

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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))
)
)
)

DOCKETED
USNRC

Docket No. 50-358
'83 OCT -4 P5:01

DOCKETED
USNRC
BRANCH

MVPP'S PETITION FOR RECONSIDERATION
OF SEPTEMBER 15, 1983 ORDER

Pursuant to 10 CFR §2.771, intervenor Miami Valley Power Project ("MVPP") petitions the Atomic Safety and Licensing Board ("ASLB" or "Board") to reconsider its September 15, 1983 order. The Cincinnati Gas and Electric Company, et. al. (William H. Zimmer Nuclear Power Station, Unit 1) ASLBP No. 76-317-01 OL, 17 NRC ____ (September 15, 1983) ("September 15 Order"), denying MVPP's Motion to Reopen the Record for admission of eight proposed contentions; as well as ancillary motions requesting receipt of additional evidence, and Board review of significant unpublished or pending Nuclear Regulatory Commission ("NRC") investigations pertaining to the William H. Zimmer nuclear power station ("Zimmer"). MVPP requests that this Board reconsider its decision in the entirety, as well as with respect to specific portions of its proposed contentions based on new information or events that meet the Board's expressed requirements for timely filing. MVPP also requests that this Board reconsider its decision not to reopen the record for more limited purposes including discovery and receipt of evidence to further develop the evidentiary record before accepting contentions.^{1/}

^{1/}As a protective measure MVPP also is submitting a motion to the Appeal Board to extend the time to appeal the September 15 order until after this Board has ruled on today's petition for reconsideration.

It is proper for this Licensing Board to reconsider its Order dated September 15, 1983. As the Commission has held, "(t)he ability to reconsider is inherent in the ability to decide in the first instance." Florida Power and Light Company (St. Lucie Nuclear Power Plant, Unit 2), CLI-80-41, 12 NRC 650, 652 (1980).

In addition to significant nonfactual developments, petition for reconsideration can be founded on errors of fact or law, as recognized by the Commission in its review of MVPP's Petition for Reconsideration of Commission Order of July 30, 1982. Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), CLI-83-4, 17 NRC _____, slip op. at 1 (February 22, 1983) ("February 22 Order"). A petition for reconsideration may also be based upon an abuse of discretion, as noted in the NRC Staff Answer in Support of Miami Valley Power Project's Petition for Reconsideration of the Commission's Order of July 30, 1982 (September 22, 1982) at pages 10-12.

In meeting that standard, a petition may properly consist of "an elaboration upon, or refinement of, arguments previously advanced." Tennessee Valley Authority (Hartsville Nuclear Plants, Units 1A, 2A, 1B, & 2B), ALAB-418, 6 NRC 1,2 (1977). Accord, Central Electric Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit 1), CLI-81-26, 14 NRC 787, 790 (1981).

MVPP's instant Petition for Reconsideration meets all of these procedural standards, and must be considered by the Licensing Board on its merits.

This petition is supported by extensive information which arose after the Commission held that there was an inadequate basis to reopen the record. Among the most compelling recent developments are the significant factual developments of the last week. These developments require reopening the record due to their inherent impact on

any licensing decision, as well as their relevance to specific reopening criteria analysed by this Board. The petition is also based on instances of legal error and abuse of discretion with respect to this Board's evaluation of the criteria for reopening the record and accepting new contentions.

I. SIGNIFICANT FACTUAL DEVELOPMENTS

The last week has seen significant new developments concerning the status of the Zimmer plant, the role of the NRC staff at Zimmer, and the nature of reopened licensing hearings. Certain of these events in isolation would require this Board to reopen the record. All are highly relevant to any decision on MVPP's initiative. Taken in combination, the new developments summarized below represent a fundamentally different record than was before this Board when it ruled on September 15, 1983.

A. Bechtel Announcement of Revised Cost-Schedule Estimates.

On Friday, September 30, when the Bechtel Power Corporation reported to Applicants on the estimated cost and time necessary to complete the plant, Bechtel told Applicants that Zimmer cannot be completed for another two to three years and will have a total price-tag of \$2.8 to \$3.5 billion. (See "Cincinnati G&E Says Plant Cost Could Double," The Wall Street Journal, p. 3 (October 3, 1983), attached and incorporated as Exhibit 1). In light of the current \$1.7 billion cost estimate, in terms of expenditures Applicants will have to rebuild the plant.

The immediate significance of the announcement is that all previous assumptions about QA and design issues are no longer relevant for licensing. In effect, unless the record is reopened Zimmer will be

built again without any oversight by the Atomic Safety and Licensing Board. It is unfortunate that the QA breakdown escaped this Board's scrutiny the first time Zimmer was built, but the parties had not presented a basis for alarm. This time, however, the QA breakdown is known by all parties and by the Board. Licensing proceedings are mandatory under these circumstances.

Under these conditions, the Atomic Energy Act of 1954, as amended, very clearly requires public hearings.

Section 189 of the Atomic Energy Act, 42 U.S.C. § 2239(a)(1) states in pertinent part:

In any proceeding under this chapter, for the granting, suspending, revoking, or amending or any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c) or 2238 of this title, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 2133 or 2134(b) of this title for a construction permit for a facility, and on any application under section 2134(c) of this title for a construction permit for a testing facility.

The importance of hearings is not diminished by earlier proceedings addressing the initial round of construction at Zimmer. Since the plant is going to be largely rebuilt, hearings are necessary to resolve the ultimate question of whether the plant can and will be operated so as not to endanger the public health and safety.

42 U.S.C. §§ 2133(d), 2232(a); 10 C.F.R. § 50.57(a)(3)(i).

Even if the repairs contemplated by Bechtel to finish the plant were nothing more than patchwork on the old design, the massive scope and unreliable CG&E QA program raise serious safety concerns and warrant a full review by this Board, as contemplated by MVPP contentions 4 and 7. Especially given the track record of CG&E, any systematic rebuilding cries out for licensing proceedings to protect the public health and safety rights of MVPP as well as all other citizens of Ohio and Northern Kentucky.

It is clear that making modifications to safety-related equipment without adequate quality assurance constitutes a serious safety issue, with enormous potential safety consequences to the public. See, e.g., "Three Mile Island Nuclear Generating Station, Unit 2 Allegations Regarding Safety Related Modifications, Quality Assurance Procedures and Use of Polar Crane," NRC Office of Investigations (September 1, 1983).

Similarly, Chairman Palladino acknowledged, at an October 26, 1982 Public Staff briefing of the Commission on the status of Zimmer acknowledged that repairs under the Quality Confirmation Program at Zimmer could actually create more serious problems than the original QA deficiencies.

The recent Calloway case strongly affirms that pervasive quality assurance program weaknesses both raise the ultimate issue for licensing, even if all specific construction errors are corrected. The Atomic Safety and Licensing Appeal Board states:

In examining claims of quality assurance deficiencies, one must look to the implication of those deficiencies in terms of safe plant operation.

Obviously, this inquiry necessitates careful consideration of whether all ascertained construction errors have been cured. Even if this is established to be the case, however, there may remain a question whether there has been a breakdown in quality assurance procedures of sufficient dimensions to raise legitimate doubt as to the overall integrity of the facility and its safety-related structures and components. A demonstration of a pervasive failure to carry out the quality assurance program might well stand in the way of the requisite safety finding.

Union Electric Company (Callaway Plant, Unit 1) ALAB-740, 17 NRC ____, ____, slip op. at 2-3 (September 14, 1983) (emphasis added).

For all of these reasons it is clear that both the letter and the spirit of the hearing requirement of the Atomic Energy Act require a full public hearing on the quality assurance impact of the Bechtel announcement.

A legitimate public hearing on these crucial safety questions is not only required, but offers significant benefit for the public interest. That is why it has long been a general rule that "issues should be dealt with in the hearings and not left over for later (and possibly informal) resolution by the staff." Consolidated Edison Company of New York (Indian Point; Unit No. 2), CLI-74-23, 7 AEC 947, 951-52 (1974), quoted Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 318 (1978).

The unique and fundamental legal importance of hearings has been clearly recognized by the Commission. For example, in the very first reported NRC decision, the Commission stated:

We wish to underscore the fundamental importance of meaningful public participation in our adjudicatory process. Such participation, performed in the public interest, is a vital ingredient in the open and full consideration of licensing issues and in establishing public confidence in the sound discharge of the important duties which have been entrusted to us. It cannot be disputed that only if our rules provide for, and we are perceived

by all to allow 'full exploration of the safety and environmental aspects of each reactor for which a construction permit or operating license is sought,' will the objective of such meaningful participation be achieved.

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-75-1, 1 NRC 1, 2 (1975).

As the Commission itself has noted:

When the Atomic Energy Act of 1954 authorized the development of a civilian nuclear power industry, it was understood from the first that the public might well be apprehensive about a technology associated in the minds of most with the destructive power of atomic weapons. One of the major reasons for providing for public hearings on nuclear power plants was to provide a means for educating the public about nuclear energy and the measures taken to assure its safety. The 1965 report to the AEC by its Regulatory Review panel, for example, characterized the most significant functions of public hearings as including a demonstration that 'the AEC has been diligent in protecting the public interest' and that the applicant's proposal had received a 'thorough and competent review.'

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-80-39, 12 NRC 607, 613 (1980) (separate views of Commissioner Hendrie), quoted in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-82-6, 15 NRC 407, 409 (1982).

Hearings go far beyond a mere educational function, however, as this Licensing Board has repeatedly observed:

We believe that a full public airing of this matter will not only contribute to public confidence, but will also strengthen the QA program. Subjecting the program to the scrutiny of the Commission's adjudicatory process can only contribute, not detract, to reasonable assurance that the public health and safety will be protected.

Cincinnati Gas & Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-54, 16 NRC 210, 215 (1982), quoted in Cincinnati Gas & Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), Memorandum and Order, 17 NRC ___, ___, slip op. at 33 (September 15, 1983).

If CG&E were right in its assertion that intervenors are simply "shrill" voices caring nothing about the safety of the plant, see exhibit 7, infra, then hearings would also effectively discredit the distractions and would increase public confidence in the safety of the Zimmer plant.

In addition to the salutary effects adjudication will have on plant QA, it will play an important role in insuring proper NRC staff action. In the words of former Commissioner Peter Bradford:

We look to public hearings to serve two purposes. They should provide a strong and skeptical independent check on the NRC's internal reviews, and they provide the only avenue for citizens to resolve concerns about a new and serious hazard being introduced into their communities.

Testimony of Peter Bradford before Senate Environment and Public Works Subcommittee on Nuclear Regulation, March 31, 1981.

Commissioner Bradford's comments reflect one of the important practical values of public hearings, and underline again the legal imperative of holding such hearings.

Because of the importance of the QA issues that have never been aired in a adjudicatory hearing, there has been a massive loss of public confidence in the safety of the Zimmer Plant, based on the issues initially raised by whistleblowers and MVPP. This loss of confidence is reflected in numerous local and national investigative reports and local editorials. Examples are incorporated and attached as Exhibits 2 through 5. Exhibit 2, "Weak Links? Nuclear-Plant Welders Often Aren't Qualified for the Job, Critics Say," Wall Street Journal, (September 7, 1983), page 1; Exhibit 3, "The Truth About Zimmer," Cincinnati Magazine, September 1983, page 82. Exhibit 4; Editorial: "The Zimmer Report," Cincinnati Post,

(August 24, 1983); Exhibit 5, Editorial: "ZIMMER: Torrey Pines study lays the blame for failures on CG&E's management," Cincinnati Enquirer, (August 25, 1983). While MVPP recognizes that loss of public confidence is not a dispositive basis for hearings, it clearly is a significant factor. These additional exhibits suggest that this Board may have underestimated the intensity of public concern over Zimmer.

The Bechtel announcement also is relevant and decisively significant for specific arguments critical to evaluate MVPP's proposed contentions. For instance, it means that the fifth criterion to evaluate new contentions under 10 CFR §2.714(a), whether reopening the record will broaden the issues or delay the proceeding, now weighs compellingly in MVPP's favor. The Bechtel announcement indicates that CG&E's consultant has already broadened the issues as far as possible, and the projected construction delays will dwarf the time burdens necessary for reasonable adjudication of MVPP's contentions.

Additionally, the Bechtel announcement cements the financial conflict of interest that disqualifies Applicants from continued control over quality assurance remedial action. Bechtel's announcement definitionally means that Zimmer faces a potentially fatal economic barrier to completion. As CG&E has recognized, the severity of the economic burden will directly depend on the nature of its quality verification program. The new information also exacerbates the conflict from legal arbitration between the partners over cost and schedule issues. In light of the nature of the issues in arbitration proceeding, CG&E could lose the financial support of its partners for completion of the project. (See "Utilities Disputes Over Zimmer Will Go To Arbitration," The

Cincinnati Enquirer, p. D-2 (September 8, 1983) attached and incorporated as Exhibit 6). The combined effect of CG&E's new legal vulnerability to economic consequences, and the staggering nature of the consequences, renders it inherently impossible for CG&E to maintain objective judgment on the same quality assurance issues that constitute the economic threat.

B. MVPP Offer to Stipulate Time and Issue Limitations.

On Thursday, September 29, 1983, through counsel, MVPP communicated an offer to stipulate limitations on its proposed contentions that would (1) specify a reasonable time limit for the hearings; (2) minimize interference with other CG&E management activities; and (3) establish a program for MVPP to withdraw all factual allegations from litigation on the QA contentions, dependant upon stipulation of an adequate correct action program for each allegation without assuming its validity. The mechanism to reduce the issues in dispute would depend upon negotiations between CG&E and the whistleblowers who initially raised the issues to MVPP. Today MVPP recorded the offer in a letter to Applicants. (See October 3, 1983 letter to Admiral Joseph Williams, Jr. from Thomas Devine, attached and incorporated as Exhibit 7).

This offer inherently would eliminate relevant delays from reopened proceedings by prohibiting delays, and would shrink the scope of contested issues solely to those with constructive significance for the safe completion of Zimmer. Combined with the effect of the Bechtel announcement, MVPP now makes a compelling showing on the fifth criterion to accept late contentions.

C. Removal of Mr. Cummings.

On Wednesday, September 28, MVPP counsel learned that NRC Office

of Inspector and Auditor ("OIA") head James Cummings had been removed from his position on a 3-2 vote of the Commission. Mr. Cummings had supervised the 1981 investigation of the NRC's role in failing to identify the Zimmer QA breakdown after allegations by whistleblower Thomas Applegate. Mr. Cummings was removed from office in the wake of NRC internal investigation by Administrative Law Judge Helen Hoyt into his handling of the sensitive assignment. "NRC Ousts Investigations Chief Who Guided Zimmer Probe," The Cincinnati Enquirer, p. A-1 (September 30, 1983). Mr. Cummings deleted certain key sections of the published report and then on March 22, 1982 denied the existence of the deleted materials in response to a November 23, 1981 Freedom of Information Act ("FOIA") request presented on behalf of Mr. Applegate by the Government Accountability Project ("GAP"), now MVPP's counsel as well. The NRC staff's persistent, intricate program to deceive the public about the nature of the evidence on Zimmer led to harsh judicial condemnation. Applegate v. NRC, No. 82-1829 (D.D.C. May 24, 1983).

Again in response to an allegation from Mr. Applegate with GAP's representation, Administrative Law Judge Hoyt recently completed an investigation into alleged deliberate actions by the NRC staff designed to prevent the public from learning the truth about Zimmer. GAP attorneys testified about instances of where Mr. Cummings engaged in such misconduct. ^{2/}

^{2/} For a full discussion of NRC staff misconduct with respect to Zimmer, see the August 20, October 11 and December 14, 1982 MVPP submissions petitioning the Commission to reconsider its July 30, 1982 Order dismissing contentions proposed by MVPP.

On September 15, 1983 GAP requested the report under the FOIA. No response has been received to date. On August 26, 1983 MVPP moved that this Board review and consider the Hoyt investigation prior to ruling on the proposed contentions. In its September 15 Order this Board denied the motion. (See September 15 Order, at 25.)

An analysis of Mr. Cumming's removal is necessary to fairly evaluate whether good cause exists for MVPP's tardiness. This Board has applied the standards in the Commission's recent Catawba decision, Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC ____ (June 30, 1983) to evaluate whether good cause existed for MVPP's 1983 lateness in refiling contentions. The new Catawba standard must also be applied to MVPP's 1982 tardiness. In that light, MVPP's tardiness is fully excused. As recognized by this Board, Catawba stands for the proposition that intervenors are responsible to analyze the significance of all available information on the public record. (17 NRC at ____, slip op. pp. 11-12, quoted in July 15 Order, p. 25).

Mr. Cumming's dismissal is consistent with MVPP counsels' allegations that the NRC staff censored the public record to conceal the same basic issues upon which MVPP proposed its May 1982 contentions. House Interior and Insular Affairs Chairman Morris Udall already has recognized that NRC manipulation of the FOIA was a major factor behind the delay in recognizing the necessity for stronger regulatory action in 1982. (MVPP's June 3 Motion to Reopen the Record, Exhibit 13). Catawba does not hold intervenors liable for information beyond the public record, and this Board has ruled that Catawba is controlling. The Hoyt investigation apparently confirmed that the

NRC staff distorted the public record itself, on the same issues for which MVPP was "late." In light of Catawba all of MVPP's 1982 "tardiness" must be assessed to the staff.

Any other result would frustrate the suggestion in Catawba that undue delay by the staff can easily be dealt with in a balancing test. Most significant, any other decision would excuse the NRC staff and CG&E from all liability before this Board for withholding relevant information for years. Simultaneously, the public would be judged in default of its obligations for failing to be clairvoyant and taking six months to independently expose the coverup. This result would violate the ultimate test of Catawba: "The proper test of a regulation is whether its normal and fair interpretation will deny persons of their statutory rights." Id., citing American Trucking Association v. United States, 201 U.S. App. D.C. 327, 627 F.2d 1313, 1318-19 (D.C. Cir. 1980).

MVPP feels vindicated that the Commissioners recognized the severity of Mr. Cummings' misconduct. Unfortunately, the intervenors have not been made whole. The Board still has penalized the public by refusing to allow hearings, because of the deception of high-level NRC staff management.^{3/}

^{3/} The Hoyt investigation also received evidence that Region III manipulated the public record in IE Report 50-358/81-13, the other November 1981 NRC disclosure of QA violations. MVPP attorneys made this point in testimony to Judge Hoyt. James McCarten, a former NRC investigator, recently reported that he also testified to that effect and specifically applied his criticisms of the Office of Inspection and Enforcement to whether this Board should reopen licensing hearings. Mr. McCarten led the 1981 investigation which created the other half of the public record on Zimmer for which MVPP is accountable under Catawba. MVPP received Mr. McCarten's letter from a confidential source under conditions of anonymity. See June 29, 1983 letter to Helen F. Hoyt from James B. McCarten, attached and incorporated as Exhibit 8).

II. ERROR IN BALANCING THE FIVE CRITERIA OF 10 CFR § 2.714 (a)

This Board stated that MVPP's contentions

should and could have been advanced long ago. Nothing new has been presented which is outside the contemplation of the original contentions.

In this circumstance, MVPP must make a compelling showing on the other four criteria in order to be successful. Mississippi Power and Light Company, et al. (Grand Gulf Nuclear Station Units 1 and 2), ALAB-704, 16 NRC 1725 (1982).

A. Incomparable Factual Contexts.

Initially, MVPP submits that Grand Gulf is inapposite on the facts. In that case the state of Louisiana was relatively inactive except for the ASLB forum (Grand Gulf, id., at 1730). By contrast, in 1982 MVPP conducted a parallel investigation and submitted contentions in six months. In 1983, during the 2.5 months between receipt of Applicant's response to the NRC's Demand for Information and the June 3 motion to reopen the record, MVPP pursued corrective action at Zimmer through conducting a parallel investigation to that of the staff; participated actively in the Commission's third party program; submitted a relevant petition under 10 CFR § 2.206; studied and assimilated two massive evaluations of the record at Zimmer -- submitted successively by CG&E and the NRC staff; and prepared its motion. The relevant diligence of the parties is not comparable.

Second, the extent of delay attributed to the intervenors in Grand Gulf is not comparable to this proceeding. In Grand Gulf Louisiana was dormant for four years. MVPP has been filing briefs on its contentions for all but nine months out of the less than two years since this Board's late 1980 estimate for timely filing.

Third, a calculation of the relevant time frame to assess delay indicates that at most MVPP has taken 3.0 months of relevant time to study the record it had obtained and to prepare its motions. MVPP contends that this amount of "delay" is reasonable and, indeed, inherently necessary for proper preparation of submissions. At worst, the inexcusable delay has been marginal and does not justify imposition of the "compelling showing" burden on all other criteria under section 2.714 (a).

Initially, the starting point for any fair computation of time must begin when MCPP received the new information in previously unavailable documents, Cincinnati Gas and Electric et al. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC, 570,574 (1980), not when it conceived the subject matter for contentions. Since MVPP has paid the penalty for this burden, it should receive the resulting benefits. In the instant case the Commission dismissed even this Board's sua sponte contentions in large part due to insufficient evidentiary basis outside the public record. Indeed, Applicants not only argued that MVPP was required to provide sufficient evidentiary basis for its motion but should be prohibited from submitting additional supporting evidence! (Applicant's Answer to Motion by Miami Valley Power Project for Leave to File New Contentions (June 2, 1983), at 43-7).

The effect of the policy was that MVPP had to provide credible proof for its contentions, not merely conceive them. Nor was it enough to receive anonymous tips from NRC whistleblowers, without evidence outside the public record. MVPP took six months to (1) study the four-inch thick IE Report No. 50-358/81-13; (2) conduct a parallel investigation that proved the

extent of the NRC staff's coverup in that report; and (3) prepare new contentions. MVPP's investigation bore its first fruits of "secret" documentary evidence in early May. Two weeks later it filed the proposed contentions, on the same day that it received the bulk of documentary evidence. MVPP then intensified its investigation, testified in forums before Congress and the Commission, responded to Applicant's pleadings, received a "course" in quality assurance from whistleblowers, applied the knowledge to some 3,000 pages of documentary evidence and indexed the data in an August 20, 1982 submission to the Commission.

The net result is that for the relevant factor, time between receipt of non-public evidence and filing of contentions, MVPP took two weeks. With respect to other measures, MVPP took six months to cover the NRC staff's tracks, and three months to assimilate and present the massive exhibits submitted for the record on August 20, 1982.

