

PD-ABU-999
113709

Poland: USAID/Bechtel Technical Assistance Program for the Energy Regulatory Authority

Energy IQC Task Order LAG-I-803-98-00006-00

FINAL REPORT

October 1999

Prepared for:
USAID/WARSAW
Warsaw, Poland

Prepared by:
Bechtel National, Inc.

23865-803-0001

1. Background

This report focuses on the January-September 1999 activities and results for the Bechtel/USAID "Technical Assistance Program for the Energy Regulatory Authority (ERA)" of Poland. This Project was initiated in October 1998 to continue and expand upon earlier USAID-funded work undertaken since 1993. USAID technical assistance programs have been a principal component of the Energy Sector Restructuring, Privatization and Regulatory Program started by the Government of Poland (GOP) in 1991.

The GOP Program has been aimed at assuring Polish consumers long-term security of energy supplies at economically reasonable prices, while promoting the long-term financial viability of the energy sector. Although the details of the GOP's strategy have changed to reflect the passage of time and the priorities of the government coalitions in place, the overall approach has been to achieve the goals of the strategy through:

- creation of a market environment for enterprise competition in all productive sectors that are not "natural monopolies";
- establishing a transparent and efficient regulatory system (including new tariff setting methodologies) for "natural monopolies" such as certain electricity, heat, and natural gas distribution services;
- economic rationalization of prices and elimination of subsidies to the extent possible;
- restructuring and ultimately privatizing state owned enterprises in order to upgrade management and corporate behavior, as well as to attract private investment capital for rehabilitation, modernization and development of the energy sector.

Significant technical assistance for the energy sector of Poland has been provided under bilateral and multilateral agreements. During its five-year existence, it was an important task of the Energy Restructuring Group (ERG) to coordinate the international effort and to establish a discussion platform for different solutions proposed to Polish beneficiaries.

The ERG was established in late 1992 and completed its formal operations in mid-1997, although some carryover activity has continued. The ERG provided foreign and Polish expertise within and across the sub-sectors of the energy industry, participated in the drafting of several new laws and was instrumental in shaping State energy policies that will affect the Polish energy industry and its customers. Funding for the ERG was provided by USAID, European Union-PHARE and the United Kingdom Know How Fund.

To assist the GOP in accomplishing the ambitious transitions shown above, the earlier Bechtel/USAID "Regulatory Reform and Energy Sector Restructuring Project," begun in mid-1995, provided technical assistance and training support primarily to the Polish

power sector, with an emphasis on electricity sector privatization, energy legislation and policy development, and regulatory authority development and implementation. In the period following the initial implementation of the Energy Law in late 1997, a shift was accomplished to re-focus the assistance almost entirely on the newly established Energy Regulatory Authority (ERA). From the outset, this Project's success has depended on the overall progress of energy sector reform and especially the successful establishment of the legal and regulatory framework.

The USAID Projects have been intended to elevate Poland's ability to attract foreign and domestic investment, and thereby to achieve substantive improvements in the efficiency and effectiveness of the energy sector and pave the way for a commercially viable, customer oriented, and ultimately privatized industry to succeed in a competitive environment. To do this within the overall USAID Strategic Objectives 1.1--Privatization of State-Owned Enterprises, and 1.3--Private Sector Development is Stimulated at the Firm Level, the 1995-1998 Project had the following overall objectives:

- Creation of the legal and regulatory framework for the energy industry through the link with the ERG and in cooperation with other international programs that assisted the GOP and the power, gas and district heating industries;
- Further restructuring of the power sector into economically viable and competitive companies, with an emphasis upon the distribution sector (including three demonstration projects and a generating company pilot project);
- Preparation for the ultimate privatization of electricity distribution companies by development of practical guidelines on planning and operations and through training of managers in organization development and good business practices;
- Introduction of energy sector regulation under the Energy Law, including licensing and transitional methods of tariff-setting under the new regulatory system, and preparation for implementation of tariffs by the heating and electricity distribution companies.

