July 27, 1982 SECY-82-318

ADJUDICATORY ISSUE
(Affirmation)

For: The Commissioners

From: Leonard Bickwit, Jr., General Counsel

Subject: REVIEW OF LICENSING BOARD ORDER WHICH RAISES SUA SPONTE ISSUES (IN THE MATTER OF CINCINNATI GAS & ELECTRIC COMPANY, ET AL.) - DOCKET NO. 50-358-OL

Facility: Zimmer Nuclear Power Station, Unit 1

Purpose: To inform the Commission (pursuant to the directives in the Secretary's June 30, 1981 memorandum) of a Licensing Board order which raises sua sponte issues in the Zimmer operating license proceeding.

Background: In a memorandum and order dated July 15, 1982, the presiding Licensing Board ordered that the record in this proceeding be reopened for the consideration of eight new contentions. The contentions generally relate to quality assurance practices at the Zimmer Station and the lead applicant's character and competence to operate a nuclear station. In admitting the contentions the Board exercised its sua sponte authority because of its belief that "resolution of these serious safety

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This paper is identical to one advanced at 4:15 p.m. on July 27.

concerns on the record and in full public view would be in the public interest." 1/

The contentions were initially raised in a May 18, 1982 motion by the Miami Valley Power Project (MVPP), an Intervenor in the proceeding. MVPP relied on the well-known reports (July 1980, April 1981, August 1981 and November 1981) of the NRC staff on quality assurance problems at the Zimmer plant. 2/

1/ The Board's memorandum of July 15, 1982 to the Commission and its Memorandum and Order of the same date are attached. (Attachment A).

2/ The Commission's Region III staff began an investigation into the applicants' quality assurance program on July 12, 1981. On July 15, 1981 the staff filed with the Licensing Board and parties a Board Notification (BN-81-14). This notification concerned an Immediate Action Letter from the Director of Region III to the applicant dated April 8, 1981, which documented the corrective measures to be taken on the problems identified by the staff with the quality assurance practices of the applicant and its general contractor, H. J. Kaiser Company. A second Board Notification (BN-81-52) was served on the Board and parties on December 17, 1981. Included in this notification was a letter from Richard DeYoung to the lead applicant's President, dated November 24, 1981, which summarized the staff's investigation of the quality assurance program at Zimmer and had as an attachment a Notice of Violation and proposed imposition of civil penalties in the sum of $200,000.00. This notification also included

[Continued on next page]

2/ [Continued from preceding page]

Chairman Palladino's letter of November 16, 1981 to Congressman Udall on the August 7, 1981 report of the Office of Inspector and Auditor. The notification also advised the Board and the parties that the voluminous documentation supporting the two letters was being placed in the public document room and in the local public document room.

The Zimmer quality assurance problems were discussed in Congressional hearings on November 19, 1981 ("Quality Assurance in Nuclear Powerplant Construction," Serial 97-26) before the Subcommittee on Energy and the Environment of the House Interior and Insular Affairs Committee and on December 14, 1981 ("Nuclear Safety: Is NRC Enforcement Working?") before a Subcommittee of the House Committee on Government Operations. The Subcommittee on Energy and the Environment also held hearings on the Zimmer matter on June 16, 1982 at which Mr. Dircks and Mr. Keppler testified.

ATTACHMENT A

July 15, 1982

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine

FROM: John H Frye, III
Administrative Judge

SUBJECT: SUA SPONTE ISSUES IN CINCINNATI GAS & ELECTRIC COMPANY, ET AL. (WM. H. ZIMMER NUCLEAR POWER PLANT) - DOCKET NO. 50-358

This is to inform you that the Licensing Board presiding in the above proceeding has exercised its authority pursuant to 10 CFR §§ 2.718(j) and 2.760a to reopen the record and raise sua sponte eight new contentions that were initially advanced by the Miami Valley Power Project, an Intervenor in this proceeding. These contentions relate to quality assurance practices at the Zimmer Station and Cincinnati Gas & Electric Company's character and competence to operate a nuclear station.

We have exercised our sua sponte authority to raise these issues because we do not believe MVPP has made a strong enough showing under the Rules of Practice to entitle it to introduce late contentions and because we believe that resolution of these serious safety concerns on the record and in full public view would be in the public interest.

Our Memorandum and Order which sets forth our reasoning is attached hereto. The contentions are set out in an Appendix to that Memorandum and Order.

