



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

AUDIT REPORT

DOE-OIG-18-17

February 2018

**THE OFFICE OF FOSSIL ENERGY'S
OVERSIGHT OF THE
TEXAS CLEAN ENERGY PROJECT
UNDER THE CLEAN COAL POWER
INITIATIVE**



Department of Energy
Washington, DC 20585

February 8, 2018

MEMORANDUM FOR THE ASSISTANT SECRETARY, OFFICE OF FOSSIL ENERGY

A handwritten signature in cursive script that reads "Sarah B. Nelson".

FROM: Sarah B. Nelson
Assistant Inspector General
for Audits and Administration
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on “The Office of Fossil Energy’s Oversight of the Texas Clean Energy Project Under the Clean Coal Power Initiative”

BACKGROUND

The Department of Energy’s Clean Coal Power Initiative (Initiative) is a partnership with industry to demonstrate advanced coal-based technologies. The Initiative’s goal is to accelerate commercial deployment of promising technologies to ensure the nation has clean, reliable, and affordable electricity. The Department’s Office of Fossil Energy (Fossil Energy), through its National Energy Technology Laboratory, is charged with the implementation of the Initiative. In January 2010, Fossil Energy awarded the Texas Clean Energy Project (Project) a \$1.7 billion cooperative agreement under the Initiative. The Department’s original share of the Project’s total cost was \$350 million, which was later increased by \$100 million. The awardee, Summit Texas Clean Energy LLC (Summit), was to provide the remaining costs.

In our special report on *The Department of Energy’s Continued Support of the Texas Clean Energy Project Under the Clean Coal Power Initiative* (OIG-SR-16-02, April 2016), we noted that significant project delays had occurred due to the Project’s inability to secure private financing. In addition, we noted that the Department had taken actions that increased its financial risk without assurances that the Project would succeed. Subsequent to our review, the Department terminated the cooperative agreement with Summit due to its inability to secure funding. The purpose of this follow on report was to determine whether Fossil Energy effectively and efficiently managed financial aspects of the Project under the Initiative.

RESULTS OF AUDIT

Fossil Energy had not always effectively and efficiently managed financial aspects of the Project.

Specifically:

- We found Fossil Energy had not effectively implemented ongoing invoice review controls it put in place to manage the risks associated with this complex project. Our audit identified numerous instances, valued at over \$38 million, where requests for reimbursement and cost-share contributions submitted throughout the period of performance were approved by Fossil Energy without sufficient documentation provided with the invoices to justify approval. Although Fossil Energy approved some invoices on a periodic basis that did not have sufficient justification, the annual compliance audits of the contractor's costs conducted by an external firm did not take issue with the costs billed to the Department based on test work performed. As a result, we are not questioning these costs. We did not test Summit's records supporting these transactions¹ because it was outside the scope of the audit and the costs were subject to a subsequent external audit that found no significant issues. Our audit focused on the process Fossil Energy used to approve invoices, not on the supporting cost records maintained by Summit.
- We directly identified over \$2.5 million in expenditures Summit charged to the Project that we questioned as potentially unallowable, including over \$1.2 million in potential lobbying costs and \$1.3 million in questionable or prohibited travel-related expenses. Additionally, we identified concerns with certain amounts reported by Summit as part of its cost share.²

The issues identified occurred, in part, because Fossil Energy had not always exercised sound project and financial management practices in its oversight of the Project. In particular, Fossil Energy had not ensured that project management policies and procedures in regard to ongoing invoice reviews were followed. Additionally, the costs we questioned were charged to the Project because neither Summit nor Fossil Energy identified the costs as potentially unallowable in Summit's preparation and review of expenditures.

In June 2016, Fossil Energy officials initiated actions to terminate the Project, citing the findings identified in our prior report. We believe that Fossil Energy should thoroughly evaluate and address the issues identified in this report, and apply lessons learned to other similar projects. Therefore, we made several recommendations that, if fully implemented, should improve Fossil Energy's control over financial aspects of projects under its purview.

Subsequent to our review, Summit filed for Chapter 7 bankruptcy in October 2017. Issues related to the bankruptcy were outside the scope of this audit and consequently, are not addressed in this report.

