

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

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December 21, 1982

Mr. James G. Keppler
Regional Administrator
United States Nuclear
Regulatory Commission
Region III
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Dear Mr. Keppler:

I am writing to seek your explanation for the contents of the enclosed November 24, 1982 memorandum from Stephen H. Lewis for the Region III files. The memorandum summarizes a November 17, 1982 meeting between Region III, Cincinnati Gas and Electric ("CG&E") and the Bechtel Ann Arbor Power Division ("AAPD"). The contents of this memorandum deeply disturbed me, in light of previous conversations with Mr. Davis of your staff. It raised serious questions in my mind whether your office has been communicating in good faith with the Government Accountability Project ("GAP").

The background for my concerns are as follows: On November 15, 1982 I learned of an upcoming meeting between the NRC staff and CG&E, to discuss the Commission's November 12 shutdown order. I immediately contacted your office to seek permission for the public to observe this meeting. As you recall, previously on October 19, you had permitted the general public to attend an enforcement meeting in order to honor the Commission's pledge for informed public oversight in the absence of reopened licensing hearings.

After first being told you were in a meeting, I called again and was informed that you had just left town but would call when you returned to Chicago. When I persisted, Mr. Davis took the call. He denied my request for public attendance but promised to consult with you personally when I protested. Mr. Davis emphasized that

contrary to GAP's previous suspicions, this was not a "backroom meeting" to make any "secret deals" or arrangements of which the public should be informed. The next day Mr. Davis reaffirmed your decision to exclude the public from the meeting. He stated that the meeting had to be closed for you to frankly and without inhibition explain the Commission's November 12 shutdown of Zimmer. He added that the meeting would provide technical clarification of the terms in the Commission's November 12 Order.

I took Mr. Davis at his word and defended your decision as reasonable to media and other public representatives who were concerned. After receiving the November 24 memorandum it is clear that I was mistaken. The memorandum states that representative of Bechtel's AAPD attended the afternoon portion of the November meeting. According to the memorandum, at the meeting Region III advised, inter alia, that in any proposal for AAPD to assume third-party oversight duties at Zimmer, CG&E should explain AAPD's own management capabilities in light of its performance at the Midland station. (In less than two weeks 1,000 Bechtel AAPD employees would be laid off at Midland due to a QA breakdown strikingly similar to the disaster CG&E wanted it to audit at Zimmer.) Further, the NRC advised AAPD that if selected it should feel free to discuss issues directly with the NRC without going through CG&E. AAPD responded that if selected to help CG&E manage construction of Zimmer, the third party normally would bring its findings first to the utility. The memorandum does not disclose any NRC objection to AAPD's intention. (November 24 Memorandum, at 3-4.)

In our opinion, this memorandum indicates that Mr. Davis' reassurances were inaccurate in the end. In effect, the NRC staff counseled CG&E on how to obtain approval of Bechtel's competence before the utility even submitted the choice. It is hard to imagine Region III rejecting CG&E's proposal if it is tailor-made to the specifics of your suggestions.

Further, the Region III position that AAPD should "feel free" to communicate with the NRC before CG&E, either relaxes the terms of the Commission's November 12 Order or at best outlines to CG&E a way to circumvent a key provision. Section IV.B.(1)(a) of the November 12 Order requires that "a copy of the independent organization's recommendations and all exchanges of 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."

Mr. Keppler

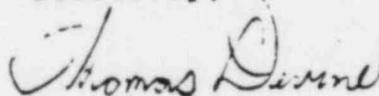
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In our opinion, there is little question that "correspondence" covers oral discussion as well as written communication. Even if Region III's advice were linguistically correct, however, the NRC suggestion-- and silence when Bechtel tentatively declined the advice-- infers an acceptable method to circumvent the intent of the November 12 Order by transforming the "independent" review to a cooperative partnership. (Bechtel's announcement that it would reject the NRC's advice if it assumed construction responsibilities also underscores the conflict-of-interest concerns we raised in our December 15 comments, if the same organization manages both quality verification and subsequent rework/construction.)

Mr. Keppler, it appears that Region III is participating in a process that will introduce a new definition to the English language--one where "independence" is synonymous with "collusion." It is understandable why the process is being conducted in secret. We at GAP implore you to open up the third-party reform to the public that must live with its consequences. Further, for GAP to take future Region III reassurances at face value, it is essential that you explain how I was so severely misled if your office dealt with me in good faith.

Sincerely,



Thomas Devine
Legal Director