John H Frye, III
Administrative Judge
Chairman, Atomic Safety and
Licensing Board for the
Zimmer Operating License
Proceeding

Attachment:
As stated
cc: Zimmer Service List
Office of the General Counsel

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
John H Frye, III, Chairman
Dr. M. Stanley Livingston
Dr. Frank F. Hooper

In the Matter of CINCINNATI GAS & ELECTRIC COMPANY, et al. (Zimmer Nuclear Power Station Unit 1)	Docket No. 50-358-OL July 15, 1982

MEMORANDUM AND ORDER
(MVPP's Motion for Leave to File New Contentions)

On May 18, 1982, the Miami Valley Power Project (MVPP), an Intervenor in this proceeding, filed a Motion for Leave to File New Contentions. That Motion states eight new contentions concerning two general areas: first, the status of quality assurance pertaining to the construction of the Zimmer Station; and second, the corporate character and competence of Cincinnati Gas and Electric Company, the lead Applicant, to operate a nuclear generating station. None of these contentions concern matters previously litigated in this case.

The Motion begins with a "History of Breakdown of Quality Assurance Program." This History alludes to reports issued by the NRC's Office of Inspection and Enforcement (I&E) of July, 1980, April, 1981, and November, 1981. It also alludes to a report of the NRC's Office of Inspector and Auditor (OIA) of August, 1981, which was released in November, 1981. The History notes that the I&E report of November, 1981, proposed a $200,000 fine which was paid in February, 1982, and that

the April, 1981, I&E report led to the institution by CG&E, of a Quality Confirmation Program. The History also refers to various communications between Commission officials and Congress on this matter.

The History continues:

> It appeared that the regulatory system had identified and taken adequate corrective action against fundamental quality abuses at Zimmer. Recently, however, MVPP has learned that -- (1) the OIA and IE Reports revealed only a small portion of the QA breakdown and resulting hardware damage; (2) the causes and responsibility for the QA breakdown rest squarely with high-level CG&E management; and (3) neither CG&E nor RIII have followed through with adequate corrective action. As a result, the RIII-imposed Quality Confirmation Program may further exacerbate the previous QA breakdown, while providing the public with false reassurances that a "final solution" has been achieved at Zimmer.

The Motion does not specifically identify the information which MVPP asserts it recently learned, or when that information was learned.

The Motion next recites the eight proposed contentions and their bases (the contentions and bases are set out in the Appendix), addresses the criteria for the acceptance of untimely contentions set out in 10 CFR § 2.714, and indicates that MVPP intends to request a protective order which would prevent disclosure of the identities of certain witnesses who are CG&E employees except to the Board. These witnesses, it is alleged, will furnish further bases for the contentions.

Applicants take sharp issue with MVPP's Motion. They begin by attacking MVPP's status as a party to this proceeding, then attack the contentions as untimely, assert that MVPP must demonstrate a need to reopen the record, and conclude by attacking the contentions themselves. Applicants also attack MVPP's asserted need for a protective order as

illustrating a desire to ". . . deny[ ] Applicants due process and strangl[e] this proceeding by delay and obfuscation" (Applicants' Answer, p. 49).

Staff supports MVPP's Motion:

> The Staff recognizes that there is validity to the Applicants' statement of the applicable law contained in Applicants' Answer. However, the breakdown in the Applicants' quality assurance program which has resulted in construction defects, and which, in the course of the ongoing investigation, may result in the discovery of more construction defects at the Zimmer plant raises a serious safety question. The information regarding the extent of the construction defects has the potential for resulting in the possible denial of an operating license. In the special circumstances of this case, the Staff's position is that the public interest is best served by the Board reopening the record and admitting the eight contentions proffered by MVPP as issues in controversy. (NRC Staff Response, p. 5; footnote omitted.)

Applicants' discussion of the decisions interpreting the requirements which must be met if tardy contentions are to be accepted does, as recognized by Staff, have validity. Further, Applicants' argument that MVPP has not met these requirements, particularly the "good cause" requirement, has much to recommend it. MVPP seems to have anticipated this argument. MVPP urges the Board to exercise its discretionary authority to admit the contentions.

Applicants also devote considerable time to the proposition that ". . . the group [MVPP] admitted as an intervenor by the Licensing Board in 1976 is not, in reality, the one pursuing these new contentions. A new entity, which is a legal stranger to the proceeding, has arrived to take the baton from previous entities which have participated in various prior stages of this proceeding, albeit under the same name" (Applicants'

Answer, p. 5). Applicants base their argument on the fact that when MVPP was admitted as an intervenor, it was centered in Dayton, Ohio, and its members were customers of Dayton Power & Light Company, a co-Applicant. Now the organization is a "wholly owned subsidiary of the Cincinnati Alliance for Responsible Energy (CARE)" (CARE Press Release of May 18, 1982). According to Applicants, its members reside in or near Cincinnati.

Finally, Applicants assert that, at this very late stage of this proceeding, MVPP has furnished too little in the way of specific bases for its proposed contentions. Applicants argue that no new information is cited by MVPP, and that its allusion to certain affidavits, interviews and internal Applicant documents should be ignored by the Board because they were not submitted in support of the Motion.

Ordinarily, in this state of affairs, we would have afforded MVPP an opportunity to respond to the arguments which Applicants have raised. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1) ALAB-565, 10 NRC 521 (1979). After having received that response, we would have ruled on the Motion.

