

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

1901 Que Street, N.W., Washington, D.C. 20009

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January 20, 1983

Mr. James Keppler
Regional Administrator, Region III
U.S. Nuclear Regulatory Commission
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Dear Mr. Keppler:

At the January 5, 1983 public meeting on Cincinnati Gas and Electric's (CG&E) proposal of the Bechtel Corporation to administer the third party program at the Zimmer nuclear power station, Region III counsel Stephen Lewis requested that public critics produce evidence for two serious challenges to the Bechtel nomination. On behalf of the Miami Valley Power Project (MVPP), the Government Accountability Project (GAP) presents this response, as well as supplemental comments.

More specifically, Mr. Lewis challenged critics to produce evidence that Bechtel first arrived on-site at Zimmer to begin work before November 15, 1982 -- the date specified by CG&E and Bechtel for the latter's arrival. Second, Mr. Lewis suggested that we present the full scope of financial conflicts-of-interest due to underwriting purchases of Dayton Power and Light stock by Dillon, Read and Co., Inc., an investment company wholly-owned by Bechtel since June 1981.

During the last two weeks GAP has researched these issues diligently. We have obtained evidence that Bechtel has been on-site continuously at Zimmer since August 1, and after August 15 operated out of a double wide trailer that served as headquarters for its site team. Further, a review of records at the Securities and Exchange Commission reveals that from 1973-82 Dillon Read has purchased at least \$49,415,000 in bonds from the three utilities that own Zimmer, as well as 571,000 shares of stock. Further, Dillon Read co-managed the sale of \$80,000,000 in bonds and 7,100,000 shares of stock for Columbus and Southern Ohio Electric (CSO&E) between 1973-76.

I. BECHTEL'S ACTIVITIES AT ZIMMER SINCE AUGUST

A. Background

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In public comments on CG&E's November 26, 1982 nomination of Bechtel, critics suggested that the latter's work for CG&E before the Commission's November 12 Order compromised Bechtel's ability to make an independent assessment of the safety hazards at Zimmer and their causes. Most commenters referred to November 1982 communications

between CG&E and Bechtel. The MVPP comments went a step further: "GAP has received reports since August of Bechtel teams on-site at Zimmer to prepare its workplan. There is no question that developing a program to finish the plan[t] constitutes direct involvement with the Zimmer project, months before the Commission acted." (December 6, 1982 letter from GAP to James Keppler, at 6.)

As a result of the public comments, in a December 28, 1982 letter to CG&E and Bechtel you raised a series of key questions about the nomination. In particular, your first inquiry was as follows:

Please provide all documents and a discussion of any oral understanding related to CG&E's plans to utilize Bechtel as described in your November 10, 1982 letter to the NRC Commissioners and activities contemplated in response to the November 12, 1982 Commission Order. Include with this response a chronology of meetings between CG&E and Bechtel and site visits by Bechtel employees in connection with this effort.

On January 3, 1983 CG&E President William Dickhoner answered that -- on November 2, 1982 the utility contacted Bechtel and other firms; on November 5 Bechtel made an initial presentation off-site; and between November 15, 1982 and December 22, 1982 visited the site on 16 occasions. Similarly, a December 29, 1982 letter from Bechtel Power Corporation Vice President and General Manager Howard Wahl fails to mention any site visits before November 15, 1982.

The subject was discussed at the January 5, 1983 public meeting. In response to an inquiry whether Bechtel's failure to disclose the August visits would constitute a material false statement, Mr. Lewis explained that the early activities would have been within the scope of the December 28 question. (Transcripts, at 60.) Counsel then confirmed the seriousness of this factual dispute in the following exchange:

MR. DEVINE: Well, as you know, since the plant was shut down, a lot of the witnesses have scattered around the country. Some of the best quality assurance personnel at Zimmer were laid off when work was suspended. If I am going to fly around the country and gather these affidavits, I want to know if it makes a difference. If Bechtel gave material false statements in response to your December 28 letter, are you going to trust the safety of this community to their judgment for the rest of the Zimmer project?