When the decisions were made to extend the USAID technical assistance, first from April through December 1998 and subsequently through September 1999, the scope of activities was narrowed to focus on the last objective listed above. As is discussed below, the approach was keyed to a cooperative effort involving the small Bechtel resident team, supplemented to a limited degree by US-based experts, and the ERA top management, in particular the President of the ERA and the heads of departments that had key roles in the first stages of energy sector regulatory implementation.

Progress in regulatory reform and energy sector restructuring and privatization is continuing to be made, although the pace of privatization continues to lag expectations. Passage of the Energy Law, and the political will to carry out the avowed energy sector policies embodied therein, have been prerequisites for meaningful privatization of, and

significant outside investment in, the energy sector. The new law went into effect in June 1997, following nearly four years of preparation. The political consequences of the Law are not minor. Energy sector reform has been delayed by social opposition to labor layoffs resulting from cost saving efforts undertaken by restructured companies. Another impediment is the low level of social acceptance of energy price increases necessary to reach economic levels.

Within the GOP, a major organizational revision at the beginning of 1997 resulted in new Ministries, with attendant start-up problems. The Parliamentary election in October 1997 produced a governing coalition that has an orientation toward dispersion of governmental control and operations away from the center, with potentially significant consequences for implementation and revisions of the Energy Law. The coalition has failed to elucidate a consistent policy for privatization of the so-called "strategic" sectors, of which energy is one. As a result, progress toward privatization has been disappointing, and the goal of achieving a high level of "new money" from strategic investors has not been reached. In the meantime, the electricity, natural gas and district heating industries have continued to function at lower levels of efficiency and higher levels of cost than necessary, and the necessary rehabilitation and environmental funding has not been generated. On a more positive note, the implementation of the ERA, a prerequisite for significant outside investment in the sector, has proceeded, perhaps beyond expectations.

To provide the continuity needed to carry out meaningful technical assistance in an era of change in Poland, Bechtel relocated an American expatriate long term advisor, Chris Turner, and paired him with Polish expert counterparts and staff support, beginning in September 1995 and continuing under this Project into June 1999. The core group of Chris Turner, Mirek Duda, Marek Grzybowski and Agnieszka Sosulska was in place throughout.

Regular involvement with GOP Ministries and with the energy sector enterprises occurred both on a day-to-day basis and in more formal meetings and working sessions. Coordination was carried out among project tasks and with other energy sector efforts, particularly during 1997 with the ERG, the World Bank-ESMAP project to implement the ERA under the Energy Law, and those that also involve USAID support. The focus of the Project shifted to the ERA in early 1998, and the principal areas of cooperation were with the ERA and with other assistance providers.

The Bechtel team participated fully in the initial implementation of the Polish Energy Regulatory Authority. During 1998, the team assisted the ERA and the Ministry of Economy in the development and justification of secondary legislation and regulations. The long term US advisor in Poland and his Polish counterparts and outside experts advised the GOP and assisted in the development of the ERA. Principal areas of assistance were in licensing (definitions, scope, content, procedures, review process, etc.), information management (licensing database, automated issuance, overall plan for the ERA), training and advice to the President of ERA.

This Project was the subject of a USAID Request for Proposal dated June 22, 1998, and Bechtel's Technical Proposal dated August 21, 1998. Following negotiations, the Project was awarded to Bechtel under Contract LAG-I-00-98-00006-000, Delivery Order 803, with limited implementation during the period October 1-December 31 1998 (to coordinate with the close-out of the former Project) and full implementation during January-September 1999. Also on August 21, 1998, USAID and the Polish ERA executed a Memorandum of Understanding that set forth the parties' responsibilities in the provision and acceptance of assistance in the areas of advisory services, technical assistance and training in licensing, tariff design and information systems. An important element of the cooperation was the relocation of the Bechtel team into the ERA offices; this was accomplished in November 1998.

The basic goals and activities of this Project were maintained for its duration. Work plan and level of effort revisions in February and May 1999 were approved to recognize the progress to date and the priorities of ERA within the total funding level for the Project.