However, because of the extraordinary situation presented by the MVPP Motion, we had not elected that procedure, and were about to issue a Memorandum and Order when MVPP's Reply to the Applicants and Staff was received. Consequently we have considered that Reply and find that it does not alter our conclusions.

In its Reply, MVPP addresses the points raised by Applicants. With regard to the factors to be addressed in order to satisfy the requirements of 10 CFR § 2.714 for acceptance of tardy contentions, MVPP makes a very weak showing.

Pursuant to Section 2.714(a), a licensing board must balance the following factors in determining whether to grant an untimely motion to file contentions:

1) good cause, if any, for failure to file on time;
2) the availability of other means for protecting the petitioner's interests;
3) the extent to which petitioner's participation might reasonably assist in developing a sound record;
4) the extent to which the petitioner's interest will be represented by existing parties; and
5) the extent to which petitioner's participation will broaden the issues or delay the proceeding.

As to good cause for the late submission, MVPP fails to tell us when it learned the information which prompted the Motion and is vague as to precisely what this information is. Given the timing of its Motion (on the eve of an Initial Decision which normally would have concluded this Board's consideration of the license application) we think this failure is particularly significant. Its presentation on the availability of other means whereby its interest might be protected seems to miss the mark - it focuses instead on the proposition that Mr. Applegate's charges regarding quality assurance (QA) at Zimmer have been substantiated and that MVPP is resporsible for bringing QA to the attention of the Board. Although brief, its presentation of its ability to assist in developing the record is borne out by its pleadings and related papers, and it seems self-evident that no other party will represent MVPP's interest if its Motion is denied. These two factors are the strongest in MVPP's favor. Finally, we believe that MVPP

is clearly and indisputably wrong in its belief that granting its Motion will not delay the proceeding. If the Motion is denied, two matters relating to offsite emergency planning remain to be considered. The Board anticipates that these matters should be expeditiously concluded. On the other hand, MVPP's Motion raises matters which may well involve lengthy proceedings before this Board. In conclusion, we find that the balance of the five factors in this case tips against MVPP.

Applicants devote considerable discussion to the legal standards for reopening records and the proposition that MVPP has not satisfied them. We entertain some doubt that these standards are applicable. We do not mean to suggest that a less stringent standard should apply; however, we read the decisions on this point as relating to situations in which reopening is requested on an issue which was previously heard. This is not the situation here; none of the proposed contentions have been the subject of previous hearings.

In any event, MVPP's presentation in answer to Applicants suffers from the same difficulties identified above with respect to its showing of good cause for failure to file its proposed contentions in a timely fashion. While MVPP asserts that it proceeded expeditiously after it learned of new information, it does not specifically identify this information or tell us when it became available. In fact, that presentation indicates that MVPP has long been critical of the Zimmer QA program. More should have been furnished to indicate why, at a minimum, MVPP waited from November, 1981, to May, 1982, to file its contentions.

Litigation must come to an end. A party should not wait until the eve of an Initial Decision which normally would conclude a proceeding before advancing new contentions unless substantial justification for that course is present.

However, as we have noted, this state of affairs is not ordinary. As Staff points out, the proposed contentions raise issues which are indeed serious. A decision adverse tc Applicants could dictate the denial of an operating license. The Staff has identified Zimmer as a plant with a serious quality assurance breakdown. (Testimony of William J. Dircks before the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, U.S. House of Representatives, November 19, 1981.) Fines have been imposed by Staff and paid with respect to this breakdown. The Commissioners were recently briefed on this situation by Applicants and MVPP, indicating the continuing concern about the matter.

In these circumstances, we agree with the Staff's assessment that the public interest requires reopening of the record to litigate these contentions. We believe that this consider tion overrides legal niceties pertaining to acceptance of untimely contentions and reopening of records. Consequently, we are exercising our authority pursuant to 10 CFR §§ 2.718(j) and 2.760a to reopen the record and admit the eight contentions advanced by MVPP as Board-raised issues. In our recent Initial Decision (LBP-82-48, 15 NRC ___ [June 21, 1982] we specifically retained jurisdiction to take this step. Cf. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1,2,3, and 4) LBP-78-2, 7 NRC 83 (1978). In a Memorandum of even date herewith, we are advising the Commissioners of this action.

Further, we do not believe that Applicants are correct in their position that hearings on these Contentions would be counterproductive, or at least ineffectual, to improving the implementation of the Zimmer QA program as Applicants seem to assert. To the contrary, 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 this 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.

With respect to the proposition that resources should be spent on inspections, not hearings, we note that the portion of the Commission's decision in Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2) CLI-80-10, 11 NRC 438 (1980) quoted by Applicants at p. 42-43 of their Answer clearly is concerned with the husbanding of NRC Staff, not utility, resources. Moreover, we are here concerned with a licensing rather than an enforcement proceeding (Marble Hill was the latter). Consequently Applicants may not prevent litigation of a matter solely on the assertion that Staff is taking care of it. Finally, we think the fact that the Staff asserts the need for a hearing in this instance is also significant.

