UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANTS' ANSWER TO MOTION BY MIAMI VALLEY POWER PROJECT FOR LEAVE TO FILE NEW CONTENTIONS

Preliminary Statement

On May 18, 1982, Miami Valley Power Project ("MVPP") moved for the admission of eight new contentions and for the reopening of this proceeding to further consider alleged quality assurance deficiencies in the construction of the Zimmer Station. The motion resurrects old matters, presents no new information and constitutes a serious disregard of the licensing procedures under the rules of the Nuclear Regulatory Commission ("NRC" or "Commission"). MVPP misrepresents the actions and positions of the NRC Staff in resolving the quality assurance matters it is presently reviewing. It also ignores the independent duties of the Staff under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. ("the Act"), for review of uncontested health and safety matters at the operating license stage. The motion is obviously timed to produce the greatest

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possible adverse impact upon the timely issuance of an operating license and thereby deny Applicants their right under the Act to a fair and timely processing of the application for an operating license for Zimmer.

It must be noted that the time for filing contentions long since passed more than seven years ago; nothing has been put forth which would justify the extreme lateness of this motion. This most recent initiative by MVPP to substitute, in effect, the Government Accountability Project ("GAP") for itself by yet another in the series of changes in counsel constitutes a blatant example of "passing the baton" not permitted by the Commission's rules. Regardless of whether MVPP is technically "owned" by CARE, variously known as the Cincinnati Alliance for Responsible Energy and Citizens Against a Radioactive Environment, [1] it is clear that the motion is merely a vehicle for GAP to launch yet another unwarranted attack against the Zimmer quality assurance program in its efforts to delay the plant.

In this regard, MVPP asserts that it can make a "unique contribution" [2] on the basis of GAP's involvement. To the contrary, MVPP's submittal clearly indicates otherwise. Indeed, the only factual support for the new proposed

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1/ In a press release dated May 18, 1982 (copy attached), MVPP states that "it is a wholly-owned subsidiary of CARE." As the Board may be aware, this motion is just one more step in an orchestrated campaign by CARE and GAP against the Zimmer Station.

2/ MVPP Motion at 26.

contentions is derived from an Investigation Report prepared by the Office of Inspection and Enforcement in conjunction with the Notice of Violation served by letter dated November 24, 1981. While MVPP promises much in the way of new documents, affidavits and witnesses, the motion fails to include any such documents or testimony. Accordingly, no matter is contained in the motion which has not already been fully reviewed by the NRC, not only as part of its routine inspection program, but also as a result of its investigation, inter alia, of the now refuted charges made by GAP to the NRC at an earlier time. 3/ The means of resolving pending matters is described in the Applicants' Answer to the Notice of Violation and in the Quality Confirmation Program described below.

As a result of its investigation, the NRC by an Immediate Action Letter dated April 8, 1981 required improvements in quality assurance at Zimmer, which have been implemented by way of Applicants' Quality Confirmation Program. These new efforts have also addressed the items contained in the Notice of Violation. The NRC has confirmed the success of these undertakings in a letter originated by Region III from William J. Dircks, Executive Director for Operations, to Senator Walter D. Huddleston, dated January

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3/ See Investigation Report 50-358/81-13 at Section 5. Of the multitude of allegations made by GAP, the NRC found only one to be of substance.

27, 1982, regarding these corrective actions, which stated in part:

> Last April the NRC required Cincinnati Gas and Electric Company to substantially upgrade its quality assurance program in order for construction work to continue. The improvements included a significant expansion of the utility's quality assurance staff, more detailed inspection procedures, retraining of quality control personnel and -- most importantly -- a 100 percent duplication by Cincinnati Gas and Electric Company of subsequent safety related quality control inspections performed by site contractors. These actions provided assurances, in our view, that ongoing construction activities would be adequately controlled.
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> . . . . We are satisfied that the quality confirmation program, monitored by the NRC, and other augmented NRC inspection activities will provide a full and adequate evaluation of the Zimmer construction.

Thus, even if quality assurance deficiencies existed, corrective actions necessary to meet NRC requirements have rendered these matters moot.

The time has come to concentrate on the completion of the Quality Confirmation Program by the Applicants and the NRC's completion of its inspection and enforcement effort regarding the Zimmer Station. To divert resources to the conduct of legal proceedings to review these items anew would be contrary to specific Commission policy. MVPP's instant motion to rehash settled matters should be rejected as a belated tactic to delay licensing which does not, for the reasons discussed below, satisfy the requirements for

the reopening of a proceeding and the submission of late contentions. Moreover, even if a hearing on such issues were held, the result would only lead to having the Staff assure that all quality assurance requirements had been met - the exact posture which exists at present.

I. MVPP IS NO LONGER VIABLE AND THE MOTION IS AN ATTEMPT TO IMPROPERLY SUBSTITUTE A NEW PARTY

The pleadings and other statements made with regard to the sponsorship of the eight newly proffered contentions raise serious questions as to the actual party in interest in the moving papers. Applicants submit that it is now clear that the group admitted as an intervenor by the Licensing Board in 1976 is not, in reality, the one pursuing these new contentions. A new entity, which is a legal stranger to the proceeding, has arrived to take the baton from previous entities which have participated in various prior stages of this proceeding, albeit under the same name. In conjunction with the filing of these contentions, a press release was issued on May 18, 1982 by CARE (copy attached) and, in particular, Tom Carpenter, identified as a member of the "CARE staff." In this press release, the Miami Valley Power Project is stated to be "a wholly owned subsidiary of the Cincinnati Alliance for Responsible Energy (CARE)," a new piece to the puzzle which was previously unknown to Applicants and undisclosed on the record. In the same press release, it is stated that CARE has retained GAP in

Washington, D.C. as legal counsel for the hearings. The press release then outlines GAP's wholly separate involvement on its own with regard to the Zimmer Station.

As the original entrant into this proceeding, MVPP was an organization centered in Dayton, Ohio some 60 miles from the Zimmer Station whose members' interest in this proceeding, as determined by the Licensing Board, was solely that of customers and ratepayers of Dayton Power & Light Company. 4/ However, all evidence points to the fact that this original entity ceased to be viable. Certainly, the newly proferred contentions bear no relationship to the interest of MVPP members as ratepayers of the Dayton Power & Light Company. 5/ GAP has now stepped in to wear the mantle of the demised intervenor because it could not independently satisfy the NRC's requirements for a demonstration of interest.

Sometime in 1979, there was a complete turnover in the organization from the original group, changing to one whose membership and officers lived in or near Cincinnati. Applicants are not aware of any of the original members or principals who still retain their affiliation. Apparently

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4/ "Order Granting Petitions for Intervention and Providing for Hearing" (March 19, 1976)(slip op. at 18).

5/ It should be noted that all contentions raised by MVPP at that time related either to "need-for-power," fuel supply, or financial qualifications, all of which are economic issues.

sometime after this second metamorphosis, the organization was gobbled up by CARE and GAP. Aside from its participation in this hearing, Applicants are unaware of any activity carried on in the name of MVPP.

While under the guise of continuity by retaining the same name, MVPP is in actuality a mere facade, used and then discarded by succeeding self-appointed groups as a surrogate to show technical compliance with the Commission's interest requirement for intervenors. MVPP has gone through so many metamorphoses as to be unrecognizable as the original legal entity the Board granted intervenor status in this proceeding. 6/

For the first time, through the press release, the Board and parties now learn that MVPP is a wholly owned subsidiary of CARE. Neither the petition filed by MVPP on October 28, 1975 nor, to our knowledge, any subsequent pleading identifies the organization as a subsidiary of CARE or state any other relationship with it. Nor is any mention made of the existence of stock or any other interest "owned" by anyone. Certainly, the avowed purposes of the original MVPP are wholly different from those of GAP and CARE. These facts could have been significant in the Licensing Board's action on previous efforts by the Applicants to determine

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6/ MVPP has been dilatory in its cooperation in discovery matters and resisted repeated efforts to speed up or simplify the hearing issues.

whether the original MVPP had any continuing existence. In ruling on a request for discovery to probe the interest of MVPP, the Board stated:

> [T]here is a difference between the situation (1) where one organization replaces another and (2) where an organization's membership changes. "People join. People leave." But an organization may nevertheless continue to exist. Clearly, that circumstance is not equivalent to the replacement of one organization in a proceeding with another, entirely disparate organization. 7/

Had the Board been aware that an entirely disparate organization had taken over MVPP, the original entrant in this proceeding, its ruling on the motion might well have been different. However, by the silence of the attorneys and other spokesmen for MVPP, relevant information was kept from the Board and parties. To this very moment, MVPP has failed to notify this Board of its absorption by CARE.

For each new issue which some group seeks to raise concerning the Zimmer station, the name of MVPP is taken over like a hermit crab utilizes an empty shell for its home to be abandoned when outgrown and taken up by another. In 1979, the Cincinnati Alliance for Responsible Energy (which, as Applicants understand, was and still is the Citizens Against a Radioactive Environment) apparently took over the

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7/ "Memorandum and Order Concerning Discovery Motions" (April 17, 1979)(slip op. at 2).

MVPP name to raise new issues. From all information available to Applicants, the membership has apparently changed completely and the organization is now based entirely in Cincinnati instead of Dayton. Its surreptitious takeover is an obvious attempt to avoid the need for compliance with the Commission's regulations for new petitioners to file late petitions to intervene.

The Applicants submit that, in fact, what the Board has before it is not a single entity with continuing existence, but a series of new intervenors attempting to subvert the intervention requirements of the Commission in 10 C.F.R. §2.714 and flit in and out of the proceeding at will. The Commission has consistently prohibited the entry of such new entities in this manner, particularly where substitution of a party is sought at the final hour.

In Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 795-98 (1977), the Atomic Safety and Licensing Appeal Board rejected an attempt by one intervenor to substitute itself for an existing party even though that new intervenor was willing to take the case as it found it. The Appeal Board established the applicable standard:

> Also pertinent is the observation of the District of Columbia Circuit in the course of its affirmance of a Commission order which had denied a late intervention petition:

> We do not find in statute or case law any ground for accepting the premise that proceedings before administrative agencies are to be constituted as endurance contests modeled after relay races in which the baton or proceeding is passed on successively from one legally exhausted contestant to a newly arriving legal stranger. . . Easton Utilities Commission v. AEC, 424 F.2d 847, 852 (1970) [Emphasis added.]

Moreover, in Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979), the Appeal Board stated that the fact that an organization was newly formed would not justify late intervention:

> If newly acquired standing (or organizational existence) were sufficient of itself to justify permitting belated intervention, the necessary consequence would be that the parties to the proceeding would never be determined with certainty until the final curtain fell. Assuredly, no adjudicatory process could be conducted in an orderly and expeditious manner if subjected to such a handicap.

This question does not come before this Licensing Board on a clean slate. The Applicants previously moved to determine the status of the Miami Valley Power Project in this proceeding and thereafter requested the Licensing Board to dismiss this entity as a party. 8/ While the Board at

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8/ "Motion to Require Response to Interrogatories" (March 8, 1979).

that time held that such action was not warranted, 9/ Applicants believe that, as discussed above, the Board's decision was significantly affected by the lack of candor of MVPP's representatives. The de facto substitution of a new party and continuing failure of MVPP to inform it of the fundamental changes in the organization alone warrant the Board's rejection of these new contentions.

It is submitted that the new contentions should be denied based upon the conduct of the intervenor and the fact that the new entrant into the proceeding has failed to justify its lateness and its interest in accordance with the NRC regulations. 10/

II. The New Contentions Should Be Rejected As Untimely.

Even if the Board should determine that MVPP has continuing vitality, the motion should be denied because it does not pass muster under the test for late contentions. Any intervenor who seeks the admission of contentions beyond the time specified in 10 C.F.R. §2.714(b) must satisfy the requirements for late intervention set forth in 10 C.F.R.