¹The objective of our audit was focused on Fossil Energy's management of the Project, as such, our audit did not include comprehensive testing to determine whether all costs submitted by Summit were allowable, allocable, and reasonable.

² Cost share is the portion of the allowable project costs that must come from non-Federal sources.

Invoice Reviews

We found that Fossil Energy had not effectively implemented ongoing invoice review controls it put in place to manage the risks associated with this complex Project. Due to the high risk nature of this Project, Fossil Energy had made a decision to put Summit on the reimbursement method of payment in which it must provide documentation of its expenditures before periodic reimbursement or acceptance of reported cost-share contributions. This method differs from the advance payment process where recipients do not have to provide documentation before acceptance of their expenditures. Reimbursing Summit's invoices without adequate documentation of expenditures, placed Fossil Energy at a higher than necessary risk of reimbursing questionable or unallowable costs.

Under the terms of the award, Fossil Energy was to obtain sufficient documentation supporting Project costs prior to reimbursing Summit and approving its cost share. Fossil Energy invoice review procedures provide guidance on the types of documentation Federal project officials were to obtain and review to ensure that costs were allowable and work performed was necessary to achieve Project objectives. Despite these requirements, we identified numerous instances, valued at over \$38 million where expenditures were continuously approved without obtaining and/or reviewing adequate detail; information necessary to track and evaluate progress. Our findings address invoices submitted by Summit to Fossil Energy and did not include an audit of Summit's cost records. Specifically, we found that Fossil Energy approved:

- Approximately \$16.9 million in subcontractor costs supported by invoices which did not include details regarding the nature of services provided or hours worked; information needed to determine the allowability and reasonableness of the costs. Our review of documentation provided by Summit to Fossil Energy for one subcontractor revealed that the monthly fee fluctuated between \$20,000 and \$50,000; however, none of the invoices included a justification for the changes. On one of the invoices, we noted that the original monthly fee was crossed out and replaced with a new, higher fee with no explanation for the adjusted amount. In order for professional services to be allowable, Federal regulations require that invoices contain sufficient detail on the nature of services and time expended. Additionally, Fossil Energy invoice review guidance states that subawards having a value of \$100,000 or more are required to have the same level of detail as required of the prime recipient.
- Almost \$10.8 million in labor and fringe benefit charges for Summit employees without adequate supporting documentation. According to Fossil Energy project management guidelines, cost information provided to support invoices for projects that are complex or high risk should include labor expense for the period by subtask, indicating labor category, hourly rate, hours and cost. Despite this direction, labor expenses were approved without this level of detail. This was of concern since about 65 percent, or approximately \$7 million, was charged for seven executives who held positions for multiple entities affiliated with Summit. We found that one of the executives concurrently served as the Chief Financial Officer for the Project, its holding company, one of its parent companies, and the parent company's overseas affiliate. Because Fossil

Energy had not received documents (such as timecards) to support costs charged, it could not verify that all the hours charged for these individuals were allocable to the Project.

- Over \$8.2 million in subcontractor costs without support demonstrating the actual amount of payments made. These costs were supported by invoices that were not in U.S. currency and did not contain details regarding the actual exchange rate in effect at the time of payment. Instead, we found that the subcontractor expenses were charged to the Project based on an amount calculated using estimated exchange rates. Without detailed support, neither Fossil Energy nor we could determine the true amount paid to the subcontractors, potentially leaving the Department vulnerable to overcharges.
- Approximately \$2.9 million in subcontractor and consultant costs charged to the Project that were unsubstantiated. Specifically, our review of documentation maintained in Fossil Energy's official files revealed that it had not received any support for these costs, yet they were still approved.

In addition to placing Summit on the reimbursement method of payment, Fossil Energy mitigated its financial risk by requiring Summit to provide external audits of its expenditures. In this case, the external audits found no significant findings or questioned costs. Because we did not independently test Summit's records supporting the transactions described above, and because they were subsequently subject to an external audit that found no significant issues, we are not questioning those costs. However, we noted that these audits were not typically conducted until well after Summit had been reimbursed. Requiring documentation at the time of reimbursement allows Fossil Energy to timely identify and act on questionable reimbursement requests.

