



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

2000-0014

2

RESPONSE TYPE FINAL PARTIAL

REQUESTER

Maria Webb

DATE

FEB 10 2000

PART I. -- INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A -- FEES

- AMOUNT * You will be billed by NRC for the amount listed. None. Minimum fee threshold not met.
- \$ You will receive a refund for the amount listed. Fees waived.
- * See comments for details

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

**APPENDIX C
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	March 3, 1998	E-mail from Hicks, RIII to Enforcement Panel members regarding panel on MK, incl. Panel worksheet (5 pages)
2.	March 27, 1998	Letter to Artayet from Grobe, RIII regarding a Predecisional Enforcement Conference (PEC) (2 pages)
3.	March 27, 1998	Fax from Weil, RIII to Stein, OE regarding Jim Gavula's recommendations for PEC (1 page)
4.	March 27, 1998	E-mail from C. H. Weil to M. Stein, subject: MK/Point Beach Enforcement Conference. (1 page)
5.	April 9, 1998	NRC Report of Proceedings (400 Pages)
6.	April 14, 1998	Letter to Artayet from Clayton, RIII regarding the postponement of the PEC (1 Page)
7.	April 14, 1998	Cancellation Notice (2 pages)
8.	April 21, 1998	Letter from Zarges, MK to Grobe, RIII regarding mitigation of chilling effect among MK employees (2 pgs.)
9..	September 18, 1998	Note to File on EA 98-081 (1 Page)
10.	October 5, 1998	E-mail from Weil, RIII to Stein, OE regarding release of the SAM reports and exhibits (1 Pg.)
11.	October 28, 1998	Note to file from Chuck Weil, RIII regarding follow-up telephone call (1 Pg.).
12.	December 11, 1998	E-mail from Weil, RIII to Stein, OE regarding closeout of Wisconsin Electric Portion of EA 98-081 (1 Pg.)
13.	January 5, 1999	Notice of Significant Meeting & e-mail attachment (4 Pages)

14. January 8, 1999 Letter to Patulski, Point Beach from Grobe, RIII regarding Apparent Violation of Employee Discrimination Requirements (13 Pages)
15. January 8, 1999 Letter to Zarges, MK, from Grobe, RIII regarding Apparent Violation of Employee Discrimination Requirements (14 Pages)
16. January 8, 1999 Letter to Artayet from Grobe, RIII regarding Predecisional Enforcement Conference. (2 pages)
17. January 27, 1999 E-mail from Weil, RIII to Stein, OE regarding Point Beach attendance at MK Conference (2 pages)
18. January 28, 1999 E-mail from Weil, RIII to Stein, OE regarding complainant's attendance at MK Conference (2 pages)
19. January 27, 1999 Note to File on EA 98-081 (1 page)
20. January 28, 1999 Note to File on EA 98-081 (1 page)
21. February 3, 1999 Letter from Hickey, Shaw Pittman to Person, RIII regarding videotape training of employees in 10 CAR 50.7 (26 pages).
22. February 3, 1999 Letter from Hickey, Shaw Pittman to Person, RIII regarding destruction of transcripts (1 pg.).
23. February 12, 1999 Letter from Hickey, Shaw Pittman, to Grobe, RIII regarding information related to the credibility of Artayet (45 Pages)
24. February 18, 1999 Memo to Paul, RIII from Clayton, RIII regarding False Information Allegedly Provided to OI and DOL about Employment Discrimination involving MK (1 Page)
25. March 1, 1999 E-mail from Weil, RIII to Person, RIII; Stein, OE; Banerjee, NRR regarding MK Discrimination case (EA 98-081) (1 Page)
26. March 18, 1999 E-mail from Weil, RIII to Person, et.al., regarding letter to MK Complainant (3 pages)
27. March 25, 1999 Letter to NRC Regional Administrator, RIII from Artayet (9 pages)
28. March 25, 1999 Letter to Artayet from Grobe, RIII regarding the Enforcement Conference (1 page)
29. March 25, 1999 Letter from J. Grobe to T. Zarges, subject: Apparent Violation of

- Employee Discrimination Requirements. (18 pages)
30. March 26, 1999 Letter to NRC Regional Administrator, RIII from Artayet (2 pages)
 31. April 8, 1999 Letter to Zarges, MK from Grobe, RIII regarding the PEC (1 Pg.)
 32. April 22, 1999 Letter to Grobe, RIII from Zarges, MK regarding MK's response to Artayet's letter of March 25, and 26, 1999 (7 pages)
 33. 06/29/99 E-mail from C. Weil to Lieberman, et. al, subject: Morrison Knudsen. (1 page)
 34. 07/08/99 E-mail from C. Weil to M. Stein, subject: Concurrence on Letter to MK Attorney. (1 page)
 35. August 10, 1999 E-mail from Weil, RIII to B. Clayton, et al, regarding MK, with attached draft letter. (5 pages)
 36. September 13, 1999 E-mail from Weil to B. Clayton, et al, re MK Order. (1 page)
 37. September 15, 1999 E-mail from Susan Chidakel to Michael Stein re: Comments. (1 page)

From: Beverly Hicks, RIII
To: enfpanel
Date: 3/3/98 5:51pm
Subject: March 5, 1998, RIII Enforcement Panel

The attached enforcement package (EA 98-081 Morrison-Knudsen) is scheduled for Thursday, March 5, 1998, 9:00 a.m. (CST). The bridge number is 301-415-7605 (Pass Code #2874377).

Cl)

PROPOSED ENFORCEMENT ACTION

EA 98-081

Violation: Potential violation of 10 CFR 50.7, "Employee Protection"

Contractor: Morrison-Knudsen Corporation (MK)
Cleveland, OH

Licensee: MK was under contract to Point Beach, and previously D. C. Cook, for replacement of the steam generators. However, the apparent violation occurred at the MK office in Cleveland, OH, which is described in the OI report as the Corporate Office, the Power Division, and the Engineering and Construction Group. No information was developed to indicate that either NRC licensee was involved in the alleged discriminatory act. At the time of the alleged violation, MK was actively involved in the ongoing steam generator replacement project at the Point Beach plant. Region III recommends that neither licensee be cited.

OI Report No. 3-97-013, dated 2/6/98

DOL No. 97-ERA-34

AMS No. RIII-1997-A-0035

SES Sponsor: Jack Grobe (630-829-9700)

Coordinator: Charles H. Weil (630-810-4372)

Summary of Facts: An allegation was made to the Department of Labor (DOL) and the NRC that MK engaged in employment discrimination when MK transferred the corporate welding engineer to a position as a site welding engineer position at a non-nuclear facility (chemical works). While the individual did not lose pay, he was transferred from Cleveland, OH, to Parkersburg, WV. Also, the position of corporate welding engineer appeared to last for an indefinite period, and the Parkersburg position would end about February 1998. He was laid-off on September 30, 1997. MK subsequently rehired the individual during November 1997, following the November 4, 1997, Preliminary Order of the DOL Administrative Review Board.

During December 1996, Hartford Steam Boiler Insurance Company audited MK and made several audit findings. During January 1997, the individual reviewed the MK welding procedures for the steam generator replacement projects at the Point Beach (1995-97) and D. C. Cook (1988) facilities, and presented his findings to MK management about MK welding procedures for each project. (The welding issues are being followed-up by the Region III Division of Reactor Safety and the NRR vendor Inspectors). On January 15, 1997, he was relieved from his position of corporate welding engineer and subsequently transferred to Parkersburg, WV.

In 1994 MK and Duke Power Engineering formed a company known as STG (steam generator group) for the replacement of steam generators. Duke Engineering apparently provided the engineering support for STG and MK, Cleveland, OH, provided the construction and quality assurance aspects for STG. STG appears to be the site organization that actually did the work. As with Point Beach and D. C. Cook plants, STG does not appear to have been involved in the alleged discriminatory act involving the MK corporate welding engineer in Cleveland, OH.

The complaint was investigated by the Occupational Safety and Health Administration (OSHA). The OSHA Area Director concluded that the complaint was without merit. That conclusion was appealed. In an October 28, 1997, Recommend Decision and Order, the DOL Administrative Law Judge (ALJ) ordered MK to rehire the individual. In that decision, the ALJ noted that the individual was transferred to "an inferior position" at Parkersburg, WV. The ALJ's decision was upheld on November 7, 1997, in a Preliminary Order by the DOL Administrative Review Board. MK rehired the individual during November 1997, following the Administrative Review Board's Order. However, MK had already hired a new corporate welding engineer and the individual could not be returned to his former position. Rather, he was rehired as a welding engineer at the same pay as he had received when he was the corporate welding engineer.

In Report No. 3-97-013, the Office of Investigations (OI) made essentially the same conclusion as the ALJ and the DOL Administrative Review Board.

Significance:

The safety and risk significance of the apparent violation of 10 CFR 50.7 is low. However, the regulatory significance is high because corporate managers were involved in the alleged discriminatory act. The safety and risk significance for the underlying technical violations may be high because a technical violation would involve welding for the steam generator replacement projects.

Summary of Proposed Enforcement Actions

- A. Conduct a transcribed predecisional enforcement conference (PEC) with MK. Ask MK to bring the involved MK managers to the conference. The alleged would be invited to attend.

The letter to MK confirming the PEC will include relevant "chilling effect" language.

- B. Following the PEC, consider issuing a Severity Level I violation to the MK Corporation.

The letter to MK should indicate that MK can wait until the final DOL order is issued before responding to the proposed violation. However, that letter would tell MK that the response to any "chilling effect" cannot be delayed.

- C. A Demand for Information (DFI) would be issued to MK at the same time as the NOV. DFI language could either be contained in the body of the letter transmitting the NOV to MK or be a separate enclosure to that letter.

The DFI would ask MK to provide written assurance that:

1. The NRC can have confidence that MK will abide by all NRC rules and regulations, including 10 CFR 50.7, in the future,
2. The NRC can have confidence that any "chilling effect," either perceived or actual, has been abated by MK, and
3. The NRC and MK can both have confidence that the MK managers involved in

the discrimination will abide by NRC rules and regulations, including 10 CFR 50.7, in the future.

D. Regarding the individuals involved in the discriminatory act:

Neither DOL nor OI made a specific conclusion about the culpability of any particular MK manager for this violation. However, the information in Paragraph 4 of the OI report discusses the MK Division Executive Vice President and his decision for the discriminatory act. Other MK managers, the CEO/President and the Director of Performance Systems are also discussed in Paragraph 4 of the OI report, but the report shows that each was only aware of the reassignment decision made by the Division Executive Vice President. Therefore, in order to make an informed enforcement decision about the latter MK managers, a very detailed analysis of the OI exhibits will have to be made. It is estimated that the staff would expended 3-4 days to develop the detailed evidence need to support an enforcement position about the individuals.

Region III believes that sufficient evidence could be developed from the OI report to support an order removing the Division Executive Vice President from participating in NRC-licensed activities for a period of five periods. The recommendation of a five year removal from NRC-licensed activities is based on the proposed Severity Level I violation to the company. However, a final decision about any particular MK manager should wait until DOL issues its final decision in this matter.

Proposed NOV

Based on the DOL Orders and the OI findings, Region III recommends that MK be cited for a violation of 10 CFR 50.7, "Employee Protection." A draft NOV follows:

10 CFR 50.7 requires, in part, that discrimination by a contractor or subcontractor of a Commission licensee against an employee engaged in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to the terms, conditions or privileges of employment. Protected activities include, but are not limited to, providing information to the employer about possible violations of NRC activities.

Contrary to the above, on January 15, 1997, Morrison-Knudsen Corporation (MK) engaged in prohibited employment activities when MK removed Mr. (individual's name), from his position as the MK corporate welding engineer at the MK corporate offices in Cleveland, OH, and subsequently transferred Mr. (individual's name) to an MK project in Parkersburg, WV, as a site welding engineer. MK removed Mr. (individual's name) from the position of corporate welding engineer and transferred Mr. (individual's name) after he delivered adverse reports to MK management about the quality of welding procedures used by MK to replace steam generators at the Point Beach and Donald C. Cook nuclear power plants, a protected activity.

A Severity Level I violation is recommended. Supplement VII to the NRC Enforcement Policy (Policy), Example A.4, categorizes the violation as "action by senior corporate management in violation of 10 CFR 50.7." The MK employees involved in the violation were senior corporate managers of MK in Cleveland, OH.

Section III(3) of the Policy and Section 2.11.b.3 of the NRC Enforcement Manual (Manual) requires that the be consulted Commission prior to issuing a Severity Level I violation.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

March 27, 1998

Mr. Alain Artayet
[Home Address
Deleted, 10 CFR 2.790]

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE
(U.S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 AND ARB 98-016)
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-97-013)

Dear Mr. Artayet:

The Nuclear Regulatory Commission (NRC) has scheduled a transcribed predecisional enforcement conference with Morrison Knudsen Corporation (MK) and Wisconsin Electric Power Company (WEPCo) on Thursday, April 16, 1998, at 9:00 a.m. (CDT) in the NRC Region III office, 801 Warrenville Road, Lisle, Illinois, to discuss issues related to your allegation of employment discrimination against MK. WEPCo was invited to attend the conference because a part of the alleged discrimination concerned MK welding procedures used during the replacement of steam generators at WEPCo's Point Beach Nuclear Power Plant.

The NRC's Enforcement Policy (Policy) as amended by a policy change, Policy and Procedures for Enforcement Actions: Policy Statement, 62 FR 13906 (March 24, 1997) permits the employee or former employee who was the subject of the alleged discrimination the opportunity to participate in a conference. Therefore, you are being given an opportunity to participate in the above scheduled conference. (A copy of the Policy is an attachment to the enclosed letter to MK. Please see Section V of the Policy, in particular page 6, center column.)

You may participate by observing the conference and if desired, following the MK and WEPCo presentations, make a presentation to address your view on why you believe discrimination occurred and your view on the presentations. We request that your presentation be no more than one hour. MK and WEPCo will be afforded opportunities to respond to your presentation, and the NRC staff may ask you some clarifying questions. If you are unable to attend in person, arrangements may be made for you to participate by telephone or for you to submit a written response to the MK and WEPCo presentations. As of March 24, 1998, it is our understanding that you plan to attend the conference on April 16, 1998.

The purpose of the conference is to examine MK's and WEPCO's position with regard to the Recommended Decision and Order by the U.S. Department of Labor (DOL) Administrative Law Judge and the Preliminary Order of the DOL Administrative Review Board and the conclusion made by the NRC Office of Investigations (OI). (A copy of the OI report synopsis is also attached to the enclosed letter to MK.) The purpose of the conference is not to investigate or question your position on the alleged discrimination. In no case will the NRC staff permit you, MK, or WEPCo to cross-examine or question each other. The NRC presiding officer has the authority to ensure that the meeting is conducted in a fair and impartial manner and to end the

C/2

A. Artayet

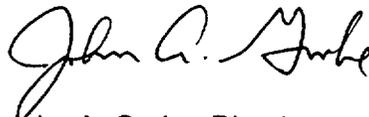
- 2 -

conference or limit participation should any party become unruly. The process and procedures for this conference will be further explained at the beginning of the conference.

Please be advised that your cost of transportation to Region III for the conference must be borne by you. Also, you are welcome to have counsel or a personal representative accompany you to an enforcement conference or assist you in preparing your response if you should choose that option. However, the cost of any such counsel or personal representative and their transportation costs must likewise be borne by you.

If you have any questions, please call either Chuck Weil or Brent Clayton of the RIII Enforcement Staff at toll free telephone number 1-800-522-3025. Please contact either Mr. Weil or Mr. Clayton at least three business days before the conference to reconfirm your participation.

Sincerely,



John A. Grobe, Director
Division of Reactor Safety

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR -27

Enclosure: NRC's 3/25/98 Letter to MK w/encls.

cc w/enclosure:
Steven D. Bell, Esq.

cc w/o enclosure:
T. Zarges, MK
S. Patulski, WEPCo
Office of Enforcement
EA 98-081
Enforcement Coordinators
RI, RII and RIV
RIII Office Allegation Coordinator
AMS No. RIII-1997-A-0035

OPTIONAL FORM 99 (7 90)

FAX TRANSMITTAL

3/27/98

of pages 2

From: James Cavula - ^{P(II)}
 To: HBC, CHW1 Brent Clayton, Charles Weir
 Date: 3/27/98 4:06pm
 Subject: MK/Point Beach Enforcement Conference

To	MIKE STEIN	From	CHUCK WUBEL
Dept./Agency	EA 98-081	Phone #	
Fax #	E-MAIL OUT OF SERVICE	Fax #	
NSN 7540-01-317-7388		5010-101 GENERAL SERVICES ADMINISTRATION	

Brent/Chuck,

Two issues regarding the subject Enf. Conf.

1) Doug Johnson (920-755-6653) from Point Beach called requesting that the conference be delayed for 2 to 3 weeks in order to allow them to address all of the issues in a comprehensive manner. He said they were caught somewhat unaware of this and need to have some additional time to get their information. I told him I would call him back on Monday 3/30 with an answer.

2) Dick Edmister (216-523-5606) from Morrison Knudsen called to inform me that Mr Walcott was currently in Petrograd, Russia and wanted to know if he had to attend the enforcement conference. Also, he stated that Mr Edleman's availability may be in question and wanted to know about the need for his attendance also. I told him I would check and get back to him on Monday 3/30.

We need to discuss these issues. Let me know when it would be appropriate.

Thanks,
Jim G.

CC: JAG, KSG

C/3

From: C.H. Weil ^{Res III}
To: WND2.WNP6.MHS Michael Stein, DE
Subject: MK/Point Bench Enforcement Conference -Forwarded

Mike, attached is FYI.

1. Jack Grobe is against rescheduling the conference.
2. Re MK: I told the Branch Chief, and checked with Brent, that we understand Walcutt's absence from the conference, but it sure would be nice to have him. Also told them that attendances by Edeleman is necessary, as is attendance by Pardi and Zargas.

Chuck

CC: WND2.WNP6.OEMAIL

C/4

J. Lieberman

Mike EA
FOR FILE

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN RE THE MATTER)
)
 OF)
)
 MORRISON KNUDSEN)

REPORT OF PROCEEDINGS
APRIL 9, 1998
9:00 A.M.

REPORT OF PROCEEDINGS had and
testimony taken the hearing of the
above-entitled matter, held before Mr. Jack
Gobe, at the Nuclear Regulatory Commission, 801
Warrenville Road, Lisle, Illinois.

PRESENT ON BEHALF OF N.R.C.:

- MR. JACK Gobe;
- MR. MIKE STEIN;
- MR. BRENT CLAYTON;
- MR. BRUCE BERSON;
- MR. CHUCK WEIL;
- MR. JAMES A. GAVULA;
- MS. JOSEPH ULIE;



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MR. RICHARD PAUL;
MS. KATHERINE GREENBATES.

PRESENT FOR MORRISON KNUDSEN:

MR. EDWIN STIER;
MS. MARY JANE COOPER;
MR. GEORGE HLIFKA;

1 MR. ROBE: I have some brief opening
2 remarks I'd like to make and I'm going to have
3 to leave. I understand that you have organized
4 your presentation into basically two sections?

5 MR. STIER: Right.

6 MR. ROBE: Kind of an overview that may
7 last about an hour. That is outstanding as far
8 as my schedule goes. I appreciate that. And
9 these guys are going to be available for a more
10 detailed discussion.

11 MR. WEIL: Why don't we go around the room
12 and double-check that she has everybody.

13 MR. ROBE: That's fine.

14 MR. STIER: My name is Edwin Stier from
15 the firm of Stier, Anderson and Malone.

16 MS. COOPER: Mary Jane Cooper from Stier,
17 Anderson & Malone.

18 MR. STEIN: I'm Mike Stein, discrimination
19 enforcement, Office of Enforcement.

20 MR. BERSON: Bruce Berson, Regional
21 Counsel.

22 MR. ROBE: Jack Robe; Director, Division

1 of Reactor Safety.

2 MR. CLAYTON: Brent Clayton, Region III
3 enforcement.

4 MR. WEIL: Chuck Weil, I work for Brent,
5 enforcement specialist for the region

6 MS. GREENBATES: Katherine GreenBates,
7 Division of Reactor Safety.

8 MR. HLIFKA: George Hlifka, I am with
9 Morrison Knudsen, welding engineer.

10 MR. PAUL: Richard Paul, office of
11 investigations.

12 MR. ULIE: Joseph Ulie, N.R.C. office of
13 investigations.

14 MR. GAVULA: Jim Gavula, D.R.S.

15 MR. ROBE: There is no doubt we have too
16 many lawyers in this room. When the lawyers
17 outnumber the technical folks, I know we are
18 getting too far away from the right issues.

19 MR. STIER: You're probably right.

20 MR. ROBE: Are we ready? Good morning, my
21 name is Jake Robe, Director of Division Reactor
22 Safety for the NRC.

1 This meeting is being conducted
2 at the request of Ed Stier, to present some
3 findings of an investigation they have done
4 regarding potential discrimination at the
5 Morrison Knudsen firm.

6 The meeting will be broken into
7 two sections. One is a general overview of the
8 facts that Mr. Stier has identified through his
9 investigative activities. And then a more
10 detailed discussion of those facts, and
11 questions.

12 The meeting is being transcribed
13 to insure that we have a correct record of the
14 information presented so that we can refer back
15 to it at some time in the future, as necessary.

16 Are there any other issues that I
17 should address before we go forward?

18 MR. BERSON: Other than we will obviously
19 consider what you have to say before reaching an
20 enforcement decision in this matter. And I
21 assume you are aware that an enforcement
22 conference has been scheduled with the licensee

1 and Morrison Knudsen April 16th.

2 MR. ROBE: And we will consider the
3 information that you have today in our decision
4 whether to go ahead with that meeting. Have you
5 any opening remarks?

6 MR. STIER: I just want to clarify one
7 thing, and George Hlifka and I will explain this
8 in a little more detail later on. George Hlifka
9 is a Morrison Knudsen employee, but he's here
10 today not representing Morrison Knudsen. He's
11 been assigned to work as part our investigative
12 team at my request under conditions that I will
13 describe to you in just a moment. So let me
14 start out by saying that although we are a law
15 firm, we are not here representing Morrison
16 Knudsen, we were not advocates for Morrison
17 Knudsen.

18 There is no attorney-client
19 relationship between our firm and Morrison
20 Knudsen. There is no privilege that attaches to
21 what we did for Morrison Knudsen.

22 I'd like to start by giving you

1 just a little bit of background about our firm,
2 what we do, how we do it, because I think you
3 need to understand that in order to put what I'm
4 going to tell you in its proper context.

5 Our firm -- first of all, before
6 I get into that, let me tell you what you have
7 got in front of you. Everybody should have two
8 books, one is a briefing book which has in it an
9 outline of the presentations that Mary Jane
10 Cooper and I are going to be making here today.

11 The section up through the yellow
12 divider covers what I'm going to be telling you.
13 And then from that point through the rest of the
14 book is an outline of Mary Jane Cooper's
15 presentation. The second book is a set of
16 document exhibits. We have tried to keep it
17 very, very limited. We have amassed something
18 like 10,000 pages of documents in the course of
19 our investigation, and we have selected these as
20 examples of certain of the points that we would
21 like to make during the course of the
22 presentation.

1 Exhibit B in the exhibits is a
2 copy of this chart that we have put up on the
3 board here. It's a time line that Mary Jane is
4 going to use to help work her way through the
5 rather complicated factual issues that she is
6 going to be discussing here today.

7 Our firm has been providing
8 services within the nuclear industry for about
9 15 years now. We started out in Region I doing
10 some work at T.M.I. and have worked in all of
11 the regions of the N.R.C. except for Region III.
12 This is the first time we have been -- we have
13 made a presentation or worked within the
14 jurisdiction of Region III.

15 The only work that we have done
16 in the nuclear industry, and generally what our
17 firm does, about 95 percent of what we do is to
18 conduct independent investigations. That is, we
19 use our skills that have been acquired in my
20 case over, I guess, about 35 years now, I hate
21 to say it, in conducting investigations in
22 government, and since 1982 in the private

1 sector. We use those skills to gather factual
2 information and to organize it in a way that
3 hopefully helps the client and third parties
4 such as the N.R.C. reconstruct what happened,
5 and so that everybody has an objective, clear,
6 detailed understanding of past events. And I
7 will tell you what the procedures are and under
8 what conditions we do that kind of work in a
9 moment.

10 Our objective is to conduct a
11 thorough, detailed investigation of issues
12 relating to violations of standards of conduct.
13 The first thing we do is try to define what are
14 the standards of conduct to which people are
15 going to be held accountable. And then we
16 investigate against those standards of conduct
17 and we try to resolve issues of whether
18 individuals or companies have violated those
19 standards of conduct, and if so how they were
20 violated, who was accountable and where we can
21 determine what the cause of the violation was.

22 Another thing we do in the course

1 of our investigations is to document the
2 evidence very, very carefully. We do not want
3 the conclusions of our investigation to rest on
4 our personal credibility. We think we approach
5 these investigations in a fair-minded, honest,
6 objective way. But nobody should have to trust
7 whether we have, in fact, done that. You should
8 be able to go back through the documentation
9 that we have created, look at it yourselves and
10 reach your own conclusions. And if we have done
11 a fair, objective job you should reach the same
12 conclusions that we did.

13 The final thing that we do in this
14 investigative process for clients is to prepare
15 a report in which we organize the information,
16 we analyze it and we present it in a form that
17 helps the reader understand what we did, how we
18 did it, what the scope of it was, what our
19 conclusions were and why we reached the
20 conclusions that we have.

21 I will explain the structure of
22 our reports in a moment. We have not in this

1 case prepared a report. We are at the beginning
2 stages of doing that.

3 In our investigations the first
4 step that we go through is to define the issues.
5 And we try to do that in a way that fairly
6 characterizes the problem, to find the issues.
7 If you narrow them too much obviously you can
8 miss the point. If you define them too broadly
9 you can end up conducting an open-ended
10 investigation that doesn't reach any useful
11 conclusions.

12 So we try to work initially with
13 the client, and then through preliminary
14 interviews of concerned individuals, such as
15 people who have made allegations, try to
16 understand precisely what the issues are. And
17 the more precisely we can define the issues, the
18 better chance we have of producing a product
19 that is useful to the client and to the N.R.C.
20 or to whoever else the client intends to submit
21 the results.

22 One of the first questions that

1 we want to know from a client is what is the
2 purpose of the investigation, why do you want to
3 know this? Why do you want us to undertake
4 something like that? And if the purpose is to
5 demonstrate to a third party such as the N.R.C.
6 that, A, the client is interested in finding out
7 the facts; and, B, wants to demonstrate to the
8 third party what the objective facts are, we
9 obtain a commitment at the outset that our work
10 product is going to be transmitted to that third
11 party, so that there is a waiver of the
12 attorney-client privilege right from the
13 beginning.

14 They understand that there is no
15 privilege, and that regardless of the outcome of
16 the investigation -- and of course at that stage
17 presumably we certainly don't know how it's
18 going to come out. The client may have some
19 ideas about how it's going to come out, but they
20 must at the beginning waive any privilege,
21 because we are concerned that we don't want to
22 create the impression that at the end, depending

1 on how the investigation comes out, they may or
2 may not disclose the results.

3 And I think that that is very
4 important, because there is no residual
5 information that is in any way unavailable to
6 the N.R.C. And, in fact, in a number of
7 investigations that we have done, some arm of
8 the N.R.C. will ask us to produce -- I have had
9 that where we are generating on a real-time
10 basis, they can have transcripts as they are
11 being produced. It's not that you have to wait
12 until the end of the process to find out what's
13 going on. We will have as open a flow of
14 information to the third party as you want to
15 have as the investigation is progressing.

16 And the purpose of that is so
17 that -- our objective is to try to reach a set
18 of conclusions that any other interested,
19 fair-minded investigator would reach at the same
20 time they reach that conclusion.

21 We started this process early on
22 in working with the N.R.C. on some fairly high

1 profile investigations, that is working out an
2 arrangement where we would simply turn over the
3 evidence as it was developing, so that instead
4 of your getting a big pile of material at the
5 end of the process you can absorb it and think
6 about it as it's developing and supplement it to
7 the extent that you want to have someone go out
8 and check and verify what we are doing.

9 We obtained a commitment from
10 management that at a level above where the
11 problem is centered that we are going to have
12 support for the investigation, we are going to
13 be assured full cooperation of all company
14 employees, cooperation of the contractors and
15 support for whatever we need to do. Typically
16 we get very complete cooperation, particularly
17 in nuclear everybody is -- everybody cooperates
18 with us.

19 But it's important that the
20 message that management sends out is that this
21 investigation is important to the company, we
22 really want to do this and this is not just

1 window dressing. We are going through a really
2 thorough analytical process.

3 Typically the investigations we
4 do in the nuclear industry involve very
5 technical issues. We work a little differently
6 than lots of other investigators in conducting
7 these investigations in that we want to
8 integrate technical knowledge into the
9 investigative process itself. So we will find
10 whatever the expertise is to help us work our
11 way through problems and bring that individual
12 or those individuals right into the
13 investigation. And they participate in every
14 phase of it, in the sense that we are hearing
15 what they have to say about it, we are learning
16 what we need to know.

17 We are not engineers. We don't
18 purport to be technical experts on any subject.
19 But by the end of the process in the narrow area
20 that we are investigating we should know pretty
21 much what a -- what an expert would know about
22 that narrow slice of subject matter. And then

1 after the report is filed we forget it. And if
2 we have to do an investigation in a related area
3 later on we will start all over again, because
4 it is by asking very, very detailed, sometimes
5 overly simplistic questions that we are able to
6 see things in a way that perhaps engineers
7 sometimes don't. Because engineers who have
8 much more knowledge than we do make certain
9 assumptions about what they are seeing, and we
10 make no assumptions about it.

11 MR. BERSON: Would these experts that you
12 retained, would they sit in, for example, during
13 interviews --

14 MR. STIER: Yes.

15 MR. BERSON: -- of people and ask
16 questions as appropriate?

17 MR. STIER: Yes. But we do not turn over
18 the decision making to any expert. We -- if an
19 expert says to us, well, you know, there is a
20 code violation here or that, you know, there is
21 a problem with what that witness said, we want
22 them to show it to us, go to the code, and we

1 will learn whatever we need to know in order to
2 reach our own conclusion on that technical
3 issue. And it should withstand scrutiny.

4 I have testified before in at
5 least one N.R.C. proceeding on a panel of
6 technical experts, along with Bill Russell and
7 some other people from the N.R.C., all of whom
8 were engineers. But by the end of the process I
9 think I was able to hold my own reasonably well
10 in that atmosphere. But that is absolutely
11 critical to the way we go about investigating
12 and reaching our conclusions.

13 MR. STEIN: Are your technical experts
14 individuals from the company that contracted
15 you?

16 MR. STIER: Usually we will ask the
17 companies to assign somebody who has not been
18 involved in the issues to work with us because
19 it's helpful to have a company employee, if
20 there is somebody there with the technical
21 knowledge that we need. Sometimes we will go
22 outside the company, sometimes we will use both.

1 We will typically, however, give
2 everybody whom we are interviewing an
3 opportunity to comment on our understanding of
4 the technical issues, and Mary Jane will explain
5 when she talks about some of the interviews, how
6 our view of in this case the ASME code, what the
7 requirements were, how our ideas were presented
8 to the witnesses who had any knowledge of the
9 issues here so that they could respond and tell
10 us whether their views were different. And we
11 want to create a record in which anybody, any
12 expert can look at it, reconstruct what we did
13 and come to their own conclusions about it,
14 understand why we say what we are saying. If we
15 are right, hopefully everybody will agree with
16 us.

17 MR. ROBE: In this case, Ed, your
18 technical expert was in Morrison?

19 MR. STIER: Yes, it's George Hlifka.

20 MR. ROBE: Can you explain George's
21 history?

22 MR. STIER: Yes. George came to work for

1 Morrison Knudsen after these events occurred.
2 He had no involvement, personal involvement in
3 any of the issues that we were investigating.
4 We asked Alain Artayet whom he thought might
5 have sufficient technical knowledge to help us.
6 He identified George as a guy that he trusted,
7 he had confidence in, and so we asked Morrison
8 Knudsen to assign him to us.

9 And George has been working with
10 us and has been independent of the company in a
11 sense that, you know, he is working for us,
12 reporting to us, and whatever we need him to do
13 he is available to us. And we have typically
14 done that.

15 Every -- virtually every
16 investigation we have done over the years has
17 been structured the same way, and you should be
18 able to evaluate based on the record that we
19 have created, should be able to evaluate whether
20 we have had sufficient independent technical
21 support, shouldn't depend on George's
22 credibility or our credibility. The

1 documentation, the data, the analysis is going
2 to be done right there on the record for you.

3 Let me just talk about the report
4 a little bit

5 MR. WEIL: If I may ask a couple of
6 questions.

7 MR. STIER: Sure.

8 MR. WEIL: Was George the replacement for
9 Alain as the group welding engineer?

10 MR. STIER: Actually, no. George was
11 hired at a time -- just about the time that
12 Alain came back there was another group welding
13 engineer as a contractor who had been hired
14 while Alain Artayet was away. And I mean George
15 didn't know anything about the situation when he
16 was hired, showed up and came in there as a
17 contractor, and it was sort of -- that was the
18 hand he was dealt.

19 MS. COOPER: I think the company was
20 looking to do, as I understand it, a bit of
21 restructuring and creating another position, and
22 in that sense had hired a subcontractor to fill

1 the group welding positions.

2 For a number of months they were
3 unsuccessful in getting an individual with
4 sufficient technical knowledge. The idea was to
5 find somebody who was both knowledgeable in
6 welding and in quality, and as we will get into
7 this you will see that was one of the issues.

8 And they had a couple of people
9 in mind, and they were unable to get the person
10 that they wanted to come to Cleveland from North
11 Carolina, so they decided that it was essential
12 to get a company group welding engineer.

13 I think it was in mid September
14 that George was hired as the company group
15 welding engineer, no longer a contractor. And
16 then I have it was at the end of October or
17 beginning of November that Alain -- the D.O.L.,
18 Department of Labor said Alain should be
19 rehired. So since that time they have had two
20 group welding engineers.

21 MR. STIER: But I want to emphasize
22 something. And that is that the product that we

1 produce, and I think it's very, very important
2 to understand that this today is not the
3 product. The product is the report that we have
4 created, the transcripts of interviews, the
5 documentation that we have collected. That
6 product is the basis on which inferences should
7 be drawn on which you should accept or reject
8 the evidence. And, for example, if in the
9 course of an interview Mary Jane has put on the
10 record a particular interpretation of ASME code
11 requirements, you should be able to go to the
12 code and see whether or not she is right or
13 wrong.

14 MR. WEIL: Let me follow-up.

15 MR. STIER: Yes?

16 MR. WEIL: Say you identified an issue
17 that has problems with a code, even a violation
18 of the code, how does that get flushed up for
19 corrective action?

20 MR. STIER: We -- if we see an ongoing
21 violation, that is if something that we think is
22 a -- could create a safety problem or needs to

1 be reported to the N.R.C., or if we have a
2 question, I am not an expert on regulatory
3 reporting requirements. We will immediately
4 call it to the attention of the company and tell
5 them this is what we found, we think you need to
6 do something, or at least --

7 MR. STEIN: In other words if employee
8 tells you they are ECP program at a plant, you
9 will come to the N.R.C.?

10 MR. STIER: If we have a communications
11 link with the N.R.C. in the investigation, and
12 we do in many cases, yes, we will immediately
13 tell whoever we are dealing with, could be an OI
14 investigator, could be somebody else in the
15 region. If we don't, we will tell the company,
16 and the company should report it.

17 If -- I mean, I have never been
18 in a situation where the company hasn't reported
19 something we think is reportable. If we did, we
20 would go to the N.R.C. And that is an
21 understanding that we have with our clients,
22 that is, if we see something that the company

1 should be reporting, we don't want to be a party
2 to a situation in which something isn't getting
3 to your attention that should. But in the first
4 instance it should be reported by the licensee,
5 typically the licensee, and once in a while a
6 contractor.

7 Let me just describe very briefly
8 the process for conducting interviews. When we
9 conduct an interview -- and in this case we did
10 approximately 25 interviews. When we do an
11 interview we permit the interviewee to have
12 anyone present that they would like to have.

13 In many cases it's a lawyer. In
14 this case Alan Artayet had his lawyer present
15 during all of the interviews. The only -- and
16 they can have somebody else if they would like
17 somebody else. The only exception is we don't
18 want them to bring another witness with them.
19 But otherwise we try to make them feel as
20 comfortable as possible in terms of having
21 somebody there that will provide them with
22 advice and support.

1 We try to make a verbatim record
2 of all the interviews. We use court reporters.
3 We think that that is the best, most accurate
4 way of not just producing the result of the
5 interview, but demonstrating what questions we
6 ask, whether our interviews were as
7 comprehensive as they ought to be, whether we
8 left something out, and it's the fairest way to
9 characterize the responses of the witness.

10 We try to include in our
11 interviews what lawyers would characterize as
12 both direct and cross examination questions. We
13 want it to be kind of a self-contained record,
14 and to come at the subject matter from as many
15 different perspectives as we can. We let the
16 witness comment, as you know, as much as they
17 would like to. We try to keep the record
18 orderly, but we certainly don't want to cut off
19 any opportunity for the witness to add anything
20 that they would like to add.

21 We try to brief the witness in
22 advance on the purpose of the investigation, the

1 procedures that we are going to follow. We give
2 them relevant documents, give them an
3 opportunity to examine the documents so that
4 they are not surprised. We do give up the
5 element of surprise in the interview process.
6 As a former prosecutor you know you highly prize
7 the element of surprise. I think it's over
8 valued and it certainly hasn't been a handicap
9 in doing investigations the way we do,
10 particularly in the nuclear industry. I think
11 we have been pretty successful in getting to the
12 bottom of whatever the issues are.

13 After the interview is complete,
14 we give the witness the transcript and let them
15 review it and correct it. We don't put any
16 restrictions on their correction of the
17 transcript. And then at the end of that
18 correction process, we ask them to swear to it.
19 So that if the witnesses want to rethink what
20 they have said, want to state it differently,
21 they can do that. We want them to feel that
22 they have told us under oath the best, most

1 accurate version or whatever version they want
2 to tell us of the subject matter.

3 We then compare that with our
4 evidence, analyze it and use it in ways that I
5 will describe to come to our conclusions. If a
6 witness does not agree to give us a statement
7 for the court reporter we type a detailed
8 interview memorandum and submit that to the
9 witness for correction before we accept it.

10 The documents -- we create a data
11 base of documents. In this case, like I said,
12 we have got something like 10,000 pages of
13 documents. We have a data base which will give
14 you a print-out identifying every document,
15 telling you where we got it from, essentially
16 what it is. Each page of each document gets a
17 unique number so that when we interview
18 witnesses you can tell in the transcript
19 precisely what it was we were showing the
20 witness. You can go directly to the documents.

21 And in the end notes in our
22 report, in every factual statement in our report

1 it has an end note which refers to the evidence
2 that we are citing.

3 And we -- in our reports we not
4 only discuss the evidence that supports the
5 conclusion we have reached, we talk about the
6 evidence that conflicts with it and explain why
7 we have accepted one view as opposed to another.
8 And hopefully in reading the report, as many
9 people do, some people will read all 10,000
10 pages of documents, thousands and thousands of
11 pages of transcripts and hopefully they will, as
12 I say, go through the same analytical process as
13 we do.

14 Where we use technical analysis
15 to support our conclusions, we follow the same
16 procedure. And Bill Russell many years ago told
17 me that if we were going to do this in the
18 industry that we better make sure that it's done
19 this way. You are going to want to know not
20 what our expert concluded but why the expert
21 concluded that. You are going to want to see
22 all the underlying data, all calculations, all

1 the original documentation. And so we included
2 that in our reports where we use technical
3 analysis.

4 As I say, the purpose is to
5 produce a fair, balanced report for the client,
6 for third parties so that when it's all over
7 with, there is no longer any dispute about the
8 facts.

9 The client can take corrective
10 action, the N.R.C. can take appropriate
11 administrative action, including imposing
12 sanctions.

13 Now, with that background, let me
14 start talking about this investigation.

15 MR. ULIE: I'd like to follow up on your
16 investigation. Based on your investigation,
17 either you or Mary Jane, could you tell us what
18 date the group welding engineer who was hired
19 after Mr. Artayet was removed, what date that
20 group welding engineer was hired and identify
21 who that person is? Can you do that?

22 MR. STIER: Well, there was originally a

1 contractor.

2 MS. COOPER: Is that what you are talking
3 about, the contractor?

4 MR. STIER: The contractor or George
5 Hlifka?

6 MR. ULIE: George had been replaced in
7 place of Mr. Artayet, and I am trying to find
8 out --

9 MR. HLIFKA: I was hired in September of
10 1997. There was another individual, Sal
11 Amsalone. I believe he had been there since
12 March, and he left the company.

13 MR. ULIE: That's fine. Because Mr.
14 Amsalone, the person that, Mary Jane, you and
15 Mr. Stier were referring to earlier as the
16 contractor --

17 MS. COOPER: Sal Amsalone.

18 MR. ULIE: So it was based on your
19 experience he was there when you were there?

20 MR. HLIFKA: I'm not sure, but he was
21 hired about March of '97 time frame, I was hired
22 in September.

1 MR. BERSON: I have a couple of process
2 questions before you move on. First, I assume
3 that when you are interviewing senior corporate
4 officials at MK they have corporate counsel
5 present generally, or --

6 MR. STIER: In some cases yes, in some
7 cases no. Was there any counsel present?

8 MS. COOPER: Not in this case, no.

9 MR. STIER: I guess the highest ranking
10 official that we interviewed was Zarges, and he
11 didn't have a lawyer present, did he?

12 MS. COOPER: No. And I think the only --
13 there were only two witnesses other than Alain.

14 MR. STIER: Wait a minute. Didn't Zarges
15 have an outside counsel with him, at the
16 interview with him?

17 MS. COOPER: No. There were two witnesses
18 who wanted attorneys present. Actually, they
19 both wanted the same attorney that Alain had,
20 and he was present during their interviews. And
21 one of them said if he had known there was going
22 to be a court reporter there he wouldn't have

1 wanted -- he wouldn't have needed an attorney.
2 He wanted to make sure there was an accurate
3 record of the interview.

4 MR. BERSON: I wondered what, if any,
5 measures are taken to preclude corporate counsel
6 sitting in on six interviews and then telling
7 everybody, you know, on the next interview, this
8 is what happened. I know that is hard to
9 control.

10 MR. STIER: It is. And we have faced this
11 many, many times, and it's not just corporate
12 counsel, sometimes you will have a group of
13 people who will all have the same outside
14 counsel.

15 MR. BERSON: Right.

16 MR. STIER: It's an issues that I have
17 been concerned about for over 30 years. You
18 face it in law enforcement, and the courts
19 typically don't do very much about it. You know
20 the right to select counsel is a very important
21 right, so we don't generally challenge it.

22 We depend very, very heavily on

1 our ability to gather very, very detailed
2 information from a wide variety of sources,
3 including witnesses, documents, sometimes
4 technical analyses, and compare it all and
5 analyze it. And we think -- you know, we think
6 over the last 15 years in the nuclear industry
7 particularly where you have got so much
8 documentation, so much evidence available, that
9 you generally get to the right conclusion, and
10 that with these details any attempts to --
11 frankly, to distort the record by witnesses or
12 their lawyers or in some cases union
13 representatives -- we have the same shop steward
14 sitting there during, you know, 15 interviews.
15 Any effort to distort it generally works the
16 opposite way. It generally -- it generally
17 works against the person who is trying to
18 distort the record.

19 MR. BERSON: Okay.

20 MR. STIER: And, you know, I mean I can --
21 I don't want to tie this up now, but at some
22 point I can give you many examples of what I'm

1 talking about and why it works the way it does.

2 MR. BERSON: Just one last question about
3 the report itself you are actually going to be
4 preparing. Is that prepared totally
5 independently by you or is a draft submitted to
6 the company for comments?

7 MR. STIER: That is a good question. We
8 -- our procedure is that when we are done with
9 the report, except for the final editing, when
10 we have reached the conclusions that we have, we
11 have written it the way we want it written, but
12 before we do the final proof editing, we send it
13 to the company with a letter that tells the
14 company that they should review it for factual
15 accuracy and then to respond to us in writing on
16 any inaccuracy that they perceive.

17 I want them to be able -- if we
18 make a mistake I want to correct it before it's
19 finalized. On the other hand, I don't want to
20 go through another investigation of the extent
21 to which the company is editing our work.

22 So I have sort of worked out this

1 procedure as a compromise, and then we make a
2 record of it. And if we agree with the change,
3 we make the change. If we disagree with the
4 change, we don't. But we have a record of the
5 fact that they have made it. And as a matter of
6 fact in an investigation that we did that
7 involved Morrison Knudsen, Morrison Knudsen
8 disagreed with some of our conclusions, we
9 didn't want to make the changes, we felt we
10 shouldn't, and we attached their comments to the
11 report so that you and they and, you know,
12 everybody else could see what they had to say
13 about it.

14 But we can reconstruct with
15 precision, you know, what changes came about as
16 a result of that.

17 This -- we began this in
18 November, and I was contacted by counsel for
19 Morrison Knudsen sometime in late November and
20 was asked to go to Cleveland. I met with
21 Morrison Knudsen representatives, including
22 Zarges and their counsel, on November 27, 1997.

1 They told me about the issues that had been
2 raised by Artayet. They told me about the
3 Department of Labor finding. They --

4 MR. STEIN: If I could interrupt. Who was
5 the counsel representing MK at the time?

6 MR. STIER: Well, there were two counsel
7 who were at the meeting. One was Richard
8 Edmister who is their in-house counsel. He is
9 -- he has an office in Cleveland. And then they
10 had their outside counsel present, I think, for
11 most of the meeting, the counsel that had
12 represented MK in the Department of Labor
13 proceeding.

14 MR. STEIN: Was it a DC nuclear firm?

15 MR. STIER: No. It was a local Cleveland
16 firm. I don't know whether they had any
17 experience in the nuclear industry, but
18 apparently they have experience dealing with
19 Department of Labor kinds of investigation
20 issues.

21 My only prior experience with
22 Morrison Knudsen was, as I said before, our

1 investigation on Fort St. Vrain, where we
2 conducted an investigation on behalf of Public
3 Service of Colorado into allegations that an
4 atmosphere of intimidation had existed or had
5 been created at the decommencing site.

6 We issued a report that made
7 findings with respect to many, many -- that
8 issue as well as some other issues that came up
9 during the course of the investigation,
10 involving the falsification of radiation
11 surveys.

12 All of that evidence was turned
13 over to Region IV, and the evidence was used by
14 Region IV as part of the basis on which they
15 issued notices of violation. And they cited
16 that in the notices of violation, so it was a
17 combination of what OIs produced and what we
18 produced that was the total record that the
19 region relied on.

20 Zarges at the meeting told me
21 that he wanted to know -- the purpose of the
22 investigation was to determine why the group

1 welding engineer had not been able to prevent
2 the welding procedures from being -- at Point
3 Beach and perhaps elsewhere from being free of
4 deficiencies.

5 Of course I was told in some
6 detail about the Department of Labor finding,
7 and I was told that I was -- you know, part of
8 what we were being asked to do was to determine
9 if that was true, that is that Artayet was
10 retaliated against by management for having
11 engaged in protected activity, who was
12 responsible, why had it occurred and what had
13 caused this problem. Because after the
14 experience that they had in Fort St. Vrain,
15 Zarges wanted to know how this could have
16 occurred within the company.

17 I told him what our procedures
18 were. I told him something that I think has
19 been very important to us. The purpose of the
20 investigation was not then, and is not now to --
21 it was not aimed at overturning the Department
22 of Labor finding. I would not have done that,

1 because it seems to me that that is an advocacy
2 role, and as I said before our firm does not
3 represent clients in the nuclear industry or in
4 any other industry in which we do independent
5 investigations. We do not represent them as
6 advocates.

7 In other words, I will not
8 represent a client in a matter that we are
9 investigating or in any other matter as their
10 counsel if we are doing any investigative work.
11 I consider it a conflict of interest. It may or
12 may not be from a legal standpoint, but I think
13 it's inherently a conflict to be both an
14 advocate for and independent investigator for a
15 client.

16 MR. CLAYTON: Can I go back?

17 MR. STIER: Yes.

18 MR. CLAYTON: Earlier in your presentation
19 you talked about one of the first things you do
20 in an investigation is to determine the
21 standards of conduct, whether they have been met
22 or not?

1 MR. STIER: Right

2 MR. CLAYTON: Can I explore a little bit
3 how you define standards of conduct? Are those
4 the standards that are established by the
5 company or are these standards including the
6 regulations?

7 MR. STIER: Starts with statutes,
8 regulations, company policies, company
9 procedures, company job descriptions. It can
10 include company practices. That is in some
11 cases where you have got ambiguities, or in this
12 case as a matter of fact as Mary Jane will tell
13 you there is no clear job description for the
14 group welding engineer at Morrison Knudsen.

15 So we have got to sort of
16 reconstruct what that job was from a number of
17 sources. And in some cases, it's -- you know,
18 it can be practices or verbal communications
19 between management and the employee about what
20 the company's expectations are. We tried to
21 reconstruct that, and we spend a good deal of
22 time in the investigation and in our report

1 telling the reader just what it is that we
2 believe the standards of conduct are.

3 You may disagree with that right
4 off the bat. I mean, when you see what we say
5 about the standards of conduct, but at least you
6 know what it is that we are -- what we are
7 holding people accountable for. And in some
8 cases the conclusions that we come to, you can't
9 hold somebody accountable because you don't have
10 clearly defined standards of conduct. And that
11 in itself is, I think, an enlightening sort of
12 piece of information for a client.

13 If the standards of conduct are
14 regulatory, we may go all the way back to the
15 statutory foundation for that. We may talk
16 about new rates, we may talk about our
17 regulatory guidance to define what those
18 standards are.

19 If there are code requirements,
20 industry code requirements we will lay those out
21 and explain why we think those code requirements
22 mean that -- what we say they mean. In some

1 cases we will do a very elaborate analysis of
2 code requirements, and we have had a number of
3 occasions where the issue is what is the code,
4 what does the code say and what does the code
5 mean. We spend a lot of time doing that, so it
6 can come from a number of sources.

7 MR. CLAYTON: Just one follow-up question.
8 Would your report conclusions identify any
9 discrepancies between the regulations, for
10 example 517 in this case, and company policy or
11 procedure?

12 MR. STIER: Oh, yeah, yes. I mean, if we
13 identify something like that, sure. I mean, one
14 of the objectives here -- the objective here is
15 not just to determine whether somebody did or
16 didn't do something that was a problem. Yes,
17 that is the immediate goal.

18 The broad objective, though, is
19 to help the client fix whatever the problem is
20 and help the N.R.C. to the extent that, you
21 know, the N.R.C. is getting part of the results
22 -- or getting the results of what we produce,

1 help the N.R.C. understand what needs fixing and
2 whether the company did an adequate job.

3 Sometimes if you don't go through this
4 investigative process, I think you may think you
5 are fixing something, and that is not the
6 problem.

7 And in some cases, to give you an
8 example, we did an investigation of leak rate
9 cheating of Three Mile Island during the year
10 that Unit 2 was in operation. That is an
11 investigation that we worked on. That is -- and
12 where we came together at a hearing before the
13 panel ALJ that was created by the commission.

14 And one of the conclusions that
15 came out of that investigation was that the
16 standard tech specs as they had been modified
17 for Unit 2 could not produce a leak rate test
18 result that had any meaning for the plant.

19 So it was kind of an insight into
20 kind of a glitch that had been created as a
21 result of trying to, you know, apply standard
22 tech specs to, you know, adapt them to a plant.

1 It didn't quite work, and it was, you know, kind
2 of an insight that came out of that
3 investigation. I think it was useful to
4 everybody.

5 So we agreed at this meeting, as
6 I understand, that our investigation was going
7 to go on a separate track from the Department of
8 Labor case. And even if we came up with
9 evidence that was relevant to the Department of
10 Labor case, that until our work was done and the
11 company had a package of information from us for
12 them to do with what they want to do with, that
13 we were not going to be feeding evidence to the
14 lawyer handling that Department of Labor case in
15 a effort to overturn it, because I thought that
16 even though they might have a perfectly
17 legitimate right to do that, it would create the
18 wrong impression, and I didn't want to give
19 anybody the impression we were brought in to
20 turn around this Department of Labor decision.

21 We did not know how this was
22 going to come out by any means. Let me tell you

1 what we did to define the issues. We started
2 out of course talking to the company at that
3 meeting. We got a copy of the record, the
4 entire record before the Department of Labor.
5 We reviewed that, including the testimony and
6 documents that had been offered in evidence.

7 Then we met with Artayet
8 preliminarily. When I say preliminarily, we did
9 not bring a corporate reporter to the meeting.
10 The purpose of the meeting was to get to know
11 him, explain to him what we were doing and to
12 help define the issues and get some background
13 information on what we needed to understand,
14 what the issues were, technical information. We
15 needed to begin to structure the investigation.

16 So we met with Artayet and his
17 lawyer. We understood what we were doing and,
18 in fact, welcomed this effort to deal with the
19 issues that he was raising. We did interview
20 him at the end of the investigation. Mary Jane
21 interviewed him for six days, which we have
22 transcripts of, and she will explain why it took

1 six days to go through these issues, technical
2 issues with him, and give him an opportunity to
3 look at code and look at documents and explain
4 questions that had been raised. And of course
5 you know those transcripts are all there for
6 anybody to read.

7 But in those initial interviews
8 he told use lot of background information and
9 gave us a tremendous amount of documentation
10 which we used to begin to define the issues.

11 And at that meeting we talked to
12 him about the technical support that we would
13 need, and he -- I don't know whether he
14 identified George or I asked him about George.
15 And he said that based on his experiences with
16 George Hlifka he was technically knowledgeable,
17 knew the company, knew where the documents were
18 that we'd be looking for, knew who the people
19 were generally, and that he was confident with
20 George's objectivity and fairness.

21 But I want you to understand that
22 whatever conclusions we reach are not -- they

1 are not George's conclusions. And you will see
2 in the record that we lay out the technical
3 basis that any expert can look at to see whether
4 we reached the right conclusions.

5 MR. BERSON: Can I ask you a question?
6 How well did the Complainant know George? It
7 seemed like they almost didn't overlap very
8 much, unless they knew each other from a prior
9 life?

10 MR. STIER: It's hard to say how well they
11 knew him. But they had been sort of thrown
12 together, worked in the same office for how long
13 a period -- well, it was from September --

14 MR. HLIFKA: I was hired September 8th,
15 and I believe Alain came back to work sometime
16 in October.

17 MR. STIER: Right.

18 MR. HLIFKA: So up until I started
19 assisting Alain and we got to know each other,
20 it was about a month or so.

21 MR. STIER: About.

22 Basically what Artayet told us in

1 the initial interview was that he had been under
2 fire in his position as group welding engineer.
3 He had been limited in his responsibilities, and
4 he was ultimately removed from that position
5 because the managers at Point Beach Project had
6 refused to adhere to welding procedural
7 requirements that he had imposed, and they
8 manipulated management into siding with them
9 against him, and ultimately resulted in his
10 removal from his position.

11 He described to us the
12 refinements that he had imposed on the site,
13 told us the source of those requirements, that
14 is ASME code foundation for those requirements,
15 explained to us why he was right and they were
16 wrong. That is that, you know, he was right in
17 imposing the requirements, the site was wrong in
18 refusing to accept those requirements. And he
19 told us how he believed the management at the
20 Point Beach site had ultimately manipulated the
21 head of the power division, Lou Pardi, into
22 intervening and removing him from his position.

1 MR. STEIN: Did he have evidence of that?
2 Did he have letters?

3 MR. STIER: Oh, yes. Well, he had lots of
4 documents. He had the report from the ALJ which
5 seemed to support him on it. He had -- and it
6 made logical sense. Everything he described at
7 that meeting made complete sense.

8 MR. STEIN: But did he have any internal
9 MK documents from Point Beach saying, you know,
10 what you just said about the removal of Artayet?

11 MR. STIER: Not directly. A lot of it was
12 inferential. He had notes. He also had
13 something that I will get to in just a moment.
14 He had tape records, and he and his lawyer told
15 us that the tape records that he had made
16 surreptitiously involving company managers
17 demonstrated that Artayet was right in the
18 allegations that he was making, and that it --
19 that the tapes confirmed that the witnesses --
20 that two company witnesses in particular had
21 lied at the hearing before the ALJ. And he gave
22 us copies of those tapes.

1 MR. WEIL: Let me ask a question. Are we
2 talking here about MK managers or Wisconsin
3 Electric managers or both.

4 MR. STIER: We are talking about MK only

5 MR. WEIL: MK only.

6 MR. STEIN: It's the MK site managers
7 recommending that he be removed, MK corporate
8 managers?

9 MR. STIER: Exactly, exactly. Mary Jane
10 will show you the corporate organizational
11 structure.

12 And so we defined the issues as
13 follows, based on what he told us. That the
14 ultimate issue was whether a decision had been
15 made by MK management concerning Artayet's
16 employment status prior to February 8, 1997,
17 that were influenced through legally
18 impermissible considerations. For example,
19 retaliation for having raised concerns about
20 problems at Point Beach, was based on inaccurate
21 information, that is Artayet's claimed that the
22 information that had been given to corporate

1 management was distorted, inaccurate, falsified
2 in order to cause them to take adverse action
3 against him and not in conformity with MK's
4 decision-making process.

5 That is, he claimed that Pardi,
6 who was not in Artayet's reporting chain, Pardi
7 being the head of the power division, had, in
8 fact, removed Artayet when Artayet reported to
9 another part of the management chain, and that
10 this was an extraordinary event.

11 So you see that we broadened our
12 investigation to go beyond the specific issues
13 that had been raised at the D.O.L. proceeding.
14 We wanted to know other things in addition to
15 whether Artayet was the victim of retaliation.

16 Let me tell you about the
17 February 8th cutoff date. Artayet has raised a
18 whole series of issues with respect to whether
19 he is in with the company, has abided by the
20 reinstatement order issued by the JLG. We have
21 not dealt with those issues in our
22 investigation.

1 The reason we haven't dealt with
2 them is because those are ongoing issues, and I
3 felt that we needed to -- and this was my
4 decision, not the company's decision. I felt
5 that we needed to have a cutoff date so that we
6 could conclude the investigation, prepare a
7 report.

8 The issues about whether the
9 company has violated or complied with the
10 reinstatement order is a matter that I felt was
11 going to end up in litigation before the ALJ or
12 some other -- in some other form, and those
13 issues were just going to keep popping up. So
14 rather than try to pick out some other arbitrary
15 cutoff point, I chose to use that February 8th
16 date.

17 The February 8th date is the date
18 on which Artayet was reassigned to a position in
19 Parkersburg, West Virginia, that he alleged was
20 a demotion, was retaliatory, was a final act of
21 retaliation against him in his allegations,
22 final act of retaliation for having engaged in

1 protected activity.

2 Based on our preliminary
3 investigation, it became clear that there were
4 two conflicting sets of facts, very conflicting.
5 One, from what Alain Artayet was saying about
6 what happened and the other version based on
7 what it appeared that management was saying.
8 When I say management I'm talking about
9 collectively the site management at Point Beach
10 and various corporate level managers who had
11 participated in the decision-making process
12 about Artayet.

13 And those factual conflicts or
14 those factual -- yeah, conflicts can be divided
15 up into four categories, and we have separated
16 our analysis into those four categories because
17 I think it's easier to understand the totality
18 of the facts which get very, very complicated if
19 you divide it up this way.

20 The first category is whether the
21 ineffective working relationship between Artayet
22 and site personnel at Point Beach was the result

1 of Artayet's deficiencies or the site's
2 unwillingness to accept appropriate corporate
3 oversight.

4 There is no dispute there was an
5 ineffective working relationship between Artayet
6 and site personnel. Artayet says it's the
7 people at the site and the people at the site
8 say it is Artayet. The question is, who is at
9 fault? In Artayet's view management was -- the
10 site was intent on taking shortcuts that could
11 violate code requirements, and perhaps even
12 regulatory requirements.

13 MR. STEIN: MK management?

14 MR. STIER: MK management. When I talk
15 about management I'm talking about MK
16 management, I'm not talking about WEPCO. As far
17 as we could see in this situation that we were
18 investigating, there was no participation by
19 WEPCO.

20 That as I say the site management
21 wanted to take shortcuts in developing welding
22 procedures that might violate code requirements,

1 or even regulatory requirements. They did not
2 want to comply with the quality assurance
3 manual. They misrepresented Artayet's positions
4 on certain issues in order to falsely accuse him
5 of being incompetent. And the most important
6 issue, and this is going to crop up, this was an
7 important issue before the ALJ, a very, very
8 important issue, and that is his position on
9 drop weight testing.

10 And Mary Jane will tell you all
11 about drop weight testing in a few minutes, but
12 Artayet says quite explicitly that his position
13 on drop weight testing was misrepresented and
14 used as a way of undermining his credibility and
15 was one of the causes for managers to lose
16 confidence in him.

17 He says it was the site personnel
18 who initially did that. They blamed him
19 unfairly for failure to meet the schedule for
20 the qualification of welding procedures.

21 Let me just stop for just a
22 moment and tell you what I mean by qualification

1 for welding procedures. Everybody here may be a
2 welding expert, but let me -- just so we are all
3 singing from the same sheet of music, let me
4 tell you what I understand the welding
5 procedures, that is the procedures that define
6 how the welds that have certain parameters, that
7 -- whether those parameters are satisfied. Code
8 requirements need to be tested in order to
9 verify that. In fact, those parameters will
10 meet the requirements of strength and toughness
11 and what have you, that are defined by the code.

12 The process of verifying that
13 through testing, that a welding procedure --
14 that is that the parameters meet code
15 requirements, that process is called
16 qualification. And in order for a welding
17 procedure to be used at the site to support
18 welds, the procedure that covers those
19 parameters needs to be qualified and you need to
20 have a record to show that that qualification
21 occurred, and the qualification process must
22 conform to code requirements. The code lays out

1 quite specifically how welding procedures need
2 to be qualified.

3 Essentially correct -- okay, good
4 welding procedures, one of the major issues at
5 Point Beach was assuring that welding procedures
6 be qualified within a scheduled period, and
7 there were problems with that.

8 The initial attempt to qualify
9 welding procedures at Point Beach did not meet
10 the schedule that had been defined. And Artayet
11 said that the failure to meet that schedule had
12 not been his, that the cause of the failure was
13 what had happened at the site. And yet the
14 people at the site were telling corporate
15 management that it was all Artayet's fault, and
16 that further undermined his credibility and
17 contributed to the decision to remove him from
18 his position.

19 And finally Artayet says that
20 there were, in fact, deficiencies, and I don't
21 think anybody disputes that there were
22 deficiencies in the welding procedures at Point

1 Beach site, deficiencies in terms of whether
2 there was compliance in the procedures with the
3 code and whether there were other problems with
4 those procedures that Mary Jane will talk about
5 in some detail.

6 Artayet says that those problems
7 were created by site personnel. It was their
8 responsibility to make sure that those
9 procedures were correct and met all the code
10 requirements, that -- but that management in
11 this case, corporate management unfairly blamed
12 him for the failure of those site procedures to
13 be compliant with the code.

14 And that was ultimately the final
15 step in -- the final link in the chain of
16 circumstances that led to Artayet's removal from
17 his position.

18 Management's view is of course --
19 I want to say management again collectively now
20 is of course the flip side of that. They say
21 that Artayet imposed unnecessary and overly
22 complex requirements on site personnel, not

1 required by the code in their efforts to create
2 site welding procedures, that he was not
3 technically competent, and they again emphasized
4 that in their minds he did not understand drop
5 weight testing, and that was a major factor that
6 led them to question his technical competence.

7 They say that Artayet was chiefly
8 responsible for the failure of the qualification
9 process to be done in a timely way, and that it
10 was his responsibility. And, again, this is not
11 so much the view of the site management, but
12 corporate management says that it was Artayet's
13 responsibility to make sure that those site
14 procedures were correct and in compliance with
15 the code. And when it came to the surface that
16 they were not, he was the guy that was
17 rightfully accountable for this. So you get
18 these totally conflicting views.

19 MR. STEIN: And you mentioned there was no
20 position description for the group welding
21 engineering?

22 MR. STIER: Yes.

1 MR. STEIN: Which spelled out exactly what
2 his --

3 MR. STIER: Yes. But we reconstructed
4 what his job was. And Mary Jane will go through
5 that in some detail so you understand how we got
6 to where we are at.

7 MR. STIER: Category 2, and this will go a
8 little quicker than Category 1 because it's more
9 defined. Category 2 is the issue of whether
10 Artayet's criticism of site procedures on
11 December 12, 1997, resulted in his removal from
12 nuclear responsibilities.

13 During the week of December 16th,
14 basically what Artayet says is that when -- that
15 he saw a copy of the site procedures when they
16 were finalized. He had already made some
17 comments on problems with them. He said that
18 those components were not incorporated into
19 them. He criticized the site procedures to his
20 manager, and Artayet believes that his manager
21 communicated that back through the organization,
22 and it resulted in the head of the nuclear --

1 the head of the power division deciding during
2 the week of December 16th that Artayet should no
3 longer be involved in supporting any other
4 nuclear projects.

5 And so he says that was an act of
6 retaliation, cause and effect.

7 MR. STEIN: Where did the oversight of
8 nuclear projects go, from Artayet to?

9 MR. STIER: Well, the fact is that by that
10 time there were no nuclear projects, and so it's
11 sort of a moot question. But where it would
12 have gone at that point was undecided. It's
13 even an open question whether a decision had
14 been made to remove him. Something happened
15 during that week. Mary Jane will construct for
16 you what happened. It's a little complicated.

17 But the question was whether
18 there was a cause and effect. I mean, some
19 decision had been made, some communication about
20 Artayet that was adverse to him occurred during
21 that week of December 16th. We say the 15th in
22 here, but the 15th was a Sunday, so it was

1 actually the first of the week of the 16th of
2 December. The question is whether those
3 discussions and whatever decisions were in the
4 process of being made during that week had
5 resulted from Artayet's criticizing the site.

6 MR. WEIL: Excuse me.

7 MR. STIER: Yes?

8 MR. WEIL: As a point of clarification,
9 when Artayet told his supervisor, who was the
10 supervisor at that time.

11 MR. STIER: He says he criticized them to
12 Andy Walcutt. Andy Walcutt was the head of QA,
13 and he was the immediate supervisor of Artayet
14 during that period of time

15 MR. ULIE: By the site you are referring
16 to Point Beach or another site?

17 MR. STIER: Talking about Point Beach, the
18 Point Beach site welding procedures.

19 Incidentally, just to give you a
20 little bit of background, Artayet reports to --
21 reported to Andy Walcutt, the head of QA, Andy
22 Walcutt reported to a gentleman by the name of

1 Drew Edelman. Drew Edelman in turn reported to
2 Zarges. Lou Pardi, who is the head of the power
3 division, also reports directly to Zarges. So
4 you see there is no common link in the two
5 chains of command other than Zarges.

6 Management's position is very
7 simple on this issue, and that is that there was
8 no communication of Artayet's criticism to
9 anybody other than Walcutt, and that Walcutt did
10 not participate in any decisions that were
11 adverse to Artayet, so there could be no causal
12 connection.

13 MR. STEIN: I know Artayet doesn't have a
14 position description. Do the other gentlemen
15 have position descriptions?

16 MR. STIER: Yes, I believe so. Mary
17 Jane --

18 MR. STEIN: Does Pardi have any personnel
19 function that oversees the entire company
20 versus --

21 MR. STIER: No, he does not. He would not
22 have a personnel related set of responsibilities

1 with respect to QA.