9/ See note 7, supra.

10/ GAP's professed interest in quality assurance does not give rise to standing under 10 C.F.R. §2.714. Westinghouse Electric Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980). No "distinct and palpable harm" to GAP has been shown. Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

§2.714(a)(1)(i-v). In this particular proceeding, the last day for filing contentions with a petition to intervene pursuant to the Notice of Hearing, dated September 24, 1975 was October 24, 1975. 11/ MVPP contends that subsequent events justify the filing of late contentions at this time. However, as discussed more fully below, the developments upon which MVPP relies in submitting late contentions on quality assurance occurred long ago, and information concerning this matter has either been of public record or could have been developed at a much earlier time. No good cause has been shown by MVPP for waiting until the end of the hearings and the closing of the record to file its new contentions, nor has MVPP otherwise satisfied the Commission's requirements for admitting late contentions.

1. No "good cause" has been shown for MVPP's lateness. The decisions of the Appeal Board stress that timely compliance with the rules is ordinarily required for the acceptance of proposed contentions and that late contentions may not be admitted without a strong showing of good cause. 12/ As the Appeal Board explained in the Three Mile Island proceeding:

> 10 C.F.R. §2.714(a) expressly provides that nontimely intervention petitions

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11/ See 40 Fed. Reg. 43959 (September 24, 1975).

12/ The Statements of Consideration for 10 C.F.R. §2.714 confirm that the same rules apply for considering late contentions as for late petitions seeking intervention. See 43 Fed. Reg. 17798, 17799 (May 26, 1978).

> "will not be entertained" absent a determination by the Licensing Board "that the petitioner has made a substantial showing of good cause for failure to file on time." As construed by the Commission in its West Valley decision two years ago [Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975)], . . . "[l]ate petitioners properly have a substantial burden in justifying their tardiness. And the burden of justifying intervention on the basis of the other factors in the rule is considerably greater where the latecomer has no good excuse." West Valley, 1 NRC at 275. 13/

More recently, the Appeal Board in Perkins ruled that a late petitioner must "affirmatively demonstrate" such good cause. 14/ In Midland, the Appeal Board sustained the denial of a petition for intervention where contentions had been filed two weeks late. The Appeal Board noted that petitioner had "offered no coherent or plausible excuse for the delay and thus has failed to establish the requisite 'good cause' and other factors set forth in 10 C.F.R. §2.714." 15/

13/ Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 615 (1977) (footnotes omitted) (emphasis added). This statement of the rule was reiterated by the Appeal Board subsequently in Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 643 (1977) and Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977).

14/ Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980).

15/ Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-624, 12 NRC 680, 682 (1980). It is significant

(Footnote 15/ continued on next page)

In reversing the grant of an untimely petition for intervention, the Appeal Board in Summer found that the adoption of post-TMI requirements on August 19, 1980 did not justify petitioner's waiting until March 1981 to file its petition. The Appeal Board summarized the destructive impact of the anticipated delay caused by the late intervention as follows:

> [Prior to the filing of the late petition], the applicants and the staff had every right to assume that both the issues to be litigated and the participants had been established with finality. Simple fairness to them - to say nothing of the public interest requirement that NRC licensing proceedings be conducted in an orderly fashion - demanded that the Board be very chary in allowing one who had slept on its rights to inject itself and new claims into the case as last-minute trial preparations were underway.
> . . . . . .

15/ (continued)

that the Appeal Board applied this exacting standard to a pro se petitioner. A party which has been admitted to the proceeding and is represented by counsel obviously bears an even greater burden to explain its lateness. It also bears mention that the "good cause" determination "depends wholly upon the substantiality of the reasons assigned for not having filed at an earlier date," and not the alleged significance of the subject matter. South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981)(emphasis in original), aff'd sub nom. without opin., Fairfield United Action v. NRC, No. 81-2042 (D.C. Cir., April 28, 1982). This principle was reaffirmed by the Appeal Board in Cleveland Electric Illuminating Company, (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675 (May 17, 1982)(slip op. at 14 n.9).

> By instead remaining on the sidelines while the proceeding moved closer and closer to trial, it voluntarily assumed the precise risk which has now materialized: that its participation in the proceeding could no longer be sanctioned without destructive damage to both the rights of other parties and the integrity of the adjudicatory process itself. 16/

Obviously, the rationale of the Appeal Board is even more compelling where the hearing is not merely imminent but completed.

Strict observance of filing deadlines is also mandated by the Commissioner's Statement of Policy on Conduct of Licensing Proceedings, 17/ which expresses the Commission's direction that all reasonable measures should be taken to expedite the conclusion of hearings on reactor operating licenses. The Commission specified that licensing boards "are encouraged to expedite the hearing process by using those management methods already contained in Part 2 of the Commission's Rules and Regulations" and added that its "reemphasis of the use of such tools is intended to reduce the time for completing licensing proceedings." 18/

16/ Summer, supra, ALAB-642, 13 NRC at 886, 895.

17/ Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981).

18/ Id. at 453.

The discussion by MVPP in its motion fully fails to show the "good cause" required under the rules and these decisions. Its assertion that it obtained the information necessary for the preparation of quality assurance contentions "only after the NRC issued its second IE Report and MVPP communicated with CG&E and KEI employees" 19/ is untenable on its face. MVPP glosses over the fact that CARE, which it now asserts is a parent organization, has been receiving a copy of inspection reports routinely since April 12, 1979. MVPP also ignores the fact that GAP, its counsel in this matter, was fully cognizant of these allegations in requesting an investigation by the Office of the Special Counsel of the Merit Systems Protection Board by letter dated December 10, 1980. In that 24-page letter, GAP charged that the NRC conducted an investigation of quality assurance violations by Thomas Applegate in a "wrongful and capricious manner" 20/ and sharply criticized the Staff's findings in Investigation Report No. 50-358/80-09, issued on July 3, 1980. 21/

19/ MVPP Motion at 22-23.

20/ Letter from GAP to Office of the Special Counsel fo the Merit Systems Protection Board at 1 (December 10, 1980).

21/ Also, the Notice of Violation issued on November 24, 1981 indicates that a copy was served upon CARE. As noted, MVPP has identified CARE as its parent organization in a press release, dated May 18, 1982 (copy attached), which states that MVPP is "a wholly owned

(Footnote 21/ continued on next page).

Thus, as a party to the proceeding, MVPP has had access to the correspondence and the earlier reports relating to quality assurance matters. For example, MVPP cites the Region III Immediate Action Letter of April 8, 1981, leading to the establishment of Applicants' Quality Confirmation Program, which MVPP now maintains has been inadequate, although it was aware of this development at the time. 22/ Moreover, MVPP relies upon a number of public statements by NRC officials and their testimony before Congress, much of which predated the issuance of the NOV. And as demonstrated by the comments of CARE and GAP spokesmen Thomas Carpenter and Thomas Devine in their joint press release, MVPP has been aware of GAP's investigative efforts and the two groups are coordinating their activities. The CARE newsletters and correspondence filed herewith show MVPP's awareness of the Applegate charges and GAP investigation in 1980 regarding

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21/ (Continued)

subsidiary of the Cincinnati Alliance for Responsible Energy." Mr. Carpenter, an MVPP spokesman, has made limited appearances before this Board which specifically evidenced a knowledge of quality assurance matters (Tr. 4873)(January 25, 1982), and has also appeared on earlier occasions. The NOV letter also indicates that a copy was served upon Thomas Applegate and GAP, whose previous involvement at Zimmer, CARE alleged, led to the issuance of the NOV to Applicants (see attached press release).

22/ A copy of the letter was sent to the local Public Document Room and was served upon Citizens Against a Radioactive Environment. As noted, a review of I&E reports indicates that CARE has been routinely served with a copy of all inspection reports since April 12, 1979.

quality assurance at Zimmer. [23/] In fact, their press release boasts that "CARE & GAP have worked together on the whistle blowing disclosures at Zimmer in the past."

Thus, all of the information needed by MVPP to frame proposed contentions has long been in existence. The IE Report accompanying the NOV was issued more than six months ago, and this fact alone would justify a finding of unexplained lateness. But, additionally, it cannot be overlooked that the report was based on an investigation which was initiated on January 12, 1981, a full 16 months prior to the filing of the proposed contentions. GAP, acting as the new representative of the proponent of the contentions, claims credit for the commencement of the NRC's investigation, [24/] based upon its allegations submitted to the NRC by letters dated December 29, 1980 and January 5, 1981. MVPP even relies upon GAP's "long investigation at Zimmer" in 1980 to support its claims. [25/] Moreover, GAP has been sending such allegations to the committees of Congress. While practically all of its allegations were shown to be unfounded, [26/] the interrelationship between GAP and MVPP makes it evident that MVPP was well aware of the

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23/ See attached CARE newsletters and letters to CG&E dated December 18 and 19, 1981.

24/ See MVPP press release, dated May 18, 1982.

25/ MVPP Motion at 26.

26/ See IE Report Section 5.

alleged conditions of which it now complains. Thus, MVPP is hardly in a position to deny ignorance of earlier developments. 27/

The only case cited by MVPP in support of a showing of "good cause" is inapposite. The decision by the Commission in Indiana and Michigan Electric Company (Donald C. Cook Nuclear Plant, Units 1 and 2), CLI-72-25, 5 AEC 13, 14 (1972), authorizes amended contentions only on the basis of "new information appearing in previously unavailable documents" and only if the proposed amendments are "expeditiously presented." 28/ The information presented by MVPP in its motion is anything but "new" and certainly has not been "expeditiously presented," even judging by MVPP's own standard, i.e., the availability of the I&E Report on November 24, 1981. 29/

27/ The fact that MVPP may have wished "to corroborate" information by interviewing Kaiser employees or other certain individuals is certainly not "good cause" for delay.

28/ 5 AEC at 14 (emphasis added).

29/ Moreover, many of the contentions do not even relate to specific alleged deficiencies in the implementation of Applicants' Quality Assurance Program, but rather assert deficiencies in its "structure and premises," e.g., as to training procedures, staffing, audits and the organizational independence of QA in general. MVPP's Motion for Leave to File New Contentions at 9-10. It is certainly far too late in the day for an intervenor to challenge the methodology and procedures utilized by Applicants in the Quality Assurance Program at Zimmer.

In essence, MVPP's purported "good cause" boils down to an assertion that it had relied upon the NRC Staff to ensure Applicants' compliance with the quality assurance criteria of 10 C.F.R. Part 50, Appendix D, through its general review and enforcement authority and, in particular, by its oversight of Applicants' Quality Confirmation Program. Now, MVPP has had second thoughts and wishes to litigate these matters itself as if the undertakings of the Staff and Applicants to improve quality assurance at Zimmer had never happened. However, no information is presented which raises any doubts as to the implementation of this program or its review by the Staff.

Similar attempts have been rejected time and again by the Commission's adjudicatory boards. For example, in the Perkins proceeding, late intervention was denied where the petitioner alleged that its intervention was necessary to correct "deliberate misrepresentation by the NRC Staff." 30/ Similarly, in the Skagit proceeding, 31/ the Appeal Board rejected the argument that petitioners had relied upon the position taken by the NRC Staff, inter alia, in deciding not to intervene earlier. The Appeal Board ruled that

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30/ Perkins, ALAB-615, supra at 353.