There remains the question of MVPP's status as an Intervenor in this proceeding. This is not the first time that Applicants have raised this issue. On March 8, 1979, Applicants sought to require MVPP to answer certain interrogatories with respect to its membership. In their Motion, Applicants alleged that MVPP apparently had changed from an organization comprised of Dayton residents to one comprised of Cincinnati residents.

Applicants' interrogatories sought information on this point. We denied Applicants' Motion with respect to these interrogatories in an unpublished Order of April 17, 1979.

Applicants present position essentially raises only one new fact: that MVPP is a "wholly-owned" subsidiary of CARE. MVPP, in its Reply, acknowledges this fact and states that it is "a Cincinnati grassroots citizens' group" (Reply, p.2). Applicants do not demonstrate the materiality of the fact that MVPP is owned by CARE. MVPP participates as a representative of its members. Applicants' allegations with regard to MVPP's membership are the same now as they were in 1979, and MVPP now states that its members are Cincinnatians. Whether MVPP is "wholly owned" by CARE does not appear relevant to its representation of its members. For this reason, we treat Applicants' challenge on this point as raising nothing new which would dictate a different result from that we reached in April, 1979.

This result is in accord with Gulf States Utilities Company (River Bend Station, Units 1 and 2) ALAB-358, 4 NRC 558 (1976), where applicants sought to dismiss the intervention of an individual on the ground that the location of his residence, which was the basis of his standing, had been changed to a distant site. There the Appeal Board held:

> We are less confident than is the applicant that, taken by itself, Mr. Pozzi's apparent transfer of his residence from Louisiana to California would be enough to require the dismissal of his intervention. But that question need not be decided here. Just last year, we had occasion to observe that "intervention in an NRC adjudicatory proceeding does not carry with it a license to step into and out of the consideration of a particular issue at will." Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-288, 2 NRC 390, 393 (1975). Where, as here, a change of residence to an area not in proximity to the reactor is coupled with a virtual total failure on the part

> of the intervenor to have assumed a significant participational role in the proceeding, it is difficult to discern a useful purpose to be served in allowing the intervention to continue. This is so irrespective of whether one views an intervention simply in terms of the protection of the interest of the particular intervenor or, rather, as having a broader significance in the realm of the furtherance of a public interest. (4 NRC at 560, footnotes omitted)

Unlike the River Bend intervenor, MVPP has taken an active role in this proceeding from its inception. Nor do Applicants allege that it will not continue to do so. From all that now appears, it must be anticipated that MVPP will continue to actively participate and is in a position to make a substantial contribution to the record. We also note that the alleged change in MVPP's membership from Dayton residents to Cincinnati residents would appear to strengthen, rather than weaken, MVPP's standing.

Nonetheless, we note that at the time MVPP was permitted to intervene, it did not submit an authorization from any of its members to represent their interest. Such an authorization is now a clear requirement for an organization seeking to protect its members' interests. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1) ALAB-535, 9 NRC 377 (1979). Consequently, MVPP should now submit such an authorization from at least one of its members with standing to participate in this proceeding.

By a separate Notice, we are scheduling a prehearing conference to be held at Cincinnati, Ohio. At that conference we intend to discuss and set a schedule for consideration of the contentions set out in the

Appendix, MVPP's Motion for a Protective Order, and any other matters relevant to hearing and resolution of the contentions.

ORDER

In consideration of the above, it is this 15th day of July, 1982,

ORDERED

1. The record in this proceeding is reopened;

2. The eight contentions set out in the Appendix are admitted as Board issues, and

3. By July 30, 1982, MVPP is to file an authorization from at least one MVPP member with standing to participate in this proceeding permitting MVPP to represent his or her interest.

Judges Hooper and Livingston concur, but were unavailable to sign this Memorandum and Order.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

John H Frye, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
July 15, 1982

APPENDIX

MIAMI VALLEY POWER PROJECT CONTENTIONS RAISED SUA SPONTE BY THE ATOMIC SAFETY AND LICENSING BOARD

1. CG&E and Kaiser Engineering, Inc. ("KEI") have failed to maintain sufficient quality assurance controls to ensure that the as-built condition of the plant reflects the final version of a design that complies with all applicable regulations and requirements for public health and safety, as required by 10 CFR Part 50, Appendix B.

To illustrate, installation has proceeded on the basis of construction aids rather than final drawings approved by the architect/engineer, Sargent and Lundy ("S&L"). Further, design revisions have not been fully incorporated and distributed to all relevant

construction and QA personnel. As a result, the as-built condition of the plant does not match the approved final design. Even if the specified equipment were installed in the designated locations, however, S&L approved erroneous Design Document Changes ("DDC").

