

50-358

FEB 1 0 1983

MEMORANDUM FOR: Chairman Palladino

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: ZIMMER INDEPENDENT MANAGEMENT REVIEW PLAN

Attached is a proposed letter to CG&E which conditionally approves Bechtel to perform the independent management review required of the Zimmer project directed by Section IV.B(1)(a) of the Commission's November 12, 1982 Order. The essential elements of the letter are:

- ° Bechtel is acceptable to perform the management audit for CG&E.
- ° A separate independent management organization must be retained by CG&E to assure that the management audit methods, findings, and recommendations of Bechtel are not compromised by the proposed future relationship between CG&E and Bechtel for the Zimmer project. Upon completing its effort, this organization will provide CG&E and the NRC simultaneously with a report documenting its actions and conclusions.
- ° This decision does not relieve the requirement for CG&E to provide an audit organization to review the Quality Verification Program as required under Section IV.B(2) of the Order.

The Office of Investigations has conducted an investigation into allegations that Bechtel was performing services for CG&E at the Zimmer site prior to the dates stated by CG&E and Bechtel in submittals to the NRC. In view of the results of the investigation, we have concluded that Bechtel was not performing prior services. Therefore, I intend to authorize Jim Keppler to issue the letter on February 18, 1983, subject to any comments received from the Commission. No separate public meeting is envisioned regarding

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Chairman Palladino

selection of the independent management organization to overview Bechtel's management review.

(Signed) William J. Dircks

William J. Dircks
Executive Director for Operations

Enclosure
As stated

cc: Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine
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DATE	2/4/83	2/4/83	2/4/83	2/10/83	2/10/83		

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Docket No. 50-358

Cincinnati Gas and Electric
Company
ATTN: Mr. W. H. Dickhoner
President
139 East 4th Street
Cincinnati, OH 45201

Dear Mr. Dickhoner:

By letter dated November 26, 1982, you proposed that Bechtel Power Corporation (Bechtel) be retained as the independent organization to conduct the review of CG&E's management of the Zimmer project required by Section IV.B(1)(a) of the Commission's November 12, 1982 Order. Supplemental information in support of this request was provided with your letters of January 3, 10, and 31, 1983.

We find the selection of Bechtel for this assignment to be consistent with the independence criteria outlined in the Commission's letter of February 1, 1982 to Congressmen Ottinger and Dingell. We believe Bechtel can be of considerable help to CG&E and the Zimmer project based upon its proven success in assisting other utilities with its projects (e.g., South Texas; WNP-2; Diablo Canyon). However, since it appears that you may also propose to retain Bechtel in a substantive role in the completion of the project, you should understand that we would only consider Bechtel eligible for both roles provided that you retain an additional independent organization, acceptable to the NRC staff, to conduct an overview of Bechtel's and CG&E's review, conclusions, and recommendations concerning the management of the Zimmer project pursuant to Section IV.B.(1) of the Order. Enclosure 1 provides our rationale for this decision.

The independent overview organization should be a recognized management consultant and must satisfy the independence standards contained in the Ottinger/Dingell letter. This overview is intended to assure that the management review findings and recommendations are not compromised by the proposed future relationship between CG&E and Bechtel. Upon completing its effort, the independent overview organization shall provide CG&E and the NRC simultaneously with a written report documenting its actions and conclusions.

We look forward to your proposal of an organization to conduct the independent overview of the management review and recommendations. We intend to act as expeditiously as possible on that proposal. Since the public's extensive comments offered on your proposal for approval of Bechtel have been considered in our decision, further opportunity for public comment is not envisioned. Note that this requirement for an additional independent organization to conduct such an overview (Section IV.B.(1) of the order)

Cincinnati Gas and Electric
Company

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would not replace the requirement to include an outside audit organization, which did not perform the activities being audited, in the comprehensive quality verification plan required under Section IV.B.(2) of the Order.

While we have approved CG&E's proposal to use Bechtel to perform the review under Section IV.B(1)(a) of the Order subject to the retention of an acceptable management consultant, certain details pertaining to Bechtel's plans for conducting the management review of CG&E need amplification. To expedite resolution of these matters, we would like to meet with you and Bechtel as early as possible. We propose to hold the meeting in Cincinnati, and make it open to public observation. I will contact you shortly regarding arrangements for the meeting.