31/ Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-552, 10 NRC 1 (1979), vacated as moot, CLI-80-34, 12 NRC 407 (1980).

petitioners could not simply "assert that they were lulled into a false sense of security" by the Staff's position. 32/

MVPP's implied assertion that it was impossible to file new contentions until after the issuance of the IE Report is analogous to the position of a petitioner which was rejected in the Allens Creek proceeding. 33/ There the Licensing Board denied late contentions despite petitioner's assertion that he had learned of a downgrading of the Applicants' bond rating only in a recent newspaper article. The Licensing Board stated: "It cannot be seriously contended that the newspaper article opened the door for the first time to the exploration of Applicant's ability to raise funds necessary for construction." 34/ In affirming this result, the Appeal Board noted that the issue was raised only after three months of evidentiary hearings and on the eve of the closing of the record. In citing its recent Summer decision 35/ the Appeal Board stated that the logic in denying late petitions "has yet greater force where not merely trial preparation

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32/ 10 NRC at 9. See also Consolidated Edison Company (Indian Point Station, Unit No. 2), Docket No. 50-247-OLA "Memorandum and Order" (January 4, 1982).

33/ Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-466-CP, "Memorandum and Order" (January 12, 1982).

34/ Slip op. at 3.

35/ See pages 14-15, supra.

but also the hearing itself has already taken place by the time the belated petition is received." 36/

Where petitioner alleged that information regarding his contention on electromagnetic pulse had come from a recent publication, the Board rejected this rationale, stating:

> Clearly, dissemination of data upon this phenomenon, whether resulting from nuclear or conventional explosions, is not of recent vintage, despite [petitioner's] allegation that information thereon was unavailable until the publication of the Science News article. 37/

Likewise, the Board in Perry 38/ rejected a late contention based on a newspaper article, and held that "a general newspaper article, not reflecting any new research or previously unavailable insights, cannot provide an acceptable excuse for late filing." Otherwise, "even matters broadly known could be brought to an intervenor's

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36/ Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671 (March 31, 1982)(slip op. at 6).

37/ Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-456-CP, "Order" (July 22, 1981)(slip op. at 2). The Board then pointed out that the magazine article itself reflected the study of the EMP phenomenon in a number of other sources predating the article.

38/ Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440-OL and 50-441-OL, "Memorandum and Order" (March 3, 1982).

attention through a newspaper article about a matter that was already quite stale." 39/

Accordingly, MVPP has not been diligent in "discovering or exercising [its] rights." 40/ As the Licensing Board instructed in the Summer proceeding, "a petitioner cannot sit back and observe the proceeding, and then intervene upon deciding that its interest[s] are not being adequately protected by existing parties." 41/

The statement that "MVPP is only moving to admit these contentions now due to the NRC Staff's precipitous recommendation that the Board immediately grant an operating license" 42/ reflects so complete a misunderstanding of the Commission's regulations and so badly misrepresents the existing facts and Staff's actions as to warrant total disbelief. It is straining credulity that MVPP and its

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39/ Slip op. at 3. See also Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387 OL and 50-388 OL, "Memorandum and Order on Pending Motions." (September 23, 1981).

40/ Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), Docket No. 50-309-OLA, "Memorandum and Order Regarding Petition for Leave to Intervene" (January 22, 1982) (slip op. at 4). Petitioner in that case similarly alleged that he was awaiting information from the NRC before taking a position on an issue.

41/ South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), Docket No. 50-395 OL, "Partial Order Following Prehearing Conference" (April 30, 1981)(slip op. at 4). Alleged misrepresentations by the Applicant were likewise alleged as a basis for lateness.

42/ MVPP Motion at 23.

attorneys by this stage in the proceeding do not appreciate the dichotomy in the responsibilities of the Licensing Board and Staff at the operating license stage. In its proposed findings, the Staff took the position that the Licensing Board should authorize the issuance of an operating license as provided in the regulations. It is clear that in its recommendation to the Licensing Board in its proposed findings, the Staff was addressing only those issues before the Board and not issues arising under the Staff's residual independent duty at the operating license stage to make all other requisite health and safety findings prior to the issuance of an operating license. 43/

As has been stressed by both the Applicants and Staff in their pleadings in this case, even if the Licensing Board were to make favorable findings on the issues before it, the Staff must still make findings, inter alia, regarding the satisfactory completion of construction before an operating license could and would be issued. 44/ Nothing in the record would even suggest that the NRC Staff has abdicated its duties in this regard. To the contrary, there is every indication that the Staff will pursue quality assurance

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43/ See 10 C.F.R. §2.760a.

44/ See, e.g., NRC Staff's Proposed Findings of Fact, Conclusions of Law and Order in the Form of an Initial Decision at 60 (June 9, 1981); Applicants' Proposed Findings of Fact and Conclusions of Law in the Form of an Initial Decision at 9 (April 24, 1981); and Applicants' Proposed Findings of Fact and Conclusions of Law Relating to Emergency Planning Issues in the Form of an Initial Decision at 157 (April 2, 1982).

matters until it is satisfied and then, and only then, would an operating license issue.

2. The NRC Staff will adequately protect MVPP's interests. The NRC Staff has an independent, statutory responsibility to take all measures necessary to protect the public health and safety. 45/ The Appeal Board itself expressly recognized this fact as a basis for denying late intervention in Summer, stating:

> As to those aspects of reactor operation not considered in an adjudicatory proceeding (if one is conducted), it is the staff's duty to insure the existence of an adequate basis for each of the requisite Section 50.57 determinations. 46/

Thus, the holding of a hearing in this instance would be the doing of a useless thing since the Board "could do no more than order that [alleged deficiencies] be corrected and that the corrections be monitored by Staff - a procedure that is already in effect without Board intervention." 47/

The fact that the Staff has undertaken and discharged its obligations with great diligence is evident on the face of the record reflecting its oversight of quality assurance

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45/ See generally Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 201 (1978); New England Power Company (NEP, Units 1 and 2), 7 NRC 271, 279 (1978).

46/ Summer, supra, 13 NRC at 896 (footnote omitted).

47/ South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1) Docket No. 50-395 OL, "Memorandum and Order" (April 28, 1982) (slip op. at 4).

activities at Zimmer. It is incongruous that MVPP relies almost exclusively upon the IE Report as the basis for its contentions, but denigrates the Staff efforts. Although information has been made available to the Board, MVPP also unjustly accuses the Staff of failing in its responsibility to keep the Board informed of significant developments. 48/ In any event, MVPP's almost exclusive reliance upon Staff documents to press its contentions clearly demonstrates that it can do little more than "traverse ground which has already been plowed (albeit not to [its] satisfaction)." 49/

3. MVPP has not shown an ability to assist the Board in developing a sound record. As noted previously, the motion by MVPP is almost wholly reliant upon the investigation conducted by the NRC Staff from January to October 1981 and the subsequently issued IE Report. The remaining materials submitted by MVPP are simply a smattering of correspondence to and from the NRC and Applicants, congressional testimony and statements, newspaper clippings and such. The only document generated by MVPP is a 16 month-old affidavit of a former employee, which addresses physical security at Zimmer, not quality

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48/ See Memorandum from Robert L. Tedesco, Assistant Director for Licensing, Division of Licensing, to the Atomic Safety and Licensing Board (December 17, 1981); Memorandum from Robert L. Tedesco, Assistant Director for Licensing, Division of Licensing, to the Atomic Safety and Licensing Board (July 15, 1981).

49/ Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 NRC 162, 172 (1979).

assurance. Although MVPP's motion is replete with alleged deficiencies in the program at Zimmer, no substantiation is given, nor is there any other evidence that MVPP or its representatives are by training, education or experience technically qualified and competent in the area of quality assurance.

Certainly, MVPP has shown no special qualifications which would even begin to justify permitting it to take up quality assurance matters now that the record is closed and an Initial Decision is near at hand. To the contrary, its obsession with the alleged making of belt buckles and other alleged misconduct by contractor construction workers demonstrates its lack of understanding of genuine safety questions in the construction of a nuclear power plant pursuant to 10 C.F.R. Part 50.

MVPP's purported "grass roots" connections are no substitute for scientific and technical qualifications. Its self-serving declaration of expertise on the basis of Mr. Applegate's allegations likewise proves nothing. As noted, supra, the NRC found practically all of those allegations to be unfounded. See Investigation Report 50-358/81-13 at Section 5. As for the "affidavits" and "internal documents that the NRC in its multiple investigations shunned," 50/ nothing has been produced nor even a proffer of a single new specific matter made.

50/ MVPP Motion at 26.

As the Commission stated in the Pebble Springs proceeding:

> Permission to intervene should prove more readily available where petitioners show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation, and demonstrate their importance and immediacy, justifying the time necessary to consider them. 51/

As noted above, nothing is alleged by MVPP which is not being covered by the Quality Confirmation Program and the completion of the final steps of the Quality Assurance Program, pursuant to 10 C.F.R. Part 50, Appendix B.

In the Black Fox proceeding, the Appeal Board described the petitioner's ability to make a valuable contribution to the decision-making process as "foremost among [the] factors" under 10 C.F.R. §2.714(a)(1).52/ Applying this standard, the Appeal Board in the Watts Bar proceeding stated:

> . . . the absence of some clear indication that the petitioner has a substantial contribution to make on a significant safety or environmental issue appropriate for consideration at the operating license stage . . . .

51/ Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 617 (1976).

52/ Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1145 (1977). See also Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633 (1976).

> There is nothing before us which might suggest that this petitioner is qualified by either specialized education or pertinent experience to make a substantial contribution on one or more of the contentions which she seeks to have litigated. Nor . . . does she profess to have expert assistance available to her. 53/

Petitioner's failure to specify its credentials or those of its members is much like tne situation in the Allens Creek proceeding, where the Appeal Board disallowed intervention by an individual who, like petitioner here, "has offered nothing beyond his bare assertion which might lead [the Board] to believe that he would be able to make a significant contribution to the development of an evidentiary record on one or more safety issues." 54/

4. MVPP's interests will be adequately represented by the existing parties. Assuming arguendo that MVPP in fact has a valid interest within the meaning of the regulations and is not a new party, that interest has been and will continue to be adequately represented by the existing procedures and personnel within the agency, particularly the Regulatory Staff. As shown above,55/ the Staff has

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53/ Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422-23 (1977).

54/ Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 244 (1980).

55/ See pages 25-26, supra.

conducted two separate, thorough investigations of the charges leveled by GAP which concluded that most, if not all, of those charges, like the current MVPP and GAP charges, were unfounded. Because the Staff did not agree with it, GAP is now seeking to have another part of the agency involve itself in the matter. The Staff has made available to the Board the inspection reports which analyze the GAP charges. It is clear that in a hearing such as GAP seeks, nothing would be accomplished except a restatement of what has already occurred. GAP makes no effort to present any new information in its motion, but only continues to make exorbitant charges unsupported by any facts. By examining these reports, the Board can see that GAP's "interests" have been fully and adequately reviewed and analyzed by the Staff.

5. Reopening the record to litigate new contentions on quality assurance will necessarily broaden the issues and greatly delay the proceeding. It cannot be doubted that reopening the record at this juncture to litigate new contentions has the potential for substantial, if not enormous, delay. The NRC Staff's most recent investigation of the matters which MVPP wishes to rehash now itself took almost a year. Given the fact that an intervenor such as MVPP lacks the impartiality of the Staff and, as avowed opponents of the operation of the facility, would avail itself of all measures open to litigants in an adversary,

adjudicatory proceeding to cause further delay, it must be realistically estimated that the time to be expended if the record is reopened for this matter must be measured in years, not months. It is clear that the major purpose of MVPP is to delay the case. Its spokesman, Thomas Carpenter, stated to the press that if they win their case, it could be "years and years."56/

Anticipated delay of this degree is squarely contrary to the Commission's policy on the conduct of licensing proceedings, which has recognized that the overall cost of significant delays in reactor licensing "could reach billions of dollars." 57/ The Commission has expressly instructed licensing boards "to expedite the hearing process" so that it "moves along at an expeditious pace, consistent with the demands of fairness." 58/ It has also specified procedures for dealing with delays caused by intervenors or even the Staff, 59/ and has stated its expectation that initial decisions "will issue as soon as practical after the submission of proposed findings of fact

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56/ See Cincinnati Enquirer at D2 (May 20, 1982) (copy attached).