Monitoring and Oversight

The issues identified occurred, in part, because Fossil Energy had not always exercised sound project and financial management practices in its oversight of the Project. In particular, Fossil Energy had not ensured project management policies and procedures in regard to ongoing invoice reviews were followed. As noted above, Fossil Energy was required to, but did not, obtain sufficient supporting documentation prior to reimbursing Project costs and approving cost-share contributions. Without such information, Fossil Energy was at greater risk of reimbursing costs charged to the Project that were not allowable, reasonable, or necessary.

Furthermore, the Contracting Officer did not take actions to address concerns raised about the level of invoice documentation provided. The Federal Project Manager and Contract Specialist had noted variations in the level of detailed documentation provided by Summit to support its expenditures. In particular, the Contract Specialist expressed concerns regarding the adequacy of documentation provided by Summit, noting that it did not contain enough detail to allow Fossil Energy to determine the relevance and necessity of the work billed. The Contract Specialist also noted that information was not always presented in a consistent and easily understood manner. Furthermore, this same official indicated that even though discussions were held with Summit officials regarding invoice backup documentation, the level of detail provided had not changed. Despite the concerns, Fossil Energy officials continued to approve, on a periodic basis, invoices

submitted by Summit. To its credit, as noted earlier, Fossil Energy required Summit to provide external audits of its expenditures as part of its monitoring and oversight process. The purpose of these audits was to determine, based on a sample of expenditures, whether Summit had an internal control structure that provided reasonable assurance it was managing the award in compliance with Federal laws and regulations as well as the terms and conditions of the award. We reviewed external audits of Summit conducted during the term of the award and noted that these audits did not identify any significant findings or questioned costs.

Unallowable Costs

During our audit, we directly identified over \$2.5 million in expenditures Summit charged to the Project that we questioned as potentially unallowable. Although our audit objective focused on Fossil Energy's management of this Project, our audit scope and methodology included limited expenditure work directly at Summit, as described in Attachment 1.

In particular, we identified over \$1.2 million in charges for three consultants that appeared to be for lobbying services, which are prohibited costs. Under Federal regulations, expenses associated with activities to influence Government officials regarding legislative matters are unallowable. During our review of consultant agreements maintained by Summit, we noted that three contained language in the scope of work related to legislative matters, which led us to question whether the costs were for lobbying activities. For instance, language included in one of the agreements, identified tasks such as meeting with and soliciting support for the Project and assisting in soliciting financial incentives for the Project from appropriate Government officials. Adding to our concern, we found that this consultant participated in discussions with law firms working on behalf of the Project whose services had separately been deemed unallowable lobbying costs. We noted that this consultant participated in meetings with the law firm, congressional staff, and lobbying firms concerning Summit's efforts to gain support for changes in tax legislation. This issue was troublesome since this consultant's fees made up over \$1 million of the questionable costs.

For the remaining \$230,000 in potential lobbying costs, we reviewed the consulting agreements for two other firms and noted that each organization had descriptions of work that appeared to be for lobbying services. As an example, the consulting agreement for one of the firms noted the consultant would provide services such as lobbying in support or in opposition to legislation, rules, policies, or programs that may affect the client and informing the client about political occurrences in election campaigns significant to its interests. We reviewed the Website for the firm and found that it outlined the services performed for Summit, which included meetings with members of Congress to secure support for the Project. The Website indicated that its efforts resulted in a revision to legislation regarding tax credits for clean energy projects.

We also identified over \$1.3 million in charges for questionable or prohibited travel related expenses. For example, we identified over \$650,000 in consultant charges for items such as a spa service, alcohol, first-class travel, limousine services, receipts in foreign currency, and business meals that were prohibited or not fully substantiated. Notably, almost half of this amount was for one consulting firm, which was particularly concerning because we noted instances where travel expenses for Summit employees were included on this consultant's

invoices, creating the potential for double billing of costs. We also identified about \$325,000 in costs that did not appear to be business-related expenses such as catering and banquet room rental expenses, catering on a private jet, and travel expenses to attend a charity event. Under Federal regulation, a cost is considered reasonable if it is necessary for the conduct of the contractor's business or contract performance. Because these events appeared to be social in nature and were not necessary for contract performance, we consider them questionable.