MR. KEPPLER: I think the answer to that question is, if Bechtel responded falsely, it will be treated as a serious matter, yes.

B. GAP Investigation

After the January 5 meeting, GAP contacted a series of former

Zimmer employees to confirm and clarify their earlier informal reports of Bechtel visits on-site since August. Six witnesses reported that Bechtel had communicated with CG&E or arrived on-site before November 1982. Five of the witnesses were working at Zimmer when the Commission issued its November 12 Order suspending all safety-related construction. One witness provided an affidavit, which is enclosed as Exhibit 1. In his disclosure the witness reported that he had confirmed the accuracy of his statement with four other ex-Zimmer employees, who had agreed to speak with the Federal Bureau of Investigation (FBI). Four of the five witnesses contacted by GAP who did not provide affidavits stated that they would speak with the Federal Bureau of Investigation or the NRC's Office of Investigations.

Taken in combination, the Zimmer witnesses provided the following information:

- 1) On August 1 a team of Bechtel employees arrived on-site at Zimmer. They entered through the north gate. The Bechtel team wore visitors passes the first day at the plant, although the passes were not seen subsequently.
- 2) The witnesses initially identified the team with Bechtel, because the members wore suits emblazoned with the Bechtel logo. Although the team members wore CG&E hardhats the first day, they later switched to Bechtel hardhats. One team member stated that the group was from Bechtel.
- 3) The Bechtel team was on-site continuously from August 1 at least through the Commission's November 12 Order. Initially, there were six Bechtel representatives. The team later increased to eight, and eventually to at least 12 members at the time of the shutdown.
- 4) For the first two weeks the team worked out of the "head shed" -- the main building for all construction managers. On approximately August 15 a double wide trailer was installed for the team. The location of the trailer is circled on a copy of an aerial photo enclosed as Exhibit 2. The team members were seen entering and leaving this trailer, which was not marked with the corporate seal.
- 5) A member of the Bechtel team stated that the group was there to do a study of code compliance and accountability, to see if the plant could be completed feasibly within normal quality assurance (QA) requirements. They were to submit a report to CG&E Vice President Earl Borgmann. The same representative stated that Bechtel had a team of 200 employees on stand-by to come in for a larger project. A Bechtel executive in charge of construction at Midland was slated to run the Zimmer audit.
- 6) Bechtel's work at Zimmer was widely known and discussed among employees on-site, who believed the firm was being eased in to replace the Kaiser Corporation. Only two of six GAP witnesses personally saw specific Bechtel identification, however.

7) One witness reported in an affidavit that in late August or early September NRC Resident Inspector Fred Christianson stood beside Bechtel representatives to observe work on a hanger.

In light of the NRC staff's previous failure to recognize the scope of Zimmer quality assurance violations until pressed by whistleblowing disclosures, the last allegation is particularly disturbing.

Overall, you have stated that if verified these charges are very serious. In our opinion, these findings independently mandate that you reject the Bechtel proposal, or at least withhold approval until proper authorities can investigate what we believe are material false statements in response to your December 28, 1982 letter on the Bechtel nomination. Further, if CG&E provided misleading or inaccurate statements to support the Bechtel nomination, it should be disqualified from making future nominations. Surely, an "independent" third party cannot provide an "objective" evaluation of the same type issues that it has been working on secretly for CG&E since August -- over three months before the NRC-imposed shutdown. It is not likely that the public will have confidence in eventual third party conclusions, either, if the initial selection process is tainted by deception.