I am also enclosing a copy of the protocol which NRC expects to be followed during the management review under Section IV.B(1) of the Order as to contacts between or among CG&E, the independent management reviewer (Bechtel), and the party selected to do the independent overview (Enclosure 2).

The approval granted by this letter is limited to Section IV.B(1)(a) of the Order.

Sincerely,

James G. Keppler
Regional Administrator

Enclosures: As stated

cc w/enclosures: See page 3

Cincinnati Gas and Electric
Company

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cc w/enclosures:

Mr. Earl A. Borgmann
Senior Vice President
J. R. Schott, Plant
Superintendent
J. D. Flynn, Manager
Licensing Environmental
Affairs Department
DMB/Document Control Desk (RIDS)
Resident Inspector, RIII
Harold W. Kohn, Power
Siting Commission
Citizens Against a Radioactive
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Helen W. Evans, State of Ohio
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Jerome A. Vennemann, Esq.
Gretchen Hummel, Ohio
Consumers' Counsel
James R. Williams, State
Liaison Officer, Ohio
Disaster Services Agency

Staff Evaluation of Cincinnati Gas & Electric Co.
Proposal to Conduct the Review of the Management
of the Zimmer Project in Accordance with Section
IV.B(1)(a) of the Commission's November 12, 1982 Order

I. Purpose

The purpose of this document is to provide an evaluation of the Cincinnati Gas and Electric Company (CG&E) response to Section IV.B(1)(a) of the Commission's November 12, 1982 Order. The Order requires an independent review of the management of the Zimmer Project, including management of the quality assurance and quality verification programs. Specifically:

"Accordingly, pursuant to sections 103, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS HEREBY ORDERED THAT: ...

B. The licensee shall show cause why safety-related construction activities, including reworking activities, should not remain suspended until the licensee:

(1) Has obtained an independent review of its management of the Zimmer project, including its quality assurance program and its quality verification program, to determine measures needed to ensure that construction of the Zimmer plant can be completed in conformance with the Commission's regulations and construction permit.

(a) The independent organization conducting this review shall be knowledgeable in QA/QC matters and nuclear plant construction and shall be acceptable to the Regional Administrator. The independent organization shall make recommendations to the licensee regarding necessary steps to ensure that the construction of the facility can be completed in conformance with the Commission's regulations and the construction permit. A copy of the independent organization's recommendations and all exchanges or correspondence, including drafts, between the independent organization and CG&E shall be submitted to the Regional Administrator

at the same time as they are submitted to the licensee. In making recommendations, the independent organization shall consider at a minimum the following alternatives for management of the Zimmer project and shall weigh the advantages and disadvantages of each alternative:

1. Strengthening the present CG&E organization.
2. Creation of an organizational structure where the construction management of the project is conducted by an experienced outside organization reporting to the chief executive officer of CG&E.
3. Creation of an organizational structure where the quality assurance program is conducted by an experienced outside organization reporting to the chief executive officer of CG&E.
4. Creation of an organizational structure with both quality assurance and construction project management conducted by an experienced outside organization reporting to the chief executive officer of CG&E...."

CG&E's response to the Commission's November 12, 1982 Order is contained in correspondence dated November 26, 1982 and January 3, 10, and 31, 1983, to Mr. James G. Keppler.

Although CG&E requested approval for Bechtel to conduct reviews of both Sections IV.B(1) and IV.B.(2) of the Order, this evaluation is limited to Section IV.B(1)(a) of the Order.

II. Selection of Independent Reviewer

CG&E has proposed that Bechtel Power Corporation perform both the management review under Section IV.B(1)(a) and the verification of the quality of construction and the preparation of a comprehensive plan

for the continuation of construction under Section IV.B(2) of the Order. Additionally, CG&E intends to use Bechtel as "a joint manager with CG&E (licensee) of the project until its successful completion." (Letter from W. H. Dickhoner, President of CG&E, to NRC Commissioners, dated November 10, 1982, page 2.) The NRC staff has considered CG&E submittals of November 26, 1982 and January 3, 10, and 31, 1983, the written comments on the November 26 submittal provided by over one hundred members of the public (organizations and individuals), the clarification of submitted comments, and comments received at a public meeting held in Cincinnati on January 5, 1983 and in subsequent correspondence from the Government Accountability Project (GAP). In considering CG&E's proposal, the Staff has used as guidance the letter of February 2, 1982 from Chairman Palladino to Congressmen Ottinger and Dingell, which sets forth the "competence" and "independence" standards that have been applied by the Commission in determining the acceptability of proposed third-party reviewers.