By any fair standard, these were all reasonable time periods. By contrast, the NRC staff spent nine months preparing IE Report 50-358/81-13. CG&E took six months to respond ineffectively to MVPP's August 20 submission of evidence.^{4/}

During 1983, MVPP took 2.5 months to study approximately 550 pages of detailed reports from Applicants and the NRC staff's National Evaluation Team and to prepare its motion after the limitations of the NRC's remedial Zimmer Action Plan were exposed, in addition to the other contributions listed above. (Supra, at 14.) The time required by MVPP to "do its homework" compares

^{4/} MVPP contends that it is unnecessary to defend the timelines of its 1980 motion since that motion is no longer before this Board. The current proceeding is on a new motion based upon new evidence. Since this Board has applied the 1982 schedule against MVPP, however, it is necessary to respond further.

favorably to the evaluation in Wisconsin Public Service Corporation, et al. (Kewaunee Nuclear Power Plant), CBP-78-24, 8 NRC 78, 81 n.2 that petitioners to intervene "acted in a timely manner" by filing their petition 30 days after learning the true status of their procedural rights.

Finally, MVPP's good cause for tardiness must be evaluated in the light of the pace set in these proceedings by Applicants and NRC staff. Since these proceedings began in 1975, both have had access to all the information submitted by MVPP and in existence at that time. By comparison, MVPP's three month lag time over two years between receipt of evidence and submission of contentions represents an accelerated schedule, compared to the seven year time lag by the same parties now complaining about MVPP's pace.

A. Legal Error

Even when not considered separately, licensing boards must evaluate all the principles for reopening the record when examining the five criteria for late contentions. The factors inherently are intertwined. Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CBP-83-30, 17 NRC ____, ____, slip op. p. 16 (June 22, 1983).^{5/} Despite recognizing the mandatory nature of the reopening factors, the Board failed to articulate any rationale for its summary conclusion that the standards for reopening the record have not been met, other than to allude to the

^{5/} The standards for reopening the hearing are (1) whether the motion is timely, (2) whether it addresses significant safety (or environmental) issues, and (3) whether a different result might be reached if the proffered material were considered. Pacific Gas and Electric Co., (Diablo Canyon Nuclear Power Plant, Units 1 and 2) ALAB-598, 11 NRC 876,879 (1980).

separate standards for the admission of contentions.

Thus, this Board failed to address the most important factor of all, whether the Zimmer plant can be safely operated, and thus ignores the significant public health and safety issues that MVPP has raised, and persuasively supported with extensive new evidence produced by its own investigations.

If the Licensing Board were to consider the ultimate issue of safety, MVPP submits that it would be compelled by logic and NRC precedent to reopen the record, and to admit MVPP's contentions.

The Board places great reliance on Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC ____ (June 30, 1983), to assert that MVPP's new evidence should not be considered. Catawba, however, places the competing factors in their proper perspective and supports the pre-eminent importance of safety in determining whether to reopen the record and admit new contentions:

[T]here is substantial public interest in efficient and expeditious administrative proceedings . . . [T]his interest is undoubtedly subordinate to the public's interests in health, safety and the environment . . .

Catawba, supra, slip op. at 11.

This reiterates a well-established principle in NRC cases: that safety is a more important issue than timeliness. For example, the Appeal Board stated in Vermont Yankee Power Co. (Vermont Yankee Nuclear Station), ALAB-124, 6 AEC 358, 365 n. 10 (1973), "[I]f the problem raised presents a sufficiently grave threat to public safety, a board should reopen the record to consider it even if it is not newly discovered and could have been raised in timely fashion."

Similarly, the Board in Consumers Power Company (Big Rock

Point), LBP-82-19, 15 NRC 627,631 (1982), stated:

Even though there has been no showing of good cause for late filing, we are hesitant to reject any contention supported by sufficient basis to demonstrate that the public health and safety or the environment would be endangered. In such a case we would be obligated to exercise our authority to declare such an issue part of the proceeding, perhaps by analogy to the sua sponte authority provided for in operating license cases [emphasis added].

See also, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-474, 7 NRC 746 (1978); Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-78-2, 7 NRC 83 (1978).

The Board also erred by basing its review on a search for new issues, rather than new information. While creative, this approach discards long-standing precedent. [N]ewly arising information has long been recognized as providing 'good cause' for acceptance of a late contention. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-63, 16 NRC 571,577 (1982), citing Indiana and Michigan Electric Co. (Donald C. Cook Nuclear Plant, Units 1 and 2), CLI-72-75, 5 AEC 13,14 (1972), and Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570,574 (1980), appeal dismissed, ALAB-595, 11 NRC 860 (1980). The Board's "meat and bones" analogy is instructive. Last year, the Commission declined to accept MVPP's platter, because it was all bones. The meat is the meal.

Within the past year, important new evidence, of several different types, has arisen, and MVPP has now provided the necessary quantum of evidence for reopening the record and admitting MVPP's contentions. .

The Board's application of the "meat and bones" analogy would lead to strange consequences indeed. For example, it would be impossible to reopen a record to consider the effects of recurring accidents or events, because each new event would merely lend more support to the relevant contention, adding more and more "meat on the bones", but never being considered significant enough to warrant a hearing, merely because it was "contemplated by" the contention. In reality, the significance of recurring violations is that the Applicant's program is not working. As it continues to fail, the consequences multiply and the risk to public safety is maximized.

The Commission-ordered Torrey Pines Report on its management review ("TP Report") offers strong evidence in support of this proposition. The TP Report discusses a myriad of significant QA program flaws that persist today. Even if the rest of Zimmer's problems were solved, licensing hearings would be invaluable in light of the ominous nature of those which remain.

For example, in 1982 CG&E began trending quality deficiencies for the first time in its history. The TP Report reveals, however, that in 1983 CG&E dropped the program. Nonconformance Reports ("NR") and Corrective Action Reports ("CAR") have remained open for years. As late as February 1983 cases were found where individual audit reports remained open for 2-3 years without CG&E interim inquiry. Even more disillusioning, QA remains vulnerable to being shunted aside while construction inspects itself. Torrey Pines described "recent examples" where construction controlled or attempted to perform QA audits and inspections for work such as hardware modifications after design changes.

On the most basic issue, the QA program still has not produced results. The "QA Group also still appears to have difficulties in obtaining corrective action responses and followups from individuals." Decisively, Torrey Pines conceded that [p]resent corrective action requests do not adequately pursue the identification of the cause of the problem, nor do they purge the system of the problem. The timeliness of response and followup to the point of effective preventive measures still appears to be inadequate.

Specific examples of QA deficiencies that have continued during 1983 include the structural inability of the CG&E program to "ensure that an approved vendor is used." Similarly,

Problems related to the use of HJK's Weld 1 Form, Welding Procedures, Radiographic Weld Identification, and Welding Inspection and Surveillance forms constitute a case in point. The TPT Team reviewed records which show that welding instruction and control problems appeared frequently from 1975 to 1983. A second case in point is the consistency of problems cited from 1973 to 1983 regarding overall control of the design document system. Welding procedures/documentation and design documents are essential parts of the work instructions provided to the crafts and the instructions provided to inspectors and QA personnel.

Similarly, the Torrey Pines Report reveals that Applicants' tradition of material false statements to the NRC continued unabated at least through February 1983, over three months after the strongest remedial action in history taken by the Commission with respect to a plant under construction.

To illustrate, in its August 20, 1982, Petition to Suspend Construction ("August 20 Petition"), MVPP alleged that piping was inspected to construction aids rather than to approved design drawings. (August 20 Petition, p. 11) In its February 28, 1983 response to the Demand for Information ("CG&E Response") Applicants

ridiculed "petitioners' unfamiliarity with inspection requirements" and insisted, "[I]nspection and acceptance of final construction are based on Sargent and Lundy approved designs." (CG&E Response, at 6) Unfortunately, Applicants' statement represented a fairy tale. In August 1983, Torrey Pines disclosed, "In at least one circumstance, it appears that inspections were performed using conditionally-approved design documents for more than four years. Other indications of design control problems were that . . . inspectors inspected hardware to as-built from the design drawings . . ." (TP Report, p. 4-23)

Similarly, last summer MVPP charged that the premise of the Quality Confirmation Program was a "piece-meal -- rather than comprehensive -- investigation." (August 20 Petition, at 94.) Again Applicant scoffed and responded,

In general, these allegations illustrate that petitioner's notion of the purpose of the QCP is distorted. The QCP is a comprehensive program which the Company established in cooperation with the NRC to demonstrate its commitment to building the Zimmer Station to meet all regulatory requirements. (CG&E Response, pp. 284-85.)

Again, Applicants' 1983 self-assessment was not based in reality. Torrey Pines reported, "As conceived at the present time, the QCP is not intended to be a comprehensive quality verification program for Zimmer. Its scope is limited to those items agreed upon with the NRC." (TP Report, p. 53.)

As a third illustration, MVPP charged, inter alia, that CG&E's QA philosophy was to "do as little as possible." (August 20 Petition, at 106.) CG&E responded, "It is denied that CG&E's approach was 'to do as little as possible.'" (CG&E Response, at 311.) The Torrey Pines conclusion suggests that Applicants had to know better:

From all the evidence available, it appears that CG&E's major priority was to complete the Zimmer project at the least cost and as close to schedule as possible. In this environment, QA was viewed as a requirement to be met at the minimum permissible level. (TP Report, p. 3-7)

A final illustration concerned MVPP's allegation that CG&E controlled Kaiser's QA program and, inter alia, specifically overruled Kaiser on QA staffing levels. This is the same issue for which MVPP alleges that two branches of the NRC staff -- OIA and UIE -- deceived the public in 1981 in order to maintain

credibility for a "reform" that increased CG&E's control over Zimmer. CG&E responded, "Petitioner's claims in Allegation 253 of CG&E's direct control of Kaiser's performance under its Quality Assurance Program are not supported by the statements therein and are denied." (CG&E Response at 320) The Torrey Pines Report obliterated any residual thread of credibility for the CG&E-NRC staff position. The Report puts CG&E's 1983 credibility gap in perspective, drawn from a written record prepared in a moment of candor by a former CG&E QA manager:

For example, in response to the CG&E QA manager's 1981 request for documentation which refutes HJK's claim that CG&E repeatedly denied HJK's requests for additional resources, one CG&E QA Director, who had worked on the project from the beginning, wrote 'This correspondence speaks for itself. I can add little information that is not already discussed in the letters. It is not a nice history, but very true.'

In sum, this Board's dismissal of approximately 4000 pages of new evidence and hundreds of allegations as no more than 1983 meat on 1982 bones is analogous to Applicant's protected response that each additional MVVP discovery and disclosure was "nothing new." CG&E's "nothing new" attitude has prevented it from solving the problems at Zimmer. MVPP urges this Board not to sidestep these serious contentions in a similar manner and with predictable results.

In similar fashion, this Board has defined-out the possibility that MVPP's 1983 contentions could contain anything new. This Board decided that the 1982 contentions "contemplate" almost any instance of QA failures, so that no QA failure, no matter how dramatic, could constitute new information that would warrant reopening the record.

This approach is in error. It is improper to disallow new evidence that serves to particularize the scope of MVPP's contentions. In fact, it is normal for contentions to start out more broad and general, and to be refined and narrowed by discovery:

[C]ontentions . . . place some reasonable limits on discovery. Boards have recognized that those discovery limits can, without prejudice to the hearing process, be more broad and general than the revised contentions that can be developed after discovery and which will ultimately structure the hearing.

Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566 (1982). If the Board believes that MVPP's contentions are too broad, it can allow discovery to narrow them as requested by MVPP in its June 3, 1983 motion, rather than disparaging MVPP's spontaneous efforts to particularize the scope of the contentions by dismissing the new facts as somehow irrelevant because they are "within the contemplation" of the 1982 submission of MVPP's contentions.

Even if literally accurate, MVPP should not be penalized either because the scope of the QA breakdown is comprehensive, or because of its early ability to recognize the scope. Both factors strongly favor reopened hearings. The former indicates that Applicants' program is permeated with illegality. The latter illustrates that MVPP was perceptive.

In fact, however, there are numerous key distinctions. For example, last year MVPP did not mention welding in the language for its eight proposed contentions. Last May 18, MVPP did not even understand the concept of welding procedures, let alone "contemplate" the issue. This year those subjects play a major role in MVPP's contentions. Last year, MVPP contended that the

quality of Zimmer was indeterminate. This year MVPP charges that the condition is quality condemnable.

The Board's search for new contentions rather than new information leads it to the related error of failing to distinguish the various sets of new information from each other. There have been many new factual developments in this case in recent months, some of which individually could support a reopening of the record.

As noted before, newly arising information can provide good cause for reopening the record. But for this principle to adequately function, distinct new factual developments and discoveries must be analyzed separately. If one newly arisen set of facts do not support a reopening of the record, that does not diminish the ability of the next newly arisen set of facts, if significant enough, to provide good cause to reopen the record.

This premise is necessary if the licensing process is to retain any capacity to respond dynamically to new developments and issue decisions relevant to the final condition of the plant. The Commission's recent Catawba decision confirmed the preeminent status of public safety. (Supra, at 18) And those paramount interests are served by allowing serious safety issues to be heard, regardless of how or when they arise.

Apart from newly arising information, good cause for late contentions can also be founded upon changes in Commission policy:

[T]he recent regulatory developments in emergency planning (including evacuation) and radiological monitoring . . . constitute "good cause" for . . . untimely filing. It is true, of course, that emergency planning and radiological monitoring could have been raised as issues back in 1975, when the proceeding commenced. Both Dr. Fankhauser and the City of Cincinnati did so. But, at the time, the relief which could be granted was far less than what it is today.

Cincinnati Gas and Electric (Wm. H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570,573 (1980).

Within the past year, regulatory developments have changed the face of the Zimmer proceeding, from a relatively neglected power plant with serious problems to a focus of intense Commission effort to save the plant, with new requirements, new investigations, and a program that has led to a prediction by Bechtel, the joint project manager, that finishing the plant may cost as much as has been spent to date.

These changed circumstances will dramatically alter the Zimmer plant, for better or for worse. The evolving regulatory approach at Zimmer increases the importance of public participation by the community affected by the change, and justifies relaxed timeliness criteria to promote constructive response.

These examples show clearly that the concept of "good cause" for late filing is a flexible concept, which is based on circumstances in each individual case.

This flexibility and accommodation to realistic circumstances is also reflected in the fact that even a failure to demonstrate good cause for delay will not be held against an intervenor if delay in the proceeding is not attributable to the intervenor's actions. South Carolina Electric and Gas Co. (Summer Nuclear Station, Unit 1), LBP-78-24, 8 NRC 78 (1978).

Because of this reasonable rule, it is clear that even if MVPP's motion to reopen the record and admit new contentions were extremely tardy at this point, which it very clearly is not, reopening the record would still be appropriate. No reasonable hearing schedule could interfere with Bechtel's projected start-up date. (Supra, at 3).

III. SUCCESSFUL ATTAINMENT OF GRAND GULF STANDARDS

Even if this Board's interpretation of Grand Gulf represented the correct legal standard, a full assessment of the current record in light of new developments indicates that MVPP has met the test imposed. Under this test, MVPP must make a compelling showing under two new criteria -- contribution to the record and delay. As seen above, the Bechtel announcement and MVPP's letter to Admiral Williams provide a compelling showing on the latter criterion.

MVPP's margin on this issue is even more compelling after factoring in the significance of its contentions. In Long Island Lighting Company (Shoreham Nuclear Power Station Unit 1) LBP-83-30, 17 NRC _____, slip op. p. 16 (June 22, 1983) the Board explained that "even where a contention is measured solely under Section 2.714 (a)(i), the extent to which the petitioner's participation will broaden the issues or delay a proceeding is properly balanced against the significance of the issue." In short, MVPP's margin here is especially compelling. This is due to the significant nature of MVPP's contentions, added to its strong factual improvement since September 15 on issues directly applicable to delay.

This leaves only MVPP's contribution to the record as a barrier to reopening hearings. This is ironic, in light of the general consensus that MVPP identified the Zimmer QA deficiencies when all other channels had failed (July 12 Reply Brief, at 59). In light of this, although recognizing MVPP's ability to gather large amounts of relevant documents, this Board declined to find a compelling showing due to MVPP's tardiness and failure to

digest the documents presented for the record. (September 15 Order, p. 34) MVPP respectfully suggests that weighing the volume versus the quality of index largely circumvents the decisive factors for this criterion -- whether the information contains a significant, triable issue. (Shoreham, supra, slip op. at 16)

Evaluated from this premise, the information presented by MVPP since last July is much more significant than for its 1982 motion when this Board judged the criterion strongly in MVPP's favor. Similarly, this Board recognized that MVPP presented litigable matters (September 15 Order, at 38) but failed to apply the finding to the criterion.

Second, MVPP's contribution should be judged by the unique nature of the issues it has raised. MVPP has challenged the assumptions of status quo policy. To illustrate, MVPP challenged the claims that Zimmer's problems are largely paperwork; that CG&E was unaware of its contractor Kaiser's improper QA program; and that the Quality Confirmation Program is a comprehensive plan. In each case, MVPP was right about issues which formed the premises for the NRC staff and Commission policy.

For both the above contributions, MVPP served as an agent to raise the topics and evidence where the status quo proved "inadequate to probe 'soft' and sensitive subjects and witnesses" (September 22, 1982 NRC Staff Answer, at 8, and cases cited therein) In this respect, MVPP's particular strength should maximize the value of public hearings.

Third, MVPP can make a unique contribution to hearings through its ability to maximize the contributions of whistle-

blowers to the fact-finding process. MVPP's counsel GAP is a non-profit non-partisan organization with a special expertise in assisting whistleblowers, mostly from outside the nuclear industry. Zimmer whistleblowers frequently are honest employees who have been frustrated in their attempts to challenge safety defects through communications with Applicants and the NRC staff. The results demonstrate that through their association with GAP these individuals have maximized their effectiveness. MVPP's ability to channel the expertise of whistleblowers represents a significant contribution to the record and independently warrants a compelling showing.

Fourth, the above contributions are particularly necessary in light of the recurring, erratic nature of the policies and record created from alternative forums. To illustrate, the significance of the Torrey Pines Report was decreased by its failure to provide any specific citations. The quality of the findings was inconsistent. Although Torrey Pines made a significant contribution to recognizing the scope and causes of the QA breakdown, it offered only ineffectual recommendations and badly censored the record on two of the most significant issues at Zimmer -- retaliation against whistleblowers and welding. MVPP exposed the evidentiary weaknesses as a result of its own independent investigation. (See September 27, 1983 letter to NRC Commissioners from Thomas Devine, attached and incorporated as Exhibit 9).

MVPP's strong contribution to the record on welding and whistleblower retaliation mandates a compelling showing and hearings with respect to those issues, due to their high safety significance. The importance of welding is self-apparent.

The Appeal Board's recent decision in Callaway specifically recognizes the effect that a serious problem of retaliation against whistleblowers can have on inhibiting disclosure of safety violations. (Callaway, supra, slip op. at 43-4) MVPP has presented significant evidence that whistleblowers face just such a threat at Zimmer. As an NRC inspector recently was quoted, "The simple truth is that if the quality-control people aren't willing to give up their jobs to report this sort of thing, then we don't find out about them." (Exhibit 2) The anonymous inspector's comment illustrated both the pervasive nature of the retaliatory environment at Zimmer, and the helplessness of the staff to respond effectively. Torrey Pines was more "ineffective." It failed to even report the evidence it received of retaliation. MVPP through counsel can make a unique contribution to litigating the potential safety impact recognized by Callaway as one of significant safety import. MVPP's strength on this issue is particularly necessary, in light of the unsettled, contradictory nature of the record on whistleblower retaliation.

The staff's record on welding and its oversight of the Zimmer Action Plan cry for public oversight. For example, to date the staff has only asked for background files on the case studies in the Torrey Pines Report, which could institutionalize reduced public accountability under the FOIA.

Similarly, the staff issued contradictory findings on its oversight of welding issues covered by the Torrey Pines Report. On September 1, 1983 Mr. Keppler informed Torrey Pines that the level of discussion was insufficient to support the conclusions, and that the Torrey Pines findings in the case are inconsistent

with those of the staff. By contrast, a September 6-8, 1983 Region III inspection found no items of concern. In contrast with the findings of GAP's investigation and the implications of Mr. Keppler's letter, the Region III team rosily concluded, "All of the documentation reviewed appeared to be appropriate and supportive of TPT conclusions and recommendations." (Compare September 1, 1983 letter to W.J. Neylan from James Keppler, IE Report No. 50-358/83-16(OSC) (September 16, 1983)) Clearly, in light of the stakes for the upcoming corrective action, there is a compelling necessity to obtain the full value systematically of MVPP's contribution through discovery and public cross-examination.

Fifth, this Board erred to penalize MVPP for tardiness under this criterion. Since this Board is relying upon Grand Gulf to weigh the criteria, inexcusable tardiness can only be counted against MVPP once. Any other result would improperly make it impossible to admit late contentions, once an intervenor failed to establish good cause. That is the case because Grand Gulf requires a compelling showing on all the other criteria if good cause is not satisfied.

Sixth, this Board erred to claim that MVPP has not conscientiously indexed the evidence presented for the record. The August 20 Petition to Suspend Construction applied the evidence to 254 specific allegations; the October 18, 1982 Supplement applied the evidence to 58 distinct issues; the July 12, 1983 Reply Brief to 50 allegations; and the August 26, 1983 Motion applied the results of an investigative trip to 32 new issues before the evidence was even presented.

While a large number of affidavits were presented without

further explanation on July 12, the relevant issues had already been digested in the other briefs listed above. The affidavits served as the basis for specific allegations but had not been attached as exhibits before July 12.

Seventh, MVPP's contribution to the record will improve if hearings are resumed, since it will no longer be necessary to participate in multiple, informal substitute forums, in addition to proceedings before this Board. MVPP seeks to resolve its remaining safety concerns as expeditiously and systematically as possible. Toward that end, it will concentrate exclusively on making a significant, manageable contribution to the record before this Board, if given the opportunity.

In case the Board has remaining doubts about MVPP's contribution, MVPP again requests the more limited step of reopening the record for discovery without admitting contentions. This initiative could be used to refine the contentions and test MVPP's ability to manage the record. In short, MVPP is willing to cut the meat into bite-size pieces for this Board if necessary.

IV. IMPROPER INTERPRETATION OF COMMISSION'S POLICY ON PENDING INVESTIGATIONS

MVPP further requests that this Licensing Board reconsider its denial of the August 26, 1983 motion pursuant to the Commission's August 10, 1983 Statement of Policy, 48 Fed. Reg. 36358 (August 10, 1983), for review of pending investigations -- (1) Administrative Law Judge Hoyt's investigation, and (2) the ongoing OI investigation of Zimmer performed primarily by Mr. John Sinclair. In the September 15 order, this Board ruled that the Statement of Policy does not apply to proposed contentions.