The basis for this contention includes IE Report §§ 4, 7, and Attachment A; affidavits from witnesses about the suppression pool, large-bore and small-bore piping, and hangers in the primary containment; interviews with current or former employees willing to testify; and internal CG&E and KEI documents.

2. CG&E and KEI have failed to maintain adequate material traceability to identify and document the history of all material, parts, components and welds, as required by 10 CFR Part 50, Appendix B, Criterion VIII.

To illustrate, it is impossible to identify and trace the history of items due to flaws such as inaccurate or overgeneralized blueprints; installation damage to materials; missing, incomplete, or unreliable records; and lack of identifying markings on equipment.

As a result, there exists little basis to rely on the existing traceability system. Guessing and unproven assumptions undermine the traceability records

that do exist.

The basis for this contention includes IE Report §§ 4 - 7 ; affidavits that demonstrate that methods are inadequate to identify and control large and small bore piping, flanges, and welds, as illustrations that prove a breakdown throughout the plant; examples supplied by current or former employees; and internal CG&E and KEI documents.

3. CG&E and KEI have failed to maintain an adequate quality assurance program for vendor purchases, as required by 10 CFR Part 50, Appendix B, Criterion VII.

The QA breakdown for vendor purchases has been systematic, from selection of individual vendors to toleration of hardware defects uncovered after installation. To illustrate, vendors have been accepted for the approved vendors list on the most superficial basis, such as unsupported memoranda from CG&E and/or KEI management, or a review of vendor QA manuals unsupported by on-site surveys. As a result, unqualified vendors have been placed on the Approved Vendors List ("AVL"). Once on the AVL list, it has been unreasonably difficult to remove the vendors despite poor performance.

CG&E has improperly made vendor purchases and then directed KEI to assume quality assurance

responsibility for the purchases. KEI receipt inspection was improperly restricted to a check for transit damage and completeness. CG&E denied permission to KEI to conduct necessary source inspections of vendors. CG&E and KEI did not maintain reliable, comprehensive identification records and documentation packages,which resulted in uncertain traceability.

After receiving vendor purchases, the items frequently were upgraded from "non-esential" to "essential" status. As a result, items were installed in critical safety systems without first meeting the corresponding safety requirements. When QA/QC inspectors found defects in vendor hardware, they were instructed not to write up Nonconformance Reports ("NR").

The vendor QA breakdown spilled over into the rest of the plant. Inadequate traceability has led to confusion over which items are vendor purchases and which are not. Vendor purchases at Zimmer are not covered by on-site QA inspectors. As a result, in a significant number of cases items fabricated on-site have been erroneously defined-out of the CG&E and KEI QA systems.

The flaws described above are illustrative, not exhaustive. This contention applies to safety systems throughout the plant. Tens of thousands of purchase

orders are questionable.

The basis for the contention includes IE Report §7; affidavits from current or former plant employees; interviews with current and former plant employees willing to testify; and internal CG&E and KEI documents.

4. CG&E and Kaiser have failed to maintain an adequate quality assurance program, to identify and correct construction deficiencies, as required by 10 CFR Part 50, Appendix B, Criterion XVI. This contention challenges the structure and premises of the QA program at Zimmer, rather than specific inspection hardware deficiencies.

To illustrate, traditionally there has not been a comprehensive quality assurance manual for either CG&E and KEI QA/QC personnel. Training procedures for QA/QC personnel have been inadequate, and some classes were taught by instructors with few qualifications. Until establishment of the Quality Confirmation Program, the KEI QA/QC program was severely understaff at CG&E's direction. Mandatory inspections did not occur of safety-related items. Necessary audits were not conducted for unjustifiable long periods. CG&E and KEI management have not always made good faith efforts to comply with audit recommendations. Corrective action procedures for identified construction

defects have looked to correct QA defects prospectively while failing to reinspect for the damage that may have been previously overlooked. Underpinning all these structural flaws has been the core of the QA breakdown at Zimmer -- the lack of independence for QA/QC departments and personnel from their construction counterparts, in both the CG&E and KEI organizations. The absence of even a minimally acceptable QA program casts a shadow over all safety-related systems at Zimmer.

The basis for this contention includes the congressional testimony and public statements of NRC officials, Exhibits 1-6; IE Report §§ 4-7 and Attachment A; affidavits from and interviews with current and former employees; and internal CG&E and KEI documents.

5. CG&E and KEI officials failed to maintain adequate controls to process and respond to internal Nonconformance Reports identifying violations of internal or government requirements. To illustrate the scope of the problem, the IE Report analyzed in-depth 26 reports of nonconforming conditions out of over 1000 that were voided between 1978 and 1981. The IE Report concluded that 25 out of the 26 reports were voided erroneously. Potentially thousands of NR's have been improperly voided or discarded under the QA program.