The Staff has considered the qualifications of both the Bechtel organization and the individuals proposed as team members to conduct the independent review of CG&E's management of the Zimmer project. Input to this review included the information supplied in CG&E's submittal, the Staff's existing knowledge of Bechtel's performance at other nuclear power plants and information from members of the public as to Bechtel's competence.

We have considered comments that problems encountered by Bechtel at identified nuclear construction sites (e.g., Midland) demonstrate that Bechtel is not qualified to perform the Zimmer management review. The Staff has considered Bechtel's experience in nuclear projects and has concluded that Bechtel is qualified to perform the Zimmer management review. We also note that Bechtel has proposed a process for review of the findings of the Zimmer team which will bring to bear the full expertise which Bechtel has to offer. Specifically, Bechtel has stated that the Zimmer team will operate independently of the functional management in the Ann Arbor Power Division (AAPD), that the team's findings will be critiqued by the AAPD functional management and that the team's report will also be reviewed by Bechtel Power Management, which works independently of the Divisions and reports directly to the President of the Bechtel Power Corporation.

CG&E's November 26, 1982 and Bechtel's January 14, 1983 letters document specific experience of the proposed Bechtel staff to be assigned to this project. The Staff has reviewed the qualifications of, and has made inquiries regarding, those persons proposed by Bechtel to be assigned to work on the Zimmer management review team.

Based upon its review, the Staff concludes that Bechtel has assigned top quality personnel to the review team. A number of the individuals to be assigned to this review have significant experience through involvement on other projects. Their knowledge and experience in

technical disciplines and in project management demonstrate their competence to conduct the management review at Zimmer.

In view of our findings with respect to the competence of Bechtel as an organization and the competence of the individual review team members, we conclude that Bechtel meets the Staff's technical competence standards.

The Staff also believes that an acceptable organization to conduct a verification program must also be independent of the utility under review. The Commission has defined independence as being the ability "...to provide an objective, dispassionate technical judgment, provided solely on the basis of technical merit" (Page 1 of Responses to Questions, attached to Ottinger/Dingell letter.) The Commission further defined the term by stating that the company approved to conduct an independent review must be one "... not previously involved with the activities. . . that they will now be reviewing...." Id.

The Staff considered the information provided regarding Bechtel's role in the Zimmer project by CG&E and Bechtel and the comments offered by members of the public on the question of independence. We believe that Bechtel meets the standards of independence outlined in the Ottinger/Dingell letter. However, a number of comments noted that Bechtel was contacted by CG&E prior to the issuance of the November 12, 1982 Order regarding assistance it could provide in completion of the

Zimmer facility. We do not believe that this type of limited contact with CG&E or the Zimmer project would disqualify Bechtel from conducting a review of CG&E's management.

In its November 26, 1982 submittal CG&E enclosed a November 23, 1982 "revised proposal" from Bechtel, which referenced an initial Bechtel proposal to CG&E on November 8, 1982. On December 28, 1982 the NRC staff requested that CG&E provide identified additional information, including "... a chronology of meetings between CG&E and Bechtel and site visits by Bechtel employees in connection with this effort." In its response of January 3, 1983 CG&E provided the following chronology:

- (1) it had first contacted Bechtel on November 2, 1982 by telephone regarding Bechtel's capabilities to conduct an assessment of the Zimmer Project management;
- (2) Bechtel made an initial presentation to CG&E on November 5, and a written proposal on November 8, 1982;
- (3) CG&E concluded on November 10, 1982 that Bechtel was the most qualified of the firms interviewed and told Bechtel that it would be advising the Commission of a proposed program utilizing Bechtel's services; and
- (4) On November 12, 1982 the Commission issued its Order.

(January 3, 1983 letter from William H. Dickhoner to James G. Keppler, page 2.)

In a Bechtel letter of December 29, 1982 to CG&E, which was enclosed with the January 3 submittal, Bechtel provided the additional information that its services to CG&E commenced on November 15, 1982.