This Licensing Board need not consider whether the Commission's

policy applies to the Hoyt investigation, since it is no longer pending.^{6/} As a result, the Hoyt investigation falls into the same category as the Torrey Pines Report: both are completed reports to be admitted as new information or additional evidence for purposes of reopening the record and filing late contentions.

The OI investigation is still pending and, therefore, subject to the Statement of Policy. In pertinent part, the Policy provides that parties to an adjudicatory proceeding are under a general duty to inform boards "of matters that are material to the issues in controversy," such as pending NRC staff investigations. The NRC regulations define "contested proceeding" as:

- (1) a proceeding in which there is a controversy between the staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or
- (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission / emphasis added /.

NRC Rules and Regulations, 10 CFR 1, Pt. 2, Sec. 2.4(n)

The regulatory definition reveals the error of the limitation proposed by this board. Just as with the ex parte rule, a pending attempt to intervene triggers applications of the policy.

Even if the restrictive interpretation of the Policy's scope were correct, this Board should evaluate the evidence from the OI investigation. There is no attempt to state that the Policy bars a licensing board from taking the initiative to obtain such data. Combined, the two efforts which this Board has declined to review represent the Commission's fullest development of the Zimmer record to date.

^{6/} Indeed, the Hoyt investigation had been completed when this Board ruled on, September 15, 1983. Therefore, it was improper to deny review based on an interpretation of the Commission's policy for pending investigations.

V. SUA SPONTE INITIATIVES

This Board declined to raise MVPP's contentions as its own due to expressed concerns that "anything has transpired" that would change the Commission's mind and permit the action. (September 15 Order, at 39) MVPP petitions this Board to reconsider. Significant developments on the public record render that explanation unpersuasive.

First, even on February 23, 1983, there was not a genuine dispute of fact over significant safety issues. CG&E didn't submit its Response to the Demand for Information until February 28, 1983. The Commissioners agree that hearings are permissible, and indeed are required, once that threshold is reached. (See June 3, 1983, Motion, p. 38)

Second, the facts about the staff's role at Zimmer have been confirmed by the judiciary only since May 24, 1983; and publicly recognized by the Commissioners as severe since last week.

Third, MVPP has informed this Board of when it obtained the supporting evidence for its evidence. This again contrasts with the record before the Commissioners on February 23, and responds to a concern expressed last July 30.

Fourth, in light of the prolonged nature of the corrective action program, sustained intensive personal oversight by the Commissioners would be unrealistic and counterproductive for other plants. The Commission's July 30, 1982, Order dismissing this Board's contentions was premised upon such a commitment.

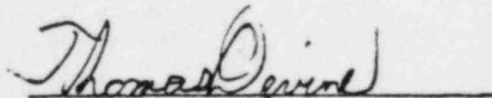
Fifth, the Commission's decision last July 30 does not imply it would disapprove lesser sua sponte initiatives such as reopening the record for discovery, or even merely for ongoing monitoring

of any approved construction completion quality verification programs without accepting contentions. Through this action, MVPP's contribution could be tested and/or its contentions refined. At a minimum this Board could reopen the record to maintain ongoing supervision of Zimmer's completion, as necessary.

In light of the drastically different circumstances from last year, Board failure to take sua sponte action due solely to concerns of Commission dismissal would significantly exacerbate the effects of last year's restriction on necessary sua sponte actions.

In light of the new factual context, MVPP contends that hearings are required by the Atomic Energy Act. (Supra, at 19) If this Board's only remaining concern is MVPP's ability to manage its record, this Board should assign MVPP to those contentions for which the intervenors have unquestionable expertise and adopt the remainder as Board contentions. Which-ever method is selected, the public health and safety requires this Board to resume its participation and assert its leadership in solving Zimmer's persistent quality assurance breakdown.

Respectfully submitted,

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

Thomas Devine
Legal Director

John Clewett
Of Counsel

Dated: October 3, 1983

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing "Miami Valley Power Project's Petition for Reconsideration of September 15, 19832 Order" have been served upon the following by mailing first-class, postage prepaid, this 3rd day of October, 1983.

Judge John H. Frye, III
Chairman, Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Charles A. Barth, Esquire
Counsel for the NRC Staff
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Frank F. Hooper
Sierra Nevada Aquatic Research
Laboratory
Route 1, Box 198
Mammoth Lakes, CA 93546

Dr. Stanley M. Livingston
Administrative Judge
1005 Calle Largo
Santa Fe, New Mexico 87501

Nuclear Regulatory Commissioners (4)
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Chairman, Atomic Safety and
Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Robert F. Warnick
Director, Enforcement and
Investigation
NRC Region III
799 Roosevelt Road
Glen Ellyn, IL 60137

Deborah Faber Webb, Esquire
7967 Alexandria Pike
Alexandria, KY 41001

Andrew B. Dennison, Esquire
Attorney at Law
200 Main Street
Batavia, OH 45103

Paul Ryder
Governor's Office
State House
Columbus, Ohio 43215

83 OCT -4 P5:01
Troy B. Conner, Esquire
Connor and Wetterhahn
1747 Pennsylvania Ave. NW
Washington, DC 20006
BRANCH

John D. Woliver, Esquire
Clermont County Community Council
Box 181
Batavia, OH 45103

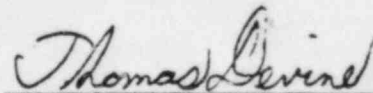
Brian Cassidy, Esquire
Regional Counsel
Federal Emergency Management
Agency -- Region I
John W. McCormack POCH
Boston, MA 02109

George E. Pattison, Esquire
Prosecuting Attorney of
Clermont County, Ohio
462 Main Street
Batavia, OH 45103

Docketing and Service Branch
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

David K. Martin, Esquire
Assistant Attorney General
Acting Director, Division of
Environmental Law
209 St. Clair Street
Frankfort, KY 40601

William J. Moran, Esquire
Vice President and General Counsel
The Cincinnati Gas and Electric
Company
P.O. Box 960
Cincinnati, OH 45201



Thomas Devine
Counsel for Intervenor MVPF

Cincinnati G&E Says Plant Cost Could Double

Partners in Zimmer Facility Express Shock; Report Suggests Need to Rebuild

By DAMON DASHIN

Staff Reporter of THE WALL STREET JOURNAL

CINCINNATI—Cincinnati Gas & Electric Co. said the troubled Zimmer nuclear power plant could cost twice its previous estimate. The utility's partners expressed shock at the new estimate, which suggests that much construction must be redone.

The estimate, based on a report by Bechtel Power Corp., a unit of closely held Bechtel Group Inc., placed the cost of the plant at completion at \$2.8 billion to \$3.5 billion, depending on whether the plant could be finished in two or three years. A previous estimate put the cost of completing Zimmer at \$1.7 billion. Bechtel Power has been hired by Cincinnati Gas to manage the construction project.

Dayton Power & Light Co. and American Electric Power Co., partners in the project, said they have begun assessing the impact the higher estimate will have on their companies, including the future costs of borrowing money. As reported, the two utilities have sought a readjustment of construction costs with Cincinnati Gas, the project manager and owner of 40% of the project.

"We were shocked to get cost estimates of that magnitude," said Stephen Kozar, general counsel of Dayton Power, owner of 31.5%.

"It was somewhat larger than we expected, and that is a restrained statement," said A. Joseph Dowd, general counsel for American Electric Power, whose Columbus & Southern Ohio Electric Co. unit owns the remaining 28%.

Supporting Documents

Cincinnati Gas didn't give reasons for the sharp increase in the construction-cost estimate. However, it promised its partners that it would give them supporting documents within 30 days. Cincinnati Gas said an exact estimate depends on how soon the Nuclear Regulatory Commission allows safety-related construction at the plant to resume. The Zimmer plant, at Moscow, Ohio, was supposedly 97% complete last November, when the NRC ordered safety-related construction halted because of faulty welds, doctored safety records and other problems.

Cincinnati Gas also said it would submit a "course of action" to the regulators outlining construction-management changes and the construction work that remains to be done. That plan would need NRC approval before work could begin.

The amount of money needed to complete the remaining 3% of the project—equal to the amount already spent to build 97% of it—strongly suggests that significant amounts of construction at the plant need to be reworked. Thus, the plant isn't 97% complete.

The estimate also suggests that the plant

Car Makers to Lift 4th- Despite Warnings Tha

By CHARLES W. STEVENS

Staff Reporter of THE WALL STREET JOURNAL

DETROIT—U.S. auto makers are going all out in their fourth-quarter production plans, scheduling plants to build 62% more cars than in the final three months of last year.

Ignoring warnings by economists inside and outside of the industry that their goal is too ambitious, the manufacturers hope to wipe out lingering shortages of some models on dealers' lots, and they are betting that recent sales improvements will strengthen.

The industry's plan to assemble 1,983,290 cars in the October-through-December period—compared with 1,226,517 units a year earlier—represents the largest fourth-quarter output since the 2.4 million units of 1978.

The schedule, if maintained, will assure a continuation of the industry's robust profit recovery in the quarter compared with a year earlier.

The chief aim of the industry's current plan is to eliminate a shortage that company officials and dealers say has limited sales gains through most of the summer. Analysts estimate that new-car inventories at the end of September were 1,155,000 units, or a 55-day supply. That's higher than stocks have been all summer but still below the 90-day

mightn't even be 75% complete, the point at which the Public Utilities Commission of Ohio allows a utility to charge the cost of borrowed funds for construction to electric-rate payers. Consumer groups in Ohio have been arguing that very point during rate-increase hearings, with limited success.

Cincinnati Gas yesterday said its 97% estimate of plant completion hasn't changed.

Borrowing Funds

Officials at Dayton Power and American Electric Power said they are concerned that the new cost estimates will increase their costs of borrowing money. They have financed their share of Zimmer construction with borrowed funds.

Although Dayton Power's and American Electric Power's debt ratings haven't changed because of Zimmer, Moody's Investors Service Inc. recently lowered its ratings on several securities of Cincinnati Gas because of the Zimmer troubles. The debt-rating concern said last month that although Cincinnati Gas's debt protection wasn't in jeopardy, "future Zimmer financing requirements could result in a deteriorating financial posture."

Neither Dayton Power nor American Electric Power knew the impact the new estimate might have on arbitration proceedings with Cincinnati Gas over Zimmer costs. The private arbitration proceedings are an attempt to adjust the costs Dayton Power and American Electric Power are assessed by Cincinnati Gas.

Andros Analyzers \$3 Million Job

BERKELEY, Calif.—Andros Analyzers Inc. said it signed a contract for more than \$3 million to supply parts for exhaust gas analyzers to a maker of automotive test equipment that it didn't identify. Andros makes infrared gas analyzers for medical and industrial-instrument makers.

THE WALL STREET JOURNAL.

EXHIBIT 2

© 1983 Dow Jones & Company, Inc. All Rights Reserved.

★ ★ ★ EASTERN EDITION

WEDNESDAY, SEPTEMBER 7, 1983

WHITE OAK, MARYLAND

40 CENTS

Weak Links?

Nuclear-Plant Welders Often Aren't Qualified For the Job, Critics Say

They Contend Test Results Were Routinely Falsified, Many Union Cards Sold

Troubles at Facility in Ohio

By J. KENNETH BRAZLEY

Staff Reporter of THE WALL STREET JOURNAL

A little over a year ago, Chuck Weaver, a quality-control inspector for H.J. Kaiser Engineers, walked in unexpectedly on a group of welders taking qualification tests at the Zimmer nuclear plant near Cincinnati.

What Mr. Weaver saw alarmed him. According to an affidavit submitted by him to the Nuclear Regulatory Commission, one welder who was undergoing certification for the most difficult safety-related work at the plant was taking the wrong test—a much simpler one than, Mr. Weaver joked later, “basically could be done by a chimp after a few weeks of training.” Other welders were committing a variety of infractions, according to Mr. Weaver’s affidavit and many others.

Mr. Weaver’s affidavit says the test supervisor told him that Kaiser’s construction division had approved the departure from regulations “for people who can’t pass the test otherwise.” Three on-site Kaiser inspectors had never before inspected welding tests, and two NRC inspectors standing nearby were oblivious to the cheating, his affidavit says.

Many Defects

Mr. Weaver had been similarly disturbed a few weeks earlier at Zimmer. Then, on another routine inspection at the Kaiser construction project, he testified in his affidavit, he discovered defective welds over two-thirds of the circumference of a critical, 50-foot-high radiation shield around the reactor.

“Other funny things were turning up, too,” Mr. Weaver recalls. He and others said in affidavits that hundreds of documents supporting the qualifications of welders already at work at the plant were missing and that other documents appeared to have been falsified. In some cases, according to NRC investigators, the same test was used to qualify several welders.

The voluminous testimony about falsified tests, stand-ins for unqualified welders and defective welds in safety systems helped persuade the NRC, four months later, to halt construction indefinitely of the \$1.7 billion, 97%-complete plant, which is owned by Cincinnati Gas & Electric Co., an American Electric Power Co. subsidiary and Dayton Power & Light Co.

It is unclear precisely what relationship exists between shoddy welding on a radiation shield, for instance, and the cheating that may precede it in the test booth, where craftsmen are supposed to meet detailed government and industry standards before they are hired. But concern is growing over both the incidence of faulty welds and the quality-control programs designed to detect them.

Other Zimmers

Moreover, interviews with dozens of welders, welding engineers, nuclear-quality-control inspectors and NRC inspectors suggest that, in varying degrees, there are indeed other Zimmers. In fact, though Zimmer may be a particularly bad case, Mr. Weaver and others say welding improprieties—ranging from stand-ins during testing to the sale of union memberships for \$50,000-a-year jobs—are a fact of life in the nuclear construction industry.

At the Washington Public Power Supply System’s reactor No. 2 in southeastern Washington, for example, NRC inspectors, prodded by complaints from quality-control inspectors, found faulty welds in a main radiation shield similar to those at Zimmer. If undetected, the welds could have jeopardized a safe shutdown of the reactor.

In June, witnesses told the House Interior Subcommittee on Oversight and Investigations that the NRC had discounted—without fully investigating—charges of inferior welding at the San Onofre nuclear plant in California and the Midland and Palisades plants in Michigan. And the Senate Labor Committee is in its third year of investigating the apparently widespread sale of union craft memberships to unqualified welders who were welding and even overseeing welders at dozens of industrial sites, including several nuclear plants.

Reports of document falsification at Zimmer were ignored by the NRC, Rep. Morris Udall, an Arizona Democrat, charged last year. A federal grand jury is said to be still investigating criminal charges concerning forged documents at Zimmer, and NRC officials now say 70% of the structural-steel welds alone there don’t meet code requirements.

Many Crucial Welds

More than 100,000 welds go into the typical nuclear plant, the NRC estimates, and of these some 15,000 are crucial pipe welds for the reactor cooling system. Cracks in these pipes could threaten the cooling system and, in the event of an accident, could impede a safe shutdown. Faulty welds in other areas, such as the reactor radiation shield problems alleged at Zimmer and WPPSS-2, could weaken the first line of defense for workers against radiation leakage.

In a letter last March to Cincinnati G&E, Zimmer’s majority owner, the NRC outlined some welding problems that it said it had found. Among the allegations: that quality-assurance records had been “altered and supplemented” without supervision and that welders qualified for one type of welding

were certified for another. NRC investigators also charge that some qualification records had been wholly rewritten and that there wasn’t any evidence that 40% to 50% of the 2,400 welders who had worked at Zimmer

Continued From First Page

mer over the years had qualified. And the investigators verified Mr. Weaver’s report of faulty welds in the radiation shield.

“This plant is an example of what happens when quality assurance breaks down on a massive scale,” says Dorwin Hunter, the NRC’s former project manager at Zimmer.

Responding to the NRC’s findings, Kaiser says it is “confident of the quality of all the safety-related and structural-steel welds at the plant.” It also cites the conclusions drawn by Torrey Pines Technology in a review conducted for Cincinnati G&E: the consulting firm said any management shortcomings at the plant “have been or can be corrected” by the utility.

A Kaiser spokesman adds: “We believe Zimmer is one of the most soundly constructed nuclear-power plants in the country. Other people in the nuclear-power industry just shake their heads in wonderment at the quality of this plant.”

The NRC says its inspections, which include sample X rays of crucial welds and reviews of welder certification documents, are as thorough as possible, given its staffing constraints. “Our system is built to the level of manpower the NRC can devote to it,” says James Taylor, the assistant director of the NRC’s Office of Inspection and Enforcement.

Privately, though, some NRC inspectors express strong doubts about their ability to detect cheating. “Hopefully, it doesn’t happen as much as it would appear, but it does happen,” one NRC inspector says.

Some early indications of the problem came in 1981, when the Senate Labor Committee opened an investigation into what it alleges was a union membership-sell-off scheme involving East Coast and Canadian locals of the International Brotherhood of Boiler-makers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers. Terming the allegations “vague and unsupported,” Charles Jones, the union’s president, vigorously denies any wrongdoing, and an NRC investigation into a small portion of the committee’s findings has failed to substantiate the charges.

Nevertheless, dozens of veteran welders told the committee that business agents routinely sold memberships at exorbitant prices to welders lacking the 8,000 hours or four years of apprentice experience generally required under union rules for referral as journeymen. In some cases, union halls sold memberships normally costing \$400 for as much as \$2,600, according to testimony.

At the same time, union officials or unqualified welders paid or pressured stand-ins to take welding tests, according to testimony at the Senate hearing. Recipients of union cards included a used-car salesman who “knew so little about what he was doing that he asked where the boiler was on the first job he worked,” said one witness, who testified behind an opaque glass screen and used a voice scrambler to protect his identity.

Cosmetic Touches Charged

Another witness was Ralph Powers, who now runs his own welding shop in Saxton, Pa., but in 1972 was welding alongside other boilermakers on the storage system for spent radioactive fuel at Three Mile Island Unit 1 near Harrisburg, Pa. There, the welds were so poor that workers were instructed to use blow torches to make the surface of the welds look “nice and clean”—at least to the eye, Mr. Powers testified.

NRC officials, though, play down the significance of the welds because the storage system isn’t crucial to the plant’s safety.

More disturbing, though, is Mr. Powers’s allegation before the Senate committee that more than half of the boilermaker welders dispatched to the plant bought union cards for prices ranging up to \$1,000 from a nearby local in Titusville, Pa. Mr. Powers said a former local official alleged to have sold the memberships “had a motto: ‘If you’ve got the bread, we’ve got the butter.’”

Lee Reisinger, the local's current president, says the international union investigated similar allegations about the local in the 1970s. "The international thought something was going on, but as far as we can tell, there was no wrongdoing at the time," Mr. Reisinger says.

Key to Miring

Union membership, of course, doesn't guarantee a welder a nuclear-plant job. NRC regulations still require certification at the construction site. In practice, though, it virtually ensures job referrals, and witnesses testified that once equipped with a union card, a welder had a high likelihood of getting work, depending on the amount of test supervision. At TMI, Mr. Powers testified, supervision was spotty at best, and cheating was common. "Some of these guys managed to get through the tests without knowing how to hook a torch up," he charged.

Mr. Powers also testified that union foremen had pressured him to take 11 tests for other welders at fossil-fueled plants. His son, he added, had bought his own union membership from a Charleston, S.C., local with only one-fourth the required apprentice hours. Union officials there deny the charge.

Committee investigators also turned up the case of an 18-year-old West Virginian named Ricky Allen Farley who says he bought union credentials from the same South Carolina local as Mr. Powers's son. Even though he had no more than trainee's status at the time, Mr. Farley became the foreman of a crew of boilermakers installing a condenser at Georgia Power's Vogtle nuclear plant.

"I wasn't really surprised to be named foreman because I was the only one who had any kind of book (union membership) at all," he says in an interview. "But I guess it did surprise everyone else because I was so young." Mr. Farley says he still has only about 6,000 hours.

Company's Reply

Richard Conway, Georgia Power's senior vice president for engineering and construction, acknowledges that Mr. Farley was hired as a journeyman upon a union hall's recommendation. But Mr. Conway considers Mr. Farley's length of apprenticeship irrelevant because, Mr. Conway says, the youth apparently passed a welding test.

"The term of apprenticeship hasn't got anything to do with skill," says Mr. Conway, who is also the chairman of the Edison Electric Institute's construction committee. "Some guys can learn how to weld in a mat-

Weak Links? Critics Say Many Nuclear-Plant Welders Aren't Qualified and Test Results Are Often Falsified

ter of weeks," Mr. Conway adds. "Besides, the proof is in the performance."

Despite the Senate hearings, the NRC says it has been handicapped in its efforts to follow up on the committee's investigation. Crucial witnesses at first refused to permit their names to be handed over to the NRC because they feared job retaliation. Initial interviews with one committee informant yielded little specific and some contradictory information, NRC investigators say. And the agency found nothing alarming in its review of the percentage of welders who passed tests at three plants.

"As far as I'm concerned, we've closed the investigation," says William Ward, a division director in the NRC's Office of Investigations.

Inspections Increased

On the other hand, the NRC's Mr. Taylor says his branch has rewritten its procedures to provide for increased inspection of welding tests, although the number inspected still will probably amount to no more than 2% of the total. "We've told our inspectors to pick things up in the test booth," Mr. Taylor says. "The hearings focused our attention on the possibility of fraudulent behavior."

Stand-ins and sales of union memberships apparently aren't a problem only at construction sites. A former quality-assurance engineer for Bechtel Corp. recalls catching an uncertified welder at one of Bechtel's suppliers for the Palo Verde nuclear plant. The welder, who reportedly hadn't been certified in 10 years despite a requirement for certification every few months, was welding flanges onto large pipe sections used in the reactor's main cooling line. "We never would have caught this guy if Bechtel hadn't had such strict standards on this job," she says.

At the plant sites themselves, welding and quality-control inspectors say, supervision of qualification tests often is lax. Test supervisors, employed by the contractor, sometimes leave the test booths unattended for hours at a time and permit union foremen to vouch for the testing of union welders. "A lot of supervisors don't care," a welding engineer says. "Others just look the other way."

Photo-Identification Plan

After the first Senate Labor Committee hearing last year, Chairman Orrin Hatch, a Utah Republican, asked the NRC to institute a photo-identification program to confirm the identity of the test-booth welder. The NRC staff is considering recommending the change. Meanwhile, the agency has begun a modest system of spot checking. So far, the NRC's Mr. Taylor says, the agency has information from three of its five regional offices, those three estimate that their inspectors witness 80 to 130 welders undergoing tests in an average year. Last year, welders took an estimated 26,000 to 25,000 tests at nuclear plants.

