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January 19, 1983

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Judge Charles Bechhoefer, Esq.
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Dear Judge Bechhoefer:

I am sending you a letter prepared by Billie Garde of the Government Accountability Project (GAP) which has accepted the Midland nuclear plant licensing case as a major project of their organization.

As you know, GAP, which is a privately funded organization, assists citizens who are involved in actions where a federal agency has some major responsibility. In this letter (enclosed) to Dr. Chester Siess, Acting Chairman of the Midland Advisory Committee on Reactor Safeguards subcommittee, Ms. Garde has provided a comprehensive overview of what is happening at Midland at the present time and the extent of the unresolved and, one might even say, unresolvable licensing problems that we are facing.

Recently, Consumers Power Co. after an indepth Nuclear Regulatory Commission inspection last fall, layed off over 1,000 workers and decided to take out most of the safety systems in the two reactors, the auxiliary building and the diesel generator building, reinspect them and reinstall them properly. This means that almost the whole range of safety systems at the Midland plant is now in question.

Wrong

It is for this reason that I raise the issue as to the feasibility of dealing with operating license contentions Nos. 3 (water hammer), 4 (steam generator) and 13 (class 9 accidents). For each of these contentions, it will be almost impossible for any witness to testify as to the real situation at the Midland plant since so much of the safety equipment is now in question.

After all, we are not licensing some theoretical plant, but specifically the Midland plant.

Mr. James Keppler noted and emphasized in the CBS national news coverage of Midland's problems that the "as built" design that his inspectors had found did not conform to the engineered design and specifications. Any testimony based on the engineering design and not the "as built" condition will not reflect the realities of what this Board is in the process of licensing.

Inspect,
- Compare,
- Update drawings,
- Change plant if below design spec.

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I expect to be ready for these contentions as much as possible during the week of February 14th to the 18th. However, I believe it is prudent to recognize that since Consumers Power Co. is now reinspecting the aforementioned safety systems, that any testimony which can be related to them in any way will be meaningless.

I disagree

I also need clarification on the staff's comments during the last telephone conference call stating they expect to file a summary disposition on the steam generator contention.

I believe the perspective of the problems at Midland as Billie Garde has set them out may also be useful to you.

Thank you for your attention to these matters.

Yours sincerely,

Mary Sinclair
Mary Sinclair

MS/jt

Enclosure

RFU

GOVERNMENT ACCOUNTABILITY PROJECT

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January 11, 1983

Dr. Chester Siess, Acting Chairman
Midland ACRS Subcommittee
3110 Newmark Laboratories
208 N. Romine
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Urbana, Illinois 61801

Dear Dr. Siess:

As you know, the Midland Nuclear Power Plant being constructed by Consumers Power Company (Consumers) in Midland, Michigan has historically had serious construction problems. Your committee and your Washington staff have consistently demonstrated a sincere concern about developments at the construction site. You may not be aware, however, that the situation at Midland has deteriorated dramatically in recent months. At the same time the Nuclear Regulatory Commission (NRC) staff has taken a number of actions that may have irreversible consequences for the construction project and upon the ability of the NRC to now assure the public that this nuclear plant can operate safely.

Not True

We urge you to consider seriously the current events at Midland, and to take decisive action through the ACRS meeting process to pull together the fragmented Midland story. The complications and contradictions of the after-the-fact Operating License and Soils/Quality Assurance hearing, the numerous independent audits, the overlapping and incomplete staff investigations and inspections, and the weekly setbacks have produced a nuclear industrial regulation nightmare.

B.G. Opinion

The Government Accountability Project (GAP) is a project of the Institute for Policy Studies (IPS), Washington, D. C. The purpose of GAP's three clinics -- Federal Government, Citizens Clinic and Nuclear Clinic -- is to broaden the understanding of the vital role of the public employee, private citizen and nuclear worker in preventing waste, corruption or health and safety dangers. GAP also offers legal and strategic counsel to whistleblowers, provides a unique legal education for law student interns, brings meaningful and significant reform to the government workplace, and exposes government actions that are repressive, wasteful or illegal, or that pose a threat to the health and safety of the American public. Presently, the Project provides a program of multi-level assistance for government employees, citizens and corporate employees who report illegal, wasteful or improper actions. GAP also regularly monitors governmental reforms, offers expertise to Executive Branch

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offices and agencies, state and local governmental bodies, and responds to requests by Congress and state legislatures for analysis of legislation to make government more accountable to the public.