II. FINANCIAL CONFLICTS-OF-INTEREST

At the January 5 meeting, Phil Amadon, Chairman of the Coalition for Affordable and Safe Energy (CASE), reported that Dillon, Read and Co., a wholly-owned Bechtel subsidiary, acquired \$1.5 million in bonds in 1982 from Dayton Power and Light (DP&L), one of the Zimmer owners. Mr. Amadon observed, "[I]f our city council people are responsible enough to remove themselves from voting after dealing with CG&E stocks, we think it might be reasonable to ask Bechtel, which wholly owns Dillon and Reed [sic], to remove themselves from auditing a plant in which they have some financial interest...." (Transcript, at 51.) Mr. Lewis requested that any more complete research be submitted for the record. (Id., at 51-2.)

GAP has checked Standard and Poor's listings to confirm that Dillon Read is a Bechtel subsidiary. In a January 19, 1983 telephone conversation, a Dillon Read representative informed Mr. Amadon that Bechtel acquired the investment firm in June 1981.

GAP has researched a wide sample of utility SEC disclosures back to 1973. Put simply, the firm has an active history as an underwriter for all three utilities which own Zimmer -- CG&E, DP&L, and C&SOE. On balance, Dillon Read participated in purchasing \$129,415,000 in bonds and 7,671,400 shares of stock between 1973-82. Included in this total are \$80,000,000 in C&SOE bonds and 7,100,000 shares of C&SOE stock for which Dillon Read served jointly with the Ohio Company as managing underwriters. Since June 1981 Dillon Read has purchased \$15,440,000 in bonds and 130,000 shares of stock. Statistical summaries for relevant SEC reports are enclosed as Exhibits 3A-3C, respectively.

This research establishes a financial conflict-of-interest.

A subsidiary of the "independent" judge of Zimmer traditionally has purchased and traded significant amounts of stock for utilities that own the Zimmer plant. In light of the potential financial consequences from an aggressive audit and quality verification plan, Bechtel forfeited its objectivity for a job at Zimmer when it purchased Dillon Read in 1981.

The research also is significant with respect to the NRC's own financial independence criteria. A literal reading of the Commission's independence criteria reveals that conflicts due to ownership or control of significant amounts of stock only apply to individuals, not corporations. As the Bechtel case indicates, the omission creates a gaping loophole that could taint any third party review.

C. SUPPLEMENTAL COMMENTS

A. Competence

At the January 5 meeting you were unimpressed that Bechtel had to lay off over 1,000 employees at the Midland site for a quality assurance breakdown -- less than three weeks after the Zimmer shutdown. Similarly, you were not impressed that Consumers Power Company previously had sued Bechtel for "gross negligence" in constructing the Palisades plant in Michigan, or that Bechtel settled the suit instead of contesting it. Reports of falsified QA records and intimidation of quality control inspectors during Bechtel's construction of the Alaska pipeline did not faze you. Instead, you explained that "if you take a critical look at the performance of almost anybody in the nuclear industry, you can find there are jobs that have been done very well and there are jobs that have not been done so well." (Transcript, at 128.)

GAP strongly believes that this evaluation standard is irresponsible. The third party chosen to evaluate the Zimmer QA breakdown will have an enormous responsibility. Fundamental breakdowns in Bechtel's QA programs cannot be brushed aside merely because all organizations have problems. That is precisely why a nuclear construction firm should not be selected to evaluate construction at another nuclear plant, and why CG&E should be required to prove that any alternative choice has an unsurpassed record for quality of its audits and other quality assurance/quality control work. Even if there is a five out of six chance that Zimmer is one of the jobs that Bechtel does "very well," that is no better odds than playing Russian Roulette with public safety.

B. Intolerance of Dissent

After the history of retaliation, intimidation and vindication of whistleblowers at Zimmer, it is essential that any third party

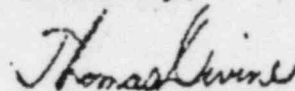
Mr. Keppler Page 6

has legitimacy with those who have challenged QA violations. This would not be possible with Bechtel. As stated at the January 5 meeting, if the gag order in Bechtel's standard employment contract had been enforced at Zimmer, the problems at the plant would have gone undetected.