One NRC inspector worries that the agency depends too much on utilities and contractors to police themselves. "There's no real safeguard against dishonesty," he says. "If the utility is less than honest with us, it can actually set us up. It can send us out to look at just the work it wants us to see."

Those seeking jobs at nuclear-plant construction sites have a powerful motive for cheating: money. A pipefitter welder at a nuclear plant commands a premium wage—as much as \$26 an hour. In a year's time, that amounts to \$24,000—not including overtime.

"When a guy can go from making \$4 an hour to \$26 an hour, he's going to cheat to get the job every way he can," asserts a welding engineer for a large Philadelphia-based construction company who estimates that he has seen stand-ins take tests for welders on more than 70 jobs, including six nuclear plants.

Helping Friends

A former quality-control inspector at WPPSS, now in a similar position at a Midwestern nuclear plant, recalls two friends who were persuaded to stand in for other welders during tests. "No money changed hands," she says in an interview. "They took the tests because the other welders couldn't pass them otherwise, because they were all friends and because the job paid so well."

Union locals also reap benefits when they land contracts for large nuclear-construction jobs. By placing their members in steady, high-paying jobs, they can count on substantial revenue from work dues paid by each member. But typically, the locals lack the required numbers of skilled craftsmen, particularly welders. "It puts you in the position of accepting a lot of guys you wouldn't ordinarily take," says a former member of the local that supplied the WPPSS plants with pipefitters.

When the WPPSS construction was announced in the early 1970s, fewer than 500 members belonged to Local 598 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, generally considered one of the best-trained pipefitting halls in the nation. Practically all were enjoying steady work, largely because of the proliferation of government research facilities and the local's large geographic territory. Nevertheless, the union hall was able to supply 10 times as many pipefitters, many of them welders, by using nomadic welders who journey from site to site in search of work. Supplying only half that number would have meant a loss of several million dollars in work dues to the local.

Harassment Charged

Quality-control inspectors complain that they often lack the autonomy to insist on stricter supervision of welding tests or correction of bad welds. Some say they even were harassed for doing their jobs.

After Mr. Weaver reported welding problems to the NRC, for example, Kaiser raised questions about his handling of expense accounts and the accuracy of his resume. Then, it suspended him with pay. But a subsequent investigation by the NRC and the Federal Bureau of Investigation found "no major problems" with Mr. Weaver's information or his background, according to Mr. Weaver and NRC staffers. And after Mr. Weaver filed a complaint charging harassment with the Labor Department, Kaiser agreed to a settlement with him that, among other things, granted his request to be laid off with full reeducation, vacation and severance pay and a 30-day expense account amounting to more than \$20,000.

Kaiser denies its action against Mr. I.

Weaver was intended as retaliation for his contact with the NRC. The company notes that in the settlement, both it and Mr. Weaver acknowledged that neither was admitting any liability or wrongdoing. On the other hand, the company concedes that the questions about the accuracy of Mr. Weaver's resume were unfounded; even before the settlement was reached, in fact, Florida Power & Light Co. had hired him as a quality-control inspector at its St. Lucie nuclear plant.

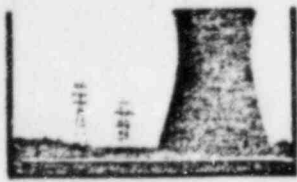
Another Alleged Victim

Another employee wasn't as fortunate in finding another job. David Jones, a senior quality-assurance analyst, says that after he was suspected of reporting problems at Zimmer to the NRC, he was moved from his \$35,000-a-year position to the document review room, where he says his duties amounted to a clerk's. On May 28, 1982, two weeks before Mr. Jones testified before a House subcommittee about the plant, he received a job evaluation that praised his performance and explained that the transfer would "broaden his background" and "improve his understanding of day-to-day activities of other quality groups."

Six weeks after his testimony, Mr. Jones was laid off. Last month, he filed for voluntary bankruptcy. A Kaiser spokesman contends that Mr. Jones's transfer wasn't a demotion, but instead reflected the company's

decision to place him "where we needed him at the time."

Commenting on the whole problem of flaws in nuclear-plant construction, an NRC inspector says: "The simple truth is that if the quality-control people aren't willing to give up their jobs to report this sort of thing, then we don't find out about them."



The Truth about Zimmer

EXHIBIT 3

September 1983 \$1.50

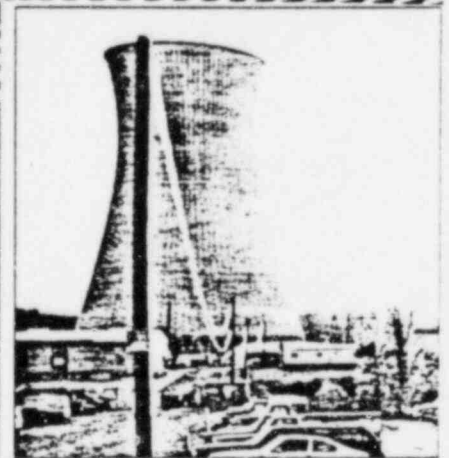
Cincinnati



Contents

The Truth about Zimmer / 82

Nobody asked us if we wanted a nuclear power plant twenty miles upstream. We don't get to choose whether to pay for it. Zimmer is a mess, a textbook example of how not to build a nuclear power plant. The government still refuses to reopen licensing hearings, which would let us question those responsible, so we're being asked to trust many of the same people who got us into this potentially dangerous mess in the first place. Meet the bureaucrats, the business leaders and the whistle-blowers who are all part of a system gone awry.



82

Contents

Volume 16 Number 12 _ September 1983

Features

A Bouquet for Mr. Bench / 32

As Big Number 5 hangs up his uniform, it's high time we thank Johnny Bench for the gift of his wonderful sustained performance as a Cincinnati Red. Bob McKay recaps his career as an All-Star catcher, and Roger Kahn, author of *A Season in the Sun*, tells us of the man behind the catcher's mask. Some of Bench's buddies and fans share personal stories, and for the statisticians, we have the record years.

Doing Business in the '80s / 55

View from the Top / 55

Four top-level executives give their versions of good management and what they see as their responsibilities to employees.

The Beginning at the End / 65

"You're fired!" need not mean "You're finished!" That's where outplacement firms come in. Also, tips on how to fire an employee without bitterness or lawsuits.

To MB or Not to MB? / 71

Does a graduate degree in business administration give you a boost up the ladder of success? It depends.

Soccer Handbook: A Guide for Bewildered Parents / 75

Betcha don't know anything about the game. Most parents don't. Back when you were on the field it was simpler: you had your pickup games, kickball or sandlot baseball, then your high school football and basketball. Who knew from soccer? Here's a complete guide to the basics, a who's who of players, how to watch and how to learn to play.

The Truth about Zimmer / 82

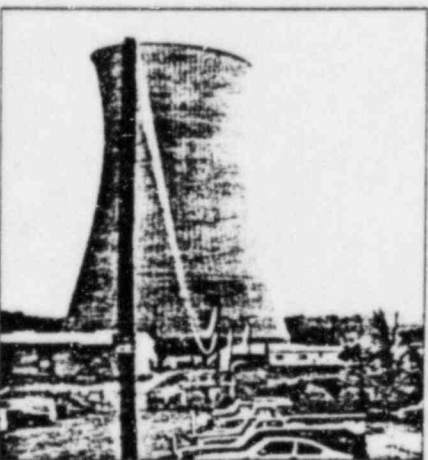
Nobody asked us if we wanted a nuclear power plant twenty miles upstream. We don't get to choose whether to pay for it. Zimmer is a mess, a textbook example of how not to build a nuclear power plant. The government still refuses to reopen licensing hearings, which would let us question those responsible, so we're being asked to trust many of the same people who got us into this potentially dangerous mess in the first place. Meet the bureaucrats, the business leaders and the whistle-blowers who are all part of a system gone awry.



32



75



82

Columns

Sports / 18

Can UC football recover from the loss of Mike Gottfried? Athletic director Mike McGee says the Bearcats' new coach, Watson Brown, will "set this community on its ear."

Politics / 24

Tom Brush is a nice guy—and a lousy politician. In the political jungles of Chicago or Boston, he would be eaten alive.

People / 28

Focusing on some of the biggest contributors in the massive United Appeal campaign here—those who give time as well as money.

Restaurants / 94

Two familiar German restaurants have been given new life—the Black Forest and Zimmer's.

Nothing but the Facts / 128

Grandes Dames of the Arts: Patricia Corbett, Maria Longworth Nichols Storer, Mary Hopkins Emery and Anna Sinton Taft.

Miscellany

Backstairs / 6

Letters / 8

Observer / 11

Of All Things / 16

Dining Out / 98

Calendar / 102

Catalog Showcase / 122

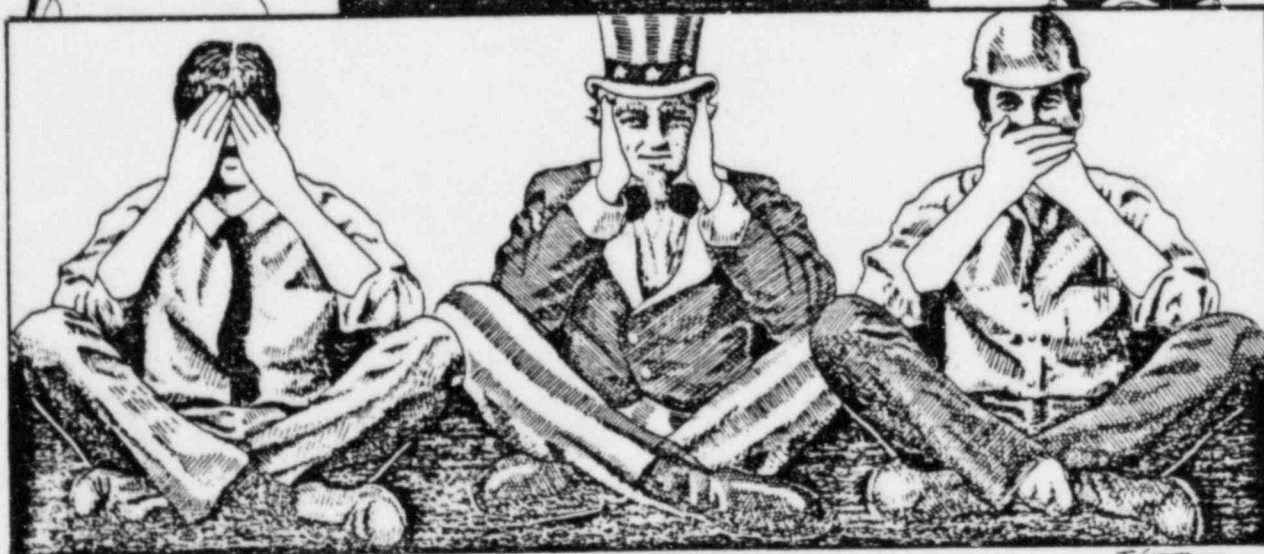
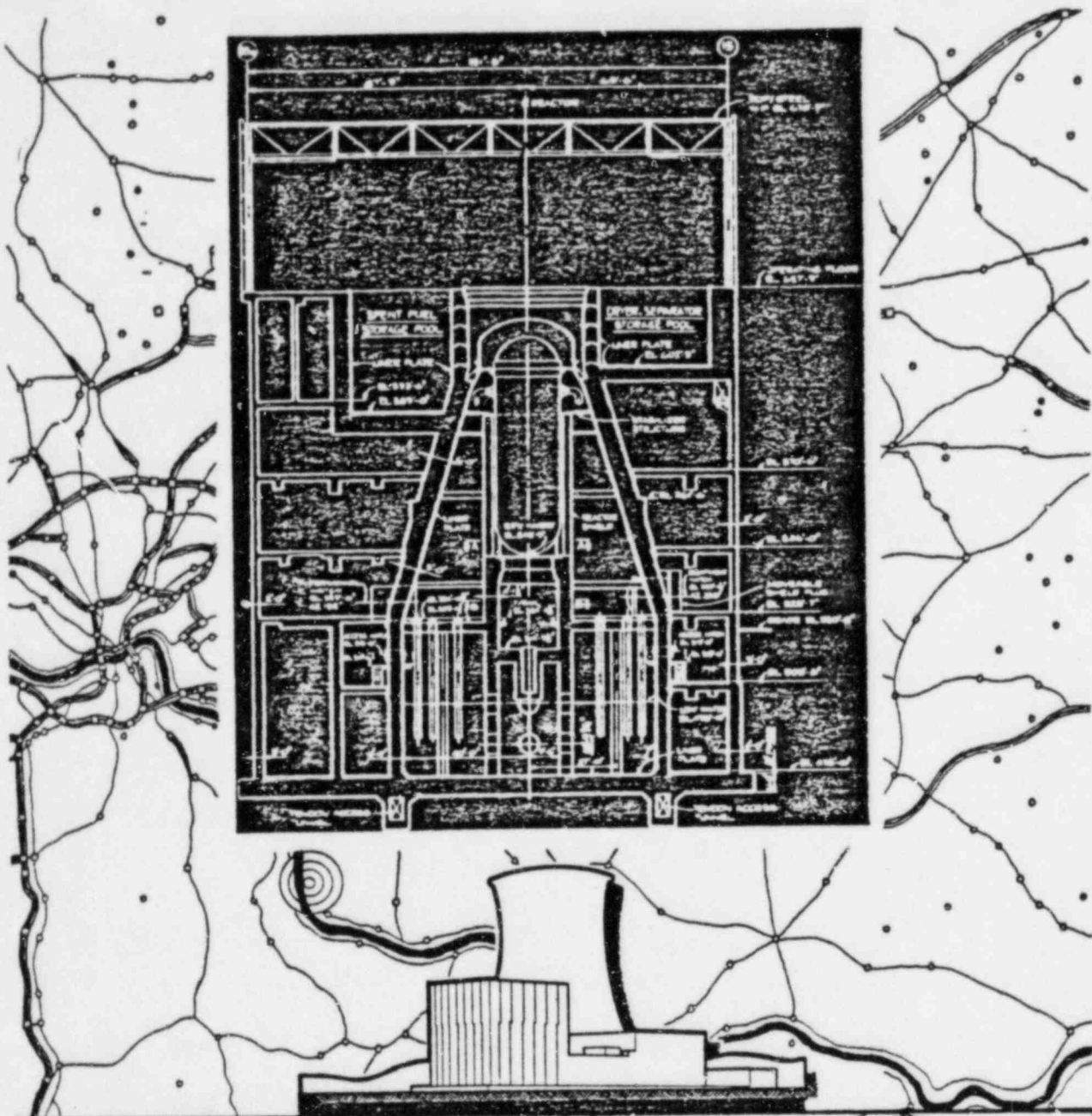
Classifieds / 124

On the cover

Photo by Tony Walsh

Photography

All photography, unless otherwise credited, is by Tony Walsh.



Born to Lose

The Truth about Zimmer

By Dale Keiger

Dr. David Fankhauser is a geneticist at Clermont College, near Batavia. He's also an organic farmer, a goatherd and, to his neighbors, something of a character. He has kept his long hair and granny glasses, has been said to walk into town barefoot for groceries and describes his life as "an experiment in self-sufficiency." He moved his family to a farm ten miles from Moscow, Ohio, to escape some unhealthy aspects of modern life. Then Cincinnati Gas & Electric Company began building the William H. Zimmer Nuclear Power Station a few minutes away.

Fankhauser didn't want *any* kind of nuclear facility that close. In his laboratory he uses radiation to induce mutations in specimens, and he believes government standards for nuclear plant radiation emissions are inadequate. But as his feelings became better known to his neighbors, he heard good reasons to stop Zimmer, specifically. People kept bringing him evidence of shoddy construction, telling of bad suppression pool work and cable insulation problems. He decided to speak out.

Few people listened to him, or to others opposing

the new plant. CG&E, the partner responsible for managing construction (the other partners in the plant are Dayton Power & Light and Columbus & Southern Ohio Electric), tried to ensure that its critics would not be taken seriously. On one occasion, a CG&E spokesman suggested the opposition must be using ouija boards as their source of information. The message to conservative Cincinnati was: do not trust these people. Are you going to believe this organic goatherd, this aging hippie, or the company that for 150 years has always provided power when you flicked the switch?

There was just one problem: the organic goatherd was right.

Zimmer is a mess. Already a textbook example of how not to build a nuclear plant, the Clermont County operation really is an example of much more: a system gone awry. What happened at Zimmer was not an accident or an unfortunate set of coincidences. Zimmer was born to lose, and it's important to understand why, because the system that produced Zimmer produced our other nuclear plants, as well. There have been improvements in this system, but you must wonder if they are enough.

We trusted the federal government to sanction a safe, effective nuclear power program. We trusted CG&E to uphold its responsibility to build as safe and economical a plant as possible. We trusted the Nuclear Regulatory Commission (NRC) to ensure our safety by supervising construction at Zimmer. All three betrayed us. The NRC had clear warnings of something dreadfully wrong at Moscow years ago. At first, the commission failed to recognize the seriousness of the problem; then it covered up to avoid embarrassment. The government still refuses to reopen licensing hearings, which would, in effect, let us question under oath those responsi-

We trusted the federal government to sanction a safe, effective nuclear power program. We trusted CG&E to uphold its responsibility to build a safe and economical plant as possible. We trusted the Nuclear Regulatory Commission (NRC) to ensure its safety by supervising construction at Zimmer. All three betrayed us.

ble, so we are left with only this: we are told to trust many of the same people who betrayed us before to now make everything right. This time will be different, they say. We promise. Trust us.

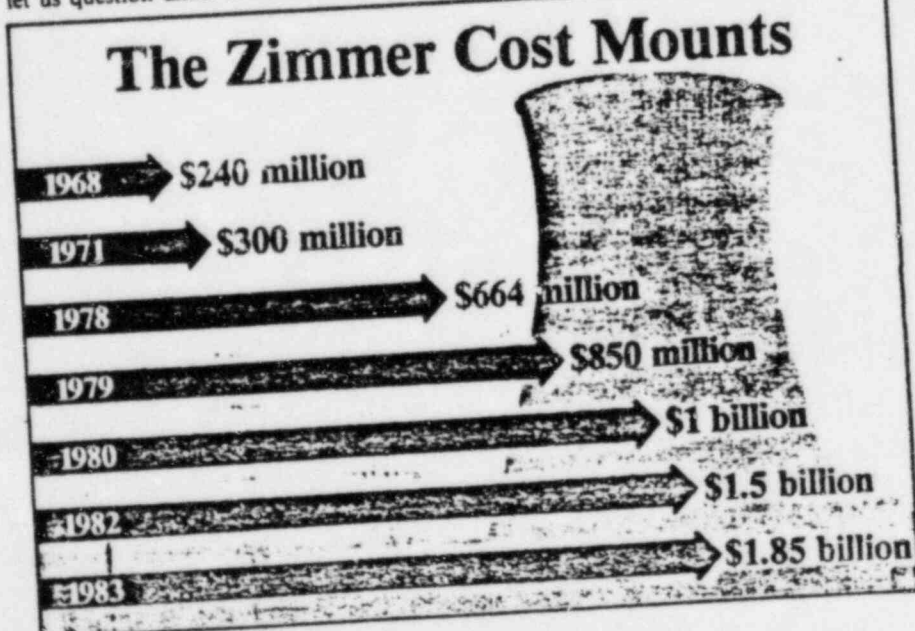
Work remains stopped at Zimmer while the government tries to figure out how bad things are and what to do. Every month of delay costs an estimated \$15 million, but it's necessary because things are so fouled up. The quality of the plant is "indeterminate," says the government, but Zimmer can't be called safe. To be safe, CG&E must be able to prove the plant was built by qualified personnel who followed an approved design and used approved building materials and procedures. CG&E can't do that. To know Zimmer is safe, we must know that each step of construction was inspected and documented according to federal law, that the operators know what could go wrong and what to do about it and that we can be evacuated, if necessary.

Zimmer fails on every point. CG&E may be able to make it safe, given enough time and money, but to call the facility safe now is ludicrous.

Safety, of course, is the point. Advocates of nuclear power insist the danger from splitting atoms has been greatly exaggerated, and they have some good points. But estimates of the toll from a hypothetical worst accident at Zimmer are sobering. According to a government-sponsored study informally known as the Sandia Report, there would be 9,000 initial fatalities, 109,000 initial injuries and 10,000 cancer deaths. Damage would total \$84.5 billion. Of the plants with the highest potential casualties, Zimmer ranks fifth in initial injuries, among reactors under construction. These estimates assume the worst possible accident under the worst possible conditions, and the odds of that are exceedingly slim. Nuclear advocates point to these low probabilities and say the risks are acceptable. But where do we draw the line? How many deaths are acceptable? A tenth of the estimates? The population of Moscow, Ohio? A few plant technicians and security guards? And was Three Mile Island "acceptable" because it didn't kill anyone? Zimmer may never hurt anybody more than it already has, but the point is we don't know that because we don't know how well it was built. Neither does CG&E. Neither does the government. And until we find out, we have to trust them to protect us.

Today, it's easy to forget that Zimmer seemed like a good idea in 1968 when it was announced in CG&E's annual report. Its estimated cost was \$240 million, its year of completion, 1975. (The next year, 1969, the company announced the plant would be named after William H. Zimmer, CG&E president and an employee for forty-nine years. CG&E directors predicted the plant would be "a fitting testimonial to his leadership.") The economy seemed reasonably healthy and demand for electricity was estimated to increase 7 percent per year. Coal prices were rising and environmentalists succeeding in imposing stricter, more expensive clean air requirements on coal-burning utilities. Nuclear seemed a clean, cheap alternative, alluring with its glamorous, high-tech image. A benevolent federal government let utilities deduct, from their earnings taxes, new equipment expenditures, but did not require them to refund the savings to rate payers. The bigger the new equipment purchase, the more of these "phantom taxes" the utility pocketed, and a nuclear plant was the biggest equipment purchase around. Zimmer had a lot going for it.

Looking back, we now see what planners couldn't foresee. No one predicted the 1973 Yom Kippur War in the Mideast (not even Israel), so nobody anticipated the



Arab oil embargo or that we would begin conserving energy because of it. Nobody knew the Midwest was enjoying its last boisterous years before a severe recession forced industry to cut power consumption. As a result, demand didn't increase by 7 percent a year; the figure was closer to 3 percent. CG&E also didn't know the government would order several extremely expensive modifications in nuclear plants that were not part of the original estimated cost.

