GOVERNMENT ACCOUNTABILITY PROJECT
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August 4, 1982

FREEDOM OF INFORMATION ACT REQUEST
FOIA-82-358
Rec'd 8-6-82

Director
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

To Whom It May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. §552, we request any and all documents, reports, memoranda, drafts, notes, minutes, telephone logs, correspondence, forms and/or other information concerning any and all investigations by the Office of Inspector and Auditor (OIA) of Charles Barth, Office of the Executive Legal Director of the NRC, on the subject of his communication regarding a letter written by NRC Region III Director James G. Keppler to the Advisory Committee on Reactor Safeguards (ACRS).

Upon the information available, we believe the investigation of Mr. Barth concerns his communication with the Atomic Safety and Licensing Board regarding Mr. Keppler's letter that was forwarded to the Board. This information is referenced in an interview by OIA investigators with Terry Harpster, formerly with the NRC Office of Investigation and Enforcement, who worked as a pre-operation start-up inspector at the William H. Zimmer Nuclear Power Plant from October 1977 through March 1979. The report of the interview with Mr. Harpster is attached hereto for your convenience in identifying the documents we request. Our reading of the report of the interview indicates that the OIA investigation of Mr. Barth took place some time between 1979 and 1981.

The Government Accountability Project is a non-profit, non-partisan public interest organization concerned with honest and open government. Through legal representations, advice, national conferences, films, publications and public outreach, the Project promotes w..istleblowers as agents of government accountability.

We are requesting the above information as part of a monitoring project on the adequacy of the Commission's efforts to protect public safety at nuclear power plants. Accordingly, we request that fees be waived, because "furnishing the information can be considered as primarily benefitting the general public." 5 U.S.C. §552(a)(4)(A).

For any documents or portions of documents that you deny due to a specific exemption, please provide any index itemizing and describing documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming such exemption, explaining why each exemption is relevant to the document or portion withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C.Cir. 1973), cert. denied, 415 U.S. 977 (1974).

We look forward to your reply within ten (10) working days.

Sincerely,

Marya C. Young
Legal Assistant

Lynne Bernabei
Staff Attorney

Attachment

questioned Phillip as to whether NRC had jurisdiction over matters such as 1) management problems, 2) theft of materials from the site, or 3) weapons violations (which Williamson understood to be within the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms). Williamson recalled Phillip's saying that this was something he had to look over in order to sort out Applegate's concerns. Williamson did not recall Phillip's singling out any issues as to which were or were not NRC concerns. Williamson said that after dinner at about 8:00 pm he and Phillip went their separate ways at the motel.

The next morning Phillip called Applegate and asked him a few additional questions. Williamson said he was in the same room at the motel during Phillip's telephone call. Williamson said the call lasted about 10 or 15 minutes. Williamson could not recall the substance of the call because much of the technical aspects were foreign to him at the time. Williamson did recall Phillip's going through some of the documents with Applegate. Williamson said that Phillip had reviewed the documents the night before and made some notes concerning them. Williamson said Phillip left Cincinnati about 10:00 that morning and he (Williamson) left a few hours later.

Williamson recalled talking with Ward upon his return to Headquarters. He said he told Ward that the only allegation he saw that was within NRC's jurisdiction was the issue about the piping being dropped off the truck. Williamson said this conversation only lasted about two or three minutes.

Williamson guessed that his next contact with Phillip was sometime in the next two or three weeks. Williamson said he later (in May) received a call from a newscaster from Channel 9 in Cincinnati. The newscaster had a copy of Phillip's letter to Applegate describing the issues to be investigated. Williamson recalled speaking with Phillip sometime after being contacted by the newscaster. Williamson said he had no more contact with anyone regarding this investigation until the material came out from the Government Accountability Project. Williamson said he was not involved with the writing of the Region III report of investigation. He did not feel that he had to write anything nor did he ever feel that he would have any input into the report.

Interview of Terry Harpster

Terry Harpster, Reactor Preoperations Specialist, IE, on detail as a Special Investigator to the Subcommittee on Energy, Environment, and Natural Resources, Government Operations Committee, U.S. House of Representatives, was interviewed on March 6, 1981, by Investigators David Gamble and John Sinclair, OIA.

Harpster said he worked in Region III of NRC from 1974 through 1979. He said he was a technical support inspector initially for all plants in

Region III. He later became a project manager for particular plants: first for DC Cook Unit 2, then Monticello, then both Zimmer and Monticello at the same time. Harpster said he began his inspection activities at Zimmer in October 1977 as a preoperations start-up inspector. He said he was assigned to this position until he left Region III in September 1979; however, he had no real involvement with Zimmer after the Three Mile Island (TMI) accident in March 1979. Harpster said that a pre-operations inspector picks up a plant when construction is far enough along, i.e., about 60 percent completed, to review certain programs, e.g., the quality control program for preoperational work. Harpster said that Tom Vandel was his counterpart as the lead construction inspecto Vandel had inspected Zimmer prior to Harpster's arrival but there was a period of overlap when they both worked there. Harpster said John Menning worked with him as a preoperations inspector who he was training. Harpster said that Menning "took one look" and left the NRC because the program was so bad. He related that one of Menning's reasons for leaving was that he saw how little support the inspectors got on the job. Harpster understood that Menning left to attend the University of Arizona where he is working on his Ph.D. in metallurgy.