In March 1982 GAP's Citizens Clinic became actively involved with the Midland Nuclear Power Plant. A local citizens organization asked GAP to pursue allegations from workers of major problems at the Midland plant. After our preliminary investigation, we compiled six affidavits which we filed with the NRC on June 29, 1982. Since then we have filed four additional affidavits resulting from the heating/ventilation/air conditioning (HVAC) system's quality assurance breakdown revelations. We are also preparing an expanded affidavits from one of our original witnesses, Mr. E. Earl Kent, who has alleged serious welding construction problems at the Midland site. Other alarming allegations, ranging from security system breakdowns to worker safety problems, have come to our attention recently. As a result, we have expanded our investigation of the Midland plant.

As we are all painfully aware, the most serious problem at Midland is a construction flaw unprecedented within the nuclear industry. The Midland site is plagued by a foundation soil settlement problem that has left the diesel generator building cracked, the auxiliary building unstable, and other safety structures in serious jeopardy of shifting or settling. The result has been a massive construction boondoggle, which has not yet been, and may never be, solved. It has been characterized recently as "corporate mismanagement on a massive scale" by the CBS National News.

BG
Opinion

The history of the soil settlement problems speaks all too clearly to the disregard Midland's management has demonstrated. Not only did Consumers and Bechtel take a risk by using improper fill and inadequate compacting techniques that led to the foundation problems, they also misled the NRC about the risk they took. In 1979, the NRC cited Consumers Power for a material false statement "in that the fill used at the site was not the type stated in the FSAR as having been used." In the strongly-worded recommendation from the Director of the Division of Reactor Construction Inspection (RCI), IE (now Nuclear Reactor Regulation (NRR)) for enforcement action, Mr. Thornburg accurately described Bechtel's error in submitting the FSAR as "in careless disregard of the facts." (September 27, 1979 memorandum.)

Although the NRC responded to the discovery of the soil settlement problems decisively with a stop-work order on December 6, 1979, Consumers Power Company and its contractor managed to find a legal loophole by which they could continue work. By requesting a public hearing, using the process intended to protect the public, Midland management has succeeded in protecting the utility's timetable in disregard of the public health and safety.

Dr. Chesler Siess, Acting Chairman
Midland ACRS Subcommittee

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In fact, the NRC staff's own observations about how Bechtel and the utility responded to unprecedented structural problems at a nuclear power plant raises extreme apprehension among all of us. One such observation was that:

CP and Bechtel are proceeding with construction of remedial measures on the foundation of the plant without any review by the NRC staff and without any committal by the NRR as to the feasibility or suitability of the proposed actions.

*This has
been correct*

(January 21, 1980 Letter from E. J. Gallagher to G. Fiorelli, Chief, Reactor Construction and Engineering Support Branch, re: Meeting with Consumers Power Company.) Unfortunately for the residents of Michigan, Midland's sensational soil settlement problems are not a unique and unusual occurrence for the owners and builders of the facility. Instead, these problems stem from a corporate attitude that has disregarded the laws that regulate atomic power and de-emphasized quality assurance from the beginning of this project.

*B.G.
Opinion*

In fact, the original Midland licensing appeal panel members felt so strongly about the QA violations discovered in a November 1973 IE inspection that Mr. L. Manning Muntzing, then Director of Regulations, wrote a prophetic letter. He pointed out that even though the Appeals Board could not take action on the IE findings,

...the members of the Midland Appeals Board feel constrained to record (1) their extreme dismay respecting this latest development; and (2) their firm belief that more drastic action against Consumers Power and its architect-engineer should be promptly considered. In this connection, had the construction permit proceeding still been before our Board at the time that the results of the November 6-8 inspection were announced, it is a virtual certainty that we would have ordered forthwith a cessation of all construction activities....

(November 26, 1973 Letter from L. Manning Muntzing, Director of Regulations, re: Quality Assurance Deficiencies Encountered at Midland Facility, p. 2.) Mr. Muntzing's warning in 1973 should have served as notice to both Bechtel and Consumers Power to resolve their QA problems. Quite to the contrary, however, they ignored the notice. So did the NRC staff! The QA problems at Midland continued unabated.

