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STATEMENT OF BILLIE PIRNER GARDE  
 CITIZENS CLINIC FOR ACCOUNTABLE GOVERNMENT

ON THE

MIDLAND NUCLEAR POWER PLANT

LANSING, MICHIGAN

February 13, 1984

Government Accountability Project  
 1901 Que Street, Northwest  
 Washington, D.C. 20009  
 Telephone: 202/234-9382

FEB 16 1984

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On behalf of the sixteen former workers and Midland residents whose affidavits Senator Johndahl has agreed to accept we thank him. Under the Michigan Whistleblowers Protection Act, Michigan Public Act 469, workers who wish to be protected under it must submit their information to a "public body." Unfortunately neither the Government Accountability Project (GAP), nor the Nuclear Regulatory Commission (NRC) qualify under the definition of "public body" according to the Michigan Annotated Code. Mr. Johndahl's efforts have extended an extra measure of protection to those workers who have spoken out about the problems at the Midland Nuclear Power Plant.

Today the Government Accountability Project (GAP) also urges elected officials in the State of Michigan, both the Governor and State Legislature to assume an additional oversight role. As summarized below we have found that the problems of the Midland Plant are being inadequately dealt with by the regulatory agencies empowered with protecting the citizens and ratepayers of this State. The efforts of a State Oversight Committee or Governor's Commission could provide answers to the problems of Midland which can no longer be avoided.

GAP is now entering the third year of our Midland investigation. In June '82 we had our first press conference in Lansing and announced turning over six worker affidavits to the NRC. We identified nine major areas of concern to GAP about the Midland Project. Some of these problems have gotten better, some have gotten immeasurably worse. Today we want to issue an update of our efforts, and to summarize the problems contained in the sixteen affidavits provided to date to the NRC.

#### MAJOR AREAS OF CONCERN THAT HAVE IMPROVED

(1) Nuclear Regulatory Commission Oversight. In June '82 the Midland Office of Special cases had just been announced. It has proven to be a trustworthy, dedicated team of inspectors who have proven they are willing to go out on the limb to insure that Midland is safe. Unfortunately the team is woefully understaffed for Midland's massive problems. That could be changed with letters from State officials to NRC Chairman N. Palladino or Regional Director Keppler.

(2) Recognition of a Quality Assurance Breakdown. Two years ago only the Intervenor and GAP recognized the seriousness of the QA breakdown at the Plant. Then, in fall 82, the OSC team did a surprise inspection which revealed all of the problems that workers had told us about, and more. In February 83 CPCo was fined \$120,000.00 for a QA breakdown and agreed to a 100% reinspection of the plant. That reinspection, called the Construction Completion Program (CCP), is the most stringent in the nuclear industry today. The fatal flaw however, is that CPCo is still allowed to identify the problems. GAP has renewed its request to the NRC to remove CPCo from that critical role.

(3) The Catch - 22 Dow Contract. Two years ago we worried about the quality of construction as CPCo pushed workers to meet an impossible but critical deadline. In July 1983 Dow cancelled its order for steam. The pressure to complete the plant for Dow is now off, but unless CPCo can complete the plant and get it into the rate base the company will allegedly go broke.

#### MAJOR AREAS OF CONCERN THAT HAVE NOT CHANGED

(4) The location of the plant. The Midland nuclear plant is located within the city limits of a town of over 50,000. There are 2,000 industrial workers within two miles. An elementary school playground is back-to-back with the cooling pond. The location will never change, making the necessity for a safe plant even more critical than ever.

(5) The environmental impact. The plant will emit extraordinary amounts of dense fog from the cooling pond in which routine and accidental radioactive releases will be entrapped. The issue of radioactive discharge into the already heavily polluted Tittabawassee river is currently in litigation.

#### MAJOR AREAS OF CONCERN THAT HAVE GOTTEN WORSE

(6) The Cost of Midland. In June 1982 the cost was projected at \$3.39 billion, now the rate payers and investors wait with bated breath for the April cost and completion estimate. The cost, now at 4.43 billion, is expected to jump to over \$5 billion. And none of these estimates include the cost of fixing the problems which will be identified in the CCP reinspection.