Harpster said that when he picked up Zimmer the licensee (Cincinnati Gas and Electric Company) had little appreciation for the amount of resources needed for the plant. He said they barely met ANSI Standard 18.1 which is the criteria for staffing. Harpster explained that even this standard is a loose one which has since been upgraded. Harpster said that one of his jobs was to show the plant management what was required to get the plant off the ground. He said that his inspections documented a number of problems at Zimmer. Harpster said that, for example, the employee who was being placed in charge of the start up operation only had about three months of actual experience in the plant. He explained that the licensee counted as nuclear experience the amount of time operations employees were onsite during the construction of Zimmer. Another example was his impression that the plant personnel felt that, once the parts were bought for the plant, they did not need any support from their corporate offices. He also believed that many plant personnel felt a nuclear plant was similar to the operation of a fossil fuel plant. Harpster said that he tried to resolve some of these problems informally; including going up through the licensee management chain to Vice President Earl Borgmann, but with no luck.

Harpster said he was successful in getting a meeting set up in Bethesda to discuss apparent weaknesses with licensee's organization and staffing. He said this meeting was held on July 13, 1978, only after he "screamed" at licensing officials in Bethesda, particularly Irv Peltier who was then project manager in NRR responsible for issuing the safety evaluation report (SER). Harpster said that he presented his concerns at that meeting and the utility agreed to upgrade their program. He recalled that the specific responses was to "buy" an engineer from General Electric to assist them.

Harpster said that Borgmann was also putting the heat on him by, for example, sending a letter to Keppler. Harpster also understood that the Chairman of the licensee sent a letter to President Carter and others. Harpster said that it was about this time that the TMI accident occurred. He said he was assigned to TMI and he has not been back to Zimmer since. Harpster said that, when he left, Zimmer still had problems. A principal one was that, as a practical matter, there was no QA program for operations. He said that all Zimmer had was one person assigned to this function and that person could not possibly do all that the job required.

Harpster said that realistically the IE modular inspection program does not deal with the things you have to focus on early in a plant's life. He said that an inspector must deal with the problems he knows are important and then deal with other problems in addition. Harpster said that he had to deal with the construction people somewhat at Zimmer. He said that the licensee had minimal involvement with the construction at Zimmer: everything was controlled by its contractor. He said that this is a problem because, after the plant is built and the contractor leaves, the licensee would not have any expertise to handle the plant. He said that for example there was no one on the licensee's corporate staff for reactor instrumentation and control systems. Harpster felt that this licensee was "in over its head."

Harpster said that people often bring matters to an inspector's attention. He said that an inspector can deal with some of these matters, but there are some which he cannot. Harpster said that sometimes so many things are wrong that a plant is out of control. Harpster concluded that "Zimmer was out of control." Harpster explained that a licensee's ability to get money for the construction of a nuclear power plant (by, e.g., the sale of bonds) is based upon the percentage of completion of the plant. He said that this results in a situation where the construction personnel attempt to turn things over as completed before they are ready. Harpster said that what then happens is that the licensee staff is not properly prepared or trained to handle them. He said when the licensee finds things that are wrong, they cannot fix or test them properly. What they must do is give the problems back to construction to be remedied. Harpster said this is indicative of a construction QC program that does not work. He said this is a situation which an NRC preoperations inspector tries to head off. He said that one example of this was that the licensee had not ordered any spare parts. According to Harpster the time required to obtain additional or replacement equipment is so long it causes a major problem to licensees trying to resupply or obtain back-up equipment.

Harpster said that sometimes plant management puts so much pressure on their personnel that the personnel cannot get things done. He said that these personnel then sometimes use NRC inspectors to accomplish the same things: they feed inspectors information so it appears that the inspector found the deficiency rather than the plant personnel. Harpster said that, from what he could see, it appeared that the construction program

had defects and he was about to inherit them. Harpster explained that he was not directly familiar with the construction activities but he saw the results - including the QA problems. Harpster said that Inspector Fred Maura has documented much of these problems from the operations side.

Harpster said that both the site construction manager, Mr. Gear (phonetic) and the site QA manager Mr. Schweirs were friends of Vice President Borgmann. Harpster believed that Schweirs was assigned by the licensee to keep the plant manager (Schott) under control. Harpster said Schweirs even called the regional office to try to get some of the IE inspection reports changed. Harpster said Schweirs also asked him to send IE inspection reports to him (Schweirs) so he could decide which matters would be sent on to Schott.