Another factor made Zimmer attractive in 1968: low apparent risk. Utility company shareholders do not bear the risk of new construction — that's passed to customers through rate increases. The Public Utilities Commission of Ohio (PUCO) had always granted such increases and CG&E assumed that would continue. Congress provided another important safeguard called the Price-Anderson Act. No one expected a major accident at a nuclear plant, but everyone knew that if somehow one *did* happen it could be awesome. But not to worry — just in case, the Price-Anderson Act limited a utility's liability to \$560 million.

Besides, what was going to happen? These things were safe, right? The federal government had done research and written all these strict regulations, so what could happen? All you had to do was follow the rules. Didn't you?

If that were true, we might have avoided much trouble. But at the inception of the nuclear program, the government made a mistake. We had incinerated more than a hundred thousand Japanese civilians at Hiroshima and Nagasaki by splitting atoms and were anxious to show peaceful applications for this horrible power, to be the atomic good guys. When the government decided we should have nuclear power, the Atomic Energy Commission was created and given contradictory functions: to both regulate and promote nuclear power. This contradiction caused problems immediately. The government saw the successful U.S. Navy nuclear program and thought if the Navy could operate safe nuclear reactors, so could America's utilities. All they had to do was take the Navy's reactors and build them bigger. This turned out to be wrong. When the AEC's experts counseled caution to allow adequate research and testing, the AEC stopped being a regulator and started promoting instead. Nothing would impede our march into the nuclear age. We didn't have time for warnings and testing. In several cases, the AEC hid ominous reports from the public.

"We plunged into nuclear with little doubt and little hesitation," says Congressman Morris Udall, chairman of the congressional subcommittee charged with oversight of the NRC. "There was no devious or evil purpose — we were just too optimistic." Adds NRC Commissioner

Zimmer Chronology

1968

Zimmer announced by CG&E.

1971-74

Initial site clearing and construction. Liz Scheurer, of the Ohio Office of Historical Preservation, pressured by CG&E management over historical preservation regulations.

1973

CG&E takes vendor QA (quality assurance) control from Henry J. Kaiser Company, the main construction contractor.

1974-75

Kaiser repeatedly requests more QA staffing; CG&E refuses.

1975

Original target year for completion.

1976

Vic Griffin, Kaiser's QA engineer, publicly airs his concerns. NRC investigates; no substantive action taken.

1977-78

NRC's Terry Harpster begins working at Zimmer as inspector. He tells CG&E, NRC administrators in Chicago and NRC officials at NRC headquarters about his concerns over serious problems at Zimmer. No substantive action taken.

1980

Dave Jones, a Kaiser employee, starts working at Zimmer. Thomas Applegate, a private detective working for CG&E at Zimmer, calls the NRC with his allegations; the first IE investigation of his charges takes place, with no substantive action taken.

1981

Sherrill Nolder investigation on behalf of Kaiser. In March, the NRC Region III staff recommends a shutdown; Immediate Action Letter written instead. OIA report censored. City signs deal with CG&E in October, pulling out of licensing hearings. In November, NRC fines CG&E \$200,000.

1982

Dave Jones demoted after he talks to government. Harpster report leaked. In June, State Senator Cooper Snyder applies political pressure on state boiler inspector. In November, the NRC orders construction halted at Zimmer.

James Asselstine, "We are paying a price for not following a more deliberate approach in those early years."

The government relied on sound utility management. If it wasn't going to own and operate the nation's nuclear plants itself, it had to. It couldn't afford the personnel required to run the civilian program the way Admiral Hyman Rickover had run the Navy's. This meant writing comprehensive standards and regulations and trusting utilities to follow them. But the government didn't write those kinds of rules. It couldn't, because it didn't know enough, in some cases, and chose to hide ominous research in others. The Atomic Energy Act of August 30, 1954, contained thirty-one references to health and safety, but no definitions. Congress seemed to assume if the word "safety" appeared often enough, that would make it reality. The Act copied

provisions for reactor licensing almost word-for-word from the Federal Communications Act of 1934, which meant we were to license nuclear plants in much the same way we licensed radio stations. The government let more than sixty utilities embark on nuclear programs that had never been adequately tested, without making sure those utilities could handle the incredibly complex technological problems involved, and with minimal assurances the utilities would obey the rules. "The whole enterprise was handled on the basis that utilities would master the technology and perform well," says NRC Commissioner Victor Gilinsky. "It turned out in quite a few cases that faith was misplaced." CG&E was one of those cases.

The utility didn't waste time making its first mistake. It was a nuclear novice, but instead of seeking experienced help, it hired



David Fankhauser, a geneticist at Clermont College: *In his laboratory, he uses radiation to induce mutations in specimens, and he believes government standards for nuclear plant radiation emissions are inadequate.*



Vic Griffin, Quality Assurance engineer for Kaiser: *He sounded the first alarm in 1976, questioning the installation of uninspected components. Nobody was listening.*



James Keppler, Nuclear Regulatory Commission (NRC) Region III top administrator: *"There was no deal cut."*

another firm with limited experience, the Henry J. Kaiser Company, as main construction contractor. Kaiser had worked for Armco and built some big things, including the Hoover Dam, but its only nuclear experience was on two experimental reactors built for the government. It had never built a commercial plant. The situation was aptly described by a local journalist as a dance of virgins.

In the early 1970s, federal regulators didn't monitor Zimmer construction closely, assuming enlightened self-interest would prevail. Why would CG&E build a bad plant? What they hadn't anticipated was how badly CG&E underestimated its task, and the utility's attitude toward rules. This attitude didn't take long to surface. Liz Scheurer worked for the Ohio Office of Historical Preservation in the early 1970s, supervising compliance with federal regulations on historical and archaeological preservation. CG&E had to work with Scheurer to acquire the permission to build on the Zimmer site. She and her boss, Bert Drennan, recall that it was common to encounter resistance to the regulations and they got some from CG&E. "They were not eager to have any kind of complication," Scheurer says, which is understandable, but, "they were trying . . . to get around the law. I was contacted by higher-ups [in CG&E] and more or less told I should find a way that they wouldn't have to comply with all the regulations. They

probably spent a lot more effort trying to get around them than just doing them." She remembers calls from Robert Wiwi, currently vice president for electric operations, and William Dickhoner, president.

CG&E seemed to regard regulations as penalties, and itself as a victim of politicians in thrall to anti-progress, anti-technology radicals. The company was also cheap, and as a result, ruined the quality assurance (QA) program meant to protect us from unsafe construction. An effective QA program requires two things: a sufficient staff of independent inspectors fully supported by management and thorough documentation for every step of construction, the importance of which cannot be overemphasized. Paperwork was virtually all the government relied on for regulation. Federal "inspection" in those days amounted to a paperwork review. If the licensee's inspections were not performed properly and documentation not accurate and complete, the government literally would not know what was happening at the site. If construction continued under an inadequate QA program, mistakes and safety violations could be buried under overlying construction and remain hidden until they caused an accident.

CG&E has tried to blame Kaiser for the QA breakdown, but internal memos and letters prove CG&E ran the show from the beginning. The utility denied Kaiser requests for additional QA staffing in 1974 and 1975, when construction began in

earnest. Those at Kaiser knew trouble was brewing. On October 14, 1974, Kaiser QA Manager William Friedrich wrote to CG&E Vice President Earl Borgmann: "Every effort is being made to comply with the drawings and specifications, codes and standards, with a minimum number of people, but it is becoming virtually impossible to continue working in all areas with the present staff." In a January 15, 1975, reply to another Kaiser request for more inspectors, Borgmann made a veiled threat and unwittingly foretold the future: "... there are trying times ahead of us and if Kaiser expects to remain a significant factor on this project, it will have to adapt to the situation now facing us, which is one of austerity and hard work. It is dangerous for us to tamper with a constructor's responsibility by trying to assess and decide the proper level of his manpower." Dangerous or not, CG&E routinely did it.

The utility took control of the Approved Vendors List. The AVL derived from a simple premise — you can't build a nuclear plant with just anything. You have to use proper materials. Recognizing this as one place where utilities might cut corners, the government requires them to buy safety-related materials from approved vendors, but lets them make the evaluations. Approving a vendor often means stationing an inspector in the vendor's plant to monitor assembly of components. You can't inspect a component after delivery: disassembling it to check parts breaks the seals and voids the warranty. CG&E would not let Kaiser do in-plant inspections, however; they were too expensive. Instead, the utility company simply read its vendors' QA manuals. If

these checked out all right, CG&E took that to mean everything would be fine on any purchased components. Kaiser knew vendors shouldn't be trusted that far, but CG&E wouldn't listen. The new procedures violated Kaiser policies and the codes of the American Society of Mechanical Engineers (ASME) that form the basis for regulating nuclear construction (even the Russians use the ASME code), but

Kaiser went along.

Things got worse. Someone decided it would be okay to buy materials as non-safety-related (from non-approved vendors) then illegally upgrade them to safety-related after delivery. One example involved 10,688 pounds of steel beams shipped February 24, 1975, from Frank Adams & Co. On the Kaiser requisition it is listed as non-safety-related, but when a stores issue was

written for the same steel on May 5, 1977, it was listed as safety-related and presumably used that way. Was Frank Adams & Co. an approved vendor for nuclear-grade steel? Hardly — Frank Adams & Co. is a scrap dealer. Was this just a clerical mistake? Possibly. But an internal Kaiser investigation conducted in July 1981 estimated that 80 percent to 90 percent of structural materials were handled this way.

Zimmer's New Boss

Joe Williams Jr., "Admiral" Williams to everyone at CG&E, admits he flunked retirement. That partly explains how he ended up as the utility's new vice president for nuclear operations and the man responsible for Zimmer since last April. After retiring as an admiral in Hyman Rickover's nuclear Navy, Williams tried taking it easy. That didn't work — he got restless. He tried his own consulting business. That didn't work either — his wife objected to his frequent travel. There was nothing left to do but go back out and get a regular job.

Not that his current position is entirely "regular." Williams walked in on one of the nation's worst utility problems, and it's his job to make Zimmer finishable and operable, assuming the Nuclear Regulatory Commission gives its permission. He professes to be pleased with what he's found.

"I'm impressed with the people," he says. "I'm somewhat puzzled why the morale is as high as it is. These guys are on a roll out here."

In the five months he has held his new post, Williams has begun to bring in reinforcements from the military. The Navy nuclear program has been an unqualified success, and the atomic industry has long depended on Navy-trained personnel. Williams quickly hired three assistant vice presidents, all Navy men, to help him with Zimmer. He has no trouble explaining why the military's program was able to accomplish what the civilian program has not, starting with the man who ran it, Rickover.

"He was the goddamndest dictator you ever saw," Williams recalls of the man he served under. "[The Navy] had a highly competent man who was the sole authority on how nuclear plants would be built and operated." Rickover set training standards, hand-picked his officers, supervised even the tiniest design and construction details and made sure the military reactors were built conservatively. The result was a fleet of ships with safe, dependable, cost-effective reactors. Williams thinks the civilian program could have



Adm. Joseph Williams, Jr., vice president for nuclear operations at CG&E: "I know we're gonna find problems, but nothing we can't resolve."

operated the same way, but he says he doesn't intend to try to run Zimmer as a boot camp. "I wasn't a martinet in the Navy. I don't find successfully leading people in civilian life any different from [leading them] in military life."

His first job has been to scrutinize what has already been built and the paperwork, to see what has to be fixed. "I've got a hunch we're going to find we've got a sound plant. I know we're gonna find problems, but nothing we can't resolve." One thing he feels necessary is better operator training. He wants better crisis simulation. Now, CG&E crews have to leave the site for training in a simulator that creates realistic, hypothetical crises that the crew must then safely resolve. That simulator doesn't match Zimmer's control room, however, and Williams would like to see a better one installed on site. He wants to increase engineering support for the plant: "People say, 'My God, 200 people in engineering at a single plant?' Absolutely!"

He'd also like to change some attitudes. He acknowledges that in the past people at Zimmer were too slow to pay attention to critics. "My people are going to listen," he insists. "They're also good at sifting the wheat from the

chaff, but you've got to listen. I'm not saying the intervenors did not bring up some valid points. If I find all the defects in this plant, and find all the defects in the paper, then ergo I should have satisfied any reasonable intervenors."

Those intervenors represent a touchy subject for Williams. He wonders about the motives of some of them, and struggles to express his reservations without sounding like a Red-baiter. Some critics, he says, "prey upon the fears of John Q. Public. They take advantage of the lack of knowledge of the untrained person about nuclear power. They make exaggerated allegations. They prey on a person's natural fear of things he cannot see or touch. I just don't think that people who utilize these extremist measures are responsible."

"There's no question in my mind that the Soviet Union would like for the nuclear industry not to be developed in this country. They understand how vital that power is going to be to the growth of our economy. Now, how do you say something like that without it looking like Admiral Williams sees a Red behind every goddamn rock? I'm not good at articulating this in a sophisticated way."

Just as he's unabashedly patriotic, Williams is unabashedly pro-nuclear. He thinks the civilian program has been better than portrayed. "You can look at TMI [Three Mile Island] as a success. Was anybody hurt? The answer is no. Did anybody receive a significant dose of radiation? The answer is no. Should it ever have progressed to the point it did? Hell no. But from the standpoint of being a danger to the public, it really wasn't."

"I just like to keep busy at something I think is important. And that's egotistical, you know? But I like to do something that really contributes. It's going to be a tough couple of years. I don't want people in Ohio to support Zimmer, I just don't want them to oppose it for reasons that are not valid."

"Come out here in a couple, three months. You'll see some changes."

—Dale Keiger



William Dickhoner, president, Cincinnati Gas & Electric Co.: *Paying the price for the early years? Every month of delay costs an estimated \$15 million.*

Even if the Kaiser investigator was wrong half the time (and the report has never been refuted), that means nearly half the safety-related construction fails to meet federal codes. If structural material fails, it could cause an accident. Furthermore, the Kaiser report states: "... as a cost-saving policy, CG&E directed that structural materials be purchased Non-Essential [non-safety-related] and later upgraded to Essential [safety-related] for construction purposes." In other words, CG&E ordered the upgrading.

There was one tragicomic episode in all this vendors business. CG&E was forcing Kaiser to use vendors that only the utility had approved, violating regulations covering Kaiser as construction contractor. Someone had a bright idea for getting around the problem: put CG&E on the Kaiser AVL. Thus, decisions made by CG&E regarding vendors would be acceptable. To everyone's embarrassment, when Kaiser checked out CG&E, the utility failed to qualify for Kaiser's list.

Vendor and material problems were only part of CG&E's demolishing of the QA program. For QA inspectors to do their job, they must be independent and backed by management, because they're not popular on construction sites. Nobody likes being graded and no boss likes to hear that part of his job must be reported and halted for rework. Because of this, federal law requires that utilities and construction departments grant total independence to QA inspectors and prevent harassment and intimidation. At Zimmer, inspectors were



Earl Borgmann, vice president of general engineering at CG&E: *An exchange of memos, a veiled threat and a forecast of "trying times ahead."*

constantly pressured not to hold up construction. As Zimmer took longer to build and the price increased, this pressure intensified. At times, things got rough. Dousing inspectors with buckets of water was one means of getting the point across. According to Dave Jones, there were others. Jones was a burly Kaiser employee made special assistant to the site QA manager in November 1980. Kaiser thought enough of him to give him considerable responsibility, but when he tried to do his job he ran into opposition. When he persisted, he says, other workers, "team players" who regarded him as a troublemaker, started dropping by his office and asking him how he felt. "You know, Dave," they'd say, "a guy like you has to start thinking about his health." Jones says he understood the message, but didn't care. He'd grown up tough and didn't like being leaned on. By 1982, he'd made enough people mad to be demoted. CG&E publicly branded him a disgruntled, low-level clerk, ignoring the fact that this "low-level clerk" had been on Kaiser organization charts just one step below the site QA manager.

The other key element of a good QA program is the documentation required by the government showing where all parts were bought, who installed them and what procedures were followed. The builder must record every welder, every weld, every piece of pipe and valve, and document every design change and nonconformance to standards found by inspectors. Why so much fuss? There are many important

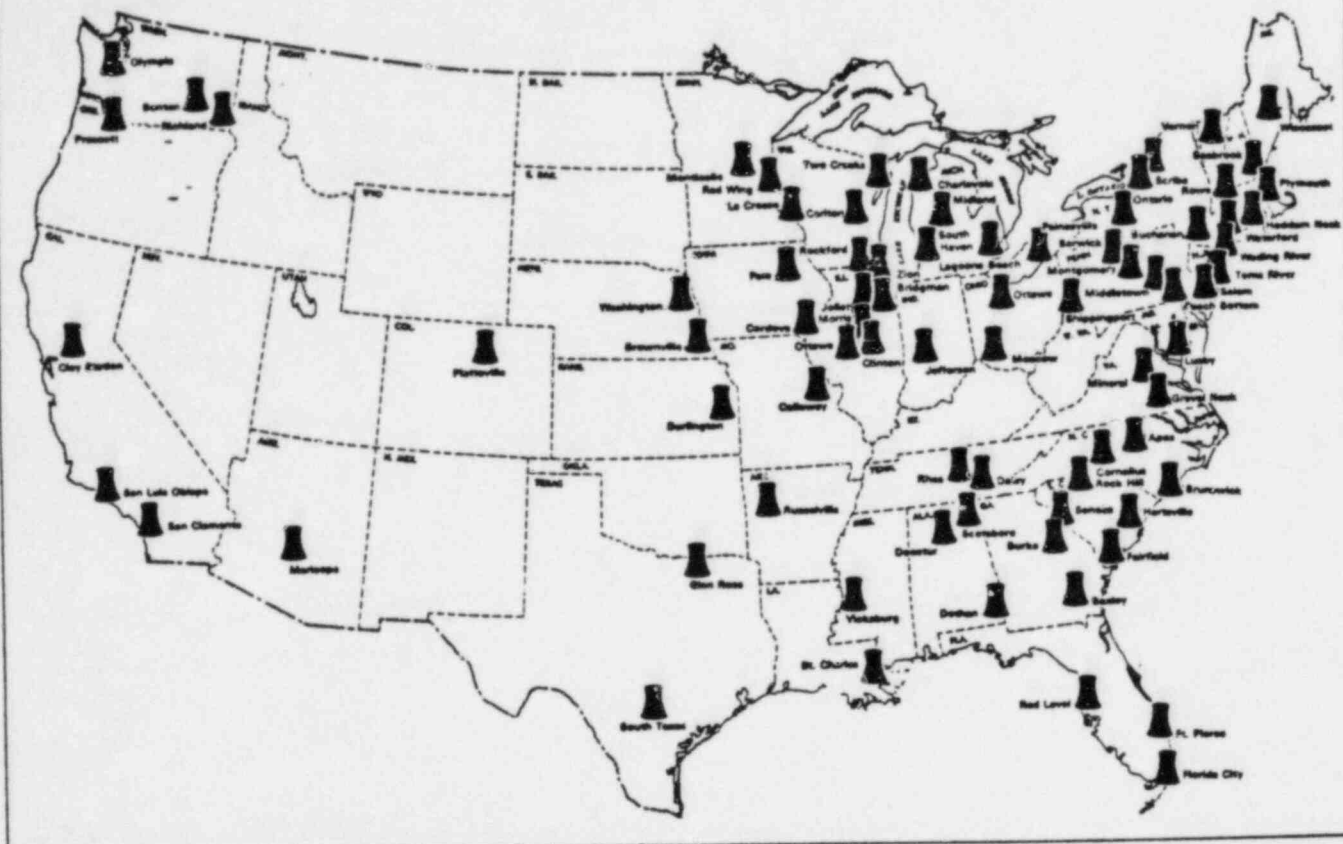


Thomas Devine, of the Government Accountability Project (GAP): *Tipped off by a private detective, he gathered enough evidence to help convince the government to reopen the investigation into Zimmer.*

reasons. Welding is the glue holding a nuclear plant together. At Zimmer, there were many different welding procedures, all of which had to be done properly by an adequately trained welder. Thus, welder certification was critical and so are weld records. If a welder's work begins to disintegrate, for example, repair crews need to find and check his other welds. If a section of pipe proves defective, inspectors must know where else it was used so it can be replaced. If a change was made in design, technicians need to know so the final blueprints match the actual plant. Documentation is the road map that allows monitoring and correction of problems. What's more, without proper documentation, the NRC was blinded. During most of Zimmer's construction, the NRC did not inspect hardware, only the paperwork. Its entire inspection effort depended on the accuracy of that paperwork. Because the paper was bad, those early inspections weren't worth much.

The scope of the problem is staggering. At the Cincinnati Environmental Advisory Council hearings in September 1982, the NRC's Dorwin Hunter estimated the number of missing documents at four million. The NRC since has backed away from that number, but the true figure is clearly very high. The NRC must track down 2,400 welders now scattered around the world, to check their qualifications. A Kaiser in-

Plants Across the U.S.



vestigation stated that 42,000 purchase orders must be reviewed to check for bad materials. The government probably will never find a lot of the paper.

In some cases, that's exactly what utility officials wanted. One important document in nuclear plant construction is the Non-conformance Report, or NR. NRs must be written whenever an inspector finds something that does not meet construction standards. Copies of all NRs are forwarded to the NRC. Internal documents and testimony by various CG&E and Kaiser personnel show that throughout construction CG&E strove to reduce the number of NRs, not by seeing to it that work was done right the first time, but by circumventing the system. At meetings, CG&E employees discussed how problems could be dealt with without writing the required NR, inventing substitute forms which did not impose strict correction standards or have to be turned into the NRC. NRs were altered with correction fluid or voided without due cause. In later years, when Zimmer was under intense scrutiny, CG&E wrote new procedures designed to identify habitual NR writers among inspectors and have "heart-to-heart talks" with them.

The government admits "whistleblowers" deserve most of the credit for revealing the truth about Zimmer, but they had little effect at first. Nobody listened. The anti-Zimmer activists must share part of

the blame for that. In the early days of their opposition, they were naive. They thought all they had to do was lay their information before the public, which would be attentive and demand action. Instead, a conservative constituency took one look at this collection of complainers, who reminded them of the anti-war movement of the '60s, and dismissed them as malcontents. CG&E didn't have to refute any charges, because no one looked past surface impressions to hear them in the first place. The anti-Zimmer people didn't understand packaging and it cost them years of effort.