To illustrate, KEI QA inspectors in practice have been ordered not to write NR's on procedural or "software" deficiencies. A convoluted system of multiple approvals

makes it unreasonably difficult to issue NR's. CG&E has developed a bewildering system of reports on non-conforming conditions including Surveillance Reports, Inspection Reports, Corrective Action Recommendations ("CAR") and In-Process Inspection Deficiency Reports, punch lists and exception lists. These QA report categories avoid the accountability and NRC oversight of the NR system, and thus violate Appendix B.

Many NR's have been eliminated entirely from the QA system. For example, NR's have been voided as "not issued," and so expunged from the QA records' system. In a significant number of cases, NR's voided as "Not Issued" cannot now be found.

Due to this high ratio of improperly voided NR's Zimmer contains an unknown number of dormant, identified deficiencies which were found and later lost or dispositioned without correcting the identified defects. Any decision to license Zimmer is premature until all QA reports on nonconforming conditions are located, entered into the NR system and properly dispositioned through adequate corrective action.

The basis for this contention includes IE Report SS 4-7; the OIA Report; affidavits and interviews with current and former Zimmer employee witnesses; and internal CG&E and KEI documents.

6. CG&E and KEI have engaged in illegal retaliation against QA/QC personnel who attempt diligently to

perform their duties or who disclose QA problems to the NRC. This retaliation violates 10 CFR Parts 19 and Part 50, Appendix B, Criterion I. Harassment occurred on all levels. Both CG&E and KEI openly tried to discourage or neutralize QA/QC initiatives, internal disclosures through this retaliation, or employee disclosures to the NRC.

To illustrate, construction personnel on at least one occasion physically attacked, and repeatedly intimidated QA inspectors. QC personnel attempting to conduct inspections were doused with buckets of water and scattered with high-pressure fire hoses. Management officials did not pursue and discipline the offenders, nor did they deter repeat harassment.

KEI top management berated QC inspectors and supervisors for writing up nonconformances. Both CG&E and KEI management retaliated against employees who pursued significant corrective action programs for QA violations, or disclosed serious violations to the NRC during its 1981 reinvestigation. These reprisals included dismissal, demotions and job transfers.

Employees who retracted or modified their NRC statements, after interviews with CG&E counsel, kept their supervisory positions. This pattern stretches from the mid-1970's to 1982.

CG&E removed Butler Services, Inc. and Peabody Magnaflux, Inc., from responsibilities for QC inspection

and radiographs, respectively, in an effort to destroy the independence of this portion of the QA program.

On both the individual and institutional level, reprisal victims were replaced with substitutes whose qualifications and commitments to sound QA practices are open to serious challenge. These examples are illustrative, not exhaustive, of an environment where it takes repeated acts of courage for QA/QC personnel to do their jobs right. QC inspections and findings that arose out of fear and pressure are an inadequate basis to satisfy public health and safety requirements.

The basis for this contention includes IE Report §§ 4 and 6; CG&E letter concerning fine, attached and incorporated herein as exhibit 7; affidavits from and interviews with witnesses; and additional documents.

7. The CG&E Quality Confirmation Program ("QCP") is inadequate to mitigate or remedy the serious consequences of QA breakdown at Zimmer. On April 8, 1981 RIII imposed on the Zimmer QA program the QCP as a structural reform intended to neutralize the previous abuses. CG&E obtained NRC approval for the QCP and administers it on an ongoing basis. The ACP has led to a welcome increase of QA personnel. However, the QCP is fundamentally deficient in that its scope is too narrow and its implementation spotty.

To illustrate, the QCP plan presented as Exhibit 17 of the IE Report gives broad discretion to CG&E, instead of clearly defined specific duties. This fails

to guarantee a full solution for a quality assurance program "totally out of control."

To illustrate further, the QCP is only a review and sampling program of individual deficiencies, not a 100-percent reinspection of all safety-related systems. CG&E has the discretion to select small samples for reinspections that may give a clean bill of health to large safety systems which remain shot through with structural deficiencies.

The QCP applies only to deficiencies identified by the NRC. New information obtained by MVPP evidences potential QA and hardware problems ranging far beyond those disclosed in the IE Report and demonstrates the need for a 100-percent reinspection of all safety equipment installed on-site. A review based on the public record to date and the even smaller sampling reinspection program is a hopelessly inadequate response to a near-decade of substandard quality control at Zimmer.

This list does not claim to be comprehensive, but represents merely a few structural flaws in the QCP based on information currently available to MVPP. Additional weaknesses will be identified as the details of the QCP are made available.

The basis for this contention includes IE Report Exhibit 17; conversations with RIII management officials;

and affidavits and interviews with witnesses willing to testify.