2. Program Results

This section of necessity includes summaries of results from the former Project while concentrating on the January-September 1999 period of full involvement in the current Project.

Industry-level progress continues to be a function of the social, political and economic environment, which is not always conducive to making such progress. The USAID Projects have accomplished meaningful results by focusing on specific opportunities. During the period leading up to the extension of the former Project from April through December 1998, energy sector training continued, a restructuring "roll-out" conference and seminar were delivered to executives and planning managers of the electricity distribution companies, and presentation of the results and the processes used in four enterprise privatization preparation analyses was the subject of a major conference in Warsaw in March 1998. The process of determining the enterprise privatization strategies and their valuations was described in detail for senior executives whose companies are likely to be part of the privatization of the sub-sectors.

In the political arena, the earlier Project maintained continuing involvement with the GOP in advancing the Energy Law and in supporting sector reform. Project consultant Mirek Duda continued as a principal advisor to the GOP throughout the drafting; justification, negotiations and revisions of the Energy Law and the secondary legislation needed to implement the Law. He also was instrumental in efforts to present information about and explanations of the law and its implementation to a variety of Polish audiences. Also, Chris Turner and Mirek Duda provided many briefings to interested foreign-based parties. These ongoing activities helped to prepare the ground in anticipation of full implementation of the Energy Law, the startup of the ERA, and the further commercialization and ultimate privatization of the energy enterprises.

Extension of the earlier Project through the end of 1998, and startup of this Project in October 1998, were predicated mainly on the provision of significant assistance to the

ERA. Given the promulgation of the Energy Law on June 5, 1997, the major implementation milestones for the ERA were:

- December 1997: "Opening" of the ERA for business, albeit at a very basic and beginning stage (this was done, and by the end of 1998 the ERA was in full operation with nine regional offices as well as the headquarters, and over 150 employees);
- June 1998: Completion of the secondary legislation process (this was partially done and is continuing, with considerable need for clarification of what has been approved);
- December 1998: Issuance of the over-1000 licenses for existing (and any new) energy enterprises (this was done for the existing heat companies, on schedule, and the remaining licenses were issued in the first part of 1999);
- December 1999: Transfer of the price regulation functions and responsibilities from the Ministry of Finance to the ERA (the secondary legislation accelerated this, such that heat and electricity prices came under ERA's regulation as of the beginning of 1999).

The primary emphasis of the Bechtel/USAID support for the startup of the ERA during 1998 was on practical solutions to implementation problems that, if unresolved, would delay or obviate efforts that were critical at the outset. In this regard, support to the ERA for Information Management Systems development was a distinct success. Most of the effort involved design and implementation of a preliminary database and associated software for the Licensing Department, although needs of other ERA departments were recognized. A Bechtel information technology expert, Mr. Charles Hartel, relocated to Warsaw for July and August 1998 to intensify these efforts, and maintained periodic involvement until mid-1999. He, along with Marek Grzybowski, supervised the work of a Polish subcontractor, EnergSys, whose principal tasks were to build upon the preliminary software and to refine the database for license issuance.

In addition to automating the licensing process, the more important function of this software (ultimately named "Urelonek") is to provide a central repository for information about licensed energy enterprises. Many of the data fields derived from the questionnaires will be useful for future ERA regulatory activities, beyond issuing *ex officio* licenses. This database defines a core information store that the ERA can build upon in the future.

The first-stage information management activities were mostly complete for the licensing area by November 1998. However, there were two carryover areas for this successor Project: helping the Licensing Department in the design and implementation of processes for monitoring compliance with license terms and conditions; and linking the licensing data base with tariff applications and analysis. Both of these areas are important to the ability of the ERA to clear the workload at the outset of its operations. Results are described below.

A. Support to the ERA Licensing Department

Licenses are crucial for effective operation of the sector. They identify who can participate, the terms of participation, and the duration. The licenses establish the authority of the regulatory body. A properly established license process: demonstrates the intention to have an open, transparent, and non politicized system by which parties can enter the energy sector; builds investor confidence; facilitates non-utility private sector energy projects; and facilitates privatization of the state-owned utility sector.