Harpster said part of the problem was that NRC does not have explicit regulations to inspect against. He said that the preoperations inspector is faced with the task of trying to get control of the site and helping the licensee to solve its problems. He said that the inspector does not document but a small percentage of this "helping work." Harpster said the licensee had no people involved with preoperations and test acceptance. He said that everything was bought under contract so the contractor was able to do whatever it wanted. Harpster said the licensee then had no one who knew how to handle the problems that were "built-in."

Harpster said he tried to get the plant managers out to take tours of the plant. He said that one assistant plant manager said he was scared to tour the plant because of the convicted felons working out there. Harpster said that sometimes the licensee's own security force could not handle disturbances and they had to call the local sheriff's office. Harpster explained that there is some drinking of alcohol on all nuclear construction sites. However, the licensee at Zimmer did not have much control of things. Harpster said there were a lot of "tough guys" working at the plant and the situation got worse when they were drinking.

Harpster said that there are many allegations at any nuclear power plant; howver, usually only a certain number are true. Harpster said that one could tell that there were a large number of problems at Zimmer because so many allegations were coming up.

Harpster said there was a lot of pressure on individual ie inspectors because of the momentum generated by the NRC licensing process. Harpster said that pressure is also created on construction personnel by the contractor's weld production schedules. He explained that the construction manager has to have a certain number of welds completed to keep the piping installation on schedule. He said that problems arise when the construction personnel are pushed. Harpster said that for a QC inspector to stop construction for any deficiencies, he would have to hold up many phases of the construction of a $1 billion plant; so the QC inspectors normally do what they are told.

Harpster said that the overall problem was that NRC's licensing process was rolling much faster than he could "ratchet" improvements at the plant end. Harpster said that NRC's requirements were a "joke." He said that NRR was about to issue the SER and they set up a meeting of the Advisory Committee on Reactor Safeguards (ACRS) to which he was not invited.

Harpster said he went up the Region III management chain and presented his concerns. He said he attended the ACRS meeting anyway. He recalled that when licensee officials were questioned by ACRS Chairman Bender, they said several things that were not true. Harpster noted that not only did he feel they were not true, but Menning also believed they were not true. Harpster said he presented this conflict to his boss, Robert Warnick when he returned to the regional office. He said that he and Menning later talked with one of the licensee officials who had testified to the ACRS (Jim Schott who was the plant manager of Zimmer). During their conversation, Harpster had Warnick read Schott's testimony to Schott over the phone. He said that Schott then agreed that the testimony did not convey the correct impression. Although Schott assured Harpster and Menning that he would clarify this at the next ACRS meeting, he did not. Harpster believed that Schott's subsequent testimony even aggravated his earlier statements.

Harpster said he briefed his management on this matter. He recalled that his Regional Director, James Keppler, sent a letter to the ACRS informing them of the situation. Harpster understood that this letter was later fowarded to the Atomic Safety and Licensing Board (ASLB).

Harpster explained that, after the ACRS meeting, he also informed Peltier (in Menning's presence) of his concerns. He said that Peltier later claimed that he did not recall Harpster's expressing his concerns to him. Harpster explained that Peltier is a "pro-nuclear" "pro-licensing" employee. He also explained that during a start-up of a nuclear plant, NRR is on a very tight schedule; the IE inspector is often viewed by NRR as an adversary when he uncovers deficiencies which NRR has already blessed.

Peltier told Harpster that he informed the licensee about an IE investigation underway on the subject of the licensee's testimony before the ACRS. Peltier also informed Harpster that Charles Barth, Office of the Executive Legal Director, called James Yore, Chairman of the ASLBP and told him to throw away Keppler's letter describing the discrepancies. Harpster pointed out that these latter two matters were the subject of a recent investigation by OIA. Harpster said in summary that this was a situation where the system broke down: NRR viewed IE as the bad guys trying to hold up plant licensing.

Harpster said that nuclear power plants employ personnel specifically designated to serve as the liaison with NRC. He said that this is helpful because it overcomes the problem IE inspectors face in trying to find their way through the great amount of paper at the plant.. Harpster said, however, this liaison person also "steers" the inspectors' activities. Harpster said that dealing with this liaison person does allow the inspector to get through NRC's modular inspection program very well. Harpster noted that there is no real internal audit of the NRC's inspection program.

Harpster described the "helping activities" that an IE preoperations inspector engages in as a process of getting all the procedures and controls in place. He said that this activity constitutes only about two lines in the IE procedures, but it is the largest part of a preoperations inspector's time.