8. CG&E lacks the necessary character and competence to operate a nuclear power plant. In Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CC1-80-32, 12 NRC 281 (1980), the Commission held that abdication of responsibility for construction to its contractor or abdication of knowledge about construction activities by a prospective licensee is an independent, sufficient basis to deny an operating license: "In large part, decisions about licenses are predictive in nature, and the Commission cannot ignore abdication of responsibility or abdication of knowledge by a license applicant when it is called upon to decide if a license for a nuclear facility should be granted." 12 NRC at 291.

The most charitable explanation for the massive QA breakdown is that CG&E abdicated its duty to devise a technically competent QA program and to monitor that program. This generous assessment of CG&E's performance during the construction phase is consistent with the conclusions of the IE Report, and certainly sufficient to deny Applicant an operating license.

In fact, CG&E has been well aware of KEI's QA program. CG&E management made key decisions about the QA program and has had a cominant role since at least 1974. (Examples of internal memoranda confirming this relationship are attached and incorporated herein as Exhibit 8.) On the public record, the IE Report references over a dozen examples of CG&E knowledge of or participation in activities covered by the RIII investigation, despite its conclusions. (See, e.g., IE Report Exhibits 4, 5 and 52, attached and incorporated herein as Exhibit 9 by reference.) According to Exhibit 52 of the IE Report, former CG&E QA manager William Schwiers said that CG&E suffers the same lack of independence from construction as Kaiser. He also admitted that CG&E management was responsible for refusing to increase KEI's requests for additional QA/QC personnel.

CG&E also denied Kaiser authorization to spend funds for adequate QA staff and training, and the CG&E construction department generally dominated the Applicant's QA program. CG&E has adopted the same philosophy the NRC attributed ti KEI -- the perspective that QA activities are an unwanted impediment to construction. CG&E made the key decisions in the

construction. CG&E made the key decisions in the QA program for vendor purchases, on occasion despite objections from Kaiser's QA personnel. CG&E mishandled QA/QC records and sustained clearly inadequate QA procedures equivalent to those of KEI.

CG&E activities in other context raise serious concerns about its character. A comparison of the public record, and CG&E correspondence with a church shareholder organization of American Electric Power, a co-owner of Zimmer, is illustrative. An attached CG&E letter sent to the shareholder organization is undeniably inaccurate in its description of the RIII reinvestigation, despite the NRC's prior notice to CG&E of serious deficiencies. The NRC's "early" findings were so significant that the Quality Confirmation Program orders instituted on April 8, 1981, over 7 months before the IE Report was released. (Compare CG&E letter of April 3, 1981 with the IE Report at 155-57, attached and incorporated herein as Exhibit 10.)

Similarly, in November and December 1981, CG&E representatives publicly made blanket statements denying hardware problems in general and <u>any single</u> defective weld in particular, despite a previous notice of NRC laboratory tests that demonstrated these deficiencies. Compare IE Report No. 50-358/81-27 at 7-8, with a November 26, 1981 news article, attached and enclosed herein as Exhibit 11. On November 16, 10 days before

CG&E President Dickhoners' assertions of a clean hardware bill of health, the NRC informed the Applicant, inter alia:

> The visual examination of piping welds that were conducted revealed six welds which exceeded the ASME Code allowable reinforcement height on the outside surface of the weld.

For each of the above inaccurate self-serving statements by CG&E, evidence was not publicly available at that time to refute the Applicant's misrepresentations.

In Houston Power and Lighting, supra, the Commission emphasized that false statements to the NRC, and particularly intentional false statements, are grounds to deny an operating license. There is evidence that records relating to such basic QA defects as material traceability and personnel qualifications were intentionally falsified. Similarly the OIA Report disclosed that construction crews made informal, undocumented repairs on welds. These repairs were made concurrently with the NRC inspectors' review of inaccurate paperwork on the very same welds. Although MVPP does not claim at the present time that CG&E officials were responsible for any deliberate falsification, such significant misconduct evidences applicant's failure to supervise the QA program to ensure its independent and proper operation.

In some instances KEI employees engaged in deceptive conduct toward the NRC. For example, when RIII requested copies of all essential, and later nonessential voided nonconformance reports, KEI personnel did not include voided NR's improperly filed with Inspection reports. Their excuse was that RIII had not asked for voided NR's filed with Inspection Reports.

Any remaining doubts about the necessity for a full hearing on CG&E's character and competence should be resolved by a currently-suspended criminal investigation of QA abuses, as well as the congressional call to pursue the probe more aggressively. Last summer OIA began a criminal investigation into falsified QA reports and failure to conduct mandatory inspections. However, the OIA criminal probe has been suspended until some time between August and October 1982, when Part II of the RIII reinvestigation will be completed. The issues addressed in Exhibit 52 of the IE Report, the interview with CG&E QA manager William Schwiers, suggest that CG&E officials may have been targets of the investigation. NRC investigators inquired into the role of CG&E Vice President Earl Borgman. This criminal investi-

gation was so significant that on October 27 and 28, 1981 the NRC Commissioners considered the ongoing law enforcement proceedings in a closed meeting on Zimmer.

