

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

THE CINCINNATI GAS AND ELECTRIC
COMPANY, ET AL.

(Wm. H. Zimmer Nuclear Power
Station)

Docket No. 50-358

'83 AUG 29 P12:26

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On August 19, 1983 counsel for Miami Valley Power Project (MVPP) completed an investigative trip which resulted in significant additional evidence in support of the eight contentions it proposed on June 3, 1983. During the investigative trip, MVPP also learned of additional significant items contained in evidence submitted to this Board on July 12. Consistent with Applicants' frequently repeated admonitions against delay in submitting evidence to this Board, on Monday, August 22 MVPP sought, and on August 23 received guidance to file a motion seeking permission to submit the new evidence.

On Tuesday, August 23, 1983 MVPP also learned that the Torrey Pines Technology management review of Cincinnati Gas and Electric (CG & E), required by the Commission, had been released. On August 24, 1983 MVPP received a copy of the Torrey Pines report from the Applicants.

MVPP moves for permission to present the additional evidence and analysis received since July 12, 1983, as well as an analysis of relevant findings and evidence in the Torrey Pines report for MVPP's proposed contentions. MVPP further moves, pursuant to the Commission policy announced on August 10, 1983 ^{1/}, that this Board review the full record in two highly-significant NRC investigations not yet

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available to the parties -- 1) the investigation of the Office of Inspector and Auditor (OIA) at Zimmer, conducted under the leadership of Judge Helen Hoyt; and 2) the Office of Investigations (OI) investigation that has been ongoing for over a year.

I. GOOD CAUSE

A. New Evidence

MVPP submits that it has good cause for submission of new evidence, because it was not previously available. Prior to last week's investigative trip, MVPP had not heard of the documents it wishes to file with this Board. Contrary to the somewhat flattering inferences in Applicants' accusations of delay, MVPP does not have the capacity to obtain records demonstrating QA illegalities at will, through a magic wand or otherwise. MVPP is acting as expeditiously as possible to alert all parties to these developments.

Second, the evidence should be considered because it is highly significant. Indeed, MVPP would use the evidence as the basis for a motion to present new contentions, if the relevant contentions were not already pending. To illustrate the relevance for this Board, the new evidence and analysis help to prove the following issues relevant to the pending contentions:

CONTENTION II: MATERIAL TRACEABILITY

1) Kaiser personnel have received contradictory instructions whether traceability is required through fabrication and installation.

2) Nearly 2000 feet of W 8 X 17 beams from a purchase order cannot be accounted for.

^{1/} "Investigations and Adjudicatory Proceeding; Statement of Policy," 48 Fed. Reg. 36358-59 (August 10, 1983).

3) New evidence and examples illustrate the practice of purchasing from non-approved suppliers and upgrading the items from nonessential to essential status, in some cases on the authority of construction personnel.

4) 1750 feet of W 8 X 17 beams were upgraded from nonessential to essential status on the orders of the QA manager, over the objections of the warehouse inspector.

5) Overall, there has been a lack of control and records on upgraded materials.

CONTENTION III: VENDOR QUALITY ASSURANCE

6) As of March 1982 there were 45,000 purchase orders that need to be reviewed to learn if legal requirements have been met.

7) The QA Manual failed to include provisions for mandatory pre-purchase reviews.

8) Additional evidence and examples illustrate the improper practice of additions to the Approved Vendors List (AVL) based solely on the personal preference of the QA Manager.

9) Additional evidence and examples illustrate how Kaiser construction and CG & E officials signed Kaiser Purchase Orders, instead of Kaiser QA representatives as required.

10) Blanket approval was given for Sargent and Lundy suppliers, without independent evaluations of the supporting data or, in some cases, disclosure of the identities of some of the firms involved.

11) In 1982, the majority of support documentation was missing for a review of 16 suppliers on the Approved Vendors List.

12) Previous versions of the Approved Vendors List have been improperly destroyed, leaving holes in the history of the AVL that inherently cannot be filled.

13) The Approved Vendors List was not updated and purged in order to keep it current and accurate. This traditional problem persisted into 1982.

14) There was conditional approval of Gladstone Laboratories for the AVL in 1973, and continued active reliance on Gladstone throughout nearly all of Zimmer's construction, despite Gladstone's almost total noncompliance with 10 CFR 50, Appendix B. The ongoing nature was detailed in a 1983 Kaiser audit.