Finally, our review raised several concerns regarding Summit's reported cost share. For example, in one case, we determined that Summit overstated the value of cost share associated with a land purchase by \$384,000. Summit had claimed cost share in the amount of \$480,000 for the value of the land, however, our examination of Fossil Energy's records revealed that it had reimbursed Summit 80 percent, or \$384,000, for the purchase of land for the Project. While this is an allowable cost under Federal regulations, we noted that Summit did not deduct the Federal reimbursement from the total value of the land it claimed for cost share. Additionally, while we could verify certain sources of other funds included as cost share, we were unable to identify and reconcile amounts associated with loan arrangements between Summit and some of its vendors which made up portions of its cost share. Under the agreements, Summit's payment for its share of invoices would be deferred until it secured financing. We found that some invoices associated with the agreements did not identify loan or deferred payment amounts; instead, they categorized these amounts as discounts on services, making it difficult to verify Summit's cost-share contributions.

Review of Lobbying and Travel Costs

Questionable lobbying and travel costs were charged to the Project because neither Summit nor Fossil Energy identified them as potentially unallowable in their preparation and review of expenditures. In regard to the costs we questioned as potential lobbying costs, Summit officials indicated that the activities were to obtain clarification on an Internal Revenue Service rule regarding the taxability of grant funds, not to change legislation. Therefore, they did not consider the activities to be lobbying. However, we disagree with this interpretation of the regulation. In particular, we noted that Summit classified its activities in this area as a "legislative fix" in the Project Management Plan that it submitted to Fossil Energy and indicated that it had initiated discussions with the Joint Committee on Taxation on the issue. Based on the description of activities above, we believe its efforts related to this issue could be construed as lobbying, and therefore, Fossil Energy should have scrutinized invoices to ensure that only allowable costs were charged to the Project.

Additionally, we noted that although Fossil Energy had been aware of the potential lobbying costs, it did not act to clarify the nature of the costs and disallow them. Our review of correspondence revealed that Fossil Energy officials responsible for overseeing the Project had discussed expenses charged for Summit's activities regarding the taxability of grant funds, and concluded that they should not attempt to determine the allowability of costs associated with these efforts. Fossil Energy officials noted that Summit would have to rely on its accountants to read and interpret regulations and justify its conclusions on whether the costs were allowable. However, under Federal regulations, it is the responsibility of Federal officials to review costs claimed by recipients and determine allowability.

Further, due to a \$20,000 threshold for submitting documentation set by Fossil Energy officials, it had not received backup for the majority of travel expenses since they fell below the established limit. Instead, it relied on Summit to ensure compliance with Federal travel regulations and determine cost allowability. As noted above, our review identified a number of instances where questionable or unallowable travel expenses were charged to the Project. This was particularly concerning because the total travel budget increased from about \$713,000 to over \$3 million. By relying on Summit to perform the reviews, Fossil Energy increased its risk of overpayment.

Review of Recipient Cost Share

Fossil Energy had not performed a comprehensive evaluation of the recipient's cost share to verify sources and/or amounts as required by its guidance. While Fossil Energy had conducted some reviews of documents supporting sources of Summit's cost share, the reviews were limited in nature. Specifically, we found that it had not conducted thorough analyses of vendors' financial capabilities or costs associated with vendor loans to ensure that expenses were allowable and reasonable. For example, Fossil Energy's Business Management Specialist assessed a vendor loan and concluded that the entity was financially capable of providing funds to the Project based on a review of information contained on its Website. The Specialist, in his assessment of loan documentation, also expressed a concern regarding the payment schedule. In particular, it was noted that the invoice amounts were scheduled into the future, implying the billings would take place regardless of the timing, quality, or relevance of the work performed. The Specialist indicated that the scope of the work and the fixed price amount should be assessed for allowability before the cost share was accepted. Despite the concern, we could not locate documentation in Fossil Energy's official file demonstrating that such a review was performed. Notably, we found that it approved the cost share 2 days after the concern was expressed, leaving a limited timeframe for a comprehensive assessment. Similarly, we found instances where Fossil Energy noted that documentation provided to support other vendor loans was unclear as to the scope of work required for the loan amount and/or how cost-share amounts were calculated. Nonetheless, it accepted the loan amounts as part of the recipient's cost share.