2 MS. GREENBATES: Could you clarify that
3 statement? I probably didn't hear it clearly.
4 You are saying that Artayet's direct supervisor
5 did not have any input on whether the damage was
6 ineffective or he should be fired because --

7 MR. STIER: He did, but there are -- I'm
8 talking about with respect to this particular
9 issue, that is the business about the December
10 16th, his criticism on December 12th and the
11 discussions about him. I say discussions
12 because there is a question as to whether
13 decisions had been made about him, but clearly
14 there were discussions with his manager about
15 him during the week of December 16th that were
16 about that time that were adverse to him.

17 MS. GREENBATES: Thank you.

18 MR. STIER: Okay. Now, the third category
19 is the one that was the centerpiece of the
20 Department of Labor finding. And really the
21 only piece of the Department of Labor finding
22 that concluded that there was retaliation, and

1 that is that whether Artayet was removed from
2 the position of group welding engineer on
3 January 15, 1997, in retaliation for submitting
4 a memorandum on January 14th claiming that
5 errors existed in the site welding procedures.
6 I guess you all are familiar with that issue.

7 Artayet says basically, of
8 course, you know, the time sequence is very,
9 very persuasive and says that the only thing he
10 was told on January 15th was that there was a
11 personality conflict between himself and site
12 personnel, not that there were any deficiencies
13 in his performance, and that in effect was told
14 by Edelman, that indeed there were no problems
15 with his technical skills and performance and so
16 this personality conflict thing rings a bit
17 hollow. And you have this clear sequence, very
18 clear sequence of January 14th and January 15th,
19 and so that supports the inference that was
20 drawn by the ALJ that there was a causal
21 connection and that was retaliatory. And I
22 think that the word retaliatory is really

1 critical here.

2 That is, by pointing out
3 deficiencies that had resulted from the
4 ineffective work done at the site, which was his
5 job to do, Artayet -- or whether it was his job
6 to do it or not, he was pointing up problems
7 that had been created by people at the site, the
8 response of management was to remove him from
9 his position.

10 Management's position as was
11 presented at the hearing, and as they presented
12 it to us, was that he was removed -- Artayet was
13 removed from his position because of
14 deficiencies in the welding program, that is the
15 very problems that he was citing in those
16 welding procedures were his responsibility. He
17 was, in effect, telling them he had been
18 ineffective or confirming that he had been
19 ineffective in assuring that site procedures
20 were free of deficiencies, which is what
21 corporate management believed his job to be.
22 That the site personnel had lacked confidence in

1 Artayet for a long period of time for good
2 reason, that he was the one who was deficient
3 in, you know, technically more than the site.
4 And that this January 14th memorandum he wrote
5 was the last step in a decision-making process
6 that had begun long before that, and was a
7 reminder that, yes, these problems indeed
8 existed at the site and that they were primarily
9 his fault.

10 MR. STEIN: Did you investigate Artayet's
11 performance files, his company file and take a
12 look at whether the company had created a record
13 of performance deficiencies?

14 MR. STIER: Yes, we did, and Mary Jane
15 will go through that. And not only did we do
16 that, we went back over everything that happened
17 at that site in great detail.

18 For example, we reconstructed, on
19 a day-by-day basis exactly what happened during
20 a requalification process. We went back over
21 the whole drop weight issue and examined it in
22 great detail, as I will explain to you.

1 Let me tell you what the fourth
2 and final category of evidence is, and then I
3 will get into our conclusions.

4 The fourth category is Artayet's
5 allegation that he was transferred to
6 Parkersburg on February 8th in retaliation for
7 having prepared a potential Part 21 with respect
8 to D.C. Cook procedures. Actually, two
9 procedures at D.C. Cook, but it was the same
10 underlying issue. This is the only piece of
11 this that relates to another project. Basically
12 what Artayet says is that after he had -- after
13 the problems at Point Beach surfaced, his
14 manager, Andy Walcutt, better take a look at
15 D.C. Cook procedures because the same people
16 were involved and they have had a lot of -- you
17 know, we ought to see what's there.

18 Artayet opened up the book of
19 procedures, he says for the first time, and saw
20 immediately that welding procedures that had
21 been used for very, very important welds maybe
22 steam line welds were not qualified, a very

1 serious problem.

2 And as a result of that
3 observation he prepared a potential Part 21 that
4 was submitted through the company. And he says
5 that because he initiated that Part 21, a
6 decision was made to move him to another job in
7 Parkersburg, get him out of corporate
8 headquarters, get him out of his role, which is
9 group welding engineer.

10 Management's position is that the
11 decision to send him to Parkersburg was totally
12 independent of this potential Part 21, and
13 indeed he did produce a potential Part 21 that
14 did raise the issues. They say it was a totally
15 independent decision-making process, and it was
16 coincidental that the transfer to Parkersburg
17 occurred after the Part -- potential Part 21 was
18 created.

19 So those are the issues that we
20 investigated. That is how the conflicting
21 positions of the witnesses sort of shaped up at
22 the beginning of the investigation. Let me tell

1 you what the status of the investigation is
2 because I'm now about to tell you what our
3 conclusions are.

4 One most caution -- I urge you
5 not to accept our conclusions at face value.
6 There is no reason why anybody should ever
7 accept a conclusion because Ed Stier or Mary
8 Jane Cooper says it's true. I urge you to look
9 at the underlying evidence, reach your own
10 conclusions. I think we are right. We try to
11 be right, but the fact that I have done this
12 before in the nuclear industry should have
13 absolutely no affect in my view on whether you
14 accept our conclusions or not.

15 So when we tell you our
16 conclusions, they are going to be pretty
17 conclusory. Mary Jane is going to go into the
18 evidence in some depth, but you really need to
19 look at that underlying documentation.

20 We have now concluded the
21 evidence-gathering phase of the investigation.
22 We have interviewed all witnesses that we think

1 have relevant information, transcripts have been
2 prepared. For the most part the transcripts
3 have been reviewed and corrected by the
4 witnesses. Artayet has not yet -- because there
5 were six days of transcripts, has not yet final
6 edited it and returned his transcripts.

7 However, when we prepared this
8 presentation we took into account every
9 conceivable possibility for the way those
10 transcripts could be changed. When we write the
11 report, when we have back a corrected
12 transcript, we may reach much more detailed,
13 precise conclusions because we will have the
14 final version of the evidence to work with. But
15 you will see from the way we have analyzed it
16 from the evidence that doesn't make any
17 difference in terms of our conclusions how some
18 of -- you know, how Artayet may change what he
19 told us on the record.

20 MR. BERSON: Do you have an estimate of
21 when the report will be finalized and given to
22 the N.R.C.?

1 MR. STIER: We expect that it will take us
2 about three months to write the report from the
3 time we begin. We have -- I mean, the work that
4 we have done to prepare this presentation is
5 going to be useful in the process, so I guess we
6 have begun that process. But as the folks from
7 OI can tell you, it takes a long time, much
8 longer than anybody anticipates to write these
9 reports. We try to do them as fast as possible,
10 but it just -- a lot of work goes into it and we
11 don't want to make mistakes and we want to make
12 sure that we tell the reader exactly why we
13 reached our conclusions, and deal with any
14 conflicting evidence.

15 MR. PAUL: I have a question. In your
16 procedure, before you interview these witnesses,
17 did you review the D.O.L. transcripts and
18 confront them with any inconsistencies in their
19 testimony?

20 MR. STIER: Oh, yes. Yeah, they were
21 shown inconsistencies between what they were
22 telling us and what they said in the D.O.L.

1 hearing, and there were lots of them. So -- and
2 we not only do that but we will tell witnesses
3 what other witnesses have said about them and
4 let them respond to that. So that sometimes
5 people don't like to here what other people are
6 saying about them, but we think it's fair to
7 give people a chance to respond in that way so
8 we have got as complete a record as possible.
9 We try to make the investigation and the record
10 sort of a -- you know, like a mini trial. It's
11 hard do that, but we like to be as complete as
12 possible because we know that -- you know we
13 like the record that we create not to have to be
14 supplemented in order for others to reach their
15 conclusions.

16 MR. STEIN: I don't want to tie you down
17 too closely, but you estimate around mid to late
18 July?

19 MR. STIER: If that is three months, yeah.

20 MR. STEIN: We are in the beginning April,
21 so by late July we should have the report?

22 MR. STIER: Yes.

1 MS. COOPER: There are two things in
2 talking to you, one of the things that we do,
3 and I don't think you mentioned this yet, but as
4 you go through this process and, you know, we
5 start with sort of a blank page but we do have
6 the hearing, as you talk to people you get
7 explanations for things that you didn't
8 understand that may involve going back to
9 witnesses, so what we do is typically we will go
10 back to at least three or four, five witnesses
11 to say, well, since we have talked to -- and I
12 always say that, try to remember to say that
13 there may be some issues that came up, we may
14 need to get back to you. So if something comes
15 up after the interview that we need to discuss
16 with a witness, we do that.

17 One of the reasons that the
18 report writing takes so darn long, since I'm the
19 one that will be doing it, I always try to have
20 the documents right there in front of me. As
21 I'm making statements I'm looking at
22 transcripts, looking at documents, and it's

1 amazing, your mind can sort of take little turns
2 about things, and so -- and we also go through a
3 process, besides looking at the documents
4 ourselves as we are writing the report of having
5 someone in our office go through, and each fact
6 or statement will have an end note.

7 Someone in our office will go
8 through and verify that what I say is true. And
9 if I have got it off or if I'm showing the wrong
10 document, that paralegal will come back and say,
11 this is not quite what it says, you are pointing
12 to the wrong document. There is a lot of
13 verifying that goes on.

14 By way of explaining, this is
15 essentially an outline for it, but there will be
16 a lot more detail and hopefully verified and
17 very accurate information when we get done.

18 MR. ROBE: Before you go on with your
19 conclusions, one more process question.

20 Other than documented evidence
21 that has come from MK, the company has not seen
22 any other evidence that you have generated as

1 part of your investigation and won't see that
2 until the report is completed to the point of
3 final editing; is that correct?

4 MR. STIER: If typically -- and I'm trying
5 to remember whether we have done it in this case
6 -- but typically if we -- I mean, we told the
7 company what our conclusions are. After we were
8 done I met with Zarges and Edmister and told
9 them what our conclusions were.

10 MR. STEIN: When did you tell them?

11 MR. STIER: What was the date of the
12 meeting? I think it was March 11th. Does that
13 sound right?

14 MS. COOPER: Sounds right.

15 MR. STIER: I think it was March 11th.
16 And we actually in the course of it gave them
17 some recommendations for corrective action
18 because they had asked us to do that. Typically
19 we don't -- and we don't intend to in this
20 report make recommendations for corrective
21 action. I'm not an expert on, you know, how to
22 organize or operate a nuclear contractor

1 facility. But inevitably you do come up with
2 some ideas, and in this case there were some
3 obvious, obvious suggestions to be made, and we
4 did that. So we told them what our conclusions
5 were and we told them what our recommendations
6 were for corrective action. And to my knowledge
7 they are doing some of the things we told them
8 to do.

9 MR. STEIN: Did you do it verbally or in
10 writing?

11 MR. STIER: Verbally, verbally, right. I
12 did not leave them with any documentation. Now,
13 if in the course of it they wanted to see a
14 transcript or some other documentation that we
15 had, I would show it to them. I don't know that
16 we did in this case.

17 Sometimes, you know, they will,
18 particularly in order to take corrective action
19 they will want an understanding, something more
20 precise than the oral briefing.

21 But in this case we have -- I
22 guess we have not given them anything like that,

1 and we have been -- we have tried to be, you
2 know, careful. On the one hand I think it's
3 important that a client know what we are finding
4 as we find it because one of the benefits of
5 doing this, going through this process is that
6 the client buys into the conclusions. And it's
7 amazing how I can tell them the same thing that
8 somebody else as an outside agency might tell
9 them, when I tell them, because they hired me
10 and I am keeping them advised along the way,
11 they tend to respond in a much more positive,
12 accepting way because they are less adversarial.
13 They don't feel defensive about it as much as
14 if, for example, the N.R.C. told them.

15 That is what I think. That is
16 why I think this is a very healthy process, and
17 I try to convey that to clients and potential
18 clients.

19 And we have told clients some
20 pretty horrible things about their companies.
21 We don't know how these things come out, and
22 sometimes the problems are far worse than

1 anybody is anticipating. In that leak rate
2 investigation it turned out the problems were
3 far more serious than either the N.R.C. or the
4 Department of Justice realized they were. And
5 there have been lots of examples like that. I
6 mean, we have had lots of examples.

7 Let me go to the conclusions.

8 Let me start by saying that when you read the
9 Department of Labor record, you read the finding
10 of the ALJ, it becomes understandable and clear
11 why the ALJ reached the conclusions that he did
12 and why those conclusions are perfectly logical.

13 The -- from the record you infer
14 that the procedural deficiencies at the site
15 were the responsibility of site personnel, that
16 site personnel refused to participate, to let
17 Artayet participate in the review process of the
18 creation of those site procedures.

19 That there was really no
20 objective basis for them to challenge Artayet's
21 professional challenge, that no decision had
22 been made to remove Artayet before the January

1 15th date or before he issued his memo on
2 January 14th.

3 And that immediately following
4 that, all of a sudden there was a reaction and
5 he was removed, that basically Artayet was
6 removed for doing his job, which was to identify
7 problems that had been created by site
8 personnel.

9 I think it's -- when you look at
10 that record it seems pretty obvious what
11 conclusions to draw. When you look at the
12 information that was supplied by Artayet to us
13 beyond what was in the record it becomes even
14 stronger. We started with the hypothesis that
15 the Department of Labor was right and that
16 Artayet's characterization of events was
17 correct.

18 He emphasized, as the ALJ did,
19 that the company offered pretextual explanations
20 for why Artayet was fired, that is the drop
21 weight test issue. At the hearing witnesses
22 said that they had seen a memo in which he had

1 misstated when drop weight testing should be
2 done. They couldn't produce it, so the ALJ
3 concluded, quite logically, that it was a
4 pretext.

5 It was also, it appeared,
6 pretextual that Artayet had failed to qualify
7 the welding procedures on time and
8 appropriately. It appeared that that was a
9 fault of site personnel. And then on top of
10 that, the tapes that I referred to before that
11 Artayet gave us, that he and his lawyer said
12 corroborate or in effect prove that management
13 had lied at the hearing was further evidence.

14 So that was our starting point.
15 I mean, we start with hypothesis, we don't start
16 with a clean slate. We start with a hypothesis
17 and then we try to investigate whether that
18 hypothesis is sound.

19 MR. CLAYTON: They weren't given to the
20 D.O.L?

21 MR. STIER: They were not offered at the
22 Department of Labor hearing, that is correct.

1 We try to very, very carefully
2 analyze the evidence related to those
3 hypotheses, including transcribing the taped --
4 we have transcribed the tapes. They were not
5 easy, as typically these tapes are not easy to
6 transcribe, but we have done it. Mary Jane has
7 gone over the transcripts with Artayet and he's
8 made some corrections, so we are satisfied we
9 know what's on the tapes.

10 And we went back over these
11 pretextual matters, these explanations. As I
12 say, we spent a lot of time reconstructing what
13 happened during the qualification process and
14 analyzing this drop weight test issue.

15 Now I am about to tell you what
16 the conclusions are. Do you want me to wait
17 until he gets back?

18 MR. CLAYTON: No, go ahead, we don't know
19 when he's coming back.

20 MR. STIER: Frankly, I have been doing
21 this a lot of years, but I was surprised at how
22 different the facts turned out to be as we

1 understand them from Artayet's descriptions and
2 from the findings by the ALJ. Again, we are
3 dealing with a body of evidence that goes way
4 beyond what was offered at the Department of
5 Labor proceeding.

6 Rather than concluding that the
7 drop weight issue was a pretext for removing
8 Artayet we concluded that Artayet was very, very
9 seriously mistaken in his understanding of what
10 the requirements were for the code with respect
11 to drop weight testing. And this occurred
12 during the course of qualifying procedures at
13 Point Beach.

14 His error was caught by site
15 personnel and they corrected or caused him to
16 correct the mistake before procedures were
17 improperly qualified.

18 We concluded that the -- that
19 that error caused site personnel to lose
20 confidence -- was one of the contributing
21 factors in a loss of confidence.

22 Maybe I ought to repeat. I had

1 just gotten into the conclusions. Let me repeat
2 what I just said.

3 During the investigation we were
4 surprised to find that the evidence that we had
5 in front of us, which was far broader than what
6 was available to the ALJ, it established a set
7 of conclusions that were fundamentally different
8 from the conclusions that the ALJ had reached.
9 I was very surprised at that.

10 Rather than finding that the drop
11 weight issue was a pretext, we found that
12 Artayet was very seriously mistaken in his
13 understanding of the code requirement for drop
14 weight testing, that his mistake occurred during
15 the course of qualifying the Point Beach welding
16 procedures, that the mistake was caught by site
17 personnel and was corrected at their insistence
18 before procedures were qualified in violation of
19 the code.

20 And that that mistake had caused
21 or contributed to a loss of confidence in him by
22 site personnel, loss of confidence in his

1 technical knowledge, because it's very
2 fundamental to performing that job that he
3 understand how to apply the code and where drop
4 weight testing is required and where it's not.

5 MR. BERSON: Does Artayet now agree that
6 he was mistaken in the drop weight testing?

7 MR. STIER: He still -- as of -- well,
8 yes, he denies it. Mary Jane has gone over that
9 with him in great detail, and his position on it
10 is not finalized because he still is editing the
11 transcripts, but we can tell you, and she will
12 describe in detail how we know he was mistaken
13 with respect to drop weight testing. And she
14 will tell you what his explanations were and
15 have been up to this point.

16 But he has never conceded that he
17 ever made a mistake on it. Site personnel
18 expressed their concerns about his technical
19 knowledge based on this issue to corporate
20 management, and that information, in fact,
21 contributed to the decisions that corporate
22 management made about what to do about Artayet.

1 Rather than -- now I'm going to
2 go on with the next point. Rather than
3 establishing that management lied at the
4 Department of Labor hearing, the tapes, when you
5 read the transcripts and you understand what is
6 on the tapes, the tapes tend to corroborate
7 management's description. The sequence of
8 events that led to Artayet's removal, and I
9 would urge that in looking at the whole body of
10 evidence here you listen to the tapes so that
11 you make sure that our transcripts are correct
12 and consider what's on those tapes in relation
13 to everything else.

14 As I say, they tend to
15 corroborate management's description of the
16 sequence of events that led to his removal from
17 his position.

18 Now, on another important
19 subject, rather than confirming that the
20 qualification testing was not completed on time
21 because of deficiencies at the site, we
22 reconstructed almost on a daily basis what took

1 place during the period that Artayet had
2 responsibility for qualification, and it's clear
3 from that record that he was doing his
4 qualification in a very inefficient way, and in
5 some cases, particularly with respect to drop
6 weight testing and another issue, the way he was
7 going about it if it had been completed would
8 have resulted in code violations, very serious
9 code violations. Mary Jane will explain what
10 they are.

11 So based on the evidence, our
12 conclusion is that although the record isn't
13 finalized, because of the reasons that I
14 explained, we believe that the decision to limit
15 his role in the nuclear industry, in the nuclear
16 work and to remove him, and decisions that
17 ultimately resulted in his removal to
18 Parkersburg were based on a belief by management
19 that Artayet was not providing adequate services
20 to support the nuclear work at the site and the
21 way the job was intended to support the site,
22 that it was not in retaliation for his having

1 pointed out procedural deficiencies that had
2 been created by somebody else.

3 The information that management
4 received, although you can't tell it from the
5 record before the ALJ, the information that
6 flowed through the organization was essentially
7 accurate in terms of the objective facts, and
8 that the decisions that were made occurred
9 within the organizational framework, that is
10 that Pardi did not make the decision to remove
11 him, but there was communication from Pardi
12 within the scope of his authority to Artayet's
13 manager that resulted in his removal.

14 MR. STEIN: The ALJ also makes an
15 observation that -- to Artayet's personnel file
16 to indicate performance deficiencies.

17 MR. STIER: That is very true, and I'm
18 going to get to that and -- because I think that
19 this is important. I don't mean to suggest here
20 that Artayet is responsible for all this
21 happening. There are others in the company who
22 are responsible for what -- for the situation

1 that now confronts the company.

2 The primary cause of the problems
3 as we -- there were two primary causes of the
4 problem as we -- or problems as we understand
5 it. One is the structure of the organization at
6 that time, placing him in the quality assurance
7 organization, that change of command contributes
8 to this problem in a couple of ways.

9 First of all, Artayet's
10 supervisor who did not have as good an
11 understanding of -- did not have a sufficient
12 understanding of welding code requirements as he
13 should have accepted Artayet's explanations and
14 positions on these issues very readily and
15 defended him even when Artayet was wrong.

16 In fact, there was a critical
17 memorandum written by Walcutt that had been
18 edited by Artayet in defense of himself with
19 respect to this drop weight issue. And when you
20 look at that memorandum which in effect says
21 Artayet was not wrong on drop weight testing
22 issues, that memorandum is incorrect. I mean,

1 it contains information that is -- that cannot
2 -- that is not consistent with what really
3 happened. It's a recitation of events and the
4 explanation for suggestions that people heard
5 about him with respect to drop weight testing,
6 that is not true.

7 But -- and the problem was that
8 his supervisor, Andy Walcutt, was not in a
9 position to evaluate what he was hearing from
10 Artayet, so you had this sort of polarization
11 within the organization, although what Artayet
12 was doing was primarily supporting the line
13 organization by working with them to produce
14 qualified procedures and assuring that the
15 welding that was done at the site was in
16 compliance with the code. That was his primary
17 responsibility, and I think that all the
18 evidence that we have seen sports that
19 performing a support function, that support
20 function is housed over in QA, and there is very
21 little communication back and forth between
22 these two parts of the office except that

1 Artayet is being defended when he is being
2 accused by the line organization of not doing
3 his job effectively.

4 The second thing that happened
5 was that this split in the chain of command, or
6 this assigning Artayet to quality assurance
7 organization created a block in the flow of
8 critical information to the line organization.
9 And this is in my view the essential point in
10 this case. The expectations of line management,
11 Pardi in particular and Walcutt were 180 degrees
12 different from one another on one very, very
13 critical point. That is, that it was Pardi's
14 understanding and expectation, and we have, you
15 know, confirmed this from a number of different
16 sources, it was his understanding and
17 expectation that Alain Artayet would sign off on
18 site welding procedures, that he would have the
19 authority to say I am not approving that
20 procedure, and without his approval that
21 procedure would not be finalized.

22 And so, therefore, if you have

1 got these deficiencies in the procedure,
2 obviously he is the top guy that you would hold
3 accountable because he didn't do an adequate job
4 of exercising that authority.

5 It was Walcutt and Artayet's
6 position that Artayet lacked the authority to
7 sign off on those procedures and to assure that
8 those procedures would incorporate whatever
9 corrections he insisted on.

10 Now, what Pardi didn't know was
11 that in preparing for the work at Point Beach
12 Artayet in effect had negotiated away his
13 sign-off authority. He had the sign-off
14 authority originally, but in developing the
15 procedural framework to do the Point Beach job,
16 the welding engineer at Point Beach, a guy by
17 the name of Rusty Gorden, had insisted that
18 Artayet give up that authority, arguing we need
19 you to sign off, what do we need you for? And
20 Artayet, for whatever his reasons, agreed to
21 that.

22 Walcutt knew that Artayet had

1 given that up and accepted it. That was not
2 communicated to Pardi. Pardi is operating on
3 the assumption that the preexisting role for the
4 group welding engineer is going to be performed.

5 MS. GREENBATES: What about Rusty Gorden's
6 supervisor, was he aware that the sign-off
7 authority had been given up?

8 MS. COOPER: They understood that Alain
9 was reviewing rather than in the approval
10 process, and that is the distinction.

11 MS. GREENBATES: After production started
12 though?

13 MS. COOPER: Or after the final -- whether
14 it would have been after welds that were used as
15 a result of those procedures but after they were
16 in the final form.

17 MR. STIER: And that is that -- the point
18 is that as it was finally structured, and there
19 is a bit of a dispute about this. But it's --
20 Artayet says he was never sent the signed
21 welding procedures, and the only way he
22 ultimately got them is because he found them, I

1 think, on Walcutt's desk where they ended up
2 after they were finalized.

3 That is not the case. He was
4 sent copies of those procedures as they were
5 being produced. However, it was the
6 understanding of the people at the site right up
7 through the MK management at the site that they
8 did not have to accept any comments that Artayet
9 made with respect to those procedures, that they
10 could look at them, and if they felt they were
11 appropriate to incorporate. They could do it,
12 if not they could simply ignore them.

13 MR. ULIE: Was that based on the agreement
14 that had been made between the site and
15 corporate?

16 MR. STIER: Yes, yes. I don't want to get
17 too much in detail, but on previous projects
18 that Artayet was involved in he had the sign-off
19 authority. He had never been involved in
20 previous nuclear projects, not in this role. He
21 had done some work with respect to St. Lucie,
22 but this was the first. And I think that is

1 another critical point in this. If there is an
2 assumption that because he was hired in 1988
3 that he must have been involved in other nuclear
4 work, he had not been.

5 MR. BERSON: How about similar nonnuclear
6 work? I mean, it's abberational in Point Beach
7 that he gave up his support in contrast to what
8 he had done in previous situations.

9 MS. COOPER: I will get into it, but Pardi
10 had communicated to him that he wanted Alain to
11 have oversight of all welding procedures used in
12 the company. He wanted him to have the final
13 authority, there were to be no changes made in
14 welding procedures unless the group welding
15 engineer acknowledge that they had created --
16 the timing of the two, St. Lucie authority was
17 actually signed and work had begun on the St.
18 Lucie project.

19 For various reasons the Point
20 Beach project intervened, and that was the one
21 that Alain initially worked on. When they had
22 created quality procedures, site procedures for

1 the St. Lucie project, the group welding
2 engineer was in the approval process, not only
3 reviewed but approved. And it was in the
4 process of developing site procedures for the
5 Point Beach project that the approval process
6 was removed from the quality -- the documentary
7 procedures, and it was that process we are
8 talking about. And we will get into it from the
9 particular procedures here, so you can see how
10 that is worded.

11 MR. STEIN: There seems to be a
12 misunderstanding between Pardi's expectations
13 and QA's expectations.

14 MR. STIER: Right.

15 MR. STEIN: Was -- did Pardi go and
16 verbally tell Artayet what his expectations are
17 or is it written down in a memo creating a PD
18 type job description that you are to sign off
19 on?

20 MS. COOPER: Actually, we have documents
21 which Alain -- which Pardi has commented and
22 Alain Artayet indicates, yes, that was Pardi

1 telling me that he wanted me to have authority
2 and be in the approval process for all changes
3 and all welding procedures.

4 And we also have in here that the
5 quality procedures that were in effect at the
6 time of the Point Beach project so that you can
7 see the language which would indicate that Alain
8 did have that authority to review them, but also
9 could be read the other way. So depending on
10 how you were coming at it and what your
11 understanding of the procedures were --

12 MR. STEIN: I guess the site reports to
13 Pardi --

14 MS. COOPER: Exactly.

15 MR. STEIN: So if the site is going to
16 ignore Artayet's concerns it's Pardi's
17 responsibility to tell the site you have to
18 listen to him, he has sign-off authority?

19 MS. COOPER: Pardi had to know that, and
20 that's where the glitch occurred.

21 MR. STIER: Knew there was --

22 MR. STEIN: Misunderstanding on the site

1 and Pardi as well?

2 MR. STIER: Oh, yes. Oh, the site clearly
3 -- I mean, I don't think there is any question
4 it was Pardi's policy and understanding that the
5 site would not -- that the site had to submit
6 welding procedures to Artayet for his final
7 approval.

8 MR. STEIN: And also take comments back
9 and accept them as the final word?

10 MR. STIER: Absolutely, absolutely.

11 MR. ROBE: Let me make sure I understand
12 what you just said. The site understood Pardi's
13 expectations.

14 MR. STIER: I'm not saying that they
15 understood his expectation. That was his
16 expectation. Whether it was ever clearly enough
17 articulated to people at the site, I'm not sure.
18 Mary Jane can --

19 MS. COOPER: He says he did, and he
20 communicated it to them. They say they
21 understood that Alain had the right to review
22 the procedures, and they say it would be

1 illogical to think that he could review them
2 and then not have the right to make changes in
3 them.

4 So whether or not it was actually
5 sign off in the approval progress, he is -- the
6 top management understood that Alain had the
7 authority to review and make some changes.
8 Whether or not that meant that he could override
9 Gorden -- Gorden on the other hand and Alain
10 were both of the understanding that Alain could
11 make suggestions and Gorden was free to accept
12 them or not.

13 MR. STIER: Right.

14 MR. BERSON: So your bottom line was
15 because Pardi had the expectation of Artayet
16 then when problems came up with the site
17 procedures he held Artayet responsible?

18 MR. STIER: Yes.

19 MR. BERSON: As opposed to the site?

20 MR. STIER: Yes. And did not realize that
21 this authority had been negotiated away when it
22 had.

1 There is another problem with
2 this.

3 MS. GREENBATES: Before we get off that,
4 there was one critical point that keeps showing
5 up. Did Pardi give Alain the authority to stop
6 critical path, because he had to review it,
7 because that is how quickly these procedures
8 would be turned around. Was he given that
9 authority, to stop production?

10 MS. COOPER: Not on paper. But what Pardi
11 says is that -- and I think this is supported by
12 the whole body of evidence -- that until he saw
13 the Hartford steam boiler audit report he had no
14 idea that there was any concern about what was
15 in the procedures. And he said if Alain had
16 ever come to me and said there's a problem,
17 Gorden won't accept it, he was unaware of the
18 change in the procedures, he was unaware that
19 Alain wasn't approving the procedures.

20 And he said if there was even at
21 the time when this agreement was made between
22 Gorden and Artayet, he said if Artayet had told

1 me about that I wouldn't have approved it, and
2 if Artayet had any concerns about it, I would
3 have made sure, because I said repeatedly there
4 is just no way that the group weld engineer
5 only --

6 MS. GREENBATES: So he could have stopped
7 the critical path or gone to Pardi and Pardi
8 would stop critical path?

9 MR. STIER: Let me just add something to
10 that. I'm not endorsing that. We were not
11 saying that that was okay or a good way for this
12 to have been structured. Frankly, I think the
13 way it turns out demonstrates it was seriously
14 flawed, because there was no clearly defined
15 role that made it -- that assured management
16 that Pardi's policies were being implemented and
17 that everybody understood who was supposed to be
18 doing what.

19 It was very poorly defined on
20 paper. There is a paper trail that we have
21 reconstructed, but it was not clearly set out.
22 And one of the recommendations that we made is

1 that it must be -- absolutely must be if you are
2 going to hold somebody accountable, you have got
3 -- everybody needs to know that and it has to be
4 on paper, the authority to do what is expected
5 him to do.

6 MR. STEIN: I want to understand your
7 position. There was disagreement on where the
8 incompetency was, Artayet and Walcutt were
9 saying it was Gorden that was incompetent?

10 MR. STIER: Right. And Gorden and other
11 managers at MK are saying it was Artayet that
12 was incompetent. And you are saying that it is
13 Artayet that lacked the competency?

14 MR. STIER: I'm not endorsing the
15 competence of the people at the site or
16 anybody's competence. All I'm saying is that
17 the criticism of Artayet for lack of technical
18 competence was well founded.

19 MS. GREENBATES: Is it correct that the
20 H & I standard policy at MK is that if such a
21 code violation, incompetency was shown you would
22 remove them?

1 MR. STIER: I don't know about standard
2 policy, but there is a logical connection
3 between the decision to take some actions
4 against the group welding engineer because you
5 discovered that he lacks the technical
6 competence to do the job that --

7 MS. GREENBATES: I guess I'm looking for
8 repeatability for if Rusty Gorden is going to be
9 shown that code violation you would expect them
10 to remove him.

11 MR. STIER: I would expect that, and
12 what's more I would also expect that the same
13 kind of -- that there be some consequences for
14 the position that Gorden took in those
15 negotiations at Point Beach that he did not want
16 the group welding engineer to sign off on
17 procedures.

18 MR. ROBE: You say there was some --

19 MR. STIER: Now that the company knows it,
20 I mean now the top management knows the facts, I
21 would expect that they would respond to that,
22 because that was, you know, based on everything

1 that we know, Gorden should not have insisted on
2 that.

3 MR. STEIN: This enters the area of
4 disparate treatment. In your investigation have
5 you found that MK has taken this type of action
6 against other engineering weld experts for code
7 violations for this type of factual sequence?

8 MR. STIER: I don't think anybody would
9 have looked at that view explicitly. I mean,
10 what we tried to do was to determine the
11 causation of this decision in the context of
12 this case. We have not looked more broadly. I
13 think it's a good question. We have not looked
14 more broadly at other actions that they have
15 taken in other contexts.

16 MR. ROBE: On Page 16 of your slides you
17 have some bullets regarding the head of the
18 power division.

19 That is Pardi, right?

20 MR. STIER: Yes.

21 MR. ROBE: And it says he gradually came
22 to recognize Artayet's deficiencies?

1 MR. STIER: Yes.

2 MR. ROBE: It's my understanding that the
3 length of time that Pardi was involved in this
4 was the time that he got the Hartford steam
5 boiler report. How gradually was this?

6 MR. STIER: Well, he kept hearing
7 complaints about Artayet all during the -- I
8 guess the summer, maybe even started before that
9 of -- what year are we in -- 1996, but he began
10 hearing complaints, and they really had to do --
11 I guess initially with the delays in the
12 qualifications of procedures, they began hearing
13 it was Artayet's fault, that Artayet didn't know
14 what he was doing, that Artayet didn't
15 understand drop weight testing and he began --
16 and I think we have got evidence to show that he
17 began developing these negative impressions
18 about Artayet and his competence during that
19 period of time.

20 He kept responding, well, maybe
21 there is another side to the story, let's look
22 at it. But it kept building, and then you had

1 the Hartford steam boiler report come out, which
2 he attributed -- Pardi attributed to Artayet's
3 deficiencies.

4 MR. STEIN: Let's see if I understand.
5 One manager that is outside the line is getting
6 indications that Artayet has performance
7 deficiencies. Now I understand I have got a
8 performance appraisal very soon in this time
9 frame.

10 MR. STIER: Right.

11 MR. STEIN: And none of this shows up in
12 this performance appraisal that was prepared by
13 Walcutt and signed off by Edelman?

14 MS. COOPER: I don't think it was signed
15 off, maybe.

16 MR. STEIN: But was there any
17 communication at all on this performance
18 deficiency between Pardi and Walcutt?

19 MR. STIER: Well, there was. I mean,
20 Pardi complained primarily to Edelman. Edelman
21 would talk to Walcutt. Artayet would talk to
22 Walcutt about his perception about, you know,

1 the difficulties he was having. Walcutt was
2 very defensive of Artayet, and I think that that
3 memorandum that he prepared on drop weight
4 testing is an example of how he felt. I mean,
5 there seems to have been a real polarization in
6 the company between Walcutt on the one hand and
7 the site management on the other and Artayet was
8 sort of in the middle.

9 And in some ways I think it
10 becomes apparent that Walcutt was letting the
11 problems at the site, of these procedural
12 deficiencies which he thought were, you know,
13 more of an editorial nature than they were a
14 real substantive nature, that is the way he saw
15 it.

16 I have no reason to believe Andy
17 Walcutt saw a serious problem he wouldn't have
18 stepped in and tried to correct it immediately.
19 But he sort of let them go and let them come to
20 the surface in the course of this Hartford steam
21 boiler audit.

22 One could infer from that that

1 you had a serious polarization problem between
2 those two parts of the organization.

3 MR. STEIN: Did you see that outside of
4 this whole welding issue are there other issues
5 that site management and Walcutt are at
6 loggerheads over that would make him very
7 defensive of Artayet, saying site management,
8 you are in left field?

9 MR. STIER: I don't recall any. I mean,
10 we didn't look for broader evidence of it, but
11 maybe you did see something.

12 MS. COOPER: There is some evidence back
13 in '94 where when they were weren't involved in
14 nuclear work where Artayet and Walcutt were
15 doing sort of independent investigations in
16 other areas of the company sort of indicating
17 that there was some kind of a festering
18 disagreement. And there was the issue of
19 Edelman being put in the organization, which I
20 think bothers Walcutt.

21 Also, it appeared that there was
22 a trusting relationship developing between

1 Walcutt and Artayet. Because when we get into
2 this they have worked together since 1992 and
3 Walcutt generally tends to believe Alain, and
4 sometimes he would look outside for expert
5 advice if there were disagreements within the
6 company.

7 But he tended to accept Alain's
8 explanations of the code, not having a welding
9 background himself, welding engineering
10 background I should say. And so it appeared
11 that in some of these issues and you will see
12 when we get into this memo that he wrote that he
13 really didn't understand the issue that he was
14 writing about. And we have a copy of the --
15 Alain actually corrected some of the language
16 that Andy Walcutt was using because he didn't
17 understand the difference between a Charpy
18 impact test and a drop weight test.

19 And so that kind of lack of
20 understanding of the technical issues, his
21 trusting relationship that he had with Alain
22 over the years of working with him and expecting

1 him to be intelligent and knowledgeable, the
2 fact they were essentially working on nonnuclear
3 projects which are not as demanding, and so he
4 was really getting for years not any complaints
5 about Artayet's work.

6 MR. STEIN: Did MK take any disciplinary
7 action against Walcutt for being wrong?

8 MS. COOPER: Not that I'm aware of.

9 MR. STIER: He is in the Ukraine now. I
10 don't know whether that means anything.

11 MR. ROBE: Isn't the heart of this issue
12 how the company chose to resolve a technical
13 dispute and whether the technical dispute was
14 resolved through a technical process resolution
15 or resolved with a job action?

16 MR. STIER: I don't think it was an -- I
17 don't think there was a technical dispute here.

18 MR. ROBE: Between Artayet and the site?

19 MR. STIER: And the site. I think there
20 was a process dispute, but I think objectively
21 on the issues that Artayet had been raising with
22 the site, Artayet was more wrong than the site.

1 And you are right in the sense --

2 MS. GREENBATES: I disagree with that
3 statement.

4 MR. STIER: I will explain what I am
5 talking about in a moment. I don't mean to
6 sound defensive of the people at the site,
7 because obviously there were problems, and those
8 problems were problems created within the MK
9 organization. Why those problems didn't get
10 identified and corrected before the procedures
11 were finalized is the question, whose
12 responsibility it was. The organizational
13 structure as we have been describing contributed
14 to the fact that those problems -- that is that
15 the mechanisms were not in place to resolve
16 those issues and to make sure that those
17 procedures were absolutely correct. The
18 organizational structure prevented those issues
19 from coming to the surface to a high enough
20 level of management where you would have had a
21 resolution of it.

22 Part of the problem however, part

1 of the problem, however, was the way in which
2 Artayet performed his job. I mean, that
3 definitely contributed to the situation. So you
4 have got two pieces of it here. One was this
5 organizational structure that was dysfunctional,
6 the other was a welding engineer who lacked
7 certain knowledge and skills.

8 What happened was when the issue
9 was finally raised to management, what they --
10 what Pardi saw was the piece of it that related
11 to Artayet's deficiencies and he reacted to
12 that. He said, it's your fault that this
13 happened. In fact, there was a basis for what
14 he was saying, and, in fact, Artayet's
15 deficiencies contributed to the problem. What
16 he didn't see and didn't understand --

17 MR. ROBE: The basis in Pardi's mind is
18 what you are saying, but in reality the
19 procedures were not written in accordance with
20 what Pardi believed.

21 MS. COOPER: You are talking about the
22 quality procedures?

1 MR. ROBE: Right.

2 MR. STIER: That is exactly right, that is
3 exactly right.

4 MR. STEIN: I'm a little troubled with
5 your description of Artayet's deficiencies. I
6 mean, he's the group welding engineer. I take
7 it that is a position of certain responsibility?

8 MR. STIER: Yes.

9 MR. STEIN: Which you just don't get to be
10 named group welding engineer, you have to work
11 your way there?

12 MR. STIER: Not really, not in his case.

13 MR. STEIN: He was hired as group welding
14 engineer?

15 MR. STIER: He was hired in a position --
16 Mary Jane will go back over the history of that
17 position at MK, but he was hired into that
18 position with the expectation that he was going
19 to learn certain things on the job from somebody
20 who was in that position and who had apparently
21 the knowledge and experience to do the job
22 effectively, and there would have been hopefully

1 a process by which he would learn what he needed
2 to know. Let me tell you basically --

3 MR. STEIN: Is there any documentation
4 spelled out that when he was hired they knew of
5 the deficiencies and they would correct them, or
6 his performance appraisals over the years, that
7 there were deficiencies and that they would be
8 corrected?

9 MR. STIER: No.

10 MR. STEIN: Is there any --

11 MR. STIER: So what happened was, he was
12 hired into the position and then the person who
13 -- for whom he was working left, and so he ended
14 up as the group welding engineer at a point
15 where he appears not to have been fully prepared
16 for the job.

17 Let me tell you what the primary
18 deficiency was. Artayet has experience as a
19 welder on nuclear sites, so he understands the
20 technical side of welding. He has a degree in
21 welding engineering. Apparently we haven't
22 verified it but I'm assuming he does have a

1 degree in welding engineering from Ohio State
2 University.

3 He did not have the experience or
4 training in understanding the ASME code
5 sufficiently to assure that the code was applied
6 to the development of welding procedures in a
7 way that would make them code compliant, and
8 even through the investigation you will see it
9 in the record, and you see plenty of
10 documentation that demonstrates that he really
11 does not understand the code in the way you
12 would obviously need to understand it to assure
13 the procedures are in compliance with the code.

14 That was, as we understand it,
15 his primary job with respect to nuclear sites,
16 make sure that procedures, welding procedures
17 were code compliant. And you can see in the way
18 he set up the system for creating site
19 procedures that there is a lot of room for
20 people at the site to make errors.

21 Again, I'm not defending what
22 anybody did at the site. All I'm saying is that

1 you can see how it worked. If you looked at
2 corporate welding procedures, he insisted that
3 site procedures be developed from corporate
4 level welding procedures not from PQRs. Mary
5 Jane with explain what PQRs are and so forth.
6 But the point is that he had the set of
7 procedures. It's our understanding that the
8 code does not require that site welding
9 procedures be created from corporate level
10 welding procedures. When you look at his
11 corporate level welding procedures, they were
12 almost incomprehensible, and you will see they
13 are filled -- they are very broadly written,
14 have all sorts of potential applications. And
15 in order to create a site procedure from the
16 corporate tier document you need to have a
17 pretty good understanding of the code yourself,
18 whereas if you were creating a site procedure
19 from the PQR, which is what they tried to do at
20 the site, they just tended to ignore the
21 corporate level procedures. When you create
22 site procedures from a PQR there is much less of

1 a chance for error than under the system that
2 Artayet had created.

3 Pardi had never seen a corporate
4 level welding procedure until we showed it to
5 him.

6 MS. GREENBATES: I'd like to ask you to
7 substantiate the statement the gross ASME code
8 violations we found were the ones that PQR was
9 doing on-site and they had an ASME code
10 procedure from that.

11 MR. STIER: Well, again, I am not
12 suggesting --

13 MS. COOPER: The PQR -- except in the one
14 instance, the PQRs were all committed by Alain.

15 MS. GREENBATES: But the ones where the
16 site did it, it would be a better chance that is
17 where the gross procedures violations occurred.

18 MR. ROBE: We are getting into a lot of
19 details.

20 MR. STIER: I'm about to conclude what I'm
21 going to say and then Mary Jane is going to go
22 through the details and show you the procedures

1 and show you --

2 MR. ROBE: And it is important that we
3 understand why you determine conclusions
4 regarding who is technically correct and who
5 isn't. But that is not the sum and substances
6 of the issue here. The issue here is how the
7 company chose to resolve those technical
8 disparities and whether they chose to resolve
9 them through a job action that was, this
10 individual was quality engineer, welding
11 engineer's quality assurance bore concerns, and
12 the issue on the table is whether the job action
13 was taken as a result of him raising concerns
14 whether it was taken for a valid, justifiable
15 performance-related, personnel-related procedure
16 -- proceduralized process.

17 MR. STIER: Right. And what --

18 MR. STEIN: I'm sorry, your overall
19 conclusion is that MK had a legitimate reason
20 for the action it took against this group
21 welding engineer?

22 MR. STIER: Yes. And a perception that

1 what Artayet was pointing out were deficiencies
2 that were his own deficiencies.

3 MR. ULIE: You have identified as an
4 example the drop weight testing. Can you list
5 for us, just in summary form, what those other
6 specific deficiencies are that you are
7 identifying to validate your conclusion?

8 MR. STIER: Yes. Well, I mean I know of
9 one. Mary Jane can go through other issues that
10 came up in the course of the investigation.

11 MR. ULIE: Just briefly.

12 MR. STIER: The main issue in which he was
13 preparing to qualify a procedure that required
14 that the welding rods be baked and did not make
15 -- did not impose that requirement. That was
16 another problem that was picked up by the site
17 and was corrected before the procedure was
18 qualified.

19 He had asked for -- he had asked
20 for samples of base material that were going to
21 be used for qualification be post-weld heat
22 treated before they were welded and shipped, and

1 there just is no justification for that in terms
2 of the qualification procedure.

3 MR. ULIE: Based on your investigation for
4 those last two examples, when was that
5 identified?

6 MS. COOPER: It was identified in July

7 MR. ULIE: July of '96?

8 MS. COOPER: Before he delegated the
9 qualification procedure to Rusty Gorden.

10 MR. ULIE: That is when the last two
11 examples --

12 MS. COOPER: This was during the
13 qualification process.

14 MR. ROBE: I just need to express that I'm
15 uncomfortable with some of the language.

16 Did Mr. Artayet have the
17 authority to delegate --

18 MS. COOPER: Yes.

19 MR. ROBE: -- the responsibilities to
20 Gorden?

21 MS. COOPER: Yes.

22 MR. ROBE: Was he provided the

1 responsibility in writing and given the ability
2 to delegate his responsibility?

3 MS. COOPER: It was part of the procedures
4 that he could delegate that responsibility and
5 he did delegated it in writing to Gorden.

6 He also had delegated it to the
7 supervisor at another MK site early on, and that
8 was not in writing until retroactively, until
9 August the 1st when he delegated it to --

10 MR. ROBE: And this delegation of
11 authority was strictly Mr. Artayet's action, it
12 wasn't in a procedure that was reviewed and
13 approved by MK management?

14 MS. COOPER: Well, it's part of the
15 quality assurance procedures for the company,
16 and it's part of -- I believe it's part of the
17 -- they have three levels of quality documents.
18 It is certainly part of the quality documents
19 that governed Alain. And he, in fact, was
20 responsible for creating those documents.

21 He always agreed that it was
22 within the group welding engineer's authority to

1 delegate qualification to another person. He --
2 the procedure requires him to retain the
3 responsibility for those procedures, however,
4 and he was in agreement with that.

5 MR. ROBE: You have certainly whetted our
6 appetites.

7 MR. STIER: Well, this is not -- in my
8 view this is not an either-or situation, and the
9 question in my mind -- and, look, I have no
10 particular stake in the outcome of this thing
11 one way or the other.

12 The question, though, is if there
13 is a problem, what is the problem and how do you
14 fix it. And it seems to me that there -- that
15 one of the things that we have brought to the
16 surface and made clear to the company is that
17 there were certain serious dysfunctionalities in
18 the organization.

19 There were certain -- there were
20 things that occurred that top management at the
21 corporate level in the power division didn't
22 know about and should have known about. And

1 whether that is his fault for not setting up a
2 system that assured that information would flow
3 up to him or it's somebody else's fault or it's
4 everybody's fault is not for me to judge.

5 What I'm saying is that I think
6 we have made it clear that there were very
7 serious problems of polarization, lack of
8 communication, misunderstanding in the
9 organization that contributed to the
10 deficiencies that you have, you know, correctly
11 identified out at Point Beach.

12 When I say you correctly
13 identified, I haven't looked at specific issues
14 that you have raised, but everybody agrees that
15 there were procedural deficiencies out at Point
16 Beach that should not have taken place.

17 MR. STEIN: Is Rusty Gorden still working
18 for MK?

19 MS. GREENBATES: Yes. He's at St. Lucie
20 now.

21 MS. COOPER: That project was finished, he
22 is in Belgium.

1 MS. GREENBATES: Because I just called him
2 a few weeks ago -- okay.

3 MS. COOPER: I guess when we interviewed
4 him he was still at St. Lucie, which was in
5 January, and I think within maybe a month or so
6 ago I spoke to him just before he left to get
7 some follow-up information.

8 MR. ROBE: I think it's almost time for a
9 break. We have stretched our 45 minute
10 presentation into about two and a half hours.

11 MR. STIER: I have stretched it.

12 MR. ROBE: Did you want to finish your
13 remarks?

14 MR. STIER: Yes.

15 MR. WEIL: At the conclusion I have got
16 two questions.

17 MR. STEIN: I just want to clarify what I
18 said. MK sent him to Belgium, he is an employee
19 of MK.

20 MS. COOPER: There were no nuclear
21 projects and they are building up for one now,
22 but he, as I understand it, is a subcontractor

1 to a company that MK has provided employees to
2 work on.

3 MR. STEIN: He is not directly working for
4 MK?

5 MS. COOPER: He is. He is an MK employee,
6 but MK is a subcontractor to another company.
7 In that instance it's not an MK --

8 MR. STEIN: Walcutt is an MK employee
9 working in the Ukraine?

10 MS. COOPER: That is --

11 MR. STIER: I believe that is an MK
12 project in the Ukraine.

13 MR. ROBE: Is Pardi still in Cleveland?

14 MR. STIER: Last I heard.

15 I think as we have analyzed the
16 evidence, I think that the correct way to view
17 the situation is that as the result of a serious
18 lack of understanding at top level of the power
19 division about what Artayet was, in fact,
20 responsible for at Point Beach, and as a result
21 of accurate information that had been
22 communicated from the site to Pardi, he reached

1 the conclusion that Artayet should not be
2 supporting site work on nuclear projects, told
3 that to Edelman. And as a result of that the
4 various actions that were taken against Artayet
5 occurred.

6 There is no doubt that a lot of
7 the -- a lot of things needed to be corrected in
8 terms of organizational structure, in terms of
9 defining responsibilities, in terms of
10 re-examining the decision-making, not just of
11 Artayet but other people, particularly at the
12 site, and corrective action needs to be taken by
13 the company.

14 And we -- when we made our
15 presentation, our verbal presentation to the
16 company they were put on notice of just what I'm
17 telling you now, and they -- it's my
18 understanding that they are taking some
19 corrective action, and they can tell you about
20 it.

21 MR. STEIN: Are you convinced -- I mean,
22 you know, there is a burden of proof and in

1 these discrimination cases the company would
2 have to show by clear and convincing evidence
3 that they had a legitimate basis.

4 MR. WEIL: I have got a question that
5 would lead to that. I'm very disturbed about
6 one thing.

7 The Administrative Law Judge made an
8 observation about Lou Pardi's testimony being
9 not credible.

10 MR. STIER: Right.

11 MR. WEIL: Has there been any analysis of
12 that statement vis-a-vis Mr. Pardi's subsequent
13 testimony?

14 MR. STIER: Yes. And although it was --
15 his testimony was confusing, in some cases
16 misleading, I don't believe -- our conclusion is
17 it was not intentionally so, and that there was,
18 in fact, a factual foundation for the things
19 that he said that I believe that the ALJ
20 disagreed with.

21 For example, the most important
22 was the ALJ's conclusion that the leak rates --

1 or not the leak rate, the drop weight test
2 problem, that is the criticisms of Artayet were
3 pretextual, that, in fact, there had been no
4 error by -- or the company hadn't established
5 that there was a error made by Artayet in
6 connection with drop weight testing. That is a
7 very critical piece of the ALJ's analysis. Our
8 conclusion is that because of evidence of which
9 the ALJ was totally unaware that the ALJ's
10 ultimate conclusion was wrong, that was not
11 pretextual, that was a significant contributing
12 factor to Pardi's decision-making and that Pardi
13 was not incredible on that point, could have
14 been proven obviously in a much more
15 constructive way.

16 MR. STEIN: You believe if the judge knew
17 at that time what you know now that he'd make a
18 clear and convincing finding that they had a
19 legitimate reason --

20 MR. STIER: Yes

21 MR. ULIE: Let me ask this: My
22 understanding was it was during the October and

1 November time frame that the drop weight testing
2 issue was identified and was considered to be of
3 significance. Is that true?

4 MS. COOPER: It was identified to Andy
5 Walcutt in that time frame as a result of
6 concerns that were raised to him by Pardi,
7 Cepkauskas and Bingham, and that is when Andy
8 Walcutt started writing about it.

9 However, it was a significant
10 issue in July of 1996, and that was when
11 management began -- or actually Gorden spoke to
12 Cepkauskas and Cepkauskas spoke to Pardi, and so
13 it became an issue at the time that it occurred,
14 and it started filtering up to management. And
15 then to continue on, then, my point is --

16 MR. ULIE: You were saying July and
17 October, gets me up to the point of January
18 15th, what was the motivating reason then that
19 started the discussions that ended up with the
20 removal of Mr. Artayet?

21 MS. COOPER: Do you want me to get --

22 MR. ROBE: No. We need to get into the

1 details of it obviously. Like I said, you have
2 whetted our appetites, but --

3 MR. STIER: That is my only objective.

4 MR. ROBE: We also need to take a brief
5 break and I need to get to another meeting. Why
6 don't we do that right now. Why don't we take a
7 break and reconvene in 10 minutes.

8 MR. STIER: Okay. And Mary Jane will pick
9 it up and go into the details.

10 MR. ROBE: And if you folks could step out
11 in the lobby for a minute that would be great.
12 We will go off the record at this point.

13 (Whereupon a recess was had,
14 after which the meeting
15 resumed as follows:)

16 MR. STIER: Before Mary Jane begins, there
17 is one thing I did not mention, one area of our
18 investigation that I did not mention that I
19 think I should tell you, because we are going to
20 discuss it. Just exactly where it's relevant
21 I'm not entirely sure, but it does affect
22 Artayet's credibility at least. It may be

1 relevant to other issues.

2 The Part 21 that Artayet was
3 preparing in January, and for which he said he
4 was transferred to Parkersburg on February 8th,
5 that Part 21 basically says that there are
6 procedures, two procedures that had been used at
7 D.C. Cook to perform very important welding,
8 main steam line welds, and that those procedures
9 were not qualified; very, very serious issue.
10 And it is raised in that Part 21 as though
11 Artayet had just discovered it.

12 There are two problems with that.
13 One is that it's very clear that he knew about
14 that problem for about two years before he
15 surfaced it in the proposed Part 21. And there
16 is lots of documentation to support that, and
17 testimony that he had recognized that issue
18 before and not done anything about it.

19 And secondly, by the time he
20 raised it it was no longer as serious an issue
21 as it had been, because in fact the weld had
22 been qualified by then. It wasn't qualified on

1 the D.C. Cook project, but it was qualified in
2 connection with the Point Beach project, same
3 weld, same parameters.

4 Now, whether at that point it
5 should have been raised as a, you know, Part 21
6 or not, you know, is a debatable question. To
7 me the more serious problem -- the two more
8 serious problems are that, A, Artayet claims
9 that he discovered that problem in a way that
10 the record shows that he did not discover it.
11 And, B, that he hadn't done anything about it
12 for a long period of time.

13 Now, the company cannot know this
14 so I'm not suggesting that in any way his
15 failure to do anything about it contributed to
16 his decision to remove him. When we, during the
17 course of our investigation, began to uncover
18 evidence that he had been -- he was aware of
19 this problem with D.C. Cook way back, so I tell
20 you that Mary Jane is going to deal with it.
21 Again, I'm not entirely sure how it gets woven
22 into the analysis of the evidence other than on

1 the question of credibility, but we will see.

2 Mary Jane?

3 MR. STEIN: Before we begin, Brent, do you
4 want to or should I raise that caveat?

5 MR. CLAYTON: I was going to do it at the
6 end of the meeting. Just to get on the record,
7 this is a predecisional meeting, we haven't made
8 any regulatory decision and we won't until we
9 have an enforcement conference with Morrison
10 Knudsen.

11 Anything that we say or any
12 questions that we ask or anything we don't say
13 today shouldn't be construed as being a
14 regulatory decision.

15 MR. STIER: I understand that completely.
16 I appreciate the opportunity to be here and to,
17 you know, expose some of what we have done.

18 MS. COOPER: And I think one of the
19 difficult things about this case, normally or
20 more typically let me say that we come into an
21 investigation before at an earlier point from
22 the company's perspective, and -- but I will say

1 -- I mean, I can understand when you have this
2 body of evidence and it seems pretty compelling
3 and you haven't found anything that conflicts
4 with it, and essentially we are in the same
5 position, I think.

6 He had tried to convey that we
7 started out with the Department of Labor
8 hearing, interviewing Alain Artayet for a couple
9 of days, and he seemed to be a very credible
10 person and he presented his arguments
11 persuasively. And the issue of sort of working
12 your way through this and testing your
13 conclusions through the process is something
14 that, you know, we really make ourselves do.

15 Every time we reach a conclusion
16 there were lots of arguments within the office
17 about what supports that, what doesn't. And so
18 we are always testing ourselves. But Ed
19 mentioned the issue of credibility, and as I was
20 going through a lot of these interviews at that
21 period to me that some place during the process
22 some of the things that Alain was saying, there

1 were reasons to question his credibility. And
2 some of those things were actually taking place
3 within the company's decision-making process.

4 They weren't necessarily aware of
5 it, but for instance his defense to the drop
6 weight test issue and the qualification issue,
7 we will get into it, but there are memos that he
8 participated in and they really don't clearly
9 represent accurately what was occurring.

10 And so that was one of the things
11 that -- in our reaching our conclusions.
12 Certainly the company may not have been aware
13 that there was any question there, but when we
14 were deciding what evidence to rely on and
15 issues of credibility, you know, we always do
16 that with witnesses anyway, we try to
17 corroborate what they are saying by talking to
18 other witnesses, utilizing documents. But that
19 issue certainly started to surface as we were
20 going through this process with him.

21 There are just a couple of things
22 I wanted to say in the outset. What you have

1 before you in this briefing book is sort of
2 bullets and outline of some of the issues that
3 as we went through this time line -- and the
4 reason I'm glad we gave each of you copies of it
5 because I'm not sure that it's that visible. We
6 thought we had blown it up enough but what we
7 have done here is essentially we went back to
8 the beginning of time for Alain Artayet and MK,
9 because actually when we sat down with Alain he
10 was the one that raised the issues of why he was
11 hired and how he was hired and some of the early
12 things that occurred.

13 So that sort of framed the time
14 of our investigation, and essentially we started
15 when he was hired, and I will talk to you about
16 that. There were some points along the way that
17 were more critical to the issues of why he was
18 removed, and so with the availability of high
19 technology on -- I think it was Word on a
20 computer we were able to blow out some of the
21 time frames here that were more significant.
22 And as we were -- we started out -- I mean the

1 time frame that really was most significant when
2 you were talking and dealing with the evidence
3 at the hearing was what was going on in December
4 and January when Alain was -- when the decisions
5 were made and people were talking about it, and
6 Alain was made aware of the adverse employment
7 actions that were going to be taken.

8 As our investigation proceeded we
9 really found that this time frame from May to
10 August was very significant in understanding the
11 perspective of people, management, understanding
12 Alain's positions, his actions. And what we
13 have done in this time line is do an almost
14 day-by-day analysis of what was going on.

15 Now, some issues are a little
16 more detailed on the chart, some are more
17 detailed in the bullets that he presented, and I
18 assume that my presentation is going to be more
19 detailed than both, so they are basically aids
20 in trying to help us through the process.

21 One of the reasons I want to say
22 this initially, he had said that I would explain

1 to you why we talked to Alain for six days. It
2 was essentially an interview. He said that we
3 talked to him, he said that he had a lot more
4 information, so one of the things that I wanted
5 to do was to as we went through each issue make
6 sure that he had every opportunity to say
7 whatever he wanted to say about an issue.

8 If I wasn't asking the right
9 questions and he was aware of something that was
10 relevant to an issue he wanted to raise I asked
11 him to please make us aware of it, because our
12 process is to get as much information as we can.
13 And so he would think of things, he would bring
14 things up, we would go back in time because he
15 thought of something.

16 His attorney participated in
17 sometimes helping him to recall issues. He had
18 provided us with a lot of documents, but he also
19 had documents with him that he had not provided
20 us with and provided us with at an earlier point
21 in time which he gave to us during the
22 interview.

1 MR. STEIN: After looking at six days of
2 interviews did you find his testimony consistent
3 between Day 1 and Day 6?

4 MS. COOPER: One of the things that
5 occurred was that he would go back and forth on
6 issues. For instance, one -- I'm thinking of
7 one in particular was there was an issue of what
8 documents a weld procedure specification, a WPS
9 should be based on. At one point he said to me
10 it was -- the code required that it be based on
11 both a supporting WPS and a PQR. It's my
12 understanding of the code that it's clear that
13 it's a PQR.

14 When I asked him to show me where
15 in the code these requirements were he couldn't
16 find the requirement for the WPS, supporting
17 WPS, so we would go back to that.

18 It seemed he changed his view on
19 that and then went back again, so there was some
20 variation on his position on things. And we
21 haven't sorted out all that yet because when he
22 returns his transcript to us he is liable to

1 say, you know, in there, hey, I was mistaken on
2 Day 2, it was always what I said on Day 1 and
3 Day 3.

4 So there was some going back and
5 forth. And I did talk to him about some of the
6 technical issues. Anything that had to do with
7 the code when he made a statement that wasn't
8 clear to me from talking to other witnesses or
9 looking at the code that he was correct, I would
10 ask him to help me to find out where that was.
11 So we would go through the code, and he would
12 point out to me what he felt were the statements
13 that needed interpretation.

14 And, granted, the code is very
15 clear on some things, but there are some issues
16 where interpretations can be made. And so he
17 would point that out to me. So we spent some
18 time going through codes, spent some time going
19 through procedures, and showing me the process
20 and how things went.

21 We went carefully through the
22 time line with him of his whereabouts during the

1 qualification process, because as you will see
2 that becomes an issue of whether or not he was
3 actually involved in the qualification process.
4 And it turns out, in fact, that he had been
5 traveling a lot, that that was all documented
6 with him and his attorney, and we went through
7 and we agreed on it.

8 I gave him copies of my
9 transcripts of the tapes that he provided. He
10 had not -- he says that he had not transcribed
11 them. He did not provide any transcriptions of
12 them to us. I told him there were some cases
13 where I couldn't understand the language. He
14 said that he would fill that in for me when he
15 returned the transcripts to me.

16 There was one case where I did
17 get a word wrong and he corrected it because it
18 was a very significant word. It turned out that
19 it was not supportive of his position, so
20 actually it was -- it certainly clarified the
21 record.

22 One thing about those tape

1 records, and I asked him about this, he told us
2 that these are the only tape records that he
3 has, and there were four conversations that he
4 recorded. It sounds as if there are breaks in
5 the tape, and you could listen to them and think
6 that they had been edited. He claims that they
7 were not, that that happened because not so much
8 that it was a voice activated tape-recording,
9 because some of the breaks come right in the
10 middle of a sentence and just stop, he claims
11 that he was wearing the tape recorder in his
12 back pocket, and if he moved a certain way it
13 would cause a break in the conversation. So we
14 understand that listening to those tape records
15 that they are not entire conversations, that
16 they are pieces of conversations.

17 But he didn't provided any
18 information to us indicating that there were
19 things left out of the tapes that would have
20 supported the position that -- chiefly that
21 management and Lou Pardi had perjured himself.
22 That is what he said these tapes would prove,

1 that Lou Pardi had perjured himself at the
2 hearing. And, in fact, that was not the case.
3 And I told him that I had a problem
4 understanding that and if he could explain it to
5 me. And he was not able to explain to me his
6 position that this -- that these tape recordings
7 indicated that Pardi had perjured himself.

8 As I said earlier, when feasible
9 or necessary we went back and interviewed
10 witnesses. One of the first witnesses we
11 interviewed was Andy Walcutt because he was
12 leaving for the Ukraine. It was the winter and
13 I was hoping we could accomplish that in the
14 United States. And, in fact, we did reinterview
15 him towards the end because there were many --
16 we were on the beginning of the learning curve
17 in, I guess it was January. Actually, it was
18 the end of December. He left the beginning of
19 January. And so there were issues that we
20 clearly didn't understand, and so we went back
21 and we interviewed him at length by telephone
22 from the Ukraine and got more information.

1 MR. STEIN: On that point, he was director
2 of quality management in 1991. What is his
3 function in the Ukraine? Has he been demoted by
4 MK?

5 MS. COOPER: Actually, what he said to us,
6 and seems to be supported, there was no issue
7 that Andy had been retaliated against or that
8 this job action had been taken against -- there
9 was any job action taken against him.

10 He claimed that he wanted the
11 transfer, that this job that he was in created a
12 lot of stress for him and that he had gone as a
13 consultant to the Ukraine and felt that when he
14 was away he was under -- he was greatly
15 relieved, and the pain in his arm went away.
16 And so when he came back he discussed it with
17 his wife.

18 At that point in time the group
19 weld engineer position -- I'm jumping ahead a
20 bit -- had been relocated a bit out of his
21 department. His department was diminished, and
22 he claimed that that really did not affect his

1 decision. And that he actually told us that
2 management requested that he stay on through the
3 end of the St. Lucie project so they wouldn't
4 have to change their Q.A. personnel.

5 MR. STEIN: Was removing the group welding
6 engineer a result of Alain Artayet?

7 MS. COOPER: Partially. And we will get
8 into the whole structural issue of, I think,
9 group welding engineer was in the quality
10 assurance department, and whether that was the
11 appropriate place for it to be.

12 So I think that that
13 reorganization at least there may have been
14 other reasons for it as well, but I think
15 management was coming to the realization that
16 having Artayet and the group weld engineer,
17 whoever he was, report to the director of
18 quality created some issues, that as he had
19 said, resulted in a problem. They may not have
20 had a clear understanding of why it was the case
21 before talking to us.

22 MR. CLAYTON: Are you going to get later

1 into the nonexistence of the position
2 description for this person and what you decided
3 what his real job was?

4 MR. STIER: Right.

5 MR. CLAYTON: I think if you are going to
6 discuss it later you don't need to go into it
7 now.

8 MS. COOPER: I think we can just get right
9 into the -- I think -- I always find that it may
10 seem like some people like to address the issues
11 and talk about the issues. In my mind you
12 really do get an understanding of what is
13 happening if you can do it chronologically, and
14 I really find it's very helpful to go back in
15 time and to try to reconstruct things.

16 For instance, we are taking
17 August and May and December out of context here
18 and actually in real life things develop over a
19 period of time, and I know one of the questions
20 that was initially asked was, you know, why
21 Alain was where he was, and, you know, what kind
22 of technical competence did he have.

1 And that question, you know, was
2 one of the first questions I asked when I came
3 into this, was why was the group welding
4 engineer in the quality assurance department, it
5 seemed to me like it was a line function. But I
6 didn't know anything about welding so I wanted
7 to understand that.

8 So those were some of the early
9 issues that were answered historically. So just
10 according to the bullets here we go back to at
11 least as early as 1975 the group welding
12 engineer at MK reported to the department named
13 quality and technical support services.

