

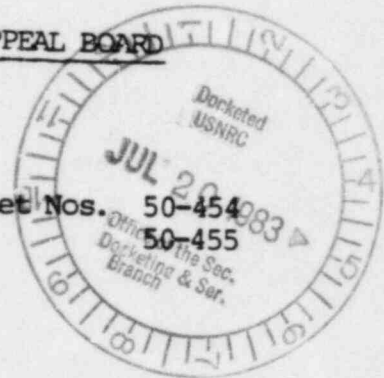
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
COMMONWEALTH EDISON COMPANY)
(Byron Station, Units 1 and 2))
_____)

Docket Nos. 50-454

50-455



MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

I. INTRODUCTION

The Government Accountability Project ("GAP") of the Institute for Policy Studies ("IPS") respectfully moves for permission to file the attached amicus curiae brief with the Nuclear Regulatory Commission Atomic Safety and Licensing Appeals Board ("ASLAB" or "Board") in the matter currently before it in the above-captioned case. According to 10 CFR 2.715 the attached brief is submitted to the Board and served on the Service List by U.S. postal service today, Tuesday, July 19, 1983.^{1/}

II. IDENTIFICATION OF AMICUS

The Government Accountability Project is a project of the Institute for Policy Studies, Washington, D.C. The purpose of the program is to broaden the understanding of the vital role of public and corporate employees in preventing waste and corruption, to offer legal and strategic counsel to whistleblowers, to provide a unique legal education for law students, to bring meaningful and significant reform to the government workplace, and to expose government actions that are repressive, wasteful or illegal and that pose a threat to the health and safety of the American public. Presently, the Project provides a program of multi-level assistance for government employees who report illegal, wasteful or improper actions by their agencies. GAP regularly monitors governmental reforms, offers expertise to Executive Branch offices and agencies, and responds to requests by Congress and state legislatures for analysis of legislation to make government more accountable.

^{1/} According to the July 11, 1983 Order of the Appeals Board the Amicus Curiae brief is being hand-delivered to the Board on this date.

(See, e.g., GAP's publication, A Whistleblower's Guide to the Federal Bureaucracy (1977)). Also see, e.g, brief for Amici Curiae The Fund for Constitutional Government and the Government Accountability Project of the Institute for Policy Studies, Givhan v. Western Line Consolidated School District, 439 U.S. 410 (1979); and Nixon v. Fitzgerald, __ U.S. __ 1982. GAP has particularly concentrated on implementation of the "whistleblower" protections of the Civil Service Reform Act of 1978, Sections 101, 201, 5 U.S.C. Sections 1101 (Supp. III 1979). See Civil Service Reform Oversight, 1980 -- Whistleblower: Hearings before the Subcommittee on Civil Service of the House Post Office Committee, 96th Congress, 2nd Session, 45-71 (1980); Briefs for Amicus Curiae The Government Accountability Project of the Institute for Policy Studies, Frazier v. Merit Systems Protection Board, No. 80-1067 (D.C. Cir., filed May 20, 1980); Frazier v. Merit Systems Protection Board, No. 80-1986 (D.C. Cir., filed January 6, 1981.); Martin v. Lauer, No. 82-1322 (D.C. Cir., filed April 26, 1982)).

GAP also includes a Citizens Clinic for Accountable Government. The Citizens Clinic is a citizens training, consulting, and social activist program for local "grassroots", public interest, community, and church groups. This program is designed to assist and direct citizen involvement. Its role is to provide a range of services to individuals or groups who begin to speak out about problems spawned by corporate or government ineptitude or malfeasance. The Clinic's focus is on assisting citizens to effectively use their First Amendment rights to expose or address significant issues.

The Clinic addresses health and safety concerns, consumer fraud, corporate "rip-offs", pollution, government misconduct, abuse or inaction, and the abridgement of individual rights that often accompanies

the struggle of citizens to redress their grievances.

In the past, the Citizens Clinic has performed independent investigations into government negligence, filed a citizens' petition for an environmental investigation, drafted citizens' participation plans for environmental investigative and regulatory review, testified frequently to local city and county councils on issues of concern to their community, testified in Congress and performed analysis of government inspections and investigations, regulatory submittals, and resolutions to problems of concern to communities.