We noted that the annual external audits referenced earlier included an examination of Summit's cost share within the scope of the reviews. These audits, based on sample test work conducted, did not identify any issues related to Summit's cost-share contributions. However, as noted above, we were unable to fully reconcile amounts associated with loan arrangements between Summit and some of its vendors which made up portions of its cost share during our review of Summit's documentation.

Opportunity to Improve Oversight

The weaknesses in financial monitoring placed Fossil Energy at a higher than necessary risk of reimbursing questionable and/or unallowable costs. Given existing budget challenges facing the Government, programs must ensure that the limited resources available are used to advance the mission of the Department's programs effectively and efficiently. During our review, Fossil Energy informed us that it had initiated actions to terminate the cooperative agreement with

Summit, citing the issues identified in our prior report. We believe that Fossil Energy should thoroughly evaluate issues outlined in this report and apply lessons learned to other similar projects.

Subsequent to our review, Summit filed for Chapter 7 bankruptcy in October 2017. Issues related to the bankruptcy were outside the scope of this audit and consequently, are not addressed in this report.

RECOMMENDATIONS

To address the deficiencies identified in our audit, thereby ensuring that taxpayer dollars are used in the most effective and efficient manner, and the Government's interests are protected, we recommend that the Assistant Secretary for the Office of Fossil Energy:

1. Reinforce project management procedures for financial assistance awards, including requiring recipients to provide adequate support documentation for ongoing reimbursement requests and cost-share contributions; and
2. Develop and implement policies and procedures for Fossil Energy awards to ensure that comprehensive reviews of sources of recipient cost share are conducted.

In addition, we recommend that the Contracting Officer for the Project:

3. Resolve questioned costs noted in this report.

MANAGEMENT RESPONSE

Management concurred with the report's recommendations and indicated that corrective actions will be taken to address the issues identified in the report. To address our recommendations, management stated that project management procedures for financial assistance awards will be reviewed and reinforced with project management and acquisition personnel. In addition, management stated that existing policies and procedures will be reviewed and modified as needed to include comprehensive reviews of sources of recipient cost share. Management also stated that the senior management project review process will be expanded to include a review of recipient cost share sources. Further, management stated that the Contracting Officer will resolve the questioned costs identified in the report; however, management stated that given Summit's bankruptcy, it would be highly unlikely that it would have the financial resources to settle any unallowable assessments. Management's formal comments are included in Attachment 3.

AUDITOR COMMENTS

Management's comments and proposed actions are responsive to our recommendations.

Attachments

cc: Deputy Secretary
Chief of Staff
Under Secretary of Energy

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

To determine whether the Office of Fossil Energy (Fossil Energy) effectively and efficiently managed financial aspects of the Texas Clean Energy Project (Project) under the Clean Coal Power Initiative.

SCOPE

We performed the review between August 2015 and February 2018 at the National Energy Technology Laboratory in Pittsburgh, Pennsylvania and Morgantown, West Virginia; and at the Summit Texas Clean Energy LLC in Seattle, Washington. This is our second report on this Project. The first report, *The Department of Energy's Continued Support of the Texas Clean Energy Project Under the Clean Coal Power Initiative* (OIG-SR-16-02), was issued in April 2016. The audit was conducted under the Office of Inspector General project number A15PT053.

METHODOLOGY

To accomplish the audit objective, we:

- Reviewed applicable Federal and Department of Energy regulations related to the Clean Coal Power Initiative;
- Reviewed site-level policies and procedures for administering and monitoring financial assistance awards;
- Reviewed award documentation maintained by Fossil Energy for the Project, including related technical and financial evaluations;
- Reviewed documentation, such as Project Management Plans and progress reports, submitted by the Project;
- Reviewed external financial and compliance audit reports for reviews performed between 2010 and 2013;
- Interviewed the Federal Project Manager and Contract Specialist assigned to the Project to determine their roles and responsibilities related to monitoring of the award;
- Conducted a site visit at Summit Texas Clean Energy LLC to discuss management of the Project, reviewed policies and procedures for tracking project costs, examined records such as subcontractor and consultant agreements for entities supporting the Project, and analyzed financial transactions;

