

November 30, 1982



SECY-82-474

ADJUDICATORY ISSUE

(Affirmation)

For: The Commission

From: Martin G. Malsch
Deputy General Counsel

Subject: ZIMMER INTERVENORS' PETITION (ATTACHMENT 2)
FOR CERTAIN RIGHTS RELATIVE TO THE INDEPENDENT
REVIEW MANDATED BY THE COMMISSION'S
NOVEMBER 12, 1982 SHOW CAUSE ORDER

Purpose: To assist the Commission in providing a timely
response.

Discussion: On November 19, 1982, two Intervenors in the
Zimmer O.L. proceeding that have not
previously identified themselves with the
quality assurance issues, Zimmer Area
Citizens-Zimmer Area Citizens of Kentucky
(ZACZACK) and the City of Mentor, Kentucky
(jointly "Intervenors"), petitioned the
Commission for the appointment of a consulting
firm that would serve on behalf of Intervenors
to review and monitor the third party audit
and independent review of the Zimmer
management, construction, and quality control
that the Commission required in its November
12 show cause order (CLI-82-33). 1/ The

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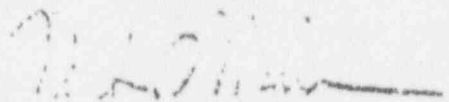
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in accordance with the Freedom of Information
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consulting firm would be nominated by the Intervenor and serve "to directly represent the interest of th[ese] and other intervenors and the public" in the ongoing Zimmer matter for the purpose of informing the public and restoring confidence. Intervenor further ask that the Commission pay to retain the requested consulting firm or require that the utility do so. In addition, Intervenor request the Commission to entertain their views regarding the selection of the entity that will conduct the Zimmer independent review or third party audit (independent reviewer). In support of this procedure they ask the Commission to require the nominated independent reviewer to disclose certain specified information to facilitate evaluation of its independence. Finally, Intervenor seek a directive from the Commission staying the decision of the Region III Administrator on the appointment of the independent reviewer and all progress at Zimmer until the Commission has ruled upon this petition and the consulting firm for Intervenor is in place and ready to serve.

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Martin G. Malsch
Deputy General Counsel

Attachments:

1. Order
2. Zimmer Intervenors' Petition

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Tuesday, December 14, 1982.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, December 7, 1982, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of December 13, 1982. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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Attachment 1

Attachment 2

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

In the Matter of :
:
CINCINNATI GAS AND ELECTRIC :
COMPANY, ET AL, : DOCKET NO. 50-358
(William H. Zimmer Nuclear :
Power Station) :

PETITION FOR THE APPOINTMENT OF A CONSULTING FIRM NOMINATED BY INTERVENORS TO REVIEW AND MONITOR THE THIRD PARTY AUDIT, TO CONSULT WITH NRC STAFF AND INTERVENORS, AND TO PERIODICALLY REPORT TO AND ADVISE THE PUBLIC AS TO THE PROGRESS OF THE AUDIT, IDENTIFICATION AND SIGNIFICANCE OF SAFETY DEFECTS AND RESOLUTION OF DEFICIENCIES IDENTIFIED

SUBMITTED BY INTERVENOR ZIMMER AREA CITIZENS-ZIMMER AREA CITIZENS OF KENTUCKY AND JOINED BY INTERVENOR CITY OF MENTOR, KENTUCKY

Intervenor Zimmer Area Citizens-Zimmer Area Citizens of Kentucky, joined by intervenor City of Mentor, Kentucky, petitions this Commission to appoint a consulting firm to be nominated by petitioner to review and monitor the independent review, third party audit, of the safety-related construction deficiencies, the review of the management of the William H. Zimmer Nuclear Power Station, including the quality assurance and quality verification programs, and a comprehensive plan for verification of the quality of construction at the Zimmer facility, as the same has been set forth and ordered by this Commission in its November 12, 1982 Order suspending construction of safety-related construction activities at the Zimmer facility.