(7) The soils settlement issue. The cracked and sinking buildings at the plant, primarily the Diesel Generator Building (DGB) and the Auxiliary Building, have not responded to the "fix." New cracks have been identified in the Aux Building, and a recent study by the Brookhaven Laboratory concluded that the building cannot meet regulatory standards, the NRC thinks it will meet its "functional" requirements anyway. The Atomic Safety and Licensing Board (ASLB) will still have to approve the whole issue -- something not as predictable in the wake of the NRC denial of an operating license to Byron.

(8) Intimidation and reprisals against workers. Even CPCo's own witness testified in a December ASLB hearing that he was afraid of giving information to the NRC because of what happens to "whistleblowers." The information from the site continues to come in, workers are fired at the first sign of raising problems. Engineers and workers are moved from system to system so it is difficult to recognize serious flaws.

(9) Allegations from plant workers and engineers. Of the original affidavits, from June 1982 almost every allegation has been substantiated. Concerns about drug abuse, poor welding, uncertified welding procedures, inadequate document control, major problems with the HVAC contractor, overloaded cable trays, failure to use Q-supports over Q-related systems, problems with the design of the control room, and on and on. The additional allegations are under investigation by the NRC, or have been "closed out," in recent inspection reports.

#### NEW AREAS OF CONCERN

- (1) Economic Impact of the Plant. Electric rate increase predictions when the Midland plant goes "on-line" range from 35% to over 50%. Worries about rate shock are forcing municipalities and businesses to intervene in the rate case, or to develop separate sources of energy so they can unplug from CPCo before the rates increase.
- (2) Inadequate Public Service Commission Staff Study on Waste/Mismanagement GAP recently announced a separate investigation into the planned rate base inclusion study. That study predicts that only the soils problems will be recommended for exclusion because of mismanagement, instead of an adequate review of all of the reinspections and re-work resulting from mismanagement.
- (3) CPCo's Mismanagement of Construction at Midland. Recent NRC investigations into violations of regulatory requirements concluded that the violations occurred with disregard for the law. The NRC has ordered a management audit of CPCo in an effort to get to the root of the problem.

#### SUMMARIES OF WORKER ALLEGATIONS

Outlined below is a list of over 65 allegations contained in the affidavits given to Senator Johndahl today. The NRC has received all of these affidavits, which include the first six submitted in 1982. Other whistleblowers have been directed to the NRC through GAP without preparing affidavits in a continuing effort to protect the sources of information.

Each affidavit represents one individual's struggle with CPCo. None of the affiants still work at the plant, all of the engineers are working in other states now. To the extent that I can answer questions about the affidavits I will attempt to do so, however, that will be within the limits set by the workers themselves, the requests of the NRC so as to not compromise on-going investigations, and GAP's own lawyers who are defending us from CPCo attorneys efforts to gain access to these affidavits.



These allegations come from engineers, quality control inspectors, welders, carpenters, document control clerks, pipefitters, security guards, and others.

- Improper welding procedures
- Inadequate inspection of Q-supports for Q-systems
- Improper use of Hilti-expansion bolts as Q-supports
- Welding performed by unqualified welders
- Inadequate training by CPCo for QA/QC inspectors
- Falsification of engineering test data
- Massive field change notice and field change request backlog
- Uncertified/unqualified welders on HVAC equipment
- Inadequate installation of HVAC equipment
- Advance notice of NRC inspections
- The adequacy of the soils under the DGB pedestals
- Use of uncertified machinery in the soils testing program
- Improper backfill and cement in the backfill areas that required clean fill
- Pressure to speed construction
- Worker safety issues, including exposure to radiation from NDE equipment
- Substantial waste of tools, equipment, and materials
- Lack of vendor document control problems
- Unorganized, lost, destroyed or falsified controlled documents
- Lack of vendor QA for material traceability
- Harassment and intimidation of workers
- Alteration or falsification of manufacturer's specifications
- No formal training for document control clerk
- Poor morale among field workers and engineers
- Failure to notify the NRC about problems per 10 CFR 21
- Inadequate NRC inspections

(allegations, continued)