- Reviewed and analyzed all cost documentation maintained by Fossil Energy that was submitted by Summit Texas Clean Energy LLC between June 2010 and March 2016 for reimbursement requests (1 through 68), which included summary spreadsheets demonstrating cumulative costs and documentation provided for items over \$20,000, to determine whether costs were fully substantiated;
- Selected and reviewed a judgmental sample of recipient records for costs under \$20,000 charged to the Project for reimbursement requests (1 through 61), which were not provided to Fossil Energy based on its established dollar threshold, to determine whether costs were allowable and/or reasonable. In selecting transactions for review, we looked for costs with item descriptions which appeared to be questionable in nature. Because we did not use a statistical sample, we were unable to project the results of our analyses to the entire population; and
- Selected and reviewed a judgmental sample of consultant agreements maintained by Summit Texas Clean Energy LLC, which were not part of Fossil Energy's records, for entities working on the Project to identify duplicate scopes of work. Because we did not use a statistical sample, we were unable to project the results of our analyses to the entire population.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Accordingly, the audit included tests of controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed compliance with the *GPR Modernization Act of 2010* and found that Fossil Energy had established performance measures for the Clean Coal Power Initiative. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Finally, we conducted a limited reliability assessment of computer-processed data and deemed the data sufficiently reliable to achieve our audit objective.

Management officials waived an exit conference on January 25, 2018.

PRIOR REPORTS

- Special Report on [*The Department of Energy's Continued Support of the Texas Clean Energy Project Under the Clean Coal Power Initiative*](#) (OIG-SR-16-02, April 2016). This report noted that significant project delays had occurred due to the Texas Clean Energy Project's inability to secure private financing. In addition, the report found that the Department of Energy had taken actions that increased its financial risk without assurances that the Texas Clean Energy Project would succeed. For instance, we noted that the Department had provided multiple extensions to the period of performance for the project definition phase, extending it by more than 5 years. Furthermore, the Department accelerated the use of *American Recovery and Reinvestment Act of 2009* funds and reduced the Texas Clean Energy Project's cost-share requirement to help it with liquidity needs. The Department also shifted about \$90 million in Federal funds earmarked for detailed engineering activities to the project definition phase.
- Audit Report on [*The Hydrogen Energy California Project*](#) (OAS-RA-13-22, June 2013). This report found that in assessing the viability of the modified Hydrogen Energy California Project, the Department relied on financial projections that were not always fully supported, and that the Department had not ensured that only allowable costs were included in the recipient's cost-share contribution. The report noted that, although the Department required the original recipient to support financial projections, the merit review of the award criticized the lack of supporting documentation provided by the recipient. In the case of the subsequent change of ownership, the Department did not require the new owners to provide supporting documentation for financial projections even though comparable information was available from other Departmental reports and projects at the time of the modification.
- Audit Report on [*The Department of Energy's Industrial Carbon Capture and Storage Program Funded by the American Recovery and Reinvestment Act*](#) (OAS-RA-13-15, March 2013). This report found that the Department had not always effectively managed financial assistance awards under the Industrial Carbon Capture and Storage Program and the use of *American Recovery and Reinvestment Act of 2009* funds. In particular, the Department had not adequately documented the approval and rationale to use \$575 million of the \$1.1 billion reviewed to accelerate existing projects rather than proceeding with new awards as required by Federal and Department policies. In addition, the report found that the Department had reimbursed recipients approximately \$16.8 million without obtaining and/or reviewing adequate supporting documentation, and awarded three recipients over \$90 million in *American Recovery and Reinvestment Act of 2009* funding even though the merit review process identified significant financial and/or technical issues. Finally, the report noted that the Department had not ensured that recipient subcontractor or vendor selections for goods and services represented the best value to the Government.