The initial focus of the assistance to the Licensing Department on the scope and content of licenses for the heat, combined heat and power, electricity, natural gas, liquid fuels and lignite sectors narrowed in mid-1998 to concentrate on procedural matters involved in issuing *ex officio* licenses to enterprises. The heat sector was chosen to be first, due both to pressure from the Ministry of Finance to have the ERA take over price regulation of the many heat enterprises (where licenses are considered a prerequisite) and to the sheer number of potential regulated heat/CHP enterprises. Bechtel provided drafts, comments, and procedural criteria for questionnaires directed to the enterprises, with a concurrent effort to define data processing requirements (see above). The first questionnaires were issued in June 1998. Attention then returned to the actual draft licenses and to the appropriate criteria to be contained in them. The ERA maintained a self-imposed goal of issuing substantially all of the *ex officio* licenses by December 1998, and, somewhat against expectations, basically met the goal.

In 1999, the Project continued to work with the Licensing Department to refine and extend the information management capabilities that ultimately will serve all areas of the ERA. Early in the year, Marek Grzybowski and Charles Hartel worked together with EnergSys and the Licensing Department to introduce modifications to the database and licensing software to get it ready to process license applications from new entrants. Attention then was directed to developing the License Monitoring software.

Version 2.0 of Urelonek was basically completed in March together with a draft manual. This version was composed of the ERA Data Base, software oriented to Licensing activities, and software systems that can enhance the work of different ERA departments to the extent they are able to devote attention to implementation. Also, by April Urelonek was integrated with the License Fee Management Program developed by the Information Technology Office. The License Monitoring Module for the Licensing Department underwent intensive testing in May and was declared fully operational.

In June, EnergSys delivered the final draft of the users' manual "Urelonek ver.2.0," along with extensive technical documentation needed for further maintenance and development of the system. Marek Grzybowski and Charles Hartel found this document acceptable and recommended that the Licensing Department of URE should also approve it. Official acceptance and sign-off by ERA of the information management aspects of assistance to the Licensing Department followed.

Although the foregoing concentrates on the technical aspects of the Licensing Department support, it should be noted that throughout the process the interaction among the advisors

and the ERA staff added to the level of understanding and the quality of work performed during the intense period of issuance of the first licenses under the new regulatory framework, and during the follow-up development of monitoring capabilities.

B. Support to the ERA Tariff Department:

The ERA's Tariff Department was very much in the startup mode during most of 1998, which limited the extent of Bechtel's involvement. Bechtel provided significant assistance to the Director of the Tariff Department in areas such as secondary legislation's potential impacts, short-term staffing recommendations, and regulatory concepts and practices from, e.g., the United States that have particular relevance for the ERA. Late 1998 saw the beginning of assistance in defining data base and information management requirements for processing tariff applications.

There was a significant change in the schedule for ERA to take on responsibility for heat and electricity pricing. On short notice, the Tariff Department had to get ready to accept, analyze and approve tariff filings as of the beginning of 1999 rather than the end of the year. This meant that virtually all of the effort became procedural until the application reviews were completed. The Project saw this as an opportunity to assist in developing efficient application review procedures for subsequent filings through recommendations based on analysis of the first-stage process.