14 What we understand is that the
15 person who is the head of that department who in
16 that period of time was an individual named
17 Murlin Grayson who had a welding -- who was
18 knowledgeable in welding and also in quality,
19 and so the fact that he was director of quality
20 for MK's nuclear projects, he also wanted to
21 keep control of welding. And just jumping
22 ahead, I think that that is more typical of the

1 structure that the company represented to me
2 that they would like to hire somebody who is
3 both knowledgeable in welding and in quality who
4 could essentially head up the quality department
5 and head up a welding department.

6 And that was what it was in 1988,
7 for instance, when D.C. Cook was operating. The
8 GWE essentially provided technical support
9 services, and they are quality engineers who
10 handle quality functions.

11 That is not to say that the group
12 welding engineer never did a quality assurance
13 kind of job. For instance, the person who was
14 the GWE on that job told us that he could be
15 called upon to assist the quality assurance
16 people in conducting an audit, some kind of a
17 survey reviewing procedures, but his job was to
18 provide support for the nuclear jobs.

19 What the group weld engineer did
20 was -- I guess I need say first MK has hundreds
21 of previously qualified welding procedures
22 recommended by PQRs as they are called and --

1 MR. WEIL: Could you for the record tell
2 us what PQR stands for?

3 MS. COOPER: I always forget, George.
4 Procedure qualification report. And through a
5 procedure qualification report, the company
6 supports numerous welding procedure
7 specifications, and that is the WPS that -- the
8 document that is actually the welding
9 procedure --

10 MR. WEIL: Again could you explain WPS for
11 the record?

12 MS. COOPER: Yes. The -- well, I will
13 jump ahead. I do have a qualification --

14 MR. WEIL: I just need the meaning of WPS.

15 MS. COOPER: Welding procedure
16 specification. When the D.C. Cook project was
17 being developed, a certain number of welding
18 procedures were needed. I think there were 12
19 or 14. The process is that the people who are
20 working at the site ask the group welding
21 engineer to provide PQRs to them. And this is
22 what was happening back in the 1988, '87 time

1 frame.

2 The group welding engineer
3 provided PQRs to the site and the site developed
4 WPSs, welding procedure specifications within
5 the parameters of the PQR.

6 The GWE at D.C. Cook in 1988 did
7 not provide WPSs and did not have approval --
8 did not have signature approval for the site
9 WPSs. If you look at Exhibit C there is an
10 example of one of these. And the first sheet is
11 the signature page, and it's essentially site
12 personnel. And there was an actual review
13 process, but it was a site personnel.

14 And as you see the person who is
15 the PWE, the project weld engineer in this case
16 was Eugene, Rusty, Gorden. And he is the one
17 who said when you get up to Point Beach it
18 worked in the past, why won't it work again.

19 MR. STEIN: So this is where Lou Pardi has
20 the assumption that Artayet was reviewing and
21 approving these WPSs?

22 MS. COOPER: Pardi didn't join the company

1 until 1992 so he had no real responsibility or
2 any involvement in D.C. Cook. It will come at a
3 later time frame after Pardi joins the company.

4 MR. STEIN: But it's this kind of PWS that
5 was different in that this was a site procedure
6 which would be different than what Pardi had
7 assumed that Artayet --

8 MR. BERSON: Which does not require GWE
9 approval?

10 MS. COOPER: Right. After Pardi joins the
11 company.

12 MR. STIER: Let me say, if we understand,
13 it was Pardi's expectation that Artayet would
14 sign off on the site procedures that were
15 created for Point Beach. The D.C. Cook project,
16 however, in that project there was no sign off
17 by the group welding engineer on site WPSs.

18 MS. COOPER: So many of the same people
19 that are involved in D.C. Cook are also involved
20 in Point Beach, they have been through this
21 process before together. They were satisfied
22 that it worked.

1 The group welding engineer
2 provides support for them, provides PQRs for
3 them. He can review the site procedures, but
4 after the fact, just as what was going on at
5 Point Beach.

6 Also involved in the D.C. Cook
7 project was Andy Walcutt. He was the site
8 quality manager, so he was aware that that was
9 the way the process worked at D.C. Cook, as well
10 as Cepkauskas, Bingham, Gorden, Walcutt, among
11 others who were people -- I think the group weld
12 engineer is still welding engineer at Point
13 Beach too.

14 So you have many people that
15 worked at this process at D.C. Cook and were
16 satisfied that without a written approval the
17 procedures would be well developed, without
18 problems, and that was the process that they
19 were used to working in.

20 So, Katherine, just since you
21 weren't here, I was just laying out that back in
22 1988 -- well, actually back as far as 1975 the

1 group welding engineer was in a department
2 called quality and technical support services
3 and that -- and I think the critical thing here
4 is that the department actually had two
5 branches, one was technical support, i.e.
6 welding, and the other was quality. And so it
7 was at that point in time it was clear that the
8 group weld engineer did not have a quality
9 function.

10 Alain Artayet was hired in June
11 of 1988. We accepted that he had been a welder
12 for a number of years, that he had actually
13 welded on nuclear projects, as he represented to
14 us. But he told us that he decided that he
15 wanted to become a welding engineer, he went to
16 Ohio State University, which is -- he had
17 already had, I think, a two-year degree, and he
18 finished up at Ohio State, getting a degree in
19 welding engineering.

20 He told us, however, that
21 essentially there is no training in the ASME
22 code. I think he said he took one course, but

1 he agrees that he went into MK fresh, with the
2 idea that he would learn to understand the ASME
3 code.

4 I asked him if there was a
5 written job description or some kind of analysis
6 back in 1988 when he was hired. He said no. He
7 said MK came into Ohio State and interviewed 60
8 or 80 people. He was the one who was selected
9 for the position. They did have a group weld
10 engineer, the group weld engineer did not want
11 to continue in that position.

12 MR. STEIN: So he had welding experience
13 and then got a degree and was hired as group
14 welding engineer?

15 MS. COOPER: Right. And I understand from
16 talking to several people that you can be a
17 welding engineer without ever being a welder.
18 You may watch somebody weld, but the two aren't
19 necessarily overlapping functions. It certainly
20 would appear to be an advantage to understand
21 welding to know how to do welding. And,
22 actually, as we get on you will see Alain

1 actually used some of his welding skills to
2 qualify some procedures.

3 It was his -- he said what he was
4 told when he was hired, what it was -- his job
5 was to support the projects, doing whatever it
6 takes to support the projects, and he accepted
7 that. When he was hired, D.C. Cook was
8 underway. If you notice the procedure that you
9 are looking at in Exhibit C is a June, 1988,
10 procedure. The group welding engineer Huffstodt
11 stayed on through the end of the project, and
12 Alain was not required to provided procedures.
13 I think he had maybe minimal involvement, they
14 had needed to find a special kind of welding rod
15 and the project had asked him to assist in that
16 project, and that was essentially his
17 involvement.

18 However, after -- just to -- I'm
19 sort of jumping ahead in my analysis here, so if
20 we could just -- I think maybe it's better if I
21 stay with the bullets. The project did -- the
22 Department of Quality and Technical Support

1 Services was renamed in 1992.

2 The people who hired Alain, and
3 that was Grayson and his -- the next level of
4 supervision is a fellow named Dorsal Baden both
5 left MK. By 1991 Andy Walcutt was moved up into
6 corporate level quality in the department, and
7 he replaced essentially Murlin Grayson as the
8 department director until 1991. In January of
9 1992 he changed the name of the department to
10 the Quality Management Department, and the
11 welding function within that department was just
12 sort of absorbed within the quality group, but
13 essentially as we have been able to determine
14 the group welding engineer's functions remained
15 the same. There was never really a quality
16 assignment. He might assist just as they had
17 before, preparing a -- putting someone on the
18 approved suppliers list or doing some kind of an
19 audit, but essentially his job was always to
20 support projects.

21 MR. STEIN: I understand from what you
22 said earlier that Walcutt did not have welding

1 experience, that he was a Q.A. person who leaned
2 on his group welding engineer for technical
3 support.

4 MS. COOPER: That developed. He was his
5 -- I think his degree was in -- he did have an
6 engineering degree, and if I remember it may
7 have even been in something like marine biology,
8 but he had some experience working at nuclear
9 plants where he came to Florida Power and Light.

10 I think he may have worked at
11 T.V.A. I am not sure exactly the other places,
12 but he did have experience from Florida Power
13 and Light and essentially in the quality
14 department, and then when he came to MK he was
15 site quality manager at D.C. Cook. And so his
16 background was essentially in quality assurance,
17 and he had supervision now for the group welding
18 engineer but had no welding engineering training
19 himself. And he is an intelligent person, and
20 you, know, he is not -- he could explain some
21 things to us, but I think that he did not have
22 independent expertise on his own to be able to

1 be supervising the group weld engineer.

2 MR. CLAYTON: Is there usually one group
3 weld engineer?

4 MS. COOPER: Well, as of last -- end of
5 October, beginning of November when Alain
6 Artayet was rehired by MK, there were two, but
7 essentially what we were told, that there was
8 not sufficient work in the company to justify
9 having two group weld engineers, and so up until
10 that time there was only one.

11 I should say too, just to sort of
12 set the backdrop, that after D.C. Cook there was
13 no actual production on a nuclear site until
14 Point Beach in 1996. And so as you will see, a
15 lot of Alain's support, what he was doing was
16 actually supporting nonnuclear project.

17 And I believe we have here
18 November of 1997 the company has been
19 reorganized, the GWE no longer reports to the
20 quality department and now reports directly to
21 Pardi, and that is the case with both Alain
22 Artayet and George Hlifka.

1 In our development of trying to
2 understand what the GWE's responsibilities were,
3 we went through various documents. They
4 included the quality assurance documents,
5 Alain's definitions, Alain's appraisals that
6 were available in the record indicating what his
7 function was. And essentially it's laid out
8 here to implement the corporate welding program,
9 and not just nuclear, but company construction
10 company wide.

11 He was MK's technical consultant
12 to power and process regarding general welding
13 issues. So someone could call him and ask what
14 kind of material should you be using to weld P-1
15 to P-3 or P-1 to P-1 or certain situations, so
16 he would provide technical advice.

17 It was always the group welding
18 engineer's responsibility to qualify welding
19 procedures, at least as far back as we have been
20 able to determine, and to provide qualified
21 welding procedures to sites if they were in
22 existence, and if they were not in existence to

1 qualify welding procedures, provide a PQR, and
2 up to a certainly point at least to provide that
3 PQR to a project.

4 On nonnuclear projects, as you
5 will see, Alain was providing the welding
6 procedure specifications as well to the sites.
7 We will get into how that occurred. For --
8 well, I think we have already essentially
9 defined some common welding terms, that is the
10 WPS, which is written procedures prepared to
11 provide direction for making production welds to
12 code requirements.

13 Procedure qualification is the
14 process of qualifying the welding procedure
15 specification. That process demonstrates that
16 the weld has certain physical properties that
17 are required by code in certain parameters.

18 The PQR, the procedure
19 qualification report, is a record of the welding
20 data used during actual welding testing. And it
21 also contains the test results and a
22 certification of accuracy by the group welding

1 engineer.

2 Just a bit about the welding
3 procedure qualification process before we get
4 into the facts, because that is such an
5 important part of what we need to know,
6 understand, what Alain's functions were.

7 As I said, essentially it is
8 still the same as it was at D.C. Cook. The
9 project provides desired properties of a
10 weldment to GWE and would say, for instance,
11 materials that we need to weld, the filler
12 material that we want to use or what filler
13 materials are available. Does it need to be
14 post-weld heat treated, does it need a certain
15 level of heat, what kind of testing needs to be
16 done. The group weld engineer then researches
17 the existing PQRs at the company to see if this
18 procedure has been previously qualified.

19 If it has, it is permissible by
20 code. If the parameters are all the same and
21 none of the essential variables are changed,
22 that that PQR can be used to support a welding

1 procedure specification, which can then be
2 created specifically for the site, and they can
3 go out and then follow that in doing the actual
4 production welding.

5 When he is looking at the PQRs
6 that are already in existence the GWE must be
7 sure that the essential variables aren't
8 changed. They are base -- the base materials,
9 such as a base material, the two pieces of metal
10 that need to be welded together, and in some
11 cases filler material is an essential variable.
12 In some cases post-weld -- post-weld heat
13 treatment is an essential variable.

14 So if your application requires
15 that and the PQR that you have, using all of the
16 other materials, filler materials and so forth,
17 does not have post-weld heat treatment, the PQR
18 cannot be a basis for the welding procedures
19 that you want to use at the site. So they have
20 to go out and requalify the procedure.

21 There are things that are
22 nonessential variables, and the example that we

1 have here is bevel angle. If the bevel angle
2 changes, then you can still use the PQR to
3 support the WPS. There are properties which are
4 called supplementary essential variables, and a
5 significant one to the issues that are developed
6 through this case and so we use it as an example
7 here is a filler material classification.

8 And it's the one classification,
9 if I recall, the material is E7018. There is
10 another classification which is E7018-A1. Now,
11 in some situations a procedure that is qualified
12 using E7018-A1 can support a procedure using
13 E7018. There is a test which I'm going to
14 describe a bit here called a Charpy impact test
15 -- Charpy V-Notch impact test. If a -- if the
16 weld parameters require that a Charpy V-Notch
17 impact test be conducted on the test specimen,
18 then this supplementary essential variable
19 becomes an essential variable.

20 So if it doesn't require a Charpy
21 V-Notch test you can forget about it, you can
22 use a procedure E7018-A1 to support a welding

1 procedure using E7018.

2 This is significant, because this
3 is the basis for the very issue that was in the
4 Part 21 in January, and that -- so that is why
5 we use this as an example.

6 MR. STEIN: Is the drop test another
7 example?

8 MS. COOPER: Drop weight testing in
9 certain instances must be done to determine the
10 temperature at which a Charpy V-Notch test can
11 be done.

12 MR. STEIN: So it's a supplement?

13 MS. COOPER: I don't think it's considered
14 a supplement. Charpy V-Notch is -- in some
15 cases you don't need a drop weight test to
16 determine the temperature at which you are going
17 to do the Charpy V-Notch and others you do. So
18 I don't believe it's supplementary, but you
19 asked me a question and I'm not sure about the
20 answer to it, but it's really not critical to
21 understanding the issues here.

22 If the supporting PQR is a

1 variable it's given to the site. If it's not,
2 then the GWE must qualify a welding procedure.
3 So I have laid out here what occurs.

4 The engineer, the group weld
5 engineer drafts a welding procedure
6 specification. It's essentially a menu that
7 lays out what you are going to be doing during
8 the test, and the parameters of the weld. He
9 buys test plates, which is the representative
10 material that is going to be welded, and
11 purchases the filler material, which is the
12 same, if I recall, material. He makes sure he
13 has the welding equipment which can weld the
14 test plates, produce the weldment, and then a
15 representative weld is created.

16 The GWE in the process of
17 qualifying the -- creating the PQR must -- or
18 delegates someone, he himself must, or he
19 delegates someone to monitor the welding and
20 collect data such as the amps, the volts, the
21 travel speed, many other characteristics which
22 must be created and saved on the PQR.

1 After the welds are created the
2 test plates are sent to a testing laboratory,
3 the GWE specifies which certain tests that need
4 to be done. It's not up to the lab to say which
5 tests should be done, it's the GWE's
6 responsibility. And the GWE also specifies the
7 information or standards which he needs the
8 weldment, the representative weld to pass in
9 order for it to be a successful qualification.

10 MR. STEIN: The entire job skills you have
11 gotten from interviewing the GWE and asking what
12 do you do?

13 MS. COOPER: Well, yes.

14 MR. STEIN: Rather than having a piece of
15 paper that says --

16 MS. COOPER: Yes, from talking to people
17 who have been involved in this process, and also
18 looking at the code and what the code requires.
19 It's a combination of what is actually done as
20 part of the GWE's responsibilities.

21 Typical tests that are required
22 by code for nuclear application, and these are

1 done at a test lab, are a bend test, which
2 measures welding techniques. And actually the
3 plate and the weld is actually bent, and this
4 will reveal defects in the welding technique.
5 Typically some of which are lack of fusion, and
6 I believe slag as well. And so that is one of
7 the initial tests that is done.

8 Tensile strength, where they
9 attempt to pull apart the plates at the weld to
10 determine the ultimate tensile strength of the
11 weld; the Charpy V-Notch test, which is
12 conducted in some applications, measures impact
13 strength of the material called toughness, and
14 it measures the material's ability to resist
15 crack propagation.

16 In this situation it's actually a
17 pendulum that is swung and hits the weld, and
18 it's done numerous times to determine at what --
19 how much energy the weld will absorb. In
20 certain applications a drop weight test must be
21 done to determine the nil-ductility temperature,
22 which is the maximum temperature at which a

1 specimen breaks. So you start at a higher or
2 lower temperature and it's a factor of the
3 temperature, cold or heat, which is colder --
4 the colder it is the more likely the specimen is
5 to break. When you find a point at which the
6 weld breaks, then you go through a process of
7 then adding 10 degrees to that temperature until
8 you find what they call two no breaks. When you
9 find that the temperature at which the weld does
10 not break, which is at that temperature, that
11 temperature can be used to determine the
12 temperature at which the Charpy V-Notch test can
13 be done.

14 The temperature at which the
15 specimen breaks is called the nil-ductility
16 temperature, the NDT. That also becomes an
17 important factor.

18 I am going into this in some
19 detail here because this understanding of the
20 drop weight test and these terms are significant
21 in understanding how Alain did not properly
22 understand the drop weight testing issue when he

1 was responsible for qualifying the procedures.

2 The code is very specific about,
3 and this is all significant -- the code is very
4 specific about where the test specimens must be
5 taken, the base metal which would actually be
6 the test plates. So if you were welding P-1
7 material to P-1 material, that is the base
8 plates, the heat affected zone, which is area of
9 the base plates, which is actually affected
10 during the welding process and the weld metal
11 which is the weld itself.

12 After the test, the GWE gets the
13 results from the test lab in a report.
14 Presumably it's a successful test. If it's not
15 it's redone, or if it was just disqualified and
16 you start all over again. If it's successful,
17 the GWE creates a PQR in which he certifies to
18 the accuracy of the information in the PQR. And
19 then he creates a final WPS, which is
20 essentially a menu of the test process. A
21 supporting PQR must be identified on every WPS.

22 The site WPSs are generated by

1 PQR from code. As I say, Artayet was of the
2 understanding that the site WPSs must be based
3 not only on the PQR but on the WPS, the
4 supporting WPSs, and we will get into what he
5 understood that to be.

6 I asked him to demonstrate to me
7 in the code where this requirement was for
8 supporting WPSs, and he was not able to.
9 Nonetheless he was adamant that there was a code
10 requirement that there be supporting WPSs. At
11 least during the interview he maintained that
12 position.

13 MR. STEIN: Did you find an independent
14 expert to run Artayet's position by?

15 MS. COOPER: I did ask George Hlifka about
16 that, and he said he is not aware of that, and
17 his understanding it's only on a PQR. I believe
18 I asked Rusty Gorden, who has considerable
19 nuclear experience, and he was unaware of it.
20 And as I said, Alain was not able to demonstrate
21 to me where in the code the requirement was,
22 so --

1 MR. STEIN: The only reason I ask is that
2 we have all these spent fuel cask issues dealing
3 with welding and I know that there were experts
4 out there that --

5 MR. STIER: Oh, yeah.

6 MR. STEIN: -- deal with this all the
7 time. And the ASME code is the same whether you
8 are dealing spent fuel cask or --

9 MR. STIER: Well, I mean we looked at the
10 code, reviewed the code, as Mary Jane said,
11 talked to people that she interviewed that were
12 knowledgeable about the code, and asked Alain to
13 identify in the code where he found support for
14 his contrary view, and he couldn't.

15 I mean, it seems if there were
16 any ambiguity in the code about it we might have
17 done a broader search for other opinions. But
18 as I remember the process, Mary Jane is the one
19 that went through it in detail, but as I
20 remember the process, it doesn't appear to be an
21 ambiguity.

22 I mean, the code seems to say

1 that a welding procedure is to be supported by a
2 PQR. It seems to make logical sense, as well as
3 sense in terms of it was written in the code

4 MR. WEIL: By any chance, did you have to
5 go to D.C. Cook or Point Beach to check the
6 plant specification in the contract or the plant
7 specifications in their weld department, or was
8 the conversation with Alain just limited to the
9 ASME code?

10 MS. COOPER: Whether there were engineer
11 requirements, plant specific engineering
12 requirements?

13 MR. WEIL: Yes.

14 MS. COOPER: No. As a matter of fact,
15 this was a process he developed, and that was
16 his explanation of how this process developed.
17 I'm not sure that since he had so much
18 difficulty illustrating the basis for and
19 insisted it was a code requirement, in looking
20 back at it, he is taking a lot of time reviewing
21 his transcript and wants to analyze the issues
22 at this point in time. And so I'm not sure that

1 he will maintain that basis.

2 I think I said earlier that was
3 one issue that as I went through the issues he
4 seemed to be backtracking from that position but
5 then went forward to it again. So whether or
6 not he is going to adhere to that as a code
7 requirement, I don't know. But it was
8 definitely a process that he developed while he
9 was the group welding engineer at MK.

10 MR. STEIN: I'm just wondering why he
11 would think that you would need a supporting WPS
12 if the code specifically says that, and he's got
13 a copy of the code, why -- unless maybe there is
14 another code that hasn't been approved yet or
15 that there is some other guidance out there.

16 MS. GREENBATES: It was part of the
17 Appendix B program.

18 MS. COOPER: He developed it based on his
19 assertion in his -- and I'm going to get into
20 the quality documents he made part of the
21 quality assurance program for D.C. -- for Point
22 Beach, but it wasn't an independent basis for

1 it. It was a process that he said, you know, he
2 had developed. And his reasons for doing so had
3 to do with, I think, as much his function as GWE
4 and perhaps thought that it was a way in which
5 he could control what was going on at various
6 company sites.

7 As I say, if you -- the D.C. Cook
8 procedures that we have in front of you, we do
9 have the PQR, we have -- if it's not Exhibit D
10 it's Exhibit C has an illustration of what the
11 prior WPS looked like.

12 It looks quite different than
13 what Alain was creating as a corporate WPS, and
14 it was Alain's corporate WPS he said should be
15 the basis for the site WPS.

16 And just jumping ahead, I just
17 want to point out to you that there are three
18 quality assurance documents at the company.
19 There is essentially a quality assurance manual
20 which governs quality assurance throughout the
21 company for nuclear projects and would govern
22 both site and the quality assurance department.

1 And there are QEPs, quality execution
2 procedures, which are the basis for performance
3 of work at the project level. And they were the
4 quality documents at the project level.

5 And there are QAI, quality
6 assurance instructions, which are operational
7 instructions for the quality management
8 department. That is quality assurance
9 department at MK.

10 The quality assurance manual
11 governs everybody. Quality execution procedures
12 governed the people at the site. The quality
13 assurance instructions governed people in the
14 quality assurance department.

15 They should be consistent. We
16 noticed inconsistencies in them, and it was part
17 of the problem as we were going through this
18 that --

19 MR. STEIN: I'm sorry, the third one, who
20 did it govern?

21 MS. COOPER: It's -- the GMD is of the
22 quality management department which is MK's

1 overall quality variance.

2 MR. STIER: Corporate level?

3 MS. COOPER: Corporate level.

4 MR. STIER: It is a quality group at the
5 site of course, but this is for the corporate
6 level quality department.

7 MS. COOPER: And as we get into the work
8 for Point Beach and St. Lucie there is a period
9 of time when there really isn't lot of nuclear
10 work, sort of gearing up and that kind of thing,
11 but not really between 1988, '89 and 1994 '95,
12 and I will tell you why I'm being so vague, and
13 I'm getting into it, but in the 1995 actually
14 probably started end of 1993, the company
15 developed quality procedures for use at St.
16 Lucie and Point Beach. So we will -- that is
17 the point in time which we notice these
18 inconsistencies within the three procedures
19 develop.

20 MR. STEIN: Are the QEPs for Point Beach
21 and St. Lucie consistent with each other?

22 MS. COOPER: No, no, not on the important

1 issues to that project and where we noticed the
2 inconsistencies.

3 Okay. So as I say we have
4 essentially developed talked about Alain --

5 MR. CLAYTON: Would it be a good time to
6 take a break?

7 MS. COOPER: I'm sorry. I was just
8 looking for a convenient spot to take a break,
9 and this may be it. I think we have the same
10 thought.

11 We can go off the record now.

12 (Whereupon, a recess was had,
13 after which the meeting was
14 resumed as follows:)

15 MS. COOPER: I have already covered that
16 when Alain was hired in 1988 he had essentially
17 no welding engineering experience and no
18 experience interpreting the code. Until roughly
19 December of 1995 Artayet's responsibilities were
20 chiefly nonnuclear. He gave minimal support to
21 nuclear projects.

22 One of the earliest things he

1 did, perhaps in part of an effort to familiarize
2 himself with the code and with company
3 procedures, was to review all of the D.C. Cook
4 WPSs and PQRs and do an analysis of that. One
5 of the things that we found is Alain had raised
6 the issue in our initial interview about
7 personality conflicts or conflicts with people
8 at the site. And that seems to be sort of a
9 subjective description. And, you know, there is
10 not a lot of substance to it. We were trying to
11 figure out what he was talking about.

12 He provided us some information,
13 and which was essentially when we talked to
14 people at the site about it, we did see that
15 there was -- it was more than, well, you
16 wouldn't call it a personality conflict, but
17 there were issues between Alain and the site
18 which I think developed an impression with site
19 people that he was stubborn, even when he was
20 wrong that it was very hard to convince him that
21 he was wrong. And in some instances he was an
22 alarmist.

1 And so kind of one of the
2 earliest examples that he actually provided to
3 us was during this review of the D.C. Cook
4 procedures he said that he raised an issue.
5 Now, granted he knows very little about the
6 code, just sort of going through the procedures
7 and trying to understand it, and it is the
8 procedure that is in -- we believe the evidence
9 indicates that Exhibit C is the procedure that
10 he was talking about.

11 The issue he raised, and if you
12 turn to documents that are 1050, and look -- if
13 you look in the lower right-hand corner of the
14 Exhibits 1050 and 1053 in Exhibit 3, if you look
15 all the way in the right-hand side about a third
16 of the way down, there is a column that says
17 drop weights, and these are both of the PQRs
18 that support this site WPS. And it says drop
19 weight, essentially it's NA, not applicable.

20 And yet if you look further to
21 the left, the column says impact values that
22 would indicate that Charpy V-Notch tests were

1 conducted, and in this case drop weight tests
2 were not conducted to determine the temperature
3 for your Charpy V-Notch test.

4 The question that he was asking
5 was why were there no drop weight tests
6 conducted? That question could create a big
7 issue if Alain was right. And Alain was
8 apparently taking the position that drop weight
9 tests should have been conducted. And there was
10 a great deal of difficulty convincing him
11 otherwise. His two supervisors, Dorsal Baden --
12 and this is all from Dorsal Baden -- was not
13 able to convince Alain that drop weight tests
14 were not required in this application. Murlin
15 Grayson was not able to convince Alain that he
16 was wrong in this application, and the concern
17 was that if Alain was right, which they didn't
18 believe he was, but this was potentially a Part
19 21 issue, that these welds might have to be
20 redone. And these were, I believe, the main
21 steam and feed water lines.

22 Marty Cepkauskas, who was

1 essentially the president of SGT on Point Beach,
2 and someone who Alain admired from -- according
3 to him from early times, and he considered him
4 to be a very knowledgeable individual, was also
5 not able to convince Alain that he was wrong
6 until he enlisted the help of an authorized
7 nuclear inspector.

8 And as Alain said to us, and this
9 was actually during the initial interview when
10 Marty explained it to me, I -- all of a sudden
11 it was clear he said, and I said to myself how
12 could I be so dumb not to understand that. So
13 he was -- he was taking a position which
14 everybody understood was incorrect. It was
15 difficult for people to explain to him why he
16 was wrong, and eventually he acknowledged that
17 he was wrong.

18 Now, I only say that not to say
19 that a person shouldn't stick to their guns,
20 because apparently Alain stuck to his guns a
21 lot, and was not overwhelmed by people telling
22 him he was wrong, from the perspective of people

1 at the site, and I guess from -- chiefly from
2 Marty Cepkauskas in this instance, because he is
3 the individual who sort of survived this issue.
4 And Andy Walcutt was kind of peripherally
5 involved but was not Alain's supervisor at the
6 time was that Alain could be difficult to deal
7 with, that, you know, you could you point
8 something out to him there in black and white
9 and if he didn't accept it, he didn't see it.
10 That was as far as it was going to go, and Alain
11 was going to stick to his guns and dig his feet
12 in.

13 And essentially that is what
14 Marty Cepkauskas says as to dealing with Alain,
15 if Alain said it I just said go ahead and do it,
16 Alain, because there is no convincing him. So
17 if anybody was overwhelmed, it seems in some
18 instances it went the other way.

19 Alain acknowledged that he was --
20 it was hard to persuade him in this instance.
21 What is interesting about it is the issue of the
22 Part 21, this is the procedure that Alain raised

1 in 19 -- 1997 in the Part 21. This procedure is
2 -- the PQRs are both based on procedure
3 qualification tests conducted with E7018-A1, and
4 the procedure itself which you see on the --
5 after the signature page is for the use of
6 E7018.

7 As I pointed out to you, Charpy
8 impact tests were done in this case in the PQR.
9 Requiring Charpy impact makes the filler
10 material qualification an essential variable,
11 and therefore under the code this procedure,
12 this WPS M-11AB, which was used to weld the main
13 steam and feed water lines I believe at D.C.
14 Cook was not supported by the PQR that was
15 referenced on the welding procedure
16 specification.

17 MR. STEIN: The question is, does the ASME
18 code cover that project?

19 MS. COOPER: Well, you are jumping ahead
20 now. When the issue was finally raised -- and
21 now we are up into 1997 -- the question was
22 raised, and this was long after the Part 21 was

1 initiated by Alain on this issue, someone from
2 D.C. Cook pointed out to Andy Walcutt that D.C.
3 Cook was built to, I think it's ANSI code
4 requirements and therefore this would have been
5 a nonissue.

6 However, we were told by Rusty
7 Gorden, who was the project weld engineer on
8 this case, and who actually signed the
9 procedure, that this was an error, that the
10 contract work was done to ASME Section 3 or 2 --
11 3. And so this was a procedure that was not
12 supported by the PQR that was referenced on it,
13 and it was a violation of at least their
14 commitment to do this project to code, ASME
15 instead of ANSI requirements.

16 So -- but the reason I point this
17 out is as we get into the issue of Alain's
18 experience with this E7018 versus E7018-A1
19 issue, this was an early example of a period of
20 time in which he says he reviewed all of the
21 D.C. Cook procedures. It appears that this is
22 the procedure that he was questioning.

1 Now, Alain denies that it was,
2 because we asked him about his knowledge of that
3 issue. I mean, after we went through all this
4 and Part 21 we went back, and he says this was
5 the time when he had the procedure in his hand,
6 he denied that he had any knowledge of this
7 issue prior to opening the book for the first
8 time on December -- January 14th and knowing
9 instantly what the problem was. But the
10 question is whether or not that explanation is
11 plausible, and both testimony and documentary
12 evidence raises the question that his testimony
13 on that is credible.

14 When we first interviewed Alain
15 he said that -- the question I asked was why
16 were the Charpys done at 30 degrees Fahrenheit,
17 and I was taking notes of that interview just to
18 make sure we had the issues. As we said that
19 was not a transcribed interview. I asked Alain
20 about that, and he said either I got it wrong or
21 that he had just pulled a number out of the air
22 during the interview, saying that plus he was

1 talking about another procedure.

2 The recollection of those who
3 heard about this issue was why were there no
4 drop weights conducted, they didn't remember the
5 specific procedures, they didn't remember the
6 temperature issue but why were there no drop
7 weights conducted to determine the temperature
8 with the Charpy.

9 And that issue came up at a later
10 point in time during the qualification project
11 that Alain was responsible for when Alain would
12 say you don't need drop weights essentially was
13 the way he characterized as opposed to in 1988
14 Alain -- or 1989 Alain is saying you need drop
15 weights when you don't, and now he is saying you
16 don't need drop weights when you do.

17 So that issue was characterized
18 as a question of not needing drop weights. So
19 when we looked through the D.C. Cook procedures,
20 all of them, it appeared that this was the only
21 procedure that Alain could have been talking
22 about with the drop weights, being no drop

1 weight test and the Charpy conducted at plus 30
2 degrees Fahrenheit.

3 MR. BERSON: So he was reviewing the
4 procedure after the fact?

5 MS. COOPER: After the project had been
6 handed over to the client.

7 MR. BERSON: And after this procedure
8 itself had been signed off?

9 MS. COOPER: Absolutely, and the welds had
10 been conducted. I don't remember whether the
11 plant was up and operating. Nobody was able to
12 fix an exact date, but they all agreed that it
13 was after the project was completed and Alain
14 was only reviewing the procedures for his own
15 edification, not because he had been assigned to
16 it in any fact, and there was a concern because
17 of Alain's issue.

18 Now, he wasn't raising the E7018
19 versus E7018-A1 issue at that time, he was
20 raising why was the Charpy impact test conducted
21 at plus 30 degrees and how did you determine the
22 temperature at which to conduct your Charpy

1 V-Notch impact test.

2 MR. BERSON: So you don't always have to
3 do a drop weight test to determine the
4 temperature --

5 MS. COOPER: It has to do --

6 MR. BERSON: -- as we talked about
7 earlier?

8 MS. COOPER: It has do, as I understand
9 it, with the thickness of the material and
10 certain materials. If it's a vessel, pressure
11 vessel and it's over five-eighths of an inch --
12 this is all by memory now -- but there are
13 applications where it's not required and it's
14 not -- from what we understood it's not
15 typically required in nonnuclear work.

16 It's more typically a test that
17 is conducted in nuclear, and as we get up to
18 1996 when Alain is responsible for qualifying
19 procedures in a nuclear project for the first
20 time, this is his first exposure to that
21 requirement. And so he really doesn't have any
22 experience on which to base what is required of

1 him, and he is essentially trying to figure it
2 out himself is what we will say.

3 One of the things that Alain
4 decided to do, he said that his supervisors, who
5 were Baden and -- Dorsal Baden and Murlin
6 Grayson were trying -- would help him to learn
7 the code. He said that what they essentially
8 told him to do was sit down and read the code
9 and learn the code. The anticipation was that
10 he would be working on projects. However, there
11 was no nuclear project for him to be working on,
12 so the work he was doing was essentially for
13 nonnuclear.

14 And Dorsal Baden and Murlin
15 Grayson left in mid 1991. They went to leave
16 and they didn't leave the company, they left
17 Cleveland and went to Boise, and if are you in a
18 situation where Alain was, no one who is
19 mentoring him, helping him, discussing code
20 interpretations with him. And Marty Cepkauskas
21 was generally not working at MK, only worked on
22 nuclear projects. He had some code knowledge

1 just based on experience, so that he was not a
2 welding engineer.

3 And as we said, there is a
4 significant lack of experience on his part when
5 he comes up to providing welding qualification
6 procedures for Point Beach.

7 But one of the projects that he
8 did undertake was a decision to take all of the
9 -- or essentially all of the PQRs that had been
10 qualified at MK and to make what he considered
11 -- called corporate WPSs, corporate welding
12 procedures. And in his mind he viewed it as a
13 welding procedure that would be -- we discussed
14 it, it was global was a good word to use.
15 First of all he was taking the old PQRs and
16 reformatting them, and hopefully copying the
17 information correctly because that is all that
18 it was. It was just a reformat. He said he
19 might have expanded it a bit in the sense of
20 adding an explanation of the code to the PQR,
21 but he wasn't changing any variables or anything
22 along those lines.

1 However, you will see -- and we
2 are in Exhibit D at the end of last document,
3 which is MK3464 on the last page he signs as
4 certifying to the accuracy of the information in
5 the PQR. The date there is April 10, 1991. The
6 original PQR, which is MK8928 for our reference,
7 was signed by the then GWE back in 1983, and
8 again in 1988 there was a revision to it.

9 Alain told us that when he was
10 recreating, reformatting the PQR he actually had
11 the test reports, because a PQR is supposed to
12 be based on the information in the test report,
13 and he said that he did go, and each instance
14 where he reformats the PQR and verified that the
15 information he was writing down was correct, the
16 only way to verify that today would be to go to
17 the -- either to the original PQR or to the
18 original test report and make sure he got it
19 right.

20 The other thing he did, as I said,
21 was create this global WPS. Now, in the days of
22 D.C. Cook, the welding procedure specification,

1 which is the third and fourth page of Exhibit D
2 is a fairly simple document. That is followed
3 by the PQR. If you turn over to -- I don't seem
4 to have a number on this one, but there is it a
5 document that looks like this. This is the new
6 corporate WPS. For some reason there is not a
7 number at the bottom of this page, probably cut
8 off.

9 As you can see, there is a lot of
10 information on here, and the part that was
11 essentially the global part of this document was
12 on Page 2 of 3, where Alain put down additional
13 notes. And what he was doing was providing how
14 the procedure could be used in various
15 applications. One of his thoughts was that if
16 he got a call from a nonnuclear project they
17 didn't have their own project welding engineer
18 who could create a site WPS, which would have
19 been perfectly fine with Alain, he would just
20 provide them this global WPS and they could weld
21 off of that.

22 And apparently that was a system

1 that worked for Alain in the nonnuclear
2 industry. The welding engineer at the project,
3 whoever he was, would get this -- whoever was
4 doing the weld would get this procedure and they
5 could find the information on here.

6 Alain said that he did not feel
7 that it would be a wise use of his time to
8 create a site specific application welding
9 procedure for every time that he was called upon
10 by construction jobs that were nonnuclear to
11 provide a sited specific application. So in
12 creating these global procedures it was his view
13 that he was lessening his amount of work, but at
14 the same time having some kind of control over
15 what the site was doing.

16 This corporate WPS created
17 problems for people at Point Beach. As I said,
18 it was Alain's view that the site WPS had to be
19 based both on the PQR and on his corporate
20 welding procedure specification.

21 They found that there was too
22 much information in here they had to sort

1 through, and some of the information on here was
2 for nonnuclear applications, which would have
3 been acceptable under the code but not nuclear.
4 So there was a concern that they could be
5 audited to this kind of information.

6 However, there were also a -- now
7 we are jumping ahead. There were also times
8 when these WPSs had incorrect information on
9 them. And there is actually one finding in
10 Alain's report, which is based on incorrect
11 information in the WPS which was correct in the
12 -- is presumably correct in the PQR.

13 There is another problem with it.
14 If you look at the very last line, Alain has a
15 disclaimer on here indicating that while he
16 wants this to be a global WPS, it doesn't
17 necessarily have all code information on it. It
18 says, for additional applications, requirements
19 or limitations of this WPS, see applicable code
20 and contract provisions. So while he is
21 providing this global WPS, he is representing
22 that he doesn't necessarily include all code

1 applications within this WPS.

2 He also -- it also is problematic
3 in terms of his corporate WPS, because I have
4 been told the code will change from time to
5 time, and so this global WPS typically could
6 have some information in it that was not
7 correct. So there was, as we will see, some
8 resistance at the site that they would base
9 their site WPSs on Alain's WPS, corporate WPSs.

10 MR. GAVULA: Was that what the Q.A.
11 program was set up though?

12 MS. COOPER: Essentially when we did the
13 -- yes. When they did the quality assurance
14 manual, and it is the quality assurance manual
15 that has that requirement, not the site. And if
16 I -- I have it in here. I don't even think QII,
17 the quality assurance manual which governed the
18 project corporate level required it to be based
19 on both documents.

20 There would be, I guess,
21 essentially no way of knowing that they didn't
22 use both unless there was a case, as there was

1 one instance, where there was no corporate WPS,
2 and so a site WPS was developed based entirely
3 on a PQR and no corporate WPS, no -- in that
4 case the quality assurance manual violation was
5 readily apparent.

6 In every other instance they had
7 both PQR and the corporate WPS. And as a matter
8 of fact, our information, and Alain agreed, that
9 at least in some ways that both site WPS --
10 well, both the corporate WPS and the PQR in
11 draft form were created by Alain at the site,
12 and he would review them and make changes to
13 them and provide them back to the site for them
14 to create their site WPSs. So they did have
15 them, they were aware of them. They did have
16 the information as to what was at least in the
17 corporate WPS as it was initially provided to
18 Alain.

19 And it's my understanding that a
20 corporate WPS should contain the same program
21 terms as the PQR. In some instances it did not,
22 and I think that created an issue as well,

1 because I think there is one instance where
2 Alain created a limitation on one of the program
3 terms the PQR would have allowed a broader
4 parameter, and the corporate WPS for arbitrary
5 reasons limited that. And the site WPS went out
6 to the -- what was in the PQR as opposed to what
7 was in the corporate. So in that kind of
8 situation you would say, well, it wasn't beyond
9 the WPS so -- the corporate WPS so that would be
10 technically a violation.

11 MR. STIER: You could infer from that the
12 corporate based the site on the PQR.

13 MR. GAVULA: They may have put aside their
14 QAM. I mean, that is --

15 MR. STIER: That is clearly the case.

16 MR. STEIN: But if the GWE creates PQRs,
17 then he is putting an additional limitation into
18 a WPS. He should be able to do that, shouldn't
19 he?

20 MS. COOPER: He should be able to do that.
21 I mean he can do it, and --

22 MR. STEIN: Whether he does it correctly

1 or not is beside the point, he should have the
2 authority to do that. The site needs to follow
3 that.

4 MS. COOPER: Or raise it to him and say,
5 you know, why is this here and what are you
6 doing, and you know, why is this limitation
7 here? Is there something that we should be
8 aware of. Is there some kind of contract
9 requirement limits, is there something else that
10 I'm not aware of that limits it? There is no
11 question that the QAM required the site WPS to
12 be based both on the PQR or on the corporate
13 WPS, and that is the way it was drafted for
14 Point Beach.

15 MR. BERSON: Do you have a sense of -- it
16 says beginning in '91 he reformatted the PQRs
17 and created these global corporate WPSs. How
18 many things are we talking about, how many
19 documents?

20 MS. COOPER: If you look --

21 MR. BERSON: I am trying to get a sense
22 of, you know, is this representative of his work

1 or is it, you know, abberational, or --

2 MS. COOPER: He was molding the GWE
3 function as he viewed it, and if you look at the
4 first document in Exhibit D he calls this a
5 Material Joining Records Log. And you look in
6 here, what he was doing was also renumbering
7 PQRs and WPSSs, and he had a view, a way of
8 tracking these documents.

9 In the first column where it says
10 Document ID, for instance, you have 114. The
11 PQRs that were originally developed were just
12 numbered in numerical order. When it was
13 developed you had a number, if it was 114, 115,
14 116.

15 What Alain wanted to do was to
16 create a system whereby you could trace the PQRs
17 and the site WPSSs and the corporate WPSSs to each
18 other. And that was one of the things that he
19 started doing. The process of reformatting, I
20 think, it may have had something do with just
21 the technical aspect, that there were
22 computerized welding procedures that over the

1 years you could now develop rather than sitting
2 down and actually typing a welding procedure,
3 there was a program at which you could create a
4 welding procedure on a computer. And this was
5 the format for it. So it may have been
6 something as minor as that.

7 As it turns out during the
8 interview process, he acknowledged to us that he
9 had created a very confusing system for this
10 numbering process, and then it was essentially
11 unworkable, and one of the things that he
12 thought should be done was that there be a
13 change in the numbering system. So -- but you
14 can look at this to answer your question, and
15 this is just page --

16 MR. BERSON: 2 of 23?

17 MS. COOPER: So there are 23 pages where
18 he's reformatted these welding -- these PQRs and
19 corporate WPSs. So he was involved in changing
20 a great number of them, I guess.

21 MS. COOPER: Yes, I would say at least
22 150.

1 By the way, he was told by his
2 supervisors prior to '91 that he said that he'd
3 like to do this process of creating these global
4 WPSs, that it was ill-advised and that he
5 shouldn't do it because it would just create too
6 many issues and that it wasn't that complicated
7 to create a site-specific WPS from a PQR.

8 But the global -- the idea of
9 creating a global WPS to cover all applications,
10 according to Alain, he was told that it wasn't a
11 good idea, that he shouldn't do it. And so he
12 apparently didn't begin the process until after
13 they left in 1991.

14 MR. STEIN: Were the sites able to use his
15 system to be able to collect all the procedures
16 they needed to look at?

17 MS. COOPER: He provided the procedure to
18 them. They never went to the quality assurance
19 vault or to the place where the welding
20 procedures were kept and got their own PQRs and
21 WPSs. They would make a request of Alain,
22 whether it be nuclear or nonnuclear, and say

1 these are the weld procedures, we need to have a
2 qualified procedure to cover this. If you do,
3 let us have it. If you don't you will need to
4 qualify something for us.

5 Just quickly, in 1992 Pardi joins
6 the company. He has some initial conversations
7 with Alain, talks to Alain about some things
8 that he expects of him. He says that in the
9 very first conversation with Alain he expected
10 him to hold -- he held him responsible for
11 making corporate -- the company's welding
12 procedures flawless, and that he wanted him to
13 sign off on all changes.

14 There were a couple of
15 experiences in 1993 that Alain had with nuclear
16 sites, one was an instruction from Cepkauskas
17 that he wanted Alain to qualify a narrow groove
18 welding procedure for use at St. Lucie. They
19 were going forward at St. Lucie.

20 Alain says that he misunderstood
21 the direction, the direction certainly wasn't
22 clear from Cepkauskas, so the procedure wasn't

1 qualified.

2 Part of the issue, and Alain
3 actually provided us with this information
4 during the interview and the memo, was it was an
5 issue that Alain was raising at the time. This
6 is back as early as 1993 Alain was insisting
7 that all welding, both production and
8 qualification welding had to be done by an MK
9 welder, that is someone who was on the MK
10 payroll.

11 The code requires the welder to
12 be under the supervision and control of MK, but
13 the question was whether a contractor's employee
14 could be considered under the supervision and
15 control of MK. And there was a dispute between
16 the people who had worked on the nuclear
17 projects and chiefly, I guess, Cepkauskas at
18 that point and Bingham and Alain. And you can
19 see in this 1993 memo that they are going along
20 with Alain on this qualification issue and
21 saying that the MK -- it has to be an MK welder,
22 somebody under the supervision and control of

1 MK, essentially someone on the MK payroll.

2 By the way, Alain acknowledged
3 prior to Point Beach welding that he was wrong
4 on the construction aspect of this. The
5 provision in the code for the qualification of
6 welding refers back to the construction issue.
7 There is a sentence in there that Alain -- in
8 that provision -- which Alain says creates an
9 ambiguity in which I interpreted to mean that it
10 could not be done, qualification welding could
11 not be done by a contractor welder even if Alain
12 Artayet was standing there and supervising the
13 production of the qualification weld through the
14 entire time.

15 And that was an issue that site
16 had disputes with him about as it got closer to
17 Point Beach. And it was one that he dug in his
18 heels on both issues. He conceded the issue on
19 the construction welds prior to the
20 qualification process, but it was another issue
21 in which Cepkauskas and Bingham believed that
22 Alain was wrong and he was digging in his heels.

1 So it's short of eroding their confidence in
2 him, but they have the impression that he is
3 somebody they have to work with because Pardi is
4 telling them he is the group weld engineer and I
5 want him to be responsible for our welding
6 procedures.

7 MR. BERSON: So it's clear Alain was
8 taking the position as a matter of code
9 interpretation as opposed to making more money
10 for MK by using MK welders or something?

11 MS. COOPER: Right, right, right.

12 MR. BERSON: Okay.

13 MS. COOPER: That is absolutely clear on
14 his part.

15 Alain did have some involvement
16 in the decommissioning of the format at Fort St.
17 Vrain. That is ASME Section 3 compelling code.
18 While it was a nuclear project it was not giving
19 him experience in the nuclear -- as the GWE to a
20 nuclear project.

21 In late 1993 to mid 1995 Alain
22 was involved in preparing the draft QEPs for the

1 St. Lucie steam generator replacement project.
2 As I said earlier, it was envisioned that that
3 process was going to take place before Point
4 Beach. It did not, so they were gearing up for
5 this with a lot of time and ahead of time.

6 The QEPs were going to be the
7 site quality documents which would control how
8 the site operated, including the welding
9 procedures. There are couple of issues that are
10 relevant here. The D.C. Cook manual was used as
11 a basis for these. The D.C. Cook manual as it
12 physically existed, and we have seen it now,
13 it's in Andy Walcutt's office which is
14 physically located very close to Alain's office.

15 And according to Andy Walcutt
16 there was actually a copy of this volume in the
17 vault available for Alain to review at any time.
18 Alain actually showed us that he sat down with
19 this volume, and when he went through it and
20 what he was looking for and how he would create
21 the QEPs for St. Lucie using the Point Beach --
22 excuse me, the D.C. Cook procedures.

1 In the back of -- in the back of
2 the D.C. Cook procedures and in which they
3 weren't called QEPs, they were called something
4 else, but it was essentially the QEPs were
5 listed, were also the welding procedures that
6 were used at D.C. Cook, including the procedure
7 that Alain used -- said was the basis of the
8 Part 21 in January.

9 So that is another instance in
10 which he was actually physically handling this
11 book with the documents and the procedures in
12 his hands.

13 According to individuals that we
14 interviewed, Alain and the Florida Power and
15 Light welding engineer had significant disputes
16 over what was required for the QEPs, and Alain
17 actually -- they sort of took him out of the
18 loop because he was creating friction with the
19 client in that case, and needlessly so,
20 according to the people that we talked to.

21 Once again, this is not something
22 that we verified by going to talk to Florida

1 Power and Light, but just this process that you
2 get is that people at the site are investigating
3 an issue that Alain is creating requiring
4 needless requirements, that he is difficult to
5 get along with, that he is stubborn.

6 When we talked to the people who
7 stepped in and filled in at the position that
8 Alain had been working with, the Florida Power
9 and Light engineer, they said, you know, we were
10 able to work things out with him where it was
11 necessary to dig our heels in where it was a
12 code requirement or something was going to cost
13 MK a significant amount of money, we can work
14 out. And the other issues where it was flexible
15 we could give it to the client, so it was a more
16 workable relationship.

17 MR. STEIN: He sounds like he's a stickler
18 for details and that the sites are wanting more
19 leniency, if you will, in the way they handle
20 the procedures.

21 MS. COOPER: Actually from what we heard
22 the FPE guy was more of a stickler, more

1 detailing than Alain, but it was just they
2 couldn't seem to work things out. But you're
3 right, seemed to be details, and, you know,
4 maybe just as often he was right as he was
5 wrong. But he certainly was wrong a few times,
6 enough to shake the confidence of the people at
7 the site, which is what is sort --

8 MR. STEIN: What troubles me is none of
9 this feedback is -- none of the FPL
10 investigating is coming before -- is showing up
11 in the performance appraisal.

12 MR. BERSON: I was going to ask, did any
13 of these show up in the performance appraisal
14 during this time?

15 MS. COOPER: No.

16 MR. STIER: You have got to remember that
17 all of this work being done at the site is
18 within the framework of what the company viewed
19 as support of the site. He is working for Andy
20 Walcutt who was the head of quality assurance.
21 And, you know, I don't mean to be offering you a
22 explanation that isn't in the record, I am not

1 sure what Walcutt said about this, but there is
2 kind of a mismatch between what he is doing
3 functionally and what the guy who is doing the
4 performance evaluation has overhaul
5 responsibility for.

6 This is as near as I can come to
7 an explanation for it. I mean, there is no
8 question that -- and Mary Jane will get into
9 some documentation of some of these issues --
10 there is no question that some of these issues,
11 some of these things were problems. I mean,
12 people aren't making it up after the fact.

13 I mean, these things were
14 happening, but you are right, it's a problem in
15 the sense that if it's an issue it's not
16 surfacing in the ordinary course of the
17 administration of the organization. You would
18 expect if it's a problem, if a guy isn't
19 functioning properly it's going to be reflected
20 in the performance evaluation where it's going
21 to get his attention, it's going to get the
22 attention of appropriate management people, and

1 it didn't. It did not.

2 MR. CLAYTON: It sounds like Walcutt was
3 unaware of the performance problems with
4 Artayet. You mentioned earlier that he brought
5 up some differences of opinion but Walcutt
6 thought that Artayet was right and the other
7 people were wrong?

8 MS. COOPER: We are about to hit on an
9 example of that here. The one thing that Andy
10 said was that Alain had some communication
11 problems with others is much the way that he
12 expressed it. And he also said that at the
13 hearing, that it was communication that -- I
14 think there was another word that he used as
15 well, but his ability to get along with people
16 he noted that, and I think when he was asked
17 about that he said, well, that was the -- how
18 did he put that in his performance appraisal,
19 but technically he thought that Alain was
20 competent, that he was doing a good job.

21 And if you realize that for the
22 most part Alain -- what I'm pointing out here

1 are the few instances. He supported eight or
2 more, 14 projects, nonnuclear projects at a
3 given time and he is providing support that
4 essentially the client or the internal client,
5 the internal department is essentially satisfied
6 with his work.

7 So even if he gets Marty
8 Cepkauskas saying, you know, Alain was really
9 hard to deal with on this one, you know, took us
10 three days for him to understand what the
11 problem was, he is not getting a lot of the
12 flack back from other people. So essentially he
13 is forming the impression based on his overall
14 experience that Alain is doing what he considers
15 to be a technically competent job.

16 MR. BERSON: Did you talk to the -- some
17 of the nonnuclear clients that he was working
18 with, 10 or 12 or whatever during this time
19 frame and get feedback that things were going
20 well?

21 MS. COOPER: We accepted his position on
22 that, that essentially he was --

1 MR. BERSON: This is Alain telling you
2 things are going well?

3 MS. COOPER: Yes. And Alain saying he had
4 called a couple of people and asked for them.
5 There were a couple of issues that when he
6 worked for Pardi that essentially he didn't work
7 for Pardi. There were two projects after Pardi
8 came on that Alain provided support for. And
9 both of them there was a slight issue in it, not
10 anything major and, you know, certainly Pardi
11 just put away in the back of his head and said
12 he never spoke to Alain or Andy about either one
13 of them, raised an issue. He essentially said
14 it was over, it was gone and he did nothing to
15 bring that to Walcutt's attention.

16 MR. STIER: See me just see if I can put
17 one of these things in perspective. Requiring
18 that these corporate level wedding procedures be
19 the basis for site welding procedures along with
20 PQRs was a big issue for people in the site, at
21 the site. They are unhappy about this. They
22 think it's unworkable.

1 Their communication ultimately
2 gets up through their chain of command, Pardi.
3 As far as Andy Walcutt was concerned, it wasn't
4 an issue, and if they were complaining about
5 Alain to him, if the site people were
6 complaining about Artayet to him, he just -- he
7 didn't see merit to their position. He thought
8 he saw it as a communication problem.

9 And I think that that is one of
10 the problems with the way the organization was
11 structured, because until we showed Pardi one of
12 these corporate level procedures he had never
13 seen one. He never understood the issue.

14 Now, whether he should have asked
15 about it, whether there should have been more
16 probing is not the point. But I'm telling you
17 the fact is that until this investigation began
18 a lot of the information that was really
19 relevant to the -- understanding the source of
20 the conflict between Artayet and people at the
21 site, a lot of that information was never gotten
22 up to a level of the organization where it

1 should have been.

2 MR. STEIN: One point I'd like you to
3 address, it doesn't say that Artayet had a lot
4 of nuclear experience and it doesn't look like
5 they had a lot of nuclear jobs since he is the
6 group weld engineer, and would he have had it
7 if --

8 MS. COOPER: Exactly.

9 MR. STEIN: -- in December they stripped
10 him of his nuclear responsibility?

11 MS. COOPER: Well --

12 MR. STEIN: But it doesn't sound like
13 there are nonnuclear sites that were really
14 upset with him, with his process. The question
15 is, why did they take the next step further if
16 90 percent of your clients are satisfied because
17 they are doing nonnuclear work and you are the
18 group weld engineer and you strip him of the 10
19 percent nuclear, why strip him of the position?

20 MS. COOPER: Because we were told the
21 company did not have enough business to support
22 two group welding engineers, and their most

1 lucrative part of the company's business was
2 certainly the nuclear, the steam generator
3 replacement projects, and it was important for
4 them to have a group welding engineer they felt
5 they would rely on.

6 MR. STEIN: For the nuclear site?

7 MS. COOPER: For the nuclear site. It was
8 much more stringent in the requirements The
9 code interpretations were very important, not
10 that they weren't in others, but it is just more
11 stringent. And they -- and the issue as it was
12 expressed was that the site was losing
13 confidence in Alain and didn't want to rely on
14 him, couldn't rely on him.

15 Just looking at it financially,
16 within the company, part of the way Alain's
17 hours are paid, since he is corporate level is
18 that internal clients rely on Alain, if you call
19 Alain and you say, you know, what do I use to
20 weld such and such or come out and review this
21 site, that time was billed to the client. And
22 apparently there was a lot of that going on.

1 Alain's time, as you will see during the process
2 was chiefly devoted to nonnuclear work.

3 So it's a question of calling on
4 Alain. They would call him for advice, and they
5 didn't feel that they could -- they didn't trust
6 him, they lost confidence in him. And the other
7 piece of it is that they would be required to
8 provide qualified welding procedures for the St.
9 Lucie project.

10 He said on there if there was a
11 different material for the steam generator, they
12 needed a lot of new procedures, and they just
13 lost confidence that he was going to be able to
14 provide qualified welding procedures within a
15 period of time.

16 Not having -- I mean they did --
17 the issues according to Edelman, he looked at
18 the possibility of having two group welding
19 engineers and didn't deem it financially
20 feasible.

21 MR. STIER: Keep in mind the decision in
22 January was to tell him that he had three months

1 to find another position within the company.
2 That position ultimately became the position at
3 Parkersburg to which he was assigned. Now, I'm
4 not saying that wasn't an adverse action at all.
5 What I'm saying was that that is what they --
6 that is how they decided to resolve this issue.

7 They viewed Artayet as providing
8 two things basically to the nuclear sites,
9 support services, which would mean nuclear sites
10 would have to call on him, and so it was their
11 choice whether to call on him and use him as a
12 resource within the company for which clients
13 would be billed.

14 And, secondly, as a kind of fail
15 safe system for assuring code compliance in the
16 welding procedures. That is the way Pardi saw
17 it, and on both of those points he had been
18 hearing complaints from people at the site, they
19 didn't want to deal with him, couldn't trust
20 him, couldn't rely on him.

21 And, secondly, a review of the
22 steam boiler report shows that there were

1 problems in the site procedures for which he
2 felt Artayet was accountable.

3 MR. STEIN: You pulled his billing
4 records. So did you see, did you actually have
5 documentary evidence that the sites were slowing
6 down in their calling of him and not using him
7 as a resource because they didn't trust him?

8 MS. COOPER: Well, the reason they didn't
9 use him was because -- they said because they
10 didn't have confidence in him.

11 MR. STEIN: Does the evidence support that
12 by the billing records, he is billing 800 hours
13 to the site and then has progressed, it's gone
14 down to 400 to 200 to finally --

15 MS. COOPER: Yes. Yes, there is no
16 question. We have the documentary evidence of
17 his billing hours through that.

18 MR. STIER: See, particularly in here the
19 end of this period where clearly the
20 responsibility gets shifted or more
21 responsibility gets taken on by the site.

22 MS. COOPER: Yeah. And prior to the

1 qualification process there really wasn't a lot
2 of support for him to provide -- there was a
3 little, and we do have both the billing records
4 and travel records to support where he was
5 working. And he had, according to the code
6 requirements, certain responsibilities that, you
7 know, had to be done. He had to provide site
8 WPSs. They did provide -- had to provide
9 corporate WPSs. The site did provide site WPSs
10 for him to review. He did not, in fact, review
11 them, even though they were provided to him for
12 review.

13 MS. GREENBATES: They currently have two
14 group engineer positions open in the company, so
15 in January they couldn't afford it but in April
16 they could?

17 MS. COOPER: It's not that they have two
18 positions open. They hired George shortly
19 before the D.O.L. required them to take Alain
20 back. And they just decided that it wouldn't be
21 -- I mean, they thought that they were going to
22 prevail in the D.O.L. hearing and they needed a

1 group welding engineer and they hired George.

2 They advertised for the position
3 and then about a month later they are told that
4 they have to take Alain back. And so the -- as
5 they expressed it to us they didn't think it was
6 fair to George to hire him and then a month
7 later let him go because of this decision.

8 MS. GREENBATES: I see, thank you.

9 MS. COOPER: It also does not mean they
10 have anymore confidence in Alain's abilities now
11 than they did.

12 MS. GREENBATES: They have confidence in
13 the nonnuclear.

14 MS. COOPER: I don't know that, and we
15 really didn't look at the nonnuclear issues that
16 much.

17 MR. WEIL: Let me follow up on Mike's
18 question about the billables. Was there any
19 correlation done about his -- the client and
20 billables to the wrap up of the Point Beach
21 project?

22 MS. COOPER: I'm afraid I have created a

1 -- he had some responsibilities that he had to
2 provide to the site. I don't think that there
3 was, in our review of his support for Point
4 Beach other than providing the qualified
5 procedures, there is minimal support that he
6 provided.

7 There is one instance, I believe,
8 where they called and asked him about what kind
9 of filler material to use. There may have been
10 some discussions, but we are talking about a
11 period of essentially a year here. After the
12 qualification process which he delegated to
13 Rusty Gorden on August the 1st, the only
14 billable time is essentially his providing the
15 PQRs and corporate WPSs to the site and
16 reviewing the test reports that he has to do for
17 that.

18 Alain says that there were times
19 when he didn't bill for telephone calls to any
20 client so, you know, that is not necessarily the
21 be all and end all, but just as an overview of
22 what is required for and how the group welding

1 engineer would be supporting the site there are
2 two things that he could provide. One would be
3 qualified procedures, and another would be
4 technical support.

5 And because they lost confidence
6 in him they -- I mean, I don't think that they
7 would be asking Alain for information on
8 anything is my impression, frankly. They didn't
9 necessarily say that, they just didn't contact
10 him and ask him questions. What they had to do,
11 they felt they had to do, they dealt with him.
12 But the information that was filtering up to
13 Pardi was they didn't have confidence in his
14 ability to provide adequate support for the site

15 MR. WEIL: Was there any suggestion in the
16 testimony received that Alain was in some way
17 interfering with production, slowing down
18 production?

19 MS. COOPER: There -- that issue was
20 raised. And one of the reasons why they didn't
21 want him to be in the approval process on the W
22 -- site WPSS was because it would slow the

1 process down, that he traveled a lot, that they
2 might not be able to get it to him, that they
3 might need a procedure approved at midnight.

4 However, the decision was made
5 not to have him in the approval process long
6 before the actual qualification process got
7 started, the actual development of site WPSSs got
8 started. So to the extent that that would have
9 been anticipated I don't know that the evidence
10 supports that.

11 Retroactively there may be some
12 support for it, because we saw it. In one
13 instance it took him about six weeks to provided
14 PQRs and corporate WPSSs to the site for
15 procedures that had been qualified in mid July
16 for previously qualified procedures that he had
17 available. And he had the PQR available in mid
18 May. It took him approximately a month to
19 develop the corporate WPSSs to provide to the
20 site.

21 So retroactively there may have
22 been some basis to say he could have slowed up

1 the process. I don't know whether or not that
2 would have occurred. In fact, once the site
3 took over the delegation process and they began
4 supplying him with WPSs, draft WPSs and PQRs and
5 test reports, he turned that around within a day
6 or two and Fed Ex'd it back to him. So to the
7 degree --

8 MS. GREENBATES: So you consider a month a
9 long time to make up a weld procedure for a
10 nuclear power plant, that is to get through the
11 whole review circuit from start to finish?

12 MS. COOPER: Well, the reason I say that
13 is because he was able to provided those WPSs
14 and PQRs within a couple of days in September
15 and October, so that was what I was basing it
16 on. And to the extent -- one of the things you
17 have to remember is that a PQR of a WPS for
18 Alain, a corporate WPS was not sitting down and
19 creating a site-specific WPS. It was creating a
20 global WPS, which, in fact, he did for all of
21 those procedures.

22 Nonetheless, when it came -- I

1 mean, it took him some time, maybe a week a
2 piece, and he was working on other things, and
3 maybe he didn't think that there was a deadline
4 to have these things completed within a certain
5 period of time. But the experience did
6 demonstrate that, and he told us too that once
7 he got the PQRs and the test reports, he was
8 able to create even a global WPS within
9 turn-around time of a day or two and sometimes
10 more than one within that day or two.

11 Now, how much help he got from
12 the site, it's hard to tell. The site said they
13 provided him with drafts of the PQRs and drafts
14 of the WPSs in every instance. Alain said it
15 was only in some instances. He said when he got
16 them this cut down on the work about 25 percent.

17 MR. BERSON: I know we are slowing you up
18 with all these questions, but did this process
19 he created with the corporate WPSs and PQR, does
20 that apply only to the nuclear work that they
21 were doing?

22 MS. COOPER: Yes.

1 MR. BERSON: Nonnuclear didn't have to go
2 through the process?

3 MS. COOPER: Yes. The quality assurance
4 manual was directed specifically at the nuclear.
5 Now, Alain's view was if you are out there
6 making a chemical plant, I can just give you
7 that WPS, my corporate WPS. You don't need a
8 site WPS, there is nobody going to be auditing
9 that in the sense of regulatory agency or
10 third-party individual review.

11 And I think he told us that there
12 were a couple of instances that he was aware of
13 where a site actually did create a site-specific
14 WPS, a nonnuclear site created one. I think it
15 was a DuPont plant where they created a couple.

16 MR. BERSON: If it's good enough for the
17 nuclear plant, it should be good enough to
18 anyone, because nuclear plant's requirements are
19 so much more stringent?

20 MS. COOPER: Right, right

21 MR. CLAYTON: May I ask a question related
22 to the appraisal issue? In the interviews of

1 the managers, we talked earlier about Zarges and
2 Pardi and certainly his boss and Edelman, his
3 boss mostly. Any of those managers that you
4 interviewed discuss having any performance
5 discussions with Artayet? Because nothing shows
6 up in the appraisal reports. Is there any
7 indications that they had given him that his
8 performance was lacking?

9 MS. COOPER: As far as we can tell, the
10 only -- there is criticism of Andy, saying you
11 should be more diplomatic, your communication is
12 a problem. Alain was getting very good
13 appraisals and significant raises each year.

14 We trusted he was making a
15 significant amount of money by the time he, you
16 know, reached the Point Beach project. It was
17 essentially nonnuclear. People were satisfied
18 with what they were getting, they could get the
19 work done, and we don't really have any
20 criticism.

21 As I say, one or two issues
22 surfaced during the investigation, but even

1 those people didn't consider them --

2 MR. STEIN: So as far as Artayet's
3 concerned, he's an eagle, he's flying high,
4 getting great performance appraisals, getting
5 bonuses, getting awards. He's got no reason to
6 think that --

7 MS. GREENBATES: He is reworking MK
8 procedures and saving them money, they don't
9 have to redo everything all the time. Someone
10 in quality assurance signed it into being,
11 someone bought off on it, someone reviewed it.

12 MR. STEIN: And then he is stripped of the
13 nuclear program.

14 MS. COOPER: I'm not sure that the quality
15 assurance program applied only to the St. Lucie
16 and Point Beach project. The fact that he could
17 provide a global corporate WPS to someone,
18 whether it, you know, saved money or made money
19 or not, I don't know whether that is an issue.
20 But no one was upset with that. It provided
21 within the parameters of that welding procedure
22 some applications that somebody at a site could

1 take a look at.