- Inadequate material control
- Inadequately controlled welding rods used
- slipshod security
- Installation of improperly inspected piping
- theft of tools on a regular basis
- wasted funds due to suspect installation blueprints
- Alcohol and drug abuse among work force
- Unsafe conduct of radiographs, endangering the workers
- Unqualified engineers performing field engineering
- massive mismanagement of the workforce
- Using welding standards below ASME/AWS welding codes
- Inadequate engagement of socket welds
- Approval of insufficient fillet welds
- inadequate inspections of small bore piping
- Post-construction hanger design modifications
- Lack of properly torqued anchor bolts
- Lack of proper QC procedures for inspection of hangers and supports
- Institutionalized efforts to deceive QC inspectors
- Electrical cable substitutions
- Overloaded cable tray
- honeycombed concrete
- Improper installation of type-30 conduit
- Material documentation problems
- Slow response to emergencies in the security force
- The "powerhouse shuffle," a way of looking busy but not working
- Poorly designed control room

(allegations, continued)

- A cost-plus contract which entitles Bechtel to a profit, plus expenses
- Pipe stress deficiencies
- Violation of NRC requirements for installation/training improvements
- Inadequate calculations used in piping system installation
- Installation of underpinning instrumentation cables without documented procedures
- Failure to correct identified QA/QC problems in a timely manner
- Gambling on site by Bechtel workers
- Inadequate anchor bolt embeds
- Unreported soil differential problems
- Instructions to workers to not report to NRC
- Company interference with union activities, including grievance procedures
- Changes to the required inspection criteria after NRC approval
- Failure to document all non-conforming items
- Systematic rotation of workers to prevent detailed understanding of a job
- Collusion between NRC officials and CPCo/Bechtel management

These allegations are currently under NRC investigation. Other allegations continue to surface as GAP investigators run into former Midland employees at other nuclear plants across the nation. Each carries a Midland "horror" story, and another piece of the puzzle about the extent of the problems at the plant.

We are encouraged that the reinspection effort, the Construction Completion Program (CCP), is finally getting off the ground. Hopefully citizens and ratepayers, as well as CPCo stockholders will demand that they be allowed a voice in making the decision about whether or not the plant is worth completing. That decision should be much easier to make at the completion of the current phase of the CCP which identifies the problems and outlines the repairs.

## GOVERNMENT ACCOUNTABILITY PROJECT

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(202) 234-9382

February 13, 1984

### HAND-DELIVERED

The Honorable James Blanchard  
Governor of the State of Michigan  
State Capitol  
Lansing, Michigan

Re: Midland Nuclear Power Plant

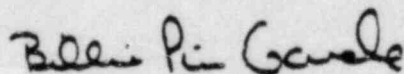
Dear Governor Blanchard:

Over the past four months, representatives of the Lone Tree Council, a mid-Michigan environmental organization, have met with members of your staff. As you know, the Lone Tree Council has actively opposed the Midland Nuclear Power Plant under construction in Midland by Consumers Power Company. Its opposition is based on a combination of factors. As an environmental group, its foremost concerns have been about nuclear waste and environmental contamination and degradation; however, beginning in early 1982, Lone Tree Council members began receiving increasing reports from site employees of shoddy workmanship and conditions that could lead to serious safety problems. In March, 1982, the Government Accountability Project, a Washington-based public interest "whistleblowers protection" group began an independent investigation of the Midland Plant. That investigation will soon begin its third year.

The Midland Plant has been plagued from its onset with poor management, cost overruns, major construction defects, i.e., a sinking foundation and cracked building, and a recently disclosed quality assurance breakdown. Construction continues under the most stringent reviews and regulatory orders in the nuclear industry today. These requirements, however, fall short of being able to insure that if Midland is completed, it will be safe.

At other troubled nuclear projects across the country, i.e., Zimmer, Marble Hill, and Diablo Canyon, the State Governors took an active role in communicating concerns of safety and out-of-control projects to the Nuclear Regulatory Commission. Their efforts made a significant difference. We urge you to take similar action immediately.

Very truly yours,



Billie Pirner Garde  
Citizens Clinic Director

BPG:me



FOR IMMEDIATE RELEASE

Contact:  
Tom Hearron  
(517) 777-4127  
(517) 790-4332

In 1982 the Lone Tree Council, in conjunction with the Government Accountability Project, released twenty-six allegations by current and former employees at the Midland Nuclear Plant, allegations of serious deficiencies in workmanship and quality assurance at what the Nuclear Regulatory Commission has called one of the most poorly constructed power plants in America.

Two years later, not all of the allegations have been investigated. Of those which have been properly investigated, not one has proved to be false.