A March 19, 1982 letter from Intervenor's counsel to the United States Attorney for the Southern District of Ohio is attached and incorporated herein as Exhibit 12, along with the accompanying original exhibits.

Evidence of harassment and retaliation toward employees coupled with criminal falsification of records has led to calls from Congress for a criminal investigation. As Representative Toby Moffett (D-Conn.) explained:

> Such harassment, as this Subcommittee has already found through previous investigations and as the NRC has now admitted in its own investigation, are precisely the sort of actions that occurred at the Zimmer site near Cincinnati.
>
> These new criminal penalties were not placed in the Atomic Energy Act as window-dressing. The Congress provided for criminal penalties for utility failures to obey NRC safety rules for a very important reason: the public health can be endangered by nuclear crimes just as surely as it can be by street crimes.

Congressman Moffett's December 14, 1981, opening statement at congressional hearings is attached and incorporated herein as Exhibit 13.

Evidence of non-QA related criminal and non-criminal misconduct must also be examined before this Board in granting Applicant an operating license. Witnesses have identified on-site criminal misconduct including diversion of nuclear materials to underground businesses that sell belt-buckles manufactured on-site. Witnesses have also provided affidavits detailing widespread illegal gambling including horse-racing bets placed from the security guard's desk on the seventh floor where nuclear fuel is kept. Dangerous alcohol and narcotics use on-site further demonstrates CG&E's abdication of its duties. (See, e.g., a January 16, 1981 affidavit from Jeffrey Hyde, attached and incorporated herein as Exhibit 14.)

The above overview helps explain why previous QA/QC retaliation and failure to respond adequately to identified deficiencies continues to date. The same management organizations are making the decisions. Through the CG&E-led Quality Confirmation Program, RIII in effect may have ordered the fox to strengthen its control over the henhouse. It is imperative that an operating license not be granted without a full hearing into Applicant's character and competence.

The basis for this contention is the OIA Report at 33-5; IE Report in general; and documentation, affidavits and interviews with witnesses willing to testify at hearings.

ATTACHMENT B

ATTACHMENT B

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

In the Matter of CINCINNATI GAS AND ELECTRIC COMPANY, et al. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1)	Docket No. 50-358

ORDER
(CLI-82-)

On July 15, 1982 the Atomic Safety and Licensing Board presiding in this proceeding issued a Memorandum and Order in which it exercised its sua sponte authority under 10 CFR § 2.760a to admit as Board issues eight new contentions. These contentions generally relate to the status of quality assurance pertaining to the construction of the Zimmer Station and the corporate character and competence of the lead applicant to operate a nuclear generating station. The Board, noting that the NRC staff supported a hearing on the eight contentions, found that "the proposed contentions raise issues which are indeed serious" (Board's Memorandum and Order at p. 7).

The Commission agrees with the Board that the contentions raise issues which are indeed serious. The Commission has indicated that it assigns great importance to the investigation. On June 7, 1982, the Commission was briefed by the Administrator of Region III, Mr. Keppler,

on the status of the investigation. On June 16, the Commission held a public meeting with representatives of the lead applicant to allow them to brief the Commission on ongoing quality assurance matters related to the Zimmer project. The Commission also heard from representatives of the Government Accountability Project, which has been involved as counsel for some who maintain a concern about the status of the Zimmer project. The Commission has directed the NRC staff that it wishes to be kept fully informed in order that it can provide guidance and direction when needed.

The NRC has been investigating alleged quality assurance irregularities at Zimmer since January 1981. The investigations are still ongoing. The investigations have identified a number of quality assurance-related problems at the Zimmer site. An extensive review of the as-built plant is currently being performed. Before the plant can be licensed, a comprehensive quality confirmation program will have to be conducted and identified problem areas resolved. By itself, without factoring in any rework, the quality confirmation program will be both costly and time-consuming. The effect of this on the construction schedule of the plant remains to be determined.

The basis for the eight contentions which the Board has accepted as Board issues is simply a repetition of some of the problems revealed in the reports of the investigations which have already been released to the public. The Miami Valley Power Project (MVPP), an Intervenor, which filed an untimely request with the Board that these issues be considered, suggested that it had new information on these matters.

MVPP did not in its motion to the Board or elsewhere, as far as we are aware, specifically identify the new information, its source, or say when it became available. The issues raised in the eight contentions are being dealt with in the course of the ongoing investigation and in the NRC staff's monitoring of the applicants' Quality Confirmation Program.

For these reasons, the Commission concludes that the Board has not set forth a sufficient justification supporting its order reopening the hearing record to consider the eight contentions as Board issues. Accordingly, the Board is directed to issue an appropriate order dismissing the eight contentions from the proceeding.

It is so ORDERED.

For the Commission

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, DC,
this day of , 1982.