2 MS. GREENBATES: So a nonnuclear site
3 could read it, it was nuclear sites that had
4 problems reading this corporate procedure?

5 MS. COOPER: No, I don't think that is the
6 case.

7 MS. GREENBATES: That's what I'm
8 wondering.

9 MS. COOPER: I think there were so many
10 applications on it, I could say that covers my
11 application, you know, I'm welding to standards
12 that are not Section III and, you know, it says
13 what I need and there is no Charpy impact so
14 there is no nonessential variable issue.

15 I don't have any information that
16 anybody was questioning the use of the corporate
17 welding procedures until it became a cumbersome
18 document for the site. Now, the fact that it's
19 there, they don't want to rely on it. The
20 significance of that, I think, is it a quality
21 assurance manual violation if they didn't rely
22 on it, which in a couple of instances it appears

1 that it didn't? I don't know that -- you know,
2 what else to make of that.

3 They found it confusing, they
4 found that you could look at the PQR and you had
5 the information. Everything on the PQR should
6 be there that you need, I guess, and they don't
7 need to have what they -- they don't need to
8 have somebody saying look at the code for this
9 or look at the code for that, or there are even
10 nonnuclear applications on that. They need
11 someone to provided them with a PQR and approve
12 the welding procedure that they develop and give
13 them a welding procedure specific to their
14 application. I think that is essentially what
15 the people at the site, nuclear site were
16 saying.

17 MR. WEIL: A minor point here. Could you
18 help me with the time line on the appraisal that
19 had the comment about the interpersonal skills,
20 when that appraisal was made?

21 MS. COOPER: It's at least the one before
22 the one that was scheduled by Andy that I don't

1 think was actually signed off by Edelman just
2 before he was removed

3 MR. WEIL: Roughly 1995?

4 MS. COOPER: That would be for the 1996
5 year, and it may have been in the one before
6 that, but I can't say that for certain

7 MR. WEIL: Thank you.

8 MR. BERSON: Edelman signed off on the
9 appraisals by Walcutt?

10 MS. COOPER: Yes, yes.

11 MR. BERSON: I thought I heard something
12 different earlier.

13 MR. CLAYTON: Except for one appraisal.

14 MS. COOPER: The one just before he was
15 relieved, at least the one that we have, it was
16 not signed by Edelman. And that may have been
17 because of circumstances that intervened that
18 actually raised questions in Edelman's mind.

19 When Edelman was put into the
20 process, into the review process was roughly in
21 1995, sometime in 1995 we think. I don't have
22 an exact date for that here, but it was as an

1 administrator, not as a review technical
2 issues.

3 And the quality assurance
4 department, both Andy and Zarges agreed both
5 Andy and Zarges did, there were technical Q.A.
6 issues that Walcutt could go directly to Zarges,
7 but Edelman was responsible for reviewing
8 performance appraisals, raises, travel vouchers,
9 things of that nature. So it was more of an
10 administrative function.

11 Neither Edelman -- Edelman first
12 of all had no experience in quality and he had
13 no experience as a welder, so he was essentially
14 relying on whatever Walcutt told him about
15 Alain's performance, and so there was no
16 independent review on his part.

17 If you just move ahead to Exhibit
18 E.

19 MR. STEIN: Except he was being told about
20 his performance, Artayet's performance by Lou
21 Pardi.

22 MS. COOPER: In 1996?

1 MR. STEIN: Right.

2 MS. COOPER: That is clear as of roughly
3 1996.

4 MR. STEIN: But he is still signing off of
5 performance appraisals in 1997?

6 MS. COOPER: No.

7 MR. STEIN: Or late 1996?

8 MS. COOPER: I don't think he signed that
9 one. That is the one I don't think he signed.

10 MR. STEIN: That is the one he didn't
11 sign?

12 MS. COOPER: I think so. The last one,
13 the version we have doesn't have a signature.

14 MR. STEIN: In his interview he did say he
15 didn't sign it because he didn't agree with it
16 or he was --

17 MS. COOPER: You know, I don't know the
18 answer to that, but I will find out.

19 By the time the appraisal would
20 have come to him he would have had the
21 conversation with Pardi about Alain's
22 performance and loss of confidence at the site.

1 Going back to June of 1995 there,
2 Alain in June -- it's interesting, Alain
3 minimized his role in the St. Lucie preparations
4 and did not provided us with this document, it
5 was actually provided to us by other people as
6 evidence that Alain could have been preparing
7 the qualified procedures for D.C. Cook at an
8 earlier time -- excuse me, for Point Beach at an
9 earlier time than he actually did.

10 Because one of Alain's complaints
11 about the procedure, qualification procedure was
12 that the site had dumped a bunch of procedures
13 on him at the last minute. And so one of the
14 defenses to that was that, well, Alain knew some
15 of the procedures that we needed to use at least
16 back in June of 1995, that we didn't have
17 qualified PQRs for those, and at some point in
18 time we were going to need them for both St.
19 Lucie and for Point Beach. And so in the
20 process he could have qualified a procedure,
21 here qualified a procedure there and gotten two
22 or three of them out of the way.

1 However, when we looked at this
2 document, and I did ask Alain about it, when we
3 reviewed it, this was another instance, and
4 actually it appears that the issue that is
5 raised in the Part 21 is crystallized in this
6 memo. If you look at it here, and this appears
7 at the time if not before that Alain definitely
8 was aware of the problem at the D.C. Cook plant.
9 He is indicating he has been asked to provide --
10 to do research to see how many procedures will
11 need to be prepared for St. Lucie, and they have
12 provided him with the applications, with the
13 filler material and base material that they want
14 to use, whether or not post-weld heat treatment
15 is available and other information. And he has
16 actually reviewed a design-based document to
17 prepare this memo.

18 We have been told by the person
19 that he mentions in this memo, Ed Jance, that
20 prior to this memo there have been considerable
21 conversations between Alain and Ed Jance about
22 whether or not there was going to -- whether

1 there was a procedure in existence for the use
2 of E7018 in applications where Charpy V-Notch
3 testing was required.

4 MR. STEIN: And who is Ed Jance?

5 MS. COOPER: Ed Jance was an employee who
6 at this particular time was working at St.
7 Lucie.

8 MR. STEIN: For MK?

9 MS. COOPER: MK employee, yes. I don't
10 know that we have really any WEPCO or other
11 project employees that we are talking about
12 here.

13 The issue was whether or not the
14 difference between E7018 and E7018-A1 was a
15 change in classification of the filler material
16 and Alain was insisting that it was and Ed Jance
17 was insisting that it wasn't as we understand
18 it. And Alain indicates in the memo that he's
19 researched historical welding procedures and
20 PQRs and he doesn't limit it to PQRs. He
21 mentions welding procedures here and he says
22 that historical MK WPSS were qualified as using

1 E7018-A1, and he points out in the memo that the
2 E7018-A1 and E7018 is a change in classification
3 and therefore E7018 is a supplementary essential
4 variable and requires requalification of WPS in
5 accordance with ASME standards, Section 9.

6 MR. BERSON: That is Note 1 you are
7 reading from?

8 MS. COOPER: Yes. It refers to it in the
9 matrix and then if you turn to Page 3 of the
10 memo he refers to it again. Ed Jance said that
11 he was able to convince Walcutt that it was not
12 a change in classification number and that
13 procedures that had been previously qualified
14 were satisfactory.

15 Jance said that Walcutt went back
16 to the site and talked to Alain and even
17 contacted an expert and was convinced by Alain
18 and the expert that Alain was correct in this
19 instance, that it wasn't a change of
20 classification, and that a PQR qualified with
21 E7018-A1 where Charpy V-Notch testing was
22 required could not be used to qualify a

1 procedure using E7018.

2 And no one else -- well, Ed Jance
3 first of all did not work on D.C. Cook, and no
4 one says that Alain references the D.C. Cook
5 procedure at this point in time.

6 But he is researching all of the
7 historical WPSs and that would include the WPSs
8 for D.C. Cook. So it appears that this is the
9 point where he first did the research on the
10 issue and recognizes it for the first time.

11 And, in fact, Walcutt does say in
12 January, 1997, when Alain brings this issue to
13 his attention that Alain said this is the
14 problem that I had before, this is the issue.
15 And he said -- he said, I didn't think back to
16 St. Lucie, he was thinking back to his referring
17 to D.C. Cook, but according to Walcutt Alain is
18 clearly telling Walcutt he has recognized this
19 problem in a situation and prior application at
20 D.C. Cook, and that issue, the documentation
21 certainly corroborates that it would have
22 occurred in this time frame with this intensive

1 review of the documentation and the controversy
2 that was going back and forth.

3 I said to Jance, did anyone say,
4 well, we used it at D.C. Cook? And he said they
5 did, I'm sure they did, I know they did. The
6 example, the reason people -- just one person
7 said they didn't think back to what were the
8 applications at D.C. Cook, whether or not it
9 required Charpy, they didn't really analyze it
10 in their minds of whether or not they understood
11 at that point that it created a problem with the
12 qualification at D.C. Cook. Marty Cepkauskas
13 said I didn't listen to what Alain's reasons we
14 had to requalify. I had come up against him so
15 many times, it was like talking to a wall. I
16 just said go ahead and requalify it.

17 So we have no one else at the
18 company recognizing that this was an issue, that
19 the D.C. Cook welding procedure was now
20 qualified, but the evidence is compelling that
21 Alain -- that Alain did, based on the testimony
22 and the document.

1 MR. STEIN: Doesn't it increase his
2 credibility? I mean, he is recognizing this
3 from years before.

4 MS. COOPER: But he doesn't say we have a
5 welding procedure from D.C. Cook, that isn't
6 supported by the PQR. And what he failed to
7 see, if it's a qualified weld or not,
8 essentially what he is saying is there is an
9 unqualified weld at D.C. Cook. In his mind he
10 doesn't reference D.C. Cook as the specific
11 application.

12 I mean, that is probably likely
13 that the weld could have been qualified. In
14 fact, it was successful at both the Point Beach
15 and St. Lucie in different heat inputs and both
16 post-weld heat treatment and not post-weld heat
17 treatment. There was no post-weld heat
18 treatment required.

19 MR. STIER: Or you could go back and
20 research the code requirements that applied to
21 D.C. Cook and conclude that at that time the
22 standard to which the welding was done didn't

1 require classification, but nobody -- he didn't
2 offer that explanation to us.

3 That is, that he had done all of
4 that and worked his way back and said, well, yes
5 we don't have it, but that code didn't require
6 it. And, in fact, because of the contract
7 requirements according to Gorden they had to
8 meet ANSI or ASME code requirements there, and
9 so even he had the guy, the welding engineer who
10 is responsible for that weld, and that procedure
11 says I blew it, you know, I used an unqualified
12 procedure at that time.

13 MS. GREENBATES: Did they inform D.C. Cook
14 of this? Did Mr. Gorden inform D.C. Cook that
15 they didn't meet the contract requirements or
16 anything?

17 MR. STIER: I don't know.

18 MS. COOPER: There was a conversation
19 between -- not until after the -- well, I don't
20 think that he had --

21 MS. GREENBATES: Prior to August, 1997?

22 MS. COOPER: No

1 MS. GREENBATES: Okay. That was my
2 question, that's all I'm interested in.

3 MS. COOPER: And the issue was first
4 brought to the surface, as far as we understood
5 it, with everybody understanding that this had
6 application with D.C. Cook in January of 1997,
7 so I don't think that Rusty Gorden said we blew
8 it back in 1995 or 19 -- he wasn't even working
9 for the company at the time that that memo was
10 written. Although he said he subsequently saw
11 it and understood that Alain was saying that
12 there wasn't a procedure for the use of E7018 in
13 situations where there is drop weight testing
14 required, Charpy impact testing required. But
15 Gorden had left MK after the completion of the
16 D.C. Cook project and is working elsewhere in
17 other nuclear plants, Portland General Electric
18 and others he tells us.

19 So he said that when he saw this
20 memo he didn't put it together in his mind, what
21 they had done at D.C. Cook, but he accepted
22 Alain's position after being convinced that it

1 was a change in classification, that Alain was
2 right and they did need to requalify a procedure
3 for E7018.

4 MR. WEIL: Question about Alain's employer
5 at that time. Was he with MK all the time, or
6 -- Exhibit E is written on the letterhead of the
7 Steam Generator Replacement Team. Was he
8 transferred at one point to SGT?

9 MS. COOPER: No, he was always corporate,
10 providing a corporate level of support to
11 projects, various projects.

12 MR. WEIL: Thank you.

13 MS. COOPER: In December of 1995 Alain
14 essentially began support for SGT, the Point
15 Beach steam generator replacement project. He
16 went to the site for one day with Walcutt, and
17 the intent was for Alain to become familiar with
18 Rusty Gorden. They had really minimal contact
19 prior to this.

20 As I said, Rusty left the company
21 in 1989, and was just returning at this point in
22 time to work on the Point Beach project. And

1 there were some issues that needed to be
2 discussed, one of which was the quality
3 procedures for the company. And this is where
4 we get into this issue of whether or not he will
5 have approval of the site procedures.

6 MR. STEIN: What was Rusty Gorden doing
7 between 1989 and December of 1996 -- I'm sorry,
8 '95?

9 MS. COOPER: We have in the record that he
10 gave us his litany, but one of the things that
11 he was doing was working at Trojan Nuclear
12 Plant. I think he worked there for a few years
13 he said. I think he went back to school and got
14 some kind of degree at the same time.

15 MR. STEIN: So he's gained a lot of
16 nuclear experience between 1989 and this point?

17 MS. COOPER: And he had nuclear experience
18 before D.C. Cook. I think he said he had worked
19 perhaps both at Main Yankee and the original
20 Point Beach placement project.

21 MR. STEIN: As a welding engineer?

22 MS. COOPER: Well, he developed -- I think

1 that was a title that doesn't necessarily mean
2 that he has a degree in engineering or
3 specifically in welding engineering. When you
4 are called a project engineer or welding
5 engineer at MK that doesn't necessarily connote
6 in the industry in general. People are called
7 engineers who don't necessarily have engineering
8 degrees. So the evidence indicates he had
9 significant welding engineering experience while
10 not having a welding engineering degree.

11 MR. BERSON: Can I backtrack? Exhibit E
12 is a June 1995 memo that we have just been
13 talking about that Alain wrote. From a
14 technical point of view he describes a bunch of
15 notes and ASME code requires this, that or the
16 other. Is this accurate from a technical point
17 of view? Was Alain correct in the process he
18 took?

19 MS. COOPER: It appears --

20 MR. BERSON: -- as far as you know?

21 MS. COOPER: Certainly in the one that we
22 have looked at intentionally, because our

1 attention was called to the issue of the E7018.
2 The first time I saw this memo I didn't
3 understand the significance of it. It was
4 looking back. I mean, it was just presented to
5 us as, well, look here, you know, he's already
6 done an analysis of the procedure, he could have
7 started working on this and he didn't for
8 whatever reason. Was he too busy or what? And
9 we started looking at it, and, you know, well,
10 this was the exact issue that was raised in the
11 Part 21.

12 But it appears that certainly on
13 that classification issue he was correct, and
14 nobody disputes that at this point.

15 MR. BERSON: I guess what I'm wondering is
16 in '88 he was new, didn't have much experience,
17 goofed up, I guess, you know, on a couple of
18 things. Now we are in '95, we are getting more
19 to the pertinent time frame, maybe he's gained
20 some confidence.

21 MR. STIER: Sure.

22 MS. COOPER: Yes.

1 MR. BERSON: Okay.

2 MS. COOPER: Yeah, now -- and this -- I am
3 trying to think. There is another memo.

4 MS. GREENBATES: His ASME code findings
5 that he sent out of 12, 11 and 12 or 12 or more
6 are absolutely dead correct. We seem to be
7 concentrating on maybe two or three that were
8 not so good, but the bulk of it was dead center.

9 MR. BERSON: Okay. Thanks.

10 MS. COOPER: Well, we haven't even gotten
11 to that so I don't want to create the impression
12 here, and it may sound like it, because the
13 issue that we are looking at was the company's
14 decision, was there a basis in fact for the
15 company's decision to relieve him.

16 And I have said a number of
17 times, site obviously said there are mistakes,
18 there is -- it's clear, they are there, whatever
19 violations, whether it's Q.A. or not. And we
20 don't mean to defend them and whatever action
21 the company should take in terms of being equal
22 and what they had in their minds and what they

1 understood.

2 At the same time the fact that we
3 are centering on the issue -- about the
4 retaliation issue, so the fact that we are doing
5 that, you know, it sounds as if we are looking
6 -- we are looking just at the issues with Alain,
7 but don't -- please try to understand that we
8 are not just saying that he is the only problem
9 in the company and that he is the worst thing
10 that ever came across the --

11 MR. STIER: Or that he --

12 MS. COOPER: -- nuclear plant.

13 MR. STIER: Or that he didn't do anything
14 correctly, we are not saying that either. He
15 was working on a lot of issues. The period that
16 we are going get to, I hope, is in here where a
17 lot of the problems that precipitated what
18 occurs in the green area, this is where those
19 problems really originate.

20 I mean, what Mary Jane has been
21 going over with you is a lot of background and
22 lot of foundation in terms of attitudes, in

1 terms of relationships, but the real stress on
2 those relationships occurs in this period.

3 I don't want to preempt your
4 presentation, but would it be valuable in the
5 sake of time to jump forward to that and forego
6 the other background details?

7 MS. COOPER: The only thing I will cover
8 before we get to that, I want to just point out
9 to you the inconsistencies in the procedure,
10 with the approval process because I think that I
11 can do it quickly.

12 If you turn to Exhibit F, then,
13 there are only two times when Alain actually
14 went to a Point Beach site, which is where Rusty
15 Gorden was situated. So there are only two
16 meetings that they had. This first one was
17 actually to reach agreement on issues. The
18 first document we have here is a document that
19 was received, you see the handwriting is Lou
20 Pardi's handwriting. I didn't provide the whole
21 document because there are other issues.

22 Alain was creating a standards

1 manual. Alain actually provided this document
2 to us as demonstrating the difference between a
3 welding supervisor and a welding engineer. And
4 he claims that a welding engineer, which is the
5 column on the left is -- which is the
6 description of some of the things he was doing
7 on this document. You will note that Lou Pardi
8 has written, I would not want any project
9 modifying any WPS variables, essential or
10 nonessential without welding supervisor's
11 approval.

12 Alain has created in the column
13 on the right-hand side a suggestion that a site
14 supervisor be able to change nonessential
15 variables in the WPS and Alain represented to us
16 that this was Lou Pardi's communication to him,
17 to Alain, that Lou Pardi wanted Alain to approve
18 all changes to any corporate procedures. And
19 Lou Pardi was adamant in our interview until he
20 saw what the corporate procedures looked like,
21 he said it was absolutely essential in my mind
22 that site WPSs be based on corporate WPSs. I

1 wanted that to happen, I thought it was
2 important. It gives control, it gives guidance,
3 it gives consistency. And I guess in his mind
4 it was the substance of the corporate WPS.

5 Nonetheless when Alain met -- let
6 me see, I have the next document here, which is
7 dated December 15, 1994, was a site QEP created
8 for welding at St. Lucie. And if you look at
9 2.1 it indicates that the GWE is responsible for
10 the review and approval of all welding
11 procedures. And it was from talking to everyone
12 it was clear that as the St. Lucie QEPs were
13 written the GWE was going to have approval for
14 the site-specific WPSs.

15 In other words, he would provide
16 the PQR, provide the corporate WPSs. When the
17 site created a site-specific WPS the GWE was
18 going to be on the approval signature line, and
19 the approval process included the GWE.

20 If you look at the next page --

21 MR. STEIN: The GWE may still delegate
22 this responsibility to the PWE according to

1 their own procedures?

2 MS. COOPER: He can always delegate that.
3 He himself acknowledged that he could delegate
4 it. And he -- for various reasons. I mean,
5 there was always the -- I guess there is always
6 the -- what he heard was you might need a
7 procedure in the middle of the night, you might
8 need a repair procedure that you needed to
9 create a site-specific procedure, you could call
10 Alain or Andy on the telephone. Alain would
11 say, if I'm not available you can call Andy, but
12 you don't need to wait for me for approval, he
13 could delegated.

14 MR. STEIN: So Pardi's assumption is not
15 accurate that he would be responsible for
16 everything if he delegated it away?

17 MS. COOPER: Well, Alain's point -- and I
18 don't know if it's in this -- Alain's point was
19 that for at least the qualification process he
20 could delegate that, but he always maintained
21 responsibility for it.

22 This is the site procedure that

1 developed as the Point Beach Unit 2 procedure,
2 which follows the one that developed as a result
3 of the negotiations between Rusty and Alain.
4 Rusty specifically said to us he did not want
5 Alain in the approval process.

6 He said, Alain, if you need -- if
7 I need you, if the company needs you to approve
8 my procedures then they are paying me too much.
9 It worked this way at D.C. Cook, the GWE was not
10 in the approval process, it can work that way
11 here.

12 Alain said that and Andy agreed
13 that it did work that way and Alain acceded to
14 that request and did not input himself in the
15 approval process, did not insist -- not
16 communicate to Pardi what he wanted, that there
17 was a problem, and he simply acknowledged that
18 he went along with it.

19 He was not able to provide me an
20 explanation of why, having received that
21 direction from Pardi gave it away essentially
22 when it came to Point Beach procedures. And his

1 stance is at this time he had no
2 responsibilities for the Point Beach site
3 procedures.

4 The evidence indicates that that
5 is not correct. If you look at the next page,
6 it's the page from the quality assurance manual
7 which was dated and was in effect at the time.
8 If you look at 9.2.1 the procedure says it is
9 the responsibility of the group welding engineer
10 to direct preparation and qualification of
11 welding procedure specifications.

12 If you look down at 9.2.5,
13 utilizing the certified PQR and supporting WPS,
14 the project welding engineer develops a
15 site-specific WPS. It does not say that the
16 procedure is provided back to the GWE for
17 approval or review. However, 9.2.1 can be read
18 to say that it has to be under his preparation.

19 If you look at the QAI, however,
20 which is on the next page, it's clear that the
21 quality documents that governed the group
22 welding engineer made him responsible for

1 reviewing the WPSSs, and is reviewed -- reviewed
2 as described in their glossary for the QAM.
3 It's signed and dated, so the question is
4 clearly under the QAI Alain had responsibility
5 to review all of the site welding procedures.
6 The QAM said they should be under his direction,
7 the QEP was silent, did not require any approval
8 or review.

9 MR. STEIN: I'm sorry, the QAI is guidance
10 for whom?

11 MS. COOPER: For the corporate quality
12 assurance department, governed Alain who was in
13 the corporate quality assurance.

14 MR. STEIN: In this what Alain would see
15 as his guidance?

16 MS. COOPER: He saw them all. He was
17 aware of what each of the documents said. He
18 was responsible for the creation of this piece
19 of the QAI and he acknowledges in other
20 documents, which you will see, that he is
21 responsible for reviewing them. It would be, as
22 somebody said at the early site, if he reviews

1 them and see a problem he should at least bring
2 them to someone's attention.

3 MR. STEIN: Is there a hierarchy in this
4 guidance? I mean we at the N.R.C. have a
5 certain hierarchy.

6 MS. COOPER: Well, you could say that the
7 QAM, which governs the whole company, is really
8 the controlling document and the site procedure
9 and particularly the QAI are more for
10 organizations.

11 The conflict here, I mean in the
12 sense that one doesn't say go right and the
13 other says go left, the conflict is that one
14 refers to a responsibility and the other
15 doesn't. So Rusty Gorden's position is the QAM
16 does not say that I have to have Alain in the
17 approval process or in the review process. The
18 QEP which governs me does not say that Alain is
19 at approval or review process and so there is no
20 requirement for me to submit them to him for
21 review and approval.

22 MR. STEIN: This is really an important

1 point because Pardi, one of the reasons that he
2 recommended or he decided to do the transfer was
3 because Artayet was not meeting his
4 expectations. Were the expectations reasonable
5 looking through the guidance and trying to
6 figure out just what was Artayet's
7 responsibility?

8 MR. STIER: Well, Pardi, from everything
9 we can tell from the evidence, Pardi did not
10 know that Artayet did not have the authority,
11 according to Artayet's understanding as well as
12 Rusty Gorden's understanding to sign off on
13 those site WPSs. He did not -- he assumed the
14 contrary, he assumed that he did.

15 And so when Artayet said here are
16 these problems with the site, he is operating on
17 the assumption that these are problems that
18 slipped through Artayet's review and sign off
19 responsibilities.

20 It was only during the
21 investigation where we showed him these
22 documents and said, well, this is what the

1 document says, and in fact was an agreement
2 between Artayet and Walcutt. On the other hand
3 -- and Rusty Gorden on the hand. Artayet would
4 not sign off on the procedure, and it was only
5 at that point that he realized that that had
6 occurred.

7 But he is operating -- the point
8 where he is making these decisions he is
9 operating on a set of assumptions that are not
10 factually accurate.

11 MR. BERSON: In the handwritten note that
12 we talked about at the beginning, Pardi wrote
13 and I read that as saying the GWE has to be the
14 one.

15 MS. COOPER: Alain told us what they were
16 talking about here, and this is what Pardi was
17 communicating to him.

18 MR. STIER: And Pardi's testimony on this,
19 and our investigation was very clear that that
20 was his expectation. And he talked about
21 conversations that he had with Artayet.

22 MR. BERSON: Even though the welding

1 engineer is different than the GWE, even in his
2 own document that he is commenting on?

3 MS. COOPER: Yeah, there are some
4 differences in what Alain -- yeah, but I'm going
5 by what Alain said. This was in a communication
6 to him from Pardi, that Pardi wanted him to
7 approve all changes to the WPSs. And then he
8 said, well, having had that represented to you
9 in 1995 in your wording on this document, a few
10 minutes later or a year later you have a meeting
11 with Rusty and you don't abide by the directions
12 that Pardi wanted. Of course, Pardi is not his
13 supervisor, but why did you do that? And it was
14 sort of a shrug, you know.

15 MR. STEIN: Is it usual for Pardi to
16 direct employees by marginal notes written on a
17 piece of paper like this?

18 MS. COOPER: This was a document Alain was
19 creating in a materials joining standards manual
20 for the use of the company, and he submitted it
21 to different people for suggestions and
22 approval.

1 This is just an example of
2 corroborating the conversations that Pardi said
3 that he had. I mean, Pardi is not saying this
4 is the only time he ever communicated that to
5 Alain in providing this document. We notice
6 that he made that statement and that seems to
7 corroborate what Pardi said, and Alain supported
8 that.

9 So this isn't his communication
10 to Alain. He is telling us that he always
11 wanted Alain to be the one to be in control and
12 to assure that our corporate and our welding
13 procedures period are without deficiencies. And
14 this merely corroborates it, but because it's an
15 important issue we showed you the document.

16 MR. GAVULA: For the Point Beach welding
17 procedures or the QEP it talks about the
18 PWE/designee. Was Gorden officially designating
19 Alain Artayet as the designee?

20 MS. COOPER: He was. But in this
21 reference PWE means project welding engineer, so
22 PWE is actually Gorden and the designee, as we

1 understand it, with no written requirement, the
2 designee be written, so it was probably -- Paul
3 Evans was I think the only person that we are
4 aware of that he designated his authority to do
5 sign off on site WPSs and --

6 MR. GAVULA: So in the procedures that
7 controlled Point Beach there was never any
8 requirement that Artayet do any of the review?

9 MS. COOPER: It's silent, doesn't mention.

10 MR. STIER: It's silent, but the
11 understanding between them was that he would not
12 sign off on them. He would review them. Now,
13 he said that Gorden took the position, I will
14 send them to you as a matter of information if I
15 want to, but, you know, that is as far as it's
16 going to go.

17 Artayet says he was not sent the
18 draft procedures. There are communications that
19 indicate that he was, in fact, sent those
20 procedures. Whether he was or he wasn't, the
21 fact remains that it was his understanding and
22 Gorden's understanding that he would not have

1 sign off authority on them.

2 MR. STEIN: And that was ultimately
3 acceptable? I mean, regardless of what Pardi's
4 marginal notes say, does he have the ultimate
5 authority? I mean, it's nice that he would like
6 this, but Artayet was working for Walcutt and
7 Walcutt is agreeable to this designation?

8 MR. STIER: That is precisely one of the
9 problems here, precisely one of the problems.
10 We have a set of expectations on the part of the
11 head of the line work, nuclear field, and, you
12 know, I suppose could have gone to -- if he knew
13 about this, he could have gone to Walcutt and
14 said that is not acceptable to me, I will not
15 permit that. But he didn't know it, and when
16 Walcutt said to Artayet, well, it worked that
17 way before, we can do it again. That was the
18 end of the discussion.

19 MS. COOPER: I'm moving on now to the
20 support for -- the real support for Point Beach,
21 because Alain was required to provide a
22 significant number of welding, qualified welding

1 procedures to the Point Beach site for use in
2 the steam generator replacement project.

3 As of May 7th the site requested
4 21 welding procedures from Artayet. He did this
5 in the form of telling what the base material
6 was, the filler material, whether or not
7 post-weld heat treatment was required, and a few
8 other characteristics of the weld.

9 The first exhibit that you have
10 here is a May 13th memorandum from Alain. There
11 are other documents, by the way. I concluded
12 the most significant, but this is an example of
13 a memorandum that Alain provided to the site.

14 Actually, by the 9th or 10th of
15 May, and you can see in here he refers to it, he
16 was aware that they would have to qualify 11 of
17 the 21 requested procedures, that there were --
18 there were PQRs in existence for the other
19 procedures. One of the ones that, by the way
20 needs to be requalified in Note No. 2 on that
21 page is one for E7018. Once again, it says the
22 use of that material was never qualified in the

1 past with notch toughness requirements being a
2 way of saying the Charpy V-Notch tests were not
3 utilized in qualifying E7018 in the past by MK.

4 He indicates that -- at the top
5 of Page 2 that he is going to be providing the
6 PQRs and supporting -- and WPSs in the near
7 future to the site. And he says in that top
8 paragraph, if these are not to your satisfaction
9 they can be modified in accordance with QAI, and
10 gives the note 6 and 7 and submitted to me for
11 review.

12 So he is acknowledging here that
13 he has responsibility for reviewing any modified
14 site procedures.

15 Other issues that were set at
16 this time which became significant by -- at this
17 point, although he was aware for some time that
18 they were going to have to requalify procedures
19 at Point Beach, by this time he still had not
20 made up his mind where the actual welding
21 qualification process would take place.

22 He is explaining to the site that

1 in the past he has qualified procedures in a
2 warehouse in Cleveland. Alain's testimony
3 indicates that in the years he had been at MK up
4 to this point he had qualified approximately, I
5 don't know, five, six procedures, something like
6 that, none of them for nuclear application, all
7 of them nonnuclear.

8 And, in fact, our documentation
9 of that indicates that approximately four of
10 those had been within the past year. So he
11 really had not even qualified a significant
12 number of nonnuclear procedures prior to jumping
13 into this nuclear project, and he is explaining
14 to them that if you recall he said that his
15 experience as a welder came into play when he
16 was qualifying these procedures. He was
17 actually doing the welding, and he was
18 delegating the collection of data to Andy
19 Walcutt. And that is the way they would qualify
20 these procedures.

21 And then they would send the weld
22 plate off to the lab, and the process would

1 follow. So in those situations it appears that
2 Alain wasn't even the person that was actually
3 collecting the data.

4 He indicates that there is only
5 one test lab on the approved suppliers list, and
6 that is who he is going to use. He has to
7 review requisition and purchase orders. He also
8 indicates on Note 2 on Page 3 that he must be
9 present during all qualification to insure
10 control and full supervision as required by the
11 Q.A. manual.

12 One of the issues that surfaced,
13 however, there were a couple --

14 MR. STEIN: And the QA manual say what?

15 MS. COOPER: That he can.

16 MR. STEIN: He can delegate that
17 responsibility?

18 MS. COOPER: I'm not sure what that
19 paragraph refers to, but clearly he is saying to
20 the site, I want to observe all of the
21 qualification welding, and I want do it myself.

22 Within this time frame, and if we

1 look at Alain's travel records, he is away and
2 traveling on nonnuclear business quite a bit.
3 The week that he provides this memo to -- it's
4 essentially to Rusty Gorden, but it's copied to
5 Bingham, who was the site project manager and
6 others, during that week Bingham contacted Alain
7 at the -- he was at an ASME code meeting with
8 Walcutt.

9 Bingham was concerned about
10 Alain's lack of experience in qualifying welding
11 procedures. There were a couple of requests
12 that he made of Alain. One was to delegate the
13 qualification process to Gorden, who had
14 qualified a number of nuclear procedures. The
15 other was to do the qualification at Point Beach
16 site.

17 Alain agreed that the most
18 efficient and probably best way, for a number of
19 reasons, would have been to do the qualification
20 welding at the Point Beach site. The reason he
21 didn't agree to do that was because there were
22 no MK payroll welders on site at this early

1 time.

2 The actual welding at Point Beach
3 after the qualification of welders didn't start
4 until a couple of months later. Because of his
5 insistence that supervision and control meant
6 that it could not be a subcontractor and there
7 were no MK welders on site, he chose another
8 site.

9 He said he didn't want to
10 delegate the responsibility to Gorden because he
11 didn't know Gorden and he wanted to do the
12 qualification himself. Marty Cepkauskas said
13 Alain Artayet is going to be the person who is
14 going to qualify the welding procedures. He
15 said he based that on the fact that it was his
16 observation that in the past Alain was bringing
17 up problems retroactively after the fact.

18 Then there was some support here
19 where he was saying he wanted Alain involved in
20 this process from the very beginning so that
21 Alain could be assured that there weren't any
22 problems after the fact. Whatever Alain wanted

1 to be done would be done.

2 So Cepkauskas told Bingham to
3 back off, and Alain refused to delegate to Rusty
4 in any event.

5 Alain chose a site in Memphis,
6 Tennessee, which was an MK site where there were
7 MK welders, that they were on the MK payroll
8 doing nonnuclear welding. And that was the
9 place where he decided that the qualification
10 welding would be, opposed to the Point Beach
11 site in Wisconsin.

12 MR. BERSON: Could he have gone to the
13 Point Beach site and done the welding himself?

14 MS. COOPER: Apparently he was capable of
15 doing the welding or most of the welds. But he
16 did have other responsibilities and, you know --
17 I don't think that he ever anticipated doing
18 that. He thought that he had a good plan, he
19 told us, to get this project accomplished within
20 the right amount of time, and that problems
21 developed.

22 Let's see, within a short period

1 of time, I think it was May 20th, Alain had
2 asked the site to prioritize welding procedures
3 of the 11 that were needed. He did that, and
4 the site did that. They provided him the list,
5 priority 1 through 11, and they asked him if
6 they could have the welding procedures by July
7 20th. So Alain was working to that deadline.

8 If you look at Exhibit H, this is
9 the requisition for the test materials. That is
10 just the base materials prewelded. Alain
11 purchased the material from the test labs, so
12 this was the material that was sent to Memphis,
13 Tennessee, for welding.

14 MR. STEIN: What is a test lab, is that an
15 internal MK test lab?

16 MS. COOPER: No, it's an engineering --
17 Triangle Engineering in Massachusetts. If you
18 will notice there is a line at the bottom of
19 this. This requisition is dated May 28, 1996.
20 It's signed by Alain. Where it says 5/2 is
21 sales item 5, quantity 2. Alain is ordering
22 post-weld heat treatment of certain base metal

1 prior to welding. I was not aware of why he
2 would do that, in my knowledge of the code.

3 He explained to me that the
4 reason he would do it would be so that the
5 material somehow would be more likely to test
6 better when the actual -- after welding when the
7 welds were actually being tested, somehow the
8 material would be better.

9 However, that explanation is --
10 first of all I'm not sure that it's plausible,
11 because in any event once this material was
12 welded, it would be post-weld heat treated
13 again, because that was one of the requirements
14 for this welding procedure.

15 In any event, in talking to the
16 people at Triangle Engineering, those items that
17 were post-weld heat treated were never even
18 welded because these were drop weight tested.
19 And as you will see, the next requirement is
20 Items 1 and 2 shall be drop weight tested in
21 accordance with the code to determine the
22 nil-ductility temperature.

1 And as it turns out, Rusty
2 Gorden, when we interviewed him, said he saw
3 this requisition and he said to Alain, why were
4 you doing post-weld heat treatment and drop
5 weight testing in the base metal prewelding?
6 These are the procedures, by the way, for the
7 girth weld, ones that would require drop weight
8 testing and would require post-weld heat
9 treatment prior to the drop weight testing and
10 the Charpy impact testing.

11 Alain explained to Rusty,
12 according to Rusty, that he was doing it because
13 he was using the drop weight test in the base
14 metal to determine the temperature to do the
15 Charpy in the weld metal post welding. And
16 Rusty said to Alain, I don't think you can do
17 that, Alain. It's never been my experience
18 under the code that that is permissible, that
19 that is acceptable in any way.

20 Alain denied that was his reason
21 for doing the post-weld heat treatment in this
22 instance, and that in any way he misunderstood

1 the requirements for drop weight testing.

2 However, when we talked to
3 Triangle Engineering they did indicate that he
4 did do -- he did explain to them what he was
5 doing, and it's actually -- it's clear on its
6 face from the requisition that he is doing the
7 drop weight test to determine the nil-ductility
8 testing for the Charpy test.

9 It turned out -- and that
10 document isn't in here -- the nil-ductility
11 temperature to the base metal was at least 120
12 degrees below zero Fahrenheit according to the
13 people at TEI. And my understanding from other
14 people is that temperature would have been so
15 low that when the Charpy impact tests were
16 conducted in the weld metal they never would
17 have passed, and it was essentially an unusable
18 figure.

19 The purchase order is the -- is
20 part of this exhibit as well. And if you notice
21 on Page 2 of that document, those requirements
22 for the post-weld heat treatment and the drop

1 weight test to determine the nil-ductility
2 temperature were buried into the purchase order.
3 And, in fact, TEI did do those tests.

4 Now, it's my understanding that
5 that would not be permissible, that temperature
6 for the nil-ductility temperature in the base
7 metal would not be permissible to use when you
8 are testing a weld metal. In any event the
9 temperature was so low it couldn't be used for
10 that for that purpose.

11 MR. ULIE: Was this Mr. Artayet's position
12 or was this information he had learned
13 elsewhere, do you know, with respect to that
14 criteria and so forth?

15 MS. COOPER: About whether or not you
16 could use the drop weight in the base metal to
17 determine the nil-ductility? It was information
18 he said -- well, since he didn't acknowledge
19 that is what he was doing, it's a little bit
20 hard to understand how he had developed this.
21 And when he led me through the code it was very
22 confusing, so he was not able to really provided

1 an adequate explanation.

2 He was talking to experts and you
3 will see at a later point in time there is a
4 memo that is created by him and Andy in November
5 which refers back to a May 20th discussion.

6 However, the documentation seems
7 to indicate that the discussions Alain is
8 talking about actually took place on July 17th.
9 And that is another significant day in the drop
10 weight testing issue, okay?

11 So I am not sure how Alain got to
12 the point of thinking that you could use this
13 drop weight test in the base metal. And, in
14 fact, they didn't use it.

15 MR. STIER: As of -- just so that
16 everybody is clear, as of now, and we don't know
17 what changes he may make to his transcript, but
18 as of now he does not acknowledge that he
19 intended to use the drop weight test in the base
20 metal as the basis for determining the
21 temperature at which to do a Charpy in the weld
22 metal zone.

1 MS. COOPER: And as I understand it, your
2 base metals are supply tested. And in this
3 procedure what they were looking for was to test
4 the welds, not other base metals, so there
5 doesn't appear to be any reason for those
6 procedures, why you would be testing them doing
7 drop weight tests to see what the nil-ductility
8 temperature would be for them, and Alain doesn't
9 provided an adequate basis for doing it.

10 Looking at this process now, and
11 roughly that was -- those were at the end of
12 May, those requisitions, the first test plates
13 were shipped to Memphis on around the 4th,
14 apparently from what we gathered from Triangle
15 Engineering, there was no requirement that they
16 be shipped by any speedy process, for instance
17 Fed Ex or overnight delivery. But they said it
18 would be shipped by common carrier, which took
19 roughly six days.

20 Artayet made arrangements to go
21 to Memphis on June 10th. That is almost a month
22 after of the date that he's been advised that he

1 needs these procedures.

2 He stayed in Memphis for one
3 week, and then left. Now, he told us that it
4 was his intention to do all of the qualification
5 welding while he was in Memphis and to supervise
6 it himself, and he had no intention of
7 delegating the qualification to the supervisor
8 who was there who he eventually did delegate to.

9 He said that there were some
10 glitches in the process. He was supposed to
11 have four welders dedicated to the
12 qualification. He said there were only two of
13 them. One or two of them got called away. He
14 had to, he said, train the welders for a day or
15 so, acquaint them with what it was he needed.
16 So essentially the evidence indicates that the
17 first qualification welding took place on the
18 12th, in the middle of the week. And Alain left
19 the site on Friday, June 14th, never to return
20 to watch or qualify or monitor the qualification
21 welding.

22 And that was one of the issues

1 that was raised by the site about doing the
2 qualification welding at Point Beach. If they
3 were doing it there we would have made sure
4 there was dedicated welders, we would have
5 assured it was done timely, that there was
6 nothing else that was more important to us than
7 qualifying the procedure.

8 Once Alain left the site, you can
9 see the process of the welding it took several
10 weeks. They were still doing qualification
11 welding on July 17 -- July 17th. And Alain was
12 not there to supervise or collect the data.

13 This created an issue between the
14 site and Alain. The site is saying we have an
15 experienced welding engineer who has qualified a
16 number of procedures, we can do whatever it is
17 to qualify welding procedures here, have the
18 welders, have the equipment, and instead Alain
19 takes it to a place in Tennessee, far away from
20 our supervision, and then leaves the site and
21 essentially delegates the welding process, which
22 Alain did do. And he documented it subsequent

1 to the fact, delegates the process to someone

2 who has no interest in the project other than,
3 you know, his normal interest in doing something
4 correct.

5 So the site actually thought of
6 that as they put it not supporting the project,
7 and that created an issue.

8 MR. STEIN: On the flip side, does Artayet
9 not have confidence in the site welders to do
10 this project?

11 MS. COOPER: Well, they would have been
12 happy to have Artayet, so they say, come to
13 Point Beach and do the welding there, and they
14 could have done it together. Theoretically, you
15 can have a number of welds being qualified. If
16 you have welders and people qualifying under the
17 procedures, it would have been perfectly
18 permissible to Alain to delegate the observation
19 to Andy Walcutt.

20 MR. STEIN: Did Artayet give you any idea
21 why he did this?

22 MS. COOPER: One of the major reasons was

1 the lack of welders on the MK payroll.

2 MR. STIER: He felt it was critical in his
3 understanding of the code that the welders who
4 do the welding of the test plates be employees,
5 be on the payroll of the company. And that is
6 what he says his understanding was. And there
7 was a big debate over that, and they did not
8 have employees of MK, welders who were employed
9 by MK at that time on the site at Point Beach.

10 MR. STEIN: Except for Gorden?

11 MR. STIER: Well, yes, but he wasn't a
12 welder. He was a welding engineer. He wouldn't
13 -- he's talking about the people who physically
14 do the welding.

15 MS. COOPER: And essentially Alain tells
16 us that he still, at least as of the interview,
17 believed that the procedure required people
18 doing qualification welding to be on the MK
19 payroll. He acknowledged by means of a code
20 interpretation on August the 8th after he
21 delegated the qualification process to Rusty
22 Gorden, he acknowledged that there was at least

1 a viable interpretation of the code which would
2 have allowed contract welders who were
3 supervised by an MK employee to perform
4 qualification welding just as he had conceded at
5 an earlier point in time that production welders
6 didn't have to be on the MK payroll.

7 MR. STEIN: I notice in your chronology
8 that he leaves Memphis on the 14th to spend the
9 week in Seattle and the week after he is in
10 Pennsylvania and West Virginia. Is he on
11 company business?

12 MS. COOPER: Yes.

13 MR. STEIN: Is there any indication that
14 the company business takes priority over the
15 welding he left in Tennessee?

16 MS. COOPER: Well, he says that it does.
17 The company says getting these welding
18 procedures completed was our highest priority.
19 Management says this was our highest priority,
20 and, you know, given one project may have been
21 more important or another one may have been less
22 important.

1 MR. WEIL: With Walcutt as the supervisor,
2 what did Walcutt do as far as prioritizing?

3 MS. COOPER: Our indication is that
4 Walcutt had no part in this at all, that was
5 entirely left to Alain. He supported Alain in
6 his decision to do the project -- to do the
7 welding qualification project away from the site
8 and to do it himself, and that was it.

9 MR. WEIL: And the follow up question is
10 who in management were the people that decided
11 that the Point Beach procedures were more
12 important than these other nonnuclear related
13 trips?

14 MS. COOPER: Well, it would be a question
15 of the project supervisor such as Pardi and --
16 Pardi and Zarges are of the opinion that the
17 nuclear plant is the highest priority and
18 getting the welding procedures done. And I
19 don't think there is anybody looking over
20 Alain's shoulder and saying what are you going
21 here, why are you going there? They left it to
22 Alain to get this project done.

1 It was his responsibility, and
2 they assumed -- and that is true of the site
3 essentially too, the site just stayed away, said
4 okay, you are going to qualify the procedures,
5 qualify them and get them to us by July 20th, it
6 was and Cepkauskas' decision that it was going
7 to be Alain who was responsible for this.

8 One thing that Alain said to us
9 was that he had invited Rusty Gorden to leave
10 Point Beach and come to Memphis to assist in the
11 qualification. Rusty Gorden denied that
12 invitation was ever extended.

13 MR. BERSON: Can I ask you a question?
14 The July 20th date when they wanted the
15 procedures qualified, is it your understanding
16 that all 11 procedures were supposed to be
17 qualified by that date or the first 11?

18 MS. COOPER: Some were already qualified,
19 if you recall. There were 10 for which -- he
20 had 10 procedures he had PQRs that were in
21 existence. So all that Alain had to do was to
22 create the corporate WPS based on the existing

1 PQR and provide that to the site, and I think it
2 was in the week of the 12th and 14th that he
3 provided those PQRs and corporate WPSs to the
4 site, approximately a month after the request.

5 MR. BERSON: I guess I'm a little
6 confused. The site prioritized the number of
7 things they wanted qualified?

8 MS. COOPER: Right.

9 MR. STIER: How many did they want
10 qualified?

11 MS. COOPER: The first request was for 21.
12 They said to Alain, we need 21 welding
13 procedures. Alain researched the file and found
14 PQRs for 10, so they had to qualify 11.

15 MR. BERSON: Right. That's what I was
16 asking. Of these 11 that needed to be
17 qualified, your understanding is they wanted all
18 11 or the first by July 20th, meaning priority
19 1?

20 MS. COOPER: No, all 11.

21 MR. BERSON: Because I notice on the
22 purchase requisition that Alain prepared and I

1 guess submitted to the contractor it requests a
2 desired delivery date of June 4th, not a
3 mandatory delivery date.

4 MS. COOPER: According --

5 MR. BERSON: Did he understand July 20th
6 was the drop dead date?

7 MS. COOPER: There was also -- we didn't
8 include it in the filing -- it says here the
9 request for priority of the welding, and we
10 would like to have the welding procedures by
11 July 20th. Alain didn't say that is impossible.
12 He told us that he had a good plan, he thought
13 it was a plan that was going to work and he
14 would be able to provide the procedures by the
15 20th, and it wasn't a question of this is
16 impossible.

17 During the interview he said,
18 well, it was a big job and I had other things to
19 do, but I had a plan and I could get it done.

20 MR. BERSON: Did he indicate why he only
21 desired a delivery date by June 4th versus the
22 mandatory delivery date by June 4th.

1 MS. COOPER: One of the things that he
2 said, which turned out not to be accurate, was
3 that if you notice in that May 13th letter he
4 said -- he indicated to them that he wanted the
5 material provided as soon as possible. In his
6 May 13th letter he indicates, for instance, that
7 those procedures which were post-held heat
8 treated and drop weight tested would -- it would
9 take an additional, I forget if it's a week or
10 whatever to get those materials.

11 However, it turns out that that
12 was not the case, because as Triangle
13 Engineering explained to us, they did the drop
14 weight testing, post-weld heat treatment coupons
15 that were never provided to Alain because he
16 couldn't use this again once they are broken.
17 So they kept those plates and gave him all the
18 materials that he needed. But in any event, he
19 is claiming it's going to take a week and a half
20 or so to get a procedure, and how long it's
21 going to take to provide a time line.

22 I do recall asking him whether he

1 had asked for priority delivery of the
2 materials, and I guess his answer was that he
3 had or something to that effect. But according
4 to Triangle they said it would take
5 approximately six days and that they didn't send
6 them out by any kind of priority.

7 MR. STIER: But he -- just to make an
8 overall point here, you can see in the original
9 negotiations or the discussions over who is
10 going to do the qualification, who is going to
11 manage it, is it going to be done at Point
12 Beach, is it going to be done some place else,
13 you can see the stress being created between
14 Alain and the line organization.

15 And in here, as you know, he
16 takes a week to go to Seattle and he takes some
17 time to go some place else. And we have tried
18 to make some determination about what he was
19 doing at these various places. And during one
20 period he was at a code committee meeting.

21 So you can see the pressures
22 beginning to build up and the deadline slipping,

1 and so you can imagine what happens by the end
2 of this process.

3 MS. COOPER: There is a date within --
4 it's not exactly clear of when it developed, but
5 it actually turned out to be only a procedure
6 that needed qualified and three of them were
7 never welded, so the -- it actually was eight
8 procedures Alain was responsible for qualifying.

9 MR. CLAYTON: Maybe we could take a
10 five-minute break. I'm sure the court
11 reporter's fingers are getting tired.

12 MS. COOPER: This is a good point.
13 (Whereupon, a recess was had,
14 after which the meeting was
15 resumed as follows:)

16 MR. CLAYTON: Back on the record.

17 MS. COOPER: Just to go back to a couple
18 of the issues that Katherine mentioned during
19 the recess.

20 About the quality of the welders,
21 one of the things that Alain claimed was that he
22 felt that he was going to be supplied with

1 experienced welders who would be able to do the
2 welding at Memphis, and it turned out that a
3 couple of the welds failed for lack of fusion,
4 which Alain acknowledged was a welder technique
5 issue. He acknowledged having some problems
6 with the welders themselves there.

7 But I think that the point being
8 here is that Alain had a plan, and due to lack
9 of experience or lack of willingness to accept
10 advice, or for some reason, the plan was not a
11 good plan and it didn't work out. And there
12 weren't -- there wasn't any contingencies in
13 there, and he -- I guess he anticipated that he
14 was going to stay in Memphis until the welding
15 was completed and he did not, and did not return
16 to Memphis.

17 Why he was traveling on company
18 business at a couple of -- certainly this trip
19 was -- this trip to Seattle and Pennsylvania and
20 West Virginia were clearly billed as company
21 business, as travel and records indicate that.
22 But then he was in Cleveland a couple of times,

1 he did take a trip to Chicago which he
2 acknowledged there was no point for him to be
3 there. And that was here in July and welding
4 was not complete.

5 He went with Andy to there, they
6 were doing a review of a couple of vendors for
7 Point Beach and PCI to put them on the approved
8 suppliers list. And that was Andy's function
9 and Alain went along, and acknowledged during
10 the interview that there was no need for him to
11 be there.

12 So if he perceived, you know,
13 that there was some urgency to this project,
14 something he could do, something he needed to
15 do, at least demonstrate to the people at the
16 site that he was devoted to this project and
17 supporting them and helping them get those
18 procedures done on time, there was certainly a
19 period of time in which he could do that.

20 Alain says, and he writes this in
21 a memo, and it's essentially a self-serving memo
22 I think, at least in certain ways. It does not

1 accurately represent the process that occurred
2 in this period of time. He writes a memo in
3 November explaining the qualification process.

4 One of the things that he is
5 talking about is that the parameters of the weld
6 were changed, making it easier for the welds to
7 pass the test. In one of those cases he is
8 essentially saying the test -- the weld has
9 failed because of lack of fusion, which is the
10 initial test done after the weld. It really has
11 nothing to do with the materials that are being
12 used, and so it sort of is presented as an
13 excuse. It might lead you to think the fact
14 that there was 24 post-weld heat treatments as
15 opposed to 12 would have caused a lack of
16 fusion. But first of all the bend test occurred
17 before the post-weld heat treatment. So that
18 change of parameters did not effect it. Am I
19 saying something wrong?

20 MR. HLIFKA: The bend test would occur
21 before.

22 MS. COOPER: I'm sorry, thanks. I look at

1 his face to make sure.

2 Well, in any event, as I
3 understand it from Alain the bend test was a
4 technique, welder technique issue and not
5 associated with the change in the post-weld heat
6 treatment, which was -- so Alain was offering
7 these changes in the process as excuses why the
8 welds were passing. Maybe in a couple of cases
9 some of the parameters were -- they did make it
10 more difficult to pass the test, no question
11 about it.

12 But in analyzing the process to
13 focus on the change in the parameters you have
14 to be very careful and look at the welds, which
15 is -- he's talking about, look at the parameters
16 have changed, which is something we did with
17 Alain and something we did with Rusty Gorden as
18 well, who was able to point out to us some of
19 the changes that had occurred and some of the
20 issues which Alain was writing about, which was
21 really a problem, particularly the drop weight
22 testing issue. It is not addressed in this

1 analysis, which is the next point that we are
2 coming to.

3 Alain has -- he is in Cleveland
4 from July 1st to the 5th and he bills eight
5 hours to SGT project, and it appears that what
6 he was doing, perhaps among other things, was --
7 there may have been other things going on, but
8 one of the things he did in that week was
9 prepare a requisition for the -- let's see if we
10 have the requisition here.

11 He prepared a requisition and
12 purchase order for the testing with the test
13 lab, and the purchase order the requisition is
14 in Exhibit I, and it's faxed to Triangle on July
15 3, 1993. The significant piece in here is that
16 -- it's on Page 2 of 4 of this purchase
17 requisition. In the third line up from the
18 bottom Alain is requesting three weld metal
19 zones, Charpy V-Notch at plus 10 degrees
20 Fahrenheit. And the question was, when was he
21 going to do the drop weight test to determine
22 that.

1 These procedures that he is
2 talking about when he -- and there is another
3 one on the next page. The procedures he is
4 using to qualify for testing here are procedures
5 for the girth weld and they did require Charpy
6 V-Notch testing and they also required drop
7 weight tests to determine the correct
8 nil-ductility temperature from which you can
9 determine the Charpys were being done, at what
10 temperature he could do the Charpy.

11 The purchase order for those
12 tests is dated 7/15 and these documents are
13 created with input from Alain, the descriptions
14 of what is needed, and Alain is not ordering
15 drop weight tests for any of the procedures.

16 Now, the question that we had
17 when we looked at this, first of all we were
18 asking the managers that we spoke to about a
19 memorandum indicating that Alain was not
20 requiring drop weight tests. We showed these
21 various documents which we are showing you here,
22 we showed them to Marty Cepkauskas to Bingham

1 and to Lou Pardi. None of them reported any of
2 these documents being the document that they saw
3 indicating to them, look at this, Alain was not
4 requiring drop weight tests. And, you know, to
5 their annoyance and chagrin, what they all
6 understood was that this meant that he didn't
7 understand the code requirements for these
8 procedures. And right in this time frame, the
9 date of the purchase order is July 15th. It was
10 faxed to Triangle on July 16th.

11 MR. BERSON: Which exhibit? I thought we
12 were on Exhibit I.

13 MS. COOPER: Exhibit I is the requisition
14 for the tests.

15 MR. BERSON: Okay. Now we are--

16 MS. COOPER: It is either Exhibit I, and I
17 believe it's Exhibit J that Rusty Gorden saw, a
18 copy of this was faxed to Rusty Gorden, and he
19 asked Alain about the drop weight tests and what
20 was he doing to determine the nil-ductility
21 temperature for these three procedures.

22 He was able to convince Alain to

1 contact some experts in Westinghouse himself to
2 indicate that drop weight tests were required
3 for these procedures. And if you will notice on
4 Page 2 of 5 on July 16, 1996, the same day on
5 which this purchase order is faxed to the site
6 -- excuse me, faxed to Triangle Engineering,
7 Alain puts a note on there referencing that some
8 of these coupons can be changed to 24 hours
9 post-weld heat treatment if not enough coupons
10 for weld metal drop weights at minus 40 degree
11 Fahrenheit with no breaks.

12 So it is right in this time frame
13 between the creation of the purchase order and
14 this July 16th note that the evidence indicates
15 that Alain finally understood that he was going
16 to have to do drop weights in the weld metal
17 zone to verify the temperature at which the
18 Charpys were done.

19 We talked to -- there is a
20 memorandum that is faxed to the site to Paul
21 Evans and Rusty Gorden indicating that Alain is
22 now talking about drop weight testing and how to

1 proceed based on either using existing coupons
2 or welding new coupons, because one of the
3 issues was that he had not required enough
4 coupons to do the -- both the drop weight
5 testing, which was in itself a destructive test
6 and then the Charpy is destructive testing.

7 There is -- subsequent to that
8 there is a document, it looks like this, it's
9 the matrix of the Priority 1 through 11. We
10 obtained this document from Triangle Engineering
11 and we spoke to the individual who put the note
12 on there, in parenthesis, two weld metal drop
13 weight at plus five degrees Fahrenheit.

14 He told us that the day that he
15 received this matrix, which was the day after
16 the PO was faxed he had a conversation with
17 Alain in which Alain asked him to price out for
18 him drop weights in the weld metal, and that he
19 also said that they never did drop weights in
20 the weld metal for MK. The reason being that
21 there weren't enough coupons to do it.

22 If you look over to the next page

1 there is a fax cover sheet also dated 7/17, and
2 some of these have times on them which helps
3 place them in sequence. This is a drawing that
4 Alain provided to Triangle Engineering.
5 Triangle said they had never done drop weight
6 tests in the weld metal. Their experience had
7 been such that they had never been called upon
8 to do it. They used surface temperatures to
9 determine temperature at which to do a Charpy.

10 Whether or not they ever welded a
11 procedure which required it, I can't say,
12 because I don't know what their experience was.
13 But their basis was they did not know how to
14 take a coupon to conduct the drop weight test.

15 Alain had gotten information from
16 the site, Gorden and Paul Evans who demonstrated
17 to him that in the code there is an explanation
18 of how to take the coupon and what to do, and so
19 he is now providing them with the diagram on how
20 to do the drop weights, because Triangle had
21 asked him to do that.

22 And, finally, if you look at

1 Exhibit L.

2 MR. STEIN: Triangle has never done it or
3 MK had never done it for anybody else?

4 MS. COOPER: They said they had never done
5 it, at least the individual we talked to.

6 MR. STIER: We don't know what the history
7 is. I mean, Rusty Gorden said that that was the
8 wrong laboratory to use for this kind of testing
9 because they didn't have enough experience in
10 doing this kind of testing. In fact, when
11 Gorden took over the qualification they went to
12 a different laboratory. I don't know, we
13 haven't gone through the history of the
14 laboratory to know what their experience was.

15 MR. STEIN: Because the location of the
16 laboratory seems to indicate that they might do
17 nuclear work.

18 MS. COOPER: They said they did.

19 MR. STIER: But how much of this kind of
20 qualification testing we don't know. But
21 typical of these laboratories --

22 MS. GREENBATES: Were they on the approved

1 vendors list?

2 MS. COOPER: Yes, Alain had put them on
3 the approved vendors list. They had been using
4 them for the nonnuclear procedures prior to
5 this. And I don't know what kind of audit he
6 had done.

7 MR. HLIFKA: Triangle engineering did
8 mention that they subbed that all out.

9 MS. COOPER: They don't do -- that's
10 right, they didn't do weld metal tests
11 themselves, drop weight tests themselves, that
12 is correct. They have to ship it to an outside
13 source.

14 MR. STIER: We have not investigated the
15 testing laboratory. We have investigated
16 testing laboratories before, but not this one.
17 But you know typically from what -- the
18 experience that we have had, they will pretty
19 much do what you ask them to be done by way of
20 testing. They are not going to tell you you are
21 wrong.

22 MS. COOPER: If you notice on the next

1 page, it's actually the last document in this
2 section, it's -- the fax date is 7/17 and it's a
3 fax to Paul Evans and Rusty Gorden, and I wanted
4 to go into that a bit. It's actually a cover
5 fax for a where-do-we-stand type of matrix which
6 Alain is providing to the site to say the status
7 of procedures.

8 MR. BERSON: We are on Exhibit L?

9 MS. COOPER: Yes, I'm sorry, that is a
10 separate exhibit, right. But you notice he says
11 in here I will call Marv Carpenter for weld
12 metal, permanent plant items, specs for drop
13 weight testing and fax to you and TEI. And on
14 the last page of that exhibit he says, Ben Hood
15 sent Marv Carpenter to me to talk about weld
16 metal zone drop weight testing on July 16, 1996.

17 MR. BERSON: What does that mean?

18 MS. COOPER: Well, in the memorandum that
19 -- the memorandum that he provides explaining
20 that process, it's a memo that he reviewed with
21 -- it's actually Andy's memorandum but Alain
22 reviewed it.

1 MR. STIER: Which exhibit is that?

2 MS. COOPER: I'm trying to -- there is a
3 reference to a conversation in May about that.
4 Well, just to say the significance of it is that
5 this is apparently one of the experts that Alain
6 had a conversation with and convincing him that
7 the drop weight testing was required in the weld
8 metal. This person is from Westinghouse, and,
9 in fact, the person from TEI who told us that
10 Alain had made the phone call on the 16th of
11 July or the 17th said that Alain told him that
12 it was -- the drop weight test of metal was
13 required by both the code and by the client,
14 meaning Westinghouse. And that Alain had been
15 told this by somebody as the site who had
16 experience in developing procedures in the past,
17 corroborating what Rusty Gorden said about that.

18 In fact, he had called to Alain's
19 attention that there were no drop weight tests
20 in the purchase order, when are you going to
21 order them and how are we going to get them
22 done? I asked Alain about this and what the

1 purchase order meant, and his explanation for
2 this was not, he said, I want you to understand,
3 I was always going to do drop weight tests. He
4 denied that he ever misunderstood the issue of
5 the drop weight tests were required in the weld
6 metal.

7 So I asked him why they weren't
8 required in the purchase order, why he hadn't
9 ordered them, and he said it was because he
10 didn't know how to take the coupon, and the code
11 isn't clear on how to take the coupon, and I
12 figured after I submitted this purchase order I
13 could -- I'd have plenty of time to do the
14 research to determine how to take the coupon and
15 do the drop weight tests.

16 And I said, well, don't you do
17 drop weight tests before doing the Charpy to
18 assure that you are going to do it at the right
19 temperature? He acknowledged that was usual,
20 but that he could do it in any case, with the
21 understanding that the Charpy could be totally
22 invalidated by the results of the drop weight

1 test. And, of course, that would mean that the
2 welding coupons would have to be rewelded and
3 you'd have to start from scratch.

4 My understanding, and I have
5 talked to others who have said that that was not
6 something that they have experienced, I imagine
7 if necessary you'd had coupons and you
8 discovered after the fact you needed a drop
9 weight test and you already conducted your
10 Charpy, you could try to validate the Charpy.
11 But the usual process would be to conduct the
12 drop weight test first.

13 It appears that the site -- the
14 evidence seems very compelling on this issue
15 that Alain was not requesting, did not
16 understand that the drop weight test and weld
17 metal were required to verify the temperature at
18 which you were going to do the Charpy, and that
19 he really misunderstood the issue. It was
20 brought to his attention, but he wouldn't accept
21 it from Rusty Gorden or people at the site.
22 They had to contact experts and be assured that

1 this is what was required, and that he began the
2 process of conceding that they needed to be
3 done.

4 However, as I said, if you look
5 at Exhibit M, there was a purchase order after
6 delegation. It was an August 8th purchase order
7 where Alain delegates the issue to Rusty Gorden.
8 The site sent a purchase order to TEI requiring
9 the drop weights, and that is the part in the
10 middle and the handwritten, they want six drop
11 weights done.

12 There were not enough coupons
13 welded and so site essentially rewelded new
14 coupons and required of the drop weight tests
15 for these girth weld procedures and they were
16 subsequently conducted.

17 So this was an issue that
18 surfaced on July 17th, if not sooner, and it
19 seriously shook the confidence in the site in
20 what Alain was saying.

21 Same time frame, look at Exhibit
22 L, you are getting this fax, which is the matrix

1 of the status of the procedures. By July 17th
2 only one procedure apparently had passed.
3 Priority 5 had failed, Priority 7 had failed,
4 did not pass the side bend test.

5 If you will notice on this
6 memorandum, and we have other copies of --
7 excuse me, this matrix, we have other copies of
8 this matrix, Alain has added to Priorities 1, 3
9 and 5, A-1 through 3A and 5A requirements, more
10 drop weight tests in the weld metal.

11 So if you look at the notes at
12 the bottom, Alain is indicating the status, some
13 machining. I had to ask TEI what machining
14 meant, cutting the coupons out of the plates.
15 That was being done as of 7/18. So the coupons
16 weren't cut.

17 He indicates that some of the --
18 they are still welding on 7/17 or 7/18 and that
19 Memphis was actually going through a shut down
20 outage which would have caused a delay in the
21 process for getting Alain's welding done.

22 Some of the other issues that he

1 discussed, he says No. 6, for instance, will be
2 welded at PCI using an MK welding operator. So
3 he still adhering to that requirement. This is
4 a -- Priority 6, as I understand it, was the
5 machine welding process that automatic -- it's a
6 process of narrow groove, is the narrow groove
7 welding process which was a technical process
8 that MK welders did not do, PCI specialty would
9 have to have done it. It was creating a
10 difficult situation. You would actually get
11 somebody on the MK payroll who would be able to
12 do this fairly unique kind of welding.

13 So the site gets their process,
14 gets this matrix on the 17th, and it's at the
15 same time that they realized that Alain did not
16 understand this important drop weight testing.
17 And, you know, Gorden's understanding of the
18 failure to require the drop weight tests, if the
19 procedures had gone through the Charpy and
20 passed, the procedures would have been
21 invalidated. And he said that Westinghouse
22 never would have accepted them because there was

1 no drop weights. So if Alain had successfully
2 completed those welds without calling the issues
3 to his attention, that would have not been
4 satisfactory.

5 So that is July 17th. On July
6 18th Priority 7 failed due to lack of fusion.
7 On July 23rd Priority 10 passed; Priority 3 you
8 could say passed, but it was one of the ones
9 that required the drop weight testing, so it was
10 actually an invalid test result.

11 It appears from this memo, and it
12 also appears to be supported by Alain's records,
13 that he is saying the test site, that TEI will
14 give you completion dates this afternoon on the
15 17th, if you need more dates call me and we can
16 get them out to you. So it appears that Alain
17 is in contact with TEI getting some of these
18 results.

19 However, as of I believe it's the
20 23rd Alain leaves Cleveland to travel up to
21 Point Beach for his second trip there. It's not
22 clear that Alain remained in contact with TEI

1 during this period of time from July 20th to the
2 26th. And that is based on a couple of things.

3 First of all, on the 23rd TEI was
4 passing Paul Evans' status and the test results
5 at the site. Alain took a couple of days
6 vacation in here and we -- Andy told us that
7 Alain was unable to represent at a meeting that
8 occurred on July 26th that any of the welding
9 procedures were completed at that point.