At the insistence of Lone Tree Council, the Nuclear Regulatory Commission established for Midland the most stringent construction-review program in the history of the nuclear industry. And yet despite all the fanfare, despite Consumers Power's promises to mend its ways, it appears that it is "business as usual" at the Midland site. Workers continue to come to Lone Tree Council and to the Government Accountability Project. They come amazed, aghast, appalled at conditions and standards of construction at the plant.

We are here today to share with you our latest findings. Over one hundred allegations coming from sixteen workers are contained in affidavits which have already been turned over to the Nuclear Regulatory Commission. At other troubled nuclear plants such as Zimmer in Ohio and Marble Hill in Indiana, the governors of those states intervened to protect the physical and economic well being of their citizens. Thus, Lone Tree Council is launching today to urge Governor Blanchard to review the unmitigated disaster

that is Midland.

We are grateful to Senator Lynn Jondahl, who has accepted these affidavits under the provisions of the Michigan Whistleblowers Protection Act. We hope that more members of the State government will take an interest in the fiasco that is being built in the heart of Michigan. Unless our state officials heed the warnings of conscientious workers from the Midland site, this plant, a comedy of errors in building, will become a tragedy of errors in operation.

May 1, 1983

MEMORANDUM

TO: The Files  
FROM: Mark Cohen and Tom Devine  
RE: State authority to regulate nuclear power after Pacific Gas and Electric v. State Energy Resources Conservation and Development Commission

On April 20 the Supreme Court gave some teeth to state governments dissatisfied with the standards for federal approval of nuclear power plants. In the process, states gained the authority to largely compensate for lax safety oversight by the Nuclear Regulatory Commission (NRC). In Pacific Gas and Electric Company v. State Energy Resources Conservation and Development Commission, No. 81-1945 (April 20, 1983) ("Pacific Gas"), the Supreme Court unanimously held "that Congress has left sufficient authority in the states to allow the development of nuclear power to be slowed or even stopped for economic reasons." Id. at 30. Two members of the Court, Justice Blackmun joined by Justice Stevens, would have gone even farther. Justice Blackmun wrote that "a ban on the construction of nuclear power plants would be valid even if its authors were motivated by fear of a core meltdown or other nuclear catastrophe." Id., concurring opinion at 7.

This memorandum will briefly summarize the holding in Pacific Gas, as well as the options that states have to regulate nuclear power in the aftermath of the decision. The scope of the new legal limits necessarily was limited by the facts in dispute. The Court upheld the validity of Section 25524(b) of the California Public Resources Code, finding that state regulation of nuclear power for economic purposes is not preempted by the Atomic Energy Act of 1954. The specific issue in Pacific Gas concerned a moratorium on the construction of new nuclear plants until the State Energy Resources Conservation and Development Commission finds that the federal government has developed and approved a demonstrated technology or means for permanently disposing of high-level nuclear wastes. But the Court's rationale in upholding the moratorium could be extended to plants already under construction or on-line.

I. THE LAW IN THE AFTERMATH OF PACIFIC GAS.

The case came before the Court on a Writ of Certiorari filed by Pacific Gas & Electric Company and Southern California Edison Company. The petitioners contended -- (1) the California statute, because it regulates nuclear plants and is allegedly founded on safety concerns, falls within the field of exclusive federal control

carved out by the Atomic Energy Act of 1954 and subsequent amendments; (2) the statute conflicts with Congressional and NRC decisions concerning nuclear waste disposal; and (3) the California statute frustrates the federal goal of developing nuclear technology as an energy source.<sup>1</sup>

The Supreme Court rejected all three challenges to the law. First, the Court held that the legislative history of the Atomic Energy Act indicates that Congress intended to place regulation of radiological safety aspects involved in the construction and operation of nuclear plants in federal hands, "but that the States retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns." Id. at 12.

The Court explained that the NRC does not purport to exercise its authority based upon economic considerations. Recently, the NRC even repealed its own regulations concerning a utility's financial qualifications to construct and operate a nuclear plant. The Court reasoned that "[i]t is almost inconceivable that Congress would have left a regulatory vacuum; the only reasonable inference is that Congress intended the states to continue to make these judgments [regarding economic considerations]." Id. at 19.

While the Court held that the federal government has occupied the field concerning safety regulation, it agreed with California that the State statute aims at regulating economic, not safety problems. The State had argued that the absence of a federally approved method of waste disposal created a "clog" in the nuclear cycle which could result in economic consequences from plant shut-downs.