III. INTEREST OF THE AMICUS

In recent years GAP has been approached by a growing number of witnesses from nuclear power plants under construction across the nation. In keeping with its objectives, both the GAP Whistleblower Review Panel and the Citizens Clinic Review Board have directed staff to pursue aggressively the complaints and problems that nuclear workers bring forward.

GAP is not an "anti-nuclear" organization. Its objectives within the nuclear industry are the elimination of the government's misconduct and inaction, the uncovering of facts that warrant closer scrutiny or regulatory action by the Nuclear Regulatory Commission ("NRC") and monitoring of how the NRC deals with significant information provided by nuclear "whistleblowers". GAP assumes that nuclear-related issues are critically important to the public safety, and takes action upon the presentation of evidence that the NRC is doing an inadequate job regulating the nuclear industry. Nuclear whistleblowers, the central figures in our approach to nuclear-related work, are the vital components in the struggle for safe energy and making the public aware of dangerous or questionable conditions.

GAP follows a common criterion in selecting cases involving nuclear power plants. There must be credible evidence of quality assurance ("QA") requirements with potentially significant safety consequences that are not being adequately enforced by the NRC. In short, amicus monitors the NRC's effort to enforce 10 CFR Part 50, Appendix B. When the NRC staff overlooks or refuses to act seriously against significant violations, amicus takes independent investigative and legal initiatives.

GAP's oversight program has led to an active docket of legal representation. Since 1980 GAP has represented twelve whistleblowers and three citizen intervenors, provided informal assistance to numerous organizations, and interviewed over 100 employee witnesses to faulty construction practices at six nuclear power plants.

Additionally, amicus has testified repeatedly in Congress with respect to oversight of NRC investigations, citizen participation in licensing proceedings and problems at specific plants. GAP has been particularly active in Region III, at the Zimmer and Midland nuclear stations, near Cincinnati, Ohio and in Midland, Michigan, respectively. At each plant, amicus has represented whistleblowers and citizen intervenors in virtually the entirety of formal and informal forums provided by the NRC staff commissioners and the Atomic Safety and Licensing Board. GAP has also provided informal investigative and other assistance to citizen organizations at the LaSalle and Perry nuclear plants, near Chicago, Illinois and Cleveland, Ohio, respectively. In the course of pursuing these cases, GAP has recognized a clear pattern by Region III of ineffective enforcement of the QA requirements in the Atomic Energy Act. This pattern has forced amicus to turn to legal forums in an attempt to identify and fill in the enforcement holes in 10 CFR part 50, Appendix B left by Region III.

IV. CONTRIBUTION OF THE AMICUS

GAP's intensive investigations and oversight have provided a unique insight into the NRC's inspection and enforcement program. At Zimmer, whistleblowers played a major role in exposing the comprehensive quality assurance breakdown that Region III had failed to report for the first 97% of construction. The disclosures prepared by GAP contributed significantly to a record \$200,000 fine and the November 12, 1982 suspension of all safety related construction. Through the Freedom of Information Act ("FOIA") 5 USC 552, amicus pursued and obtained significant evidence withheld from the public by the staff. (See, e.g., Applegate v. NRC, No. 82-1829 (D.D.C. May 24, 1983) (Memorandum Opinion and Order)).

At Midland, whistleblowers represented by GAP exposed QA violations that contributed to a \$120,000 fine and suspension of QA covered work by the major contractor, as well as major new revelations at ASLB hearings this spring.

At Lasalle, disclosures of whistleblowers represented by GAP led to a series of ongoing civil and criminal investigations, as well as a third party audit.

As a result of this extensive experience with Region III, it is desirable to obtain the participation of amicus and the bases proffered at Byron. Amicus has learned through frustrating experience and prolonged litigation the naivete of relying on Region III conclusions about disputed QC issues without full review in all available legal forums.

Respectfully submitted,

Thomas Devine

Thomas Devine
Legal Director

Billie Garde
Billie Garde
Director, GAP Citizens Clinic

Dated: July 19, 1983