Not only did the public fail to listen — so did the government. It missed its first chance in 1976, when a Kaiser QA engineer named Vic Griffin went public with his concerns about installation of uninspected components. It missed its second chance in 1980 with Thomas Applegate, a private detective working for CG&E at Zimmer, who'd called the NRC after being fired when he reported to CG&E evidence of faulty welds and falsified field documentation. Each time, the NRC ordered investigator Gerald Phillip and its Office of Inspection and Enforcement (IE) to conduct an inquiry. In Griffin's case, nothing ever came of the IE probe. As for Applegate, IE reported one minor paperwork violation. Cases closed.

Except Applegate refused to just go away. He went to Washington and, while

making the rounds, spoke to a young lawyer named Thomas Devine, of the Government Accountability Project (GAP). GAP decided to represent Applegate, and Devine began interviewing Zimmer workers in Cincinnati. By December of 1980, he had enough evidence to contact the NRC, which agreed to reopen the investigation, but not just because of Devine. A former Zimmer QA inspector working at another nuclear plant coincidentally had started telling the NRC of serious violations he knew about. The NRC finally suspected that its investigators and inspectors had been missing something.

The NRC dispatched IE to Zimmer again, but it did something else, too. The government agency decided to investigate itself, calling on people from its Office of Inspector and Auditor (OIA) and telling them to find out if something had been wrong with IE's earlier work. OIA investigators interviewed NRC personnel from December of 1980 to February of 1981, and examined documentation from the first Applegate investigation. What they found was embarrassing. In an October 1981 memo to NRC Chairman Nunzio Palladino, OIA Director James J. Cummings described it this way: "Fundamentals basic to all investigations were simply not observed. . . . The investigative file contained no results of interviews at all nor was there any detailed record of copies of documentation

YOUR TRI-COUNTY TRAVEL CONNECTION

PERSONALIZED TRAVEL by PROFESSIONALS
who have been where you're going!!

BUSINESS TRAVEL SPECIALIST

WE GUARANTEE
IN WRITING
LOWEST
AIRLINE RATES

- ONE CALL RESERVATION SERVICE
- FULL INTERNATIONAL PLANNING
- PROMPT CONFIRMATIONS
- DETAILED TRAVEL ITINERARIES
- CONVENTION-MEETING PLANNING
- SALES INCENTIVE PROGRAMS
- CUSTOMIZED BILLING
- PASSPORT AND VISA SERVICES

NO CHARGE FOR OUR SERVICES
ALL MAJOR CREDIT CARDS
ACCEPTED
WE DELIVER TO YOUR
BUSINESS OR HOME
HOURS BY APPOINT-
MENT EVENINGS,
SAT. OR SUN.

*We're here
when You need
to be there*
874-8006

Cadillac Travel

467 CIRCLE FREEWAY
CINCINNATI, OHIO 45246

Near Showcase Cinema, Off Crescentville Rd.
REGISTERED OHIO TRAVEL AGENT #TA0537

Zimmer

reviewed [emphasis Cummings's]. IE apparently hadn't interviewed witnesses or reviewed welding documentation. Furthermore, investigators clearly hadn't bothered to go into the plant and look at the welds Applegate had noted as having problems, despite his having listed the welds by their identification codes. IE had simply indicated no problems were found. If somebody had gone into the plant, he would have discovered that weld #RH-42 didn't exist anymore (it had been improperly cut out) and weld #CY606 was covered by concrete, so nobody could tell if it had been done properly or not. Also, the IE report had mentioned, in its one finding of infraction, that "a CG&E official" had improperly ordered the closing out of an NR on defective piping; what OIA found was that this wasn't any ordinary "official," but QA Manager William Schwiens. This was direct implication of a top CG&E official subverting the QA program, and IE had not pursued the lead.

OIA investigators also spoke to an NRC man named Terry Harpster. Harpster had been a hard-nosed preoperations start-up inspector for the NRC's Region III, which has jurisdiction over Zimmer. He was sent to Zimmer in October 1977 and didn't like what he found. He thought CG&E didn't appreciate the amount of resources needed to operate a nuclear plant, that the plant was understaffed and that too many untrained personnel were involved. He said he'd found an employee entrusted with supervising the start-up operation who had only three months' experience. Furthermore, the QA inspectors weren't able to do their jobs correctly. Harpster finally concluded that Zimmer was out of control. He told OIA investigators John Sinclair and David Gamble that he had tried to resolve these problems informally with CG&E, working up to Earl Borgmann, with no success. Then, Harpster said, he went up the NRC Region III management chain to James Keppler, the top administrator, and reported his findings (Keppler recalls this taking place in 1978 or 1979). Harpster said he managed to set up a meeting at NRC headquarters to discuss CG&E problems in July of 1978 only after "screaming." By the time he'd left Zimmer in March 1979, to join the team investigating the accident at Three Mile Island, he'd heard nothing about any action on his complaints.

The information Sinclair and Gamble wrote in their report, which was filed April 7, 1981, was explosive. The NRC was belatedly recognizing how much it had missed for years. Now, here was this OIA report revealing that IE's investigations had been inept and that top people in the NRC had been told how bad things were at

Zimmer back in 1978, if not earlier. The public was going to scream if it learned how much the NRC had known, and for how long. Heads might roll. What to do?

The answer was to cover up, censor the report, do a little "word engineering," in the NRC's euphemistic lexicon. The OIA report was rewritten repeatedly from April 7 to August 7 at the direction of OIA Director Cummings. The idea was simple: leave the attachments — the inches-thick stack of supporting evidence — untouched, but dilute the summary so that, while it wouldn't lie, it would cloud the truth. Cummings knew that few people would bother to look at the attachments. Who had time, or sufficient interest? Most would just read the transmittal memo and the summary, and nobody would get excited because by now that summary didn't say much of anything.

Well, two people *did* get excited — Gamble and Sinclair. When they read the final report and checked the attachments, they were angry. A diluted summary was one thing — that was routine around the NRC. But the Harpster report had been pulled from the document altogether. Sinclair and Gamble wanted to know why, and they went to their boss, Arthur Schnebelen. Schnebelen, in turn, took them to confront Cummings.

Cummings defended his decision, saying that the Harpster material was inconsistent with the thrust of the OIA investigation and therefore should not be included. Gamble and Sinclair replied that it was an investigator's job to report what he'd found, whether it fit the original mission or not. Schnebelen tried to get the Harpster document out in a different way, arguing that since information always seemed to leak anyway, why hide it? Just mail it under a separate cover, as in, "We don't know what to do with this, but we thought you should see it anyway." Cummings didn't like that idea, and countered with a shrewd bureaucratic move. Create a third file, he said, just for Harpster. Gamble and Sinclair knew this would bury the report, because no one would ever know to ask for the "Harpster file," and they objected again. Cummings finally decided to hold the document and include it in a later OIA report, this one covering an OIA investigation into possible criminal actions at Zimmer. Because the criminal investigation has never been concluded, the OIA criminal investigation report has never come out. The Harpster interview did make it out, however: it was leaked to GAP in July of 1982. After GAP's Tom Devine went public with it, an Office of General Counsel attorney named Rick Parrish contacted Sinclair and Gamble and told them Harpster, now high-

Zimmer

er up in the NPC, was writing a statement refuting the report's accuracy. Gamble and Sinclair said to warn Harpster that if he did that, they'd sign affidavits swearing to its accuracy. Furthermore, they'd publish their notes. Harpster apparently realized they meant business and backed off.

This was not the only example of "word engineering." By July of 1981, NRC investigators were closing in on CG&E, accumulating evidence that the utility was behind the breakdown of quality assurance at Zimmer. On July 9, John Sinclair and another investigator, Albert Puglia, interviewed CG&E's William Schwiers, who was about to retire after several years as QA manager for Zimmer. He began the interview criticizing Kaiser, stating the contractor had not given its QA personnel sufficient independence from the construction department. Asked about Kaiser requests for additional QA inspectors, Schwiers replied that he believed all such requests had been honored. Then the investigators played their trump card. They told him they had asked for documentation from Kaiser that would prove CG&E's role in denying those staffing requests, and that Kaiser had agreed to turn it over. Faced with this, Schwiers admitted he'd had "some authority" in denying requests for more inspectors, that "on paper" it looked like he was in control. He couldn't remember who had attended management meetings at which those requests were discussed, but noted that he reported directly to Earl Borgmann. As the interview progressed, Schwiers became more agitated. He gave a few answers that he could not explain, then stated that he was under "tremendous pressure" at Zimmer. Finally, he refused to answer any more questions with more than "yes" or "no."

This interview was important as evidence of CG&E's culpability in wrecking the Zimmer QA program. But, again, the summary of the investigation was diluted so that the Schwiers interview was only mentioned, not discussed, with no clue to its significance. If anybody bothered to read all the attachments, they found it last in the pile, behind fifty-one others.

The NRC wasn't the only organization trying to hide what it knew about Zimmer. The Kaiser report noting the widespread upgrading of non-safety-related material to safety-related was written by Sherrill Nolder, Kaiser supplier quality engineer. She had been sent to look into that specific problem, as well as to determine the adequacy of document control, assess vendor evaluation and judge compliance with procurement regulations. Nolder interviewed

Kaiser personnel at Zimmer July 21-31, 1981, and filed a twelve-page report listing numerous violations and implicating CG&E in the breakdown. Kaiser thought enough of her to send her back to Zimmer within months to conduct another investigation, but her first report was kept under wraps. Kaiser did not report the findings to the NRC. When copies later mysteriously arrived at NRC headquarters in a plain brown envelope, Nolder was fired. She is suing Kaiser.

More than just cover-ups prolonged the abuses at Zimmer. The NRC was excruciatingly slow to face that Zimmer was not simply a series of isolated incidents, but a widespread breakdown. By March of 1981, the NRC was tracking more than 600 allegations found by its second IE investigation, including illegal voiding of NRs, harassment and intimidation of quality assurance personnel, cosmetic rework that merely hid problems, pressure on inspectors from Kaiser management and reassignment of those too insistent on proper work, bad welding procedures, a bookmaking operation run out of a plant security office and several serious construction flaws, including some in the suppression pool that protects against a meltdown. At a Region III meeting held at the end of March of 1981, the staff laid it on the line — Zimmer should be padlocked. Construction had to stop until investigators could learn what exactly was happening. But Region III boss Keppler wouldn't do it. The investigation would continue, he said, but so would construction. Keppler met with CG&E's Borgmann on March 31. NRC sources insist Keppler and Borgmann worked out a deal, something Keppler strenuously denies. "There was no deal cut," he says. Whatever happened at the meeting, on April 8, 1981, Keppler issued an "Immediate Action Letter," which was the first real step taken against CG&E. The letter ordered the utility to take several corrective actions regarding quality assurance, but it fell far short of a stop order. Keppler maintains this was adequate, that a shutdown was not called for because the investigation had revealed only "programmatic," not hardware, problems. At a Region III staff meeting a few weeks later, a top official from NRC headquarters, Vic Stello, also argued that the staff was only digging up paperwork problems. What was the big deal, where were the hardware problems? Keppler's and Stello's logic is curious for two reasons. First, as has been explained, a breakdown in paperwork is no trifle, given the importance of documentation. Second, both Keppler and Stello knew that investigators hadn't found hardware problems yet because they hadn't had

about town
in cincinnati
real estate

JERRY DEVITT & ASSOCIATES

REALTORS
CAREW TOWER
CINCINNATI, OHIO 45202
513/241-7688



commercial
industrial
investments

7-11-68

And so, here we are today. The price tag for Zimmer probably reads about \$1.85 billion by now, of which we've paid an estimated \$184.3 million and will surely pay much more before we're through. Construction remains halted while management and hardware audits are concluded, and we must still trust the same organizations that got us here. CG&E is conducting its "Quality Confirmation Program," and *this* time promises to acknowledge all problems and fix them. The NRC Region III staff is supervising the QCP and audits, and says *this* time they won't miss anything. CG&E shareholders are nervously watching their investment (the utility is currently considered a bad place to put your money), while the company has a tough new vice president for nuclear operations, Joseph Williams Jr., a retired admiral from the nuclear Navy who may be what CG&E needed from the start. The NRC senses that the public is getting fed up, but once again all we have to go on are promises. The NRC still won't reopen licensing hearings. As Commissioner Victor Gilinsky candidly notes, "There is tremendous hostility here toward public hearings as a vehicle for regulatory action." Gilinsky favors those new hearings. He has pictures of only two plants on his office wall, Zimmer and Three Mile Island. But his vote probably won't be enough. The NRC doesn't want us involved. It prefers to tell us what's good for us, and it doesn't want to admit the extent to which it helped create this fiasco. We are due an accounting. We are owed licensing hearings. We will probably get neither.

Perhaps the most frightening thought is that while Zimmer was out of control, the plant was 97 percent completed. But for a few tenacious people who refused to shut up, Zimmer would be a *fait accompli*. Nobody asked us if we wanted a nuclear power plant twenty miles upstream. We don't get to choose whether to pay for it. Nobody knows what it will cost to finish it. It may never run at anything near acceptable efficiency; the nation's other reactors generally have poor operating records. And even if it does run well for the full thirty-odd years of its projected life, we're still faced with decommissioning: the site will be "entombed" and guarded for 104 years while the radioactivity lessens, and then the reactor will be dismantled, assuming someone has figured out what to do with all that radioactive waste. Nobody knows what that will cost, because nobody has ever done it. Nobody even knows *how* to do it — but somebody will think of something, says the nuclear industry. Trust us. Sound familiar? □

BUSINESS MEETING?

**Have Yourself a
Marriott Kind of Day
In Lexington**

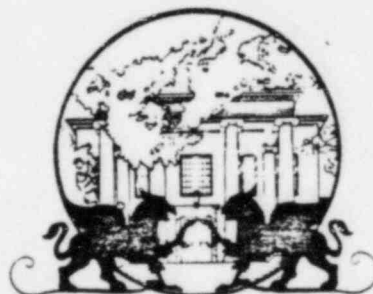
The perfect setting for that mix of business and pleasure.

Overlooking the golf course, the Lexington Marriott Resort Griffin Gate offers your meeting planner the ultimate in flexibility, and your attendees an almost endless list of amenities not available elsewhere.

Nestled in the heart of Bluegrass country, the Lexington Marriott Resort features a Rees Jones designed 18-hole golf course, lighted tennis courts, pools, saunas and health club facilities, plus 317 spacious guest rooms, unique restaurants and lounges, and ample free parking.

Recreation...Relaxation...Meeting/ Banquet Facilities.

Call us direct at (606)231-5100 or toll free, (800) 228-9290, for details and brochures that'll help you make your next function a GREAT one!



Lexington Marriott Resort
Griffin Gate

1800 Newtown Pike, Lexington, Kentucky 40511-9990

ARCHITECTURE • INTERIOR DESIGN

Champlin / Haupt

424 E. Fourth St.
Cincinnati, Ohio
241-3474



THE ENQUIRER

WILLIAM J. KEATING *President and Publisher*
 GEORGE R. BLAKE *Editor, Vice President*
 THOMAS S. CEPHARDT *Associate Editor*
 FRED L. FOSTER *Vice President, Advertising*
 LARRY G. LINDQUIST *Vice President, Circulation*
 FRANCIS M. PRICE *Vice President, Production*

ZIMMER

Torrey Pines study lays the blame for failures on CG&E's management

TORREY PINES Technology prepared an almost 400-page critical evaluation of Zimmer Nuclear Power Plant and found a great deal wrong with CG&E's management.

Torrey Pines found that CG&E executives put cost considerations ahead of quality assurance, that the general contractor had no prior or concurrent experience in building nuclear power stations, that CG&E President William H. Dickhoner did not have an accurate picture of the project's problems and inadequacies.

But the conclusions contained in the Torrey Pines report corroborate many of the charges leveled by CG&E's critics over the years. That, in turn, only serves to reinforce another of the report's findings — that the general public now assumes the company is guilty until proved innocent.

If that was once an unfair burden for the firm, now it is a stigma of CG&E's own making. There just is no other way to put it. CG&E management knew, and should have recognized from the outset, that a construction project of this type would require extraordinary attention to records and quality control. The company had to expect that it would be called into account by anti-nuclear interests, the federal government and, eventually, the public.

But CG&E proceeded with what, in hindsight, can be regarded as a kind of institutional arrogance. When the first signs of trouble surfaced, CG&E embarrassed itself by its inability to answer accusations with hard evidence. The deeper the investigations went, the greater CG&E's troubles. Now Torrey Pines has found that records for the plant were confused, incomplete, difficult to retrieve and possibly invalid.

Management also failed during the early years to ensure that construction was co-ordinated with a

workable system of on-site inspections and specifications checks.

Torrey Pines, while allowing that neither CG&E nor general contractor Henry J. Kaiser had experience building nuclear plants, also levels its most damning indictment — that profits/costs meant more than quality assurance.

CG&E's management has no excuse for Zimmer's problems. Torrey Pines charges that project management should have been aware of Zimmer's problems and shortcomings. So, too, should the company's highest management.


Consider that the Zimmer plant began as a multimillion-dollar expansion that soon exceeded a billion. Consider, too, that nuclear power is a relatively new technology that tends to make the public nervous. Is it likely that upper management would remain aloof in such a high-stakes game? Is it reasonable now to plead ignorance?

CG&E behaved in this affair very much like a government agency. As more and more problems were discovered, they were discounted or the blame placed elsewhere.

As costs continued to mount, they were passed on to consumers through work-in-progress rate hikes. For all its problems, CG&E did not endure the kind of corporate disruption that Zimmer would have brought down on any other private industry.

Torrey Pines recommended a wholesale replacement of construction and operations management groups. That's a reasonable first step. But the responsibility for Zimmer does not stop at that level. Questions need to be asked all the way to upper management. That is surely the only way popular confidence in the company will be restored. It may be the only way the plant will be completed without more costly delays and overruns.

12A



The Cincinnati Post

"Give light and the people will find their own way"

Editor

William R. Burleigh

Managing Editor

Thomas E. Dunning

Editorial Page Editor

Marianne O'Regan

800 Broadway, Cincinnati, Ohio 45202 (513)352-2000 Wednesday, August 24, 1983

editorials

The Zimmer report

The report of Torrey Pines Technology, the San Diego-based engineering firm hired four months ago to analyze safety procedures at the beleaguered William H. Zimmer Nuclear Power Station at Moscow, O., offered no startling revelations but its recommendations to Cincinnati Gas & Electric Co. management and the Nuclear Regulatory Commission—which appeared in Cincinnati newspapers this week—should be studied by every member of this community.

That is because no issue has been more central to life here—nor more divisive—than the construction of Zimmer. Its multitude of problems since the mid-1970s has been the subject of exhaustive public debate and study. Let it be said that it was not always easy to separate the safety-concerned critics from those who opposed all nuclear-generated power on philosophical or political, or less solid, grounds. But CG&E management, says the Torrey Pines report, did not even attempt to make such distinctions, reacting negatively to all criticism.

The study levels most of the blame for construction problems and delays at the plant on CG&E management, painting a picture of a project virtually out of control. The bottom line for the company, it says, was not quality and safety assurance but cost and completion schedule. Even today, the report adds, construction records are neither complete nor easily retrievable.

The Nuclear Regulatory Commission also comes in for its share of lumps. Not until

after the accident at Three Mile Island in Pennsylvania did the federal agency, charged with the licensing of nuclear power plants, become aggressively concerned about Zimmer's shortcomings. In November 1981, the NRC fined CG&E \$200,000 for quality assurance breakdowns; the following November it suspended all safety related work and called for the independent study.

While the report presents a bleak picture, it is not a hopeless one. The remedies would go far to rebuild public confidence in Zimmer and, finally, get it operating safely. The Torrey Pines study recommends the hiring of an engineering firm to take over the daily management at the station, suggests the election of a new board member with expertise in the nuclear industry, and urges the establishment of a new committee of the board to monitor Zimmer independently, with its own staff of advisers. The board, concludes the recommendation, should include "a respected leader from the Cincinnati community."

These recommendations will not be cheap to implement—the study alone is estimated to cost \$500,000, and CG&E and its Zimmer co-owners, the utility companies of Dayton and Columbus, already have \$1.7 billion invested in the plant. Safety, however, knows no price. Most costly ultimately would be to allow the long shadow of doubt that Zimmer has cast to continue to darken this community. CG&E's own report to the NRC, due shortly, will also make compulsory reading for all who now live in that shadow.

Utilities' Disputes Over Zimmer Will Go To Arbitration

BY GEORGENE KALEINA
Enquirer Reporter

Two of the utilities involved in the embattled William H. Zimmer Nuclear Power Station claimed partial victories Wednesday when a judge ruled some of their disputes must be arbitrated.

Hamilton County Common Pleas Judge Robert Gorman ruled that three issues in dispute between Cincinnati Gas & Electric Co. (CG&E) and Dayton Power & Light Co. (DP&L) must be decided by an arbitrator chosen by the utilities.

CG&E is the major owner of the nuclear power plant with a 40% share. DP&L has 31.5% share and Columbia & Southern Ohio Electric Co. (C&SOE) owns 28.5%.

The Zimmer plant is about eight years behind schedule and is costing seven times original estimates. As part of a 1969 basic agreement on the Zimmer station, the three agreed to submit to arbitration

any controversy among them. Last January, DP&L invoked arbitration on four main questions relating to the agreement and project.

THREE DP&L'S original questions for arbitration which Gorman agreed must go to arbitration were:

- Whether DP&L must continue to pay all costs of completion of Zimmer that CG&E bills to it in view of the history and current status of the project.
- Whether CG&E had sufficient knowledge that actions against suppliers for failure to comply with contractual obligations should have been initiated or other remedies pursued.
- Whether DP&L should be awarded damages resulting from CG&E performance under the basic agreement signed by the utilities.

STEVE KOZIAR, DP&L's attorney, said

of Gorman's ruling: "It's really what we were anticipating. Our general questions have been how much is the plant going to cost and when it is going to be finished. CG&E must tell us that. At least, we've made some progress. I'm pleased with the decision."

Robert Stachler, CG&E's attorney, said he considered it a victory for the Cincinnati-based utility.

"I think this certainly makes it clear which issues we must go to arbitration on," Stachler said, adding CG&E has not been against arbitration. "DP&L won't be able to ask the arbitrator to re-write the basic generating agreement."

Stachler had maintained that the three issues which now must go to arbitration were not laid out specifically enough. "But I think we can live with that," Stachler said.

BUT HE did say they would study the

possibility of appealing Gorman's decision.

Gorman ruled that DP&L's percentage in the plant and its share of the electricity was not within the scope of arbitration and would amount to the arbitrator re-writing the basic agreement.

DP&L also wanted an arbitrator to decide whether the utility's right and obligations under the agreement should be modified.

The judge, however, said "an arbitrator should logically not have the power to modify or rewrite the agreement."