Disagree

Both the 1979 and 1980 Systematic Assessment of Licensing Procedure (SALP) reports give notice of further and expanded problems at Midland. The problems identified then (lack of qualifications of QC inspectors, continuation of work prior to corrective action) are similar to those cited as causes in the recent stop-work order. (Attachments 1 and 2, re; Midland Stop-Work Orders, Dec. 82)

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The reports also included acknowledgements of excessive QA backlogs and lack of timeliness. (SALP Report 1980.) Consumers Power Company's failure to learn from its mistakes passed the stage of accidental oversight long ago. *opinion*

The lack of quality assurance at Midland has been a continuous concern of the Regional Administrator, James G. Keppler. In the spring of 1982 at the release of the 1981 SALP rating, Mr. Keppler publicly reported that he was going to have to change his previous testimony before the Atomic Safety Licensing Board in which he gave his "reasonable assurance" that the plant would be constructed in accordance with nuclear construction regulations. His revised testimony was submitted October 27, 1982. Although Mr. Keppler did not withdraw or modify his original testimony substantially, he did refer to and attach a number of revealing staff memoranda. I have attached these, as well as several articles surrounding Mr. Keppler's testimony for your own review (Attachment #3). It is clear that virtually all of the NRC staff working on Midland have strong opinions about the lack of quality performance of Consumers Power Company and its contractor, the Bechtel Corporation.

In July 1982 your committee issued its interim approval for the remedial soils work on the Midland plant. As you are well aware, that approval comes after a lengthy and controversial debate regarding Consumers Power Company and Bechtel's ability to implement the complex and exacting underpinning construction that successful completion of this project will require.

It was my understanding that before any work began on the underpinning efforts that your committee would have the opportunity to review the independent audit that would ascertain the proper implementation of Consumers' Quality Assurance Plan. Further, it was my understanding that the audit methodology of this critical work was to be reviewed publicly, allowing for citizen and public interest comments about procedures to be used by the auditor in insuring compliance with Consumers' QA plan. Certainly, at a minimum, I understood that the ACRS had retained the authority to approve the actual beginning of soils work. It appears that I was mistaken.

In perhaps one of the most arrogant NRC staff moves GAP has had the misfortune to observe, the Region III staff has allowed the irreversible soils underpinning work to begin. (See Attachment 4.) Not only does this action represent a total disregard for the ACRS's prudent position as set forth in its July letter, it also indicates a total failure to respect the seriousness of the problems of public mistrust of the Midland plant.

It is simply too much to expect the public to retain any confidence after the NRC's own revelations about "shoddy construction practices," "poor management," and "slipshod workmanship" (Attachment 3), and the necessity of a subsequent major stop-work order resulting from

an NRC investigation that revealed a quality assurance breakdown, construction flaws, unqualified/uncertified welders, questionable material traceability (Attachment 3), and the flip-flop "reasonable assurance" of the Regional Administrator. These events of the past few months follow a decade of construction failures, cost overruns and major setbacks -- all attesting to the questionable integrity and ability of the licensee to safely construct a nuclear power plant.

It is clear that the major questions concerning the underpinning work undertaken by Consumers, as well as the extent of the damage already done to the diesel generator building and auxiliary building, cannot be answered until they are a "fait accompli". Unfortunately for the residents of Central Michigan, Mr. Keppler's statement from the Operating License hearing carries heavy consequences:

Based upon (1) the third party assessments of the plant which will be performed, (2) the increased NRC inspection effort, and (3) the work authorization controls by the NRC, I believe that soils work at the Midland plant may continue. As demonstrated by the previous stop-work effected in the remedial soils area, the staff will take whatever action is necessary to assure that construction is in accordance with applicable requirements and standards. (Atch. 3, at 6)

Mr. Keppler's ideological views of his role in protecting the public health and safety are disquieting however when those views are translated into his staff's refusal to honor their legislative mandate. It is imperative that your committee respond swiftly.

You asked to review the audit plan, and Mr. Keppler made a commitment to allow public review. Apparently Mr. Keppler has decided to relegate the public meeting to a press relations charade. For example, on October 22, 1982, and again on November 11, 1982, GAP analysts prepared extensive comments about the independent audit that the ACRS required. Although letters and public presentations were informative, they failed to provide the key methodology needed for GAP to assess the adequacy of the program. When GAP investigators attempted to pursue the questions at the public meeting, they were told "to allow the NRC time to ask for those documents." (NRC Open Meeting, Bethesda, Maryland, November 5, 1982.) Subsequently, GAP repeated the request in a November 11, 1982 letter (Attachment 5). Last week GAP received the NRC's response, over two-and-a-half months after the original request: "You may wish to request access to the documents from Consumers Power." (See Attachment 6.)

It is clear to us that the Nuclear Regulatory Commission staff plans to evade or ignore requests made by GAP for the minimum

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information it will take to enable us to complete a responsible review of the proposed independent audit. Currently, we are involved in a Freedom of Information Act suit against the NRC for withholding documents that would have significantly altered the conclusions of an NRC investigation of the Zimmer case. Congressman Udall voiced his own request for an explanation of that affair. (See Attachment 7.)