57/ Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 453 (1981).

58/ Id.

59/ Id. at 454.

and conclusions of law," taking "precedence over other responsibilities" of the individual Administrative Judges. 60/

MVPP's assertions that little delay will occur clearly cannot be believed, particularly since it asks the Board to "establish a discovery schedule for full examination of the Applicant's [sic] QA program, and most importantly CG&E's character and competence."61/ Obviously, such discovery would take months if not years in the hands of an intervenor seeking to delay the plant.

Further, the licensing of a nuclear reactor is certainly not dependent upon any alleged criminal investigation that GAP is attempting to stir up. The NRC is an independent regulatory body and bases its licensing determinations on the standards enunciated under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq. and the regulations thereunder. Neither the Department of Justice nor any other agency of the Federal Government has authority to veto or suspend nuclear licensing, even if, contrary to fact, there were any indication that it desired to delay the licensing of Zimmer.

60/ Id. at 458.

61/ MVPP Motion at 28.

III. MVPP Has Not Met Its Heavy Burden In Requesting That The Record Be Reopened

The motion by MVPP for leave to file new contentions ignores the fact that the taking of testimony before the Licensing Board in this case concluded on March 4, 1982[62/] at which time the record was closed. A party seeking to reopen the record to file late contentions must first satisfy its heavy burden to justify reopening the case before the Board even reaches the five criteria for late contentions. [63/] MVPP has failed to meet the heavy burden the decisions of the Appeal Board have placed upon such a proponent.

The standard enunciated in the Wolf Creek proceeding[64/] summarizes the basic legal requirements and has since been cited as the prevailing standard in reviewing a motion to reopen the record. The Appeal Board stated:

> As is well settled, the proponent of a motion to reopen the record has a heavy burden. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976). The motion must be

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62/ Tr. 7979.

63/ South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), Docket No. 50-395-OL, "Memorandum and Order" (April 28, 1982)(slip op. at 2-3).

64/ Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320 (1978). This standard was approved by the Commission in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 363 (1981).

> both timely presented and addressed to a significant safety or environmental issue. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); id., ALAB-167, 6 AEC 1151-52 (1973); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975). Beyond that, it must be established that "a different result would have been reached initially had [the material submitted in support of the motion] been considered." Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974). 65/

MVPP's heavy burden in justifying a reopening of the record is substantially increased because it has been made at least a year and a half after the subject of the motion came to its attention.66/ The Appeal Board in Three Mile Island held that the heavy burden imposed upon the proponent of a motion to reopen is indeed significantly greater where the lateness is unjustified:

> In the case of a motion which is untimely without good cause, the movant has an even greater burden; he must demonstrate not merely that the issue is significant but, as well, that the matter is of such gravity that the public interest demands its further exploration. 67/

65/ 7 NRC at 338.

66/ Members of MVPP and CARE have been bringing matters related to the construction of the plant to the Board's attention during the entire course of the proceeding. These matters have been duly investigated by the Staff and not a single significant matter has been found which was not already being pursued by Applicants.

67/ Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 21 (1978).

As the Appeal Board in the Perry proceeding succinctly stated: "Litigation has to end sometime." 68/

MVPP's motion is unquestionably untimely. Even a cursory review of the proposed contentions and the bases cited in support of them demonstrates that primary reliance is based upon Investigation Report No. 50-358/81-13, dated November 24, 1981. It is clear for the reasons discussed above that MVPP has long been on notice of the investigation by the NRC into the Quality Assurance Program at Zimmer since January 12, 1981. Its counsel, in fact, claims credit for its initiation. Thus, none of the documentation upon which MVPP relies presents "new" information, and the single affidavit which it has submitted is irrelevant to quality assurance matters. MVPP has therefore failed to justify its untimely request to reopen the record.

The Appeal Board in Diablo Canyon denied a motion to reopen under very similar circumstances. The joint intervenors in that case moved to reopen the record based upon a report by the United States Geologic Survey. In denying the motion, the Appeal Board stated:

> We have examined the USGS report with care. We note that, while its analysis is new, the seismic motion records underlying it are not. For the most part these either were or might have been addressed at the reopened hearing

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68/ Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 750 (1977).

> on IV-79 . . . . Our point is not that the USGS Report is irrelevant. Rather, it is that the subject matter it addresses was thoroughly litigated before us, albeit on the basis of analysis supplied by other qualified experts.
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> . . . . . .
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> Finally, we have thoroughly examined the evidence now before us bearing on the points covered by the new Open-File Report. Even were the caveat we mentioned not present, we are satisfied that the report itself is insufficient to overcome the results required by the record as we have discussed and evaluated it in this decision. In all the circumstances, and particularly as the new report would not effect the outcome of the case, the standards for reopening are not met. 69/

By comparison, the materials MVPP has assembled are not even "new," and the underlying information they contain is certainly not "new."

In the Perkins proceeding, the Licensing Board denied the motion to reopen the record to consider new site suitability issues because it "determined that the Intervenors had the opportunity to press this issue by proposing an acceptable contention in the petition to intervene," but did not do so. 70/

69/ Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-644, 13 NRC 903, 994-95 (1981) (emphasis added).

70/ Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), Docket Nos. STN 50-488, 50-489 and 50-490, "Order Relative to Motions to Reopen the Record for Additional Hearings" (April 12, 1979)(slip op. at 7-8).

In the TMI-1 proceeding, the Licensing Board denied "out-of-hand" a motion by intervenor to consider the results of an April 1981 examination of control room operator candidates as "unjustifiably late" where the intervenor asked the Board to reopen the record to consider these results on December 24, 1981. 71/

It is also highly pertinent that MVPP wishes to reopen the hearing on a matter which has not previously been contested by MVPP or any other intervenor. Thus, this is not an instance in which the Board must simply determine whether some additional data on a contention may be admitted to supplement existing testimony and documents of record.

A request by an intervenor to interject an entirely different issue into the hearing after the close of the record, it is submitted, should be granted only under the most extraordinary circumstances in which it can be palpably demonstrated, under the same standard by which a Licensing Board takes up a generic safety issue sua sponte, that the NRC Staff has itself failed to take the issue "into account in a manner that is at least plausible and that, if proven to be of substance, would be adequate to justify operation." Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245, 248-49 n.7 (1978). If "the Staff has provided an at least

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71/ Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289 (Restart) (February 3, 1982)(slip op. at 5).

reasonable foundation for its several conclusions," Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), ALAB-620, 12 NRC 574, 577 (1980), then the Licensing Board should decline to reopen the record on the proposed new issue.

Directly on point is a recent decision in the Summer proceeding [72/] in which an intervenor proposed a new contention after the close of the record, based upon a Staff report critical of operating and emergency procedures at the facility. [73/] The Board noted that, unlike the situation here, the new contention was based on new information brought to intervenor's attention only after the close of the hearing, and that the proposed contention was filed shortly thereafter. Even so, the Board held that intervenor had failed to show the significance of the allegations within the context of that particular proceeding at that late stage:

> To be sure, each of the alleged deficiencies with regard to Applicants' operating procedures contained in the [NRC Staff] report would have some significance to the safety of the plant if it actually exists and were to go uncorrected. But Intervenor has not alleged, nor do we see any support for such an allegation, that there is any

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72/ Summer, "Memorandum and Order" (April 28, 1982), supra.

73/ Preliminarily, the Licensing Board ruled that the intervenor must satisfy the "stringent standards" for reopening a case in addition to the five-factor test set out in 10 C.F.R. §2.714(a)(1) for late contentions. Slip op. at 2-3.

> danger that the alleged deficiencies will go uncorrected. The affidavits submitted by Staff and Applicants establish that the shortcomings to Applicants' operating procedures are being routinely handled by Staff, and Applicants have committed themselves to upgrade and correct the operating procedures in accordance with Staff's suggestions. In the face of this established procedure for identifying the deficiencies and correcting them, their mere existence loses its significance in the context of this operating license proceeding. Were the Board to take this issue and determine that the alleged deficiencies actually exist, we could do no more than order that they be corrected and that the corrections be monitored by Staff - a procedure that is already in effect without Board intervention.
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> If we were to reopen the record every time that Staff discovered a safety defect and reported it to us, we could never bring this proceeding to completion. See ICC v Jersey City, 322 U.S. 503, 514 (1944). We see no correlative benefit for further delay here, since Board involvement is unnecessary to assure the public health and safety. 74/

The Summer case is "on all fours" with the circumstances at Zimmer. Board involvement here would also be redundant at best. The Staff has already exhaustively reviewed each of the issues addressed by MVPP as demonstrated in the comprehensive IE Report prepared by I&E Region III. Its Immediate Action Letter of April 8, 1981 proves that the Staff has already required the Applicants to undertake a Quality Confirmation Program to implement all

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74/ Id. at 3-4 (emphasis added).

necessary corrective action. Additionally, the NRC has closely monitored the implementation of all improvements in Applicants' Quality Assurance Program and has met with Applicants' representatives at numerous conferences since the letter of April 8, 1981. The final and agreed upon Quality Confirmation Program has been transmitted to I&E Region III 75/ and NRC inspection reports since that time demonstrate the Applicants' careful attention to quality assurance matters. Further, as noted earlier, in a letter originated by Region III from William J. Dircks, Executive Director for Operations, to Senator Walter D. Huddleston, dated January 27, 1982, the NRC stated that it was "satisfied that the quality confirmation program, monitored by the NRC, and other augmented NRC inspection activities will provide a full and adequate evaluation of Zimmer construction."76/

In view of the Staff's active, ongoing consideration of quality assurance at Zimmer, the matters now raised by MVPP cannot be considered truly significant, nor has it been shown that the Board's involvement would add anything to the Staff's activities or otherwise result in a change of the result in this proceeding. Accordingly, MVPP has failed to satisfy the legal requirements for reopening and its request should be denied.

75/ See IE Inspection Report 50-358/81-13, Exhibit 17.

76/ See page 4, supra.

One further aspect of the Staff's review of quality assurance matters at Zimmer deserves serious consideration. As the Board is aware, the IE Report upon which MVPP primarily relies resulted in the issuance of a Notice of Violation ("NOV") dated November 24, 1981 to Applicants. While in their view many of the allegations were unsupported, Applicants elected not to raise legal objections or factual defenses to the NOV or to request a hearing and submitted to the proposed penalty assessment.77/ Thus, Applicants stated:

> Rather than dwell on our differences at this point we believe it is important that we be free to devote our full resources and attention toward the positive goal of completing the Wm. H. Zimmer Nuclear Power Station in a quality manner.

In this letter, Applicants also recognized "the need for improving the implementation of our Quality Assurance Program in several areas," and reviewed, as requested, the history of certain deficiencies, including "a statement of the steps taken to address and correct the underlying programmatic causal factors related to the noncompliance" as determined by the Office of Inspection and Enforcement. The letter concluded that "the corrective action stated in our response to the Immediate Action Letter of April 8, 1981 is

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77/ Letter from W.H. Dickhoner, President, The Cincinnati Gas & Electric Company, to Richard C. DeYoung, Director, Office of Inspection and Enforcement, NRC (February 26, 1982) (copy of complete response attached).

sufficient to preclude further noncompliance, particularly in light of our Quality Confirmation Program."