DP&L also wanted to withhold payments to CG&E until completion of the arbitration proceedings. Gorman ruled that issue is outside the scope of arbitration.

According to the opinion, CG&E and C&SOE maintained such an order would be the "death knell" for the entire Zimmer project.

"If THIS situation did result as they allege," the judge wrote, "the issue of ownership and the right to control a licensed facility, presents an inevitable question for determination by the Nuclear Regulatory Commission."

"In the meantime, the public, which has no choice or guarantee of quality control of the project, likewise, has no voice if electricity and all dependent services are curtailed because of CG&E's financial inability or insolvency," Gorman wrote.

Stachler said he felt Gorman's ruling on the withholding of payments "was very appropriate. I'm pleased he clarified these points."

Koziar said if those issues are not proper for arbitration, the utility can return to the court for a ruling on those matters.

GOVERNMENT ACCOUNTABILITY PROJECT
Institute for Policy Studies
1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

October 3, 1983

Admiral Joseph Williams, Jr.
Senior Vice President
Cincinnati Gas and Electric
139 East 4th Street
Cincinnati, Ohio 45201

Dear Joe:

As promised in our September 29 telephone conversation, this letter provides a record of the Miami Valley Power Project's (MVPP) offer for expedited Atomic Safety and Licensing Board (ASLB) hearings on the Zimmer nuclear station. In exchange, Cincinnati Gas and Electric (CG&E) would drop its opposition to reopening the record for litigation of MVPP's eight proposed contentions.

The proposal is tailored to address the specific concerns you raised at our September 22, 1983 meeting. You discussed the undesirable side effects even from expedited hearings, which you said would detract from time that you and your top managers spend on the job and could drag on for years. You pointed to the Comanche Peak hearing as a three-year "expedited" proceeding.

I am confident that the following proposal can achieve both MVPP's goal for effective public participation resolving the Quality Assurance (QA) deficiencies at Zimmer, and your concerns as expressed above:

1. MVPP and CG&E will stipulate a specific time limit for completion of hearings on the eight proposed contentions. This time limit will guarantee that the hearings are completed early enough so that any relevant ASLB orders could be incorporated into your upcoming construction completion program.
2. MVPP will negotiate with CG&E to determine mutually acceptable corrective action for all allegations contained in the first seven proposed contentions. The agreement upon adequate corrective action would not imply that the original allegations were correct. The October 10 meetings that you are holding at my suggestion with whistleblowers could be the first step toward defining a common ground MVPP will withdraw all such allegations from its contentions prior to commencement of discovery for the hearings. MVPP would reserve the right to reintroduce any such issues if the agreed corrective action were not implemented.

October 3, 1983

3. MVPP will agree to stipulate discovery and testimony schedules so that productivity conflicts are nonexistent or minimal. To illustrate, MVPP will conduct depositions on nights and weekends, if practical arrangements can be agreed to record the transcripts. If schedule conflicts cannot be resolved for specific CG&E witnesses, MVPP will agree to substitution of other utility representatives authorized to speak on the same topics where feasible. For example, Mr. Borgmann is quite familiar with the QA issues and may now have time to testify.

This proposal inherently puts a cap on excessive time delays, minimizes interference with your program, and guarantees that the relevant QA issues even for discovery are shrunk to include only those for which a solution is in dispute. MVPP will consider any modifications after you have an opportunity to review the plan with counsel.

On a separate matter, I have been informed of your recent speech attacking the intervenors as "shrill" and not interested in getting the plant on line. Joe, I am disappointed that you are still resorting to the old tactic of attacking the motives of the public critics who have exposed Zimmer's problems. Your predecessors said we were shrill, too, but we were right.

In light of your accusations, you should welcome reopened licensing hearings. If our charges are empty hysteria, hearings will help assure the plant's completion by discrediting the intervenors and regaining public confidence.

To illustrate your beliefs, you have criticized MVPP's challenge to Mr. Dickhover's continued leadership. We wish Mr. Dickhoner the best. MVPP simply does not feel secure with public safety at the mercy of Mr. Dickhoner's policies. In this respect, our concerns are consistent with those expressed by the Nuclear Regulatory Commission (NRC) Commissioners on September 27. Surely you would not dismiss the Commissioners as "shrill."

There should be no confusion about MVPP's goal at Zimmer -- full enforcement of the Atomic Energy Act; no more, no less. If it is possible to achieve that goal and still complete the plant, fine. If not, so be it. If MVPP's goal is yours as well, we can work together constructively. My proposal for whistleblowers to meet and hopefully work with you on correcting the quality assurance breakdown was evidence of MVPP's good faith. I hope that you take these constructive efforts seriously. We do.

Sincerely,

Thomas Devine
Legal Director

TD/ea .

37042 Avon
Lake Villa, IL 60046
June 29, 1983

Helen F. Hoyt
Administrative Law Judge
U.S. Nuclear Regulatory Commission
Mailstop E-W 439
Washington, D.C. 20555

Dear Judge Hoyt:

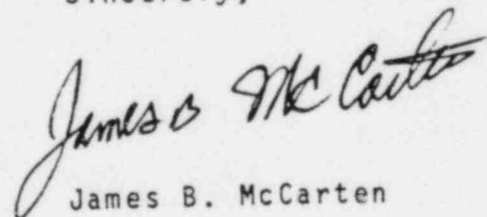
On June 7, 1983 I was interviewed at your request concerning your investigation of irregularities in the NRC's Office of Inspector and Auditor 1981 investigation of another NRC investigation at the William H. Zimmer nuclear power station in Moscow, Ohio.

During the course of this interview, which was transcribed by a court reporter, I provided information relative to the 1981 OIA investigation. But I also used this forum to inform the NRC about mismanagement of other OIA investigations, particularly the OIE investigation conducted at Zimmer in 1981. In light of recent congressional and DOJ criticisms of the NRC investigative program, and due to the forthcoming ASLB decision whether to hold licensing hearings, I feel that the information I provided to you should be reported immediately to the Commissioners and the ASLB panel on Zimmer. Also, as we discussed earlier I would like a copy of my transcript for my own records.

As you well know, I feel strongly that the testimony I gave would have a major impact on the decision to hold licensing hearings and perhaps trigger a wider investigation into Region III and OIA's handling of the Zimmer investigation from a safety standpoint, and also why the NRC did not vigorously pursue allegations of criminal misconduct by utility and contractor personnel at Zimmer. This second issue is very significant for the Commissioners in light of recent DOJ criticisms of NRC's performance in this area.

Thank you for your immediate attention to this serious matter.

Sincerely,


James B. McCarten

cc: Commissioners
Zimmer ASLB panel
Julian Greenspun, DOJ
Cong. Udall, House Interior Comm.

Miami Valley Power Project



3516 Vine St.
Cincinnati, Ohio 45220

EXHIBIT 9

(513) 221-6877

September 27, 1983

Honorable Nunzio Palladino, Chairman
Honorable Victor Gilinsky
Honorable James Asselstine
Honorable Thomas Roberts
Honorable Frederick Bernthal
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Commissioners:

On behalf of the Miami Valley Power Project ("MVPP"), the Government Accountability Project ("GAP") of the Institute for Policy Studies ("IPS") presents these comments on the August 1983 Torrey Pines Technology ("TP") Independent Review of Zimmer Project Management ("Torrey Pines Report"). MVPP recognizes that the report is a significant addition to the public record on Zimmer. However, MVPP is concerned that the Torrey Pines Report is seriously compromised by two fundamental flaws: 1) manipulation of the record; and 2) suspect policy judgments.

MVPP requests that the Nuclear Regulatory Commission immediately take the following actions:

(1) Obtain and publicly disclose all information received and/or generated by Torrey Pines during its management review.

(2) Thoroughly question Torrey Pines representatives on the nature and basis for the underlying assumptions and values used by Torrey Pines in selecting and evaluating options for management structures to complete the Zimmer nuclear power station, as well as the criteria for assigning weight to the different variables used in the evaluation.

(3) Direct Region III Administrator James Keppler to require establishment of a Zimmer Public Oversight Committee ("ZPOC") as a condition to permit resumption of construction at Zimmer. The ZPOC should have:

- (a) full access to information;
- (b) the authority to subpoena witnesses to testify under oath at "legislative-style" oversight hearings;
- (c) the responsibility and authority to establish a whistleblowing channel to which Zimmer employees

could make legally protected, confidential disclosures of NRC or program violations for ZPOC investigation and report in cooperation with the NRC staff; and

- (d) predominantly public membership, representative of the community and the citizen organizations which have actively monitored resolution of the Zimmer quality assurance breakdown to date. Membership should be consistent with the guidelines proposed in an August 26, 1983 letter to Mr. Keppler from Sister Alice Gerdeman, Steering Committee Chair of the Coalition for Affordable Safe Energy ("CASE").^{1/} (Attachment 1).

- (4) Grant the relief in MVPP's pending May 26, 1983 petition under 10 CFR 2.206 by removing the Cincinnati Gas and Electric Company ("CG&E") from management control of the quality assurance program at Zimmer.

The basis for this relief is summarized in the examples of generic and specific deficiencies presented below, which are illustrative rather than comprehensive of the analytical weaknesses in the Torrey Pines Report.

I. Manipulation of the Record

The Torrey Pines Report suffers from a generic flaw that undercuts the credibility of its findings: the authors did not provide any specific citations. Although Torrey Pines reviewed over 3200 documents and interviewed approximately 100 people (Torrey Pines Report, at 1-1), there are no verifiable references to this wealth of information. As a result, there is little or no significance to the Torrey Pines conclusions. They suffer from a basic flaw for any auditing analysis: the findings are unverifiable from the information presented.

^{1/} CASE is a coalition of 49 Ohio and Northern Kentucky organizations united by their concern for the safety and financial implications of the Zimmer quality assurance breakdown. CASE member organizations include religious orders and churches, environmental groups, neighborhood associations, consumer groups, and unions representing the firefighters, hospital workers, teachers, mine workers, steel workers and railroad workers, among others.

This default on a precondition for credibility is particularly unfortunate. At a May 1983 public meeting in Cincinnati, former Zimmer Senior Quality Assurance Analyst David Jones questioned Torrey Pines on this issue and was reassured that adequate references would be provided. In reality, there were none. (See September 26, 1983 Affidavit of David Jones, enclosed as Attachment 2, at 5).

This omission would be significant even if Torrey Pines had reported the facts fully, accurately and objectively. "Independent" or third party reviews are an increasingly significant component of the Commission's design and quality assurance ("QA") regulatory program. The effectiveness of the third party program at Zimmer is uniquely significant, in view of the unprecedented scope of the QA breakdown and the absence of licensing hearings.

If the Commission accepts a third party report without published references for such a critical assignment as the Zimmer management review, the program will represent a deterioration of the public record. Currently, NRC's own Office of Investigations and Office of Inspection and Enforcement provide specific references for their findings in published reports.

The loss of accountability extends further. Torrey Pines apparently is retaining possession of most of the investigative file and internal records generated during its \$500,000, 60 person-months project. In meetings with public representatives, CG&E officials have maintained that they did not receive the Torrey Pines supporting documentation and research files. Mr. Keppler has only requested supporting documentation for the case studies. (September 1, 1983 letter from James G. Keppler to Torrey Pines Technology).

The evidence obtained by Torrey Pines will be wasted if it merely gathers dust in the TP office files. That result would waste the primary value of the project. The significance of the effort is the information that was generated, not the analysis in the report. The former would constitute a significant contribution to the public record on Zimmer. The latter is largely neutralized due to the bias and internal contradictions discussed below with respect to current developments.

Even more significant, NRC failure to obtain the records gathered and generated by Torrey Pines could structurally decrease public accountability under the Freedom of Information Act ("FOIA"). Currently if the public is dissatisfied with the published record, the FOIA is available to request supporting documentation and other relevant agency records. If the NRC defaults on obtaining the TP Zimmer file, a defense could be presented that the information does not constitute "agency records" and therefore is beyond reach. The history of Zimmer has been

one of corporate and NRC suppression of the truth about the QA program. The tradition was broken only after public whistleblowing disclosures exposed the QA breakdown, and resulted in community outrage. No "reform" for Zimmer will be credible, if it institutionalizes lack of public access to the facts about the plant's condition.

A. General Evaluation of CG&E Management Program

The Torrey Pines review of the CG&E program suffers from a "Dr. Jekyll and Mr. Hyde" schizophrenia. The analysis of root causes and the history of the QA breakdown is reasonable and incisive. Torrey Pines made its conclusions about current events, however, in spite of the record it presented.

1. Current state of the QA program.

The most significant inconsistencies involve the most fundamental conclusion in the report: Since the November 12, 1982 Show Cause Order suspending construction, there has been a significant improvement in the management attitude toward quality and the trend can be expected to continue. (TP Report, at 8-26). This rosey assessment is directly undercut by other Torrey Pines findings on specific deficiencies in the basic elements of a minimal quality program. For example, in 1982 CG&E began trending quality deficiencies for the first time in its history. The TP Report reveals, however, that in 1983 CG&E dropped the program. (Id., at 4-34). Nonconformance Reports ("NR") and Corrective Action Reports ("CAR") have remained open for years. As late as February 1983 cases were found where individual audit reports remained open for 2-3 years without CG&E interim inquiry. (Id.). Even more disillusioning, QA remains vulnerable to being shunted aside while construction inspects itself. Torrey Pines described "recent examples" where construction controlled or attempted to perform QA audits and inspections for work such as hardware modifications after design changes. (Id., at 4-40).

On the most basic issue, the QA program still has not produced results. The "QA Group also still appears to have difficulties in obtaining corrective action responses and followups from individuals." (Id., at 4-34). Decisively, Torrey Pines conceded that "[p]resent corrective action requests do not adequately pursue the identification of the cause of the problem, nor do they purge the system of the problem. The timeliness of response and followup to the point of effective preventive measures still appears to be inadequate." (Id., at 3-18).

Specific examples of QA deficiencies that have continued during 1983 include the structural inability of the CG&E program to "ensure that an approved vendor is used." (Id., at 4-47). Similarly,

Problems related to the use of HJK's Weld 1 Form, Welding Procedures, Radiographic Weld Identification, and Welding Inspection and Surveillance forms constitute a case in point. The TPT Team reviewed records which show that welding instruction and control problems appeared frequently from 1975 to 1983. A second case in point is the consistency of problems cited from 1973 to 1983 regarding overall control of the design document system. Welding procedures/documentation and design documents are essential parts of the work instructions provided to the crafts and the instructions provided to inspectors and QA personnel. (Id., at 4-11,12).

In short, the effects of the new management QA attitude perceived by Torrey Pines are not reassuring. Even since ongoing safety-related construction was halted, the QA program doesn't work.

2. Mr. Dickhoner

The gap between conclusions and facts also extends to Torrey Pines' analysis of CG&E President William Dickhoner's record. MVPP does not seek to issue personal criticisms devoid of constructive value. But Torrey Pines made Mr. Dickhoner's record an issue by endorsing final and active responsibility for him on all issues relevant to Zimmer, including quality assurance and whistleblowers. As a result, Mr. Dickhoner would have an unprecedented impact on the project. Torrey Pines judged Mr. Dickhoner capable of the challenge. (Id., at 10-2).

TP drew this conclusion without explaining the abundant evidence in the public record and the TP report that his leadership would perpetuate the QA deficiencies, because his policies were the cause of the breakdown. To illustrate, Torrey Pines blames CG&E vice presidents for administering improper QA practices. But evidence not mentioned by Torrey Pines makes it clear that Mr. Dickhoner approved. Inadequate staffing was the most obvious effect of CG&E's QA philosophy. Last August MVPP disclosed an October 30, 1974 letter from Mr. Dickhoner that flatly rejected the Kaiser QA Manager's urgent plea for personnel that had been sought as "absolutely necessary" to meet the requirements of 10 CFR 50, Appendix B. Mr. Dickhoner acted despite being warned that otherwise it would be "virtually impossible" to cover all the legal QA requirements. (August 20, 1982 MVPP Petition to Suspend Construction, Attachments 83 and 84).

Mr. Dickhoner's credibility did not improve over the years. In 1981 he responded to the Applegate whistleblowing disclosure which sparked the crumbling of the Zimmer coverup. Mr. Dickhoner's defense to interested citizens was that he cared more for the community than did Mr. Applegate, and that Mr. Applegate's counsel GAP was part of the closest thing to a "Communist front group" in America today. In November 1981 the NRC substantially confirmed Mr. Applegate's charges. Now Mr. Dickhoner's defense shifted. It was just a paperwork problem for which he was publicly quoted as denying even a single bad weld. He issued this public reassurance despite prior NRC notice to CG&E to the contrary. (May 18, 1982 MVPP Motion for Leave to File New Contentions, at 17-18).

Mr. Dickhoner's loyalty to his QA philosophy persisted during 1982. It was illustrated with respect to vendor quality assurance. Next to welding, vendor QA may be the most significant, pervasive failure at Zimmer in terms of impact on public safety. Torrey Pines succinctly explained the cause of the problem: "CG&E policy over the years basically has been to rely on the integrity of the vendor to provide a quality product." (TP Report, at 4-47). CG&E refused vendor surveys and inspections due to cost and schedule pressures. (*Id.*, at 4-46-47). Unfortunately, in June 1982 Mr. Dickhoner publicly rejected vendor inspections as "traipsing all over the country on jukets that weren't required." (August 20 Petition to Suspend Construction, Attachment 61).

Even last November after construction was suspended, Mr. Dickhoner insisted that Zimmer was as well-built as any nuclear plant in the country under construction or in operation. Again the facts are embarrassing. The preoperational test program was 46.8% complete in November 1982 when Mr. Dickhoner boldly declared his confidence in the completed work. By April 1983 the test completion rate for essential systems "had returned to zero. The net result of the four year exhaustive effort was that the preoperational test program had shown that the essential systems were not ready for start-up." (TP Report, at 7-3). There could be no more basic indicator of the total failure of installed systems at Zimmer.

Torrey Pines may be correct that Mr. Dickhoner has adopted some new perspective that qualifies him for ultimate control of Zimmer QA. Torrey Pines interviewed Mr. Dickhoner, and undoubtedly conducted intensive research on the issue. In light of the above record, however, TP should reveal the evidence for its currently unsupported endorsement.

3. CG&E and the NRC

Torrey Pines provides contradictory assessments of CG&E's relationship to the NRC. On the one hand TP credited

CG&E with being "generally responsive" to NRC guidance. (Id., 3-13). On the other hand, TP recognized that CG&E had ignored Atomic Energy Commission ("AEC") warnings since 1971 of QA staffing deficiencies. CG&E's lack of responsiveness to NRC warnings since 1975 of inadequate management control led to repetitive violations. Torrey Pines disclosed, for example, that between 1975 and 1980 the NRC identified 16 CG&E violations of NRC requirements for control of welding material. (Id., 3-4, 14).

4. CG&E oversight of Catalytic, Inc.

Torrey Pines turned to CG&E's oversight of Catalytic, Incorporated's ("CI") 1982 Quality Confirmation Program ("QCP") repairs to demonstrate the utility's new capacity for effective oversight. Torrey Pines concluded, "In general, CI was found to perform well...." TP reported that CG&E was "quite satisfied" with Catalytic's work. (Id., at 6-37). This cheerful, undocumented generality does not square with the facts in the report or the public record. After a few months work last summer, serious deficiencies in Catalytic's performance led to stop work orders. By September the NRC had identified five significant deficiencies in CG&E's oversight of Catalytic. Since September CG&E has been attempting to investigate what happened and develop corrective action. It is not done. (Id., p. 4-44).

If Catalytic is the model for an effective CG&E program, TP should reveal the evidence that supports CG&E's performance. The public record is that after a year's effort CG&E has been unable to correct the residual effects from three months of Catalytic work.

5. Quality Confirmation Program

Torrey Pines' inconsistencies with respect to the Quality Confirmation Program have a distorted significance, because TP recommended exempting any work covered by the QCP from the Quality Verification Program ("QVP") that supposedly will provide the ultimate assessment of Zimmer's quality. If the QCP results are not reliable, this recommendation would create a giant loophole in the Quality Verification Program.

Predictably, Torrey Pines reported high confidence in the current CG&E management. (Id., at 5-7). Again, however, the specific information in the report contradicts the vote of confidence. For example, Torrey Pines disclosed that in May 1983 CG&E had failed to meet QCP procedure commitments made to the NRC in 1981. QCP Task VIII still does not have written procedures, over two years into the program. Two other tasks did not have procedures ready until late May 1983. (Id., at 5-8). Even into 1983, CG&E did not formally transmit QCP procedures to contractors with QCP responsibilities. (Id., at 5-8,9).

The QCP management response to audits is a repetition of Zimmer QA traditions. All of the illustrative incidents reported by Torrey Pines have occurred since the Show Cause Order, or the period covered by the organizational reforms TP now claims will lead to successful completion of the plant. As a result, the record is especially depressing. As of August 1983, 11 of 19 findings were still open for a February 1982 QCP audit. TP reported, "This status has not changed since November 8, 1982. There is no evidence in the audit package that indicates attention has been given to the concerns identified." (Id., at 5-10,11).

The QCP's 1983 response to an October 1982 audit reveals the scope of the ongoing QA failure. The 1983 QCP team described its actions to correct specific, identified examples. But the QCP responses skipped the most elementary principles of audits - 1) identification of the root cause of the problem; 2) search for similar deficiencies; and 3) identification of actions taken to prevent recurrence. (Id., at 5-10,11).

6. Overgeneralities

Finally, when Torrey Pines conclusions were not refuted by the public or its own record, on occasion the reason was that the conclusions were too vague and incomplete to be meaningful. For example, TP's assessment of an effort since April 1981 to develop minimally adequate operating procedures is that the results "generally appear to contain the necessary level of detail to help" CG&E run the project. There is not any assessment whether CG&E would be running the project to the proper standards. (Id., at 6-30).

B. Case Studies

The NRC staff already has requested the Torrey Pines files relevant to the case studies in the report. This data should be promptly released to the public to use in evaluating the upcoming CG&E proposals for quality verification.

MVPP is particularly disappointed with Torrey Pines' superficial, inaccurate case studies on welding and attitudes toward whistleblowers. These issues are uniquely significant to MVPP because of its own 1983 investigation and published results on welding, as well as its recommendations to whistleblowers to cooperate with the Torrey Pines study. MVPP would not make that recommendation again. The published results diverged so far from the record presented that MVPP has serious reservations whether the findings in these two case studies were presented in good faith.