15) Gladstone was used for the destructive testing necessary to qualify the welding procedures that governed welding throughout Zimmer, although the laboratory had only been approved on the AVL for nondestructive tests (NDT), such as X-rays. The flaw renders invalid a major portion of the welding procedures at Zimmer.

CONTENTION IV: QUALITY ASSURANCE PROGRAM -- WELDING

16) The program for weld rods failed to meet minimum standards in nearly all areas, starting with the inability to provide Certified Material Test Reports (CMTR) and continuing through using the wrong metal for electrodes as specific assignments.

17) There were no tests done on one weld procedure for the first two years of work.

18) There is an inability to locate CMTR's on the coupons used to test welding procedures, resulting in an inability to verify the base metal relied on to approve the procedures.

19) Welding procedures were approved without being tested for all the uses to which they would be put, such as pipe welding.

20) Although welding procedures are required by the American Society of Mechanical Engineers (ASME) to be redone whenever certain tolerance levels are exceeded for essential variables, at Zimmer excessive tolerances were written into the welding procedures.

21) Basic data on essential variables was not always recorded on the relevant Q-1 forms for welding procedures, and the recorded data was not always updated to reflect changes.

22) Welding procedures were improperly changed through "supplements," instead of revisions, thereby circumventing the requirement for new tests.

23) Although the ASME code required welding procedures to be requalified to the current version of the code, the Welding Task Force at Zimmer has attempted to circumvent the effort by using earlier versions of the code which have less stringent requirements. The audit team leader whose findings led to the creation of the Task Force termed its efforts "a complete whitewash."

24) All of the welding procedures qualified at Gladstone Laboratories are invalid, because Sargent and Lundy specifications required the procedures to be tested on-site at Zimmer.

25) Kaiser has improperly attempted to manipulate Audit #67 -- of, inter alia, welding procedures, welder qualifications and vendor purchases -- through transferring the unresolved issues to a new audit, instead of solving the problems under the oversight of the original auditors.

26) A top Kaiser audit official improperly asserted that the Welding Task Force addressed all of the issues in Audit #67, although some of the audit findings had dealt with unrelated vendor QA deficiencies.

27) A September 9, 1982 Kaiser Audit Status Report deleted all mention of Audit #67 and also rewrote history to remove references to whistleblower David Jones' work on a different audit.

28) As of October 6, 1981 no audit could be done of preheat treatment of welding at Zimmer, because it was not performed despite knowledge of heat treatment deficiencies since 1979.

CONTENTION VI: RETALIATION

29) In June 1982 Kaiser official Sherrill Nolder informed Kaiser President J. McCloud that after writing reports on serious QA violations and refusing to modify the truth to the NRC, she was subjected to, inter alia, the following reprisals: her certification to perform audits was removed; rude disciplinary lectures and a low performance appraisal ensued; her desk was ransacked; her time cards were altered; and other harassment intensified. Despite her letter, the retaliation continued until her February 1983 dismissal.

CONTENTION VIII: CHARACTER AND COMPETENCE

30) Additional evidence suggests four more cases of potentially deliberate records falsification, including examples where welds were not done to the item claimed in the records; the same liquid penetrant test report was used for different inspections by different inspectors over a six-month period; records were altered without explanation; and five different welder symbols were used to document the work of one welder.

31) On September 14, 1982 Kaiser's Vice President Admiral Donald Iselin testified in Congress that all welding procedures were acceptable, except for four compromised by suspect Charpy tests. In fact, evidence indicates that 16 out of 20 welding procedures reviewed had to be rewritten.

32) Admiral Iselin testified that the welding procedures were successfully retested. That claim raises serious questions, since Kaiser lacks the necessary data on flow rates needed to requalify the procedures.

33) Admiral Iselin testified that the testing problem for welding procedures was due to a small period when Gladstone's Charpy machine was not working properly. In fact, the Charpy was not even certified at all from 1951-75, when the U.S. Army caught the problem. As of 1983, the Charpy machines for destructive tests still were not calibrated.

B. Torrey Pines Report

On August 23, 1983 MVPP received from CG & E a copy of Torrey Pines Technology's "Independent Review of Zimmer Project Management." MVPP is confident that even Applicants will not find dilatory the three days MVPP spent reviewing the 491 page text and 47 page summary of the report. The contents are relevant for this Board in two areas.