MANAGEMENT COMMENTS



Department of Energy
Washington, DC 20585

MEMORANDUM TO THE ASSISTANT INSPECTOR GENERAL FOR AUDITS AND
ADMINISTRATION

FROM: STEVEN WINBERG 
ASSISTANT SECRETARY FOR FOSSIL ENERGY

SUBJECT: IG-302 (A15PT053) Draft Audit Report on “The Office of Fossil Energy’s
Oversight of the Texas Clean Energy Project Under the Clean Coal Power
Initiative”

The Acquisition and the Technology Development & Integration Centers of NETL and the Office of Fossil Energy (FE) appreciate the opportunity to provide feedback on the Inspector General’s (IG) Draft Report with Recommendations on the FE’s oversight of the Texas Clean Energy Project.

We note that the facts and circumstances detailed in the report support the decision to discontinue this high-profile, major demonstration project. The IG’s concurrence aided in affirming the decision was in the best interest of the Department of Energy and taxpayers.

In this report, the IG raises matters of effectiveness and efficiency in the FE’s management of certain financial aspects of the project while the project was still under development. Specifically, the IG: (1) found FE had not effectively implemented ongoing invoice review controls; (2) directly identified certain costs that might be unallowable; and (3) had concerns with certain amounts reported as non-Federal cost share.

As noted in the report, in addition to placing the project’s prime performer, Summit, on the reimbursement method of payment, FE further mitigated financial risk by requiring Summit to provide external audits of its expenditures. While FE concurs with the IG’s observations that post-expenditure audits may only identify questionable charges after reimbursement, the fact is that the external audits conducted on this project found no significant findings or questioned costs. FE further agrees with the IG that programs should manage limited resources effectively and efficiently, requiring and receiving sufficient documentation prior to reimbursement would allow FE to identify and act more timely on questionable reimbursement requests.

Regarding the finding that certain costs might be unallowable, FE requests an opportunity to review the supporting details on which the IG based this observation. This would be helpful to the Contracting Officer in his/her final determination of the allowability of such costs. However, given the bankruptcy of STCE LLC as noted in the report, it seems highly unlikely that the company will have financial resources to settle any unallowable assessments.



FE will more fully explore the findings related to non-Federal cost share. In the case of vendor loans and, specifically, the likely Engineering Procurement and Construction (EPC) contractor being referred to in the circumstance noted in the report, the fixed price proposal from the contractor with a discount from full cost (reflected as a loan and accounted for as non-Federal cost share), was acceptable once the Cooperative Agreement extension was approved. Therefore, a separate, documented review of the scope of the work and the fixed price amount just for the purpose of cost share validation would have been redundant. As to the other vendor discounts, etc. that the IG could not reconcile, FE appreciates the subtleties associated with affirming non-Federal cost share. When the prime performer on a major demonstration project award does not possess substantial funds internally but, rather, relies on its abilities to attract other supporters to the project who can provide non-Federal cost share, the components of the non-Federal cost share can become numerous and complex.

Management Reaction

1. Reinforce project management procedures for financial assistance awards, including requiring recipients to provide adequate support documentation for ongoing reimbursement requests and cost-share contributions. We concur with the recommendation. This action will be implemented immediately. Project management procedures for financial assistance awards similar to the subject project (including requiring recipients to provide adequate support documentation for ongoing reimbursement requests and cost-share contribution) will be reviewed and reinforced with project management and Acquisition Financial Assistance Team personnel.
2. Develop and implement policies and procedures for Fossil Energy awards to ensure that comprehensive reviews of sources of recipient cost share are conducted. We concur with the recommendation. This action will be implemented immediately. Existing policies and procedures for Fossil Energy awards will be reviewed and modified as needed to include comprehensive reviews of sources of recipient cost share. Further, the senior management project review process at NETL will be expanded to include a review of the sources of recipient cost share.
3. Resolve questioned costs noted in this report. We concur with this recommendation. A Contracting Officer will resolve the questioned costs listed in the Monetary Impact Report. As noted previously, we request an opportunity to review the supporting details on which IG has based its findings. This will be completed within three (3) months following receipt of all necessary documentation from IG and Summit required to complete a comprehensive review.

cc: Audit Liaison, Office of Fossil Energy, FE-3
Supervisor, Performance and Metrics Team, NETL

FEEDBACK

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Office of Inspector General (IG-12)
Department of Energy
Washington, DC 20585

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