Bechtel consultants Robert Borgstrom and Jonathan Foord traveled to Warsaw and to some of the regional offices in January and February, 1999 to further define the accounting and procedural needs for the tariff design and approval process. Their first visit had been relatively successful in that they were able to conduct interviews with key officers at ERA. The February visit was expected to be timely in that applications would be flowing through ERA's system and there would be an opportunity to evaluate this process in "real time." Unfortunately, ERA's officers in Warsaw were preoccupied with issues left unresolved in the secondary legislative process, and were unable to receive the expats. As an alternative, Borgstrom, Foord and Turner turned their attention to work by ERA at their regional locations. District heating applications (of which the number will be over 1,000) are first evaluated at these locations and then sent to ERA's headquarters for final approval. We visited the regional centers at Lodz and Warsaw and observed that the analysts were developing procedures in an *ad hoc* manner and in isolation (except for informal communications) from either the center or the other regional offices. It was apparent that the process would need to be standardized in order to: (a) manage the huge task at hand in a timely manner; and (b) produce tariff recommendations that will turn out to be consistent across Poland. In April, Borgstrom and Foord, accompanied by Witold Cherubin, completed the on-site component of their work on the processing of tariff applications. They visited the Gdansk, Poznan and Katowice local branches and met with several Warsaw headquarters Tariff Department staff members as well as Director Bodych-Wasilewska.

A draft report, "Recommendations Concerning the Processing of Tariff Applications" was reviewed in Warsaw during May and June. Following incorporation of comments,

the report was provided to ERA in English and Polish and to USAID in English. The report was accepted by ERA as a substantive work product that will be used to refine the tariff application review process.

One reason for early difficulties in reviewing tariff applications was the incomplete and inconsistent secondary legislation, or ordinances, that was to prescribe the ERA's actions. Early in 1999, Mirek Duda held meetings and provided advisory assistance to the Tariff Department and to managers of power generating and distribution companies on the tariff setting procedures under the new energy law. An implementation problem had arisen, in that the new tariff ordinance provides for two-component electricity prices (fixed and variable). Electricity distribution companies complied with this provision in the initial tariffs filed with and approved by the ERA. As a result, some commercial customers with low electricity consumption and high connection capacity, who previously had been billed on only a per-kilowatt hour electricity price, encountered much higher electricity bills, and commenced a campaign against the regulator in the public media. The regulator, at a meeting with distribution companies' managers, appealed for additional analyses of the impact of new tariffs on certain customer classes and appropriate corrections of the tariffs. The press campaign created a threat that the ruling political coalition would start a legal process of recalling Dr. Juchniewicz from his post, and then nominating somebody supported by the coalition.

Chris Turner prepared a paper that discussed ways to limit effects on customers of tariff design decisions such as the above. The paper provided analysis and arguments for use in response to the media campaign against ERA, as well as basic information on regulatory policies and practices in the US. By mid-year, the revised tariffs were in effect and the issue had passed. The Project continued to provide advice to the Tariff Department on an as-needed basis for the duration of the schedule, and Mirek Duda had a continuing role as a member of the Tariff Commission, the ERA group tasked with providing recommendations to the ERA President regarding tariff applications.

C. Support for ERA Training

The staffing of the ERA began in earnest in the spring of 1998, and training opportunities were limited. Assistance was delivered to the ERA in the form of: senior staff's attendance at programs such as a Regulatory Strategy program at the University of Florida and a Regulatory Studies program at Michigan State University. Staff also attended USAID-sponsored meetings such as CENTREL forums, and had informal discussion sessions among staff and the Bechtel experts. In addition, Bechtel delivered two formal training programs in Warsaw. The first concentrated on basic regulatory concepts and the evolution of performance-based regulation, and the second focused on the operations of a US State regulatory agency, including the area of public information and outreach. While these programs were well received, by mid-1998 it was clear that until the first peaks of licensing and tariff approvals were past, there would be no opportunities for ERA staff to devote several days or weeks at a time to training—the workload and the staffing constraints would not permit them.

In April 1999, the situation had improved to the point that a seminar on economic regulation could be planned for June 7-9. Marek Grzybowski worked in May on the organization of the seminar. Seven seminar sessions were delivered by former Illinois Commissioner Karl McDermott, Chris Turner and Cathy Connors of the Pierce Atwood law firm. All Bechtel-Poland Project members took part in seminar discussions. At the request of Director General Mr. Grzegorz Borowiec, this seminar was generally addressed to the employees of the Local Branches, who constituted two thirds of the approximately 40 people in the audience. A large part of the seminar was devoted to discussion and answering questions from the audience. In order to facilitate discussion, a list of questions was collected from the Local Branches, translated and delivered to the speakers.