Harpster estimated that the interest cost alone is holding up construction of a nuclear power plant for one day would be several hundred thousand dollars. He observed that with the increased pressure on NRC to license power plants, he would expect even more pressure to be placed on IE inspectors. He said that pressures on the licensee personnel to make exceptions to the acceptance criteria in the preoperations tests are very real. He said it is difficult for an IE NRC inspector to tell whether the licensee's exceptions are based on valid engineering analyses. He said that all inspectors cannot possibly be experts in all areas. Harpster said the inspectors must rely on the licensee's people to review the exceptions. Harpster said that this represents a flaw in the NRC's system because the licensee's reviewers are under the same pressure to approve exceptions. Harpster pointed out that the licensee, because it is a utility company, cannot pass on the amortization costs to the ratepayers until the plant reaches the point of completion, i.e., the stage of commercial operations.

Review of Welding Records

During the period of the OIA investigation welding records were reviewed which included Radiograph Reports, Weld Rework/Repair Data Sheets and Weld Data Sheets to identify specific information concerning (1) dates of weld rework and (2) whether or not welds had been replaced. Complete weld packages identifying all work on the three alleged defective welds were reviewed at which time it was disclosed that rework was being conducted at the time the IE investigative effort was ongoing at the Zimmer site, however, it related to one of the safety-related welds RH-42 and not welds pertaining to welds on prefabricated pipe (spools). Information contained in IE Report 50-350/80-09 describes a review of records which disclosed one weld was cut out (K-811) and replaced by a new weld (K-916). No date pertaining to the rework was identified in the IE report. As part of the OIA review the welding records for weld

PDR-016

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

September 13, 1982

Ms. Marya C. Young
Ms. Lynne Bernabei
Government Accountability Project
1901 Que Street, N.W.
Washington, DC 20009

IN RESPONSE REFER
TO FOIA-82-358

Dear Ms. Young and Ms. Bernabei:

This supplements my previous letter to you dated August 13, 1982. In your letter dated August 4, 1982, you requested, pursuant to the Freedom of Information Act, all documents concerning any and all investigations by the Office of Inspector and Auditor of Charles Barth.

In further response to your request, we are providing you with copies of the two documents listed on Appendix A.

In addition to the documents provided to you, the following documents are available for public inspection and copying at the NRC Public Document Room located at 1717 H Street, N.W., Washington, DC:

1. Zimmer Subcommittee Meeting Transcript (ACRST-0646A) and Minutes (ACRS-1616) held on February 27, 1979

2. 227th ACRS Meeting Transcript (ACRST-0651) and Minutes (ACRS-1622) held on March 8-10, 1979

3. 230th ACRS Meeting Transcript (ACRST-0674) and Minutes (ACRS-1648) held on June 14-16, 1979

Finally, I have been informed that, on August 19, 1982, you were served with a copy of "NRC STAFF RESPONSE TO MIAMI VALLEY POWER PROJECT'S (MVPP) PETITION TO DISQUALIFY STAFF ATTORNEY FROM LICENSING PROCEEDINGS FOR THE ZIMMER PLANT AND MOTION TO HAVE THE PROPRIETY OF MVPP'S COUNSEL'S CONDUCT REVIEWED BY THE LICENSING BOARD" and "NOTICE OF APPEARANCE" for Dennis C. Dambly.

This completes action on your FOIA request.

Sincerely,

J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

Appendix A

1. 6/12/79 Memo to ACRS Members/ACRS Technical Staff from R. Savio, Subject: APPARENT FALSE STATEMENT AT THE ZIMMER ACRS SUBCOMMITTEE (1 page) w/attachment:

   5/16/79 Memo to M. W. Carbon/M. Bender from R. F. Fraley, Subject: NUCLEAR POWER PLANT STAFFING, ZIMMER NUCLEAR POWER STATION - APPARENT FALSE STATEMENT (1 page) w/attachments

   5/2/79 Memo for J. G. Keppler from D. Thompson, Subject: APPARENT FALSE STATEMENTS BY APPLICANT AT ZIMMER ACRS SUBCOMMITTEE MEETING (AITS F30488H6) (2 pages) w/enclosure

   4/10/79 Memo for D. Thompson, from J. G. Keppler, Subject: ERRONEOUS STATEMENTS PROVIDED BY APPLICANT AT ZIMMER ACRS SUBCOMMITTEE MEETING (AITS F30488H6) (2 pages) w/enclosure

   Undated STATEMENT OF FACTS REGARDING ERRONEOUS INFORMATION GIVEN BY APPLICANT AT ZIMMER ACRS SUBCOMMITTEE MEETING (1 page)

   3/8-10/79 Transcript of ACRS 227th Meeting (EXCERPT), pages 118-125 (8 pages)

2. 6/19/82 Memo to L. V. Gossick from R. F. Fraley Subject: REQUESTS, AGREEMENTS AND COMMITMENTS DURING 230th ACRS MEETING - JUNE 14-16, 1979 (2 pages)