Having foregone their opportunity to litigate those matters in a hearing, Commission policy strongly dictates that Applicants not be exposed to the same charges by way of late contentions. Thus, in the Marble Hill proceeding, the Commission denied an intervenor's request for a hearing on an order by the Director of the Office of Inspection and Enforcement suspending construction at the site, where the licensee did not challenge the Director's order. 78/ The Commission determined that it could lawfully preclude litigation of the matters resolved by the licensee's consent to the Director's order and explained its rationale as follows:

> We believe that public health and safety is better served by concentrating inspection and enforcement resources on actual field inspections and related scientific and engineering work, as opposed to conduct of legal proceedings. This consideration calls for a policy that encourages licensees to consent to, rather than contest, enforcement actions. Such a policy would be thwarted if licensees which consented to enforcement actions were routinely subjected to formal proceedings possibly leading to more severe or different enforcement actions. Rather than consent and risk a hearing on whether more drastic relief was called for, licensees would, to protect their own

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78/ Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980).

> interests, call for a hearing on each enforcement order to ensure that the possibility of less severe action would also be considered. The end result would be a major diversion of agency resources from project inspections and engineering investigations to the conduct of hearings. 79/

The Commission's lead should be followed by the Board in this case in refusing to require Applicants to adjudicate at a hearing precisely those issues which it has resolved without a hearing by consent to the Staff's enforcement action. The admission of the proferred contentions by the Board would result in the same evil perceived by the Commission in Marble Hill, i.e., the "major diversion of agency resources from project inspections and engineering investigations to the conduct of hearings."

IV. Each of the Proposed MVPP Contentions is Defective.

As noted, an intervenor which proposes to reopen the record for the litigation of late contentions bears a very heavy burden. Correspondingly, the Commission's rules under 10 C.F.R. §2.714(b), requiring that "the basis for each contention [be] set forth with reasonable specificity," must at this very late juncture be strictly construed. The specificity of a proposed contention and the amount of detail supporting its basis which might have been acceptable when the proceeding had just commenced is therefore insufficient after the close of the record. In particular,

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79/ 11 NRC at 441-42 (emphasis added).

fairness to the applicant and other parties in a licensing proceeding requires that late contentions proposed after the close of the record must be set forth in highly specific form and supported by documentary or testimonial evidence which convincingly demonstrates the existence of a genuinely significant health, safety or environmental issue. 80/ It is surely not enough, as MVPP has done, simply to allude to earlier NRC Inspection and Enforcement reports that address quality deficiencies already addressed by the Staff and Applicants. Nor does it suffice to claim the existence of new information, but not produce even a single shred of new, hard evidence.

In this respect, the eight proposed contentions submitted by MVPP fall far short of what is promised in its motion. Thus, MVPP states at the outset of its motion that it has learned that "OIA and IE Reports revealed only a small portion of the QA breakdown and resulting hardware damage;" that "neither CG&E nor RIII have [sic] followed through with adequate corrective action"; and that "the RIII-imposed Quality Confirmation Program may further exacerbate the previous QA breakdown."81/ Later, MVPP

80/ MVPP has had over five years to pursue discovery. Surely, the Board could not countenance even further discovery at this late hour.

81/ MVPP Motion at 4.

states: "New information obtained by MVPP evidences potential QA and hardware problems ranging far beyond those disclosed in the IE Report and demonstrates the need for a 100-percent reinspection of all safety equipment installed on-site."[82/] Finally, MVPP asserts that it "has collected affidavits, received offers by other witnesses to testify, and received internal documents that the NRC in its multiple investigations shunned." [83/]

Yet, no such materials or information are included in the exhibits proffered by MVPP in support of its motion, which are merely an assortment of old NRC memoranda and correspondence, newspaper clippings, congressional testimony and statements, and portions of the main IE Report. The only affidavit included in these materials addresses itself to physical security of new fuel at the plant site and other matters having nothing to do with quality assurance.

Each of the proposed contentions is in a format which simply alleges that Applicants have failed to meet the requirements of 10 C.F.R. Part 50, Appendix B for a given Criterion. Such "conclusional . . . barren and unfocused" references are clearly impermissible contentions, [84/]

82/ Id. at 14.

83/ Id. at 26.

84/ Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-77-48, 6 NRC 249, 250-51 (1977).

particularly at this eleventh hour. The Board and the parties may not be "left to wander aimlessly in . . . speculation on the details of the allegations." 85/ Rather, the contention must "specify the particular features" of the requirement of the regulation at issue and "show the nexus of those features" 86/ to the Zimmer facility.

While MVPP purports to cure this deficiency by giving examples of alleged problems, the attempt to be specific is entirely illusory. Thus, the "affidavits," information from "interviews with current or former employees willing to testify," and "internal CG&E and KEI documents" to which the various proposed contentions allude are nowhere to be

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85/ Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387 and 50-388, "Memorandum and Order on Pending Motions and Requests" (July 7, 1981)(slip op. at 4).

86/ Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71, 75 (1981). The Board also stated:

> The requirement of greater specificity is necessary to provide a fair opportunity for other parties to learn precisely what the issues are, what proof, evidence or testimony is required to meet the issues, and what the Intervenor intends to adduce for its allegations.

See also Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 1,2 and 3), Docket Nos. STN 50-528 OL, 50-529 OL and 50-530 OL, "Memorandum and Order" (April 16, 1981)(slip op. at 6-9).

found.[87/] In light of the lateness of MVPP's filing and the imminence of an Initial Decision by the Board, it would certainly be unfair to permit MVPP to supplement its motion by the submission of any other materials to which Applicants would necessarily have to respond. Rather, the Board should decide the motion based upon the exhibits and arguments which have been submitted by MVPP and disregard the allusions to other information it may or may not file.

In sum, all that MVPP has done is to sift through the existing record and designate particular items which have already been identified by the Staff and Applicants for corrective action and addressed under the Quality Confirmation Program. Since these issues are being thoroughly examined under this Program and the means of their resolution has been determined by the Staff, there is in fact no litigable issue at this point in the proceeding.[88/] Each contention is merely an attempt to rehash matters which

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87/ Proposed contentions 1, 2, 3, 5, 6 and 7 apparently rely exclusively upon IE Report 50-358/81-13. Contentions 4 and 8 rely upon the various exhibits submitted with the motion, which, as noted, provide no specific insight, and certainly no new information, pertaining to MVPP's allegations.

88/ Some of the matters do not even purport to be based upon any "new" information. For example, proposed contention 4 seeks to challenge "the structure and premises of the QA program at Zimmer, rather than specific inspection hardware deficiencies." Obviously, it is far too late in the day to litigate the adequacy of quality assurance procedures which have long since been in use and never challenged.

already received full inquiry and scrutiny by the Staff, leaving nothing new to litigate at this time. As noted above in the discussion of Summer, even if a hearing were held, its outcome would be to reach the same point at which the matter stands today. The only result would be a wholly unnecessary delay. These contentions should therefore be denied.

V. MVPP's Frivolous Request for A Protective Order Also Militates Against Reopening the Proceeding.

In addition to the previous discussion, there is another matter raised by MVPP's motion which goes to the sound exercise of the Board's discretion and militates against reopening. MVPP states that, if the record is reopened, it will seek a protective order so that it need not disclose the identity of its witnesses. While the Board need not, of course, address the substance of this indicated motion at this time, the mere fact that MVPP would even suggest that its witnesses could be secreted and withheld from Staff and Applicants for deposition and cross-examination at a hearing clearly reflects MVPP's real attitude: it is not interested in exploring significant health and safety matters, but only in denying Applicants due process and strangling this proceeding by delay and obfuscation.

Thus, MVPP proposes that the identity of these employees "be kept confidential from all except the

Board." 89/ The kind of "Star Chamber" proceeding suggested by MVPP is anathema to American jurisprudence, and is certainly not authorized for NRC proceedings.

The decisions of the Licensing Board are clear on this point. MVPP's attempt to secrete its witnesses can only be interpreted as an attempt to prejudice Applicants unfairly and delay the proceedings. Applicants have a right to confront their accusers and to examine and cross-examine such individuals in order to meet any allegations. As the Supreme Court held in Jenkins v. McKeithen, 395 U.S. 411 (1969), "the right to confront and cross-examine witnesses is a fundamental aspect of procedural due process."90/

While protective orders in NRC licensing cases have prohibited the disclosure of certain identities beyond the Board and the parties, it would be inconceivable to deny an applicant this information or its right to examine and cross-examine the witnesses.91/ As the Appeal Board recently observed in South Texas, a party must have the informer's identity where "relevant and helpful to the

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89/ MVPP Motion at 28.

90/ 395 U.S. at 428. See also Fitzgerald v. Hampton, 467 F.2d 755 (D.C. Cir. 1972).

91/ See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 400 (1979); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341, "Memorandum and Order Ruling on Discovery and Scheduling Motions" (February 15, 1980).

defense of an accused, or is essential to a fair determination of a cause."[92/] MVPP's attempt to deprive Applicants and Staff of this basic right additionally demonstrates why the Board should exercise its discretion against reopening this proceeding.

Conclusion

For the reasons discussed more fully above, MVPP has wholly failed to demonstrate the existence of a significant health or safety issue which would justify reopening the record in this proceeding, nor has it shown that the litigation of any issue it has proffered would result in different findings by this Board. The motion is indisputably out of time and is a patent attempt to reargue matters previously resolved by the Staff and Applicants for the sole purpose of securing delay in the licensing of the Zimmer Station. No "good cause" for MVPP's untimeliness has been shown, nor has MVPP otherwise shown any particular knowledge or expertise in quality assurance matters so as to justify the diversion of resources from the licensing efforts of the Staff and Applicants at this critical stage.

92/ Houston Lighting & Power Company (South Texas Project, Units 1 and 2), 13 NRC 469, 473-74, (1981) citing Roviaro v. United States, 353 U.S. 53, 60-61 (1957) (emphasis added). The Board specifically noted that the Applicant, not the intervenor, was "the accused." The Board also noted that the "informer's privilege," contrary to MVPP's claim, is the Government's privilege to assert, not that of a private organization. Id. at 473.