The success of the first seminar led to a request for a second program. This was organized during August for presentation September 15-16 at Dom Polonii in Pultusk. The seminar had 35 participants including ERA President Dr. Leszek Juchniewicz, Vice President Mr. Wieslaw Wójcik and General Director Mr. Grzegorz Borowiec, along with directors of all major ERA Departments in Warsaw, and directors and deputy directors of all local ERA branches.

The western experience in developing electricity markets was presented by local experts and Chris Turner. Mr. Leszek Szczygiel, Deputy Director of URE Local Branch at Łódź, delivered a presentation on the development of the market in Australia. The discussion that followed the presentation was facilitated by Chris Turner and professor Władysław Mielczarski of the University of Melbourne, who is one of the godfathers of the Australian market experience. California's market development was presented by Mr. Paweł Chmurski, an expert from Energoprojekt Consulting, with considerable input from Chris Turner.

The second day of the seminar was devoted to discussion of ideas on the development of the Polish market. A detailed presentation of the present concepts was delivered by Mr. Stanisław Poreba, Chairman of the PSE Elektra, one of the subsidiaries of the Polish Power Grid Company. Mr. Poreba is one of the very active players in the development of competition in the energy sector. The discussion that followed this presentation led to a general conclusion that although development of competition in the electricity sector in Poland is inevitable, the path to the free market will be rather long, therefore the Regulator will maintain its key position over the next several years.

During the entire duration of this Project, there was a conscious effort to provide *ad hoc* training whenever possible. This was most evident in the daily interactions among members of the Tariff Department and Mirek Duda.

D. Advisors Additional Support to the ERA

Much of the work done primarily for one or another of the ERA departments had cross-over benefits. This gave a base of support that advanced the conceptual and procedural implementation of the ERA and informed other interested parties of the issues needing discussion and resolution. By early 1999, Mirek Duda had demonstrated his abilities in presenting information and leading discussions and negotiations, and he took on the role

of senior advisor to Dr. Juchniewicz. A considerable portion of his time was devoted to various forms of outreach, both within Poland and outside.

The additional support was broad-based, including matters internal to the operations of ERA and external relationships and issues among ERA, energy enterprises and the GOP. An important area was the conceptual and practical development of a competitive electricity market. Many meetings and negotiations helped to raise understanding of the complex criteria for a successful shift to a competition model from the centrally-controlled market now in place. Dr. Duda had a lead role in this effort and Chris Turner provided background support. As the Project neared its conclusion, attention began to shift to the forthcoming ERA regulation of the natural gas industry beginning in 2000.

3. Key Issues

Implementation of the Energy Law since June 1997 has proven to be a challenging process. The Project focused on the operational framework that will permit further progress toward transparent and appropriately limited regulation of the energy industry, and that will encourage commercial behavior and privatization. Successful implementation of the ERA will require a well-conceived program with maximum Polish involvement. Attraction and retention of top-level Polish expertise to the ERA remains a problem.

More generally, the secondary legislation needed to implement the Energy Law has been delayed and that which has been approved leaves considerable room for interpretation and argument. Meanwhile, the ERA and the regulated enterprises are struggling with the accelerated requirements for prices, while the ground rules remain under preparation and negotiation. Although there is general agreement that energy prices set independently of direct GOP control are necessary for successful privatization, the policies regarding privatization are not clear, and the continuing delays are signaling an ongoing lack of political will to get the job done.

Freedom from undue political influence and pressure continues to be an ongoing challenge for the ERA. The leadership of the ERA was appointed by the previous coalition, and the Energy Law assures relatively strong independence for the regulator. Thus, attempts to pressure the ERA have become overt and have created operational obstacles. For example, the GOP refused to permit the President of the ERA to travel on official business (with USAID support) to the US for an important executive experience program concerning the development of the California electricity market, a subject that has direct relevance for Poland and the ERA, and failed to seek available PHARE funding for assistance to the ERA. Thus, at times it seems that the success of the ERA to date has been in spite of the efforts of some in the GOP to the contrary.