The Court concluded that states have the authority "to halt the construction of new nuclear plants by refusing on economic grounds to issue certificates of public convenience in individual proceedings" Id. at 23.

Second, the Court found that the statute does not conflict with federal regulation of nuclear waste disposal. The fact that the NRC has concluded that it could continue to license new reactors given progress toward the development of disposal facilities and interim storage sites is not dispositive. Writing for the Court, Justice White stated that NRC licensing "indicates only that it

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<sup>1</sup>/ The Court held that another provision of the statute, requiring that the State Commission determine on a case-by-case basis that there will be "adequate capacity" for interim storage of the plant's spent fuel at the time the plant requires such storage, is not "ripe for adjudication until the state commission actually has to make a decision. (Id., at 10.)



is safe to proceed with such plants, not that it is economically wise to do so." Id. at 25.

The Court also ruled out passage of the Nuclear Waste Policy Act of 1982, Pub.L. 97-425, \_\_\_ Stat. \_\_\_ (1982) which authorizes repositories for disposal of high-level radioactive waste and spent nuclear fuel, as an answer itself to California's challenge. The Court explained that while the new law "may convince state authorities that there is now a sufficient federal commitment to fuel storage and waste disposal...it does not appear that Congress intended to make that decision for the states through this legislation." Id. at 27.

Finally, the Court held that the California statute does not frustrate the Atomic Energy Act's purpose of developing the commercial use of nuclear power. While "a primary purpose of the Atomic Energy Act was, and continues to be, the promotion of nuclear power," id. at 28, the Court upheld the Ninth Circuit's caveat, stating "that the promotion of nuclear power is not to be accomplished 'at all costs.'" States, the Court concluded, may choose alternative energy sources to nuclear power based on economic grounds.

## II. STATE OPTIONS TO REGULATE NUCLEAR POWER IN THE AFTERMATH OF PACIFIC GAS

The Supreme Court cannot establish legal rules that reach beyond the facts of the case; any other conclusion would be nonbinding dictum. As a result, the new decision only approves economically-motivated moratoriums on construction of new nuclear plants. A close reading of the Court's analysis suggests that it also applies to nuclear plants already on-line or under construction, however. Seven of nine justices took the initiative to emphasize in dicta that new state authority does not extend to safety issues. But there is no hint that states only have the power to regulate the economic effects of nuclear plants in the planning stage. The same economic rationale for Pacific Gas applies even more strongly to the side-effects of inefficient or dangerous nuclear "lemons."

The new options for states in light of Pacific Gas are summarized below, along with the state authority that already exists.

### A. New Options Resulting From Pacific Gas

Since there are economic consequences from any significant activity, states which creatively apply Pacific Gas can require complete accountability from the nuclear industry. Many opportunities parallel current state authority to regulate the costs of electricity.

In general, the distinction is that now states can use these approaches to impose a statutory ban on construction, and probably on operation, through legislation or citizen referenda. Formerly, states could enforce economic principles merely through rate-making regulation by public utilities commissions whose commitments were questionable, or through imposition of liability after-the-fact for the consequences of an accident. By that point, the damage is done and there are reasonable arguments to protect the utility's investment, even if the initial decision was unwise. After Pacific Gas, states can prevent nuclear faits accomplis from occurring.

The examples of state opportunities after Pacific Gas listed below are by no means comprehensive; they are offered to illustrate the range of new options.

1. Economic Impact Studies -- States could impose a moratorium on new construction until the utility obtains state approval of an economic impact study demonstrating that construction of a new nuclear power plant offers a net cost-benefit advantage to its citizens. Required topics for the study could include the need for additional electric generating capacity, as well as an economic analysis comparing a new nuclear facility to all other energy sources.

This same rationale could be extended to plants under construction or on-line. States would merely establish a trigger mechanism that required updating the economic analysis in light of significant developments during construction and operation. If work at a nuclear "lemon" is halted late in construction to undertake massive repairs, direct costs could escalate by hundreds of millions of dollars. Delays would further exacerbate cost increases due to interest on loans. The state could prevent the utility from beginning the repairs until a revised economic impact study was completed. At that point, it may be cheaper on-balance to convert the facility or scrap it altogether.