10 MR. STEIN: Paul Evans at the site took a
11 vacation?

12 MS. COOPER: No, Rusty -- excuse me, Alain
13 took a couple of days off.

14 MR. STEIN: Off on vacation?

15 MS. COOPER: Yeah, just a couple of days.

16 MR. STEIN: I thought you said Paul Evans.

17 MS. COOPER: I'm sorry. Paul Evans was
18 the one that TEI was contacting with the test
19 results.

20 MR. STEIN: He works with Rusty?

21 MS. COOPER: He was at the site. You
22 notice his name is on a lot of these fax

1 documents. I believe he told us he came to the
2 site -- well, it was in the summer. I think it
3 was July 14th that he started work at the site
4 to provide some support, and he became an
5 employee at that point.

6 Alain's trip to Point Beach was
7 not as the GWE so much as to provide some kind
8 of technical advice or to provide support, or
9 actually what he did was to go to help Artayet
10 -- excuse me, to help Walcutt essentially with
11 documents. He acknowledged it was something
12 that somebody else could have done, but he felt
13 that he was helpful to the process in culling
14 out problems with the documents that could be
15 rectified before --

16 MS. GREENBATES: These are requests by his
17 boss, his boss asked him to come with him and he
18 goes?

19 MS. COOPER: It was requested by Walcutt
20 to assist, yeah.

21 And while he was there Max
22 Bingham held a meeting. It was on the last day

1 when the survey preparation was completed, a
2 meeting of all of the site people. Not all, I
3 shouldn't say. It was a meeting of several site
4 people. It was attended at least by Walcutt,
5 Artayet, Gorden, the project quality manager.
6 There may have been others, but I understand
7 there were approximately nine people there.

8 The purpose of the meeting was
9 supposed to be where do we stand now, what
10 status are we in for the project? The Point
11 Beach outage is to begin on October 5th and this
12 is July 6th. At this point the welding
13 procedures are not complete, it's becoming
14 apparent that new welding will have to be done
15 for the qualification. And essentially
16 according to Andy, Alain is unable to defend
17 himself by saying that any of the welding
18 procedures are complete.

19 It appears that a couple were,
20 that is why we have the question of whether or
21 not Alain understood at that point in time that
22 even two were completed or possibly three. And

1 it could be that they are referring to the fact
2 that no PQRs and WPSs are complete as well for
3 these new procedures.

4 There are other issues that are
5 discussed, it's not just Alain. Alain during
6 the hearing essentially did not describe this
7 meeting -- during the interview. He described
8 it as being extremely embarrassing to him, that
9 Bingham essentially blamed him and embarrassed
10 him in front of all these other people. I
11 called to his attention that there is a second
12 meeting after the meeting of several people.
13 When we first met with Alain he told us that
14 after the big meeting of several people Bingham
15 asked Alain and Andy to stay behind and he
16 talked to them. And apparently it is at that
17 point that Bingham expressed his extreme
18 annoyance with Alain for not having the
19 qualification project completed.

20 MR. STEIN: And this project is such a big
21 deal that Walcutt, who is the supervisor that
22 does the performance appraisal, doesn't give him

1 minimal satisfaction on this project and it
2 shows up in there and it shows up in some kind
3 of award, you know, like he doesn't get the
4 award that he normally would? But that is not
5 what happened, you know, in front of your own
6 supervisor you are basically pinged for such an
7 important project?

8 MR. STIER: Right.

9 MR. STEIN: And it doesn't show up?

10 MR. ULIE: Is there any testimony from
11 Pardi's side, from Bingham and the site group on
12 through Pardi up through Mr. Zarges and down to
13 Walcutt in any formal --

14 MS. COOPER: Yes, there is. It's coming
15 up.

16 MR. ULIE: Very good.

17 MS. COOPER: And Alain says that during
18 this second meeting -- well, ignoring the
19 meeting, and I think during the interview
20 process he probably sort of jumped into it, it
21 was probably the second meeting where this
22 occurred, according to Andy it was where it

1 occurred. According to other people who
2 attended the large meeting, I mean people are
3 being asked what are your procedures, what is
4 the status of this? And if you weren't ready,
5 it was significant. But it was not just Alain,
6 it was others. So other people have described
7 this meeting differently from Alain. I think
8 Alain is mistaken, it's a private meeting.

9 But clearly after that meeting
10 Bingham had a meeting with Alain. He was aware
11 that Alain had left the delegation of
12 responsibility to Keith Mackie in Memphis. He
13 said he thought it was a bad decision in the
14 first place to do the qualification in Memphis.
15 He said you are traveling too much, you have got
16 other responsibilities, why don't you delegate
17 this to Rusty? This is, you know, essentially
18 from Alain. And Alain said I tried to provide
19 explanations for what was going on, and it was
20 taken as excuses.

21 And, you know, maybe that is the
22 case because the only -- on here the only issue

1 that he is talking about the serious post-weld
2 heat treatment or any of the issues that
3 parameters were changed. But he hasn't said now
4 that these parameters are extremely difficult at
5 this point in time because it's not even clear
6 that the testing has begun on some of these
7 things. And actually the one with the extensive
8 post-weld heat treatment had actually passed.
9 The problem was, they didn't have -- it had
10 passed the Charpy test, but they hadn't done the
11 drop weight testing to verify that.

12 At this point Alain agrees to
13 delegate the process to Rusty Gorden and they do
14 take over the delegation. I spent some time on
15 that issue, the drop weight test because when
16 the ALJ found that it was pretextual, he didn't
17 have these purchase orders, the requisitions,
18 the testimony that we had from Triangle and
19 others which indicated that there was clearly an
20 issue here about Alain understanding that and
21 that it was upsetting to the site. And also --

22 MR. STEIN: You got the purchase orders

1 from MK, so MK had the purchase orders, so they
2 could have just as easily given them to the
3 judge and made that argument.

4 MR. STIER: All the people who were
5 preparing the case knew that they existed. I
6 mean, there had -- I mean, you now can't -- I
7 don't know what investigation was done in
8 preparation for the hearing. All I know is that
9 this evidence was not organized and presented at
10 the hearing.

11 MS. COOPER: Just to jump into Mr. Ulie's
12 question now, because this is when the process
13 begins. The first thing Alain says, that when
14 he went back to Cleveland after this meeting he
15 met with Drew Edelman and told him about his
16 conversation with Bingham. Andrew asked him if
17 he wanted him to do anything, and Alain said no
18 or we can handle it, meaning he and Andy.

19 Drew also spoke to Andy about
20 that, and they both assured him that they could
21 handle whatever had occurred with Max Bingham.

22 MS. GREENBATES: Could you clarify what

1 level of management made Alain give -- delegate
2 this to Rusty. I know Pardi's here, and you
3 said at this meeting there was a lot of pressure
4 put on by what level in the MK hierarchy to turn
5 it over?

6 MS. COOPER: At that meeting, Max Bingham.

7 MS. GREENBATES: And he is?

8 MS. COOPER: Was the project manager.

9 MS. GREENBATES: Under Lou Pardi?

10 MS. COOPER: It was presented to him that
11 you have no procedures qualified, it's already
12 -- we have no WPSs, we are going to do a lot
13 more welding, you have a lot of responsibilities
14 that you have to undertake. He says he made the
15 decision, Alain does not say -- he says he was
16 urged.

17 MR. STIER: Walcutt was there, was he not?

18 MS. COOPER: Walcutt was. And he said he
19 made the decision.

20 MS. GREENBATES: With his boss present and
21 a high-ranking official?

22 MS. COOPER: Walcutt did not support him.

1 He said he supported him at an earlier time and
2 Andy did not support him at this position. He
3 also said to us when we interviewed him the
4 first day that he made the decision because it
5 was the right decision to make.

6 And he also said that he -- while
7 he had no further experience with Rusty Gorden
8 and didn't know Rusty he was -- he knew Paul
9 Evans from past experience. In fact, he had
10 recommended that the site hire Paul Evans, and
11 since Paul Evans would be working closely with
12 Rusty he felt that Paul's knowledge of the code
13 would prevail and that this would be done right.

14 He wrote a letter of delegation.
15 However, he was still responsible. Now what
16 this meant, the letter of delegation to Rusty
17 saying the qualification, which means observing
18 the welders and correcting, monitoring the
19 welding of the qualification welding and
20 collecting the data would be done by Rusty
21 Gorden. Alain was still responsible for
22 preparing from the test results the PQRs and the

1 corporate WPSs. So essentially what he was
2 delegating was the observation of the welding
3 process.

4 MR. STIER: We better move it because we
5 are running out of time.

6 MS. COOPER: In addition to them both
7 making Edelman aware of the problems, Cepkauskas
8 said as a result of Alain's performance on the
9 qualification process he spoke to Lou Pardi and
10 said to Lou, based on both, he last claimed, and
11 said it's supported that he provided Lou with
12 information about Alain not understanding the
13 drop weight tests were required, and he told
14 Pardi that based on Alain's inability to get
15 those procedures qualified in the time frame, he
16 had serious reservations about Alain's ability
17 to continue as the group welding engineer for
18 the nuclear project.

19 Pardi's response to him was,
20 well, let's wait and see. I'm not going to do
21 anything. There is two sides to every story. I
22 want to evaluate this, we are in the middle of

1 the process. And so he took the information
2 that Marty provided to him but did he not act on
3 it immediately..

4 MR. STEIN: But this goes to my earlier
5 question, what could Lou Pardi do? He is not in
6 the group welding engineer's direct line.

7 MS. COOPER: What he could do would be to
8 speak to Alain's supervisors and say we are
9 having a problem with somebody in your
10 department who is supposed to support us, which
11 is what he says essentially he did do.

12 MR. STIER: Don't forget that his
13 organization, Pardi's organization is, in
14 effect, a client of theirs for the services that
15 are provided by Artayet, and what he could do is
16 go to them and say we don't want the services
17 anymore.

18 MS. COOPER: Now, there is a readiness
19 review that occurred sometime after the end of
20 -- middle to the end of August. We tried to
21 find a date and we can't. But in any event
22 there is a third-party individual, an

1 independent assessor who comes in. And I
2 understand this is fairly typical before the
3 outage to assess your readiness for the outage,
4 reports both to MK and reports to Westinghouse.

5 He told us that there were no
6 welding procedures ready, that this was terrible
7 for this, they were only a month or so before
8 the outage, and that he said that there was
9 really nothing for me to review. His review
10 would have been to look at welding procedures
11 and documents, compare PQRs and assess whether
12 or not those were in adequate shape. He said
13 there was nothing for him to review in this
14 department.

15 He said that -- he had spent time
16 with Alain back in -- when Alain was in Chicago
17 in July because he worked at PCI. He spent a
18 day and a half trying to convince Alain that he
19 was wrong on the MK qualification welder issue
20 and he said he just couldn't convince Alain that
21 he was wrong.

22 I did neglect to mention that on

1 August 8th, after the delegation Alain did
2 concede to -- of the site that at least there
3 was another viable opinion of whether or not the
4 qualification welders had to be on the MK
5 payroll, and of course at MK they did end up
6 using contract welders under the supervision and
7 control of MK.

8 At that readiness review meeting,
9 the third-party reviewer was critical of the
10 group weld engineer, critical of him for not
11 spending more time at the site and critical for
12 not having the procedure ready. That also was
13 communicated -- Pardi was at that meeting and as
14 Bingham said that he said to Pardi at that point
15 we have no welding procedures prepared because
16 we did not have corporate support, meaning the
17 GWE hadn't completed his support for our
18 project.

19 Cepkauskas, Bingham and Pardi all
20 spoke to Walcutt sometime prior to November 4th
21 about their concerns about Alain's support for
22 the project during the summer of '96. And I

1 will jump ahead to --

2 MR. WEIL: One quick question. I'm not
3 sure, but I think you said the readiness
4 reviewer did not produce an audit report?

5 MS. COOPER: He said there were no welding
6 procedures for him to review. He did produce a
7 report.

8 MR. WEIL: He did produce an audit?

9 MS. COOPER: And that information was
10 communicated to the client, that there were no
11 welding procedures ready by that time.

12 By the way, the site did start
13 providing welding the PQRs the WPSs, the drafts
14 and the test results to Alain at the end of
15 August. And as soon as Alain got those, the
16 typical turn-around time was a day or two he
17 would have them back in the mail and out, Fed
18 Ex'd to the site. That once these test results
19 were obtained it was a time short time before
20 the procedures were done by Alain.

21 However, it wasn't until the end
22 of July that Alain provided the site with the

1 PQRs and corporate WPSs for the procedures that
2 did pass the qualification testing. I think
3 there were two of them that they relied on back
4 on July 17th.

5 MR. GAVULA: Is that inconsistent with
6 what the rate review found?

7 MS. COOPER: I think the readiness review
8 person was looking at documents. He wanted to
9 see WPSs so that he could review the actual
10 document, and there were no documents.

11 MR. STIER: You mean the site WPS?

12 MS. COOPER: There were no corporate or
13 site until August 30th. And the readiness
14 review was in mid August, so he was looking to
15 find a document like this.

16 MR. GAVULA: I thought you said July 30th.

17 MS. COOPER: No, August 30th.

18 So each of those managers in turn
19 spoke to Walcutt about the concerns, and Walcutt
20 began doing research. The documents are the
21 exhibit on which the tab is at the bottom here.

22 Walcutt prepared two memorandum

1 defending Alain's work. One is -- they are both
2 dated November 4th. One addresses the issue of
3 the drop weight test, and that is the first one.
4 However, we have a draft of this document with
5 Alain's handwriting on it. And when Andy
6 Walcutt was initially addressing this issue he
7 was -- instead of saying drop weight testing,
8 was calling them Charpy tests, indicating that
9 Andy himself didn't understand the difference
10 between the necessity for the drop weight test
11 and the Charpy test.

12 He did say when he was writing
13 the memorandum it was Alain who addressed the
14 issue of whether the drop weight test was
15 required. When we showed the memorandum to
16 Alain he acknowledged having reviewed it. He
17 said he was in another -- working at a DuPont
18 site at the time, and initially he read this
19 memorandum to say that Paul Norris had said that
20 you cannot require -- Paul Norris was an
21 independent expert who he said he sought out --
22 said Paul Norris said you did not need to do

1 drop weight testing. However, it was pointed
2 out to him that the last sentence in the second
3 paragraph, all you would have to do is prove
4 that your materials had a lower NDP than
5 required by design.

6 Alain acknowledged that the only
7 way that could be done would be by getting two
8 no breaks in your drop weight testing. So then
9 he reversed his position and said, oh, yeah, he
10 does say you have to do some drop weight
11 testing.

12 MR. STEIN: Did you call Paul Norris at
13 Hatch and confirm whether or not he actually did
14 give this advice to --

15 MS. COOPER: No, no. But that is
16 something that we could possibly do.

17 This is -- if you look at the
18 last paragraph he says in mid May, 1996, as part
19 of the process Alain also contacted Marv
20 Carpenter of Westinghouse-Pensacola. This
21 discussion identified Westinghouse's standard
22 practice was to do their Charpy V-Notch testing

1 at plus 55 degrees Fahrenheit and not at the
2 plus 10 degrees Fahrenheit temperature they were
3 requiring of SGT.

4 It would appear that this contact
5 actually was the one on July 17th. You have to
6 understand that. And this memorandum was based
7 on what Alain was telling him, and Alain is
8 representing here in this -- Andy is
9 representing through what information is
10 supplied to him by Alain, that Alain did not
11 misunderstand the necessity for a drop weight
12 test, and this is clearly contradicted by the
13 documentary evidence and the testimony of --

14 MR. STEIN: Where did this memo go? It
15 says it went to file.

16 MS. COOPER: Actually it was supplied to
17 Pardi on November 15th. The second memo that
18 Andy prepared was this matrix, also dated
19 November 4th, which has prepared from a much
20 longer memorandum supplied to him by Alain.
21 Alain's memorandum does not have a date on it,
22 but it says the last entry on this memorandum

1 was supplied as of November 3rd. So Alain could
2 have been preparing this for a significant
3 period of time.

4 As he said, he was -- he said he
5 realized when he hadn't produced the
6 qualification on time and he realized that his
7 position was in jeopardy based on his failure in
8 that regard. And in some ways this memorandum
9 doesn't accurately reflect the facts.

10 I mean, for instance, if you look
11 at No. 3 it says they passed, but there is no
12 indication that there was no drop weight testing
13 done and that there should have been.

14 And a memorandum was prepared by
15 Andy and reviewed by Alain by around November
16 4th because Alain -- we have a copy of this also
17 marked up by Alain.

18 MR. CLAYTON: Can I go back just a minute?
19 I may have missed it as you went through, but in
20 your overview slide you mentioned that
21 Cepkauskas and Bingham and Pardi all expressed
22 concerns of Walcutt. Do you know what day that

1 was on or what date?

2 MS. COOPER: No, no. The memorandum --

3 MR. CLAYTON: Can you bound it, can say
4 it's between --

5 MR. STIER: I think we can give you an end
6 date, whether we can give you a beginning date
7 -- I mean, it had to be before these memos
8 because the memos were in response to those
9 criticisms.

10 MS. COOPER: The memo to Pardi, the cover
11 memo, which is Exhibit Q, indicates that Walcutt
12 had a conversation with Pardi in early November.

13 He also says he talked to Pardi
14 and Cepkauskas in this memo November 15th. He
15 says he talked to Marty Cepkauskas on November
16 7th about the drop weight issue. And Marty was
17 saying -- referred to the memorandum that he had
18 seen, and the rest of this November 15th
19 memorandum is explaining to Pardi Walcutt's view
20 of where this drop weight issue may have come
21 there.

22 He is pointing back to the May

1 13th memo, which is also in these exhibits, in
2 which Alain says that if you do drop weight
3 tests it's going to add a certain amount of time
4 to the testing process. And he is saying they
5 may have been confused about this to think that
6 Alain didn't require the drop weight test. So
7 Andy does not apparently understand that the
8 requisition required drop weight tests in the
9 base metal, and he did not require drop weight
10 tests in the weld metal as of July 15th and
11 nobody -- Marty is saying, well, I saw a
12 memorandum but apparently the real information
13 was at the Alain-Rusty level, and that
14 information never got to Andy Walcutt about
15 Alain really messed up the drop weight test, it
16 was not communicated to him.

17 So we do know it was at least
18 early November. During the interview Andy
19 Walcutt said to me it could have been even as of
20 mid October that he was having these
21 conversations with Pardi, at least, and that he
22 had conversations with Cepkauskas and Bingham

1 before that, and that they were all talking
2 about drop weight tests and the failure to
3 complete the qualification process.

4 MR. STIER: Let me just add, I think it's
5 important to understand that this drop weight
6 test issue came up in the context of this
7 qualification process that was not meeting their
8 expectations and that they, you know, thought it
9 was dragging on and that they were disappointed.
10 So it was not just a technical problem, but it
11 takes on added significance in their minds
12 anyway when it happens as part of a process that
13 fails to produce qualified procedures within the
14 time frame that they expect them to be.

15 MS. COOPER: One issue that Alain was very
16 definitive about through the process was that he
17 had wanted -- although he was not in the
18 approval process he had wanted copies of the
19 site WPSS to review. And he understood that
20 under the QAI that there was a requirement
21 there, although he says he had the
22 responsibility to review he had no authority is

1 the point that he is making, I had no authority
2 to change.

3 And he said that Rusty refused to
4 send him site WPSSs. He was adamant about that,
5 said that he had to take Andy Walcutt a copy
6 because Andy as manager of QA was getting a
7 control copy for permanent records, and that
8 those were the ones that he reviewed.

9 It turned out that there is a
10 document, transmittal list in here indicating
11 that Alain did receive not only the initial set
12 of procedures but all revisions to the
13 procedures, and that he was supplied that.

14 When we showed him the document,
15 transmittal list indicating that, at first he
16 was a little incredulous and he actually then
17 called me on the telephone to point out to me
18 that his testimony at the hearing had indicated
19 that Rusty was providing him those procedures
20 and that this was an absolute contradiction of
21 what he had been saying earlier.

22 He did receive the first

1 revision, and Exhibit P, I won't go into it in
2 too much detail because we don't have much time,
3 but Exhibit P is the facts and the corrections
4 that were suggestions -- as Alain said, they
5 were suggestions to the review of all the
6 procedures. I think there were 14 procedures
7 that he received, possibly more. But of those
8 procedures, only five of them did he find the
9 errors in. Some of them are -- for instance,
10 the one at the top global transfer, spray
11 transfer, Alain's point is that that should be
12 an amount. There is no block for what should be
13 checked, and so Alan says you said say N/A. I
14 believe this is the procedure that was one of
15 these five procedures that was being used
16 through qualified welders, so it was not
17 actually on a production weld. Another one was
18 not Section III work, it was to weld the hatch
19 on the old steam generator that was being
20 removed.

21 It's not to say that it's -- that
22 these are correct. For instance, there is a

1 typographical error on one of them where the
2 hyphen is just in the wrong place. It could
3 have been changed. Alain's position was that
4 these were suggestions. He thought that the
5 procedures that site had made were -- could
6 create confusion, while they weren't code
7 violations in his mind they didn't represent
8 hardware issues, he felt that it was possible
9 somebody could pick up this procedure and create
10 a -- could create a hardware problem.

11 Rusty's position was that it
12 didn't matter anyway because they weren't used
13 on production welds. There was no chance there
14 was going to be any confusion because the people
15 who were reviewing the procedures knew where
16 they should be used, and Lou Pardi says that is
17 not acceptable. Lou Pardi says these changes
18 should have been made, I don't want anything
19 like this in company welding procedure. Lou
20 Pardi -- nobody says that Lou Pardi knows about
21 this, that anybody on November 6th knows about
22 this.

1 Alain and Rusty have the
2 conversation, Alain believes he says that Rusty
3 is to change them. Rusty says I took it under
4 consideration, I'd make the changes I thought
5 were appropriate. He says he didn't want to
6 submit some of those procedures through the
7 whole review process to the client again just
8 for a typographical error, things of that sort.
9 So he -- in Pardi's view that is not acceptable,
10 however. That was his position, I just tell you
11 what he said about that.

12 Now, on November 15th Pardi gets
13 this memorandum, cover memorandum plus the two
14 other memorandum from Walcutt defending Alain's
15 performance.

16 Alain is essentially off-site
17 until -- I mean, working on other projects,
18 remote projects until something like December
19 7th. He goes to an ASME code committee meeting
20 and returns to Cleveland on December 12th. In
21 that time frame he has been supplied other
22 copies of other revisions, I should say

1 revisions to the site WPSs. When he comes in he
2 has his own copy, he acknowledged that, well, if
3 I did he says I did not review all of the
4 procedures. The only procedures that he says he
5 reviewed were the ones that he had faxed to
6 Rusty on November 16th with so-called
7 suggestions.

8 As I understand it, however, he
9 wouldn't be faxed copies of procedures that did
10 not have revisions. And every time they made a
11 revision of one procedure they wouldn't send
12 copies of all, it was just procedures that were
13 revised. So in order for him to -- I think only
14 one of the procedures that Alain had commented
15 on of the five had actually been revised, so
16 that would have been the only procedure that he
17 could have looked at to see that the changes
18 that he suggested were not made. The other
19 four, all he could do would be to look at the
20 revision list to see that those five had not
21 been revised.

22 However, there were a number of

1 revisions to other procedures and he claims that
2 he never again until he did the review for the
3 QFR review any of those welding procedures. He
4 says he -- Andy Walcutt returned to Cleveland
5 and he was at the code meeting as well.

6 He said to Andy they haven't
7 adopted the changes that I have made, what
8 should I do about it? I could go to the site,
9 we could demand that they change them. Andy
10 says, I understood Alain's comments to be
11 editorial in nature, and I said don't bother, if
12 -- since they are not important, since they are
13 not hardware and code problems. And that is
14 what he said Alain communicated to him.

15 It also -- evidence is clear both
16 Alain and Andy were aware that on the 30th and
17 31st there was going to be an audit of the
18 quality management department, their department,
19 and they both said, well, maybe the auditor will
20 find a problem. If he doesn't find them, okay;
21 if he does find them, essentially what he is
22 saying the site will fall on it's face and they

1 will be caught making these errors.

2 And so Alain says that they made
3 a decision not to do anything further about it,
4 and so it's at that level. Now, Andy -- so I
5 think this was in the Department of Labor
6 hearing days that he do not tell Pardi or
7 anybody at the site about this conversation he
8 had with Alain. That was the ALJ finding, and
9 we didn't find anything to indicate that that
10 finding was incorrect.

11 So it appears that the only one
12 who is aware of this conversation is Alain and
13 Andy. This is a significant period of time,
14 because it is in this period of time that Pardi
15 talked to Edelman and says the guys in my
16 department, nuclear, have a problem in dealing
17 with Alain, they don't have confidence in him,
18 some of the technical issues were raised, and
19 they can't rely on him. And the question that
20 Pardi says he is asking is what can we do about
21 it? Edelman, in his mind, understands that
22 Pardi does not want Alain to work on nuclear

1 projects anymore. That seems to be what the
2 record supports, as opposed to saying that Alain
3 was stripped of his nuclear duties by Pardi.

4 I mean, Pardi is essentially
5 communicating to Edelman that there is a real
6 problem here, and the way Edelman understood is
7 that he went out and looked to do some research,
8 some options. Now, what may have triggered that
9 conversation, both Pardi and Edelman said it
10 occurred in the middle of another conversation,
11 an entirely different subject, and it was a
12 reference and it wasn't the subject of a long
13 discussion.

14 Pardi says that over the period
15 of time from August until sometime in December
16 when he has this conversation with Edelman,
17 Marty Cepkauskas has talked to him approximately
18 three times questioning Alain's competence and
19 whether or not Alain is going to be able to
20 continue as the GWE for nuclear. Each time
21 Pardi has told him Alain is the GWE, Alain is
22 going to be responsible for those procedures, I

1 want Alain to review all the site's procedures,
2 and we will take it under consideration, but he
3 had made no decision.

4 Approximately December 1st,
5 sometime certainly before the 14th Cepkauskas
6 tells Pardi that Paul Evans has given his
7 notice, essentially Point Beach is winding down,
8 there is not a lot of work to do, and Paul Evans
9 has an offer from another company and he is
10 going to work. He realizes the employment with
11 MK isn't permanent. Cepkauskas called Pardi and
12 says if you are thinking about replacing Alain I
13 have got somebody here who might be good for the
14 job, it's Paul Evans, you might want to consider
15 hiring him.

16 That may have been the last
17 conversation that Cepkauskas had with Pardi that
18 Pardi says may have triggered his thought to
19 talk to Edelman about it. In fact, no offer was
20 made to Evans and he went off and went to work
21 for PCI.

22 Alain says that a significant

1 meeting took place after he returned from
2 Colorado. He claims that he had a two and a
3 half hour meeting with Pardi, was pretty
4 specific in the interview about the date. He
5 originally said that it occurred on, I believe
6 it was December 18th.

7 He was specific about the date
8 because he says that after the meeting with
9 Pardi, went down to his car pool buddies and
10 said I have just been -- Pardi has just removed
11 me from nuclear projects, I'm not working on
12 nuclear anymore. And he says he knows that is
13 why it was the date, and he checks with his
14 buddies and they were there. He said it
15 happened on an Thursday because he remembers the
16 men said to him this is a nice say to start the
17 weekend. And also there were a couple of other
18 reasons.

19 However, when we checked Pardi's
20 travel documents, Pardi was not in Cleveland on
21 that day, so it clearly wasn't that day. The
22 only day it appears that it could have happened,

1 I think could have been the 12th or could have
2 been possibly Monday, the 16th.

3 We tried to verify whether or not
4 that conversation took place because that seemed
5 to be a lynch pin in Artayet's argument that it
6 was Pardi who had removed him from his position,
7 and that was contrary to company policy. The
8 company has a security system whereas you pass
9 through the doorway to the fourth floor, your
10 badge number is picked up. We tried to utilize
11 that, and we were unsuccessful in doing that
12 because it had been such a long time frame there
13 was no requirement in the company security
14 system that they keep it and they copy over the
15 disks, so we weren't successful in that event.
16 And it wouldn't have been definitive in any way
17 if it showed he was there. If it said he wasn't
18 it didn't mean he wasn't because people come
19 through the door together, could have been up
20 there for another reason, so that was one of the
21 things we tried to do.

22 Going over the logic of it,

1 though, Alain -- first of all, Pardi denies that
2 he had a two and a half hour meeting with Alain.
3 Alain describes it as Alain being very vocal,
4 standing up, pointing out faults in the
5 procedures to Pardi, standing over his shoulder
6 talking loud, he was very excited. He became
7 very emotional in describing the conversation.
8 And that Pardi had just removed him from nuclear
9 work and his whole career had been in nuclear,
10 and this was a devastating meeting for him.

11 The logic of that was presented
12 to Alain. For instance, we did tell him that
13 the dates that he was espousing could not have
14 been the dates. He says that -- well, Pardi
15 says if I knew there was any problems in the
16 procedures I would have jumped on it. There is
17 no way Alain would have said to me there is a
18 problem in the site procedures and presented
19 them in such a way that I would have just
20 ignored that. I would have made sure that those
21 problems were corrected.

22 Pardi acknowledges having a

1 conversation with Edelman, so why he would want
2 to himself have the conversation with Alain
3 didn't really make any -- there wasn't any logic
4 to that. I asked Alain if there it was a reason
5 for it, and he really couldn't come up with a
6 grand plan of why Pardi would be doing it as
7 opposed to Edelman. And in fact Edelman did
8 have a conversation with Alain in mid December,
9 and Edelman also had a conversation with Andy in
10 mid December, and so it appears -- I mean I
11 offered to Alain that perhaps he was confused
12 about who he actually had this conversation
13 with, because essentially what Edelman was
14 telling him was that Pardi had removed him from
15 nuclear work, and Alain came very close to
16 saying that could, in fact, have been what
17 happened, that he could have been confused about
18 that. But what he said was, but then I would
19 have been mad at Drew, not mad at Pardi.

20 However, he did tell us when
21 Edelman was the one who delivered the final
22 decision on July -- January 15th, he said he was

1 not upset with Drew because Drew was only the
2 messenger, and essentially Drew did not really
3 understand the problems or what had been going
4 on.

5 MR. STEIN: I'm still very confused that
6 Drew Edelman would tell one of his own employees
7 that Lou Pardi was the one who removed him from
8 nuclear.

9 MS. COOPER: Not removing him, but saying
10 Lou doesn't want you working on nuclear projects
11 anymore, essentially those words, not --

12 MR. STEIN: And, therefore, I'm talking
13 you out of nuclear projects?

14 MS. COOPER: Edelman.

15 MR. STEIN: As your supervisor?

16 MS. COOPER: Edelman is saying the nuclear
17 projects don't want to work with you anymore and
18 so we are going to have to see what we can do
19 about this. And he says it was before Christmas
20 when he did it, and so --

21 MR. STIER: And the tape conversation?

22 MS. COOPER: I forgot. Alain secretly

1 recorded the conversation with Edelman on
2 January 15th where Drew said that you are being
3 removed. Alain told us that some of the
4 conversation would prove the Pardi had lied
5 about this mid December meeting and that it did
6 occur, and that this tape recording would, in
7 fact, support it.

8 It was the opposite. In none of
9 the conversations -- four conversation is there
10 any reference to Alain having any conversation
11 with Pardi about this. Having brought the
12 issues to Pardi's attention, having brought the
13 welding procedures to Pardi's attention, there
14 is no conversation about that at all.

15 And, in fact, in the conversation
16 on January 15th Drew starts out by saying,
17 Alain, we have to talk and Alain says about
18 what? Drew says about your position. Alain
19 says, what's going on? Drew says, well, you
20 know as well as I do that the problems began
21 back in -- you mentioned sometime in the summer
22 and, you know, I told you Lou told me -- when I

1 originally transcribed that I thought it was "I
2 told you, you told me what Loud had said."

3 Alain says it says, "I told you Lou told -- I
4 told you Lou told me what Lou had said."

5 So essentially as Alain corrected
6 my transcript, the only conversation referring
7 to Lou Pardi at all is Edelman saying back in
8 December I told you what Lou told me, and so --
9 and that is the only time there is that
10 reference to any conversation with Lou. So that
11 really supports the conclusion that it was
12 Edelman who was telling Alain that Lou had
13 problems with Alain working on nuclear projects,
14 those people were not confident in Alain
15 anymore.

16 MR. BERSON: Was Edelman in the office on
17 December 18th?

18 MS. COOPER: Edelman was in the office.
19 We have the travel records to the extent -- he
20 says he was off one day, but he doesn't know
21 which day, so essentially he was there that
22 week, yeah.

1 MS. GREENBATES: How about Pardi's
2 secretary, does she recall?

3 MS. COOPER: She recalls Alain being up in
4 the time frame sometime between Thanksgiving and
5 Christmas. She says that Alain was up on the
6 fourth floor and did speak to Lou.

7 MS. GREENBATES: Okay.

8 MS. COOPER: There is -- I asked Lou about
9 that. I said, you know, she recollects that,
10 and it would have to be after December 12th
11 because Alain was not in the office before that,
12 in Cleveland. He was essentially traveling and
13 then in Colorado. She has no recollection of --
14 I know he was up there, how long he was up
15 there. And I told Lou about that, and he, you
16 know, I offered him -- I said, you know, you
17 have two direct issues here, is there any reason
18 why you and Alain would have been talking? He
19 said, you know, it's possible that we talked for
20 a few minutes, it's possible that Alain came up
21 to me and asked me about the issue. It's
22 possible that I was saying to him something

1 about what was going on at the site. I don't
2 know. I won't say it didn't happen, but
3 certainly there was no two and a half hour
4 meeting. And I didn't tell Alain that the site
5 didn't want him to be working on nuclear
6 projects.

7 So it appears that he was up
8 there and the evidence supports that. So we
9 have this contradiction. But it's the substance
10 of the conversation, how long it lasted that
11 seems to be problematic.

12 MR. STIER: And we were not saying there
13 was never a meeting between Pardi and Artayet.
14 The question is, did the two and a half hour
15 meeting occur in which the events as described
16 by Alain took place, and was it Lou Pardi who
17 said too Alain that you are no longer on nuclear
18 projects. That is what we were looking at.

19 And we have blended two things
20 together, conversation with Edelman,
21 conversation with Pardi. But in this critical
22 conversation on the 15th you have a tape

1 recording and there is absolutely no reference
2 to this earlier direct conversation between
3 Artayet and Pardi.

4 MR. ULIE: Is there a conversation at the
5 time that Edelman was saying that Lou was the
6 one who was behind --

7 MR. STIER: I mean, clearly the
8 information that Edelman is acting on is
9 information that is coming directly from Pardi.
10 I don't think there is any dispute over that at
11 all.

12 MS. COOPER: No, I don't think so either.
13 And Edelman doesn't really understand -- I know
14 Pardi has raised some technical issues, he
15 doesn't understand the significance of those
16 issues and says that to Alain when he talks to
17 him on the 15th, January 15th.

18 Actually, that -- the part of
19 that recording that we from received from Alain,
20 Drew tends to downplay any problems with Alain,
21 and he is saying, you know, I feel bad about
22 this. And Alain is saying, well, what was it,

1 was it a personality conflict?

2 MR. STIER: We have got to get to the two
3 things, the audit and then the memorandum of the
4 14th.

5 MS. COOPER: Okay. I will just --

6 MR. STEIN: Before you start I'm going to
7 have to leave. Jim Leashman has got two
8 questions for you. He's the director of
9 enforcement.

10 MR. STIER: I know who he is.

11 MR. STEIN: Does MK know that you are
12 giving us this briefing today?

13 MR. STIER: Yes.

14 MR. STEIN: And do you know whether they
15 plan to use your finding before the
16 administrative review board for the Department
17 of Labor?

18 MR. STIER: To my knowledge they have not
19 -- they have decided to not use our findings
20 before the ALJ.

21 MR. STEIN: The ALJ?

22 MR. STIER: Before the review board in the

1 Department of Labor proceeding because of the
2 agreement that we had going into this that this
3 was going to be on a separate track from that
4 proceeding and didn't want anybody to infer from
5 anything they did that the purpose of this was
6 to try to overturn the Department of Labor
7 proceeding.

8 So, I mean, we got this -- now,
9 essentially when they get a report if there is
10 still an opportunity, I can't say that they are
11 not going to, you know, try to defend themselves
12 in that context. But right now my understanding
13 is that this report is -- or that our report or
14 our information is going to be used for two
15 purposes. One is for the company to understand
16 what kind of corrective action it needs to take
17 internally. And, two, to present this as part
18 of the record before the N.R.C. for the N.R.C.'s
19 consideration in deciding what happened and what
20 the appropriate resolution ought to be.

21 MR. STEIN: Thank you.

22 MR. CLAYTON: Is Jim going to be in

1 tomorrow?

2 MR. STEIN: No, and I'm not either.

3 MS. COOPER: Okay. The audit took place
4 -- if you look at Exhibit R there is the
5 documented audit findings of January 6th of
6 1997. While it was a review of the corporate
7 level quality management department, it was
8 because of the requirement that the PQR --
9 excuse me, the site WPSS be based on corporate
10 WPSS that was only within the audit purview to
11 look as the site WPSS.

12 In any event there were four
13 findings that are made by the audit department.
14 Three of them are with site WPSS. It's not
15 clear -- for instance, No. 3, there is no letter
16 of delegation of the WPS assigned by Paul Evans.
17 In fact, there was a delegation letter dated
18 December 5th. It was approximately a week after
19 Evans had done what it was that he was supposed
20 to have been delegated to do. It was called to
21 Alain's attention, Alain prepared the delegation
22 letter. The auditor said he was not provided

1 with that letter that would have satisfied his
2 understanding of the requirements for this audit
3 finding.

4 One of the other findings, it
5 would have been impossible for the auditor to
6 track the WPS, site WPS to the corporate WPSs
7 because the numbering system is off. So we went
8 through this with the auditor and went through
9 it with Alain and came to the understanding of
10 what it was that the auditor was looking at.

11 In any event, before the letter
12 comes in apparently Lou Pardi understands there
13 was an exit interview, that there were findings
14 regarding these site WPSs. Lou Pardi is still
15 of the understanding that Alain is responsible
16 and has reviewed all of the welding procedures
17 and is upset that there were these problems in
18 the welding -- site welding procedures and he
19 goes to Edelman than says we have to do
20 something, this is totally unacceptable. I
21 can't have problems in my welding procedures.

22 Nobody says to Pardi in this time

1 frame that Alain wasn't reviewing these welding
2 procedures, and Pardi said that if I understood
3 I would have been perhaps more upset, that if I
4 understand he had abdicated his responsibility.

5 So it's based on those verbal
6 reports that Pardi goes to Edelman and says, you
7 have got to make some resolution to this issue,
8 we need a GWE for the nuclear projects and it
9 can't be Artayet.

10 Meantime, Walcutt has assigned
11 Alain to do a review of all Point Beach welding
12 procedures. He finds some of the procedures --
13 some of the problems that are in his QFR are the
14 same problems that he received in the notice of
15 November 6th. Some of them aren't. Some of
16 them go beyond what -- some of them are problems
17 that weren't called out in the November 6th fax
18 to Rusty that were subsequently found in his
19 more thorough review.

20 He completes his QFR on January
21 14th. It's given to Pardi and Bingham on the
22 14th, and Pardi is now really upset, because

1 instead of being three problems with the WPSs
2 there is a whole bunch of them. And he is
3 saying how could this be?

4 He goes to Edelman and he says,
5 you have got to do something. In his mind
6 Edelman has sort of been delaying the process of
7 making a decision about Alain, and he is wanting
8 something done. And it's at that point that
9 they make the decision. They talk to Zarges,
10 explain to him what's going to happen. That
11 apparently is what they think should happen,
12 that occurs on the morning of January 15th.
13 Zarges agrees with them that they will give
14 Alain three months to find a position within the
15 company and carry him if he doesn't have any
16 billable time.

17 MR. CLAYTON: Did Pardi learn that Artayet
18 wasn't reviewing the WPSs?

19 MR. STIER: When we told him, wasn't it?

20 MS. COOPER: It was at least then. There
21 was a provision in the QEP for St. Lucie that
22 were drafted prior to Alain's. Actually, I

1 think it was before Alain actually left the
2 company, indicating that the GWE would approve
3 all site WPSs and Artayet -- Walcutt says to us
4 that Pardi insisted that that provision be in
5 there. But he appears to learn that Alain --
6 Alain sales that Pardi didn't know about it even
7 as of the hearing. He said clearly as of the
8 hearing, this is in June, that he didn't
9 understand that he wasn't responsible for
10 reviewing those procedures.

11 MR. ULIE: What was his testimony to you
12 two regarding the Point Beach deficiencies that
13 you just mentioned? What did he say about it?

14 MS. COOPER: Unacceptable. He said I
15 wanted our welding procedure to be flawless, and
16 I was furious. He said it was incomprehensible
17 to me, that we have all these problems in our
18 site welding procedures and our group welding
19 engineer didn't catch them. And he said he felt
20 that way when he read that information, and it
21 was on the 14th that he read that.

22 It was actually a final draft that he

1 got on the 14th, and that is the way he felt on
2 the 14th. He says he spoke to Edelman on the
3 14th.

4 MR. ULIE: And when he spoke to you in
5 your testimony was he very clear on this -- on
6 that point?

7 MS. COOPER: That he was upset about that?
8 Oh, yes.

9 MR. ULIE: That he read this and was very
10 upset?

11 MR. COOPER: Yeah. There is -- the time
12 is the 14th, 15th, and, I mean, there is no
13 question that there is a sequence there that
14 would create the impression that it was based on
15 these errors. And, in fact, it was. I mean, it
16 was based on the fact there were errors in the
17 procedures.

18 But it's Lou -- it's his
19 understanding that they are Alain's fault and
20 Alain is appearing -- Alain and Andy, when they
21 made the decision back in mid December not to do
22 anything and not to tell anybody about these

1 procedures and not raise them, not surface that,
2 if they -- the site auditors, if the independent
3 auditor finds them, fine; if they didn't, fine.
4 And that was the view that they took towards it.

5 The same day Edelman tells
6 Walcutt what the decision is and says I'm going
7 to be delivering the message to Alain at 1:00.
8 Alain keeps saying it was 10:00 o'clock in the
9 morning on the tape, that's why we know the
10 time. Alain -- Drew Edelman said to Alain that
11 you are no longer going to be group weld
12 engineer and explains to him the process. And
13 it's in that conversation that he says, I told
14 you Lou told me in December, and the basis for
15 it.

16 He really doesn't talk a lot
17 about technical deficiencies. He says he didn't
18 hear a lot of that, and he is very -- you know,
19 very definitely soft regarding the technical
20 areas, No. 1, because he didn't understand them
21 very well and he acknowledged to us that he
22 doesn't understand welding. And he said when

1 Alain started talking welding I just -- you
2 know, he said I put my hands up and said stop,
3 because I don't know what you are talking about,
4 I just don't understand that.

5 One of the things I noticed,
6 though, I think that it would have been -- not
7 that Alain was unaware that there was problems
8 with his performance, because that apparently
9 was made known to him by Bingham, and then the
10 whole process, he started writing the deficiency
11 memos concerning -- I think the one point Andy
12 in December said something to him about you, and
13 he said he was aware that this was under
14 consideration, but no one actually sat down with
15 Alain and said it was at least that, we have
16 been able to determine it was because of your
17 lack of technical knowledge, your inability to
18 get the procedure qualification done on time,
19 and actually confronted him with the issues of
20 why Pardi had lost -- Pardi's group had lost
21 confidence, why they didn't feel he could
22 continue as group weld engineer

1 MS. GREENBATES: Is that usual at MK, when
2 you take someone out of a position not to
3 specify --

4 MS. COOPER: We talked about whether or
5 not there were procedures for how to notify
6 someone of the basis for the removal.
7 Essentially Alain is an employee at will within
8 the company, and there really aren't any
9 procedures for what should be done.

10 I asked both Alain and their
11 human resources person about that. They said
12 they have, you know, procedures against
13 discrimination and letting people go for the
14 wrong reasons, but not specifically that a
15 person should be informed of X, Y and Z and why
16 they are being let go.

17 And Edelman did have enough
18 information. He could have said, you know, they
19 were dissatisfied with what you did in the
20 qualification process, but if you listen to the
21 tape he is simply saying I feel bad about this,
22 it just didn't work out, there was a lack of

1 trust on the part of the site, you know. So he
2 does mention it, but not -- it's not laid out,
3 at least in the part of the tape, you know,
4 assuming that the tape is a whole tape of the
5 conversation.

6 That afternoon Alain pulls out
7 the D.C. Cook book of 14 procedures and other
8 procedures and he says to Walcutt, I think we
9 have the same problems at D.C. Cook that we had
10 the Point Beach. And he says that is -- this is
11 the way he described it, I opened it up, looked
12 at the first procedure, which is the very first
13 procedure you have here, and I could tell right
14 away that -- he said he could tell right away,
15 as good as I am, that this procedure was used on
16 the main steam and feed water, a Charpy was
17 required, that this PQR did not support this
18 WPS, and I told Andy about that.

19 Andy said as soon as Alain picked
20 up the procedure he said we have the same
21 problems at Point Beach that we have problems at
22 D.C. Cook, and he goes here, here and here. And

1 it was this procedure for the use of E7018
2 versus E7018-A1.

3 Andy says that Alain convinced
4 him that there was a PQR that would support the
5 procedure, in effect, because that procedure had
6 been qualified for D.C. Cook. Alain -- Andy
7 says, I did not think based on what Alain had
8 told me that there was a hardware problem. My
9 immediate concern was to go out and resolve the
10 QFR, which he did. He went to the site for a
11 week and responded to the problems in the QFR
12 and prepared a response to that.

13 When he came back on January 22nd
14 he and Alain had a meeting. As you see on
15 January -- I believe it's the 20th. I have the
16 date, it says January 20th, so Alain spoke to an
17 attorney. He wanted to know if he could sue the
18 company based on his removal on the issue of
19 retaliation.

20 He says that -- he provide us
21 detailed notes about this, that the attorney had
22 told him that he did not have sufficient

1 evidence to prove he had been retaliated against
2 by the company, that there was sufficient
3 legitimate basis for him that the company would
4 prevail on that issue, for him to be relieved.

5 Then on the 22nd of January Alain
6 writes the memo that you have in your last
7 exhibit, Exhibit T. On the day before that
8 Alain has two conversations with Walcutt.
9 Walcutt has returned from the site. The initial
10 conversation is recorded. Alain says he was
11 trying to get Andy to admit that Alain was
12 removed from the GWE position because he had
13 completed the QFR, and Andy does not acknowledge
14 that that was the reason.

15 There is a conversation that
16 evening which is referred to in the memorandum,
17 January 22nd, that is supposedly the memorandum
18 about the D.C. Cook procedures. Alain did not
19 provide a tape recording of that conversation,
20 and he says he did not because he didn't realize
21 that anything significant was going to occur.

22 However, Alain did tell us that

1 he at this point had asked Andy about the
2 problems in D.C. Cook procedures. There was a
3 dispute between the two of them of who had put
4 the D.C. Cook procedures on whose desk, whether
5 Andy had said to Alain look at these D.C. Cook
6 procedures and see if there are any problems in
7 them since they were the same people involved,
8 or Alain had said to Andy there are the similar
9 problems.

10 I didn't understand the
11 significance of that, and I said to Alain, what
12 is the significance of who initially said look
13 at the D.C. Cook procedures, because it seemed
14 to me it wouldn't be a bad idea to just take a
15 second look again. The fact that they had the
16 same people involved and you had so many
17 problems.

18 It's not clear, the tape
19 regarding of the conversation doesn't really
20 shed a lot of light on it, but this memorandum
21 is the memorandum in which Alain finally says
22 the use of E7018-A1 does not support the welds

1 because the welds were done with E7018, and says
2 at the time the welds were put in they were not
3 qualified.

4 And in the QFR which Alain had
5 completed on January 14th, there were issues
6 raised about the very procedures that supported
7 the WPS and D.C. Cook, so Alain said to us that
8 he had done no research to determine between
9 January 15th, when he says he first discovered
10 the problem, and January 22nd. He said he had
11 done no research to determine whether or not
12 these procedures were available to support the
13 welding. And he says that he essentially had
14 forgotten the PQRs that he had reviewed the week
15 before, that they were using E7018 both in the
16 post-weld and in the non post-weld heated
17 condition.

18 So the way he presents this
19 memorandum it makes it sounds and if the welds
20 still are unqualified, and -- however, when
21 Artayet -- and then he initiated the Part 21
22 check list on the 23rd.

1 Walcutt did the research, asked
2 -- there were apparently these PQRs were brought
3 forward to support the welds.

4 As he had said in the earlier
5 point, the relevance of this just essentially
6 could go to Alain's competence, and it could go
7 to his -- because he had these procedures in his
8 hand certainly as of June 15, 1995. If he
9 didn't observe them and he was looking at them,
10 then that might be an issue. And then the other
11 issue is to his credibility.

12 But essentially what we have
13 found as we said earlier is that the evidence
14 did support that there was a basis for at least
15 a belief on the part of management, a legitimate
16 belief that Alain did not understand the code
17 requirements which were necessary for resolving
18 the qualifying procedures and that he had not
19 devoted significant attention and time to
20 planning and conducting the qualification of the
21 procedures, which was his main -- the main
22 nuclear project he had been asked to complete

1 since he came to St. Lucie.

2 And so it was that information
3 that came up through management starting back in
4 August, not in December or not in January as
5 Alain said. So it would appear that there would
6 be a legitimate basis for them to question his
7 competence and basis for removing him for
8 legitimate purposes as opposed to retaliation.

9 MR. STIER: The other thing is, we have
10 gone back and reconstructed the decision making
11 that led to his transfer on February 8th to
12 Parkersburg, and our conclusion is that that was
13 on a separate track and not affected by the
14 preparation of the proposed Part 21.

15 Let me just say a couple of
16 things, because we have just run out of time and
17 we need to leave. I realize we have presented
18 you with a lot of information, a lot of
19 inferences that we have drawn from evidence,
20 some of which may be in conflict with inferences
21 that you have drawn from the body of evidence
22 that you have looked at.

1 I obviously haven't -- I don't
2 know everything that you have looked at and so
3 there may be evidence that needs to be
4 reconciled with what we have collected. I would
5 suggest that we have been very careful to base
6 what we have said on what we understand from the
7 record that we have compiled.

8 And what I would suggest is that
9 you take a look at that in some way in which you
10 can reasonably digest it so that you can see
11 whether what we have collected and looked at has
12 any affect on, you know, your judgment, based on
13 the evidence that you have seen.

14 MR. CLAYTON: Any last-minute questions?

15 MR. WEIL: Yes. If the company lacked
16 confidence in Artayet as group welding engineer,
17 why would they send him on to another project as
18 a site welding engineer? That perplexes me.

19 MS. COOPER: I don't think he was a site
20 welding engineer. It was up to the project to
21 accept him. Requirements were not as stringent,
22 there weren't really any complaints from the

1 project, the person who -- he was actually a
2 supervisor, I believe, and he was -- so he
3 wasn't acting as a welding engineer.

4 MR. STIER: Just management
5 responsibility.

6 MR. WEIL: My mistake then.

7 MR. STIER: And you have got to remember
8 that, you know, the problems are coming from or
9 the criticisms or concerns are coming from the
10 nuclear group and basically. He's viewed by
11 them as somebody who provides support services
12 to them, and, you know, they are expressing
13 their concerns based on what we have described
14 to you here. And so the company decided, well,
15 we can't use him over here, maybe we can use him
16 in another part of the company in a construction
17 management role.

18 MR. CLAYTON: Did you determine whether he
19 had provided any services to the Parkersburg
20 office before?

21 MS. COOPER: Yes, he did.

22 MR. BERSON: Just a quick one: Events on

1 January 20, 22, 23, Part 21, discussion with the
2 attorney. Did you draw some kind of inference
3 from that that this whole business with the Part
4 21 are somehow related to him trying to put
5 himself in a favorable position in anticipation
6 of litigation over this, or --

7 MR. STIER: I'm not entirely sure how to
8 fold that into the analysis of the issues that
9 we are resolving. We decided to put it -- you
10 know, to lay it out, because I think it does
11 have some affect on your -- on our overall
12 assessment of his credibility.

13 I mean, we don't make credibility
14 determinations based on observations of people
15 or impressions. We try to do it based on what
16 we find in the record and what they say, if
17 there is conflicts or is inconsistent with other
18 evidence.

19 I do think that you could draw an
20 inference from what we have seen about that
21 proposed Part 21, that he was aware of the
22 problem previously, that he didn't do anything

1 about that. By the time he did raise the issue,
2 the problem was not as serious as he understood
3 it to be previously, because there had been a
4 PQR created to support it, and he had reviewed
5 it a week before.

6 He said the Part 21 -- that he
7 didn't explain that in describing the problems,
8 and that his motive was to position himself in a
9 legal sense with respect to the company. Now,
10 I'm not sure what to make of that in the context
11 of the issues that we are trying to resolve, and
12 I don't want to -- I mean, the question is
13 whether there was a causal connection between
14 the company making the decision to transfer him
15 to Parkersburg and the proposed Part 21.

16 Nobody in the company at the time
17 when he issued the proposed Part 21 knew that he
18 had -- I mean the decision makers, the top
19 management decision makers did not know about
20 his earlier involvement with those issues. And
21 so I'm not suggesting that anybody said, oh, my
22 goodness, this guy knew about it before, never

1 said anything, and now all of a sudden he raised
2 it, and that is the reason we are going to do
3 this. That is not the case.

4 MS. GREENBATES: Were there any
5 similarities to the H & I case that involved Mr.
6 Pardi earlier -- I believe you investigated that
7 also -- that we should be aware of?

8 MR. STIER: Well, you mean the Fort St.
9 Vrain situation? That situation, first of all,
10 to my recollection Pardi was not directly
11 involved in it. It was a set of conditions that
12 occurred at the site. We did find that there
13 was an atmosphere of intimidation that existed
14 at the site. We did conclude, however, that the
15 top MK management at the site hadn't
16 intelligently created that set of conditions,
17 but that it had occurred as a result of the
18 conduct of mid level MK managers who had taken
19 acts of -- that appeared to be retaliation that
20 just spread through the whole organization and
21 suggested to people that MK doesn't want to you
22 raise concerns.

1 So I think we got to the root
2 cause of the problem, and those cases occurred
3 at a level lower than corporate headquarters
4 back in Cleveland.

5 MR. CLAYTON: I didn't hear any indication
6 in the present case that you identified a chill
7 effect or intimidation atmosphere, not to raise
8 concerns. Is that --

9 MR. STIER: We haven't -- I mean, the
10 company asked us to take a look for that. I
11 mean, not to investigate that as a separate
12 issue but to be very sensitive about that, and I
13 think they are increasingly concerned about it.

14 In my conversations with Lou
15 Pardi and Edmister they keep raising that issue,
16 and I say to them what I am about to say to you.
17 We did not see any indications among the people
18 that we interviewed that there was any sort of a
19 pervasive feeling, chilling effect as I now
20 understand it among employees.

21 However, you have got to remember
22 that they are not staffed up to do a nuclear

1 project at the moment, so these people are sort
2 of spread to the four winds. But the people who
3 would -- people who had been at the site at
4 Point Beach probably have a very different
5 perspective on why the decision was made to
6 remove Artayet because that is what they wanted
7 to happen, and they -- you know, they see, you
8 know, their experience was all of this and so
9 they don't -- they don't see his removal as an
10 act of retaliation, they see it as a result of
11 recognition by management that he wasn't doing
12 the job they expected him to do.

13 So there may be some people, I
14 think, that the company may want us to do a more
15 systematic -- take more of a systematic look at
16 the attitudes of employees at corporate
17 headquarters perhaps to see what their
18 impressions are and whether there is any
19 residual effect.

20 And I have talked to them about
21 some discussions about what they can do to make
22 sure that in the events that there are people

1 who feel that way they have got channels of
2 communication. And they understood, you know,
3 that the company wants them to express
4 themselves.

5 MR. CLAYTON: Well, if there are no
6 further questions, in closing let me say thank
7 you for coming today and presenting your
8 preliminary findings to us. We will take into
9 consideration the information as you provided.
10 We look forward to getting your full report when
11 you have finished and all the exhibits that
12 support that.

13 And I will just reiterate one
14 last time it was a predecisional meeting. We
15 haven't reached an enforcement decision and we
16 will not for some time yet.

17 MR. STIER: Okay. And let me just add one
18 thought for your consideration. If in the
19 interim while we are preparing our report there
20 is any of the evidence that you would like to
21 see for any reason you know it's available to
22 you.

1 MR. CLAYTON: Thanks.

2 MR. STIER: You don't have to wait until
3 we finish our report.

4 (Which were all the
5 proceedings had and
6 testimony taken in the
7 above-entitled matter at the
8 time and place aforesaid.)
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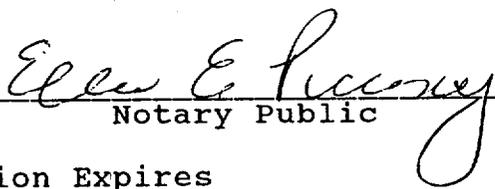
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STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

I, ELLEN E. PICCONY, a Notary Public
duly qualified and commissioned for the State of
Illinois, County of Kane, do hereby certify that
at the request of THE NUCLEAR REGULATORY
COMMISSION, subject to the usual terms and
conditions of County Court Reporters, Inc.,
reported in shorthand the proceedings had and
testimony taken at the meeting in the
above-entitled cause, and that the foregoing
transcript is a true, correct and complete
report of the entire testimony so taken at the
time and place hereinabove set forth.



Notary Public

My Commission Expires
May 15, 1999.

<p style="text-align: center;">-*-</p> <p>'87 [1] 149:22 '88 [1] 247:16 '89 [1] 176:11 '91 [2] 198:16 201:2 '94 [1] 108:13 '95 [3] 176:11 245:8 247:18 '96 [2] 120:7 323:22 '97 [1] 30:21 's [1] 353:18</p> <hr/> <p style="text-align: center;">-1-</p> <p>1 [10] 60:8 139:3 140:2 238:6 271:5 272:20 285:19 298:9 307:8 360:20 10 [11] 130:7 168:7 191:5 212:18 215:18 284:19,20 285:14 294:19 309:7 328:2 10,000 [3] 7:18 27:12 28:9 1050 [2] 179:12,14 1053 [1] 179:14 10:00 [1] 360:8 10th [2] 264:14 277:21 11 [11] 248:5 264:16 271:3 271:5 284:16,17 285:14 285:16,18,20 298:9 114 [2] 199:10,13 115 [1] 199:13 116 [1] 199:14 11th [2] 76:12,15 12 [7] 60:11 149:18 212:18 248:5,5,5 292:15 120 [1] 274:11 12th [6] 64:10 278:18 285:2 336:20 343:1 349:10 13th [4] 264:10 287:3,6 331:1 14 [4] 149:19 212:2 334:6 363:7 14th [19] 65:4,18 67:4 80:2 185:8 278:19 282:8 285:2 311:3 341:5 352:4 356:21,22 358:21 359:1,2 359:3,12 367:5 15 [7] 8:9 33:6,14 65:3 252:7 368:8 379:21 150 [1] 200:22 15th [21] 61:21,22 65:10 65:18 80:1 129:18 296:9 328:17 330:14,18 331:10 336:12 345:22 347:2,16 350:22 351:17,17 357:12 359:12 367:9 16 [3] 104:16 297:4 302:16 16th [12] 6:1 60:13 61:2 61:21 62:1 64:10,15 296:10 297:14 303:10 337:6 343:2</p>	<p>17 [1] 279:11 17th [10] 276:8 279:11 303:11 306:18 307:1 308:14 309:5,15 325:4 328:5 180 [1] 91:11 18th [3] 309:6 342:6 348:17 19 [2] 183:1 243:8 1975 [2] 147:11 152:22 1982 [1] 8:22 1983 [1] 191:7 1988 [12] 95:2 148:6 149:22 150:6 152:22 153:11 154:6 155:9 176:11 177:16 186:13 191:8 1989 [4] 186:14 244:21 245:7,16 1991 [6] 144:2 156:5,8 189:15 191:5 201:13 1992 [5] 109:2 151:1 156:1,9 202:5 1993 [6] 176:14 202:15 203:6,19 205:21 294:15 1994 [2] 176:11 252:7 1995 [13] 176:13 177:19 205:21 232:3,21,21 235:1 235:16 243:8 244:13 246:12 260:9 368:8 1996 [13] 105:9 129:10 158:14 188:18 232:4 233:22 234:3,7 245:7 271:19 297:4 302:16 327:18 1997 [13] 30:10 35:22 50:16 60:11 65:3 158:18 183:1,21 234:5 239:12 242:21 243:6 354:6 1998 [1] 1:7 1999 [1] 379:21 1:00 [1] 360:7 1st [4] 121:9 222:13 294:4 341:4</p> <hr/> <p style="text-align: center;">-2-</p> <p>2 [17] 43:10,17 60:7,9 140:2 184:10 192:12 200:16 254:1 264:20 265:5 267:8 271:21 272:20 274:21 294:16 297:4 2.1 [1] 252:9 20 [1] 372:1 200 [1] 219:14 20th [12] 271:1,7 276:5 284:5,14 285:18 286:5,11 286:15 310:1 364:15,16 21 [32] 68:7 69:3,5,12,13 69:17 131:2,5,10,15 132:5 164:4 180:19 182:22 183:1,22 185:4 207:8 236:5 247:11 264:4,17 285:11,12 367:21 369:14 372:1,4,21 373:6,15,17 22 [1] 372:1</p>	<p>22nd [4] 364:13 365:5,17 367:10 23 [3] 200:16,17 372:1 23rd [4] 309:7,20 310:3 367:22 24 [2] 292:14 297:8 25 [2] 24:10 226:16 26th [2] 310:2,8 27 [1] 35:22 28 [1] 271:19</p> <hr/> <p style="text-align: center;">-3-</p> <p>3 [13] 140:3 179:14 184:10 184:11 192:12 205:17 238:9 267:8 294:15 307:8 309:7 329:11 354:15 30 [4] 32:17 185:16 187:1 187:21 30th [4] 325:13,16,17 338:16 31st [1] 338:17 35 [1] 8:20 3A [1] 307:9 3rd [1] 329:1</p> <hr/> <p style="text-align: center;">-4-</p> <p>4 [1] 294:16 40 [1] 297:10 400 [1] 219:14 45 [1] 124:9 4th [8] 277:13 286:2,21 286:22 323:20 326:2 328:19 329:16</p> <hr/> <p style="text-align: center;">-5-</p> <p>5 [4] 271:21 297:4 307:3,9 5/2 [1] 271:20 517 [1] 42:10 55 [1] 328:1 5A [1] 307:9 5th [3] 294:4 312:11 354:18</p> <hr/> <p style="text-align: center;">-6-</p> <p>6 [4] 139:3 265:10 308:1,4 60 [1] 154:7 6th [5] 312:12 335:21 354:5 356:15,17</p> <hr/> <p style="text-align: center;">-7-</p> <p>7 [3] 265:10 307:3 309:6 7/15 [1] 295:12 7/17 [3] 299:1 302:2 307:18 7/18 [2] 307:15,18 7th [3] 264:3 330:16 336:19</p> <hr/> <p style="text-align: center;">-8-</p> <p>8 [1] 50:16 80 [1] 154:8</p>	<p>800 [1] 219:12 801 [1] 1:12 8th [10] 47:14 51:17 52:15 52:17 68:6 131:4 281:20 306:6 323:1 369:11</p> <hr/> <p style="text-align: center;">-9-</p> <p>9 [2] 1:7 238:5 9.2.1 [2] 255:8,17 9.2.5 [1] 255:12 90 [1] 215:16 95 [1] 8:17 9:00 [1] 1:8 9th [1] 264:14</p> <hr/> <p style="text-align: center;">-A-</p> <p>A-1 [1] 307:9 A.M [1] 1:8 abberational [2] 95:6 199:1 abdicated [1] 356:4 abide [1] 260:11 abided [1] 51:19 abilities [1] 221:10 ability [6] 33:1 121:1 167:14 211:15 223:14 320:16 able [38] 10:8 16:5 17:9 19:18,19 22:11 34:17 38:1 143:5 156:13 157:22 159:20 170:8,20 180:13 180:15 181:5 187:11 197:18,20 201:14,15 208:10 217:13 224:2 225:13 226:8 238:11 251:14 254:19 275:22 286:14 290:1 293:18 296:22 308:11 340:19 361:16 above [1] 14:10 above-entitled [3] 1:11 378:7 379:11 absolute [1] 333:20 absolutely [11] 17:10 70:13 98:10,10 102:1 111:17 187:9 205:13 248:6 251:21 351:1 absorb [2] 14:5 167:19 absorbed [1] 156:12 acceded [1] 254:13 accept [16] 22:7 27:9 48:18 54:2 70:5,7,14 94:8 98:9 99:11 100:17 109:7 182:9 290:9 305:20 370:21 acceptable [6] 194:3 263:3,14 273:19 335:17 336:9 accepted [8] 28:7 89:13 93:1 153:11 155:6 212:21 243:21 308:22 accepting [1] 78:12 accomplish [1] 143:13 accomplished [1] 270:19</p>	<p>accordance [4] 112:19 238:5 265:9 272:21 according [19] 147:10 181:2 201:10 206:15 207:13,20 217:17 220:5 239:17 242:7 252:22 258:11 273:12 274:12 286:4 288:3 312:16 314:22 315:1 account [1] 71:8 accountable [8] 9:15,20 41:7,9 59:17 92:3 102:2 219:2 accuracy [4] 34:15 160:22 169:18 191:4 accurate [10] 25:3 27:1 32:2 75:17 88:7 125:21 246:16 253:15 259:10 287:2 accurately [3] 135:9 292:1 329:9 accuse [1] 55:4 accused [1] 91:2 acknowledge [4] 95:15 275:18 276:18 365:13 acknowledged [18] 181:16 182:19 200:8 204:2 253:3 254:17 281:19,22 290:4,5 291:2 291:9 304:19 311:11 326:16 327:6 337:2 360:21 acknowledges [2] 256:19 344:22 acknowledging [1] 265:12 acquaint [1] 278:15 acquired [1] 8:19 act [5] 52:20,22 61:5 321:2 376:10 acting [2] 351:8 371:3 action [22] 22:19 29:10 29:11 51:2 76:17,21 77:6 77:18 104:5 110:7,15 118:9,12,20 121:11 126:12,19 144:8,9 218:4 248:20 353:16 actions [5] 103:3 104:14 126:4 137:7,12 activated [1] 142:8 activities [1] 5:9 activity [2] 38:11 53:1 acts [1] 374:19 actual [10] 150:12 158:13 160:20 162:3 224:6,7 265:20 269:2 272:6 325:9 adamant [3] 170:9 251:19 333:4 adapt [1] 43:22 add [6] 25:19,20 101:9 331:3 332:4 377:17 added [2] 307:8 332:11 adding [2] 168:7 190:20 addition [2] 51:14 320:6 additional [4] 192:12 194:18 197:17 287:9</p>
--	--	--	---	--