(December 29, 1982 letter to Mr. Dickhoner from Howard W. Wahl, page 3.)

At the January 5, 1983 public meeting GAP stated that they had information that Bechtel had been on site prior to the dates stated by CG&E and Bechtel, and argued that CG&E and Bechtel may therefore have made material false statements. Tr. at 60-61. In response to the Staff's request for whatever information it had regarding the timing of Bechtel's arrival on site, GAP submitted a letter dated January 20, 1983 in which it stated, "Six witnesses reported that Bechtel had communicated with CG&E or arrived on-site before November 1982."

(Letter of Thomas Devine to James G. Keppler, page 3.) Attached to the letter was an affidavit of one of these witnesses. The contents of that affidavit are summarized in GAP's letter (pages 3 - 4). The key points made in the affidavit were:

- (1) the affiant personally saw Bechtel representatives on site as early as August 1, 1982,

- (2) the affiant identified the individuals in question as being Bechtel employees by the Bechtel logo on their briefcases and suits,
- (3) around August 15, 1982 the Bechtel representatives began to use a double trailer that had been brought on site, and
- (4) the affiant asked one of the individuals why he was on site and the individual responded that the job of the team was to study "code compliance and accountability" at the project and that there were two-hundred people on standby ready to come to Zimmer.

The NRC's Office of Investigation (OI) has conducted an investigation into the matters stated in the affidavit provided by GAP. That investigation included the following areas:

- (1) interviews with the affiant and three other witnesses identified by GAP;
- (2) interviews of CG&E officials;
- (3) review of gate records at the site;
- (4) contacts with local realtors;

- (5) checks of local hotel, motel and rental car records; and
- (6) contacts with consultants to CG&E who had been on site during the summer and fall of 1982.

OI investigated all relevant statements given by the individuals identified by GAP. No corroborating evidence was uncovered by OI to substantiate these statements. The earliest indication of Bechtel presence on site was November 5, 1982, when three Bechtel employees signed in to see Mr. Sylvia (CG&E). This is consistent with CG&E's statement that Bechtel made an initial presentation to it on November 5, 1982.

The OI investigation also developed information which might explain the perception that Bechtel personnel had arrived on site. The investigators determined that there were pervasive rumors at the site during the summer and fall of 1982 that some outside company, perhaps Bechtel, might be coming in to play a key role in the project. Four consulting organizations did arrive at the Zimmer site during the summer, at least two of the employees of these consultants were former Bechtel employees, and one of them did carry a briefcase with a Bechtel logo.

On the basis of the OI investigation, the staff has been unable to identify any support for the statements made by the individuals identified by GAP. We conclude, therefore, on the basis of the investigation that CG&E and Bechtel did not make material false statements in submittals to the NRC.

At the January 5, 1983 public meeting and in subsequent letters, the Coalition for Affordable and Safe Energy (CASE) and GAP asserted that Bechtel would have a financial conflict-of-interest affecting its objectivity in reviewing CG&E's management of Zimmer because Bechtel wholly owns Dillon, Read & Co. Inc. (Dillon, Read), an investment banker which has participated in underwriting debt and equity of the three owners of the Zimmer facility. In letters dated January 10 and 31, 1983, CG&E has transmitted information from Bechtel regarding the ownership relationship between the Bechtel family and Dillon, Read and the percentage of Dillon, Read's business that is represented by its underwriting for CG&E, Dayton Power & Light Company, and American Electric Power Company (parent of Columbus & Southern Ohio Electric Company). On the basis of these materials, the Staff concludes that there could only be a speculative and remote effect on Dillon, Read's business as a result of any recommendations of Bechtel Power Corporation with respect to the Zimmer project. Bechtel states that it "... has no intention of permitting the financial interests of Dillon, Read & Co. Inc., to interfere with the independent exercise of its judgment as a professional engineering firm." Letter of H. W. Wahl (Bechtel) to William H. Dickhoner (President, CG&E), dated

January 31, 1983, page 2. The Staff concludes that the financial relationship between the Bechtel family and Dillon, Read does not compromise Bechtel's ability to conduct an independent review of CG&E's management of Zimmer.