Similarly, the requirement could be imposed for plants on-line that are closed down due to an accident, or to conduct major unanticipated repairs. For example, at Three Mile Island the Supreme Court has ruled that psychological trauma is not a relevant environmental consideration under the National Environmental Policy Act. But the economic consequences of psychological trauma could be devastating if a significant percentage of the population tried to leave due to fear that the facility will reopen. Real estate values could fall, the tax base could be depleted, and business investment in the area might be threatened.

2. Financial Qualification -- States can now impose a moratorium on construction of new plants until the owners demonstrate their financial ability to compensate for the effects of an accident. At TMI, the utility's survival has been threatened by the economic

consequences of the accident. In some states, utilities might also have to pay massive damages from tort suits brought by a multitude of citizens suing under strict liability after an accident. A community's economic base could be badly damaged either if the utility went bankrupt or was unable to pay local citizens for damages incurred on a mass level.

3. Reasonable Assurance of Stable Federal Safety Regulation --  
Through this approach, states could require federal reassurance that the safety implications of nuclear technology have been sufficiently mastered to permit reliable economic planning. Utilities have long complained that the Nuclear Regulatory Commission is responsible for construction delays due to changing the technological rules in the middle of the game. The NRC has responded that it has little choice, since it has a duty to act on previously unknown safety implications of a developing technology. Regardless of fault, the financial consequences of these delays can be significant.

States now can impose a moratorium on new construction until the government issues a certificate of "reasonable assurance" that the state-of-the-art technology at the beginning of construction is sufficient to complete construction under the Atomic Energy Act. Presumably, the NRC would issue such a certificate for each plant, since all designs are unique to some extent for each facility.

4. Financial Impact of Safety Risks Accepted by the NRC --  
Citizen intervenors have long complained that the legal process to license nuclear plants is fundamentally deficient. They criticize decisions that accept certain safety risks, or that classify the safety challenges as "generic" to the industry and therefore not relevant for an individual licensing proceeding. Unfortunately, often the plants begin operating before the NRC has addressed the nuclear industry's generic defect. States now can partially fill this loophole by requiring approval of an economic analysis demonstrating that the potential consequences from the risk accepted by the NRC, or from the generic flaw, are acceptable in light of the costs of delaying the plant to make the repairs sought by intervenors.



B. Existing State Authority.

Even before Pacific Gas, the steady trend has been for an increased state role in the nuclear regulatory scheme. The Supreme Court referred with approval to examples of the trend. The options for state initiatives before Pacific Gas are summarized below

1. Pollution Control Laws -- Both the Clean Air Act Amendment of 1977 and the Water Pollution Prevention and Control Act provide for an active state role in protecting the environment.

The Water Pollution Prevention and Control Act provides that "[i]t is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution [to land and water resources 33 U.S.C. § 1252(b) (1976)].

Even more specific are the Clean Air Act Amendments of 1977, which give the states authority to regulate radioactive air emissions from nuclear plants, 42 U.S.C. §7422 (Supp. III 1977), and allow the states to set emission standards more stringent than those imposed by the NRC. 42 U.S.C. §7416; H.R. Conf. Rep. No. 95-564, 55th Cong., 1st Sess. 143, reprinted in [1977] U.S. Code Cong. & Ad. News 1502, 1523-24. In effect, the Clean Air Act Amendments legislatively overruled earlier judicial prohibitions of authority to regulate radioactive waste emissions. See, e.g., Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971), aff'd, 405 U.S. 1035 (1972); City of Cleveland v. Public Utilities Commission, 64 Ohio St. 2d 209. 414 N.E.2d 718 (1980).

2. Traditional Utility Regulations -- (a) State authority over utility rates offers a second opening to regulate nuclear plants. As TMI already had revealed, economics and safety are not entirely separable. A nuclear facility which is unsafe is also unreliable. This could result in enormous charges for the purchase of replacement power which the utility will seek to pass along to ratepayers. States can prohibit any automatic pass throughs of these increased costs to consumers.

(b) A bill introduced last year in the New Jersey legislature would require that whenever a utility seeks to recover costs of more than ten million dollars for a nuclear accident by imposing a rate increase, the utilities board must conduct hearings on the accident in order to make a finding of fault. Utilities would be denied recovery from its ratepayers for any "fault-related" repair. Additionally, the utility would be liable for a variety of penalties including a reduction in its permissible rate of return on equity for a designated period of time.