The Board should also consider the adverse impact that reopening the hearing and consequent delay would have upon the public interest. The public hearing proceedings on the issuance of an operating license for Zimmer have been pending since 1975. In those seven years, many contentions have been litigated and many opportunities for the granting of additional contentions have been entertained by the Board. Now, however, the record has been closed. If it were to be reopened, Zimmer could not supply electric power to Applicants' consumers. Accordingly, the lower cost of nuclear power would be denied to the public. As noted above, "[l]itigation has to end sometime."93/

The motion should therefore be denied in all respects.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

Troy B. Conner, Jr. /RMR

Troy B. Conner, Jr.
Mark J. Wetterhahn
Robert M. Rader
Counsel for the Applicants

Of Counsel:

William J. Moran
Jerome A. Vennemann
139 E. Fourth Street
Cincinnati, Ohio 45201

June 2, 1982

93/ Perry, supra, 6 NRC at 750.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer to Motion by Miami Valley Power Project for Leave to File New Contentions" dated June 2, 1982 have been served upon the following by deposit in the United States mail this 2nd day of June, 1982:

Judge John H. Frye, III
Chairman, Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Frank F. Hooper
Camp Filbert Roth
276 University Road
Iron River, Michigan 49935

Dr. M.Stanley Livingston
Administrative Judge
1005 Calle Largo
Sante Fe, New Mexico 87501

Dr. Lawrence R. Quarles
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chairman, Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Charles A. Barth, Esq.
Counsel for the NRC Staff
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Branch
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chairman, Atomic Safety and Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Region I
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George E. Pattison, Esq.
Prosecuting Attorney of
Clermont County, Ohio
462 Main Street
Batavia, Ohio 45103

William J. Moran, Esq.
General Counsel
The Cincinnati Gas &
Electric Company
P.O. Box 960
Cincinnati, Ohio 45201

Robert M. Rader
Robert M. Rader

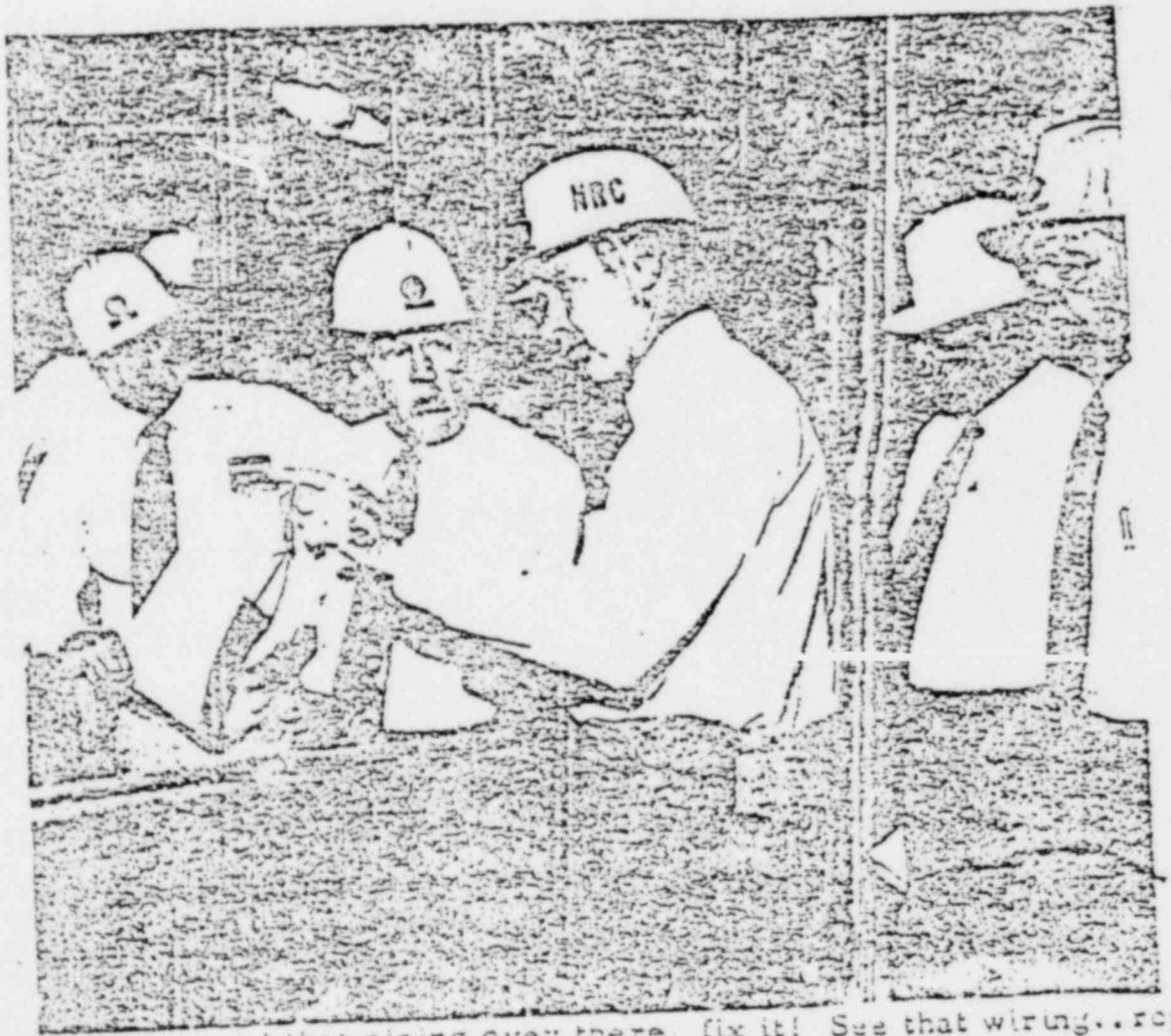
CAMPAIGN
AGAINST A
RADIOACTIVE
ENVIRONMENT
6110 GIRTON AVE.
CINCINNATI, OHIO 45213

CAARE NEWSLETTER

By Subscription

JULY 198

ONE DAY AT THE ZIMMER PLANT



NRC: "...and that piping over there, fix it! See that wiring..replace it, you heard me, all of it. Next we'll pay a little visit to the suppression pool. Applegate had a lot to say about that..."

Construction expenditures for 1980 are expected to be $288 million. Over the next five years (1980-1984) construction expenditures are expected to total $1,211 million, primarily for electric generating and transmission facilities ($879 million). An estimated $87 million will be spent for gas facilities.

The amounts for the electric facilities reflect deferrals of one year in the scheduled commercial operation dates of certain electric generating units. These estimates also reflect a proposed change in ownership of the East Bend and Killen Generating Stations, both of which are under construction. Under the proposed change, CG&E would own 69% of East Bend Station and 33% of Killen Station as opposed to its present 51% share of each Station. The two Stations will be commonly owned by CG&E and The Dayton Power and Light Company (DPL), with CG&E responsible for the construction and operation of East Bend Station and DPL responsible for the construction and operation of Killen Station.

The 1980-1984 construction expenditures include an estimated $220 million for pollution control facilities such as electrostatic precipitators, cooling

Board members donned hard hats to tour East Bend Station in July. Left to right: Neil A. Armstrong, Harry Holiday, Jr., William H. Dickhoner, Donald I. Lowry, James P. Herring, and Earl A. Borgmann.

Summary of Planned Future Generation

Plant or Unit (a)	Energy Source	Location	Approximate Total Kw Capability	Owned by CG&E %	Owned by CG&E Kw	Scheduled Year of Operation	Estimated Cost to CG&E (Millions of Dollars)
Wm. H. Zimmer Nuclear Power Station (Unit 1)	Nuclear	25 miles upstream from Cincinnati on Ohio River	792,000	40	316,800	1981	$ 332
East Bend Generating Station (Units 1 and 2) (b)	Coal	In Kentucky, 40 miles downstream from Cincinnati on Ohio River	600,000 600,000	69 69	414,000 414,000	1981 1985	571
Killen Generating Station (Units 1 and 2) (b)	Coal	80 miles upstream from Cincinnati on Ohio River	600,000 600,000	33 33	198,000 198,000	1982 1985	297
		Totals	3,192,000		1,540,800		$1,200

(a) All units will be commonly owned by CG&E and The Dayton Power and Light Company (DPL), except Zimmer Unit 1 which will be owned by CG&E, Columbus and Southern Ohio Electric Company, and DPL. DPL is responsible for construction and operation of Killen Station. CG&E is responsible for construction and operation of all other units.

(b) Reflects a proposed change in ownership of the East Bend and Killen Generating Stations (see "Construction").

July 1981

Dear Editor:

Concern for future children motivates some people to oppose abortion. Concern for future generations also motivates many people to oppose nuclear power. Julie Loesch is opposed to both abortion and nuclear power and, in an attempt to link the two issues, has begun an organization of so-called "Prolifers for Survival". We say so-called because the organizations name is a complete misnomer: while all anti-nukers have clearly chosen LIFE, not all of us are anti-abortion. Far from it.

Speaking in Cincinnati last week, Ms. Loesch explained that three years ago a woman asked her why she didn't care about the unborn if she was so concerned about radiation. "Afterall," Loesch continued,"radiation affects the unborn most severely. Every year nuclear power and weapons exist, our radiation debt to future generations grows." The "conflict" she thought she saw between abortion and the ravages of radiation had to be resolved; so, she decided that anti-nuclear and anti-abortion people are working for the same ends!

In making this rather amazing connection, Ms. Loesch forgets to take a few things into account. She forgets that abortion is a relatively private and individual act freely chosen for reasons of health and sanity, while nuclear power is a corporate atrocity foisted upon us for profit. To say the two are the same is like comparing Ann Frank to Adolph Hitler.Anyone who thinks women considering abortion don't care about the children they might bear is downright foolish, probably foolish enough to think Jesse Helms cares more.

We find it sad that her empathetic concern for unborn children blinds Ms. Loesch to the needs and rights of women. We are surprised she cannot make the connection between the powers that favor nuclear energy and the powers that maintain the sexism rampant in our society. It is the same administration, Senators, and grab bag of right wingers who would deny women freedom in their reproductive lives. Is it any wonder that the same men who give us nuclear power whether we want it or not, also want to force a woman who has been raped to give birth? Without reproductive rights for women, we all--men and women alike-- live in bondage to the church, the state, and/or Jerry Falwell and his repressive morality. As long as women are pushed economically and socially into pregnancy and children are not born free from deprivation, abortion is a viable last resort. We believe abortion will only become unnecessary when women are truly free--from economic marriages, from dependency, from acting as the servants(i.e., service workers) of our society.

We are members of the anti-nuclear movement who believe it is a woman's right to determine what happens to her body. It angers us that, blinded by the imaginary children, "Prolifers for Survival" would sacrifice women's freedom in the name of opposition to nuclear power. While we are dubiously grateful for Ms. Loesch's anti-nuclear sentiments (Could this be an attempt to split a strong and unified anti-nuclear movement down a very emotional middle?), we have nothing else in common with any group that denies any person the right to control his/her own life.

Yours for a nuclear-free future,

Steve Schumacher
Marjorie Colden
Michael Burnham
Barb Wolf

natural energy

WOMANPOWER

UPCOMING HEARINGS

During the next round of Nuclear Regulatory Commission's (NRC) licensing hearings for the Zimmer Nuclear Power Plant, any citizen will be able to question C.G.&E. officials concerning the power station. According to Attorney Jim Feldman of Miami Valley Power Project, intervenor group representing CAaRE, citizens can cross examine utilities officials who will be under oath. Feldman stated that this procedure would be a "direct and active way" for citizens to obtain information concerning the plant.

Other contentions have been heard by the various intervening groups and now the NRC permits individual citizens to pose questions. Attorney Feldman suggested that CAaRE members and friends hold discussions concerning possible issues that should be raised before C.G.&E. officials. Those interested should contact him at 621-6151. The date for the next set of hearings has not yet been announced by the NRC, but concerned citizens who wish to participate in the cross-examination process should prepare in advance.

Ky. Sierra Club Urges Shutdown

The Kentuck y Sierra Club voted on a stand against the Zimmer nuclear station which calls for the suspension of the construction permit. On May 23, the Kentucky Chapter decided to send copies of the Government Accountability Project (GAP) request to the NRC to suspend Zimmer's construction to the Kentucky Governor, the Attorney General and the Kentucky Committee on Nuclear Issues urging those representatives to take a stand against Zimmer.

Kentucky has traditionally been anti-nuclear, voicing it's concerns in the licensing hearings at Zimmer and precipitating action at Marble Hill nuclear plant in Indiana, on Kentucky's border. The Sierra Club action could effectively galvanize opposition in the Kentucky Legislature to take a strong stand against the Zimmer station.

-Tom Carpenter

Sen. Glenn Responds to CaARE

As a result of a letter CAaRE sent to Senator John Glenn's Office in April, Glenn has given some hopeful signs concerning the problems at the Zimmer Nuclear Station.

In April, Glenn received a letter from us urging action by the Congressional Sub-Committee on the charges lodged by Tom Applegate, a private detective who worked at Zimmer last year.