1. Welding procedures and qualifications

In addition to criticisms already identified by Region III, two conclusions in this area are highly irresponsible and premature. Initially, Torrey Pines indicates that "CG&E upper management was aware of and responded appropriately in providing sworn statements to the NRC refuting the allegation of withholding of information on regualification of welders at a July 1982 meeting." (Id., at 8-23). In light of TP's qualifier that it "did not investigate the veracity of the statements made concerning the data provided to the NRC" (emphasis added) (Id., at 8-22), it should not have endorsed CG&E's response. Indeed, MVPP has presented evidence to law enforcement and NRC investigators that in fact CG&E upper management pressured employees to sign identical affidavits that would refute the allegations, despite protests that the statements were inaccurate.

Torrey Pines also noted with approval that a Welding Procedure Task Force is making "good progress to correct past deficiencies and prevent recurrences...." (Id., at 8-24). This reassurance flies in the face of the earlier Torrey Pines observation that problems with welding procedures have persisted frequently into 1983. Additionally, the audit which led to the task force, Audit #67, has been open for nearly two years. The "good progress" evaluation is inconsistent with TP's general condemnation of the audit program because some responses had been overdue "by as much as two years." (Id., at 4-27).

The lack of TP credibility for welding is overwhelming when the findings are compared to evidence already on the public record but ignored by Torrey Pines. To illustrate, a July 6, 1983 affidavit from Sherrill Nolder, submitted with an MVPP licensing brief, illustrated the "good progress." In July 1982 Zimmer auditors on-site attempted to close out the findings with a four-inch thick stack of duplicative records that did not even address issues raised in Audit #67. The team leader, J. Gilhooly, commented, "This is a complete whitewash." (July 12, 1983 MVPP Reply Brief, Attachment 12, at 8, Exhibit 12).

In January 1983 Kaiser management made more "progress" when it attempted to close out the audit by rewriting the findings. On February 18, 1983 still more "progress" was achieved when Ms. Nolder was dismissed after warning the Kaiser president of the severity of the violations (Id., at 7-8).

MVPP unsuccessfully attempted to present to the Atomic Safety and Licensing Board ("ASLB" or "Board") evidence of still more attempts at "progress" - through transferring unresolved issues to a new audit and therefore preventing the originators from enforcing their findings. The new evidence indicates that in addition to numerous welding procedure deficiencies, it may be impossible to even identify when the procedures were used improperly. They were so vague that excessive tolerances were built into the essential variables, and basic data was not

always recorded on the Q-1 forms. (MVPP's August 26, 1983 Motion to Present New Evidence, at 4-5, enclosed as Attachment 3).² In short, Torrey Pines' analysis of welding procedure deficiencies at Zimmer represents a major retreat from the analysis which existed prior to the TP Report.

2. Attitudes toward whistleblowers

Torrey Pines listed 21 instances where employees disclosed QA deficiencies, in order to identify the CG&E management response.¹ 10 of 20 cases where Torrey Pines drew a conclusion, it found that CG&E's response was inappropriate wholly or in part. In 3 of 21 cases TP determined that retaliation had occurred but in each instance it was resolved. On their face, these findings represent a significant deficiency. MVPP contends that it is flatly unacceptable to only take appropriate corrective action in responding to the concerns of whistleblowers in 50% of the cases.

Since MVPP had recommended to many of these witnesses that they cooperate with Torrey Pines, a survey of five witnesses was undertaken to test whether TP had reported the record adequately. Resulting affidavits are enclosed as Attachments 2, and as Attachments 4-7. Torrey Pines flunked the test, both in terms of accuracy and objectivity. Illustrations of this charge are provided below.

(a) Narrowing the issue to exclude organizational freedom.

Mr. David Jones pointed out that Torrey Pines missed the issue by limiting it to "whistleblowing" personnel actions and disputes.

In overview, the analysis of whistleblowing missed the real problem - the lack of organizational freedom required by 10 CFR 50, Appendix B, Criterion I for all quality personnel. The real issue was whether Quality Assurance (QA) personnel had the freedom to identify and verify corrective action of violations, not merely whether individuals were wronged. In other words, the real issue is whether the program was compromised by lack of organizational freedom. This was the root cause of the QA breakdown, as I told Torrey Pines. But Torrey Pines' report skipped the root cause and quibbled about the individual personnel actions.

In the process, Torrey Pines shrunk the scope of the issue drastically. Whistleblowers constitute only a

²/ The NRC Office of Investigations has expressed its desire to review this evidence.

small portion of the personnel who were charged with responsibilities to perform Quality Assurance duties and were prevented from doing so by management at Zimmer. (Attachment 2, at 1-2).

(b) Failure to list significant substantive issues challenged by whistleblowers.

According to the witnesses, the summary table on pages 8-4/5 of the TP Report failed to mention significant issues they had raised. The omissions include the following -

(1) cancellation of Equipment Trouble Reports ("ETR") to provide quality verification of repairs and modifications of General Electric ("GE") components undertaken in response to Field Design Instructions/Field Deviation Disposition Requests ("FDI-FDRR"). (Attachment 2, at 3).

(2) lack of quality control inspections and surveillance for weld repairs conducted as a result of the Quality Confirmation Program. (Attachment 4, at 1; Attachment 5).

(3) lack of prior welding experience or training for some supervisors for Quality Confirmation Program welding repairs. (Attachment 5).

(4) serious organizational weaknesses in the Quality Confirmation Program (Attachment 6, at 1).

(5) widespread use of In-Process Inspection Deficiency Reports ("IIDR") as an inferior substitute for Nonconformance Reports (Id.)

(6) assignment of minimally qualified QA/QC personnel to handle advanced duties, without adequate supervision. (Id.)

(7) structural steel purchased on the basis of design sketches instead of approved Design Document Changes ("DDC"), because the DDC program was too far behind to be utilized for the purchases. (Id., at 2).

(8) substitution of unqualified replacements jokingly referred to as "hamburger flippers", for experienced management and inspection personnel. (Id.)

(9) unreliable statistics in the dual inspection program by CG&E inspectors, who on occasion literally slept on the job and signed off on items without looking at them; or who wrote up irrelevant Nonconformance Reports to make it appear that problems had been identified, while ignoring serious safety violations. Specific examples occurred with respect to hangers and the primary containment. (Id.)

(10) widespread lack of material traceability, referenced with specific examples. (Attachment 7, at 1).

(11) intentional falsification of documents and markings (Id.)

(c) Inaccurate disclosure of substantive concerns raised by whistleblowers.

Torrey Pines concluded that the "allegation of bad welds" by two anonymous whistleblowers, Messrs "Q" and "R" "seem [sic] inaccurate." (Torrey Pines Report, at 8-4). The problem is that they did not make such an allegation. As Mr. R explained,

In other respects the report is inaccurate. For example, Torrey Pines stated that I alleged "poor quality welds." That is incorrect. I said the welding program was poor, not the welds themselves. I told Torrey Pines that individuals were trained and certified to do original welds but were assigned to engage in weld repairs, which is a distinct and more difficult procedure. I also explained that the procedures actually used were too vague and therefore allowed an excessive amount of individual discretion, particularly since the personnel had not been trained to use those procedures. Finally, I said that as a result, in practice the welders "repaired" the welds by grinding them out entirely, doing new welds and making them look nice with a few extra passes. (Attachment 4, at 1-2; Attachment 5).

This factual dispute illustrates why the Commission should obtain the supporting data for the report. MVPP counsel has worked previously with Messrs Q and R. They have been careful to limit their allegations to suspect practices in the welding program, rather than an evaluation of the hardware. Further, Mr. Richard Reiter witnessed the interview and agreed with their recollection. (Attachment 7). Review of the supporting file could help reveal whether the inaccuracies were a result of mistaken recollections by witnesses, good faith errors in Torrey Pines' notes, or whether the report contains deliberate material false statements.

(d) Manipulation of the record

The validity of the Torrey Pines statistical compilation is compromised by eight "ringers" out of 21 case studies in the sample. These eight cases involved employees whom CG&E labeled as whistleblowers. Torrey Pines did not claim to interview any of the CG&E-nominated whistleblowers. TP merely discussed the cases with the CG&E QA Manager, because the "whistleblowers" "were not available for interview." Predictably, Torrey Pines concluded that CG&E had responded appropriately to

the allegations in every case. (Torrey Pines Report at 8-4,5).

Quite simply, this biased manipulation of the sample represents an indefensible methodology. In these eight case studies, Torrey Pines acted as CG&E's mouthpiece, rather than as an objective reviewing organization.

(e) Acceptance of management denials at face value

Even when TP interviewed the whistleblowers, the bias was evident in its evaluation of retaliation allegations. Based on the evidence in the record, Torrey Pines was satisfied to "resolve" the reprisal charges merely by obtaining a management denial. For instance, Torrey Pines was satisfied with the explanation that "[m]istreatment or reprisal of D. Jones was denied by all former HJK supervisors. HJK claimed payroll error caused temporary pay cut, later corrected." (*Id.*, at 8-4). It is unfortunate that TP did not check back with Mr. Jones, as their representatives had promised. He could have provided the following description of how his pay cut was corrected. "It wasn't." (Attachment 2, at 4).

In another instance TP rejected an allegation by Messrs Q and R that another employee suffered retaliation: "Info shows Griffis not mistreated." TP identified Griffis as a Catalytic employee. (Torrey Pines Report, at 8-4). In this case there is serious question how TP even obtained a denial to accept at face value. As Mr. R. explained,

I wonder how Torrey Pines came to that conclusion. The authors did not claim to have interviewed him. I also do not understand how Torrey Pines could have made this conclusion based on a document review, since they spelled the victim's name wrong -- it was "Griffiths," not "Griffis"; and had him working for the wrong company -- he worked for CG&E, not Catalytic. (Attachment 4, at 3).

(f) Failure to consider significant events

Although TP gave CG&E a clean bill of health on retaliation, the report contains no discussion of the most significant publicity event during 1982 with respect to QA organizational freedom -- the May 1982 dousing of three QA employees with "dirty water". The dousing led to the temporary shutdown of the plant.

CG&E hired a private detective to investigate the incident. The results of the investigation and any corrective action have never been publicly disclosed. Without evaluating the adequacy and results of CG&E's "private eye" response, Torrey Pines' exoneration of the utility is premature.

(g) Incomplete disclosures of reprisal allegations

In some instances TP went beyond accepting management's position on reprisals at face value. Torrey Pines did not even report what happened to the whistleblower, his allegations of retaliation against others, or his rebuttal of the management position. This censorship of the whistleblower interviews permitted Torrey Pines to maintain superficial credibility as it accepted incredible CG&E positions. To illustrate, Torrey Pines failed to disclose the following significant evidence that witnesses claim to GAP that they have provided --

(1) addition of interior layers of authority on the organizational chart to neutralize persistent critics (Attachment 2, at 2);

(2) an announced policy by Kaiser corporate official Dave Howard that "he managed by intimidation" (Id., at 3);

(3) harassment and discriminatory salary treatment of a QA employee who tried to incorporate a procedure to control FDI/FDDR repair work on sensitive GE equipment in the Nuclear Steam Supply System (Id.);

(4) "layoffs" in July 1982 of QA personnel -- including Mr. Jones, despite TP's failure to recognize his job loss -- who had been identified as "habitual NR writers" by the NR Action Plan. Torrey Pines' conclusion that the NR Action Plan was an attempt to improve the Nonconformance System merely parrots the utility party line. As with so many other examples, the conclusion was reached on the basis of discussions with CG&E's QA Manager. Although MVPP counsel originally presented the issue last August and met with TP twice, they never raised the topic. In spite of this bias, if TP had accurately reported Mr. Jones' interview it would not have been credible to mimic the CG&E position here. (Id., at 5);

(5) Supporting analysis by Mr. Richard Reiter concerning retaliation against Mr. Jones (Attachment 7);

(6) a practice by supervisors of ordering unqualified Level I personnel to sign off on work or else be "sent down the road". (Attachment 6, at 1-2);

(7) orders to inspectors not to challenge structural steel that had been purchased to design sketches (Id.);

(8) restriction of inspectors to limited work areas, with a prohibition to inspect or report deficiencies in other locations, even during a general surveillance (Id.);

(9) the absence of a formal program to engage in constructive dissent (Id.);

(10) layoffs of experienced inspectors in November 1982, using the NRC suspension of construction as the excuse despite ongoing QA work and simultaneous rehiring of inexperienced personnel (Id., at 3).

(h) Inaccurate description of reprisal allegations

Torrey Pines reported that Mr. "Weaver alleged reprisal only regarding reassignment of duties...." (Torrey Pines Report, at 8-5). That is inaccurate. In fact, he informed TP of a management effort to fire him on pretextual charges. After Mr. Weaver defended himself fiercely, management "furloughed" him -- maintaining his salary but preventing him from returning to the site to do his job. (Attachment 6, at 2-3).

Similarly, Mr. Jones reports that TP was wrong to state that there was a "casual attitude" at Zimmer toward 10 CFR 50.55(e) reports. Mr. Jones provided an eyewitness account to Torrey Pines of a determined philosophy to avoid 50.55(e) reports, enforced by such techniques as shouting, orders not to write memoranda, and transfers. (Attachment 2, at 3-4).

The above analysis could be expanded, but the point should be clear. The accuracy of the record presented by Torrey Pines for recent events is suspect. As Mr. Jones stated, "Many of us told Torrey Pines the truth. Unfortunately, Torrey Pines only shared the part they wanted to. The public record on Zimmer remains biased and distorted." (Attachment 2, at 5). The credibility gap will remain and compromise the rest of the Zimmer Action Plan, until the information gathered by Torrey Pines is made public.

II. Suspect Policy Judgment

Torrey Pines essentially recommended retaining the leaders and organizations of the status quo to manage Zimmer -- the Board of Directors Litigation Committee (newly titled as the Zimmer Oversight Committee ("ZOC"))^{3/}, Mr. Dickhoner and Mr. Williams. The proposal has only cosmetic distinctions from CG&E's own recommendation. (Torrey Pines Report, at 9-62).

In light of the continuing QA violations since the SCO, this organization per se is not credible. The current retreat on trending analysis, continued ineffectiveness of the audit program;

^{3/} The provision for a public member on an advisory staff to the ZOC has the potential to be significant, but the proposal is too sketchy to be meaningful. Torrey Pines did not specify whether the public advisor would have the same access to information as the ZOC members. (id., at 10-5,6).

persistent attempts and, in some cases, performance of QA functions by construction; continued systematic failure of corrective action to follow through in a timely manner on its findings, identify root causes, "purge the system of the problem", and prevent recurrences; sustained inability to "ensure that an approved vendor is used," frequent 1983 problems with welding; and continued inability to control the design document system all argue against retaining the status quo response. (Supra, at 4-5).

More specifically, the TP proposal is unacceptable due to four serious analytical flaws -- 1) adopting and maintaining the historical biases that led to the QA breakdown; 2) restricting the public to a token role; 3) relying upon naive trust in individuals as a substitute for structural accountability; and 4) Institutionalizing legal nonaccountability.

A. Adopting the priorities that caused the QA breakdown

Although Torrey Pines identified schedule/cost priorities over QA as a major cause of the QA breakdown, it explicitly adopted those priorities as its own "at this point in the Zimmer construction...." (Id., at 10-2).^{4/} As a result, Torrey Pines recommended legitimizing the flawed assumptions that brought Zimmer to where it is today -- shut down. As a result, Torrey Pines' priorities promise to perpetuate the mistakes of the past. It is fitting that TP revealed its bias in the context of a recommendation to retain the overall leadership of Mr. Dickhoner, who established those priorities.

B. Restricting the public to a token role.

Torrey Pines' planned role for the public at Zimmer is to be represented by an adviser to the ZOC. This recommendation represents tokenism. Anything less would be nonexistent.

^{4/} Torrey Pines explained that a break from tradition would not be practical. "In the case of Zimmer, the advanced state of construction precludes consideration of some of the more esoteric organizational philosophies." (Id., at 9-20) This is the same excuse relied on by Mr. Keppler in early 1981 not to suspend construction. As a result, the situation deteriorated for another 1.5 years. What both Mr. Keppler and Torrey Pines have overlooked, however, is that Zimmer is an esoteric plant. CG&E experimented by attempting to build a nuclear power plant essentially without the "conventional" compliance with the law through a quality assurance program. Conventional solutions are not appropriate for Zimmer.

Torrey Pines' recommendation is consistent with its stated criteria and the biases revealed by its analysis. Public credibility is a "want" criteria for Torrey Pines, not a "must". (Id., 9-18/19). If anything, Torrey Pines revealed its active opposition to the Atomic Energy Act provisions for public participation when it argued against the alternative for a new company on grounds that the organizational change could lead to reopened licensing hearings. (Id., at 9-50).

If adopted, the Torrey Pines recommendation for public hearings will eliminate all confusion about the token nature of the public's ability to control or even participate meaningfully on matters crucial to its own safety with respect to nuclear power. Zimmer is often conceded as the most poorly constructed nuclear plant in the country, and widely agreed as a case of unprecedented NRC neglect that was reversed due to the persistence of the public and whistleblowers from the nuclear industry labor force. Yet both the Commission and the Atomic Safety and Licensing Board have refused to reopen public licensing hearings. If in the absence of licensing hearings NRC offers only token public participation in correcting the abuses at Zimmer, the message will be clear: public safety is not a public concern.

C. Relying on naive trust in individuals as a substitute for structural accountability

One of the assumptions in the organization endorsed by TP is that "organizational characteristics of this alternative can be presumed to be adequate on the basis that the new executive and the ZPOC would insist on QA awareness and support; organizational balance; and correction of policies, procedures, and planning/scheduling problems." (Id., at 9-61).

The assumption is utterly naive. It means the premise for confidence in Zimmer is trust in three entities -- the Board of Directors, Mr. Dickhoner and Mr. Williams. Either alone or in combination, these entities do not merit the extraordinary blind trust that Torrey Pines would require. The Board has passively watched for ten years as Mr. Dickhoner and his aides caused the problem. Obviously, there is no basis for confidence there.

Mr. Williams is relatively inexperienced in commercial nuclear power. Even if he proves to be an extraordinary leader, however, that is no substitute for active public oversight. Certainly his leadership will be welcome, if effective. Zimmer does not need a Messiah, however. It needs a system that guarantees public accountability.

D. Institutionalizing legal nonaccountability

Torrey Pines views the upcoming Quality Verification Program as a project that "affords CG&E the opportunity to make its QA

and QC objectives evident." (Id., at 9-14). This is precisely the opposite premise from what is appropriate. After CG&E defied, and at best violated, legal minimums for ten years, the management report was an opportunity to institutionalize public oversight and to maximize the safety of the surrounding community. Torrey Pines should have recommended every step that would help achieve these goals. Instead, TP opted to "give CG&E another chance."

Torrey Pines did not even recommend removing CG&E from control of the QA program. TP's analysis of this alternative was entirely favorable. The only significant objection was that third party QA would not solve Construction, Engineering and Operational deficiencies. That is hardly startling and is no reason to avoid an effective QA corrective action program that would maximize public confidence. Again, however, TP opted for nonaccountability to the public, and nonliability for previous abuses. Almost without analysis, TP chose not to recommend the best QA solution on the excuse that it would not be a panacea.

In November 1981 Mr. Keppler succeeded in placating the public for a few months with harsh rhetoric, while permitting CG&E to tighten its grip on Zimmer. He was able to maintain short-term credibility for his program, because the NRC published reports severely distorted the available evidence -- much of which had already been obtained. It only worked for a few months.

The Torrey Pines Report is analogous to the NRC's November 1981 initiative -- strong rhetoric, a public record of suspect accuracy, and still further retrenchment of CG&E control over Zimmer. That approach will not work again. The Commission should exercise leadership to institutionalize an open record and public accountability, while removing CG&E from control of the project. Avoiding the issues again may doom the plant from ever being completed.

Respectfully submitted,

Thomas Devine

Thomas Devine
Counsel for
Miami Valley Power Project

COALITION FOR AFFORDABLE, SAFE ENERGY (C.A.S.E.)

Attachment 1

3516 Vine St.
Cincinnati, Ohio 45220
(513) 221-6877

August 26, 1983

James Keppler
Regional Administrator, Region III
U.S. Nuclear Regulatory Agency
799 Roosevelt Road
Glen Ellyn, IL 60137

Dear Mr. Keppler:

After preliminary review of the Torrey Pines management audit recommendations for the Zimmer Nuclear Power Station, the Coalition for Affordable, Safe Energy (CASE) has several serious concerns:

- 1) We challenge the report's conclusion that Zimmer can be completed. This conclusion seems premature based on the fact that Zimmer was 97% completed under poor, "out of control" management. A total and completely independent hardware/construction audit, not by Bechtel or CG&E, must be implemented with as much detail and thoroughness as should have gone into the original construction.
- 2) We affirm the formation of a Zimmer Power Project Oversight Committee. However, having this committee consist of members of the present CG&E Board of Directors will do little to ensure that dollars will not continue to override safety at the plant. The CG&E Board is responsible for the current indeterminate safety conditions at the plant. We urge that the suggested board have a minority membership of CG&E representatives and other representatives from DP&L, C&SOE, and an equal number of concerned citizens from this community as voting members, also.
- 3) We want to stress again the purpose of our organization. As rate-payers affected physically and financially by the Zimmer Station, we expect that our health and safety will be the prime concern of the NRC in its decision making process. This is especially important to us now that our assertions that our safety has not been a major consideration of CG&E have been corroborated by the Torrey Pines report. We also reassert that we are not willing to pay for the costly mistakes made at Zimmer through poor utility management. Those responsible for the management breakdown at Zimmer must be made to assume in some way financial liability for these mistakes and violations.
- 4) In your latest letter to us you indicated that a public hearing would be held after CG&E makes its recommendations to you. We feel strongly that CG&E needs to hear our concerns in detail before they make their recommendations to the NRC. If there is no possibility of the public hearings influencing the recommendations, the process of public comment becomes an idle and meaningless mockery.

For 97% of Zimmer, the NRC has somehow allowed CG&E to poorly manage the project. Good management for the last 3% of the construction cannot undo the damage done in the 97% already built. To assure public safety, a thorough hardware audit is essential, regardless of the cost.

The NRC should not be permitted to allow the utility to complete construction based on a superficial and cheap audit of hardware problems simply because the NRC did not begin to do its assigned job until after Three Mile Island and numerous Zimmer whistleblowers created immense public pressure.

Sincerely,

Sr. Alice Gerdeman
CASE Steering Committee Chair

cc.
DP&L
C&SOE
CG&E
Dayton Daily News
Enquirer
Post
Clermont Courier
WKRC
WLW
WCPO

Representative Morris Udall
USNRC Commissioners Palladino, Asseltine, Roberts
and Gilinsky