<p>address [3] 5:17 146:10 215:3</p> <p>addressed [2] 293:22 326:13</p> <p>addresses [1] 326:2</p> <p>addressing [1] 326:6</p> <p>adequate [7] 43:2 87:19 92:3 223:14 276:1 277:9 322:12</p> <p>adhere [2] 48:6 173:6</p> <p>adhering [1] 308:3</p> <p>administration [1] 210:17</p> <p>administrative [4] 29:11 127:7 233:10 352:16</p> <p>administrator [1] 233:1</p> <p>admired [1] 181:2</p> <p>admit [1] 365:11</p> <p>adopted [1] 338:7</p> <p>advance [1] 25:22</p> <p>advantage [1] 154:20</p> <p>adversarial [1] 78:12</p> <p>adverse [6] 51:2 61:20 63:11 64:16 137:6 218:4</p> <p>advertised [1] 221:2</p> <p>advice [7] 24:22 109:5 159:16 217:4 290:10 311:8 327:14</p> <p>advised [2] 78:10 277:22</p> <p>advocacy [1] 39:1</p> <p>advocate [1] 39:14</p> <p>advocates [2] 6:16 39:6</p> <p>affect [5] 70:13 130:21 144:22 370:12 372:11</p> <p>affected [3] 169:8,9 369:13</p> <p>afford [1] 220:15</p> <p>aforesaid [1] 378:8</p> <p>afraid [1] 221:22</p> <p>afternoon [2] 309:14 363:6</p> <p>again [23] 16:3 58:19 59:3 59:10 83:2 115:21 117:11 132:21 139:19 149:10 150:18 169:16 173:5 191:8 207:21 238:10 263:17 264:21 272:13 287:16 336:7 338:2 366:15</p> <p>against [17] 9:16 33:17 38:10 48:9 51:3 52:21 103:4 104:6 110:7 118:20 126:4 144:7,8,9 240:14 362:12 365:1</p> <p>agency [2] 78:8 227:9</p> <p>ago [3] 28:16 124:2,6</p> <p>agree [6] 18:15 27:6 35:2 85:5 234:15 268:21</p> <p>agreeable [1] 263:7</p> <p>agreed [9] 44:5 92:20 121:21 141:7 187:12 196:8 233:4 254:12 268:17</p> <p>agreement [6] 94:13</p>	<p>100:21 122:4 250:17 259:1 353:2</p> <p>agrees [4] 123:14 154:1 316:12 357:13</p> <p>ahead [14] 6:4 82:18 144:19 147:22 149:13 155:19 174:16 182:15 183:19 194:7 206:5 233:17 240:16 324:1</p> <p>aids [1] 137:19</p> <p>aimed [1] 38:21</p> <p>air [1] 185:21</p> <p>Alain [438] 19:4 20:9,12 20:14 21:17,18 31:13,19 47:15,19 53:5 91:17 93:8 95:10,21 96:21,22 97:7 98:21 99:6,9,10 100:5,15 100:19 109:3,15,21 117:14 121:19 134:8,22 136:8,9 137:4,6 138:1 145:6 146:21 153:10 154:22 155:12 156:2 158:5,21 160:5 168:21 170:20 171:12 172:8 174:13 177:4,16 178:5,17 180:7,7,13,15,17 181:2,5 181:8,20 182:6,10,14,15 182:16,19,22 184:1 185:1 185:14,19 186:11,11,14 186:14,21 187:13 188:18 189:3,18 191:9 192:12,19 193:1,6 194:14 196:8,11 196:18 197:2 199:15 201:10,21 202:7,7,9,15 202:17,20 203:2,5,6,18 203:20 204:2,7,8,11,22 205:7,15,21 206:17,18 207:7,14,16 208:3,8 209:1 211:10,19,22 212:8,14 213:1,3,8,12 214:5 216:13 216:18,19 217:4 220:19 221:4 222:18 223:7,16 225:18 226:14 228:12 235:2,2,6,14 236:2,7,21 237:16,18 238:16,17,18 239:4,12,13,17 240:21,21 243:11 244:1,13,17 246:13,17 249:6 250:13 250:22 251:1,12,15,17,17 252:5 253:10,10 254:3,5 254:6,12,13 256:4,12,14 257:16,18 259:15 260:4,5 260:18 261:5,7,10,11,19 263:21 264:10,13 267:2 268:6,12,17 269:13,16,19 269:21,22 270:3,5 271:1 271:7,10,20,21 273:3,11 273:16,17,20 276:7,11 277:8 278:18 279:8,11,14 279:18,22 280:18 281:15 283:5,5,22 284:7,8,21 285:12,13,22 286:11 287:15 288:14 289:8,21 290:4,8 291:9,20 293:3,6 293:17,20 294:3,18 295:13,14,19 296:3,19,22 297:7,15,21 298:17,17 299:4,15 301:2 302:6,21 303:5,10,11,14,22 305:15 306:7,20 307:8,12 308:15 309:1,16,20,22 310:5,7 310:12 312:16,21 313:5,5 313:13,15,18 314:17</p>	<p>315:5,7,8,10,11,18,18 316:12,20 317:13,17 318:1,15 319:21 320:12 322:16,16,18,20 323:1 324:14,15,20,22 326:13 326:16 327:6,19 328:7,7 328:10,10,20 329:1,15,16 329:17 331:2,6,15 332:15 333:11 334:4 336:1,2,16 337:14 338:14,16 339:2,8 339:12,17,22 340:2,19,21 340:21 341:1,12,22 344:1 344:2,3,3,12,17 345:2,4,8 345:11,15 346:22 347:3 347:10,17,17,18 348:3,5 348:12,13,14 349:3,5,11 349:18,20 350:4,16,17 351:16,19,20,22 354:21 355:9,15 356:1,11 357:7 357:14 358:1,5,6 359:20 359:20 360:7,8,10,10 361:1,7,15 362:7,10 363:6 363:19 364:3,6,7,14,16 365:5,8,10,11,18,22 366:5 366:8,11,21 367:4,7 368:16 369:5</p> <p>Alain's [51] 109:7 137:12 158:15 159:5,5 161:6 174:14 182:5 184:17 187:17 193:18 194:10 195:9 206:14 216:16 217:1 221:10 227:5 233:15 234:21 235:10 240:13 243:22 244:4 253:17,18 266:2 268:1,10 283:20 303:18 307:21 309:12 311:6 320:8,14,16 321:8 323:21 326:1,5 328:21 334:11 335:3 336:14 338:10 340:18 354:21 357:22 359:19 368:6</p> <p>Alain-Rusty [1] 331:13</p> <p>Alan [2] 24:14 334:13</p> <p>alarmist [1] 178:22</p> <p>ALJ [21] 43:13 49:4,21 52:11 55:7 65:20 79:10 79:11 80:18 81:2 83:2 84:6,8 88:5,14 127:19 128:9 316:16 339:8 352:20,21</p> <p>ALJ's [3] 127:22 128:7,9</p> <p>allegation [1] 68:5</p> <p>allegations [4] 11:15 37:3 49:18 52:21</p> <p>alleged [1] 52:19</p> <p>allowed [2] 197:3 282:2</p> <p>almost [6] 47:7 86:22 116:12 124:8 137:13 277:21</p> <p>along [10] 17:6 78:10 136:16 190:22 203:19 208:5 211:15 213:19 254:18 291:9</p> <p>always [18] 74:12,19 121:21 134:18 135:15 140:2 146:9 149:3 156:19 159:17 188:2 244:9 253:2 253:5,5,20 261:10 304:3</p> <p>amassed [1] 7:17</p>	<p>amazing [2] 75:1 78:7</p> <p>ambiguities [1] 40:11</p> <p>ambiguity [3] 171:16,21 204:9</p> <p>among [4] 152:10 294:6 375:17,20</p> <p>amount [7] 46:9 193:13 208:13 228:15 270:20 331:3 334:12</p> <p>amps [1] 165:20</p> <p>Amsalone [3] 30:11,14 30:17</p> <p>analyses [1] 33:4</p> <p>analysis [15] 20:1 28:14 29:3 42:1 53:16 127:11 128:7 132:22 137:14 154:5 155:19 178:4 247:6 294:1 372:8</p> <p>analytical [2] 15:2 28:12</p> <p>analyze [6] 10:16 27:4 33:5 82:2 172:21 240:9</p> <p>analyzed [2] 71:15 125:15</p> <p>analyzing [2] 82:14 293:12</p> <p>Anderson [2] 3:15,17</p> <p>Andrew [1] 317:16</p> <p>Andy [68] 62:12,12,21,21 68:14 90:8 107:16 109:16 129:4,7 143:11 144:7 152:7 156:5 182:4 184:2 206:13,15 209:19 211:9 213:12 214:3 228:10 231:22 233:4,5 253:10,11 254:12 266:18 276:4 280:19 291:5 310:6 312:16 313:15 314:22 317:18,19 319:2 326:5,9 328:8,18 329:15 331:7,14 331:18 333:5,6 338:4,6,9 338:16 339:4,13 345:9 359:20 361:11 363:18,19 364:3,6 365:11,13 366:1 366:5,8</p> <p>Andy's [2] 291:8 302:21</p> <p>angle [2] 163:1,1</p> <p>annoyance [2] 296:5 313:18</p> <p>ANSI [3] 184:3,15 242:8</p> <p>answer [4] 164:20 200:14 234:18 288:2</p> <p>answered [1] 147:9</p> <p>anticipated [3] 224:9 270:17 290:13</p> <p>anticipates [1] 72:8</p> <p>anticipating [1] 79:1</p> <p>anticipation [2] 189:9 372:5</p> <p>anybody's [1] 102:16</p> <p>anyway [3] 135:16 332:12 335:12</p> <p>apart [1] 167:9</p> <p>apparent [3] 107:10 196:5 312:14</p> <p>appear [5] 154:20 171:20 277:5 328:4 369:5</p>	<p>appeared [7] 53:7 81:5,8 108:21 109:10 186:20 374:19</p> <p>appearing [1] 359:20</p> <p>Appendix [1] 173:17</p> <p>appetites [2] 122:6 130:2</p> <p>applicable [2] 179:19 194:19</p> <p>application [12] 162:14 166:22 180:14,16 193:8 193:11 230:11 231:14 239:19 241:11 243:6 266:6</p> <p>applications [15] 116:14 167:12,20 188:13 192:15 194:2,18 195:1 201:9 229:22 230:10 231:10 236:12 237:2 240:8</p> <p>applied [3] 115:5 229:15 241:20</p> <p>apply [3] 43:21 85:3 226:20</p> <p>appraisal [12] 106:8,12 209:11,13 211:18 227:22 228:6 231:18,20 232:13 234:19 313:22</p> <p>appraisals [7] 114:6 159:5 228:13 229:4 232:9 233:8 234:5</p> <p>appreciate [2] 3:8 133:16</p> <p>approach [1] 10:4</p> <p>appropriate [8] 16:16 29:10 54:2 94:11 145:11 210:22 336:5 353:20</p> <p>appropriately [1] 81:8</p> <p>approval [31] 91:20 93:9 96:2,5 97:2 98:7 99:5 150:7,8 151:9 152:16 223:21 224:5 245:5 250:10 251:11 252:10,13 252:18,19 253:12 254:5 254:10,15 255:17 256:7 257:17,19,21 260:22 332:18</p> <p>approve [5] 231:11 251:17 254:7 260:7 358:2</p> <p>approved [10] 96:3 101:1 121:13 156:18 173:14 224:3 267:5 291:7 300:22 301:3</p> <p>approving [3] 91:19 100:19 150:21</p> <p>April [5] 1:7 6:1 73:20 191:5 220:15</p> <p>arbitrary [2] 52:14 197:4</p> <p>area [6] 15:19 16:2 104:3 130:17 169:8 249:18</p> <p>areas [2] 108:16 360:20</p> <p>arguing [1] 92:18</p> <p>argument [2] 317:3 343:5</p> <p>arguments [2] 134:10 134:16</p> <p>arm [2] 13:7 144:15</p> <p>arrangement [1] 14:2</p> <p>arrangements [1]</p>
---	--	--	--	---

<p>277:20 Artayet [169] 19:4 20:14 24:14 29:19 30:7 36:2 38:9 45:7,16 47:22 49:10 49:17 51:8,8,15,17 52:18 53:5,12,21 54:5,6,8 55:12 57:10,19 58:6,21 59:7 60:14,20 61:2,8,20 62:9 62:13,20 63:11,13 65:1,7 66:5,12 67:1 68:12,18 71:4,18 79:17,22 80:5,12 80:20 81:6,11 82:7 83:8,8 84:12 85:5,22 87:1,19 88:20 89:15,18,21 90:10 90:11 91:1,6,17 92:6,12 92:18,20,22 93:20 94:8 94:18 96:16,22 98:6 99:15 99:17 100:22,22 101:2 102:8,11,13,17 105:7,13 105:14,18 106:6,21 107:2 107:7 108:7,14 109:1 110:18,21,22 112:2 114:18 117:2 119:1 120:16 125:19 126:1,4,11 128:2,5 129:20 131:2,11 132:8 134:8 136:8 145:6 145:16 150:20 151:7,13 153:10 158:6,22 170:1 204:12 211:4,6 214:6,20 215:3 218:7 219:2 228:5 258:3,10,15 259:2,3,21 261:19 262:8,17 263:6,16 264:4 269:13 277:20 280:8,12,20 311:9 312:5 321:15 350:13 351:3 356:9 357:17 358:3 367:21 370:16 376:6 Artayet's [43] 50:15,21 51:6 54:1,9 55:3 57:15 58:16 59:12 60:10 62:5 63:8 64:4 67:10 68:4 79:20 80:16 83:1 86:8 88:12,15 89:9,13 92:5 97:16 104:22 105:13 106:2 110:5 112:11,14 113:5 121:11 130:22 170:14 177:19 229:2 233:20 258:6,11,18 275:11 343:5 articulated [1] 98:17 aside [1] 197:13 ASME [20] 18:6 22:10 48:14 115:4 117:7,9 153:21 154:2 171:7 172:9 183:17 184:10,14 205:17 238:5 242:8 246:15 248:4 268:7 336:19 aspect [2] 199:21 204:4 assertion [1] 173:19 assess [2] 322:3,11 assessment [1] 372:12 assessor [1] 322:1 assign [2] 17:17 19:8 assigned [5] 6:11 187:15 218:3 354:16 356:10 assigning [1] 91:6 assignment [1] 156:16 assist [5] 148:15 155:15 156:16 284:10 311:20 assisting [1] 47:19</p>	<p>associated [1] 293:5 assume [3] 5:21 31:2 137:18 assumed [4] 151:7 258:13,14 284:2 assuming [2] 114:22 363:4 assumption [5] 93:3 95:2 150:20 253:14 258:17 assumptions [3] 16:9 16:10 259:9 assurance [35] 55:2 89:6 91:6 118:11 121:15 145:10 147:4 148:12,15 157:16 159:4 173:21 174:18,19,20,22 175:6,8 175:10,13,14 195:13,14 195:17 196:4 201:18 209:20 227:3 229:10,15 230:21 233:3 255:6 256:12,13 assure [5] 92:7 115:5,12 261:12 304:18 assured [7] 14:13 101:15 123:2 269:21 279:5 305:22 317:20 assuring [4] 57:5 66:19 90:14 218:15 atmosphere [4] 17:10 37:4 374:13 375:7 attached [1] 35:10 attaches [1] 6:20 attempt [2] 57:8 167:9 attempts [1] 33:10 attended [2] 312:4 315:2 attention [16] 23:4 24:3 210:21,22 213:15 239:13 247:1 257:2 303:19 305:20 309:3 313:11 347:12,13 354:21 368:19 attitudes [2] 249:22 376:16 attorney [7] 31:19 32:1 138:16 141:6 364:17,21 372:2 attorney-client [2] 6:18 12:12 attorneys [1] 31:18 attributed [2] 106:2,2 audit [14] 100:13 107:21 148:16 156:19 301:5 324:4,8 338:17 352:3 354:3,5,10,13 355:2 audited [1] 194:5 auditing [1] 227:8 auditor [6] 338:19 354:22 355:5,8,10 360:3 auditors [1] 360:2 August [15] 121:9 137:10 146:17 222:13 242:21 281:20 306:6 321:20 323:1 324:15 325:13,14 325:17 340:15 369:4 authority [29] 88:12 91:19 92:4,6,13,14,18 93:7 94:19 95:13,16 97:1</p>	<p>97:8,18 99:7,21 100:5,9 102:4 120:17 121:11,22 198:2 258:10 262:4 263:1 263:5 332:22 333:1 authorized [1] 181:6 automatic [1] 308:5 availability [1] 136:18 available [13] 3:9 19:13 33:8 84:6 159:6 161:13 206:17 224:17,17 236:15 253:11 367:12 377:21 award [2] 314:3,4 awards [1] 229:5 aware [28] 5:21 93:6 110:8 132:18 135:4,12 137:6 138:9,11 152:8 170:16 196:15 198:8,10 227:12 236:8 256:17 262:4 264:16 265:17 272:1 315:10 320:7 338:16 339:12 361:13 372:21 374:7 away [16] 4:18 20:14 92:12 99:21 144:14,15 213:11 253:16 254:21 268:1 278:13 279:19 283:7 284:3 363:14,14</p> <p style="text-align: center;">-B-</p> <p>B [4] 8:1 12:7 132:11 173:17 backdrop [1] 158:12 background [10] 7:1 29:13 45:12 46:8 62:20 109:9,10 157:16 249:21 250:6 backtrack [1] 246:11 backtracking [1] 173:4 bad [4] 315:13 351:21 362:21 366:14 Baden [6] 156:4 180:11 180:12 189:5,5,14 badge [1] 343:10 baked [1] 119:14 balanced [1] 29:5 base [26] 27:11,13 119:20 162:8,8,9 169:5,7,9 188:22 195:8 236:13 264:5 271:10,22 273:5,13 274:11 275:6,16 276:13 276:19 277:2,4 331:9 370:5 based [48] 19:18 29:16 30:18 46:15 50:13,20 53:2 53:6 85:19 87:11,18 94:13 103:22 120:3 139:9,10 170:2 173:18 183:2 190:1 191:12 193:19 194:10 195:18 196:2 197:12 198:12 212:13 240:21 251:22 269:15 284:22 298:1 310:2 320:10,14 328:6 329:7 354:9 356:5 359:14,16 364:7,18 370:12 371:13 372:14,15 basing [1] 225:15 basis [31] 13:10 22:6 37:14 47:3 67:19 79:20</p>	<p>86:22 112:13,17 127:3 162:18 164:3 172:18 173:1,22 174:15 175:2 206:11 207:7 213:19 224:22 248:14 276:20 277:9 299:13 360:14 362:6 365:3 368:14 369:6 369:7 bat [1] 41:4 Beach [87] 38:3 48:5,20 49:9 50:20 53:9,22 57:5,9 58:1 62:16,17,18 68:13 83:13 84:15 92:11,15,16 95:6,20 96:5 97:6 103:15 123:11,16 125:20 132:2 150:17 151:15,20 152:5 152:13 158:14 172:5 173:22 176:8,16,20 181:1 190:6 193:17 198:14 204:3,17 206:4,21 221:20 222:4 228:16 229:16 235:8,19 241:14 244:15 244:22 245:20 250:14 254:1,22 255:2 261:16 262:7 263:20 264:1 265:19 268:15,20 269:2 270:10,13 279:2 280:13 281:9 283:11 284:10 288:12 291:7 309:21 311:6 312:11 341:7 356:11 358:12 363:10,21 376:4 became [7] 53:3 129:13 218:2 230:17 265:16 311:4 344:6 become [2] 153:15 244:17 becomes [6] 79:10 80:13 107:10 141:2 163:19 168:16 becoming [1] 312:13 began [13] 35:17 105:9 105:12,15,17 129:11 132:17 214:17 225:3 244:14 306:1 325:20 347:20 begin [6] 45:15 46:10 72:3 133:3 201:12 312:11 beginning [15] 11:1 12:13,20 21:17 69:22 73:20 136:8 143:16,18 158:5 198:16 259:12 269:20 288:22 330:6 begins [2] 130:16 317:13 begun [4] 67:6 72:6 95:17 316:6 behalf [2] 1:15 37:2 behind [2] 313:15 351:6 Belgium [2] 123:22 124:18 belief [3] 87:18 368:15 368:16 believes [2] 60:20 336:2 Ben [1] 302:14 bend [5] 167:1 292:16,20 293:3 307:4 benefits [1] 78:4 bent [1] 167:3 Berson [56] 1:19 3:20,20</p>	<p>5:18 16:11,15 31:1 32:4 32:15 33:19 34:2 47:5 71:20 85:5 95:5 99:14,19 151:8 187:3,7 188:2,6 198:15,21 200:16 205:7 205:12 209:12 212:16 213:1 226:17 227:1,16 232:8,11 238:6 246:11,20 247:15 248:1,9 259:11,22 270:12 284:13 285:5,15 285:21 286:5,20 296:11 296:15 302:8,17 348:16 371:22 beside [1] 198:1 best [3] 25:3 26:22 268:18 better [8] 11:18 28:18 68:14 117:16 155:20 272:6,8 320:4 between [44] 6:19 40:19 42:9 53:21 54:5 65:11 72:21 90:21 94:14 96:12 100:21 103:3 106:18 107:6 108:1,22 109:17 110:18 139:3 176:11 178:17 203:15 210:2 214:20 236:21 237:14 242:19 245:7,16 251:2 254:3 259:2 262:11 279:13 288:13 297:13 326:10 330:4 349:4 350:13 351:2 366:3 367:8 373:13 bevel [2] 163:1,1 beyond [5] 51:12 80:13 83:4 197:8 356:16 big [7] 14:4 180:6 213:20 281:7 286:18 313:14,20 bill [3] 17:6 28:16 222:19 billable [2] 222:14 357:16 billables [2] 221:18,20 billed [3] 216:21 218:13 290:20 billing [5] 219:3,12,12 219:17 220:3 bills [1] 294:4 Bingham [24] 129:7 152:10 203:18 204:21 268:5,6,9 270:2 295:22 311:22 313:9,14,17 314:11 315:10 317:16,21 318:6 323:14,19 329:21 331:22 356:21 361:9 biology [1] 157:7 bit [15] 7:1 20:4,20 40:2 62:20 65:16 93:19 144:20 144:20 161:2 163:14 190:19 268:2 275:19 302:4 black [1] 182:8 blamed [3] 55:18 58:11 313:9 blank [1] 74:5 blended [1] 350:19 blew [2] 242:11 243:7 block [2] 91:7 334:12 blow [2] 136:20 274:12 blown [1] 136:6</p>
---	---	--	---	--

<p>board [3] 8:3 352:16,22 body [5] 83:3 86:9 100:12 134:2 369:21 boiler [5] 100:13 105:5 106:1 107:21 218:22 Boise [1] 189:17 bonuses [1] 229:5 book [8] 7:8,14,15 68:18 136:1 185:7 207:11 363:7 books [1] 7:8 bore [1] 118:11 boss [5] 228:2,3 311:17 311:17 318:20 bother [1] 338:11 bothers [1] 108:20 bottom [7] 26:12 99:14 192:7 271:18 294:18 307:12 325:21 bought [1] 229:11 bound [1] 330:3 branches [1] 153:5 break [9] 124:9 130:5,7 142:13 168:5,10 177:6,8 289:10 breaks [8] 142:4,9 168:1 168:6,8,15 297:11 327:8 Brent [4] 1:18 4:2,4 133:3 brief [3] 3:1 25:21 130:4 briefing [4] 7:8 77:20 136:1 352:12 briefly [2] 24:7 119:11 bring [6] 15:11 24:18 45:9 138:13 213:15 257:1 bringing [1] 269:16 brings [1] 239:12 broad [1] 42:18 broadened [1] 51:11 broader [4] 84:5 108:10 171:17 197:3 broadly [4] 11:8 104:12 104:14 116:13 broken [2] 5:6 287:16 brought [8] 44:19 122:15 211:4 243:4 305:20 347:11,12 368:2 Bruce [2] 1:19 3:20 buddies [2] 342:9,14 build [1] 288:22 building [2] 105:22 124:21 built [1] 184:3 bulk [1] 248:8 bullets [5] 104:17 136:2 137:17 147:10 155:21 bunch [3] 235:12 246:14 357:2 burden [1] 126:22 buried [1] 275:2 business [9] 64:9 215:21 216:1 268:2 282:11,14 290:18,21 372:3 busy [1] 247:8 buys [2] 78:6 165:9</p>	<p style="text-align: center;">-C-</p> <p>C [4] 150:9 155:9 174:10 179:9 calculations [1] 28:22 calls [2] 199:4 222:19 cannot [4] 90:1 132:13 162:18 326:20 capable [1] 270:14 car [1] 342:9 career [1] 344:9 careful [3] 78:2 293:14 370:5 carefully [3] 10:2 82:1 140:21 Carolina [1] 21:11 Carpenter [3] 302:11,15 327:20 carrier [1] 277:18 carry [1] 357:15 case [44] 8:20 11:1 18:6 18:17 24:9,14 27:11 31:8 40:12 42:10 44:8,10,14 58:11 76:5 77:2,16,21 91:10 94:3 104:12 113:12 133:19 141:16 143:2 145:20 150:15 158:21 163:6 180:1 183:8 184:8 195:22 196:4 197:15 207:19 230:6 287:12 304:20 315:22 317:5 374:3,5 375:6 cases [20] 23:12 24:13 31:6,7 33:12 40:11,17 41:8 42:1 43:7 87:5 127:1 127:15 141:12 162:11,12 164:15 292:7 293:8 375:2 cask [2] 171:2,8 catch [1] 358:19 categories [2] 53:15,16 category [7] 53:20 60:7 60:8,9 64:18 68:2,4 caught [3] 83:14 84:16 339:1 causal [3] 63:11 65:20 373:13 causation [1] 104:11 caused [6] 38:13 83:15 83:19 84:20 292:15 307:20 causes [2] 55:15 89:3 caution [1] 70:4 caveat [1] 133:4 center [1] 248:8 centered [1] 14:11 centering [1] 249:3 centerpiece [1] 64:19 Cepkauskas [27] 129:7 129:12,12 152:10 180:22 182:2,14 189:20 202:16 202:22 203:17 204:21 212:8 240:12 269:12 270:2 295:22 320:7 323:19 329:21 330:14,15 331:22 340:17 341:5,11 341:17</p>	<p>Cepkauskas [1] 284:6 certain [26] 7:20 16:8 55:4 56:6 112:7 113:7,19 122:17,19 142:12 149:17 159:15 160:16,17 161:14 164:9 166:3 167:20 188:10 220:6 226:4 232:6 257:5 271:22 291:22 331:3 certainly [23] 12:17 25:18 26:8 121:18 122:5 135:12,19 141:20 154:19 160:2 202:21 209:5 213:10 216:2 228:2 239:21 246:21 247:12 290:18 291:18 341:5 350:3 368:8 certification [1] 160:22 certified [1] 255:13 certifies [1] 169:17 certify [1] 379:5 certifying [1] 191:4 chagrin [1] 296:5 chain [5] 51:6,9 58:15 91:5 214:2 chains [1] 63:5 challenge [3] 32:21 79:20,21 chance [6] 11:18 73:7 117:1,16 172:4 335:13 change [21] 35:2,3,4 71:18 89:7 100:18 145:4 195:4 200:13 237:15 238:2,12,19 244:1 251:14 292:18 293:5,13 333:2 336:3 338:9 changed [10] 71:10 139:18 156:9 161:21 162:8 292:6 293:16 297:8 316:3 335:3 changes [18] 35:9,15 95:13 97:2 99:2,7 163:2 196:12 202:13 251:18 260:7 276:17 293:7,19 335:17 336:4 337:17 338:7 changing [2] 190:21 200:19 channels [1] 377:1 characteristics [2] 165:21 264:8 characterization [1] 80:16 characterize [2] 25:9,11 characterized [2] 186:13,17 characterizes [1] 11:6 Charpy [45] 109:17 163:14,15,16,20 164:10 164:14,17 167:11 168:12 179:22 180:3 183:7,9 186:8 187:1,20,22 230:13 237:2 238:21 240:9 243:14 265:2 273:10,15 274:8,15 276:21 294:19 295:5,10 298:6 299:9 304:17,21 305:10,10,18 308:19 316:10 326:8,11</p>	<p>327:22 363:16 Charpys [3] 185:16 295:9 297:18 chart [2] 8:2 137:16 cheating [1] 43:9 check [3] 14:8 172:5 367:22 checked [2] 334:13 342:19 checks [1] 342:13 chemical [1] 227:6 Chicago [2] 291:1 322:16 chiefly [6] 59:7 142:20 177:20 182:1 203:17 217:2 chill [1] 375:6 chilling [1] 375:19 choice [1] 218:11 chose [6] 52:15 110:12 118:7,8 269:7 270:5 Christmas [2] 346:19 349:5 chronologically [1] 146:13 chronology [1] 282:7 Chuck [2] 1:20 4:4 circuit [1] 225:11 circumstances [2] 58:16 232:17 cited [1] 37:15 citing [2] 28:2 66:15 claimed [6] 50:21 51:5 144:10,22 289:21 320:10 claiming [2] 65:4 287:19 claims [6] 132:8 142:6 142:10 251:4 338:1 342:2 clarification [1] 62:8 clarified [1] 141:20 clarify [4] 6:6 64:2 124:17 317:22 classification [10] 163:7,8,10 237:15 238:2 238:12,20 242:1 244:1 247:13 Clayton [28] 1:18 4:2,2 39:16,18 40:2 42:7 81:19 82:18 133:5 145:22 146:5 158:2 177:5 211:2 227:21 232:13 289:9,16 329:18 330:3 353:22 357:17 370:14 371:18 375:5 377:5 378:1 clean [1] 81:16 clear [36] 9:5 40:13 53:3 65:17,18 79:10 87:2 122:16 123:6 127:2 128:18 131:13 139:12 140:8,15 145:20 153:7 181:11 202:22 205:7,13 234:2 248:18 252:12 255:20 259:19 274:5 276:16 289:4 304:11 309:22 316:5 338:15 354:15 359:5 366:18 clearly [21] 41:10 64:3 64:13 98:2,16 101:14,21</p>	<p>135:8 143:20 197:15 219:19 239:18 256:4 267:19 290:20 315:9 316:19 328:12 342:21 351:7 358:7 Cleveland [16] 21:10 35:20 36:9,15 125:13 189:17 266:2 290:22 294:3 309:20 317:14 336:20 338:4 342:20 349:12 375:4 client [27] 9:3 11:13,19 11:20 12:1,6,18 29:5,9 39:8,15 41:12 42:19 78:3 78:6 187:6 207:19 208:15 212:4,4 216:21 221:19 222:20 303:13 321:14 324:10 336:7 clients [10] 10:14 23:21 39:3 78:17,18,19 212:17 215:16 216:18 218:12 close [2] 206:14 345:15 closely [2] 73:17 319:11 closer [1] 204:16 closing [1] 377:6 code [137] 16:20,22 18:6 22:10,12,17,18 41:19,20 41:21 42:2,3,4,4 46:3 48:14 54:11,22 56:7,11 56:14,22,22 58:3,9,13 59:1,15 83:10 84:13,19 85:3 87:8,9 89:12 90:16 102:21 103:9 104:6 109:8 115:4,5,7,11,13,17 116:8 116:17 117:7,9 139:10,12 139:15 140:7,9,11,14 153:22 154:3 160:12,17 161:20 166:18,18,22 169:2,3 170:1,7,9,21 171:7,10,10,12,13,16,22 172:3,9,19 173:6,12,13 173:14 177:18 178:2 179:6 183:11,18 184:3,14 189:7,8,9,19,22 190:20 194:3,17,19,22 195:4 203:11 204:5 205:8,17 208:12 216:9 218:15 220:5 231:8,9 241:20 242:5,8 246:15 248:4 268:7 272:2,21 273:18 275:21 281:3,19 282:1 288:20 296:7 299:17 303:13 304:10 319:12 335:6 336:19 338:5,13 368:16 codes [1] 140:18 coincidental [1] 69:16 cold [1] 168:3 colder [2] 168:3,4 collect [3] 165:20 201:15 279:12 collected [3] 22:5 370:4 370:11 collecting [2] 267:3 319:20 collection [1] 266:18 collectively [2] 53:9 58:19 Colorado [3] 37:3 342:2 349:13</p>
--	--	---	---	--

<p>column [5] 179:16,21 199:9 251:5,12</p> <p>combination [2] 37:17 166:19</p> <p>comfortable [1] 24:20</p> <p>coming [11] 82:19 97:10 111:19 145:15 209:10 294:2 314:14 351:9 371:8 371:9 377:7</p> <p>command [4] 63:5 89:7 91:5 214:2</p> <p>comment [3] 18:3 25:16 231:19</p> <p>commented [2] 96:21 337:14</p> <p>commenting [1] 260:2</p> <p>comments [6] 34:6 35:10 60:17 94:8 98:8 338:10</p> <p>commission [5] 1:2,12 43:13 379:7,20</p> <p>commissioned [1] 379:4</p> <p>commitment [3] 12:9 14:9 184:14</p> <p>committed [1] 117:14</p> <p>committee [2] 288:20 336:19</p> <p>common [3] 63:4 160:9 277:18</p> <p>communicate [1] 254:16</p> <p>communicated [10] 60:21 93:2 95:10 98:20 125:22 261:4 323:13 324:10 331:16 338:14</p> <p>communicating [2] 259:17 340:5</p> <p>communication [15] 61:19 63:8 88:11 90:21 106:17 123:8 211:10,13 214:1,8 228:11 251:16 260:5 261:9 377:2</p> <p>communications [3] 23:10 40:18 262:18</p> <p>companies [3] 9:18 17:17 78:20</p> <p>company [119] 14:13,21 17:14,19,22 19:10 20:19 21:12,14 23:4,15,16,18 23:22 30:12 34:6,13,14 34:21 38:16 40:5,8,9,10 42:10 43:2 44:11 45:2 46:17 49:16,20 51:19 52:9 63:19 67:11,12 69:4 75:21 76:7 80:19 88:21 89:1 95:12 103:19 107:6 108:16 109:6 110:12 118:7 121:15 122:16 125:1,6 126:13,16 127:1 128:4 132:13 135:12 148:1 149:5 150:22 151:3 151:11 158:8,18 159:9,10 161:17 174:6,18,21 176:14 178:2 189:16 202:6 209:18 215:21 216:16 218:1,12 220:14 240:18 243:9 244:20 245:3 248:21 249:9 254:7 257:7 260:20 281:5</p>	<p>282:11,14,17 290:17,20 335:19 341:9 343:7,8,13 353:15 357:15 358:2 362:8 364:18 365:2,3 370:15 371:14,16 373:9 373:14,16 375:10 376:14 377:3</p> <p>company's [8] 40:20 52:4 133:22 135:3 202:11 216:1 248:13,15</p> <p>compare [3] 27:3 33:4 322:11</p> <p>compelling [4] 134:2 205:17 240:20 305:14</p> <p>competence [10] 59:6 102:15,16,18 103:6 105:18 146:22 340:18 368:6 369:7</p> <p>competency [1] 102:13</p> <p>competent [3] 59:3 211:20 212:15</p> <p>compiled [1] 370:7</p> <p>Complainant [1] 47:6</p> <p>complained [1] 106:20</p> <p>complaining [2] 214:4 214:6</p> <p>complaints [6] 105:7,10 110:4 218:18 235:10 370:22</p> <p>complete [12] 14:16 26:13 49:7 73:8,11 291:4 312:13,18 313:2 332:3 368:22 379:12</p> <p>completed [15] 76:2 86:20 87:7 187:13 226:4 282:18 290:15 309:2 310:9 312:1,22 313:19 323:17 365:13 367:5</p> <p>completely [1] 133:15</p> <p>completes [1] 356:20</p> <p>completion [2] 243:15 309:14</p> <p>complex [1] 58:22</p> <p>compliance [5] 58:2 59:14 90:16 115:13 218:15</p> <p>compliant [3] 58:13 115:7,17</p> <p>complicated [4] 8:5 53:18 61:16 201:6</p> <p>complied [1] 52:9</p> <p>comply [1] 55:2</p> <p>components [1] 60:18</p> <p>comprehensive [1] 25:7</p> <p>compromise [1] 35:1</p> <p>computer [2] 136:20 200:4</p> <p>computerized [1] 199:22</p> <p>concede [1] 323:2</p> <p>conceded [3] 85:16 204:18 282:4</p> <p>conceding [1] 306:2</p> <p>conceivable [1] 71:9</p> <p>concentrating [1] 248:7</p> <p>concern [5] 100:14</p>	<p>180:16 187:16 194:4 364:9</p> <p>concerned [7] 11:14 12:21 32:17 214:3 229:3 268:9 375:13</p> <p>concerning [2] 50:15 361:11</p> <p>concerns [14] 50:19 85:18 97:16 101:2 118:11 118:13 129:6 323:21 325:19 329:22 371:9,13 374:22 375:8</p> <p>conclude [4] 52:6 117:20 241:21 374:14</p> <p>concluded [8] 28:20,21 64:22 70:20 81:3 83:8,18 264:11</p> <p>concluding [1] 83:6</p> <p>conclusion [17] 13:20 17:2 28:5 33:9 70:7 87:12 118:19 119:7 124:15 126:1 127:16,22 128:8,10 134:15 348:11 369:12</p> <p>conclusions [45] 10:3 10:10,12,19,20 11:11 13:18 17:12 18:13 27:5 28:15 34:10 35:8 41:8 42:8 43:14 46:22 47:1,4 68:3 70:3,5,10,14,16 71:13,17 72:13 73:15 75:19 76:7,9 77:4 78:6 79:7,11,12 80:11 82:16 84:1,7,8 118:3 134:13 135:11</p> <p>conclusory [1] 70:17</p> <p>condition [1] 367:17</p> <p>conditions [5] 6:12 9:8 374:11,16 379:8</p> <p>conduct [17] 8:18 9:10 9:12,14,16,19 24:9 39:21 40:3 41:2,5,10,13 187:22 299:14 305:11 374:18</p> <p>conducted [18] 5:1 37:2 163:17 167:12 180:1,2,6 180:9 183:3 186:4,7 187:1 187:10,20 188:17 274:16 305:9 306:16</p> <p>conducting [6] 8:21 11:9 15:6 24:8 148:16 368:20</p> <p>conference [2] 5:22 133:9</p> <p>confidence [24] 19:7 55:16 66:22 83:20,21 84:21,22 205:1 209:6 216:13 217:6,13 219:10 221:10,12 223:5,13 234:22 247:20 280:9 306:19 339:17 361:21 370:16</p> <p>confident [2] 46:19 348:14</p> <p>confirm [1] 327:13</p> <p>confirmed [2] 49:19 91:15</p> <p>confirming [2] 66:18 86:19</p> <p>conflict [10] 39:11,13 65:11,16 178:16 214:20</p>	<p>257:11,13 352:1 369:20</p> <p>conflicting [5] 53:4,4 59:18 69:20 72:14</p> <p>conflicts [7] 28:6 53:13 53:14 134:3 178:7,7 372:17</p> <p>conform [1] 56:22</p> <p>conformity [1] 51:3</p> <p>confront [1] 72:18</p> <p>confronted [1] 361:19</p> <p>confronts [1] 89:1</p> <p>confused [5] 285:6 331:5 345:11,17 346:5</p> <p>confusing [4] 127:15 200:9 231:3 275:22</p> <p>confusion [2] 335:6,14</p> <p>connection [6] 63:12 65:21 103:2 128:6 132:2 373:13</p> <p>connote [1] 246:5</p> <p>consequences [1] 103:13</p> <p>consider [7] 5:19 6:2 39:11 86:12 225:8 229:1 341:14</p> <p>considerable [2] 170:18 236:20</p> <p>consideration [6] 336:4 341:2 353:19 361:14 377:9,18</p> <p>considerations [1] 50:18</p> <p>considered [5] 129:2 164:13 181:3 190:10 203:14</p> <p>considers [1] 212:14</p> <p>consistency [1] 252:3</p> <p>consistent [4] 90:2 139:2 175:15 176:21</p> <p>construct [1] 61:15</p> <p>construction [6] 159:9 193:10 204:4,6,19 371:16</p> <p>constructive [1] 128:15</p> <p>construed [1] 133:13</p> <p>consultant [2] 144:13 159:11</p> <p>contact [7] 223:9 244:18 297:1 305:22 309:17,22 328:4</p> <p>contacted [4] 35:18 238:17 268:6 327:19</p> <p>contacting [1] 310:18</p> <p>contain [1] 196:20</p> <p>contains [2] 90:1 160:21</p> <p>context [6] 7:4 104:11 146:17 332:6 353:12 373:10</p> <p>contexts [1] 104:15</p> <p>contingencies [1] 290:12</p> <p>continue [5] 129:15 154:11 320:17 340:20 361:22</p> <p>contract [8] 172:6 184:10 194:20 198:8 242:6,15</p>	<p>282:2 323:6</p> <p>contracted [1] 17:14</p> <p>contractor [11] 20:13,17 21:15 24:6 30:1,3,4,16 76:22 204:11 286:1</p> <p>contractor's [1] 203:13</p> <p>contractors [1] 14:14</p> <p>contradicted [1] 328:12</p> <p>contradiction [2] 333:20 350:9</p> <p>contrary [3] 171:14 258:14 343:7</p> <p>contrast [1] 95:7</p> <p>contributed [8] 57:17 84:21 85:21 111:13 112:3 112:15 123:9 132:15</p> <p>contributes [1] 89:7</p> <p>contributing [2] 83:20 128:11</p> <p>control [14] 32:9 147:21 174:5 193:14 203:12,15 203:22 206:7 252:2 261:11 267:10 269:5 323:7 333:7</p> <p>controlled [1] 262:7</p> <p>controlling [1] 257:8</p> <p>controversy [1] 240:1</p> <p>convenient [1] 177:8</p> <p>conversation [45] 142:13 172:8 202:9 234:21 242:18 298:16 303:3,6 317:16 330:12 336:2 339:7,12 340:9,10 340:16 341:17 343:4 344:7 345:1,2,8,9,12 346:21 347:1,4,9,10,14 347:15 348:6,10 350:10 350:20,21,22 351:2,4 360:13 363:5 365:10,15 365:19 366:19</p> <p>conversations [12] 142:3,15,16 202:6 236:21 259:21 261:2 331:21,22 347:9 365:8 375:14</p> <p>convey [2] 78:17 134:6</p> <p>convince [8] 178:20 180:13,15 181:5 238:11 296:22 322:18,20</p> <p>convinced [4] 126:21 238:17 243:22 364:3</p> <p>convincing [5] 127:2 128:18 180:10 182:16 303:6</p> <p>Cook [66] 68:8,9,15 131:7 132:1,19 148:7 149:16 150:6 151:2,15,19 152:6 152:9,15 155:7 157:15 158:12 161:8 172:5 174:7 178:3 179:3 183:14 184:2 184:3,21 186:19 191:22 206:10,11,22 207:2,6 235:7 236:8 239:3,4,8,17 239:20 240:4,8,12,19 241:5,9,10,21 242:13,14 243:6,16,21 245:18 254:9 363:7,9,22 364:6 365:18 366:2,4,5,13 367:7</p> <p>Cooper [225] 2:6 3:16,16</p>
--	--	---	--	---

46:10 56:5	175:8,9,14,22 176:6 212:5	149:17 150:3 152:17	131:11 132:9 305:8 367:9	296:2 311:1,11,14 322:11
defined [8] 41:10 50:12	233:4 256:12 321:10	157:4 163:5 172:15,16	discrepancies [1] 42:9	325:8,10,20 342:20
56:11 57:10 60:9 101:14	322:14 338:18,18 339:5	173:8,18 174:2 176:15	discrimination [4] 3:18	doesn't [38] 11:10 63:13
101:19 160:9	339:16 352:16 353:1,6	177:4 178:18 196:2	5:4 127:1 362:13	71:16 134:17 163:20
defining [1] 126:9	354:7,13	199:11,13 245:22 254:1,2	discuss [5] 28:4 74:15	171:20 188:21 194:16,22
definitely [4] 112:3	depend [2] 19:21 32:22	270:21 275:20 289:4	130:20 146:6 228:4	215:3,4,12 234:13 237:20
173:8 236:7 360:19	depending [2] 12:22	developing [8] 14:3,6	discussed [5] 144:16	241:1,4,10 246:1,5 257:12
definitions [1] 159:5	97:9	54:21 92:14 96:4 105:17	190:13 245:2 308:1 313:5	257:15 262:9 277:5,8
definitive [2] 332:16	depth [1] 70:18	108:22 303:16	discussing [2] 8:6	313:22 314:3,9 329:9
343:16	describe [6] 6:13 24:7	development [3] 115:6	189:19	338:20 346:10 348:20
degree [12] 114:20 115:1	27:5 85:12 163:14 313:6	159:1 224:7	discussion [7] 3:10 5:10	351:13,15 357:15 360:16
153:17,18 154:13 157:5,6	described [8] 48:11 49:6	develops [1] 255:14	263:18 276:5 327:21	360:22 366:19 374:21
225:7 245:14 246:2,10	256:2 313:7 315:6 350:15	devoted [3] 217:2 291:16	340:13 372:1	done [98] 5:3 8:15 10:7
297:10	363:11 371:13	368:19	discussions [10] 62:3	10:10 13:7 19:14,16 20:2
degrees [11] 91:11 168:7	describes [2] 246:14	diagram [1] 299:19	64:11,11,14 129:19	28:18 34:8 38:22 44:10
185:16 187:2,21 246:8	344:3	difference [5] 71:17	222:10 228:5 276:7 288:9	59:9 66:4 70:11 72:4
274:12 294:19 298:13	describing [3] 111:13	109:17 237:14 251:2	376:21	75:17 76:5,8 81:2 82:6
328:1,2	344:7 373:7	326:9	disks [1] 343:15	90:15 94:21 95:8 131:18
delay [1] 307:20	description [11] 40:13	differences [2] 211:5	disparate [1] 104:4	132:11 133:17 136:7
delaying [1] 357:6	59:20 63:14 86:7,15 96:18	260:4	disparities [1] 118:8	137:13 161:16 164:9,11
delays [1] 105:11	113:5 146:2 154:5 178:9	different [17] 18:10	dispute [10] 29:7 54:4	166:4,5,19 167:1,7,18,21
delegate [17] 120:17	251:6	25:15 82:22 84:7 91:12	93:19 110:13,13,17,20	168:13 171:17 183:8
121:2,4 122:1 252:21	descriptions [4] 40:9	91:15 151:5,6 174:12	203:15 351:10 366:3	184:10 185:16 200:12
253:2,3,20 267:16 268:12	63:15 83:1 295:13	217:11 232:12 241:15	disputes [4] 57:21	203:8 204:10,11 209:17
269:10 270:3 278:8	design [1] 327:5	260:1,21 300:12 340:11	204:16 207:15 247:14	220:7 221:19 228:19
280:18 315:16 316:13	design-based [1] 236:16	376:4	disqualified [1] 169:15	241:22 242:3 243:21
318:1	designated [1] 262:4	differently [3] 15:5	dissatisfied [1] 362:19	247:6 270:1,1,13 279:5
delegated [9] 120:8	designating [1] 261:18	26:20 315:7	distinction [1] 93:10	280:14 283:18,22 286:19
121:5,6,9 222:12 253:13	designation [1] 263:7	difficult [7] 133:19	distort [3] 33:11,15,18	288:11,12 291:18 292:10
253:16 281:21 354:20	designee [3] 261:19,22	181:15 182:6 208:4	distorted [1] 51:1	295:9 297:18 299:5 300:2
delegates [5] 165:18,19	262:2	293:10 308:10 316:4	disturbed [1] 127:5	300:3,4 301:6,19 303:22
279:21 280:1 306:7	desired [3] 161:9 286:2	difficulties [1] 107:1	divide [1] 53:19	306:3,11 307:15,21 308:9
delegating [3] 266:18	286:21	difficulty [2] 172:18	divided [1] 53:14	311:12 312:14 316:10
278:7 320:2	desk [2] 94:1 366:4	180:10	divider [1] 7:12	317:7 319:13,20 324:20
delegation [11] 121:10	destructive [2] 298:5,6	dig [2] 182:11 208:11	division [10] 3:22 4:7,21	327:7 329:13 354:19
225:3 306:6 315:11	detail [13] 6:8 38:6 58:5	digest [1] 370:10	48:21 51:7 61:1 63:3	357:8 361:18 362:9 367:1
316:14 319:14,16 323:1	60:5 67:17,22 75:16 85:9	digging [1] 204:22	104:18 122:21 125:19	door [1] 343:19
354:16,17,21	85:12 94:17 168:19	diminished [1] 144:21	document [43] 7:16 10:1	doorway [1] 343:9
delivered [1] 345:21	171:19 334:2	diplomatic [1] 228:11	27:14,16 75:10,12 116:16	Dorsal [5] 156:4 180:11
delivering [1] 360:7	detailed [12] 3:10 5:10	direct [7] 25:12 64:4	149:8 191:2 192:2,5,11	180:12 189:5,14
delivery [6] 277:17	9:6,11 16:4 27:7 33:1	255:10 260:16 321:6	199:4,10 230:18 235:4	double-check [1] 3:12
286:2,3,21,22 288:1	71:12 137:16,17,19	349:17 351:2	236:2,16 240:22 250:18	doubt [2] 4:15 126:6
demand [1] 338:9	364:21	directed [1] 227:4	250:18,21 251:1,7 252:6	down [21] 73:16 96:17
demanding [1] 110:3	detailing [1] 209:1	direction [5] 160:11	257:8 259:1 260:2,9,18	136:9 179:16 189:8
demonstrate [6] 12:5,7	details [8] 33:10 117:19	202:21,21 254:21 256:6	261:5,15 274:10,21 296:2	191:15 192:12 200:2
170:6,20 226:6 291:15	117:22 130:1,9 208:18	directions [1] 260:11	298:8,10 302:1 325:10,15	206:18 219:6,14 223:17
demonstrated [2] 49:17	209:3 250:6	directly [8] 27:20 49:11	326:4 333:10,14	224:1 225:18 226:16
299:16	determination [1]	63:3 125:3 158:20 233:6	documentary [5] 96:6	255:12 307:19 314:12
demonstrates [3]	288:18	351:9 374:10	185:11 219:5,16 328:13	341:7 342:9 361:14
101:13 115:10 160:15	determinations [1]	director [7] 3:22 4:21	documentation [17]	downplay [1] 351:20
demonstrating [2] 25:5	372:14	144:1 145:17 147:19	10:8 20:1 22:5 29:1 33:8	draft [7] 34:5 196:11
251:2	determine [34] 9:21	156:8 352:8	46:9 70:19 77:12,14 114:3	205:22 225:4 262:18
demoted [1] 144:3	37:22 38:8 39:20 42:15	disagree [3] 35:3 41:3	115:10 131:16 210:9	326:4 358:22
demotion [1] 52:20	104:10 118:3 156:13	111:2	239:20 240:1 266:8 276:6	drafted [2] 198:13 357:22
denied [4] 185:6 273:20	159:20 164:9,16 167:10	disagreed [2] 35:8	documented [4] 75:20	drafts [4] 165:5 226:13
284:11 304:4	167:18,21 168:11 180:2	127:20	141:5 279:22 354:5	226:13 324:13
denies [3] 85:8 185:1	186:7 187:21 188:3	disagreement [2] 102:7	documents [52] 7:18	dragging [1] 332:9
344:1	272:21 273:14 274:7	108:18	26:2,3 27:10,11,13,20	draw [3] 80:11 372:2,19
department [59] 21:18	275:1,17 294:21 295:7,9	disagreements [1]	28:10 33:3 45:6 46:3,17	drawing [1] 299:3
36:3,12,19 38:6,21 44:7,9	296:20 299:9 304:14	109:5	49:4,9 74:20,22 75:3	drawn [4] 22:7 65:20
44:14,20 45:4 64:20,21	361:16 367:8,11 371:18	disappointed [1] 332:9	96:20 121:17,18,20	369:19,21
79:4,9 80:15 81:22 83:4	determining [1] 276:20	disciplinary [1] 110:6	135:18 138:18,19 139:8	dress [1] 15:1
86:4 134:7 144:21,21	devastating [1] 344:10	disclaimer [1] 194:15	159:3,4 173:20 174:18	Drew [15] 63:1,1 317:15
145:10 147:4,12,15 148:4	develop [5] 146:18	disclose [1] 13:2	175:4 179:12 195:19	317:19 345:19 346:1,1,2
148:5 153:1,4 155:22	176:19 200:1 224:19	discover [1] 132:10	198:19 199:8 206:7	346:6 347:2,16,18,19
156:6,8,9,10,11 157:14	231:12	discovered [5] 103:5	207:11 255:21 256:17,20	351:20 360:10
158:20 172:7 174:22	developed [23] 116:3		258:22 264:11 295:12,21	drop [127] 55:9,11,13 59:4

<p>83:7,11 84:10,13 85:3,6 85:13 87:5 89:19,21 90:5 105:15 107:3 109:18 119:4 128:1,6 129:1 135:5 164:6,8,15 167:20 168:20 168:22 179:17,18 180:1,5 180:8,13 186:4,6,12,14 186:16,18,22,22 188:3 243:13 272:18,20 273:4,7 273:9,13 274:1,7,22 275:16 276:9,13,19 277:7 286:6 287:8,13 293:21 294:21 295:6,15,20 296:4 296:19 297:2,10,16,22 298:4,12,18,19 299:5,14 299:20 301:11 302:12,16 303:7,12,19 304:3,5,15 304:17,22 305:8,12,16 306:9,10,14 307:10 308:16,18 309:1,9 316:11 316:15 320:13 326:3,7,10 326:14 327:1,8,10 328:11 329:12 330:16,20 331:2,6 331:8,9,15 332:2,5 due [2] 290:8 309:6 dug [1] 204:17 duly [1] 379:4 dumb [1] 181:12 dumped [1] 235:12 DuPont [2] 227:15 326:17 during [56] 7:21 16:12 24:15 31:20 33:14 37:9 43:9 60:13 61:1,15,20 62:4,14 64:15 67:19 82:13 83:12 84:3,14 87:1 105:7 105:18 120:12 128:22 132:16 134:21 138:21 140:22 160:20 165:7 169:10 170:11 179:3 181:9 185:22 186:10 200:7 203:4 209:14 212:18 217:1 228:22 258:20 267:9 268:6 286:17 288:19 289:18 291:9 310:1 313:5,7 314:17,19 323:22 331:18 duties [1] 340:3 dysfunctional [1] 112:5 dysfunctionalities [1] 122:17</p>	<p>184:19 203:6 256:22 268:22 330:12 331:18 easier [2] 53:17 292:6 easily [1] 317:2 easy [2] 82:5,5 ECP [1] 23:8 Ed [11] 5:2 18:17 70:7 134:18 236:19,21 237:4,5 237:16 238:10 239:2 Edelman [52] 63:1,1 65:14 106:13,20,20 108:19 126:3 217:17 228:2 232:1,8,16,19 233:7 233:11,11 317:15 320:7 339:15,21 340:5,6,9,16 341:19 345:1,7,7,9,13,21 346:6,14,16 347:1 348:7 348:12,16,18 350:20 351:5,8,13 355:19 356:6 357:4,6 359:2 360:5,10 362:17 Edelman's [1] 232:18 edification [1] 187:15 edited [3] 71:6 89:18 142:6 editing [5] 34:9,12,21 76:3 85:10 editorial [2] 107:13 338:11 Edmister [3] 36:8 76:8 375:15 Edwin [2] 2:5 3:14 effect [16] 61:6,18 65:13 66:17 81:12 89:20 92:12 97:5 255:7 288:3 292:18 321:14 364:5 375:7,19 376:19 effectively [2] 91:3 113:22 efficient [1] 268:18 effort [4] 33:15 44:15 45:18 178:1 efforts [1] 59:1 eight [3] 212:1 289:7 294:4 either [10] 29:17 79:3 185:20 191:17 213:12 249:14 296:16 298:1 351:12 354:2 either-or [1] 122:8 elaborate [1] 42:1 Electric [2] 50:3 243:17 element [2] 26:5,7 ELLEN [1] 379:3 elsewhere [3] 38:3 243:16 275:13 embarrassed [1] 313:9 embarrassing [1] 313:8 emotional [1] 344:7 emphasize [1] 21:21 emphasized [2] 59:3 80:18 employed [1] 281:8 employee [13] 6:9 17:19 23:7 40:19 124:18 125:5 125:8 203:13 237:5,9</p>	<p>282:3 311:5 362:7 employees [9] 14:14 125:1 237:11 260:16 281:4,8 346:6 375:20 376:16 employer [1] 244:4 employment [3] 50:16 137:6 341:10 end [32] 11:9 12:22 13:12 14:5 15:19 17:8 21:16 26:17 27:21 28:1 45:20 52:11 75:6 133:6 143:15 143:18 145:3 155:11 158:4 176:14 191:2 219:19 222:21 263:18 277:11 289:1 321:19,20 323:5 324:14,21 330:5 ended [3] 94:1 114:13 129:19 endorsing [2] 101:10 102:14 energy [1] 167:19 enforcement [10] 3:19 3:19 4:3,5 5:20,21 32:18 133:9 352:9 377:15 engaged [2] 38:11 52:22 engineer [94] 4:9 20:9 20:13 21:12,15 29:18,20 38:1 40:14 48:2 65:2 69:9 92:16 93:4 95:15 96:2 101:4 103:4,16 112:6 113:6,10,14 114:14 118:10,21 144:19 145:6,9 145:16 147:4,12 148:12 148:19 149:21 150:2,15 151:17 152:1,12,12 153:1 153:8,15 154:10,10,14,17 155:10 157:2,18 158:1,3 161:1,16 165:4,5 172:10 173:9 184:7 190:2 192:17 193:2 205:4 207:15 208:9 215:6,18 216:4 220:14 221:1 223:1 242:9 245:21 246:4,5 251:3,4 255:9,14 255:22 260:1 261:21 279:15 281:12 320:17 323:10 358:19 360:12 361:22 370:16,18,20 371:3 engineer's [5] 118:11 121:22 156:14 159:18 321:6 engineering [25] 59:21 104:6 109:9 114:21 115:1 153:19 157:6,18 172:11 177:17 246:2,3,7,9,10 271:16,17 272:16 274:3 277:15 287:13 297:6 298:10 299:4 301:7 engineers [10] 15:17 16:6,7 17:8 21:20 148:9 158:9 215:22 217:19 246:7 enlightening [1] 41:11 enlisted [1] 181:6 enters [1] 104:3 entire [6] 45:4 63:19 142:15 166:10 204:14 379:13 entirely [6] 130:21</p>	<p>132:21 196:2 283:5 340:11 372:7 entry [1] 328:22 envisioned [1] 206:2 equal [1] 248:21 equipment [2] 165:13 279:18 eroding [1] 205:1 error [8] 83:14,19 117:1 128:4,5 184:9 335:1 336:8 errors [6] 65:5 115:20 334:9 339:1 359:15,16 espousing [1] 344:13 essential [13] 21:11 91:9 161:21 162:7,11,13 163:4 163:18,19 183:10 238:3 251:9,21 essentially [88] 27:15 57:3 75:15 88:6 110:2 134:4 136:7,14 138:2 148:4,8 150:11 153:21 155:16 156:7,13,19 157:13,16 158:7 159:7 160:8 161:7 165:6 169:20 174:19 177:4,16 178:13 179:19 181:1 182:13 186:12 189:1,7,12 190:9 192:11 195:12,21 200:10 204:1 207:4 212:4,5,12 212:22 213:6,13 222:11 222:14 228:17 231:14 233:13 241:8 244:14 254:21 268:4 274:17 278:16 279:21 281:15 284:3 291:21 292:8 306:13 311:10 312:15 313:6,9 315:17 320:1 321:11 336:16 338:21 340:4 341:7 345:13 346:2 346:11 348:5,21 349:12 353:9 362:7 367:13 368:5 368:12 established [3] 40:4 84:6 128:4 establishing [1] 86:3 estimate [2] 71:20 73:17 Eugene [1] 150:16 evaluate [4] 19:18,19 90:9 320:22 evaluation [2] 210:4,20 Evans [16] 262:3 297:21 299:16 302:3 310:10,16 310:17 319:9,10,11 341:6 341:8,14,20 354:16,19 Evans' [1] 310:4 evening [1] 365:16 event [11] 51:10 270:4 272:11,15 275:8 287:18 293:2 321:21 343:15 354:12 355:11 events [9] 9:6 19:1 80:16 86:8,16 90:3 350:15 371:22 376:22 eventually [2] 181:16 278:8 everybody [18] 3:12 7:7 9:5 14:17,17 18:2,15 32:7 35:12 44:4 56:1 101:17</p>	<p>102:3 123:14 175:11 181:14 243:5 276:16 everybody's [1] 123:4 evidence [67] 10:2 14:3 22:8 27:4 28:1,4,6 33:8 37:12,13 44:9,13 45:6 49:1 68:2 70:9,18 71:14 71:16 72:14 75:20,22 81:13 82:2 83:3 84:4 86:10 87:11 90:18 100:12 105:16 108:10,12 125:16 127:2 128:8 132:18,22 134:2 135:14 137:2 179:8 185:12 219:5,11,16 224:9 235:6 240:20 246:8 255:4 258:9 278:16 297:14 305:14 317:9 328:13 338:15 350:8 365:1 368:13 369:19,21 370:3 370:13 372:18 377:20 evidence-gathering [1] 70:21 Ex [1] 277:17 Ex'd [2] 225:6 324:18 exact [3] 187:12 232:22 247:10 exactly [12] 50:9,9 60:1 67:19 72:12 97:14 113:2 113:3 130:20 157:11 215:8 289:4 examination [1] 25:12 examine [1] 26:3 examined [1] 67:21 example [20] 16:12 22:8 42:10 43:8 50:18 67:18 78:14 107:4 119:4 127:21 150:10 162:22 163:6 164:5,7 184:19 211:9 240:6 261:1 264:12 examples [7] 7:20 33:22 79:5,6 120:4,11 179:2 except [7] 8:11 34:9 90:22 117:13 232:13 233:19 281:10 exception [1] 24:17 excited [1] 344:6 excuse [9] 62:6 206:22 235:8 292:13 297:6 307:7 310:12 311:10 354:9 excuses [2] 293:7 315:20 execution [2] 175:1,11 exercising [1] 92:4 exhibit [37] 8:1 150:9 155:9 174:9,10 179:9,14 191:2 192:1 199:4 233:17 244:6 246:11 250:12 264:9 271:8 274:20 294:14 296:11,12,13,16 296:17 300:1 302:8,10,14 303:1 306:5,21 325:21 330:11 334:1,3 354:4 365:7,7 exhibits [5] 7:16 8:1 179:14 331:1 377:11 existed [6] 37:4 65:5 67:8 206:12 317:5 374:13 existence [6] 159:22,22 162:6 237:1 264:18</p>
<p>-E-</p>				
<p>E [4] 233:18 244:6 246:11 379:3 E7018 [19] 163:9,13 164:1 183:6 184:18 187:18 237:2,14 238:2,3 239:1 243:12 244:3 247:1 264:21 265:3 364:1 367:1 367:15 E7018-A1 [12] 163:10 163:12,22 183:3 184:18 187:19 237:14 238:1,2,21 364:2 366:22 eagle [1] 229:3 earliest [2] 177:22 179:2 early [12] 13:21 121:7 136:11 147:8,11 181:3</p>	<p>184:19 203:6 256:22 268:22 330:12 331:18 easier [2] 53:17 292:6 easily [1] 317:2 easy [2] 82:5,5 ECP [1] 23:8 Ed [11] 5:2 18:17 70:7 134:18 236:19,21 237:4,5 237:16 238:10 239:2 Edelman [52] 63:1,1 65:14 106:13,20,20 108:19 126:3 217:17 228:2 232:1,8,16,19 233:7 233:11,11 317:15 320:7 339:15,21 340:5,6,9,16 341:19 345:1,7,7,9,13,21 346:6,14,16 347:1 348:7 348:12,16,18 350:20 351:5,8,13 355:19 356:6 357:4,6 359:2 360:5,10 362:17 Edelman's [1] 232:18 edification [1] 187:15 edited [3] 71:6 89:18 142:6 editing [5] 34:9,12,21 76:3 85:10 editorial [2] 107:13 338:11 Edmister [3] 36:8 76:8 375:15 Edwin [2] 2:5 3:14 effect [16] 61:6,18 65:13 66:17 81:12 89:20 92:12 97:5 255:7 288:3 292:18 321:14 364:5 375:7,19 376:19 effectively [2] 91:3 113:22 efficient [1] 268:18 effort [4] 33:15 44:15 45:18 178:1 efforts [1] 59:1 eight [3] 212:1 289:7 294:4 either [10] 29:17 79:3 185:20 191:17 213:12 249:14 296:16 298:1 351:12 354:2 either-or [1] 122:8 elaborate [1] 42:1 Electric [2] 50:3 243:17 element [2] 26:5,7 ELLEN [1] 379:3 elsewhere [3] 38:3 243:16 275:13 embarrassed [1] 313:9 embarrassing [1] 313:8 emotional [1] 344:7 emphasize [1] 21:21 emphasized [2] 59:3 80:18 employed [1] 281:8 employee [13] 6:9 17:19 23:7 40:19 124:18 125:5 125:8 203:13 237:5,9</p>	<p>282:3 311:5 362:7 employees [9] 14:14 125:1 237:11 260:16 281:4,8 346:6 375:20 376:16 employer [1] 244:4 employment [3] 50:16 137:6 341:10 end [32] 11:9 12:22 13:12 14:5 15:19 17:8 21:16 26:17 27:21 28:1 45:20 52:11 75:6 133:6 143:15 143:18 145:3 155:11 158:4 176:14 191:2 219:19 222:21 263:18 277:11 289:1 321:19,20 323:5 324:14,21 330:5 ended [3] 94:1 114:13 129:19 endorsing [2] 101:10 102:14 energy [1] 167:19 enforcement [10] 3:19 3:19 4:3,5 5:20,21 32:18 133:9 352:9 377:15 engaged [2] 38:11 52:22 engineer [94] 4:9 20:9 20:13 21:12,15 29:18,20 38:1 40:14 48:2 65:2 69:9 92:16 93:4 95:15 96:2 101:4 103:4,16 112:6 113:6,10,14 114:14 118:10,21 144:19 145:6,9 145:16 147:4,12 148:12 148:19 149:21 150:2,15 151:17 152:1,12,12 153:1 153:8,15 154:10,10,14,17 155:10 157:2,18 158:1,3 161:1,16 165:4,5 172:10 173:9 184:7 190:2 192:17 193:2 205:4 207:15 208:9 215:6,18 216:4 220:14 221:1 223:1 242:9 245:21 246:4,5 251:3,4 255:9,14 255:22 260:1 261:21 279:15 281:12 320:17 323:10 358:19 360:12 361:22 370:16,18,20 371:3 engineer's [5] 118:11 121:22 156:14 159:18 321:6 engineering [25] 59:21 104:6 109:9 114:21 115:1 153:19 157:6,18 172:11 177:17 246:2,3,7,9,10 271:16,17 272:16 274:3 277:15 287:13 297:6 298:10 299:4 301:7 engineers [10] 15:17 16:6,7 17:8 21:20 148:9 158:9 215:22 217:19 246:7 enlightening [1] 41:11 enlisted [1] 181:6 enters [1] 104:3 entire [6] 45:4 63:19 142:15 166:10 204:14 379:13 entirely [6] 130:21</p>	<p>132:21 196:2 283:5 340:11 372:7 entry [1] 328:22 envisioned [1] 206:2 equal [1] 248:21 equipment [2] 165:13 279:18 eroding [1] 205:1 error [8] 83:14,19 117:1 128:4,5 184:9 335:1 336:8 errors [6] 65:5 115:20 334:9 339:1 359:15,16 espousing [1] 344:13 essential [13] 21:11 91:9 161:21 162:7,11,13 163:4 163:18,19 183:10 238:3 251:9,21 essentially [88] 27:15 57:3 75:15 88:6 110:2 134:4 136:7,14 138:2 148:4,8 150:11 153:21 155:16 156:7,13,19 157:13,16 158:7 159:7 160:8 161:7 165:6 169:20 174:19 177:4,16 178:13 179:19 181:1 182:13 186:12 189:1,7,12 190:9 192:11 195:12,21 200:10 204:1 207:4 212:4,5,12 212:22 213:6,13 222:11 222:14 228:17 231:14 233:13 241:8 244:14 254:21 268:4 274:17 278:16 279:21 281:15 284:3 291:21 292:8 306:13 311:10 312:15 313:6,9 315:17 320:1 321:11 336:16 338:21 340:4 341:7 345:13 346:2 346:11 348:5,21 349:12 353:9 362:7 367:13 368:5 368:12 established [3] 40:4 84:6 128:4 establishing [1] 86:3 estimate [2] 71:20 73:17 Eugene [1] 150:16 evaluate [4] 19:18,19 90:9 320:22 evaluation [2] 210:4,20 Evans [16] 262:3 297:21 299:16 302:3 310:10,16 310:17 319:9,10,11 341:6 341:8,14,20 354:16,19 Evans' [1] 310:4 evening [1] 365:16 event [11] 51:10 270:4 272:11,15 275:8 287:18 293:2 321:21 343:15 354:12 355:11 events [9] 9:6 19:1 80:16 86:8,16 90:3 350:15 371:22 376:22 eventually [2] 181:16 278:8 everybody [18] 3:12 7:7 9:5 14:17,17 18:2,15 32:7 35:12 44:4 56:1 101:17</p>	<p>102:3 123:14 175:11 181:14 243:5 276:16 everybody's [1] 123:4 evidence [67] 10:2 14:3 22:8 27:4 28:1,4,6 33:8 37:12,13 44:9,13 45:6 49:1 68:2 70:9,18 71:14 71:16 72:14 75:20,22 81:13 82:2 83:3 84:4 86:10 87:11 90:18 100:12 105:16 108:10,12 125:16 127:2 128:8 132:18,22 134:2 135:14 137:2 179:8 185:12 219:5,11,16 224:9 235:6 240:20 246:8 255:4 258:9 278:16 297:14 305:14 317:9 328:13 338:15 350:8 365:1 368:13 369:19,21 370:3 370:13 372:18 377:20 evidence-gathering [1] 70:21 Ex [1] 277:17 Ex'd [2] 225:6 324:18 exact [3] 187:12 232:22 247:10 exactly [12] 50:9,9 60:1 67:19 72:12 97:14 113:2 113:3 130:20 157:11 215:8 289:4 examination [1] 25:12 examine [1] 26:3 examined [1] 67:21 example [20] 16:12 </p>