Terry
Harper
See Z

Likewise, the NRC's handling of the Midland investigation demands further explanation:

--Why did Mr. Keppler give his "reasonable assurance" that all was well at the Midland site when he was fully aware that there were numerous major ongoing investigations, unresolved allegations of false statements by Consumers Power to the NRC, and serious quality assurance deficiencies?

--Why did the NRC staff allow work to begin on the underpinning work when it had already committed itself to a quality assurance implementation audit and had not approved the audit methodology or audit contractor?

All prep.
met

--Why has the investigation into the GAP allegations taken six months so far, with no projected completion before the end of March 1983?

Other
Priorities
& Myopia
Needs

--Why has the NRC failed to produce the results of an October-November inspection that resulted in a major work stoppage?

Issued 2/8/83

--Why did Mr. Keppler override his staff's concerns and recommendations in October about the Midland problems and grant his "reasonable assurance" that quality assurance was under control?

Normal
Business
Decision

--Why has the NRC failed to release the "Secret Stipulation" reached between Mr. Keppler and Consumers Power in Spring 1981? (It was originally requested by Ms. Barbara Stamaris, the citizen intervenor in the soil settlement hearings, and denied. A decision on appeal of the denial is now overdue by almost 30 days.)

?

These questions about the Midland plant, and similar questions about other plants, form the basis for growing public skepticism about the Nuclear Regulatory Commission's ability to regulate adequately nuclear power. In Central Michigan this uneasiness and distrust have led previously inactive citizens and local government bodies to become involved in their own protection. In fact, every single hearing or license associated with the nuclear power plant going into operation is being contested.

The Ingersoll Township and the Saginaw City Council, along with various other citizen organizations, unions and individuals, have signed or passed a resolution opposed to the plant. The Tittabawassee

Township Board is opposing Consumers Power Company's waste water discharge permit. The Michigan Attorney General is an intervenor in the rate case in opposition to allowing Midland in the rate base. Citizen intervenors Mary Sinclair and Barbara Stamaris continue to struggle upstream in a hearing process that has been characterized as "the New York Jets against your local high school football team."*

The entire NRC process has grown so absurd that Ms. Stamaris is re-evaluating the benefit of her efforts within the hearing process. (See Attachment 8.) GAP has turned to Congress for assistance in obtaining answers to questions the NRC staff cannot or will not answer. Nuclear workers have become more and more disenchanted with the ability or willingness of the NRC staff to investigate their allegations, turning instead to GAP, Congress, the media or law enforcement agencies. One such worker, whose affidavit I have attached as Attachment 9, turned in his allegations to the NRC through GAP in June 1982. He waited for over five months for an OI inspector.

The February 6-8, 1969 summary of the 106th ACRS Meeting on the Midland plant states:

The Committee considers the site proposed to be unacceptable for use with reactor plants designed and analyzed as presently described in the PSAR. However, it believes that the site may be acceptable for use with reactor plants of the proposed power rating if:

- (1) The facility is equipped with adequate engineered safety features and protective systems;
- (2) the facility is analyzed sufficiently conservatively - particularly in respect to: determination of exclusion area and low population zone; assurance of low potential doses at short distances from the reactor in the unlikely event of a serious accident; evaluation of the number and location of people who could be safely and quickly evacuated in such an event; and, use of assumptions, for example those related to meteorology, in dose calculations;
- (3) the facility is designed, constructed, and utilized sufficiently conservatively; and
- (4) the facility is provided with thoroughly structured, effective emergency plans, including evacuation plans.

Thirteen years later this ACRS is faced with one of the five worst nuclear plants in the country (see William Dircks testimony before Congress, May, 1981), unprecedented construction flaws, a massive quality assurance breakdown, a pattern of false statements and broken trust, and -- as of yet -- undeveloped evacuation plans.

*Judge Louis Carter's testimony in front of the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce, September 24, 1982. Judge Carter was the Administrative Judge in the ASLB hearings surrounding the Indian Point Nuclear Power Plant.

Dr. Chester Siess, Acting Chairman
Midland ACRS Subcommittee

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We urge you to act according to your mandate and aggressively pursue a leadership role in holding Consumers Power Company accountable for public safety.

Sincerely,

BILLIE PIRNER GARDE
Director, Citizens Clinic for
Accountable Government

BPG/mcy

Attachments