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The consulting firm so nominated and authorized by the Commission shall review and monitor the third party audit of the Zimmer facility and consult with NRC Staff and intervenors as to the degree of deficiencies present, corrective actions to be undertaken, and other relevant matters pertaining to the circumstances and situation present at the Zimmer facility and to periodically report to and advise the public as to the progress of the audit, its significance and its sufficiency.

Petitioner presents this petition to the Commission under its supervisory powers exercised over the William H. Zimmer Nuclear Power Station and undertaken following the Commission's Order of July 30, 1982, and as pronounced by its Order of November 12, 1982, and the powers of the Commission vested to it by 42 U.S.C. §§2133, 2201, 2232, 2235, 2236, 5841 and 5846, and as further authorized by 10 C.F.R. Part 2, Subpart B, §2.200, et seq., and specifically 10 C.F.R. §2.206.

The basis for this petition is as follows:

1. In early 1981 the NRC conducted an investigation into allegations presented by the Government Accountability Project and Zimmer site employees which revealed numerous examples of non-compliance with twelve of the eighteen quality assurance Criteria of Appendix E, 10 C.F.R. Part 50 as the same is more specifically set forth in Notice of Violation and Proposed Imposition of Civil Penalties, issued November 24, 1981, and Investigation Report No. 50-358/81-13, resulting in the imposition of, and payment of, a

civil penalty by Cincinnati Gas & Electric Co. in the amount of \$200,000.00;

2. Commencing March 31, 1981, and thereafter, the utility has met with NRC, discussed appropriate action to resolve ongoing difficulties and agreed to implementation of action plans for resolution, but which remain unresolved;

3. As of November 12, 1982, this Commission found that the NRC lacks reasonable assurance that the Zimmer facility is being constructed in conformance with the terms of its construction permit and 10 C.F.R. Part 50, Appendix B, and that the NRC lacks reasonable assurance that there is adequate management control over the Zimmer project to ensure that NRC requirements are being met;

4. Verification of the plant's quality and the actions deemed appropriate to correct deficiencies in construction are of the utmost importance to the public health and safety and in consideration of the impact upon public health and safety construction was suspended by Order of this Commission issued November 12, 1982;

5. On July 15, 1982, the Atomic Safety and Licensing Board, sua sponte, admitted as Board issues eight contentions presented by the Government Accountability Project in behalf of the intervenor Miami Valley Power Project, which the Board found to be serious issues, with which this Commission concurred, and which relate to the issue of safe construction of the facility;

6. On July 30, 1982, this Commission issued its Order directing the Atomic Safety and Licensing Board to dismiss the eight contentions from the proceeding and noted that it, the Commission,

has directed the NRC Staff to keep the Commission informed so that the Commission can provide guidance and direction as needed;

7. Intervenor Miami Valley Power Project moved this Commission to reconsider its July 30, 1982 Order and that motion still pends, in which the essence of the issue raised in the Motion for Reconsideration is public involvement and dissemination of information to the public as to the degree of safety-related deficiency and appropriate resolution present at the Zimmer facility;

8. The Environmental Advisory Council of the City of Cincinnati conducted four consecutive weekly public hearings commencing September 9, 1982, at which Commissioner Asselstine, Region III Administrator Keppler and other NRC personnel appeared and provided information at one hearing session, in which the Council hearings dealt with the safety issue of construction of the Zimmer facility and produced recommendations to the City of Cincinnati for that governmental agency's consideration and the consideration of others who desire to review the Council findings and recommendations;

9. This Commission has conducted numerous public and closed meetings, the subject matter of which was the sufficiency of the construction and construction management of the Zimmer facility;

10. On November 15, 1982, William H. Dickhoner, president of the Cincinnati Gas & Electric Co., released to the public a statement on behalf of the utility which stated, among other things, that this Commission's Order of November 12, 1982 was precipitous, punitive and does nothing to resolve the problem, that the utility would not challenge the Order because it would result in further delays and

that he, as president of the utility, was convinced that the overall construction of the Zimmer facility was as good or better than any plant in service or under construction. If Mr. Dickhoner is correct, then this is a matter of extreme and grave concern to the entire public;