<p>284:21 existing [3] 161:17 284:22 298:1 exit [1] 355:13 expanded [1] 190:19 expect [7] 72:1 103:9,11 103:12,21 210:18 332:14 expectation [8] 91:14 91:17 98:15,16 99:15 113:18 151:13 259:20 expectations [10] 40:20 91:10 96:12,13,16 98:13 258:4,4 263:10 332:8 expected [3] 102:4 202:9 376:12 expecting [1] 109:22 expects [1] 202:8 experience [42] 30:19 36:17,18,21 38:14 113:21 114:18 115:3 154:12 157:1,8,12 170:19 177:17 177:18 184:18 188:22 190:1,4 205:19 212:14 215:4 226:5 233:12,13 245:16,17 246:9 247:16 266:15 268:10 273:17 290:9 299:6,12 300:9,14 301:18 303:16 319:7,9 376:8 experienced [3] 279:15 290:1 305:6 experiences [2] 46:15 202:15 expert [16] 15:21 16:18 16:19 18:12,18 23:2 28:20 28:20 47:3 56:2 76:21 109:4 170:14 238:17,18 326:21 expertise [2] 15:10 157:22 experts [10] 15:18 16:11 17:6,13 104:6 171:3 276:2 297:1 303:5 305:22 Expires [1] 379:20 explain [22] 6:7 10:21 18:4,20 28:6 41:21 45:11 45:22 46:3 67:22 87:9 111:4 116:5 137:22 143:4 143:5 149:10 157:20 181:15 274:4 357:10 373:7 explained [6] 48:15 87:14 181:10 272:3 273:11 287:13 explaining [6] 75:14 265:22 266:13 292:3 302:19 330:19 explains [1] 360:12 explanation [12] 90:4 172:16 185:10 190:20 209:22 210:7 242:2 254:20 272:9 276:1 299:17 304:1 explanations [7] 74:7 80:19 82:11 85:14 89:13 109:8 315:19 explicitly [2] 55:12 104:9</p>	<p>explore [1] 40:2 expose [1] 133:17 exposure [1] 188:20 express [2] 120:14 377:3 expressed [6] 85:18 211:12 216:12 221:5 313:17 329:21 expressing [1] 371:12 extended [1] 284:12 extensive [1] 316:7 extent [6] 14:7 34:20 42:20 224:8 225:16 348:19 extraordinary [1] 51:10 extreme [1] 313:17 extremely [2] 313:8 316:4</p> <hr/> <p style="text-align: center;">-F-</p> <hr/> <p>F [1] 250:12 face [5] 32:18 70:5 274:6 293:1 338:22 faced [1] 32:10 facility [1] 77:1 fact [71] 10:7 13:6 35:5,6 40:12 45:18 51:8 56:9 57:20 61:9 70:11 75:5 85:20 89:16 110:2 111:14 112:13,14 121:19 125:19 127:18 128:3 131:21 141:4 143:2,14 147:19 152:4 172:14 187:4,16 196:8 210:12 214:17 220:10 225:2,20 229:16 230:18 239:11 241:14 242:6 248:14 249:2,4 259:1 262:19,21 266:8 269:15,17,22 275:3 276:14 280:1 292:13 300:10 303:9,18 305:8 313:1 319:9 341:19 345:7 345:16 347:7,15 354:17 359:15,16 366:15 factor [4] 59:5 128:12 168:2,17 factors [1] 83:21 facts [13] 5:8,10 12:7,8 29:8 53:4,18 82:22 88:7 103:20 161:4 329:9 334:3 factual [8] 8:5 9:1 27:22 34:14 53:13,14 104:7 127:18 factually [1] 259:10 Fahrenheit [8] 185:16 187:2 274:12 294:20 297:11 298:13 328:1,2 fail [1] 218:14 failed [7] 81:6 241:6 290:3 292:9 307:3,3 309:6 fails [1] 332:13 failure [9] 55:19 57:11 57:12 58:12 59:8 132:15 308:18 329:7 332:2 fair [4] 10:11 29:5 73:6 221:6 fair-minded [2] 10:5</p>	<p>13:19 fairest [1] 25:8 fairly [5] 11:5 13:22 192:2 308:12 322:2 fairness [1] 46:20 fall [1] 338:22 falsely [1] 55:4 falsification [1] 37:10 falsified [1] 51:1 familiar [2] 65:6 244:17 familiarize [1] 178:1 far [17] 3:7 4:18 54:16 78:22 79:3 84:5 152:22 159:19 182:10 214:3 228:9 229:2 243:4 246:20 262:15 279:19 283:2 fast [1] 72:9 fault [10] 54:9 57:15 67:9 81:9 105:13 112:12 123:1 123:3,4 359:19 faults [1] 344:4 favorable [1] 372:5 fax [8] 299:1 302:2,3,5,13 306:22 310:22 356:17 faxed [9] 294:14 296:10 296:18 297:5,6,20 298:16 337:5,9 feasible [2] 143:8 217:20 February [7] 50:16 51:17 52:15,17 68:6 131:4 369:11 Fed [3] 225:6 277:17 324:17 feed [3] 180:21 183:13 363:16 feedback [2] 209:9 212:19 feeding [1] 44:13 feeling [1] 375:19 feet [1] 182:11 fellow [1] 156:4 felt [18] 35:9 52:3,4,10 94:10 107:4 140:12 144:13 216:4 219:2 223:11 281:2 289:22 311:12 319:12 335:8 358:19 359:1 festering [1] 108:17 few [8] 55:11 124:2 209:5 212:1 245:12 260:9 264:7 349:20 field [2] 108:8 263:11 figure [4] 178:11 189:1 258:6 274:18 figured [1] 304:12 file [4] 67:11 88:15 285:13 328:15 filed [1] 16:1 files [1] 67:11 filing [1] 286:8 fill [2] 20:22 141:14 filled [2] 116:13 208:7 filler [11] 161:11,12 162:11,16 163:7 165:11 183:9 222:9 236:13</p>	<p>237:15 264:6 filtering [2] 129:14 223:12 final [19] 10:13 34:9,12 52:20,22 58:14,15 68:2 71:5,14 76:3 93:13,16 95:12 98:6,9 169:19 345:21 358:22 finalized [8] 34:19 60:16 71:21 85:10 87:13 91:21 94:2 111:11 finally [8] 57:19 93:18 112:9 183:20 219:14 297:15 299:22 366:21 financially [2] 216:15 217:19 finding [15] 12:6 36:3 38:6,22 64:20,21 78:3 79:9 84:10 128:18 194:9 339:8,10 352:15 355:3 findings [10] 5:3 37:7 83:2 248:4 352:19 354:5 354:13 355:4,13 377:8 finds [2] 356:12 360:3 fine [5] 3:13 30:13 192:19 360:3,3 fingers [1] 289:11 finish [3] 124:12 225:11 378:3 finished [3] 123:21 153:18 377:11 fire [1] 48:2 fire [2] 64:6 80:20 firm [11] 3:15 5:5 6:15,19 7:1,5 8:7,17 36:14,16 39:2 first [56] 7:5 8:12 9:13 11:3,22 24:3 31:2 39:19 53:20 62:1 68:19 89:9 94:22 143:10 147:2 148:20 150:10 185:7,14 188:19,20 190:15 199:4,9 202:9 233:11 239:3,9,10 243:3 247:2 250:16,18 264:9 272:10 277:12 278:17 284:17 285:11,18 292:16 295:17 305:12 310:3 313:13 315:14 317:13 319:4 326:3 333:15,22 344:1 363:12 363:12 367:9 374:9 five [7] 74:10 266:5 298:13 334:8,15 337:15 337:20 five-eighths [1] 188:11 five-minute [1] 289:10 fix [3] 42:19 122:14 187:12 fixing [2] 43:1,5 flack [1] 212:12 flawed [1] 101:14 flawless [2] 202:12 358:15 flexible [1] 208:14 flip [2] 58:20 280:8 floor [2] 343:9 349:6 Florida [5] 157:9,12 207:14,22 208:8</p>	<p>flow [3] 13:13 91:7 123:2 flowed [1] 88:6 flushed [1] 22:18 flying [1] 229:3 focus [1] 293:13 fold [1] 372:8 folks [3] 4:17 72:6 130:10 follow [8] 26:1 28:15 29:15 162:3 198:2 221:17 267:1 283:9 follow-up [3] 22:14 42:7 124:7 followed [1] 192:2 following [1] 80:3 follows [5] 50:13 130:15 177:14 254:2 289:15 forego [1] 250:5 foregoing [1] 379:11 forget [5] 16:1 149:3 163:21 287:9 321:12 forgot [1] 346:22 forgotten [1] 367:14 form [6] 10:16 52:12 93:16 119:5 196:11 264:5 formal [1] 314:13 format [2] 200:5 205:16 former [1] 26:6 forming [1] 212:13 Fort [4] 37:1 38:14 205:16 374:8 forth [8] 90:21 116:5 139:5 140:5 162:16 240:2 275:14 379:14 forward [6] 5:17 173:5 202:19 250:5 368:3 377:10 found [17] 23:5 84:11 93:22 104:5 117:8 134:3 137:9 171:13 178:5 193:21 231:3,4 285:13 316:16 325:6 356:18 368:13 foundation [4] 41:15 48:14 127:18 249:22 founded [1] 102:18 four [10] 53:15,16 74:10 142:3 266:9 278:11 337:19 347:9 354:12 376:2 fourth [5] 68:1,4 192:1 343:9 349:6 FPE [1] 208:22 FPL [1] 209:9 frame [21] 30:21 106:9 129:1,5 137:1,9 150:1 151:3 212:19 239:22 247:19 267:22 296:8 297:12 306:21 320:15 332:14 336:21 343:12 349:4 356:1 framed [1] 136:13 frames [1] 136:21 framework [3] 88:9 92:15 209:18 frankly [4] 33:11 82:20</p>
---	--	--	--	---

101:12 223:8
free [3] 38:3 66:20 99:11
fresh [1] 154:1
friction [1] 207:18
Friday [1] 278:19
front [6] 7:7 74:20 84:5
 174:8 313:10 314:5
frying [1] 189:1
fuel [2] 171:2,8
full [3] 14:13 267:10
 377:10
fully [1] 114:15
function [12] 63:19
 90:19,20 144:3 147:5
 153:9 156:11 159:7 174:3
 199:3 233:10 291:8
functionally [1] 210:3
functioning [1] 210:19
functions [4] 148:10
 154:19 156:14 161:6
fundamental [1] 85:2
fundamentally [1] 84:7
furious [1] 358:16
fusion [5] 167:5 290:3
 292:9,16 309:6
future [2] 5:15 265:7

-G-

gained [2] 245:15 247:19
gather [2] 9:1 33:1
gathered [1] 277:14
Gavula [9] 1:21 4:14,14
 195:10 197:13 261:16
 262:6 325:5,16
gearing [2] 176:10 206:4
general [4] 5:7 159:12
 243:17 246:6
generally [10] 8:16 31:5
 32:21 33:9,15,16,16 46:19
 109:3 189:21
generated [2] 75:22
 169:22
generating [1] 13:9
generator [7] 206:1
 216:2 217:11 244:7,15
 264:2 334:19
gentleman [1] 62:22
gentlemen [1] 63:14
George [24] 2:7 4:8 6:7,8
 18:19,22 19:6,9 20:8,10
 20:14 21:14 30:4,6 46:14
 46:14,16 47:6 149:3
 158:22 170:15 220:18
 221:1,6
George's [4] 18:20 19:21
 46:20 47:1
girth [3] 273:7 295:5
 306:15
given [15] 50:22 71:21
 77:22 81:19 93:1,7 100:8
 121:1 165:1 212:3 228:7
 282:20 317:2 341:6
 356:21
giving [3] 6:22 205:18
 352:12

glad [1] 136:4
glitch [2] 43:20 97:20
glitches [1] 278:10
global [16] 190:14 191:21
 192:11,20 193:12 194:16
 194:21 195:5 198:17
 201:3,8,9 225:20 226:8
 229:17 334:10
glossary [1] 256:2
GMD [1] 175:21
goal [1] 42:17
goes [11] 3:8 72:10 75:13
 83:3 311:18 321:4 336:19
 355:19 356:6 357:4
 363:22
gone [13] 61:12 82:7 85:8
 101:7 144:12 213:14
 219:13 263:12,13 270:12
 300:13 308:19 369:10
good [24] 4:20 34:7 40:21
 57:3 67:1 89:10 101:11
 104:13 116:17 177:5
 190:14 201:11 211:20
 227:16,17 228:12 248:8
 270:18 286:12 289:12
 290:11 314:16 341:13
 363:15
goodness [1] 373:22
goofed [1] 247:17
Gorden [56] 92:17 99:9,9
 99:11 100:17,22 102:9,10
 103:8,14 104:1 120:9,20
 121:5 123:17 129:11
 150:16 152:10 170:18
 184:7 222:13 242:7,14
 243:7,15 244:18 245:6
 250:15 259:3 261:18,22
 262:13 268:4,13 269:10
 269:11 273:2 281:10,22
 284:9,11 293:17 296:17
 296:18 297:21 299:16
 300:7,11 302:3 303:17
 305:21 306:7 312:5
 316:13 319:7,21
Gorden's [5] 93:5
 257:15 258:12 262:22
 308:17
govern [2] 174:21 175:20
governed [6] 121:19
 175:12,13 195:17 255:21
 256:12
government [1] 8:22
governments [4] 174:20
 175:11 257:7,18
gradually [2] 104:21
 105:5
grand [1] 345:6
granted [2] 140:14 179:5
Grayson [6] 147:17
 156:3,7 180:15 189:6,15
great [7] 67:17,22 85:9
 130:11 180:10 200:20
 229:4
greatly [1] 144:14
green [1] 249:18
GreenBates [38] 2:2 4:6
 4:6 64:2,17 93:5,11 100:3
 101:6 102:19 103:7 111:2

117:6,15 123:19 124:1
 173:16 220:13 221:8,12
 225:8 229:7 230:2,7
 242:13,21 243:1 248:4
 300:22 311:16 317:22
 318:7,9,20 349:1,7 362:1
 374:4
gross [2] 117:7,17
group [80] 20:9,12 21:1
 21:12,14,20 29:18,20
 32:12 37:22 40:14 48:2
 59:20 65:2 69:9 93:4
 95:14 96:1 101:4 103:4
 103:16 113:6,10,13
 114:14 118:20 121:22
 144:18 145:5,9,16 147:3
 147:11 148:11,9 149:20
 150:2 151:17 152:1,11
 153:1,8 154:9,10,13
 155:10 156:12,14 157:2
 157:17 158:1,2,9 159:17
 160:22 161:16 165:4
 173:9 176:4 205:4 215:6
 215:18,22 216:4 217:18
 220:14 221:1 222:22
 255:9,21 314:11 320:17
 321:6 323:10 358:18
 360:11 361:20,22 370:16
 371:10

grove [3] 202:17 308:6,6
guess [25] 8:20 31:9 65:6
 72:5 77:22 97:12 103:7
 105:8,11 124:3 143:17
 148:20 182:1 195:20
 200:20 203:17 231:6
 247:15,17 252:3 253:5
 285:5 286:1 288:2 290:13
guidance [7] 41:17
 173:15 252:2 256:9,15
 257:4 258:5
guns [3] 181:19,20 182:11
guy [9] 19:6 59:16 92:2
 92:16 208:22 210:3,18
 242:9 373:22
guys [2] 3:9 339:15
GWE [35] 148:8,14 150:6
 151:8 158:19 161:10
 162:6 165:2,16 166:3,6
 166:11 169:12,17 174:3
 191:7 197:16 199:2
 205:19 252:9,13,17,19,21
 254:9 255:16 259:13
 260:1 311:7 323:17
 340:20,21 356:8 358:2
 365:12
GWE's [3] 159:2 166:5
 166:20

-H-

H [3] 102:20 271:8 374:5
half [7] 124:10 287:19
 322:18 342:3 344:2 350:3
 350:14
hand [9] 20:18 34:19 78:2
 99:9 107:6 185:5 259:2,3
 368:8
handed [1] 187:6
handicap [1] 26:8
handle [4] 148:10 208:19

317:18,21
handling [2] 44:14
 207:10
hands [2] 207:12 361:2
handwriting [3] 250:19
 250:20 326:5
handwritten [2] 259:11
 306:10
happening [4] 88:21
 146:13 149:22 210:14
happy [1] 280:12
hard [8] 32:8 47:10 73:11
 178:20 182:20 212:9
 226:12 275:20
hardware [4] 335:8,10
 338:13 364:8
Hartford [4] 100:13
 105:4 106:1 107:20
hatch [2] 327:13 334:18
hate [1] 8:20
he'd [2] 128:17 201:2
head [14] 48:21 51:7
 60:22 61:1 62:12,21 63:2
 104:17 147:15 148:4,5
 209:20 213:11 263:11
headquarters [3] 69:8
 375:3 376:17
healthy [1] 78:16
hear [3] 64:3 360:18 375:5
heard [6] 90:4 125:14
 186:3 208:21 232:11
 253:6
hearing [28] 1:10 15:14
 43:12 49:21 66:11 73:1
 74:6 80:21 81:13,22 86:4
 90:9 105:6,10,12 134:8
 137:3 143:2 211:13
 218:18 220:22 313:6
 317:8,10 333:18 339:6
 358:7,8
heart [1] 110:11
heat [28] 119:21 161:14
 161:15 162:12,17 168:3
 169:8 236:14 241:15,16
 241:16,17 264:7 271:22
 272:12,17 273:4,8,21
 274:22 287:7,14 292:14
 292:17 293:5 297:9 316:2
 316:8
heated [1] 367:16
heavily [1] 32:22
heels [3] 204:18,22
 208:11
held [5] 1:11 9:15 99:17
 202:10 311:22
help [15] 8:4 15:10 19:5
 42:19,20 43:1 45:12
 137:20 140:10 181:6
 189:6 226:11 231:18
 311:9,10
helpful [3] 17:19 146:14
 311:13
helping [3] 138:17
 189:19 291:17
helps [3] 9:3 10:17 299:2
hereby [1] 379:5
hereinabove [1] 379:14

hey [1] 140:1
hierarchy [3] 257:3,5
 318:4
high [4] 13:22 111:19
 136:18 229:3
high-ranking [1] 318:21
higher [1] 168:1
highest [4] 31:9 282:18
 282:19 283:17
highly [1] 26:6
himself [22] 65:11 89:18
 109:9 142:21 143:1,7
 157:19 165:18 178:2
 189:2 253:3 254:14
 269:12 270:13 278:6
 283:8 297:1 312:17 326:9
 345:2 372:5 373:8
hire [3] 148:2 221:6
 319:10
hired [30] 20:11,13,16,22
 21:14 29:18,20 30:9,21
 30:21 47:14 78:9 95:2
 113:13,15,17 114:4,12
 136:11,11,15 153:10
 154:6,13 155:4,7 156:2
 177:16 220:18 221:1
hiring [1] 341:15
historical [3] 237:19,22
 239:7
historically [1] 147:9
history [4] 18:21 113:16
 300:6,13
hit [1] 211:8
hits [1] 167:17
Hlifka [16] 2:7 4:8,8 6:7
 6:8 18:19 30:5,9,20 46:16
 47:14,18 158:22 170:15
 292:20 301:7
hold [5] 17:9 41:9 92:2
 102:2 202:10
holding [1] 41:7
hollow [1] 65:17
honest [1] 10:5
Hood [1] 302:14
hope [1] 249:16
hopefully [7] 9:3 18:15
 28:8,11 75:16 113:22
 190:16
hoping [1] 143:13
horrible [1] 78:20
hour [5] 3:7 342:3 344:2
 350:3,14
hours [6] 124:10 216:17
 219:12,17 294:5 297:8
housed [1] 90:20
Huffstodt [1] 155:10
human [1] 362:11
hundreds [1] 148:20
hyphen [1] 335:2
hypotheses [1] 82:3
hypothesis [4] 80:14
 81:15,16,18

-I-

i.e [1] 153:5

ID [1] 199:10	inaccurate [2] 50:20 51:1	26:10 28:18 33:6 36:17 39:3,4 41:20 70:12 87:15 193:2 246:6	279:18 326:7 357:1	374:13 375:7
idea [7] 21:4 100:14 154:2 201:8,11 280:20 366:14	Inc [1] 379:8		instruction [1] 202:16	invalid [1] 309:10
ideas [3] 12:19 18:7 77:2	inch [1] 188:11	ineffective [6] 53:21 54:5 64:6 66:4,18,19	instructions [3] 175:6,7 175:13	invalidated [2] 304:22 308:21
identified [15] 5:8 19:6 22:16 46:14 111:10 119:3 120:5,6 123:11,13 129:2 129:4 169:21 327:21 375:6	Incidentally [1] 62:19	inefficient [1] 87:4	insure [2] 5:13 267:9	investigate [4] 9:16 67:10 81:17 375:11
identify [5] 29:20 42:8 42:13 80:6 171:13	include [5] 25:10 40:10 194:22 239:7 286:8	inevitably [1] 77:1	integrate [1] 15:8	investigated [4] 69:20 301:14,15 374:6
identifying [2] 27:14 119:7	included [3] 29:1 159:4 252:19	infer [4] 79:13 107:22 197:11 353:4	intelligent [2] 110:1 157:19	investigating [7] 15:20 17:11 19:3 39:9 54:18 208:2 209:10
ignore [3] 94:12 97:16 116:20	including [8] 29:11 33:3 35:21 40:5 45:5 82:3 206:8 207:6	inference [3] 65:19 372:2,20	intelligently [1] 374:16	investigation [61] 5:3 7:19 9:11 10:3 11:10 12:2 12:16 13:1,15 14:12,21 15:13 16:2 19:16 23:11 25:22 29:14,16,16 34:20 35:6 36:19 37:1,2,9,22 38:20 39:20 40:22 43:8 43:11,15 44:3,6 45:15,20 51:12,22 52:6 53:3 69:22 70:1,21 73:9 76:1 79:2 84:3 104:4 115:8 119:10 120:3 130:18 132:17 133:21 136:14 137:8 214:17 228:22 258:21 259:19 317:7
ignoring [1] 314:18	incompetency [2] 102:8 102:21	inferences [3] 22:6 369:19,20	intend [1] 76:19	investigations [14] 4:11 4:13 8:18,21 10:1,5 11:3 13:7 14:1 15:3,7 26:9 39:5 108:15
III [5] 4:2 8:11,14 230:12 334:18	incompetent [3] 55:5 102:9,12	inferential [1] 49:12	intended [2] 87:21 276:19	investigative [6] 5:9 6:11 10:14 15:9 39:10 43:4
ill-advised [1] 201:4	incomprehensible [2] 116:12 358:16	influenced [1] 50:17	intends [1] 11:20	investigator [3] 13:19 23:14 39:14
Illinois [3] 1:13 379:1,5	inconsistent [6] 72:18,21 175:16 176:18 177:2 250:9	inform [2] 242:13,14	intensive [1] 239:22	investigators [1] 15:6
illogical [1] 99:1	inconsistent [2] 325:5 372:17	information [73] 5:14 6:3 9:2 10:15 13:5,14 33:2 41:12 44:11 45:13,14 46:8 50:21,22 71:1 75:17 80:12 85:20 88:3,5 90:1 91:8 123:2 124:7 125:21 138:4 138:12 142:18 143:22 166:7 169:18 178:12 190:17 191:4,12,15 192:10 193:5,22 194:1,5 194:8,11,17 195:6 196:8 196:16 203:3 214:18,21 223:7,12 230:15 231:5 236:15 262:14 275:12,17 299:15 320:12 321:1 324:9 328:9 331:12,14 351:8,9 353:14 358:20 362:18 369:2,18 377:9	intent [2] 54:10 244:17	invitation [1] 284:12
illustrating [1] 172:18	incorporate [2] 92:8 94:11	informed [1] 362:15	intention [2] 278:4,6	invited [1] 284:9
illustration [1] 174:10	incorporated [1] 60:18	inherently [1] 39:13	intentionally [2] 127:17 246:22	involve [2] 15:4 74:8
imagine [2] 289:1 305:6	incorrect [5] 89:22 181:14 194:8,10 339:10	initial [10] 46:7 48:1 57:8 167:7 178:6 181:9 202:6 292:10 333:11 365:9	interest [3] 39:11 280:2 280:3	involved [22] 17:18 35:7 61:3 68:16 94:18,19 95:3 105:3 108:13 141:3 151:19,19 152:6 166:17 182:5 200:19 205:22 269:19 366:7,16 374:5,11
immediate [3] 42:17 62:13 364:9	increase [1] 241:1	initiated [3] 69:5 184:1 367:21	interested [3] 12:6 13:18 243:2	involvement [7] 19:2,2 151:2 155:13,17 205:15 373:20
immediately [6] 23:3 23:12 68:20 80:3 107:18 321:3	increasingly [1] 375:13	inputs [3] 64:5 254:14 295:13	interesting [2] 182:21 235:2	involving [2] 37:10 49:16
impact [14] 109:18 163:14,15,17 167:12 179:21 183:8,9 187:20 188:1 230:13 243:14 273:10 274:15	incredible [1] 128:13	input [3] 64:5 254:14 295:13	interfering [1] 223:17	Island [1] 43:9
impartial [1] 109:18	incredulous [1] 333:16	insight [2] 43:19 44:2	interfering [1] 223:17	issue [138] 17:3 22:16 37:8 42:3 50:14 55:6,7,8 60:9 63:7 64:9 65:6 67:21 68:10 80:21 82:14 83:7 84:11 85:19 87:6 89:19 108:4,18 109:13 110:11 112:8 118:6,6,12 119:12 129:2,10,13 131:9,17,20 134:11,19 135:6,6,19 138:5,7,10 139:7 141:2 144:6 145:8 164:3 168:22 173:3 178:6 179:4,11 180:7,19 182:3,21 183:20 184:1,17,19 185:3,7 186:3 186:6,9,17 187:17,19 196:22 203:2,5,20 204:6 204:15,18,20 208:3 210:15 213:9,13,20 214:4 214:13 216:11 218:6
impermisible [1] 50:18	indeed [3] 65:14 67:7 69:13	insist [1] 254:15	interfering [1] 223:17	
implement [1] 159:8	independent [15] 8:18 19:10,20 39:4,14 69:12 69:15 108:15 157:22 170:13 173:22 233:16 322:1 326:21 360:2	insisted [6] 92:9,17 104:1 116:2 172:19 358:4	interfering [1] 223:17	
implemented [1] 101:16	independently [1] 34:5	insistence [2] 84:17 269:5	interfering [1] 223:17	
important [32] 13:4 14:19,21 22:1 32:20 38:19 55:5,7,8 68:21 78:3 86:18 88:19 118:2 127:21 131:7 161:5 168:17 176:22 216:3,9 252:2 257:22 261:15 279:6 282:21,22 283:12 308:16 314:7 332:5 338:12	indicate [11] 88:16 97:7 179:22 262:19 274:3 276:7 286:20 290:21 297:2 300:16 339:9	insisting [3] 203:6 237:16,17	interfering [1] 223:17	
impose [1] 119:15	indicated [4] 143:7 287:4 316:19 333:18	inspector [1] 181:7	interfering [1] 223:17	
imposed [3] 48:7,12 58:21	indicates [16] 96:22 179:9 237:18 246:8 252:9 255:4 265:4 266:3,9 267:4 267:8 278:16 287:6 297:14 307:17 330:11	instance [31] 24:4 117:14 125:7 135:5 139:6 146:16 148:7,13 161:10 182:2,20 191:13 196:1,6 197:1 199:10 207:9 222:7 224:13 226:14 236:3 238:19 273:22 277:16 287:6 308:1 329:10 334:9 334:22 344:12 354:15	interfering [1] 223:17	
imposing [2] 29:11 48:17	indicating [13] 108:16 142:18 159:6 194:15 236:9 295:19 296:3 297:21 307:12 326:8 333:10,15 358:2	instances [8] 164:9 178:21 182:18 196:21 212:1 226:15 227:12 230:22	interfering [1] 223:17	
impossible [3] 286:11 286:16 355:5	indication [4] 282:13 283:3 329:12 375:5	instantly [1] 185:9	interfering [1] 223:17	
impression [9] 12:22 44:18,19 178:18 205:2 212:13 223:8 248:11 359:14	indications [3] 106:6 228:7 375:17	instead [5] 14:3 184:15	interfering [1] 223:17	
impressions [3] 105:17 372:15 376:18	individual [11] 15:11 21:3 30:10 118:10 147:16 181:4 182:3 227:10 298:11 300:5 321:22		interfering [1] 223:17	
improperly [1] 83:17	individuals [5] 9:18 11:14 15:12 17:14 207:13		interfering [1] 223:17	
in-house [1] 36:8	industry [14] 8:8,16 15:4		interfering [1] 223:17	
inability [2] 320:14 361:17			interfering [1] 223:17	
inaccuracy [1] 34:16			interfering [1] 223:17	

223:19 227:22 229:19 230:14 236:4 237:13 239:10,12,14,20 240:18 243:3 245:4 247:1,10,13 248:13 249:3,4 261:15 276:10 279:13 280:7 290:5 293:4,22 304:4 305:14,19 306:7,17 315:22 316:15,20 322:19 326:2,6,14 330:16,20 332:6,15 349:21 356:7 364:18 365:4 368:10,11 373:1 375:12,15 issued [5] 37:6,15 51:20 80:1 373:17 issues [111] 4:18 5:16 8:5 9:11,17 11:4,6,16,17 15:5 17:18 18:4,9 19:3 21:7 26:12 32:16 36:1,20 37:8 45:1,12,14,19 46:1,2,10 50:12 51:12,18,21 52:2,8 52:13 55:4 57:4 69:14,19 74:13 89:14,22 108:4 109:11,20 110:21 111:16 111:18 119:9 123:13 131:1 135:15 136:2,10,17 137:15 138:17 139:6 140:6,15 143:19 145:18 146:10,11 147:9 159:13 163:5 164:21 171:2 172:21 173:3 177:1 178:17 185:18 201:6 204:18 206:9 208:14 210:9,10 213:5 217:17 221:15 228:21 233:2,6 245:1 249:6,15 250:17,21 265:15 267:12 278:22 289:18 293:20 298:3 307:22 309:2 313:4 316:2 335:8 339:18 347:12 349:17 351:14,16 361:19 367:5 372:8 373:11,20 item [1] 271:21 items [3] 272:16,20 302:12 itself [7] 15:9 34:3 41:11 169:11 183:4 187:8 298:5 IV [2] 37:13,14 <hr/> -J- <hr/> J [1] 296:17 Jack [3] 1:11,16 3:22 Jake [1] 4:21 JAMES [1] 1:21 Jance [9] 236:19,21 237:4 237:5,16 238:10,15 239:2 240:3 Jane [36] 2:6 3:16 7:9,14 8:3 18:4 22:9 29:17 30:14 40:12 45:20 50:9 55:10 58:4 60:4 61:15 63:17 67:14 70:8,17 82:6 85:8 87:9 98:18 113:16 116:5 117:21 119:9 130:8,16 132:20 133:2 171:10,18 210:8 249:20 January [39] 65:3,4,10 65:18,18 67:4 79:22 80:2 124:5 129:17 131:3 137:4 143:17,19 156:8 164:4	185:8 207:8 217:22 220:15 239:12 243:6 345:22 347:2,16 351:17 354:5 356:20 357:12 364:13,15,16 365:5,17 367:5,9,10 369:4 372:1 jeopardy [1] 329:7 Jim [3] 4:14 352:7 353:22 JLG [1] 51:20 job [42] 10:11 40:9,13,16 43:2 60:4 66:5,5,21 69:6 80:6 85:2 87:21 91:3 92:3 92:15 96:18 103:6 110:15 112:2 113:19,21 114:16 115:15 118:9,12 144:8,9 144:11 146:3 148:13,14 148:17 154:5 155:4 156:19 166:10 211:20 212:15 286:18 341:14 376:12 jobs [3] 148:18 193:10 215:5 join [1] 150:22 joining [2] 199:5 260:19 joins [3] 151:3,10 202:5 Joseph [1] 4:12 judge [4] 123:4 127:7 128:16 317:3 judgment [1] 370:12 July [41] 73:18,21 120:6 120:7 129:10,16 224:15 271:6 276:8 279:11,11 284:5,14 285:18 286:5,11 291:3 294:4,14 296:9,10 297:4,14 302:16 303:11 306:18 307:1 309:5,5,7 310:1,8 311:3 312:12 322:17 324:22 325:4,16 328:5 331:10 345:22 jump [4] 149:13 250:5 317:11 324:1 jumped [2] 314:20 344:16 jumping [7] 144:19 147:21 155:19 174:16 183:19 194:7 266:12 June [13] 153:10 155:9 235:1,2,16 246:12 277:21 278:19 286:2,21,22 358:8 368:8 jurisdiction [1] 8:14 Justice [1] 79:4 justifiable [1] 118:14 justification [1] 120:1 justify [1] 158:8 <hr/> -K- <hr/> Kane [2] 379:2,5 Katherine [4] 2:2 4:6 152:20 289:18 keep [7] 7:16 25:17 52:13 147:21 217:21 343:14 375:15 keeping [1] 78:10 keeps [2] 100:4 360:8 Keith [1] 315:12	kept [5] 105:6,20,22 201:20 287:17 kind [39] 3:6 9:8 25:13 43:19,20 44:1 103:13 108:17 109:19 146:21 148:13,16 151:4 154:5 155:14 156:18 159:14 161:15 176:10 179:1 182:4 193:14 194:5 197:7 198:8 210:2 218:14 222:8 245:14 288:6 300:8,10,19 301:5 308:12 311:7 314:2 353:16 372:2 kinds [1] 36:19 knew [18] 46:17,17,18 47:8,11 92:22 97:21 114:4 128:16 131:13 235:14 263:12 317:5 319:8 335:15 344:15 373:17,22 knowing [2] 185:8 195:21 knowledge [18] 15:8 16:8 17:21 18:8 19:5 21:4 77:6 85:1,19 112:7 113:21 185:2,6 189:22 272:2 319:12 352:18 361:17 knowledgeable [7] 21:5 46:16 110:1 147:18 148:3 171:12 181:4 known [3] 31:21 122:22 361:9 knows [6] 103:19,20 179:5 335:20,21 342:12 Knudsen [20] 1:5 2:4 4:9 5:5 6:1,9,10,16,17,20,21 19:1,8 35:7,7,19,21 36:22 40:14 133:10 <hr/> -L- <hr/> L [3] 300:1 302:8 306:22 lab [8] 166:4 167:1 169:13 266:22 267:5 271:14,15 294:13 Labor [23] 21:18 36:3,12 36:19 38:6,22 44:8,10,14 44:20 45:4 64:20,21 79:9 80:15 81:22 83:5 86:4 134:7 339:5 352:17 353:1 353:6 laboratories [2] 300:21 301:16 laboratory [6] 166:2 300:8,12,14,16 301:15 labs [1] 271:11 lack [16] 102:17 109:19 123:7 125:18 167:5 190:4 268:10 281:1 290:3,8,9 292:9,15 309:6 361:17 362:22 lacked [5] 66:22 92:6 102:13 112:6 370:15 lacking [1] 228:8 lacks [1] 103:5 laid [3] 159:7 165:3 363:2 language [4] 97:7 109:15 120:15 141:13 large [1] 315:2 last [23] 3:7 33:6 34:2	67:5 120:4,10 125:14 158:4 191:2,3 194:14 234:12 235:13 302:1,14 311:22 320:10 327:2,18 328:22 341:16 365:6 377:14 last-minute [1] 370:14 lasted [1] 350:10 late [5] 35:19 73:17,21 205:21 234:7 law [3] 6:14 32:18 127:7 lawyer [7] 24:13,14 31:11 44:14 45:17 49:14 81:11 lawyers [4] 4:16,16 25:11 33:12 lay [3] 41:20 47:2 372:10 laying [1] 152:21 lays [2] 56:22 165:7 lead [2] 127:5 292:13 leak [5] 43:8,17 79:1 127:22 128:1 leaned [1] 157:1 learn [8] 17:1 113:19 114:1 154:2 189:6,9 357:17 358:5 learned [1] 275:12 learning [2] 15:15 143:16 Leashman [1] 352:7 least [33] 17:5 23:6 41:5 74:10 130:22 145:13 147:11 159:19 160:2 170:11 184:13 196:9,16 200:21 231:21 232:15 235:15 253:19 257:1 274:11 281:16,22 291:15 291:22 300:5 312:4 323:2 331:17,21 357:20 361:15 363:3 368:14 leave [7] 3:3 77:12 189:15 189:16 284:9 352:7 369:17 leaves [3] 279:20 282:8 309:20 leaving [1] 143:12 led [6] 58:16 59:6 86:8,16 275:21 369:11 left [24] 25:8 30:12 108:8 114:13 124:6 142:19 143:18 156:5 179:21 189:15,16 201:13 243:15 244:20 251:5 257:13 278:3,18 279:8 282:15 283:5,21 315:11 358:1 legal [2] 39:12 373:9 legally [1] 50:17 legitimate [8] 44:17 118:19 127:3 128:19 365:3 368:15 369:6,8 length [2] 105:3 143:21 leniency [1] 208:19 less [3] 78:12 116:22 282:21 lessening [1] 193:13 letter [10] 34:13 287:3,6 319:14,16 354:15,17,22 355:1,11	letterhead [1] 244:6 letters [1] 49:2 letting [2] 107:10 362:13 level [31] 14:10 53:10 111:20 116:4,9,11,21 117:4 122:21 125:18 156:3,6 161:15 175:3,4 176:2,3,6 195:18 213:18 214:12,22 216:17 244:10 318:1,4 331:13 339:4 354:7 374:18 375:3 levels [1] 121:17 liable [1] 139:22 licensee [3] 5:22 24:4,5 lied [4] 49:21 81:13 86:3 347:4 life [2] 47:9 146:18 light [6] 157:9,13 207:15 208:1,9 366:20 likely [3] 168:4 241:12 272:5 limit [2] 87:14 237:20 limitation [3] 197:2,17 198:6 limitations [1] 194:19 limited [4] 7:17 48:3 172:8 197:5 limits [2] 198:9,10 line [22] 8:3 68:22 90:12 91:2,8,10 99:14 106:5 131:8 136:3 137:13 140:22 147:5 194:14 231:18 252:18 263:11 271:18 287:21 288:14 294:17 321:6 lines [3] 180:21 183:13 190:22 link [3] 23:11 58:15 63:4 Lisle [1] 1:13 list [11] 119:4 156:18 267:5 271:4 291:8 301:1 301:3 333:10,15 337:20 367:22 listed [1] 207:5 listen [5] 86:10 97:18 142:5 240:13 362:20 listening [1] 142:14 litany [1] 245:10 litigation [2] 52:11 372:6 lobby [1] 130:11 local [1] 36:15 located [1] 206:14 location [1] 300:15 Log [1] 199:5 loggerheads [1] 108:6 logic [3] 343:22 344:11 345:3 logical [4] 49:6 79:12 103:2 172:2 logically [1] 81:3 longer [9] 21:15 29:7 61:3 72:8 131:20 158:19 328:20 350:17 360:11 look [67] 10:9 18:12 46:3
---	--	--	---	--

<p>46:3 47:3 67:12 68:14 70:8,19 80:9,11 89:20 94:10 105:21 108:10 109:4 116:10 122:9 150:9 179:12,13,14,20 194:14 198:20 199:3,5 200:14 201:16 215:4 221:15 230:1 231:4,8,9 236:6 247:5 252:8,20 255:5,8 255:12,19 268:1 271:8 292:22 293:14,15 296:3 298:22 299:22 306:4,21 307:11 322:10 327:17 329:10 337:19 354:4,11 366:5,12,15 370:9 375:10 376:15 377:10</p> <p>looked [19] 104:9,12,13 116:1 123:13 171:9 174:11 186:19 217:17 236:1 246:22 251:20 295:17 337:17 340:7 363:11 369:22 370:2,11</p> <p>looking [30] 20:20 46:18 74:21,22 75:3 86:9 103:7 139:1 140:9 155:9 162:5 166:18 172:19 177:8 206:20 216:15 247:4,9 248:13 249:5,6 258:5 277:3,10 283:19 325:8,14 350:18 355:10 368:9</p> <p>looks [3] 174:12 192:5 298:8</p> <p>loop [1] 207:18</p> <p>lose [2] 55:15 83:19</p> <p>losing [1] 216:12</p> <p>loss [4] 83:21 84:21,22 234:22</p> <p>lost [5] 217:6,13 223:5 361:20,20</p> <p>lots [7] 15:6 49:3 73:1 79:5,6 131:16 134:16</p> <p>Lou [42] 48:21 63:2 127:8 142:21 143:1 150:19 233:20 250:19 251:7,16 251:17,19 296:1 318:9 320:9,10,11 321:5 335:16 335:17,19,20 346:7,10 347:22 348:3,4,4,7,8,10 348:12 349:6,8,15 350:16 351:5 355:12,14 359:18 360:14 375:14</p> <p>loud [2] 344:6 348:2</p> <p>low [2] 274:15 275:9</p> <p>lower [4] 168:2 179:13 327:4 375:3</p> <p>Lucie [26] 94:21 95:16 95:18 96:1 123:19 124:4 145:3 176:8,16,21 202:18 202:19 206:1,21 217:9 229:15 235:3,19 236:11 237:7 239:16 241:15 252:8,12 357:21 369:1</p> <p>lucrative [1] 216:1</p> <p>lynch [1] 343:5</p> <hr/> <p style="text-align: center;">-M-</p> <p>M [1] 306:5 M-11AB [1] 183:12 machine [1] 308:5</p>	<p>machining [2] 307:13 307:13</p> <p>Mackie [1] 315:12</p> <p>mad [2] 345:19,19</p> <p>mail [1] 324:17</p> <p>main [8] 119:12 131:8 180:20 183:12 245:19 363:16 368:21,21</p> <p>maintain [1] 173:1</p> <p>maintained [2] 170:11 253:20</p> <p>major [4] 57:4 59:5 213:10 280:22</p> <p>makers [2] 373:18,19</p> <p>makes [4] 88:14 165:12 183:9 367:19</p> <p>Malone [2] 3:15,17</p> <p>manage [1] 288:11</p> <p>management [67] 14:10 14:20 38:10 40:19 48:8 48:19 50:15 51:1,9 53:7,8 53:9 54:9,13,14,15,16,20 57:15 58:10,11,19 59:11 59:12 66:8,21 81:12 85:20 85:22 86:3 87:18 88:3 91:10 94:7 99:6 101:15 103:20 107:7 108:5,7 111:20 112:9 121:13 122:20 129:11,14 137:11 142:21 144:2 145:2,15 156:10 175:7,22 210:22 282:19 283:10 318:1 338:18 354:7 368:15 369:3 371:4,17 373:19 374:15 376:11</p> <p>management's [6] 58:18 63:6 66:10 69:10 86:7,15</p> <p>manager [12] 60:20,20 64:14 68:14 88:13 106:5 152:8 157:15 268:5 312:5 318:8 333:6</p> <p>managers [14] 48:5 49:16 50:2,3,6,8 53:10 55:15 102:11 228:1,3 295:18 325:18 374:18</p> <p>mandatory [2] 286:3,22</p> <p>manipulated [2] 48:8 48:20</p> <p>manual [16] 55:3 174:19 175:10 195:14,14,17 196:4 206:10,11 227:4 230:21 251:1 255:6 260:19 267:11,14</p> <p>March [4] 30:12,21 76:12 76:15</p> <p>marginal [2] 260:16 263:4</p> <p>marine [1] 157:7</p> <p>marked [1] 329:17</p> <p>Marty [14] 180:22 181:10 182:2,14 189:20 212:7 240:12 269:12 295:22 321:2 330:15,16 331:11 340:17</p> <p>Marv [3] 302:11,15 327:19</p> <p>Mary [36] 2:6 3:16 7:9,14</p>	<p>8:3 18:4 22:9 29:17 30:14 40:12 45:20 50:9 55:10 58:4 60:4 61:15 63:16 67:14 70:7,17 82:6 85:8 87:9 98:18 113:16 116:6 117:21 119:9 130:8,16 132:20 133:2 171:10,18 210:8 249:20</p> <p>Massachusetts [1] 271:17</p> <p>material [31] 14:4 119:20 159:14 161:12 162:9,11 163:7,9 165:10,11,12 167:13 169:7,7 183:10 188:9 199:5 217:11 222:9 236:13,13 237:15 264:5,6 264:22 271:11,12 272:5,8 272:11 287:5</p> <p>material's [1] 167:14</p> <p>materials [14] 161:11,13 162:8,16,16 188:10 260:19 271:9,10 287:10 287:18 288:2 292:11 327:4</p> <p>matrix [9] 238:9 298:9 298:15 302:5 306:22 307:7,8 308:14 328:18</p> <p>matter [17] 1:3,11 5:20 15:22 25:14 27:2 35:5 39:8,9 40:12 52:10 172:14 196:7 205:8 262:14 335:12 378:7</p> <p>matters [1] 82:11</p> <p>Max [3] 311:21 317:21 318:6</p> <p>maximum [1] 167:22</p> <p>may [69] 3:6 12:18 13:1,2 20:5 39:11,12 41:3,14,15 41:16 43:4 56:1 71:12,18 74:8,13,13 130:22 135:12 137:9 145:13,19 146:9,17 154:18 157:6,10 177:9 197:13 199:20 200:5 222:9 224:11,18,21 227:21 232:5,16 248:12 252:21 264:3,10,15 271:1 271:19 276:5,17 277:12 282:20,21 287:3,6 294:7 303:3 312:6 327:18 329:19 330:20,22 331:5 340:8 341:16,18 369:20 370:3 376:13,14 379:21</p> <p>mean [83] 20:14 23:17 33:20 41:4,22,22 42:5,12 42:13 55:22 61:18 72:3 76:6 79:6 81:15 88:19 89:22 95:6 98:3 103:20 104:9 106:19 107:4 108:9 111:5 112:2 113:6 119:8 126:21 134:1 136:22 171:9,15,22 185:3 197:14 197:21 204:9 209:21 210:7,11,13 217:16 218:9 220:21 221:9 223:6 226:1 241:2,12 246:1 247:4 248:20 249:20 253:4 257:4,11 261:3 263:3,5 300:7 302:17 305:1 315:2 317:6,6 325:11 329:10 330:7 336:17 340:4 343:18 345:10 351:7</p>	<p>353:8 359:12,15 372:13 373:12,18 374:8 375:9,11</p> <p>meaning [6] 43:18 149:14 285:18 303:14 317:18 323:16</p> <p>means [5] 44:22 110:10 261:21 281:19 319:17</p> <p>meant [6] 99:8 269:5 296:6 304:1 307:14 319:16</p> <p>Meantime [1] 356:10</p> <p>measures [4] 32:5 167:2 167:12,14</p> <p>mechanisms [1] 111:15</p> <p>meet [7] 55:19 56:10,14 57:9,11 242:8,15</p> <p>meeting [61] 5:1,6,12 6:4 36:7,11 37:20 44:5 45:3,9 45:10 46:11 49:7 76:12 130:5,14 133:6,7 177:13 258:3 260:10 268:7 288:20 289:14 310:7 311:22 312:2,3,8 313:7 313:12,12,14 314:18,19 314:21 315:2,7,8,9,10 317:14 318:3,6 323:8,13 332:7 336:19 338:5 342:1 342:3,8 344:2,10 347:5 350:4,13,15 364:14 377:14 379:10</p> <p>meetings [1] 250:16</p> <p>memo [32] 80:1,22 96:17 109:12 203:4,19 236:6,17 236:19,20 237:18 238:1 238:10 243:9,20 246:12 247:2 248:3 268:3 276:4 291:21,21 292:2 302:20 309:11 328:14,17 330:10 330:11,14 331:1 365:6</p> <p>memorandum [38] 27:8 65:4 67:4 89:17,20,22 107:3 264:10,13 295:19 297:20 302:18,19,21 307:6 325:22 326:13,15 326:19 328:6,20,21,22 329:8,14 330:2,17,19 331:12 336:13,13,14 352:3 365:16,17 366:20 366:21 367:19</p> <p>memory [1] 188:12</p> <p>memos [4] 135:7 330:7,8 361:11</p> <p>Memphis [14] 270:5 271:12 277:13,21 278:2,5 282:8 284:10 290:2,14,16 307:19 315:12,14</p> <p>men [1] 342:16</p> <p>mention [6] 130:17,18 262:9 301:8 322:22 363:2</p> <p>mentioned [8] 59:19 74:3 134:19 211:4 289:18 329:20 347:21 358:13</p> <p>mentions [2] 236:19 237:21</p> <p>mentoring [1] 189:19</p> <p>menu [2] 165:6 169:20</p> <p>merely [1] 261:14</p> <p>merit [1] 214:7</p>	<p>message [2] 14:20 360:7 messed [1] 331:15</p> <p>messenger [1] 346:2</p> <p>met [9] 35:20 39:21 45:7 45:16 58:9 76:8 252:5 313:13 317:15</p> <p>metal [32] 162:9 169:5 169:10 271:22 273:5,14 273:15 274:11,16 275:7,8 275:16 276:13,20,22 294:18 297:10,16 298:12 298:18,20 299:6 301:10 302:12,16 303:8,12 304:6 305:17 307:10 331:9,10</p> <p>metals [2] 277:2,4</p> <p>mid [14] 21:13 73:17 189:15 205:21 224:15,17 325:14 327:18 331:20 345:8,10 347:5 359:21 374:18</p> <p>middle [8] 107:8 142:10 253:7 278:18 306:10 320:22 321:20 340:10</p> <p>midnight [1] 224:3</p> <p>might [17] 19:4 44:16 54:22 78:8 156:16 171:16 180:19 190:19 224:2,3 253:6,7 292:13 300:16 341:13,14 368:10</p> <p>Mike [2] 1:17 3:18</p> <p>Mike's [1] 221:17</p> <p>Mile [1] 43:9</p> <p>mind [16] 21:9 75:1 112:17 122:9 146:11 190:12 217:21 232:18 241:9 243:20 251:21 252:3 265:20 335:7 339:21 357:5</p> <p>minds [4] 59:4 240:10 248:22 332:11</p> <p>mini [1] 73:10</p> <p>minimal [5] 155:13 177:20 222:5 244:18 314:1</p> <p>minimized [1] 235:3</p> <p>minor [2] 200:6 231:17</p> <p>minus [1] 297:10</p> <p>minute [5] 31:14 124:9 130:11 235:13 329:18 260:10 349:20</p> <p>minutes [4] 55:11 130:7 260:10 349:20</p> <p>misleading [1] 127:16</p> <p>mismatch [1] 210:2</p> <p>misrepresented [2] 55:3,13</p> <p>miss [1] 11:8</p> <p>missed [1] 329:19</p> <p>misstated [1] 81:1</p> <p>mistake [7] 34:18 83:16 84:14,16,20 85:17 371:6</p> <p>mistaken [6] 83:9 84:12 85:6,12 140:1 315:8</p> <p>mistakes [2] 72:11 248:17</p> <p>misunderstand [1] 328:11</p>
--	---	--	--	---

misunderstanding [3] 96:12 97:22 123:8
misunderstood [4] 202:20 273:22 304:4 305:19
MK [98] 31:4 36:5,12 49:9 50:2,4,5,6,7,15 54:13,14 54:15 75:21 94:7 102:11 102:20 104:5 110:6 111:8 113:17 118:19 121:7,13 123:18 124:18,19 125:1,4 125:5,6,7,8,11 136:8 144:4 147:12 148:20 154:1,7 156:5 157:14 158:6 173:9 175:9 189:21 190:10 203:8,9,12,15,21 203:21 204:1,1 205:10,10 208:13 229:7 237:8,9,22 243:15 244:5 246:5 265:3 266:3 268:22 269:7 270:6 270:7,7 271:15 281:1,8,9 281:18 282:3,6 298:20 300:3 308:2,8,11 317:1,1 318:4 322:4,19 323:4,5,7 341:11 352:11 362:1 374:15,18,21
MK's [4] 51:3 147:20 159:11 175:22
MK3464 [1] 191:3
MK8928 [1] 191:6
modified [3] 43:16 265:9 265:13
modifying [1] 251:9
molding [1] 199:2
moment [7] 6:13 9:9 10:22 49:13 55:22 111:5 376:1
Monday [1] 343:2
money [6] 205:9 208:13 228:15 229:8,18,18
monitor [2] 165:19 278:20
monitoring [1] 319:18
month [9] 47:20 124:5 221:3,6 224:18 225:8 277:21 285:4 322:7
months [6] 21:2 72:2 73:19 217:22 269:4 357:14
moot [1] 61:11
morning [3] 4:20 357:12 360:9
Morrison [21] 1:5 2:4 4:9 5:5 6:1,9,10,15,16,19 6:21 18:18 19:1,7 35:7,7 35:19,21 36:22 40:14 133:9
most [13] 25:3 26:22 36:11 55:5 70:4 71:2 127:21 137:1 211:22 215:22 264:12 268:17 270:15
mostly [1] 228:3
motivating [1] 129:18
motive [1] 373:8
move [4] 31:2 69:6 233:17 320:4
moved [2] 142:12 156:5

moving [1] 263:19
MS [258] 2:2,6 3:16 4:6 20:19 30:2,17 31:8,12,17 64:2,17 74:1 76:14 93:5,8 93:11,13 95:9 96:20 97:14 97:19 98:19 100:3,10 101:6 102:19 103:7 106:14 108:12 110:8 111:2 112:21 117:6,13,15 120:6,8,12,18,21 121:3 121:14 123:19,21 124:1,3 124:20 125:5,10 129:4,21 133:18 139:4 144:5 145:7 146:8 149:3,12,15 150:22 151:10,18 154:15 157:4 158:4 164:8,13 166:13,16 170:15 172:10,14 173:16 173:18 175:21 176:3,7,22 177:7,15 183:19 187:5,9 188:5,8 195:12 197:20 198:4,20 199:2 200:17,21 201:17 205:11,13 208:21 209:15 211:8 212:21 213:3 215:8,11,20 216:7 219:8,15,22 220:13,17 221:8,9,12,14,22 223:19 225:8,12 226:22 227:3,20 228:9 229:7,14 230:2,5,7 230:9 231:21 232:4,10,14 233:22 234:2,6,8,12,17 237:5,9 238:8 241:4 242:13,18,21,22 243:1,3 244:9,13 245:9,17,22 246:19,21 247:22 248:2,4 248:10 249:12 250:7 253:2,17 256:11,16 257:6 259:15 260:3,18 261:20 262:9 263:19 267:15,18 270:14 271:16 275:15 277:1 280:11,22 281:15 282:12,16 283:3,14 284:18 285:8,11,20 286:4 286:7 287:1 289:3,12,17 292:22 296:13,16 300:4 300:18,22 301:2,9,22 302:9,18 303:2 310:12,15 310:17,21 311:16,19 314:14,17 317:11,22 318:6,7,8,9,10,18,20,22 320:6 321:7,18 324:5,9 325:7,12,17 327:15 328:16 330:2,10 332:15 346:9,14,16,22 348:18 349:1,3,7,8 351:12 352:5 354:3 357:20 358:14 359:7 362:1,4 370:19 371:21 374:4
Murlin [5] 147:17 156:7 180:14 189:5,14
music [1] 56:3
must [16] 12:20 56:21 95:3 102:1,1 162:6 164:9 165:2,17,18,22 167:20 169:4,21 170:2 267:8

-N-

N.R.C [23] 1:15 4:12 8:11 9:4 11:19 12:5 13:6,8,22 17:5,7 23:1,11,20 29:10 42:20,21 43:1 78:14 79:3 257:4 353:18,18
N.R.C. [2] 23:9 71:22

N/A [1] 334:13
NA [1] 179:19
name [6] 3:14 4:21 62:22 92:17 156:9 310:22
named [4] 113:10 147:12 147:16 156:4
narrow [6] 11:7 15:19,22 202:17 308:6,6
nature [4] 107:13,14 233:9 338:11
NDP [1] 327:4
NDT [1] 168:16
near [2] 210:6 265:6
necessarily [9] 135:4 154:19 194:17,22 222:20 223:9 246:1,5,7
necessary [5] 5:15 143:9 208:11 305:7 368:17
necessity [2] 326:10 328:11
need [59] 7:3 14:15 15:16 17:1,21 19:12 23:5 46:13 56:8,19 57:1 70:18 74:14 74:15 92:18,19 115:12 116:16 120:14 129:22 130:4,5 146:6 148:20 149:14 161:5,11,13,14 162:10 164:15 166:3 173:11 186:12,14,16 202:1,3 224:3 227:7 230:13 231:6,7,10 235:18 236:11 244:2 253:6,8,12 254:6,7,285:12 291:10 309:15 326:22 356:8 369:17
needed [25] 32:1 45:13 45:15 52:3,5 114:1 126:7 140:13 149:18 155:14 201:16 217:12 220:22 235:15 245:1 253:8 271:3 278:15 285:16 287:18 289:6 291:14 295:14 305:8 306:2
needing [1] 186:18
needless [1] 208:4
needlessly [1] 207:19
needs [13] 22:22 43:1 56:19 102:3 126:12 161:15 166:7 198:2 254:7 264:20 278:1 353:16 370:3
negative [1] 105:17
neglect [1] 322:22
negotiated [2] 92:12 99:21
negotiations [3] 103:15 254:3 288:9
Neither [1] 233:11
never [31] 23:17 85:16 93:20 94:19 117:3 148:12 156:15 201:18 213:12 214:12,13,21 262:7 264:22 272:17 273:17 274:16 278:19 287:15 289:7 298:19 299:5,7 300:2,3,4 308:22 331:14 338:2 350:13 373:22
new [8] 41:16 192:5

217:12 247:16 298:2 306:13 312:14 313:3
next [13] 32:7 86:2 156:3 215:15 252:6,20 255:5,20 272:19 294:1 295:3 298:22 301:22
nice [2] 263:5 342:16
night [1] 253:7
nil-ductility [11] 167:21 168:15 272:22 274:7,10 275:1,6,17 277:7 295:8 296:20
nine [1] 312:7
nobody [9] 10:6 187:11 227:8 242:1 247:14 331:11 335:20 355:22 373:16
non [1] 367:16
none [7] 106:11 161:21 209:8,9 266:6 296:1 347:8
nonessential [4] 162:22 230:14 251:10,14
Nonetheless [3] 170:9 225:22 252:5
nonexistence [1] 146:1
nonissue [1] 184:5
nonnuclear [30] 95:5 110:2 158:16 160:4 177:20 188:15 189:13 192:16 193:1,10 194:2 201:22 212:2,17 215:13 215:17 217:2 221:13,15 227:1,14 228:17 230:2 231:10 266:7,12 268:2 270:8 283:12 301:4
normal [1] 280:3
normally [2] 133:19 314:4
Norris [4] 326:19,20,22 327:12
North [1] 21:10
Notary [2] 379:3,19
notch [1] 265:1
note [11] 28:1 75:6 238:6 251:7 259:11 264:20 265:10 267:8 297:7,14 298:11
noted [1] 211:16
notes [9] 27:21 49:12 185:17 192:13 246:15 260:16 263:4 307:11 364:21
nothing [6] 213:14 228:5 279:6 292:11 322:9,13
notice [16] 126:16 155:8 176:17 261:5 271:18 274:20 282:7 285:21 287:3 297:3 301:22 302:10 307:5 310:22 341:7 356:14
noticed [3] 175:16 177:1 361:5
notices [2] 37:15,16
notify [1] 362:5
November [25] 21:17 35:18,19,22 129:1 158:5 158:18 276:4 292:3

323:20 326:2 328:17,19 329:1,15 330:12,14,15,18 331:18 335:21 336:12 337:6 356:15,17
now [80] 8:9,20 29:13 33:21 38:20 58:19 64:18 70:2,20 77:12 82:15 85:5 86:1,18 89:1 92:10 103:19 103:20 106:7 110:9 123:20 124:21 126:17 128:17 130:6 132:4,13 137:15 146:7 157:17 158:20 163:10 177:11 179:5 181:18 183:20,21 185:1 186:15 187:18 188:12 191:21 194:6 200:1 206:12 214:14 218:3 221:10 226:11 227:5 230:18 240:19 247:18 248:2 262:12 263:19 275:4 276:16,18 277:10 278:3 295:16 296:15 297:22 299:19 312:9 316:3 317:6,12 319:15 321:18 336:12 339:4 340:8 353:8,12 356:22 373:9 374:1 375:19
NRC [1] 4:22
nuclear [101] 1:2,12 8:8 8:16 14:17 15:4 26:10 33:6 36:14,17 39:3 60:12 60:22 61:4,8,10 70:12 76:22 87:15,15,20 94:20 95:3 108:14 114:19 115:15 124:20 126:2 147:20 148:18 153:13 157:8 158:13 159:9 166:22 170:19 174:21 176:9 177:21 181:7 188:17,19 189:11,22 194:3 201:22 202:15 203:16 205:18,19,20 215:4,5,10,19 216:2,6,7 218:8,9 225:10 226:20 227:4,17,18 229:13 230:3 231:15 243:17 245:11,16 245:17 249:12 263:11 266:6,13 268:14 283:17 300:17 320:18 339:16,22 340:3,20 342:11,12 344:8 344:9 345:15 346:8,10,13 346:16 348:13 350:5,17 356:8 368:22 371:10 375:22 379:6
number [25] 13:6 21:2 27:17 40:16 42:2,6 91:15 149:17 153:12 185:21 192:4,7 199:13 200:20 238:12 248:16 263:22 266:12 268:14,18 279:16 280:15 285:6 337:22 343:10
numbered [1] 199:12
numbering [3] 200:10 200:13 355:7
numerical [1] 199:12
numerous [2] 149:6 167:18

-O-

o'clock [1] 360:8
oath [1] 26:22
objective [11] 9:5,10
 10:6,11 12:8 13:17 42:14
 42:18 79:20 88:7 130:3
objectively [1] 110:20
objectives [1] 42:14
objectivity [1] 46:20
observation [6] 69:3
 88:15 127:8 269:16
 280:18 320:2
observations [1] 372:14
observe [2] 267:20 368:9
observing [1] 319:17
obtain [1] 12:9
obtained [3] 14:9 298:10
 324:19
obvious [3] 77:3,3 80:10
obviously [9] 5:18 11:7
 92:2 111:7 115:12 128:14
 130:1 248:17 370:1
occasions [1] 42:3
occur [4] 292:20 347:6
 350:15 365:21
occurred [33] 19:1 38:12
 38:16 56:21 61:20 69:17
 83:11 84:14 88:8 97:20
 117:17 122:20 126:5
 129:13 136:12 139:5
 160:7 225:2 239:22 259:6
 292:1,16 293:19 310:8
 314:22 315:1 317:21
 321:19 340:10 342:5
 374:12,17 375:2
occurring [1] 135:9
occurs [4] 165:3 249:18
 250:2 357:12
October [8] 21:16 47:16
 128:22 129:17 158:5
 225:15 312:11 331:20
off [37] 25:18 41:4 75:9
 91:17 92:7,19 96:18 99:5
 100:3 103:16 106:13,15
 130:12 151:14,16 177:11
 187:8 192:8,21 202:13
 229:11 232:1,8 234:4
 258:12,18 259:4 262:5,12
 263:1 266:22 270:3
 310:13,14 341:20 348:20
 355:7
off-site [1] 336:16
offer [3] 242:2 341:9,19
offered [6] 45:6 80:19
 81:21 83:4 345:11 349:16
offering [2] 209:21 293:6
office [15] 3:19 4:10,12
 36:9 47:12 75:5,7 90:22
 134:16 206:13,14 348:16
 348:18 349:11 371:20
official [2] 31:10 318:21
officially [1] 261:18
officials [1] 31:4
often [1] 209:4
Ohio [4] 115:1 153:16,18
 154:7
OI [2] 23:13 72:7

OIs [1] 37:17
old [2] 190:15 334:19
on-site [1] 117:9
once [9] 24:5 207:21
 225:2 226:6 264:21
 272:11 279:8 287:16
 324:18
one [190] 5:7 6:6 7:8 11:22
 17:5 21:7 28:7 31:21 34:2
 36:7 39:19 42:7,13 43:14
 53:5 55:15 57:4 64:19
 67:2 70:4 74:2,17,19
 75:19 78:2,4 83:20 89:5
 91:12,12 95:20 100:4
 101:22 106:5 107:6,22
 112:4 117:13 119:9
 122:11,15 124:21 127:6
 130:17,17 131:13 133:18
 135:10 136:10 137:21
 138:4 139:4,6,7,9 141:16
 141:22 143:10 146:19
 147:2 150:10,16 153:5,22
 154:8 158:2,10 163:5,8
 167:6 171:18 173:3
 175:19 177:22 178:4
 179:1 189:3,18 190:7
 192:4,15 194:9 196:1
 197:1,2 199:18 200:11
 202:16 204:17 211:9
 212:9 213:12,17 214:9,11
 214:13 215:2 222:7 223:2
 223:20 224:12 225:16
 226:10 227:14 228:21
 229:20 231:21,22 232:5
 232:13,14,15 234:9,9,10
 234:12 235:10,13 239:2,4
 240:6,17 244:8,16 245:2
 245:10 246:21 250:16
 254:2 257:12,13 258:1
 259:14 261:11 263:8,9
 264:19,21 267:5,12
 268:12 272:13 278:2,13
 278:22 280:22 282:20,21
 284:8 287:1 288:19
 289:21 292:4,7 294:8
 295:3 298:2 301:16 303:5
 307:2 309:8 310:18 316:7
 324:2 326:1,2,3 328:5
 332:15 334:10,14,17
 335:1 337:11,14 339:11
 343:20 345:21 346:6,7
 348:20 351:6 353:15
 355:4 361:5,11,14 371:22
 377:13,17
ones [7] 117:8,15 264:19
 273:7 309:8 333:8 337:5
ongoing [2] 22:20 52:2
open [4] 13:13 61:13
 220:14,18
open-ended [1] 11:9
opened [2] 68:18 363:11
opening [3] 3:1 6:5 185:7
operate [1] 76:22
operated [1] 206:8
operating [6] 93:2 148:7
 187:11 258:16 259:7,9
operation [1] 43:10
operational [1] 175:6
operator [1] 308:2
opinion [3] 211:5 283:16

