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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

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

Miami Valley Power Project's Response in Support of Zimmer Area Citizens - Zimmer Area Citizens of Kentucky and the City of Mentor Petition for Appointment of a Consultant to Monitor the Third Party Audit and Petition to Establish a Detailed Structure for Public Participation Throughout the Audit

Intervenor Miami Valley Power Project ("MVPP") submits this brief in support of the November 19, 1982 petition submitted by Intervenor Zimmer Area Citizens - Zimmer Area Citizens of Kentucky ("Zack") and joined by intervenor City of Mentor, Kentucky ("November 19 Petition"), which proposed public participation to select and monitor the third party which implements this Commission's November 12, 1982 Order suspending safety-related construction activities at the Zimmer station. Additionally, MVPP petitions the Commission to adopt the monitoring structure described in this brief in order to insure meaningful public participation in the selection of all outside organizations implementing the Commission's Order.

Zack and Mentor ask the Commission to establish public oversight through appointment of a consulting firm -- nominated by them to represent the

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interests of public intervenors -- to monitor and report on the third party reforms. Zack and Mentor also ask the Commission to provide for payment of fees and expenses incurred by the public consultant, and give the consultant full access to information generated by third party programs. Further, these intervenors request that a program be established to receive public comments on the selection of the third party auditor, and that any further progress and decisions by the Region III Administrator to select a third party auditor be stayed until the Commission rules on their Petition.

MVPP supports these proposals in their entirety.¹

MVPP also proposes that the structure recommended by Zack for public participation in the selection of a third party auditor be further detailed and expanded both to cover selection of all independent organizations that implement the Commission's November 12 Order, and to emphasize the responsibility of the NRC staff to respond to specific public input raised in meetings or through written comments. This overall structure is necessary to provide legitimacy to the organization or organizations eventually charged with implementing the third party audit. These organizations face an almost unprecedented challenge -- to assure the public and the Commission that the Zimmer plant is safe even though the plant has been constructed over the last decade with little more than token quality assurance and NRC oversight. Moreover, since the third party selection process is tainted by the suspicion that the third

¹ Zack and Mentor have proposed one excellent method for appointment of a consultant to monitor the third party audit. MVPP believes that other methods of providing public oversight of the third party auditor may also be employed to provide crucial public participation. For example, MVPP would support an oversight committee, similar to the one suggested by Governor Brown in the Diablo Canyon proceedings, consisting of a representative of the utility, a representative of the NRC staff, a representative chosen by Governor Brown, and a fourth representative chosen by Joint Intervenors.

party is not truly independent of CG&E, a cloud of distrust will hang over any findings of the auditor, regardless of their substance. This latest NRC reform policy must be legitimate at every stage, including the initial process of selecting the third party.

Unfortunately, the Region III Administrator currently plans to offer only limited public participation in selection of the third party auditor. As outlined in informal discussions, he will follow the basic guidelines used at Diablo Canyon for public participation in the third party program. This precedent permitted the Governor of California and Joint Intervenors to make public comments on the third party's proposed remedial plan. Further, at Diablo Canyon the Commission approved the utility's third party selection, rather than delegating that responsibility to the Regional Administrator as the Commission has done at Zimmer. Pacific Gas and Electric Company (Diablo Canyon, Unit 1), CLI-81-22, 14 NRC 950 (Order Suspending License, November 19, 1981). In practice, however, there was no system whereby the NRC staff provided formal responses either oral or written to issues raised by intervenors in their written comments.²

² In fact, the Region III Administrator's current plan does not allow as much public participation in selecting the third party auditor as occurred at Diablo Canyon, or at other sites. Mr. Keppler plans to entertain public comments on Cincinnati Gas and Electric Company's ("CG&E") proposed third party auditor. But there is no plan for any meeting to address the concerns raised by the public about CG&E's choice. This is a retreat from the process at Diablo Canyon where prior to NRC approval Governor Brown of California and Joint Intervenors participated at a February 3, 1982 meeting to discuss inter alia, the third party organizations proposed by the utility. Further, on February 17, 1982 the NRC staff met again with all parties to discuss their concerns. A verbatim transcript was maintained of this and all similar meetings and provided to Governor Brown and the Joint Intervenors. SECY-82-89 (March 1, 1982). Similarly, the NRC staff this summer and fall at the La Salle and Midland plants respectively, had solicited outside comments and also held meetings for public participants to discuss their concerns over proposed utility choices for third party efforts. None of these other cases involved enforcement action as significant and severe as in the November 12 Order, yet the public input into the selection process at Zimmer is diluted by comparison. Given the erosion of public confidence, it does not make sense to limit public participation.

It is essential that the Commission require greater public participation than it permitted at Diablo Canyon. The third party program at Diablo Canyon was premised solely on seismic design problems. At Zimmer the quality assurance breakdown permeates all construction throughout the history of the plant. CG&E's comprehensive violation of the public trust demands comprehensive public participation to alleviate the public's well-founded fears about Zimmer's safety.