Notwithstanding the Ottinger/Dingell letter, we also believe it is necessary to consider whether CG&E's intention to use Bechtel as a joint manager for completion of the facility and for purposes of assistance in meeting the requirements of Section IV.B(2) of the Order compromises Bechtel's independence to perform the management review function. While the Staff expects Bechtel to conduct an objective review of CG&E management, the Staff believes that a separate independent party should be retained to conduct an overview of Bechtel's review and conclusions under Section IV.B(1)(a) and CG&E's recommendation under Section IV. B(1)(b) of the Order. This is required because the proposed subsequent role of Bechtel could adversely affect their ability to perform the independent management review. This separate independent party must be acceptable to the NRC and should be a recognized management consultant which meets the Staff's independence standards. In this manner, CG&E will have the benefit of Bechtel's expert advice of its management of the Zimmer facility and the NRC will be further assured that the proposed relationship between Bechtel and CG&E does not compromise the recommendations made by CG&E under Section IV.B(1)(b) of the Order.

III. Review Program

Bechtel's proposed outline and scope for their management review of Zimmer was submitted to the NRC with CG&E's November 26, 1982 response. The Staff has reviewed this outline and scope and finds it acceptable. Some remaining details, however, need to be clarified. To resolve the Staff's detailed questions, a meeting, open to the public, should be held to obtain additional information from CG&E and Bechtel regarding details associated with Bechtel's proposed plan of action.

IV. Summary and Conclusion

Based on the Staff's review of the documentation submitted by CG&E and the verbal and written comments of members of the public, we conclude that Bechtel meets the Staff's independence and competence criteria for third party reviewers. However, since a significant amount of concern has been raised regarding the planned dual role of Bechtel, the Staff believes that an independent overview of Bechtel's review and conclusions and CG&E's recommendations is required.

COMMUNICATIONS BETWEEN AND AMONG CG&E, INDEPENDENT MANAGEMENT
REVIEWER (BECHTEL), AND INDEPENDENT OVERVIEWER

In order to ensure the "arms length" relationship between CG&E (including its contractors and subcontractors), the independent management reviewer (Bechtel), and the independent overviewer, while at the same time not unduly restricting the ability of all to complete their efforts, the following protocol shall be adhered to:

1. Consistent with the Commission's November 12, 1982 Order, recommendations, findings, evaluations and all exchanges of correspondence, including drafts, between the independent management reviewer and CG&E will be submitted to the Regional Administrator at the same time as they are submitted to the licensee. Since the Regional Administrator has additionally required CG&E to propose an independent management consultant to conduct an overview of the management reviewer's and CG&E's review, conclusions, and recommendations concerning the management of the Zimmer project, the above requirements will also apply to that organization.
2. The independent management reviewer and the independent overviewer have a clear need for prompt access to whatever information they require to fulfill their roles as described in the Commission's November 12, 1982 Order and in the cover letter to this protocol. To this end, the independent reviewer and overviewer may request documentary material, meet with and interview individuals, conduct

telephone conversations, or visit the site to obtain information without prior notification to the NRC. All communications and transmittals of information shall, however, be documented and such documentation shall be maintained in a location accessible for NRC examination. To the extent that any individual contacted or interviewed requests that his or her name not be revealed, that information need not be included in the documentation but shall, if requested, be made available to appropriate NRC personnel.

3. If the independent reviewer or overviewer wishes to discuss with CG&E substantive matters related to information obtained, to provide an interim report to CG&E, or to discuss its findings or conclusions with CG&E in advance of completing its report, or if CG&E desires such communication, such discussions shall be accomplished in meetings open to public observation. In this regard, CG&E shall provide a minimum of five days advance notice to the Regional Administrator of any such meeting. The Regional Administrator shall make reasonable efforts to notify representatives of interested members of the public of the meeting, but the inability of any person to attend shall not be cause for delay or postponement of the meeting. Transcripts or written minutes of all such meetings should be prepared by the organization requesting the meeting and provided to the NRC in a timely manner. Any portion of such meetings which deals with proprietary information may be closed to the public.

4. All meetings between the Staff and CG&E, the independent reviewer, and/or the independent overviewer will be open to public observation, except where the Staff deems it appropriate.
5. All documents submitted to, or transmitted by, the NRC subject to this Protocol will be placed in the NRC Public Document Rooms in Batavia, Ohio, and Washington, D.C., and will be available there for public examination and copying.