First, the findings in the report are highly relevant, significant evidence in support of MVPP's proposed contentions, as well as against the credibility of Applicants' denials. The findings in the Torrey Pines report confirm nearly all of the conceptual charges of QA violations raised by MVPP. Torrey Pines' explanation for the cause of the QA breakdown is nearly identical to that alleged by MVPP: CG & E's leadership emphasized cost and scheduling concerns, at the expense of quality assurance. Quality assurance was the bottom priority of an unqualified management. Contrary to the NRC staff and CG & E's assertions, the utility was not ignorant of its contractor Kaiser's QA practices. In fact, CG & E dominated Kaiser's QA policy and exercised budget control to thwart the contractor's attempts to attain a program of minimally adequate scope.

Some of the most fundamental programmatic deficiencies continue today, over two years after the April 8, 1981 Immediate Action

Letter. These findings cast doubt on Applicants' frequent response that a "program" is solving the problems identified by MVPP.

Second, the recommendations in the Torrey Pines report illustrate the utter failure to date of alternative mechanisms to protect MVPP's interests. Despite confirming the existence of a massive QA breakdown caused by CG & E, Torrey Pines recommended solving the problem by retaining the status quo and all the underlying causes. MVPP submits that there is an inherent flaw with any recommendations that essentially propose "more of the same" at Zimmer. MVPP believes that a detailed analysis of the Torrey Pines recommendations would demonstrate the need for licensing hearings to directly address the issues and remedies that have apparently proved too politically sensitive for other forums.

C. Value for Discovery Motion

A brief on the new evidence and report would illustrate the value of discovery for demonstrating genuine disputes on material facts of safety significance that require a hearing. The report and new documents themselves raise significant issues for which discovery could provide a response on corrective action to test the specifics behind Applicants' reassurances.

Second, during the investigative trip MVPP counsel spoke with witnesses who provided highly significant allegations but did not have records available and could not provide statements due to fears of reprisal.^{2/} In each case, however, the witnesses either identified the documents or explained that their charges could be verified by

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MVPP also received the evidence which it seeks to submit under conditions of anonymity.

challenging Applicants to produce the records that should be available to demonstrate that QA requirements were honored.^{3/}

II. MOTION FOR LICENSING BOARD REVIEW OF PENDING INVESTIGATIONS

The Commission's August 10 Statement of Policy recognized the value for adjudicatory proceedings of evidence obtained by the NRC staff during ongoing inspections and investigations. Two such pending matters are highly relevant to MVPP's proposed contentions. MVPP moves that prior to a decision this Board review the full investigative files and any reports for the following two investigations which are not yet publicly available -- 1) the investigation by Administrative Law Judge Helen Hoyt of Thomas Applegate's allegations of misconduct by the Office of Inspector and Auditor during a 1981 investigation at Zimmer; and 2) the ongoing OI investigation of Zimmer performed primarily by Mr. John Sinclair.^{4/} Both investigations have involved intensive investigation of evidence and interviews with witnesses both on Zimmer, and on the adequacy of the NRC's staff performance at Zimmer. Neither report nor any findings are publicly available.

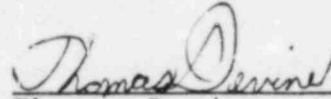
In conclusion, MVPP recognizes that it is unusual to file repeated briefs. The case is unusual, however, because of so many new official findings and developments. Further, MVPP believes that it has no duty to submit significant relevant evidence that is

^{3/} Consistent with this advice, MVPP further seeks leave to file a proposed initial Request for Production of Documents in order to demonstrate the value of discovery for the QA issues raised by its new evidence and the Torrey Pines report.

^{4/} Normally such a review would be at the request of the NRC staff. The staff has not made any effort on the record to so inform this Board. Fortunately, the Commission's Statement of Policy permits a Licensing Board to initiate a review on its own authority. (48 Fed. Reg. 26359).

necessary for this Board to make a fully-informed decision. If the motion to submit new evidence is granted, MVPP requests one week after receipt of the order to file its brief.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas Devine", is written over a horizontal line.

Thomas Devine
Counsel for Intervenor MVPP

August 26, 1983

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing "Miami Valley Power Project's Motion For Leave To Submit New Evidence and For Licensing Board Review of Significant Pending Investigations" has been served upon the following by mailing first-class, postage prepaid, this 26th day of August, 1983

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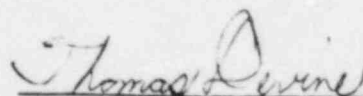
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