In its July 30 Order refusing public licensing hearings on these same issues, the Commission recognized the necessity for direct Commission oversight and full public input short of administrative litigation of the quality assurance breakdown. Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit 1), CLI-82-20, 16 NRC _____ (July 30, 1982). It would be unfortunate if the November 12 Order withdrew the Commission's July 30 commitment -- by delegating full authority to Region III (which has failed in the past to keep pace with the evidence at Zimmer) and by restricting public input to written comments.

There is a clear need for full public participation in all aspects of the third party effort. The unprecedented November 12 Order is the result of a systematic quality assurance breakdown, an inability by the NRC staff to keep pace with evidence of new violations, and a major breakdown in public confidence in CG&E and the NRC's ability to ensure Zimmer is constructed safely. It is naive to expect confidence to be restored if CG&E dominates the process that selects the organization to judge the consequences of the utility's own misconduct.³ That course will inevitably lead to increased

³ The ongoing criminal investigation into falsification of QA records only emphasizes what may be found to be intentional wrongdoing on the part of CG&E management.

public cynicism.

Indeed, by its statements since the November 12 Order, CG&E has already disqualified itself from selecting the third party auditor. In a November 15, 1982 News Release (Attachment 1), CG&E President William Dickhoner indicated that the utility still does not accept the need for remedial sanctions: "I am convinced that the overall construction of this plant is as good or better than any plant in service or under construction." In short, CG&E is operating from the premise that Zimmer represents the state of the art for the nuclear industry. The utility can hardly be expected to nominate a third party auditor in basic disagreement with that premise. Unfortunately, this premise defeats the Commission's objective in ordering an independent third party audit in the first place. It demonstrates all too clearly the reasons the utility must be isolated from the third party selection process.

By contrast, petitioners Zack and the City of Mentor are uniquely qualified in this case to nominate a public consultant, or to assume increased responsibilities in monitoring the third party effort. In its Initial Decision denying applicants a license to operate Zimmer at full power, the Atomic Safety and Licensing Board complimented Zack on its presentation of evidence and witnesses on the emergency planning issues, and in fact denied applicants a full-power license on the basis of contentions raised by Zack. Moreover, Mentor, as a governmental body, is entitled to deference in NRC proceedings as elected representatives of the public and a legitimate channel through which the NRC staff may receive a wide range of community input. Zack and Mentor's participation in the earlier licensing hearings has shown them to be extremely capable of selecting a consultant to monitor the third party. See generally, Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), Initial Decision, Docket No. 50-358, Initial Decision (June 21, 1982).

MVPP believes that even under Zack and Mentor's stewardship, however, there should be a guaranteed process of public input before any single nominee is submitted for NRC approval, even to serve as the public consultant that oversees the entire remedial program. The challenge at Zimmer is unique; it requires nothing less than open competition among the best organizations the market can provide to complete Zimmer in full compliance with the Atomic Energy Act and NRC regulations.

As a result of these concerns, MVPP requests that the Commission, not the Region III Administrator, carry out the following suggested program for selection and approval of all third party organizations implementing the Commission's November 12 Order:

(1) Invite all intervenors and the general public to submit candidates for relevant third party roles during a fifteen day period. The utility should be prohibited from making any such nomination.

(2) Convene a public meeting where all proposed candidates are asked to respond to questions from the public or the utility about qualifications, and quality assurance practices with regard to issues relevant at Zimmer. The Commission should prohibit any closed meetings concerning selection of the third party auditor. All proposed candidates should be invited to attend subsequent public meetings that may be required.

(3) Solicit written comments by all public participants and the utility into the issues raised at this third party candidate forum.

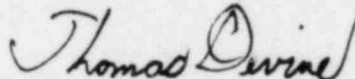
(4) Provide a response to each material concern raised by public comments. The Commission or NRC staff response should be written in connection with the final selection process and should address all concerns raised in public comments. Alternatively, a public meeting could address these concerns. A verbatim transcript of all public meetings should be main-

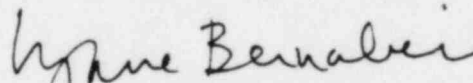
tained and provided to participants.

(5) Select a third party organization from among the nominees, or nominee in the case of a public consultant chosen by Zack and Mentor.

The Commission's November 12 Order was a result of sustained public initiatives that tested the limits of the NRC staff's enforcement capabilities. The Order recognized that CG&E failed in its quality assurance responsibilities. It would be totally inconsistent and threaten the legitimacy of the Commission's Order to respond with only token public participation. Region III's proposed process for selection of a third party auditor will only increase public cynicism. The public must be invited to participate fully, with assurance that the Commission itself will consider and address the public's specific concerns.

Respectfully submitted,


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DATED: November 30, 1982

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Miami Valley Power Project's Response in Support of Zimmer Area Citizens - Zimmer Area Citizens of Kentucky and the City of Mentor Petition for Appointment of a Consultant to Monitor the Third Party Audit and Petition to Establish a Detailed Structure for Public Participation Throughout the Audit was mailed, first-class postage prepaid, this 30th day of November, 1982, to each of the following:

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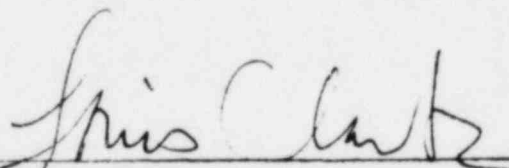
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