(c) A state can apply the "used and useful" standard to seek exclusion of units from the rate base which have poor operating records and/or are in need of expensive reworking. This approach allows construction to continue, but without a subsidy from the ratepayers.

(d) States can levy assessments against utilities to generate funds for both the costs of decommissioning and long-term waste storage and disposal. This fund could be used to provide energy conservation loans at negligible interest rates to low-income citizens.

3. Emergency Evacuation Plans -- Under the Atomic Energy Act, the state "police power" already is used to directly regulate emergency preparedness plans of the utility and/or to support the exercise by local governments of their "police power" to regulate evacuation plans.

There is considerable evidence, based upon the experience at Three Mile Island and studies conducted at other nuclear facilities, that existing emergency preparedness is woefully lacking. Far greater numbers of people evacuated at TMI than were ordered to do so by Governor Thornburg. This mass evacuation sorely taxed the available emergency preparedness resources. There is also compelling evidence that when confronted with the TMI alert a significant portion of the emergency preparedness personnel went home to protect their families rather than to assist in the evacuation, which further exacerbated the inadequate emergency resources. States can insist through the exercise of "police powers" that an adequate emergency plan be in place, perhaps ratified in a referendum by people in communities surrounding the nuclear plant. This would be particularly appropriate in light of the NRC Atomic Safety and Licensing Board's June 1982 rejection of an operating license at Zimmer, due to inadequate evacuation plans.

4. Enact or Extend Tort Laws -- (a) The Tenth Circuit in Silkwood v. Kerr-McGee Corp., 667 F.2d 908, 921 (10th Cir. 1981), held that Oklahoma's imposition of tort liability in a situation where a quantity of plutonium had escaped the plant site and caused damage did not significantly interfere with the federal regulation of the Kerr-McGee facility. The state imposed a strict liability standard, consistent with accepted legal authority. "Some activities such as the use of atomic energy, necessarily and inevitable involve major risks of harm to others, no matter how or where they are carried on." Restatement (Second) of Torts §520, comment (g) (1977).

(b) The court in Marshall v. Consumers Power Co., 65 Mich. App. 237, 237 N.W.2d 266 (1976), held that state courts were not

prevented under the preemption doctrine from considering complaints concerning nonradiological hazards from a nuclear plant based upon a nuisance theory. Since a construction license granted by the AEC is merely a permit and not a federal order to build, that court held that Michigan could stop a power company from operating until it meets reasonable standards or abates a nuisance, unless that would make construction of the plant impossible.

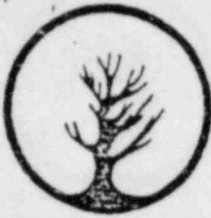
5. Gubernatorial Agreements -- Under §274(b) of the Atomic Energy Act, a Governor may reach an agreement with the NRC under which the state would take over health and safety regulation of most nuclear materials. 42 U.S.C. §2021(b) (1970). The state program must be compatible with NRC objectives. As an example, New York City, through a gubernatorial agreement, gained the acquiescence of the Department of Transportation in a health code ban on nuclear shipments through the city. New York Times, (Apr. 5, 1978) at A27, col. 5.

6. Vermont Approach -- Vermont has used its "general authority" as part of a "carrot and stick" approach toward the nuclear industry. To gain the State's approval of a bond issue, the Yankee Nuclear Power Company "voluntarily" agreed to submit to regulation by the Vermont Public Service, Water Resources, and Health Boards and waived the defense of federal preemption. No law prohibits a nuclear company from exceeding federal standards on its own initiative, so waiver of the preemption doctrine is permissible..

7. Education -- A state can undertake to inform and prepare citizens living in the vicinity around a nuclear plant of hazards they face and precautions they might take. Tennessee, for example, dispenses potassium iodine to residents living within a ten-mile radius of a TVA nuclear facility. Residents are cautioned to swallow capsules in the event of a nuclear "incident," not as a radiation remedy but as a tracer substance to measure radiation exposure.

### III. CONCLUSION

The implications of Pacific Gas must be confirmed through additional cases that apply the Court's reasoning. The significance of the decision is clear, however: states no longer can pass the buck to the federal government for the consequences of ill-conceived or poorly constructed nuclear power plants. Pacific Gas removed any remaining doubts. If anything, states now have more authority than the NRC to regulate nuclear power plants.