Glenn's response fell short of promising an investigation, but he did state that he had the details of Applegate's allegations, and that he was in contact with Chairman Hendrie of the Nuclear Regulatory Commission which has conducted an investigation of Zimmer, the results of which are due soon. Glenn also termed the allegations raised by Applegate "grave and if true, could result in a serious threat to the public health and safety".

Glenn also made it clear that the Atomic Safety Licensing Board, the body responsible for licensing nuclear plants, would have access to the NRC investigations findings and factors them into it's deliberations when considering Zimmer's license.

Depending upon the outcome of the NRC report, Senator Glenn could be an important figure concerning Applegate's allegations and the future of Zimmer. Glenn holds a position on the Government Sub-Committee on Energy, Nuclear Proliferation & Government Processes, and has the power to open hearings on the Zimmer station. At this juncture, he is understandably reluctant to make such a move.

cont. on p.3

BENEFIT FOR CAaRE

CHARLIE KING

MUSIC & HUMOUR

$3

$2 FOR LOW INCOME PEOPLE

CALHOUN ST. CLUB

7/21 TUES. 8pm

CAaRE

Citizens Against a Radioactive Environment
2699 Clifton Avenue, Cincinnati, Ohio 452

INFO: 861-3533

Glenn

You can help by making it easier for Glenn to open an investigation. Take a few minutes to write a letter urging Glenn to open such an investigation. If you are interested in working on this project, contact CAaRE at 861-3533.

-Tom Carpenter

SENATOR JOHN GLENN
204 Russel Building
Washington D.C. 20510

Financing CAaRE

How does CAaRE spend it's money? Where does it all go? Here is a brief run-down of our expenses so that you can see why CAaRE has to constantly raise money to continue our struggle.

Our biggest expense by far is the newly created staff position. The CAaRE staffperson is paid $150 per week to work at least 40 hours per week. The staff person coordinates activities, answers mail, runs the office, schedules tables, speakers and routine office activities, is responsible for fundraising such as mailings, events and membership dues and up-dating and distributing information.

Monthly expenses include rent ($85), phone bills (average of $70), table supplies ($25), office supplies ($40) and our monthly newsletter ($150).

Some of the expenses are steadily rising. The newsletter list continuously expands, meaning higher printing and mailing cost. Our level of activity determines phone bills and mailing expenses (stamps-$10 per month).

Everything we do seems to cost money. CAaRE spent close to $600 on Zimmer licensing intervention in March for Ralph Estes, an expert witness who testified on decommissioning. To simply repair our mimeograph machine cost $160. A thousand peice mailing costs $130. A booth at the up-coming Carthage Fair cost $500, $250 of which was due in May.

Adding all this up, CAaRE needs over $900 per month to simply function at our current level of activity. Some money trickles in from the Solar Not Zimmer Club, our sustainer organization where members contribute $5 per month. However, even if all of those members paid regularly, that only equals about $50 per month.

CAaRE is having to face the unhappy reality of either seriously curtailing our activities, or of devising a successful fund-raising strategy that will help us make it through the months ahead.

All ideas, corrections, criticisms or comments are welcomed. If you would like to become involved in resolving our current dilemma, please call.

JOIN THE

SOLAR NOT ZIMMER CLUB

CAaRE survives on your contributions alone. The SOLAR NOT ZIMMER CLUB is a sustainer club, whose members pledge $5.00 a month (20¢ a day) to help defray such expenses as rent, staff, tele phone, etc. Membership includes: a club button, newsletter, and a T-shirt.

Help Us Stop Zimmer! Pledge Only 20¢ A Day.
Do It Now!!

CITIZENS AGAINST A RADIOACTIVE ENVIRONMENT
1699 CLIFTON AVE. CINCINNATI, OHIO 45220 861 3533

ZIMMER LICENSE
(SHOULD BE) DENIED !

The image of the Nuclear Regulatory Commission as unbiased regulator of a technology that brings us Three Mile Islands suffered a severe tarnishing recently when Charles Barth, NRC attorney in the Zimmer licensing scam, labeled the contentions raised by intervenors in the hearings "worthless".

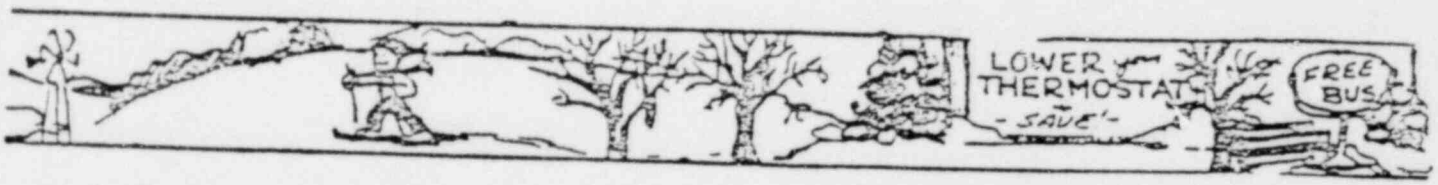
The Miami Valley Power Project, a subsidiary of CAaRE, has always recognized that the NRC was more of a promoter of Zimmer than a regulator, especially when it comes to the licensing hearings. But for the NRC staff to whole-heartedly endorse Zimmer before all contentions are heard, before the Applegate investigation is completed, simply reveals the eagerness of the NRC to license without regard for safety. In other words, its business as usual, and the lesson from Three Mile Island is that the lesson was not learned.

What the Zimmer licensing hearings have proven, contrary to what Charles Barf might think, is that Zimmer's control rods are incapable of performing their function of stopping the fission reaction, that the cable trays at the plant are overloaded, welded by incompetent or uncertified welders, and incapable of performing their function; that fire insulation material being used to protect the cables is inadequate and a possible fire hazard; and that CG&E, builder of Zimmer, is incapable and unqualified to operate the plant because of escalating costs.

Why this information wasn't reported in the mainstream media shows very clearly the power of CG&E to distort facts to suit their needs, and the gullibility, if not criminality, of the media in bringing the facts before the public.

Hopefully, none of us will ever see the day when that billion dollar pandoras box is allowed to open. It is up to area residents, our representatives and community organizations to insure that Cincinnati is protected from the hazards of a particularly unsafe Zimmer nuke. Must we find dozens more workers to tell us how badly Zimmer is built? Must we wipe out a city to prove that nuclear power is unviable?

-Tom Carpenter



tear off & mail today

cut out nukes

( ) I want to join CAaRE. Enclosed is $15 for my one year membership which entitles me to the monthly newsletter and all CAaRE mailings.

( ) I want to subscribe to the CAaRE newsletter only. Enclosed is $5 for a one year subscription.

( ) I want to be a CAaRE sustainer. I pledge $5 a month to sustain CAaRE, which gives me full benefits of a membership, plus membership in the Solar Not Zimmer Club.

( ) I can afford more to ensure that nuclear power is not acceptable in our city. Enclosed is my donation of ( )$10 ( )$25 ( )$50 ( )more

NAME_____ PHONE # _____

ADDRESS_____ ZIP_____

CAaRE
CITIZENS AGAINST A RADIOACTIVE ENVIRONMENT
2699 CLIFTON AVE. CINCINNATI, OHIO 45220 861-3333

Cincinnati Alliance for
Respon ble Energy, Inc.
2699 Clifton Avenue
Cincinnati, Ohio 45220
(513) 861-3533

DEC 28 1981

December 10, 1981

Milan & Marjorie Busching
1032 Valley Lane
Cincinnati, Ohio 45229

Cincinnati Gas & Electric Company
John Yeager/Chairman of the Board
4th & Main St.
Cincinnati, Ohio 45202

Dear Mr. Chairman,

We are shareholders of CG&E and are presently concerned with our company's policies concerning conservation and the Zimmer plant. CARE, Inc., are the owners of 1 (one) share of CG&E common stock, and are filing the attached resolution with Mrs. Marjorie Busching who is the owner of 200 (two hundred) shares of common stock. ~~We would be pleased to produce verification of our ownership if you wish.~~

We hereby notify you of our intention to present the attached proposal for consideration and action by the stockholders at the next annual meeting, and we hereby submit it for inclusion in the proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Security and Exchange Act of 1934, as amended.

If you should, for any reason, desire to oppose the adaption of this proposal by the stockholders, please be good enough to include in the corporation's proxy material the attached statement of security holders submitted in support of the proposal as required by the aforesaid rules and regulations.

Sincerely,

Tom Carpenter

Tom Carpenter/Chairman
Cincinnati Alliance for
Responsible Energy, Inc.

Marjorie Busching

Marjorie Busching

CC: Securities & Exchange Commission
500 N. Capitol Street
Washington D.C. 20549

tc

Cincinnati Alliance for
Responsible Energy
2699 Clifton Avenue
Cincinnati, Ohio 45220
(513) 861-3533

December 18, 1981

Milan & Marjorie Busching
1032 Valley Lane
Cincinnati, Ohio 45229

SHAREHOLDER RESOLUTION

WHEREAS:

-We support energy technologies which do not endanger human health and safety or impose unacceptable financial burdens;

-Increasingly, utilities have initiated programs aggressively promoting investments in energy conservation and alternative energy sources;

-The Three Mile Island accident heightened public awareness of the dangers associated with nuclear energy, including controversy about safe, legal limits on radiation emissions; unsafe methods of radioactive waste disposal; and inadequate government and utility preparedness for the consequences of nuclear accidents;

WHEREAS:

-In November, 1981, the Nuclear Regulatory Commission penalized Cincinnati Gas & Electric $200,000 for "serious quality assurance breakdowns with broad repercussions" at the Zimmer nuclear reactor after an NRC reinvestigation found 40 non-compliances with nuclear safety regulations. In addition to this fine, the largest in history for a reactor under construction, the NRC ordered a 100% quality confirmation program that "by itself, without factoring in any re-work...will be both costly and time consuming".

-The City of Cincinnati's Environmental Advisory Council has recommended an independent quality assurance review and the suspension of Zimmer's construction permit out of concern for CG&E's poor quality control record;

WHEREAS:

-CG&E testified before the Atomic & Safety Licensing Board that Zimmer will produce only 2-7% of the company's electricity when complete;

THEREFORE BE IT RESOLVED THAT THE SHAREHOLDERS REQUEST THE BOARD OF DIRECTORS:

(1) Take urgent steps to develop conservation and alternative energy programs to meet demand for electricity, and send a report on such programs to shareholders by September 1982;

(2) Commission an independent study of Zimmer's potential adaptation to coal; including estimates of long-term and possible contingency costs and health consequences of nuclear and coal use, and summarize this study in the above report, consistent with reasonable costs over-all.

SUPPORTING STATEMENT

Plans to build Zimmer II nuclear reactor were wisely abandoned due to uncertainty about the cost of fuel, decommissioning of the reactor, waste management and compliance with Federal regulations. We submit that the longer term costs of operating Zimmer I would likewise be prohibitive for these and additional reasons relating to quality control problems identified by the NRC.

Given the history of problems at Zimmer, cost increases seem inevitable. The current NRC investigation is not yet complete and is to cover numerous allegations of construction defects. In our view, CG&E's financial health could improve if it converted Zimmer to coal, a technology our company has had far more experience with.

The health of the people of Cincinnati is also a matter our company should take into account. A growing number of studies show that the health risk of low and high level radiation, including increased rates of cancer and leukemia, is substantial. We believe future energy needs can be met through conservation and alternative sources, rather than costly and enormously complicated nuclear power plants. We urge support for this resolution as sound ethical and financial policy.