4. Lessons Learned

It continues to be important to underscore a basic fact of life in Poland since 1989: the processes whereby the nation accomplishes its transition to a "Western" economy are complex, lengthy and continuing, with a whole range of challenges and of starts and stops. Expert assistance, provided that it is kept to areas that can improve the quality of the work undertaken by the Poles themselves, is not a commodity that has a definite shelf life. Instead, it lies in services of a continuing nature, and the needs of the times determine the services to be provided as well as the manner in which the services are best delivered.

Predictability is not a hallmark of government, at least not in Poland. Times change, as do governments, and outside assistance has to be flexible enough to move with the times. The USAID-Warsaw staff recognized this and both encouraged and agreed to fine-tuning as the projects went along. They recognized that strict adherence to specific tasks with pre-set schedules, benchmarks, a results structure and predictable deliverables and costs fits only some of the work done under this and the earlier projects. This added considerably to the effectiveness of the assistance, and should be noted in the design of any further programs.

In reviewing the Poland experience over the full duration, it must be said that one negative aspect was the "up and down" nature of the outside advisors' involvement. Often there was a great deal the advisors could offer, and sometimes the demands were less immediate, leaving the advisors waiting for action from others. This was more the case with the resident expatriate than with the Polish counterparts. This might have implications for future long term advisor assignments, such as leveraging overseas residence by using more of a regional approach whereby the expatriate can be involved with more than one assistance project.

Considering the results and the positive views expressed by the President of the ERA and other senior officials at the end of the Project, it is fair to say that this Project made a positive and lasting contribution to the development of the ERA and the Polish energy sector.

5. Recommendations for Future Activities

In the specific case of assistance to the ERA, it continues to be clear that there will be a need for outside expertise in the economic regulation area for the next several years. The Energy Law is a good start and a progressive stimulus, but the secondary legislation that is needed to flesh out the details has been less of a success. As the ERA gets into real issues, the legal basis will come under severe pressure, and expertise will be needed to sort through the legal and policy alternatives. For example, the extent to which the regulator has a role in determining whether investments by mainly-regulated companies in unregulated businesses is likely to be a major issue, and the range of experience from the US and elsewhere is relevant to decisions in Poland (utility diversification in the US was the subject of a paper prepared by Bechtel subcontractor law firm Pierce, Atwood).

Moreover, the ongoing difficulties encountered in defining the electricity market and its operating rules, as well as the role of the regulator in the operation of what is intended to be a competitive electricity generation sector, continues to present a barrier to modernization via foreign investment. Another continuing need is training of the staff of the ERA and of the enterprises the ERA regulates. This training will give context to what the staff does on a daily basis, and will thereby improve both morale and performance. However, at present it is unclear who will provide what training, or to whom.

The earlier Bechtel/USAID Project was extended once to recognize the continuing need for a broad range of assistance to Poland in the energy area, although the recipient of such assistance was the ERA rather than the array of recipients previously involved. This "successor" Project continued and expanded the assistance to the ERA's President and to the Licensing, Tariff, Information Management and Planning & Analysis Departments as well as the regional offices. As of October 1999, there are indications that a successor to the ESMAP project that provided regulatory and energy policy support via the ERG may be about to begin, this time focused on the ERA. Also, assistance via PHARE is likely and will be keyed to European Union accession issues. It is worthy of note that Bechtel team member Dr. Miroslaw Duda is continuing in his role as a key advisor to the President of the ERA, so continuity will be maintained.

If the assistance from or via ESMAP and PHARE can be oriented toward pragmatic implementation needs as well as the more generalized policy matters that include, e.g. rationalization of the secondary legislation with the Energy Law and with European Union Directives, the continuing positive development of the ERA will be encouraged. If there were to be an opportunity for further USAID assistance, a clear focus on ERA's operations (including further refinement of the information management capabilities) and on training (with an orientation toward the gas industry) would be appropriate.