# LONE TREE COUNCIL

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## Advisory Board

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LAW - CAP COUNCIL

February 13, 1984

The Honorable James Blanchard  
Governor of the State of Michigan  
State Capitol  
Lansing, Michigan

Re: The Midland Nuclear Power Plant

Dear Governor Blanchard:

Over the past several months members of the Lone Tree Council, a mid-Michigan environmental organization, have met with members of your staff. As you know we are concerned with the financial, economic, and environmental problems associated with the Midland Nuclear Power Plant. For the past six years we have opposed the plant's completion as unnecessary and unsafe. In the past two years we have worked actively towards requiring that an independent audit be conducted of the entire plant. That audit began last week as the Construction Completion Plan (CCP) began the first phase of the Quality Verification Program (QVP). At the completion of the QVP (a dynamic reinspection program of 100% of accessible hardware at the site) there will be a perfect opportunity to re-evaluate the future of the Midland plant.

We are submitting to your staff a proposal for an INDEPENDENT COMMISSION TO STUDY THE PROBLEMS PRESENTED BY THE MIDLAND PLANT. Attached to that proposal is an eight-page legal analysis of the role that state's can play in regulating and controlling nuclear power plants in the light of recent U.S. Supreme Court decisions, particularly Pacific Gas and Electric v. State Energy Resources Conservation and Development Commission.

We look forward to your response in the near future.

Sincerely,

Tom Hearron  
Chairperson

AN INDEPENDENT COMMISSION TO STUDY THE  
PROBLEMS PRESENTED BY THE MIDLAND PLANT

PROPOSAL

Submitted by:

The Lone Tree Council  
Michigan



## PROPOSAL

### FOR THE GOVERNOR AND AIDES

An independent commission to study the problems presented by the Midland Nuclear Power Plant, currently under construction in Midland, Michigan by Consumers Power Company (CPCo).

#### RATIONALE:

1. Midland is recognized as one of the most troubled plants in the nation by the Nuclear Regulatory Commission (NRC).
2. It's owner, CPCo, is now the second-worst rated utility investment on Wall Street.
3. The rate increase for the Midland plant will be between 35 -60% for ratepayers of CPCo, if the plant goes on line.
4. The devastation of CPCo if the plant does not go on line will be a major problem for the state government, which will be faced with either an energy reorganization crisis, or a bail out for CPCo.
5. The citizens of Michigan will be forced to increase taxes to either pay the electric bills of those citizens on fixed incomes who cannot afford the higher rates, or to bail out CPCo. if the plants closure forces them into reorganization.

#### WHY AN INDEPENDENT COMMISSION?

1. The Public Service Commission(PSC) has forfeited the opportunity to take control of the Midland project.
2. The PSC staff has lost the credibility needed to perform an unbiased and independent assessment of problems and options.
3. The Nuclear Regulatory Commission does not assess costs or needs.
4. The Attorney General's limited resources are being spent on fighting the inclusion of the plant in the rate base.

#### WHAT PURPOSE WILL THE COMMISSION SERVE?

1. To seek solutions to the impending problems.
2. To recommend to the parties and to the citizens and rate-payers a range of options.
3. To be prepared for dealing with whichever reality comes to pass.

## COMMISSION DETAILS

I. Members and Staff

A. A panel of experts in the following fields should be selected by the Governor:

1. Financial Analyst
2. Energy Analyst
3. Consumer Advocate
4. Business Representative
5. Union Representative
6. Small business representative
7. Community/City representatives
8. Representative for those on fixed-incomes

B. A staff should be hired, with positions coming (on loan) from each effected agency. The Staff for the Commission should work directly under the newly appointed position of Director of the Energy Administration Agency.

II. Activities of Commission

A. Through a series of hearings, solicitations of papers, or other means the Commission should:

1. Identify the problems for the State of Michigan and its taxpayers the result from the Midland plant completion or cancellation.
2. Ascertain the actions planned by the Company for either reality, and the extent to which it is capable and/ willing to assume the burden of social responsibility
3. Employ consultants with expertise in modelling the realities as presented by the Company, and measuring impacts of rates or lost investments on identified groups of customers.
4. Seek solutions from experts in alternative energy sources.
5. Determine a baseline cost over which the plant becomes a negative factor.
6. Make recommendations to the Company, the Public Service Commission, and the public.

III. Legal Authority

Attached is a legal memorandum detailing state authority to involve itself with the construction of nuclear power plants.