Respectfully Submitted,

Tom Carpenter

Tom Carpenter
Chairman of Cincinnati Alliance
for Responsible Energy

Marjorie Busching

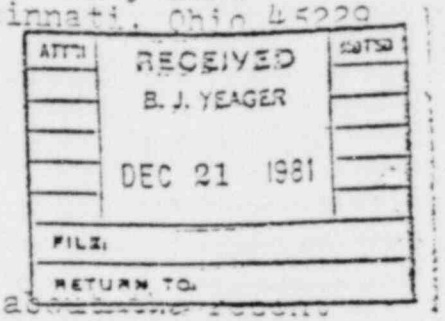
Marjorie Busching

CC: Securities & Exchange Commission
Division of Corporate Finance
500 N. Capitol St.
Washington D.C. 20549

Cir nnati Alliance for
Res. nsible Energy
2699 Clifton Ave
Cincinnati, Ohio 45220
(513) 861-3533

December 19, 1981

Milan & Marjorie Busching
1032 Valley Lane
Cincinnati, Ohio 45229



Cincinnati Gas & Electric Company
Chairman John Yeager
4th & Main Street
Cincinnati, Ohio 45202

Dear Mr. Chairman,

We are shareholders of CG&E and are concerned as [illegible] NRC findings at the Zimmer nuclear station, and particularly the role CG&E management played that led to the $200,000 fine, in addition to the 100% Quality Confirmation program. CARE, Inc., are the owners of 1 (one) share of CG&E common stock, and are filing the attached resolution with Mrs. Marjorie Busching who is the owner of 200 shares of common stock. We will produce verification of our ownership at your request.

We hereby notify you of our intention to present the attached proposal for consideration and action by the stockholders at the next annual meeting, and we hereby submit it for inclusion in the proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Security and Exchange Act of 1934, as amended.

If you should, for any reason, desire to oppose the adoption of this proposal by the stockholders, please include in the corporation's proxy material the attached statement of security holders submitted in support of the proposal as required by the aforesaid rules and regulations.

Sincerely,

Tom Carpenter

Tom Carpenter
Cincinnati Alliance for
Responsible Energy

Marjorie Busching

Marjorie Busching

CC: Securities & Exchange Commission
500 N. Capitol Street
Washington D.C. 20549

Cinci ti Alliance for
Responsible Energy
2699 Clifton Avenue
Cincinnati, Ohio 45220

Milan & Marjorie Busching
1032 Valley Lane
Cincinnati, Ohio 45229

December 19, 1981

SHAREHOLDER RESOLUTION

WHEREAS:

-A November, 1981 Nuclear Regulatory Commission report on Zimmer found improper voiding and alterations of quality assurance non-compliance reports on a widespread basis;

-The investigation uncovered harassment of quality control inspectors and dismissal threats for checking components too thoroughly, including examples of dousing inspectors with water;

-Congress recently added criminal liability to the Atomic Energy Act for "precisely the sort of actions that occured at the Zimmer site";

-Government investigators have not yet determined criminal liability of relevant management officials for the above misconduct.

WHEREAS:

-A February 1981 NRC survey found more legal non-compliances at Zimmer than any other Region III plant under construction;

-A March 1981 letter from the Commission to the utility warned that "additional (quality assurance) violations...which demonstrate ineffective management...will likely lead to escalated enforcement";

-A November 1981 Commission report cited forty new items of legal non-compliances at Zimmer, almost double the number uncovered in the past two years. Simultaneously, the Commission Regional Director called Zimmer's quality assurance program "totally out of control". He equally blamed the utility and construction firm. The Commission proposed a $200,000 fine, the largest for a plant under construction;

-The NRC investigation led to a quality confirmation program that "by itself, without factoring in any re-work...will be both costly and time consuming;

-The NRC chairman recently called Zimmer one of the five plants under construction nationally with "major problems".

THEREFORE BE IT RESOLVED THAT THE SHAREHOLDERS REQUEST THE BOARD OF DIRECTORS:

Authorize a review panel of distinguished members of the community, wholly independent and free from conflicts of interest with the utility, to investigate utility management responsibility for the above issues; and request Cincinnati's City Manager to select the members with the advice and consent of the City Council after public input and comment.

Respectfully Submitted,

Tom Carpenter/Chairman
Cincinnati Alliance for
Responsible Energy

Tom Carpenter

Marjorie Busching

Marjorie Busching

CC: Securities & Exchange Commission
500 N. Capitol Street
Washington D.C. 20549

SUPPORTING STATEMENT

The courts and the Securities & Exchange Commission have recognized that mismanagement, civil and criminal illegalities are of material concern to shareholders. In light of recent developments, the scope, causes and corrective action relevant to these revelations haven't been adequately disclosed in reports to the S.E.C.

The 1981 government findings at Zimmer have serious public health and safety implications. A Congressional committee observed, "the public health can be endangered by nuclear crimes just as surely as it can by street crimes". These findings have lowered CG&E's standing in the community, evidenced by a recent vote of Cincinnati's Environmental Advisory Council to recommend suspension of Zimmer's construction permit and an independent quality assurance review.

The development could threaten the shareholders' interest. The necessity for costly repairs and delay means major unanticipated expenses, and prevents prudent investment decisions.

The utility failed to disclose long-term investment risk that results from short-term cost cutting. CG&E is charged with a 100% reinspection of safety components at Zimmer. There are unresolved concerns that management officials responsible for conscious safety violations may be manipulating the re-testing program. Unless those responsible for previous abuses are identified and removed from Quality Confirmation, it will lack credibility.

CG&E Tells 'Accusers' Legal Action Possible

BY BEN L. KAUFMAN
Enquirer Reporter

If critics use stolen documents to justify new hearings on Zimmer nuclear power station, Cincinnati Gas & Electric Co. will pursue criminal charges, utility officials threatened Wednesday.

"We will pursue them with all our resources," promised Earl Borgmann, senior vice president of CG&E.

And CG&E will not sit still for new proceedings in which its accusers remain nameless, President William Dickhoner added. "We have a right to face our accusers."

UNIDENTIFIED ACCUSERS and suspect documents are part of a new challenge to the vital operating license CG&E needs for the $1.3 billion facility in Clermont County.

On Tuesday, the Miami Valley Power Project formally asked the Atomic Safety & Licensing Board to reopen licensing hearings. The citizen group, a recognized intervenor in the licensing hearings, also asked the licensing board to keep the identities of witnesses from CG&E.

Tom Carpenter, spokesman for the citizens group said this was to prevent retribution by CG&E and its contractors. A $200,000 fine paid by CG&E this year included a penalty for allowing or not preventing harassment and intimidation of inspectors at Zimmer.

New contentions include charges of shoddy work, inept or criminally inadequate quality assurance, and unfitness of CG&E officials to run a nuclear power plant.

Many of those charges are old, but they never have been formal contentions before the licensing board, Carpenter said. That, and new evidence he would later describe, justify reopened hearings, he explained.

Hearings on new contentions would postpone the startup of Zimmer for at least two or three months, Borgmann said.

IF THE critics win their case, it could be "years and years," Carpenter said.

Carpenter would not deny that some of the evidence brought to him and his colleagues was stolen. "We know of no instance that they were taken without permission," Carpenter said, but he hadn't asked where some of it came from. The authenticity of evidence used in the petition to the licensing board is certain, he added.

Even if evidence were stolen, the "greater harm" of ignoring deadly faults at Zimmer would move him to use it, he said.

Most of the witnesses he offered to the board are former and present workers at Zimmer, and they brought the documents or copies of documents with them.

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CINCINNATI ALLIANCE FOR RESPONSIBLE ENERGY

May 18, 1982

PRESS RELEASE

"New Licensing Challenges to Zimmer Filed Today"

The Miami Valley Power Project (MVPP), a wholly owned subsidiary of the Cincinnati Alliance for Responsible Energy (CARE) is submitting eight new contentions to the Atomic Safety & Licensing Board hearings today (May 18). The contentions revolve around two major issues: (1) serious quality assurance breakdowns with broad repercussions at Zimmer, and (2) the lack of corporate character and competence on the part of the licensee and builder, Cincinnati Gas & Electric Company (CG&E).

CARE has retained the Government Accountability Project (GAP) in Washington D.C. as legal counsel for the hearings, upon acceptance of the ASLB judges of the eight contentions. GAP has previously been involved in the Zimmer plant as representative of Detective/Whistleblower Tom Applegate, whose allegations led to a November, 1981 $200,000 fine against CG&E for quality assurance abuses at Zimmer. CARE & GAP have worked together on the whistle blowing disclosures at Zimmer in the past. (GAP representative Tom Devine may be reached at 202-347-7904).

The charges being filed by MVPP/CARE center on three basic platforms: (1) that the Region III branch of the Nuclear Regulatory Commission (NRC) revealed only a portion of the actual problems at Zimmer in their November report; (2) that, contrary to government and utility statements, high-level CG&E management is squarely responsible for directing the previous quality assurance program, including responsibility for identified abuses of same, and (3) that the utility and Region III NRC have failed to take adequate corrective actions of identified problems.

(continued)

"We decided to submit new contentions only after it became clear that the NRC staff (in the licensing hearings) was not going to raise these issues--a quality assurance program "totally out of control" and grave doubt about CG&E's character and competence--either through Region III investigation or through the Atomic Safety & Licensing Board hearings. Witnesses want to speak out in increasing numbers, but Region III no longer seems interested. Under these circumstances, we could no longer stand by in all good conscience and watch the licensing process rush to approve Zimmer." -Tom Devine of GAP.

"These contentions are a mixture of old and new information gained from investigation and communication with Zimmer workers. However, those issues are all brand new to the licensing process. It is outrageous that a plant that has been fined one of the largest fines on record for quality assurance abuses, which include felony violations as yet unresolved, has yet to be even addressed by the licensing board. We intend to remedy that situation" - Tom Carpenter, CARE Staff.

The Atomic Safety & Licensing Board closed the record in early March of 1982 after hearing evacuation planning issues. Under ASLB guidelines, the record may be re-opened under certain circumstances. CARE spokesperson Tom Carpenter believes that the new contentions meets those guidelines: "This is new information before the licensing board, and the appropiate time to hear these issues is now, before the plant is allowed to begin operation."

The eight new contentions are summarized here:

(1) CG&E & Kaiser (Zimmer's contractor; KEI) have failed to maintain sufficient quality controls to ensure that the as-built condition of the plant reflects the final version of a design that complies with standards to protect public health & safety.

(2) CG&E & KEI have failed to maintain adequate traceability to identify and document the history of all material, parts, components and welds, as required by law.

(3) CG&E & Kaiser failed to maintain an adequate quality assurance program for vendor purchases, as required by NRC regulations.

(4) CG&E & Kaiser have failed to maintain an adequate quality assurance program, to identify and correct construction deficiencies.

(5) CG&E & KEI officials failed to main adequate controls to process and respond to internal Non-Conformance Reports identifying violations of internal or government requirements.

(6) CG&E & KEI have engaged in illegal retaliation against Quality Control personnel who attempt diligently to perform their duties or who disclose quality assurance problems to the NRC.

(7) The CG&E Quality Confirmation Program is inadequate to mitigate or remedy the serious consequences of QA breakdowns at Zimmer.....the QCP is fundamentally narrow in scope and its implementation spotty.

(8) CG&E lacks necessary and competence to operate a nuclear plant

The basis for these contentions include the November, '81 NRC Investigation & Enforcement Report, conversations with Region III management officials, affidavits from and interviews with witnesses willing to testify; and additional documents.

"We expect to be able to prove all of these contentions before the licensing board and, in effect, force the government regulatory agency to do its job." -Tom Carpenter, CARE Staff.

FOR COPIES OF THE CONTENTIONS, COMPLETE WITH EXAMPLES, CONTACT CARE AT (513) 861-3533, Tom Carpenter-or CAP at (202) 667-7904.