "guilty of ... reckless<sup>ness</sup> and in fact engaged in certain respects in deliberate, willful and wanton misconduct." These are serious charges. I would hope your staff is carefully analyzing the record of the New York proceeding. It is important to determine, among other things, whether the record contains information bearing on the question of GPU's meeting the competence and character requirements of a holder of a reactor Operating License. It appears also that significant new information has emerged from the trial. I think it important that you determine why this information was not addressed in your own inquiries into the accident. I am particularly interested as to whether information was improperly withheld from the various investigators.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Mr. John H. Frye III  
Judge Stanley M. Livingston  
Dr. Frank F. Hooper

In the Matter of :  
: CINCINNATI GAS AND ELECTRIC :  
COMPANY, ET AL, : DOCKET NO. 50-358  
(William H. Zimmer Nuclear :  
Power Station) :  
:

CERTIFICATE OF SERVICE

I hereby certify that copies of MVPP's Motion to Reopen the  
Record for Admission of Eight Contentions on Quality Assurance and  
Character and Competence with exhibits in the above-captioned proceed-  
ing have been served on the following persons by posting the same  
in the U.S. Mails, postage prepaid, this 3rd day of June  
1983 .

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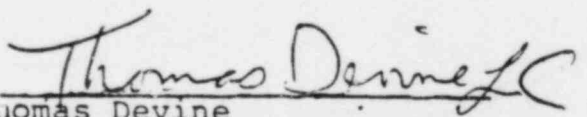
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# GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

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TO: The Atomic Safety and Licensing Board  
FR: Louis Clark, Executive Director  
RE: In the matter of Cincinnati Gas and Electric Co., et al., and  
MVPP's Motion to Reopen the Record for Admission of Eight  
Contentions on Quality Assurance and Character and Competence  
DT: June 3, 1983

In support of its Motion to Reopen the Record, dated June 3, 1983, MVPP, through its Counsel at the Government Accountability Project, submits the following items previously submitted in proceedings at the Nuclear Regulatory Commission.

<u>Submission</u>	<u>Date Filed</u>
Motion for Leave to File New Contentions ("May 18 Motion").....	5/18/82
Reply to Applicants' and Staffs' Responses to MVPP's Motion for Leave to File New Contentions ("July 8 Reply").....	7/8/82
Motion for Protective Order ("July 8 Motion")....	7/8/82
Motion to Strike Applicants' Answer to Intervenor's Motion for Protective Order ("July 26 Motion").....	7/26/82
Petition for Reconsideration of Commission's Order of July 30, 1982 ("August 6 Petition")..	8/6/82
Petition for Reconsideration of the Commission's Order of July 30, 1982 ("August 20 Petition for Reconsideration").....	8/20/82
Petition to Suspend Construction of the Zimmer Station ("August 20 Petition to Suspend Construction").....	8/20/82
Reply to NRC Staff and Applicant Responses to MVPP's Petition for Reconsideration ("October 11 Reply").....	10/11/82
Motion for Leave to File Reply Brief to Applicants and NRC Staff Responses to MVPP's Petition for Reconsideration ("October 11 Motion").....	10/11/82
Supplement to MVPP August 20 Petition to Suspend Construction of the Zimmer Station ("October 18 Supplement").....	10/18/82
Notice of Correction to Intervenor MVPP's Petition for Reconsideration ("November 3 Notice of Correction").....	11/3/82
Opposition to Applicants' Motion to Strike MVPP's Reply Brief ("November 10 Opposition").	11/10/82

LIST OF PREVIOUS MVPP SUBMISSIONS FILED WITH THE NRC ON 6/3/83

Response in Support of Zimmer Area Citizens-  
Zimmer Area Citizens of Kentucky and the City  
of Mentor Petition for Appointment of a Con-  
sultant to Monitor Third Party Audit and  
Petition to Establish a Detailed Structure  
for Public Participation Throughout the Audit  
("November 30 Response and Petition")..... 11/30/82  
Supplemental Memorandum in Support of MVPP's  
Petition for Reconsideration of Commission  
Order of July 30, 1982 ("December 14 Supple-  
mental Memorandum")..... 12/14/82  
January 31, 1983 Letter to Nunzio J. Palladino,  
NRC Chairman, from Lynne Bernabei and Thomas  
Devine, Government Accountability Project..... 1/31/83