Second, the gag order reveals Bechtel's institutional intolerance of dissent. In light of Bechtel's dominance within the nuclear industry, any employee who works cooperatively with the third party will risk professional suicide within the industry.

MVPP believes that the Bechtel nomination should be rejected due to a lack of independence, financial and functional conflicts of interest, an insultingly deficient audit plan, an erratic track record and a history of internal repression. Even if you are not moved by these deficiencies, we urge you at least to withhold judgment until the allegations of misleading or false statements are resolved.

Sincerely,



Thomas Devine
Legal Director

U.S. NUCLEAR REGULATORY COMMISSION
REGION III

OUTGOING TRANSMISSION SERVICE REQUEST

1-20-83

Number of Pages

16

17 + cover

(Name): R. F. WARNICK, Acting Director, OSC, RIII

From: T. P. GWYNN, RI, Zimmer

Description: G A P DOCUMENT PROVIDED BY

COURIER

Mr Rights Bldg

/W Towers

Street

FOR WP & D/C USE

System 6 (WP)

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*picture
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EXHIBIT 3A

COLUMBUS & SOUTHERN OHIO ELECTRIC STOCK AND BOND PURCHASES BY DILLON, READ & CO., INC.

Date	Form	Page	Bonds	Stocks (shares)
5/12/82	S-16	12 (09)	\$10,040,000	
5/13/81	S-16	20 (24)		79,200
4/08/81	S-A	63 (74)	\$10,000,000	
10/01/80	S-7	63 (36)		125,000
10/01/80	S-7	63 (34)	\$10,000,000	
6/27/75	S-A	36	\$4,625,000	

D.R. ALONG WITH THE OHIO COMPANY SERVED AS A MANAGING UNDERWRITER FOR THE FOLLOWING STOCK AND BOND PURCHASES:

10/22/76	S-7	01		1,000,000
4/29/76	S-7	01		2,000,000
6/20/75	S-7	01		2,000,000
6/18/75	S-7	01	\$50,000,000	
12/17/74	S-7	01	\$30,000,000	
2/17/74	S-7	01		1,200,000
4/26/73	S-7	01		900,000

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6/18/75	S-7	01	\$50,000,000	
12/17/74	S-7	01	\$30,000,000	
2/17/74	S-7	01		1,200,000
4/26/73	S-7	01		900,000

EXHIBIT 3B

DAYTON POWER & LIGHT STOCK AND BOND PURCHASES BY DILLON, READ & CO., INC.

Date	Form	Page	Bonds	Stocks (shares)
3/09/82	S-16	10 (11)	\$1,500,000	
3/04/82	S-16	01		80,000
9/22/81	S-16	24	\$1,980,000	
5/05/81	S-16	07		60,000
2/09/81	S-A	10	\$1,500,000 ¹⁵⁰	
7/14/80	S-A	09		8,000
12/14/79	S-A	10	\$1,350,000	
10/25/77	S-A	29	\$1,000,000	
9/27/74	S-7	23	\$750,000	

EXHIBIT 3C

CINCINNATI GAS & ELECTRIC STOCK AND BOND PURCHASES BY DILLON, READ & CO., INC.

Date	Form	Page	Bonds	Stocks (shares)
6/25/82	S-16	24	\$2,000,000	
1/09/82	S-16	7 (10)		50,000
5/13/81	S-16	9 (10)	\$2,125,000	
1/28/81	S-16	7 (10)		42,500
1/08/81	S-16	8 (09)		7,200
12/21/79	S-16	25		54,500
12/21/79	S-16	09 (10)		10,000
12/21/79	S-16	08 (11)		48,000
9/23/76	S-7	24	\$1,150,000	
12/5/75	S-7	22		7,000
3/27/75	S-7	23	\$900,000	
10/18/74	S-7	20	\$925,000	