11. The history of events, briefly set forth here, together with the inability of the public to be involved with the identification, resolution and progress of the construction deficiencies, particularly the absence of a public forum and the necessity of ongoing activity of which the public has no knowledge and the dependence of the public to rely upon limited information divulged to it has resulted in skepticism, distrust and fear for their health and safety in the construction of this plant which the utility claims to be as good or better than any plant in service or being constructed and which the utility has vowed to operate, and of which the public is currently denied any productivity in the selection of the third party auditor, the degree of investigation and the resolution of the pronounced defects, as well as the determination of the degree of the current state of indeterminability present at this construction site;

12. The public has a right to share in all aspects of the future resolve of the current state of the Zimmer station as is recognized by the United States Code, the Code of Federal Regulations and this Commission's policy, but in which, under the present posture of the Zimmer licensing process, it currently is denied both involvement and information, leading to further skepticism, distrust and fear produced by both the inability to be involved and to be informed.

Petitioner therefore seeks authorization by this Commission for the appointment of a consulting firm to be nominated by petitioner to directly represent the interest of this and other intervenors and the public to consult with the utility, its contractor, the third party auditor, the NRC and the intervenors and to periodically disseminate to the public information vital to that public's understanding and appreciation of the state of construction deficiencies and the manner of resolve to abate the public fear and reinstate its confidence in the utility, the plant being constructed and the regulatory scheme present.

Petitioner further seeks authorization by this Commission for the payment of expenses and consultation fees incurred and charged by the nominated and approved consulting firm to be paid from the NRC research funds, other funds, or assessed by the Commission to the utility, as the Commission, in its discretion, so elects in the public's interest, or in the alternative the retention of the nominated consulting firm as NRC consultant in the public's interest to carry forth the intent and provisions of this petition; and that the consulting firm so nominated and approved shall have the responsibility as the public's representative, and in the public's interest, to be empowered to be involved in all matters pertaining to the future progress of the Zimmer facility as directed by this Commission's Order of November 12, 1982, that the Commission direct the Office of Inspection and Enforcement and the utility to provide all reports, studies and analyses and other information to the nominated and

approved consulting firm relating to the November 12, 1982 Order of the Commission, and to assure that the public is fully and adequately informed as to the future progress of the Zimmer project to resolve the found and indeterminable deficiencies currently present.

Petitioner further requests that the Commission, as authorized by Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Unit No. 1) CLI-81-30 14 NRC 950 (1981), entertain the views of the intervenors as to the selection of the third party auditor and, in order to make this meaningful, it is requested that the Commission direct the designated third party auditor to disclose all past and present relationship between it and the NRC, the nuclear power industry and the public utility industry, including disclosure of such information for all personnel of the third party auditor who will perform any work during the course of the audit.

Petitioner further seeks a directive from this Commission to stay the progress and decision of the Region III Administrator, as directed by the November 12, 1982 Order, until this Commission has ruled upon this petition and upon favorable ruling as to the nominated consulting firm, that that firm be present and in a position to become productive to protect the public's interest from the inception of compliance with the Commission's Order of November 12, 1982, and the entertainment of the views of the intervenors as to the selection of the third party auditor and requested disclosure of information sought

and determination of potential conflicts of interest as to that designated auditor.

Dated: November 19, 1982



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Zimmer Area Citizens of Kentucky,
Intervenor-Petitioner, and as
authorized by Intervenor City of Mentor

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document entitled "Petition for the Appointment of a Consulting Firm Nominated by Intervenor to Review and Monitor the Third Party Audit, to Consult with NRC Staff and Intervenor, and to Periodically Report to and Advise the Public as to the Progress of the Audit, Identification and Significance of Safety Defects and Resolution of Deficiencies Identified, Submitted by Intervenor Zimmer Area Citizens-Zimmer Area Citizens of Kentucky and Joined By Intervenor City of Mentor, Kentucky" was served by ordinary U.S. Mail, postage prepaid, upon the following persons this 19th day of November, 1982:

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