323:3
opinions [1] 171:17
opportunity [7] 18:3
 25:19 26:3 46:2 133:16
 138:6 353:10
opposed [10] 28:7 99:19
 186:13 197:6 205:9
 270:10 292:15 340:2
 345:7 369:8
opposite [2] 33:16 347:8
options [1] 340:8
oral [1] 77:20
order [30] 7:3 17:1 51:2
 51:20 52:10 55:4 56:8,16
 73:14 77:18 116:15 166:9
 199:12 274:19 275:2
 294:12,13 295:11 296:9
 297:5,13 303:20,21 304:1
 304:8,12 306:5,6,8 337:13
ordered [1] 304:9
ordering [2] 271:21
 295:14
orderly [1] 25:18
orders [4] 267:7 316:17
 316:22 317:1
ordinary [1] 210:16
organization [21] 60:21
 88:6 89:5,7 90:11,13 91:2
 91:7,8 108:2,19 111:9
 122:18 123:9 210:17
 214:10,22 288:14 321:13
 321:13 374:20
organizational [6]
 50:10 88:9 111:12,18
 112:5 126:8
organizations [1]
 257:10
organize [3] 9:2 10:15
 76:22
organized [2] 3:3 317:9
original [6] 29:1 191:6
 191:17,18 245:19 288:8
originally [5] 29:22
 92:14 199:11 342:5 348:1
originate [1] 249:19
otherwise [2] 24:19
 180:11
ought [4] 25:7 68:17
 83:22 353:20
ourselves [3] 75:4
 134:14,18
outage [5] 307:20 312:11
 322:3,3,8
outcome [2] 12:15
 122:10
outline [4] 7:9,14 75:15
 136:2
outnumber [1] 4:17
outset [2] 12:9 135:22
outside [9] 17:22 31:15
 32:13 36:10 78:8 106:5
 108:3 109:4 301:12
outstanding [1] 3:7
overall [5] 118:18 176:1
 212:13 288:8 372:11
overhaul [1] 210:4

overlap [1] 47:7
overlapping [1] 154:19
overly [2] 16:5 58:21
overnight [1] 277:17
override [1] 99:8
oversees [1] 63:19
oversight [3] 54:3 61:7
 95:11
overturn [2] 44:15 353:6
overturning [1] 38:21
overview [4] 3:6 5:7
 222:21 329:20
overwhelmed [2]
 181:21 182:17
own [15] 10:10 17:2,9
 18:13 70:9 119:2 157:22
 187:14 192:17 201:20
 253:1 260:2 314:5 337:2
 346:6

-P-

P [2] 334:1,3
P-1 [5] 159:14,15,15 169:6
 169:7
P-3 [1] 159:15
package [1] 44:11
page [25] 27:16 74:5
 104:16 150:11 183:5
 191:3 192:1,7,12 200:15
 238:9 252:20 255:5,6,20
 264:21 265:5 267:8
 274:21 294:16 295:3
 297:4 298:22 302:1,14
pages [5] 7:18 27:12
 28:10,11 200:17
paid [1] 216:17
pain [1] 144:15
panel [2] 17:5 43:13
paper [6] 100:10 101:20
 101:20 102:4 166:15
 260:17
paragraph [4] 265:8
 267:19 327:3,18
paralegal [1] 75:10
parameter [1] 197:4
parameters [19] 56:6,7
 56:9,14,19 132:3 150:5
 160:17 161:20 163:16
 165:8 229:21 292:5,18
 293:9,13,15 316:3,4
Pardi [149] 48:21 51:5,6
 63:2,18 88:10,11 91:11
 92:10 93:2,2 95:9 96:15
 96:21,22 97:13,19 98:1
 99:15 100:5,10 101:7,7
 104:19 105:3 106:2,18,20
 112:10,20 117:3 125:13
 125:22 128:12 129:6,12
 142:21 143:1,7 150:19,22
 151:3,6,10 158:21 202:5
 205:3 213:6,7,7,10 214:2
 214:11 218:16 223:13
 228:2 233:21 234:21
 251:7,17,19 254:16,21
 258:1,8,9 259:12,16 260:6
 260:6,12,12,15 261:2,3,7
 283:15,16 296:1 314:12

318:9 320:9,14 321:5
 323:13,14,19 328:17
 329:21 330:10,12,13,19
 331:21 335:16,17,20,20
 336:12 339:6,14,20,22
 340:3,4,9,14,21 341:6,11
 341:17,18 342:3,9,10,20
 343:6 344:1,5,8,14,22
 345:6,14,19 346:7 347:4
 347:11 348:7 350:13,16
 350:21 351:3,9,14 355:12
 355:14,22 356:2,6,21,22
 357:17 358:4,6 361:20
 374:6,10 375:15
Pardi's [26] 91:13 96:12
 97:16 98:4,12 101:16
 112:17 127:8,12 128:12
 151:13 250:20 251:16
 253:14 259:18 263:3
 314:11 318:2 320:19
 321:13 336:9 342:19
 347:12,13 349:1 361:20
parenthesis [1] 298:12
Parkersburg [11] 52:19
 68:6 69:7,11,16 87:18
 131:4 218:3 369:12
 371:19 373:15
part [70] 6:11 37:14 38:7
 42:21 51:9 68:7 69:3,5,12
 69:13,17,17 71:2 76:1
 111:22,22 121:3,14,16,16
 121:18 131:2,5,10,15
 132:5 161:5 164:4 166:20
 173:16,20 175:16 178:1
 180:18 182:22 183:1,22
 185:4 190:4 192:10,11
 203:2 205:14 207:8
 211:22 216:1,16 233:16
 236:5 247:11 263:10
 274:20 283:4 306:9
 327:18 332:12 351:18
 353:17 363:1,3 367:21
 368:15 369:14 371:16
 372:1,3,21 373:6,15,17
Partially [1] 145:7
participate [4] 15:13
 63:10 79:16,17
participated [3] 53:11
 135:8 138:16
participation [1] 54:18
particular [8] 22:10
 49:20 64:8 91:11 96:9
 122:10 139:7 237:6
particularly [9] 14:16
 26:10 33:7 77:18 87:5
 126:11 219:18 257:9
 293:21
parties [2] 9:3 29:6
parts [2] 90:22 108:2
party [5] 12:5,8,11 13:14
 24:1
pass [6] 166:8 292:7
 293:10 307:4 325:2 343:8
passed [8] 274:17 307:2
 308:20 309:7,8 316:8,10
 329:11
passing [2] 293:8 310:4
past [9] 9:6 150:18 265:1
 265:3 266:1,10 269:16
 303:16 319:9

<p>path [3] 100:6 101:7,8 Paul [23] 2:1 4:10,10 72:15 262:2 297:20 299:16 302:3 310:4,10,16 310:17 319:8,10,11 326:19,20,22 327:12 341:6,8,14 354:16 Paul's [1] 319:12 paying [1] 254:8 payroll [10] 203:10 204:1 268:22 270:7 281:1,5,19 282:6 308:11 323:5 PCI [5] 291:7 308:2,8 322:17 341:21 PD [1] 96:17 pendulum [1] 167:17 Pennsylvania [2] 282:10 290:19 people [103] 9:14 11:15 16:15 17:7 21:8 28:9,9 32:13 41:7 46:18 54:7,7 57:14 66:7 68:15 73:5,5,7 74:6 90:4 94:6 98:17 102:15 111:6 115:20 126:11 137:5,11 146:10 148:16 149:19 151:18 152:11,14 154:8,16 156:2 166:16 171:11 175:12,13 178:7,14,19 181:15,21,22 193:17 203:16 207:20 208:2,6 209:6 210:12,22 211:7,15 212:12 213:4,20 214:5,20 218:18 228:17 229:1 231:15 235:5 240:6 246:6 260:21 272:16 274:13,14 280:16 281:13 281:17 283:10 291:15 305:21 312:2,4,7 313:10 313:12,14 315:1,2,6 317:4 335:14 343:18 348:14 362:13 366:7,16 372:14 374:21 375:17 376:1,2,3 376:13,22 perceive [1] 34:16 perceived [1] 291:12 percent [4] 8:17 215:16 215:19 226:16 perception [2] 106:22 118:22 perfectly [4] 44:16 79:12 192:19 280:17 perform [2] 131:7 282:3 performance [30] 65:13 65:15 67:11,13 88:16 106:6,8,12,17 114:6 175:2 209:11,13 210:4,20 211:3 211:18 228:4,8 229:4 233:8,15,20,20 234:5,22 313:22 320:8 336:15 361:8 performance-related [1] 118:15 performed [2] 93:4 112:2 performing [2] 85:2 90:19 perhaps [10] 16:6 38:3 54:11 174:4 178:1 245:19 294:6 345:11 356:3</p>	<p>376:17 period [28] 47:13 57:6 62:14 67:1 87:1 105:19 132:12 134:21 146:19 147:16 176:8 184:19 217:15 219:19 222:11 226:5 249:15 250:2 261:13 270:22 288:20 291:19 292:2 310:1 329:3 339:13,14 340:14 peripherally [1] 182:4 perjured [3] 142:21 143:1,7 permanent [3] 302:12 333:7 341:11 permissible [5] 161:19 273:18 275:5,7 280:18 permit [2] 24:11 263:15 perplexes [1] 370:18 person [25] 21:9 29:21 30:14 33:17 114:12 122:1 134:10 146:2 147:15 148:13 150:14 157:1,19 181:19 236:18 240:6 262:3 267:2 269:13 303:8 303:9 325:8 362:11,15 371:1 personal [2] 10:4 19:2 personality [5] 65:11 65:16 178:7,16 352:1 personnel [22] 53:22 54:6 55:17 58:7,22 63:18 63:22 65:12 66:22 79:15 79:16 80:8 81:9 83:15,19 84:17,22 85:17 88:15 145:4 150:12,13 personnel-related [1] 118:15 perspective [5] 133:22 137:11 181:22 213:17 376:5 perspectives [1] 25:15 persuade [1] 182:20 persuasive [1] 65:9 persuasively [1] 134:11 pertinent [1] 247:19 pervasive [1] 375:19 phase [2] 15:14 70:21 phone [1] 303:10 physical [1] 160:16 physically [4] 206:12 206:14 207:10 281:13 PICCONY [1] 379:3 pick [3] 52:14 130:8 335:9 picked [3] 119:16 343:10 363:19 piece [11] 41:12 64:21 68:10 112:10 128:7 166:14 217:7 226:2 256:18 260:17 294:15 pieces [3] 112:4 142:16 162:9 pile [1] 14:4 pin [1] 343:5 pinged [1] 314:6</p>	<p>place [25] 30:7 87:1 111:15 123:16 134:21 135:2 145:11 201:19 206:3 265:21 270:9 276:8 278:17 279:19 288:12,17 299:3 315:14 335:2 342:1 343:4 350:16 354:3 378:8 379:14 placement [1] 245:20 places [2] 157:11 288:19 placing [1] 89:6 plan [9] 270:18 286:12 286:13,19 290:8,10,11 345:6 352:15 planning [1] 368:20 plant [16] 23:8 43:18,22 172:6,6,11 187:11 225:10 227:6,15,17 236:8 245:12 249:12 283:17 302:12 plant's [1] 227:18 plants [2] 157:9 243:17 plate [2] 167:3 266:22 plates [11] 165:9,14 166:2 167:9 169:6,8,9 277:12 281:4 287:17 307:14 plausible [2] 185:11 272:10 play [1] 266:15 plenty [2] 115:9 304:13 plus [8] 185:22 187:1,21 294:19 298:13 328:1,2 336:13 PO [1] 298:16 pocket [1] 142:12 point [173] 7:13 11:8 33:22 38:2 48:5,20 49:9 50:20 52:15 53:9,22 57:5 57:9,22 61:12 62:8,16,17 62:18 68:13 76:2 81:14 83:13 84:15 85:15 86:2 91:9,13 92:11,15,16 93:17 95:1,6,19 96:5 97:6 100:4 103:15 114:14 116:6 123:11,15 125:20 128:13 129:15,17 130:12 132:2,4 133:21 138:20 139:9 140:12,17 144:1,18 150:17 151:15,20 152:5 152:12 153:7 158:14 160:2 168:5 172:5,22 173:21 174:17 176:8,16 176:17,20 181:1 182:7 184:16 186:10 190:6 193:17 198:1,14 203:18 204:3,17 206:3,21 214:16 215:2 221:20 222:3 228:16 229:16 231:17 235:8,17,19 239:5,9 240:11 241:14 244:8,14 244:21,22 245:16,20 246:14,16 247:14 250:8 250:14 253:17,18 254:1 254:22 255:2 258:1 259:5 259:7 261:16 262:7 263:20 264:1 265:17,19 266:4 268:15,20 269:2 270:10,13 276:3,12 279:2 280:13 281:9 282:5 283:11 284:10 288:8,11 289:12 290:7 291:2,7</p>	<p>293:18 294:1 309:21 310:9 311:5,6 312:10,12 312:21 313:17 316:5,12 323:14 333:1,17 334:11 341:7 356:11 357:8 358:12 359:6 361:11 363:10,21 366:1 368:5 376:4 pointed [4] 88:1 183:7 184:2 327:1 pointing [7] 66:2,6 75:11 119:1 211:22 330:22 344:4 points [4] 7:20 136:16 218:17 238:1 polarization [4] 90:10 107:5 108:1 123:7 policies [2] 40:8 101:16 policy [5] 42:10 98:4 102:20 103:2 343:7 pool [1] 342:9 poorly [1] 101:19 popping [1] 52:13 Portland [1] 243:17 position [71] 20:21 48:2 48:4,10,22 52:18 55:8,12 57:18 58:17 59:20 63:6 63:14,15 65:2 66:9,10,13 69:10 85:9 86:17 90:9 92:6 102:7 103:14 113:7 113:15,17,18,20 114:12 134:5 139:20 141:19 142:20 143:6 144:19 146:1 154:9,11 170:12,14 173:4 180:8 181:13 205:8 208:7 212:21 214:7 215:19 218:1,2,2 221:2 243:22 257:15 262:13 275:11 319:2 327:9 329:7 335:3,11 336:10 343:6 347:18 357:14 362:2 365:12 372:5 373:8 positions [7] 21:1 55:3 69:21 89:14 137:12 220:14,18 positive [1] 78:11 possibility [2] 71:9 217:18 possible [9] 24:20 72:9 73:8,12 287:5 335:8 349:19,20,22 possibly [4] 312:22 327:16 334:7 343:2 post [1] 273:15 post-held [1] 287:7 post-weld [26] 119:21 161:14 162:12,12,17 236:14 241:16,16,17 264:7 271:22 272:12,17 273:4,8,21 274:22 287:14 292:14,17 293:5 297:9 316:1,8 367:16,16 potential [8] 5:4 68:7 69:3,12,13,17 78:17 116:14 potentially [1] 180:18 power [14] 48:21 51:7 61:1 63:2 104:18 122:21 125:18 157:9,12 159:12</p>	<p>207:14 208:1,8 225:10 PQR [63] 116:19,22 117:8 117:13 139:11,13 149:2 150:5 160:1,3,18 161:22 162:15,17 163:2 164:22 165:17,22 169:17,18,21 170:1,3,17 172:2 174:9 183:8,14 184:12 190:20 191:5,6,10,11,14,17 192:3 193:19 194:12 196:3,7,10 196:21 197:3,6,12 198:12 201:7 224:17 225:17 226:19 231:4,5,11 238:20 241:6 252:16 255:13 285:1 354:8 363:17 364:4 373:4 PQRs [43] 116:4,5 117:14 148:22 149:21 150:3 152:2 161:17 162:5 178:4 179:17 183:2 190:9,15 197:16 198:16 199:7,11 199:16 200:18 201:20 213:20 222:15 224:14 225:4,14 226:7,13 235:17 237:20,20 264:18 265:6 284:20 285:3,14 313:2 319:22 322:11 324:13 325:1 367:14 368:2 practice [1] 327:22 practices [2] 40:10,18 precipitated [1] 249:17 precise [2] 71:13 77:20 precisely [5] 11:16,17 27:19 263:8,9 precision [1] 35:15 preclude [1] 32:5 predecisional [2] 133:7 377:14 preempt [1] 250:3 preexisting [1] 93:3 preliminarily [2] 45:8 45:8 preliminary [3] 11:13 53:2 377:8 preparation [5] 255:10 255:18 312:1 317:8 369:14 preparations [1] 235:3 prepare [5] 10:14 52:6 72:4 236:17 294:9 prepared [20] 11:1 34:4 68:7 69:3 71:2,7 106:12 107:3 114:15 160:10 236:11 285:22 294:11 323:15 325:22 328:18,19 329:14 354:21 364:12 preparing [11] 34:4 92:11 119:13 131:3 156:17 205:22 235:6 317:5 319:22 329:2 377:19 present [16] 1:15 2:4 5:2 10:16 24:12,14 31:5,7,11 31:18,20 36:10 267:9 318:20 353:17 375:6 presentation [12] 3:4 7:15,22 8:13 39:18 71:8 72:4 124:10 126:15,15 137:18 250:4</p>
--	--	---	--	--

<p>presentations [1] 7:9 presented [13] 5:14 18:7 66:11,11 134:10 137:17 247:4 292:12 317:9 318:10 344:11,18 369:17 presenting [1] 377:7 presents [1] 367:18 president [1] 181:1 pressure [2] 188:10 318:3 pressures [1] 288:21 presumably [3] 12:17 169:14 194:12 pretext [3] 81:4 83:7 84:11 pretextual [6] 80:19 81:6 82:11 128:3,11 316:16 pretty [9] 15:20 26:11 70:16 78:20 80:10 116:17 134:2 301:18 342:3 prevail [3] 220:22 319:13 365:4 prevent [1] 38:1 prevented [1] 111:18 previous [3] 94:17,20 95:8 previously [6] 148:21 161:18 224:16 238:13 372:22 373:3 prewelded [1] 271:10 prewelding [1] 273:5 price [1] 298:17 primarily [3] 67:8 90:12 106:20 primary [5] 89:2,3 90:16 114:17 115:15 print-out [1] 27:14 Priorities [1] 307:8 prioritize [1] 271:2 prioritized [1] 285:6 prioritizing [1] 283:2 priority [16] 271:5 282:14,18,19 283:17 285:18 286:9 288:1,6 298:9 307:3,3 308:4 309:6 309:7,7 private [2] 8:22 315:8 privilege [4] 6:20 12:12 12:15,20 prize [1] 26:6 probing [1] 214:16 problem [58] 11:6 14:11 16:21 22:22 38:13 42:16 42:19 43:6 69:1 89:4,8 90:7 100:1,16 107:17 108:1 111:22 112:1,15 119:16 122:13,13 128:2 131:14 132:7,9,19 143:3 145:19 175:17 185:9 194:13 210:14,18 212:11 214:8 228:12 236:8 239:14,19 240:11 249:8 254:17 257:1 293:21 316:9 321:9 332:10 335:10 338:20 339:16 340:6 344:18 364:8</p>	<p>367:10 372:22 373:2 375:2 problematic [2] 195:2 350:11 problems [72] 15:11 22:17 50:20 57:7 58:3,6 60:17 65:14 66:6,15 67:7 68:13 78:22 79:2 80:7 89:2,4 99:16 107:11 111:7 111:8,8,9,14 123:7 131:12 132:8 152:18 193:17 210:11 211:3,11 214:10 219:1 230:4 249:17,19 258:16,17 263:9,9 269:17 269:22 270:20 290:5 311:14 320:7 338:13 344:15,21 346:3 347:20 348:13 351:20 355:17,21 356:13,14,16 357:1 358:17 361:7 363:9,21,21 364:11 366:2,6,9,17 371:8 373:7 procedural [6] 48:6 79:14 88:1 92:15 107:11 123:15 proceduralized [1] 118:16 procedure [130] 28:16 34:8 35:1 42:11 56:13,17 56:18 72:16 91:20,21 92:1 116:15,18 117:4,10 118:15 119:13,17 120:2,9 121:12 122:2 139:8 149:4 149:5,6,9,15 150:4 151:5 155:8,10 160:6,13,14,18 161:3,18 162:1,20 163:11 163:12,22 164:1 165:2,5 172:1 179:8,9 182:22 183:1,2,4,11,15 184:9,11 184:22 185:5 186:1,21 187:4,7 190:13 191:22 192:14 193:4,9,20 200:2 200:4 201:17 202:2,18,22 207:6 224:3 225:9 229:21 230:4 231:12,13 235:11 235:11,20,21 237:1 239:1 239:5 240:19 241:5 242:10,12 243:12 244:2 247:6 250:9 253:7,8,9,22 254:1 255:8,11,16 257:8 259:4 272:14 277:3 279:7 281:17 287:20 289:5 299:11 307:2 323:12 334:14 335:9,19 337:11 337:16 358:15 361:18 363:12,13,15,20 364:1,5 364:5 procedures [284] 9:7 26:1 38:2,17 40:9 54:22 55:20 56:1,5,5 57:1,4,5,9 57:22 58:2,4,9,12 59:2,14 60:10,15,19 62:18 65:5 66:16,19 68:8,9,15,19,20 79:18 81:7 83:12,16 84:16 84:18 90:14 91:18 92:7,8 93:15,21 94:4,9 95:11,14 95:22,22 96:4,7,9 97:3,5 97:11 98:6,22 99:17 100:7 100:15,18,19 103:17 105:12 111:10,17 112:19 112:22 115:6,13,16,16,19 116:2,3,4,7,9,10,11,21,22 117:17,22 121:3,15 122:3</p>	<p>131:6,6,8 140:19 148:17 148:21 149:18 151:14 152:3,17 155:2,12 159:19 159:21 160:1,10 162:18 169:1 174:8 175:2,11 176:15,18 178:3 179:4,6 184:21 186:5,19 187:14 188:19 190:6,12 193:12 199:22 201:15,20 202:1 202:12 205:6 206:9,22 207:2,5,11 208:20 213:18 213:19 214:12 217:8,12 217:14 218:16 219:1 222:5 223:3 224:15,16 225:21 229:8 230:17 235:7,12,15 236:10 237:19,21 238:13 245:3,5 251:18,20 252:11 253:1 254:8,22 255:3 256:5 261:13,17 262:6,18,20 264:1,4,17,19 265:14,18 266:1,5,12,16,20 268:11 268:14 269:14 271:2,6 273:6 277:6 278:1 279:16 279:17 280:17 282:18 283:11,18 284:4,15,16,20 285:13 286:10,14 287:7 289:8 291:18 295:1,3,4 295:15 296:8,21 297:3 301:4 302:7 303:16 306:15 307:1 308:19,20 310:9 312:13,18 313:3 315:3 318:11 320:15 322:6,10 323:15 324:6,11 324:20 325:1 332:13 333:12,13,19 334:6,6,8 334:15 335:5,15 336:6 337:4,4,9,12,14 338:1,3 340:22 341:1 344:5,16,18 347:13 355:16,18,21 356:2,12,12 358:10,18 359:17 360:1 362:5,9,12 363:7,8 365:18 366:2,4,6 366:13 367:6,12 368:7,18 368:21 proceed [1] 298:1 proceeded [1] 137:8 proceeding [7] 17:5 36:13 51:13 83:5 353:1,4 353:7 proceedings [4] 1:7,9 378:5 379:9 process [151] 10:14 13:12 13:21 14:5 15:2,9,19 17:8 24:8 26:5,18 28:12 31:1 43:4 51:4 53:11 56:12,15 56:21 59:9 62:4 67:5,20 69:15 72:5,6 74:4 75:3,19 78:5,16 79:17 82:13 93:10 96:2,4,5,7 97:2 110:14,20 114:1 118:16 120:13 134:13,21 135:3,20 137:20 138:12 140:19 141:1,3 149:19 150:13 151:21 152:9,15,18 159:12 160:14,15 161:3 165:16 166:17 168:6 169:10,20 171:18,20 172:15,16 173:8 174:1 199:19 200:8,10 201:3,12 204:20 206:3 208:1 215:14 217:1 220:1 222:12 223:21 224:1,5,6</p>	<p>225:1,3 226:18 227:2 232:20,20 235:20 246:17 250:10 252:19 253:19 254:5,10,15 257:17,17,19 265:21 266:22 268:13 269:20 277:10,16 278:10 279:9,21 280:1 281:21 289:2 292:1,3 293:7,12 302:20 305:11 306:2 307:21 308:5,6,7,7,13 311:13 314:20 316:13 317:12 320:3,9 321:1 327:19 331:4 332:3,7,12 332:16,18 336:7 357:6 360:12 361:10 362:20 produce [13] 13:8 22:1 29:5 42:22 43:17 69:13 81:2 90:13 165:14 324:4 324:6,8 332:13 produced [5] 13:11 37:17,18 94:5 329:5 producing [2] 11:18 25:4 product [6] 11:18 12:10 21:22 22:3,3,6 production [12] 93:11 100:9 158:13 160:11 162:4 203:7 204:13 223:17,18 282:5 334:17 335:13 professional [1] 79:21 profile [1] 14:1 program [11] 23:8 66:14 159:8 173:17,21 195:11 196:20 197:2 200:3 229:13,15 progress [1] 99:5 progressed [1] 219:13 progressing [1] 13:15 project [85] 48:5 68:11 95:18,20 96:1,5 97:6 123:21 125:12 132:1,2 145:3 149:16 150:15 151:15,16 152:7 155:11 155:15,16,21 158:16 160:3 161:9 175:3,4 177:1 183:18 184:7,14 186:10 187:5,13 188:19 189:11 192:16,17 193:2 195:18 205:18,20 206:1 217:9 221:21 228:16 229:16 237:11 243:16 244:15,22 245:20 246:4 251:8 255:14 261:21 264:2 266:13 268:5 270:19 280:2,6,10 282:20 283:6 283:7,15,22 291:13,16 294:5 312:5,10 313:19,20 314:1,7 318:8 320:18 323:18,22 368:22 370:17 370:20 371:1 376:1 projects [37] 61:4,8,10 94:17,20 110:3 124:21 126:2 147:20 153:13 155:5,6 156:20 160:4 174:21 177:21 189:10,22 190:7 203:17 212:2,2 213:7 216:3 244:11,11 336:17,18 340:1 342:11 346:10,13,17 348:13 350:6,18 356:8 proof [2] 34:12 126:22</p>	<p>propagation [1] 167:15 proper [1] 7:4 properly [2] 168:21 210:19 properties [3] 160:16 161:9 163:3 proposed [5] 131:15 369:14 372:21 373:15,17 prosecutor [1] 26:6 protected [2] 38:11 53:1 prove [5] 81:12 142:22 327:3 347:4 365:1 proven [1] 128:14 provide [40] 24:21 141:11 148:18 149:21 150:7 159:16,20 160:1,2 160:11 192:20 193:11 196:13 217:8,14 220:2,7 220:8,8,9 222:2 223:2,14 224:19 229:17 236:9 250:20 252:15,16 254:19 263:21 285:1 286:14 287:21 311:4,7,8 315:18 364:20 365:19 provided [43] 120:22 125:1 138:18,19,20 141:9 142:17 148:8 150:3 155:12 178:12 179:2 196:17 201:17 203:3 213:8 220:11 222:6 224:13 225:13 226:13 229:20 231:11 235:4,5 236:12 251:1 255:16 264:13 271:4 275:22 277:9 285:3 287:5,15 299:4 320:11 321:2,15 324:22 354:22 371:19 377:9 provides [6] 152:2,2 161:9 268:3 302:19 371:11 providing [17] 8:7 87:19 160:5 190:5 192:13 194:21 212:3 218:7 222:4 222:14 244:10 261:5 265:5 299:19 302:6 324:13 333:19 provision [4] 204:5,8 357:21 358:4 provisions [1] 194:20 Public [3] 37:2 379:3,19 pull [1] 167:9 pulled [2] 185:21 219:3 pulls [1] 363:6 purchase [21] 267:7 274:19 275:2 285:22 294:12,13,16 295:11 296:9 297:5,13 303:20 304:1,8,12 306:5,6,8 316:17,22 317:1 purchased [1] 271:11 purchases [1] 165:11 purport [1] 15:18 purpose [11] 12:2,4 13:16 25:22 29:4 37:21 38:19 45:10 275:10 312:8 353:5 purposes [2] 353:15 369:8</p>
--	--	--	--	---

purview [1] 354:10
put [23] 7:3 8:2 22:9 26:15
 108:19 126:16 192:12
 197:13 211:18 213:11,16
 232:19 243:20 280:6
 291:7 298:11 301:2 318:4
 361:2 366:3 367:2 372:4
 372:9
puts [1] 297:7
putting [2] 156:17 197:17
PWE [4] 150:15 252:22
 261:21,22
PWE/designee [1]
 261:18
PWS [1] 151:4

-Q-

Q.A [6] 145:4 157:1
 195:10 233:5 248:19
 267:11
QA [6] 62:12,21 64:1
 90:20 267:14 333:6
QA's [1] 96:13
QAI [8] 175:5 255:19
 256:4,9,19 257:9 265:9
 332:20
QAM [6] 197:14 198:11
 256:2,6 257:7,15
QEP [5] 252:7 256:7
 257:18 261:17 357:21
QEPs [9] 175:1 176:20
 205:22 206:6,21 207:3,4
 207:16 252:12
QFR [7] 338:3 356:13,20
 364:10,11 365:13 367:4
QII [1] 195:16
qualification [82] 55:20
 55:22 56:16,20,21 59:8
 82:13 86:20 87:2,4 119:21
 120:2,9,13 122:1 135:6
 141:1,3 149:4,5,13 160:13
 160:19 161:3 166:9 183:3
 183:10 186:10 190:5
 203:8,20 204:5,10,13,20
 220:1 222:12 224:6
 235:11 240:12 253:19
 255:10 265:21 267:9,21
 268:13,15,19 269:3,12
 270:9 278:4,7,12,17,20
 279:2,10 281:18,21 282:4
 283:7 284:11 288:10
 292:3 300:11,20 312:15
 313:19 315:14 319:17,19
 320:9 322:19 323:4 325:2
 329:6 332:3,7 361:18
 362:20 368:20
qualifications [1]
 105:12
qualified [57] 56:19 57:2
 57:6 68:22 83:17 84:18
 90:14 119:18 131:9,22,22
 132:1 148:21 159:20
 161:18 163:11 190:10
 202:2 203:1 217:8,14
 222:4 223:3 224:15,16
 235:7,17,20,21 237:22
 238:13,20 240:20 241:7
 241:13 263:22 264:22
 266:1,4,11 268:14 279:15

280:15 284:15,17,18
 285:7,10,17 289:6 318:11
 320:15 332:13 334:16
 364:6 367:3 379:4
qualify [19] 57:8 81:6
 119:13 155:2 159:18
 160:1 165:2 202:4,17
 238:22 264:16 266:19
 269:14 278:20 279:17
 284:4,5 285:14 295:4
qualifying [13] 83:12
 84:15 160:14 165:17
 169:1 188:18 265:3
 266:16 268:10 279:7
 280:16 289:8 368:18
quality [82] 21:6 55:2
 89:6 91:6 95:22 96:6 97:5
 112:22 118:10,11 121:15
 121:17,18 144:2 145:9,18
 147:4,13,18,19 148:3,4,9
 148:10,12,15 152:8 153:2
 153:6,8 155:22 156:6,10
 156:12,15 157:13,15,16
 158:20 159:4 173:20,21
 174:18,19,20,22 175:1,4
 175:5,7,8,10,11,12,14,22
 176:1,4,6,15 195:13,14
 195:17 196:4 201:18
 206:7 209:20 227:3
 229:10,14 230:20 233:3
 233:12 245:2 255:6,21
 256:11,13 289:20 312:5
 338:18 354:7
quantity [1] 271:21
questioning [3] 184:22
 230:16 340:18
questions [20] 5:11
 11:22 16:5,16 20:6 25:5
 25:12 31:2 46:4 124:16
 133:12 138:9 146:19
 147:2,223:10 226:18
 232:18 352:8 370:14
 377:6
quick [2] 324:2 371:22
quicker [1] 60:8
quickly [3] 100:7 202:5
 250:11
quite [7] 44:1 55:12 57:1
 75:11 81:3 174:12 268:2

-R-

R [1] 354:4
radiation [1] 37:10
raise [8] 69:14 133:4
 138:10 198:4 360:1 373:1
 374:22 375:7
raised [28] 36:2 46:4
 50:19 51:13,17 112:9
 123:14 129:6 131:10,20
 132:5 136:10 178:5 179:4
 179:11 182:22 183:20,22
 213:13 223:20 232:18
 236:5 247:10 279:1
 339:18 351:14 367:6
 374:1
raises [3] 185:12 228:13
 233:8
raising [7] 45:19 110:21
 118:13 187:18,20 203:5

375:15
ranking [1] 31:9
rate [5] 43:8,17 79:1 128:1
 325:6
rates [2] 41:16 127:22
rather [10] 8:5 52:14 83:6
 84:10 86:1,2,19 93:9
 166:14 200:1
RE [1] 1:3
re-examining [1]
 126:10
reach [13] 10:10,11 11:10
 13:17,19,20 17:2 46:22
 70:9 71:12 73:14 134:15
 250:17
reached [10] 10:19 28:5
 34:10 47:4 72:13 79:11
 84:8 125:22 228:16
 377:15
reaching [3] 5:19 17:12
 135:11
reacted [1] 112:11
reaction [1] 80:4
Reactor [3] 4:1,7,21
read [14] 28:9 46:6 79:8,9
 86:5 97:9 189:8 230:3
 255:17 259:13 326:18
 358:20,21 359:9
reader [3] 10:17 41:1
 72:12
readily [2] 89:14 196:5
readiness [6] 321:18
 322:3 323:8 324:3 325:7
 325:13
reading [3] 28:8 230:4
 238:7
ready [5] 4:20 315:4
 322:6 323:12 324:11
real [9] 107:5,14 146:3,18
 151:1 250:1 263:20
 331:12 340:5
real-time [1] 13:9
reality [1] 112:18
realization [1] 145:15
realize [4] 99:20 211:21
 365:20 369:17
realized [5] 79:4 259:5
 308:15 329:5,6
realizes [1] 341:10
really [53] 14:22 15:1
 64:20 65:22 70:18 79:19
 90:2 105:10 109:13 110:4
 113:12 115:10 134:14
 135:8 137:1,9 144:22
 146:12,14 156:15 164:20
 176:9,11 188:21 212:8
 214:18 215:13 220:1
 221:15 228:19 237:10
 240:9 244:18 249:19
 257:7,22 266:11 275:22
 292:10 293:21 305:19
 322:9 331:15 345:3,5
 346:2 348:11 351:13
 356:22 360:16 362:8
 366:19 370:22
reason [28] 52:1 67:2
 70:6 107:16 118:19

128:19 129:18 136:4
 171:1 184:16 192:6 219:8
 225:12 229:5 240:6 247:8
 268:20 272:4 273:20
 277:5 290:10 298:20
 343:20 345:4 349:17
 365:14 374:2 377:21
reasonable [1] 258:4
reasonably [2] 17:9
 370:10
reasons [17] 74:17 87:13
 92:20 95:19 135:1 137:21
 145:14 174:2 197:5
 223:20 240:13 253:4
 258:1 268:19 280:22
 342:18 362:14
reassigned [1] 52:18
recalls [1] 349:3
receive [2] 333:11,22
received [8] 88:4 223:16
 250:19 254:20 298:15
 334:7 351:19 356:14
recess [4] 130:13 177:12
 289:13,19
recitation [1] 90:3
recognition [1] 376:11
recognize [1] 104:22
recognized [2] 131:17
 239:18
recognizes [1] 239:10
recognizing [2] 240:18
 241:2
recollection [3] 186:2
 349:13 374:10
recollects [1] 349:9
recommendations [4]
 76:17,20 77:5 101:22
recommended [3]
 148:22 258:2 319:10
recommending [1] 50:7
reconciled [1] 370:4
reconstruct [6] 9:4
 18:12 35:14 40:16,21
 146:15
reconstructed [5] 60:3
 67:18 86:22 101:21
 369:10
reconstructing [1]
 82:12
reconvene [1] 130:7
record [47] 5:13 18:11
 19:18 20:2 22:10 25:1,13
 25:17 32:3 33:11,18 35:2
 35:4 37:18 45:3,4 47:2
 56:20 67:12 71:19 73:8,9
 73:13 79:9,13 80:10,13
 87:3,12 88:5 115:9 130:12
 132:10 133:6 141:21
 149:1,11 159:6 160:19
 177:11 209:22 245:9
 289:16 340:2 353:18
 370:7 372:16
recorded [3] 142:4 347:1
 365:10
recorder [1] 142:11
recording [4] 347:6
 351:1,19 365:19

recordings [1] 143:6
records [15] 49:14,15
 142:1,2,14 199:5 219:4
 219:12 220:3,4 268:1
 290:21 309:12 333:7
 348:19
recreating [1] 191:10
rectified [1] 311:15
redo [1] 229:9
redone [2] 169:15 180:20
refer [1] 5:14
reference [8] 191:6
 241:10 261:21 303:3
 340:12 347:10 348:10
 351:1
referenced [2] 183:15
 184:12
references [1] 239:4
referencing [1] 297:7
referred [3] 81:10 330:17
 365:16
referring [5] 30:15 62:15
 239:16 313:1 348:6
refers [8] 28:1 204:6
 238:8,10 257:14 264:15
 267:19 276:5
refinements [1] 48:12
reflect [1] 329:9
reflected [1] 210:19
reformat [1] 190:18
reformats [1] 191:14
reformatted [2] 198:16
 200:18
reformatting [3] 190:16
 191:10 199:19
refused [4] 48:6 79:16
 270:3 333:3
refusing [1] 48:18
regard [1] 329:8
regarding [8] 5:4 104:17
 118:4 159:12 355:14
 358:12 360:19 366:19
regardless [2] 12:15
 263:3
region [9] 4:2,5 8:9,11,14
 23:15 37:13,14,19
Regional [1] 3:20
regions [1] 8:11
regulations [3] 40:6,8
 42:9
regulatory [11] 1:2,12
 23:2 41:14,17 54:12 55:1
 133:8,14 227:9 379:6
rehired [2] 21:19 158:6
reinstatement [2] 51:20
 52:10
reinterview [1] 143:14
reiterate [1] 377:13
reject [1] 22:7
related [7] 16:2 63:22
 82:2 112:10 227:21
 283:12 372:4
relates [1] 68:11
relating [1] 9:12

relation [1] 86:12	73:21 74:18 75:4 76:2,20	208:12 257:20 262:1,8	responsibility [35] 58:8	324:6 325:6,7,9,14 332:19
relationship [6] 6:19	100:13 105:5 106:1	272:19 277:15 308:3	59:10,13 66:16 79:15 87:2	332:22 334:5 336:7 337:3
53:21 54:5 108:22 109:21	145:17 149:4,5 160:19	332:20 343:13 354:8	90:17 97:17 111:12 113:7	338:2,3 341:1 352:16,22
208:16	169:13 191:12,18 194:10	requirements [48] 18:7	121:1,2,4 122:3 151:1	354:6 356:11,19
relationships [2] 250:1	218:22 324:4,7 353:9,13	22:11 23:3 41:19,20,21	159:18 166:6 210:5	reviewed [20] 45:5 71:3
250:2	353:13 377:10,19 378:3	42:2 48:7,13,14,17,18	215:10 219:20,21 252:22	96:3 121:12 171:10
relevance [1] 368:5	379:13	54:11,12,22 55:1 56:8,10	253:21 255:9 256:4	184:20 229:11 236:3,16
relevant [8] 26:2 44:9	reportable [1] 23:19	56:15,22 58:10,22 83:10	257:14 258:7 265:13	256:1,1 302:20,22 326:16
71:1 130:20 131:1 138:10	reported [10] 23:1,18	89:12 139:15 160:12	267:17 269:10 284:1	329:15 333:8 337:5
206:10 214:19	24:4 51:8 62:21,22 63:1	172:11,12 184:4,15	315:12 332:22 356:4	355:16 367:14 373:4
relied [2] 37:19 325:3	147:12 296:1 379:9	194:18 208:4 216:8 220:6	responsible [26] 38:12	reviewer [2] 323:9 324:4
relieve [1] 248:15	reporter [3] 27:7 31:22	227:18 241:20 242:7,8,15	59:8 88:20,22 99:17	reviewing [15] 93:9
relieved [3] 144:15	45:9	265:1 272:13 274:1,21	121:20 125:20 169:1	148:17 150:20 172:20
232:15 365:4	reporter's [1] 289:11	296:7 307:9 355:2 368:17	186:11 188:18 202:10	187:3,14 222:16 233:7
relocated [1] 144:20	reporters [2] 25:2 379:8	370:21	205:5 233:7 242:10 252:9	256:1,21 265:13 335:15
rely [9] 135:14 216:5,13	reporting [4] 19:12 23:3	requires [6] 122:2 162:14	253:15 255:22 256:18,21	356:1 357:18 358:10
216:14,18 218:20 230:19	24:1 51:6	166:18 203:11 238:4	284:7 289:8 319:15,21	reviews [1] 256:22
230:21 339:19	reports [17] 10:22 28:3	246:15	340:22 355:15 358:9	revised [3] 337:13,15,21
relying [1] 233:14	29:2 62:20 63:3 72:9	requiring [7] 183:9	rest [3] 7:13 10:3 330:18	revision [4] 191:8 334:1
remained [2] 156:14	97:12 158:19,20 191:11	208:3 213:17 295:20	restrictions [1] 26:16	337:11,20
309:22	222:16 225:5 226:7 228:6	296:4 306:8 328:3	restructuring [1] 20:21	revisions [5] 333:12
remains [1] 262:21	322:4,4 356:6	requiring [13] 267:7	result [18] 25:4 35:16	336:22 337:1,10 338:1
remarks [3] 3:2 6:5	represent [7] 39:3,5,8	271:9,19 273:3 274:6	43:18,21 53:22 69:2 93:15	rewelded [2] 305:2
124:13	135:9 292:1 310:7 335:7	285:22 294:9,10,11,13,17	118:13 125:17,20 126:3	306:13
remember [12] 74:12	representative [4]	296:13 331:8	129:5 145:6 254:2 309:10	reworking [1] 229:7
76:5 157:6 171:18,20	165:9,15 166:8 198:22	requisitions [2] 277:12	320:8 374:17 376:10	Richard [3] 2:1 4:10 36:7
186:4,5 187:10 209:16	representatives [2]	316:17	resulted [9] 48:9 60:11	right [77] 3:5 4:18,19
225:17 371:7 375:21	33:13 35:21	research [9] 236:10	60:22 62:5 66:3 87:8,17	12:12 15:12 18:15 20:2
remembers [1] 342:15	represented [5] 36:12	325:20 340:7 367:8,11	88:13 145:19	22:12 32:15,20,21 33:9
reminder [1] 67:7	148:1 153:13 251:15	368:1	results [13] 11:21 13:2	40:1 41:3 44:17 47:4,17
remote [1] 336:18	260:8	researched [2] 237:19	42:21,22 160:21 169:13	48:15,16 49:17 70:10,11
removal [12] 48:10 49:10	representing [6] 6:10	285:13	304:22 309:18 310:4,19	74:20 76:13,14 77:11
58:16 60:11 86:8,16 87:17	6:15 36:5 194:21 328:8,9	researches [1] 161:16	319:22 324:14,18	80:15 94:6 96:14 98:21
88:13 129:20 362:6	requaification [2]	researching [1] 239:6	resumed [3] 130:15	99:2,13 102:10 104:19
364:18 376:9	67:20 238:4	reservations [1] 320:16	177:14 289:15	106:10 111:1 113:1,2,3
remove [10] 57:17 61:14	requaified [1] 264:20	residual [2] 13:4 376:19	retain [1] 122:2	118:17 127:10 130:6
66:8 79:22 87:16 88:10	requaify [5] 162:20	resist [1] 167:14	retained [1] 16:12	138:8 142:9 146:4,8
102:22 103:10 132:16	240:14,16 244:2 265:18	resistance [1] 195:8	retaliated [3] 38:10	151:10 154:15 180:7,17
376:6	request [8] 5:2 6:12	resolution [4] 110:14	144:7 365:1	191:19 205:11,11,11
removed [20] 29:19 48:4	201:21 254:14 285:4,11	111:21 353:20 356:7	retaliation [14] 50:19	209:3,4 210:14 211:6
50:7 51:8 65:1 66:12,13	286:9 379:6	resolve [8] 9:17 110:12	51:15 52:21,22 61:6 64:22	227:20,20 234:1 244:2
80:5,6 96:6 136:18 232:2	requested [4] 145:2	111:15 118:7,8 218:6	65:3 68:6 87:22 249:4	257:12 270:20 285:8,15
334:20 342:10 343:6	264:3,17 311:19	364:9 373:11	364:19 369:8 374:19	296:8 297:12 301:10
344:8 345:14 346:7 347:3	requesting [2] 294:18	resolved [2] 110:14,15	376:10	302:10 304:18 314:8
365:12	305:15	resolving [2] 368:17	retaliatory [3] 52:20	319:5,13 353:12 363:13
removing [5] 48:22 83:7	requests [3] 268:11	372:9	65:21,22	363:14
145:5 346:9 369:7	286:1 311:16	resource [2] 218:12	rethink [1] 26:19	right-hand [3] 179:13
renamed [1] 156:1	require [14] 116:8 151:8	219:7	retroactively [4] 121:8	179:15 251:13
renumbering [1] 199:6	163:16,20 242:1,5 256:7	resources [1] 362:11	224:11,21 269:17	rightfully [1] 59:17
reorganization [1]	273:7,8 295:5 308:18	respect [15] 37:7 51:18	return [2] 278:19 290:15	rings [1] 65:16
145:13	326:20 331:6,9	64:1,8 68:7 83:10 85:13	returned [5] 71:6 141:15	Road [1] 1:13
reorganized [1] 158:19	required [44] 59:1 85:4	87:5 89:19 90:5 94:9,21	338:4 342:1 365:9	Robe [36] 1:12,16 3:1,6
repair [1] 253:8	119:13 139:10 155:12	115:15 275:13 373:9	returning [1] 244:21	3:13,22,22 4:15,20,21 6:2
repeat [2] 83:22 84:1	160:17 166:21 180:14	respond [6] 18:9 34:15	returns [2] 139:22 336:20	18:17,20 75:18 98:11
repeatability [1] 103:8	188:13,15,22 195:18	73:4,7 78:11 103:21	reveal [1] 167:4	103:18 104:16,21 105:2
repeatedly [1] 101:3	198:11 207:16 217:7	responded [1] 364:11	reversed [1] 327:9	110:11,18 112:17 113:1
replaced [2] 30:6 156:7	220:19 222:22 237:3	responding [1] 105:20	review [63] 26:15 34:14	117:18 118:2 120:14,19
replacement [6] 20:8	238:22 240:9 241:18	response [4] 66:8 320:19	72:17 79:17 97:8 98:21	120:22 121:10 122:5
206:1 216:3 244:7,15	243:14,14 263:21 264:7	330:8 364:12	99:1,7 100:6 150:12 152:3	124:8,12 125:13 129:22
264:2	267:10 281:17 295:6	responses [1] 25:9	178:3 179:3 196:12	130:4,10
replacing [1] 341:12	297:2 298:3 299:11 303:7	responsibilities [15]	206:17 216:20 218:21	rod [1] 155:14
report [49] 1:7,9 10:15	303:13 304:5,8 305:17	48:3 60:12 63:22 120:19	220:10,10,12 222:3	rods [1] 119:14
11:1 16:1 20:3 22:3 23:16	306:1,14 309:9 320:13	126:9 159:2 166:20	225:11 227:10 232:20	role [8] 39:2 69:8 87:15
27:22,22 28:8 29:5 34:3,9	326:15 327:5 331:8	177:19 220:6 222:1 255:2	233:1,16 240:1 252:10	93:3 94:20 101:15 235:3
35:11 37:6 40:22 42:8	363:17	258:19 270:16 315:16	255:17 256:5,8 257:17,19	371:17
49:4 52:7 71:11,21 72:2	requirement [21] 84:13	318:13	257:21 258:18 262:8,12	room [3] 3:11 4:16 115:19
	119:15 139:16 170:7,10		265:11 267:7 291:6	root [1] 375:1
	170:21 172:19 173:7		321:19 322:9,9,13 323:8	roughly [6] 177:18 232:3
	188:21 195:15 198:9			232:20 234:2 277:11,19

<p>run [2] 170:14 369:16 running [1] 320:5 Russell [2] 17:6 28:16 Rusty [55] 92:17 93:5 103:8 120:9 123:17 150:16 170:18 184:6 222:13 243:7 244:18,20 245:6 250:14 254:3,4 257:15 258:12 259:3 260:11 268:4 270:3 273:1 273:11,12,16 281:21 284:9,11 293:17 296:17 296:18 297:21 300:7 302:3 303:17 305:21 306:7 310:12,20 315:17 316:13 318:2 319:7,8,12 319:16,20 333:3,19 336:1 336:2,3 337:6 356:18 Rusty's [1] 335:11</p>	<p>346:19 347:17,18,19,19 348:3,3,20 349:5 351:16 355:19,22 356:6 357:4 358:3 359:2 360:6,13,17 363:8,10 364:3,7,16,20 365:10,20 366:21 367:1,9 367:13 schedule [4] 3:8 55:19 57:10,11 scheduled [3] 5:22 57:6 231:22 school [1] 245:13 scope [2] 10:18 88:12 scratch [1] 305:3 scrutiny [1] 17:3 search [1] 171:17 Seattle [3] 282:9 288:16 290:19 second [9] 7:15 91:4 309:21 313:11 314:18,21 327:2 328:17 366:15 secondly [3] 131:19 218:14,21 secretary [1] 349:2 secretly [1] 346:22 section [7] 7:11 184:10 205:17 230:12 238:5 302:2 334:18 sections [2] 3:4 5:7 sector [1] 9:1 security [2] 343:8,13 see [82] 16:6 21:7 22:12 22:20 23:22 28:21 35:12 41:4 47:1,3 51:11 54:17 63:4 68:17 71:15 76:1 77:13 96:9 97:7 106:4 108:3,11 109:11 112:16 115:8,9,17 116:1,12 133:1 141:1 150:14 154:22 158:14 160:5 161:17 178:14 182:9 183:4 191:1 192:9 194:19 195:7 203:19 213:16,16 214:7 217:1 219:4,18 221:8 236:10 241:7 250:19 252:6 256:14,20 257:1 264:15 270:22 272:19 276:3 277:7 279:9 288:8 288:13,21 294:9 320:20 325:9 337:17,20 346:18 364:14 366:6 370:10 375:17 376:7,9,10,17 377:21 seeing [1] 16:9 seem [4] 146:10 192:3 209:2 248:6 select [1] 32:20 selected [2] 7:19 154:8 self-contained [1] 25:13 self-serving [1] 291:21 send [8] 34:12 69:11 262:14 266:21 288:5 333:4 337:11 370:17 sends [1] 14:20 senior [1] 31:3 sense [15] 15:14 19:11</p>	<p>20:22 49:6,7 111:1 172:2 172:3 190:19 198:15,21 210:15 227:9 257:12 373:9 sensitive [1] 375:12 sent [10] 93:20 94:4 124:18 166:2 248:5 262:17,19 271:12 302:15 306:8 sentence [3] 142:10 204:7 327:2 separate [5] 44:7 302:10 353:3 369:13 375:11 separated [1] 53:15 September [6] 21:13 30:9,22 47:13,14 225:14 sequence [8] 65:8,17,18 86:7,16 104:7 299:3 359:13 series [1] 51:18 serious [15] 69:1 79:3 87:8 107:17 108:1 122:17 123:7 125:17 131:9,20 132:7,8 316:1 320:16 373:2 seriously [4] 83:9 84:12 101:13 306:19 Service [1] 37:3 services [11] 8:8 87:19 147:13 148:9 153:2 156:1 218:9 321:14,16 371:11 371:19 set [16] 7:15 13:17 63:22 84:6 101:21 115:18 116:6 158:12 195:11 259:9 263:10 265:15 333:11 374:11,16 379:14 sets [1] 53:4 setting [1] 123:1 several [5] 154:16 279:9 312:3 313:12,14 SGT [5] 181:1 244:8,14 294:5 328:3 shake [1] 209:6 shall [1] 272:20 shape [1] 322:12 shaped [1] 69:21 shed [1] 366:20 sheet [3] 56:3 150:10 299:1 shifted [1] 219:20 ship [1] 301:12 shipped [4] 119:22 277:13,16,18 shook [1] 306:19 shop [1] 33:13 short [3] 205:1 270:22 324:19 shortcuts [2] 54:10,21 shorthand [1] 379:9 shortly [1] 220:18 shoulder [2] 283:20 344:5 show [11] 16:22 50:10 56:20 77:15 105:16 117:22 118:1 127:2</p>	<p>139:14 209:13 314:9 showed [11] 20:16 117:4 206:18 214:11 258:21 261:15 295:20,22 326:15 333:14 343:17 showing [6] 27:19 75:9 100:4 140:19 209:10 295:21 shown [3] 72:21 102:21 103:9 shows [6] 106:11 132:10 218:22 228:5 314:2,2 shrug [1] 260:14 shut [1] 307:19 side [8] 58:20 105:21 114:20 179:15 251:13 280:8 307:4 314:11 sides [1] 320:21 siding [1] 48:8 sign [17] 91:17 92:7,19 96:18 99:5 103:16 151:14 151:16 202:13 234:11,15 258:12,18 259:4 262:5,12 263:1 sign-off [5] 92:13,13 93:6 94:18 97:18 signature [5] 150:8,11 183:5 234:13 252:18 signed [15] 93:20 95:17 106:13,14 184:8 187:8 191:7 229:10 232:1,8,16 234:8,9 256:3 271:20 significance [8] 129:3 230:20 247:3 303:4 332:11 351:15 366:11,12 significant [28] 128:11 129:9 136:21 137:1,10 141:18 163:5 164:2 168:20 169:3 190:4 207:15 208:13 228:13,15 246:9 263:22 264:12 265:16 266:11 276:9 294:15 315:5 329:2 339:13 341:22 365:21 368:19 signing [1] 234:4 signs [1] 191:3 silent [3] 256:7 262:9,10 similar [2] 95:5 366:8 similarities [1] 374:5 simple [2] 63:7 192:2 simplistic [1] 16:5 simply [4] 14:2 94:12 254:17 362:21 singing [1] 56:3 sit [2] 16:12 189:8 site [295] 37:5 48:12,17 48:20 50:6 53:9,22 54:6,7 54:7,10,20 55:17 56:17 57:13,14 58:1,7,12,22 59:2,11,13 60:10,15,19 62:5,15,16,18 65:5,11 66:4,7,19,22 67:3,8,17 79:14,15,16,18 80:7 81:9 83:14,19 84:16,22 85:17 86:21 87:20,21 90:15 91:18 94:6,7,14 95:22 96:4 97:12,15,17,22 98:2</p>	<p>98:5,5,12,17 99:16,19 102:15 107:7,11 108:5,7 110:18,19,22,22 111:6 115:18,20,22 116:3,8,15 116:18,20,22 117:16 119:16 121:7 125:22 126:2,12 149:20 150:3,3 150:8,11,13 151:5,14,17 152:3,7 157:15 158:13 162:2,19 165:1 169:22 170:2 174:15,22 175:12 176:5 178:8,14,17,18 179:18 182:1 192:18 193:8,15,18 195:8,9,15 196:2,9,11,13,14 197:5 197:12 198:2,11 199:17 204:15 206:7,8 208:2 209:7,17,19 213:19,20,21 214:5,21 216:6,7,12,21 218:18 219:1,13,21 220:7 220:9,9 222:2,15 223:1 223:14,22 224:7,14,20 225:2 226:12,12 227:8,13 227:14 229:22 230:2,18 231:15,15 234:22 235:12 238:16 244:16 245:5 248:17 250:14 251:13,22 252:7,17 253:22 255:2 256:5,22 257:8 258:13,16 262:5 264:1,3,13 265:7 265:14,22 267:20 268:5 268:16,20,22 269:7,8 270:5,6,11,13 271:2,4 278:19 279:1,8,14,14,20 280:5,9 281:9 283:7 284:2 284:3 285:1,4,6 291:16 297:5,20 299:16 302:6 303:15 305:13,21 306:8 306:13,19 308:13 309:13 310:5,10,21 311:2,3 312:2 312:3 314:11 316:21 319:10 323:2,11 324:12 324:18,22 325:11,13 326:18 332:19 333:4 335:5 337:1 338:8,22 339:7 344:18 350:1,4 354:9,11,14 355:6,14,18 358:3,18 360:2 363:1 364:10 365:9 370:18,19 374:12,14,15 376:3 site's [2] 54:1 341:1 site-specific [7] 201:7 225:19 227:13 252:14,17 253:9 255:15 sited [1] 193:11 sites [13] 114:19 115:15 159:21 160:6 174:6 201:14 202:16 208:18 215:13 218:8,9 219:5 230:3 sitting [4] 32:6 33:14 200:1 225:18 situated [1] 250:15 situation [15] 20:15 23:18 24:2 54:17 88:22 112:3 122:8 125:17 167:16 189:18 197:8 239:19 308:10 374:9,9 situations [5] 95:8 159:15 163:11 243:13 267:1 six [11] 32:6 45:21 46:1</p>
---	---	--	--	---

-S-

safe [1] 218:15
safety [4] 4:1,7,22 22:22
sake [1] 250:5
Sal [2] 30:10,17
sales [2] 271:21 358:6
samples [1] 119:20
sanctions [1] 29:12
sat [3] 136:9 206:18
361:14
satisfaction [2] 265:8
314:1
satisfactory [2] 238:14
309:4
satisfied [8] 56:7 82:8
151:21 152:16 212:5
215:16 228:17 355:1
saved [2] 165:22 229:18
saving [2] 102:9 229:8
saw [18] 60:15 68:19
100:12 107:14,17 112:10
214:8 218:16 224:12
243:10,19 247:2 251:20
256:16 273:2 296:2,17
331:11
says [125] 16:19 54:6
55:12,17 57:19 58:6 59:12
60:14 61:5 62:11 65:7,9
68:12,19 69:4 70:8 75:11
89:20 93:20 98:19 100:11
104:21 131:5 141:10
166:15 173:12 179:16,18
179:21 182:14 184:20
185:4 194:18 198:16
199:9 202:8,20 204:8
222:18 230:12 237:21
239:4 242:11 255:8
257:13 259:1 262:17
264:21 265:7 271:20
281:6 282:16,17,19 286:8
291:20 302:10,14 308:1
314:17 317:13 318:14,15
321:11 327:18 328:15,22
329:11 330:13,15 331:2
332:21 334:13 335:16,17
335:20 336:2,3,5 337:3,4
338:4,10 339:2,15,20
340:14 341:12,18,22
342:8,12 344:14,15

71:5 138:1 139:1 224:13 266:5 277:19 288:5 306:10 skills [7] 8:19 9:1 65:15 112:7 155:1 166:10 231:19 slag [1] 167:6 slate [1] 81:16 slice [1] 15:22 slide [1] 329:20 slides [1] 104:16 slight [1] 213:9 slipped [1] 258:18 slipping [1] 288:22 slow [1] 223:22 slowed [1] 224:22 slowing [3] 219:5 223:17 226:17 so-called [1] 337:6 soft [1] 360:19 someone [19] 14:7 75:5 75:7 156:17 159:13 165:18,19 181:2 184:1 203:9 204:1 229:9,11,11 229:17 231:11 280:1 362:2,6 sometime [9] 35:19 47:15 232:21 321:19 323:20 340:15 341:5 347:21 349:4 sometimes [13] 16:4,7 17:21,22 32:12 33:3 43:3 73:4 77:17 78:22 109:4 138:17 226:9 soon [4] 106:8 287:5 324:15 363:19 sooner [1] 306:18 sorry [8] 118:18 175:19 177:7 245:7 256:9 292:22 302:9 310:17 sort [35] 20:17 34:22 40:15 41:11 47:11 61:11 69:21 73:10 74:5 75:1 90:10 107:8,19 108:15,16 134:11 136:1,13 155:19 156:12 158:11 176:10 178:8 179:6 182:3 193:22 207:17 209:7 260:14 292:12 314:20 336:8 357:6 375:18 376:1 sorted [1] 139:21 sorts [1] 116:14 sought [1] 326:21 sound [5] 76:13 81:18 111:6 215:12 248:12 sounds [6] 76:14 142:4 208:17 211:2 249:5 367:19 source [3] 48:13 214:19 301:13 sources [4] 33:2 40:17 42:6 91:16 speak [2] 321:8 349:6 special [1] 155:14 specialist [1] 4:5 specialty [1] 308:8	specific [13] 51:12 119:6 123:13 169:2,4 172:11 186:5 193:8,11 231:13 241:10 342:4,7 specifically [7] 57:1 162:2 173:12 227:4 246:3 254:4 362:14 specification [9] 139:8 149:16 160:15 162:1 165:6 172:6 183:16 191:22 193:20 specifications [5] 149:7 150:4 160:6 172:7 255:11 specifies [2] 166:3,6 specify [1] 362:3 specimen [4] 163:17 168:1,4,15 specimens [1] 169:4 specs [3] 43:16,22 302:12 speed [1] 165:21 speedy [1] 277:16 spelled [2] 60:1 114:4 spend [3] 40:21 42:5 282:8 spending [1] 323:11 spent [8] 82:12 140:17 140:18 171:2,8 316:14 322:15,17 split [1] 91:5 spoke [13] 124:6 129:11 129:12 213:12 295:18 298:11 317:19 320:9 323:20 325:19 359:2,4 364:16 sports [1] 90:18 spot [1] 177:8 spray [1] 334:10 spread [2] 374:20 376:2 SS [1] 379:1 St [30] 37:1 38:14 94:21 95:16,17 96:1 123:19 124:4 145:3 176:8,15,21 202:18,19 205:16 206:1 206:21 217:8 229:15 235:3,18 236:11 237:6 239:16 241:15 252:8,12 357:21 369:1 374:8 staffed [1] 375:22 stage [1] 12:16 stages [1] 11:2 stake [1] 122:10 stance [1] 255:1 stand [1] 312:9 standard [6] 43:16,21 102:20 103:1 241:22 327:21 standards [18] 9:12,14 9:16,19 39:21 40:3,4,5 41:2,5,10,13,18 166:7 230:11 238:5 250:22 260:19 standing [3] 204:12 344:4,5 standpoint [1] 39:12 stands [1] 149:2 start [17] 6:14,22 16:3	29:14 74:5 79:8 81:15,15 81:16 168:1 169:16 225:11 269:3 305:3 324:12 342:16 352:6 started [23] 8:9 13:21 45:1 47:18 80:14 93:11 105:8 129:8,14,19 134:7 135:19 136:14,22 176:14 199:19 224:7,8 247:7,9 311:3 361:1,10 starting [2] 81:14 369:3 starts [2] 40:7 347:16 state [7] 26:20 115:1 153:16,18 154:7 379:1,4 statement [9] 27:6,22 64:3 75:6 111:3 117:7 127:12 140:7 261:6 statements [2] 74:21 140:12 States [2] 1:1 143:14 status [8] 50:16 70:1 302:6 307:1,12 310:4 312:10 315:4 statutes [1] 40:7 statutory [1] 41:15 stay [4] 145:2 155:21 290:14 313:15 stayed [3] 155:11 278:2 284:3 steam [17] 68:22 100:13 105:4 106:1 107:20 131:8 180:21 183:13 206:1 216:2 217:11 218:22 244:7,15 264:2 334:19 363:16 Stein [128] 1:17 3:18,18 17:13 23:7 36:4,14 49:1,8 50:6 54:13 59:19 60:1 61:7 63:13,18 67:10 73:16 73:20 76:10 77:9 88:14 96:11,15 97:12,15,22 98:8 102:6 104:3 106:4,11,16 108:3 110:6 113:4,9,13 114:3,10 118:18 123:17 124:17 125:3,8 126:21 128:16 133:3 139:1 144:1 145:5 150:19 151:4 154:12 156:21 164:6,12 166:10,14 170:13 171:1,6 173:10 175:19 176:20 183:17 197:16,22 201:14 208:17 209:8 215:2,9,12 216:6 219:3,11 229:2,12 233:19 234:1,4,7,10,14 237:4,8 241:1 245:6,15 245:21 252:21 253:14 256:9,14 257:3,22 260:15 263:2 267:14,16 271:14 280:8,20 281:10 282:7,13 300:2,15 310:10,14,16,20 313:20 314:9 316:22 321:4 327:12 328:14 346:5,12,15 352:6,11,14 352:21 353:21 354:2 step [5] 11:4 58:15 67:5 130:10 215:15 stepped [2] 107:18 208:7 steward [1] 33:13 stick [2] 181:19 182:11	stickler [2] 208:17,22 Stier [176] 2:5 3:5,14,14 3:15,16 4:19 5:2,8 6:6 16:14,17 17:16 18:19,22 20:7,10 21:21 22:15,20 23:10 29:22 30:4,15 31:6 31:9,14 32:10,16 33:20 34:7 36:6,15 39:17 40:1,7 42:12 47:10,17,21 49:3 49:11 50:4,9 54:14 59:22 60:3,7 61:9 62:7,11,17 63:16,21 64:7,18 67:14 70:7 72:1,20 73:19,22 76:4,11,15 77:11 81:21 82:20 85:7 88:17 93:17 94:16 96:14 97:21 98:2 98:10,14 99:13,18,20 101:9 102:10,14 103:1,11 103:19 104:8,20 105:1,6 106:10,19 108:9 110:9,16 110:19 111:4 113:2,8,12 113:15 114:9,11 117:11 117:20 118:17,22 119:8 119:12 122:7 124:11,14 125:11,14 127:10,14 128:20 130:3,8,16 133:15 146:4 151:12 171:5,9 176:2,4 197:11,15 209:16 213:16 217:21 219:18 241:19 242:17 247:21 249:11,13 258:8 259:18 262:10 263:8 276:15 281:2,11 285:9 288:7 300:6,19 301:14 303:1 314:8 317:4 318:17 320:4 321:12 325:11 330:5 332:4 346:21 350:12 351:7 352:2,10,13,18,22 357:19 369:9 371:4,7 372:7 374:8 375:9 377:17 378:2 still [21] 85:7,10 123:17 124:4 125:13 152:12 161:8 163:2 234:4 252:21 265:19 279:10 281:16 307:18 308:3 319:15,21 346:5 353:10 355:14 367:20 stop [6] 55:21 100:5,9 101:8 142:10 361:2 stopped [1] 101:6 story [2] 105:21 320:21 strength [4] 56:10 167:8 167:10,13 stress [3] 144:12 250:1 288:13 stretched [2] 124:9,11 strictly [1] 121:11 stringent [4] 216:8,11 227:19 370:21 strip [2] 215:18,19 stripped [3] 215:9 229:12 340:3 stronger [1] 80:14 structural [1] 145:8 structure [9] 10:21 45:15 50:11 89:5 111:13,18 112:5 126:8 148:1 structured [4] 19:17 93:18 101:12 214:11	stubborn [2] 178:19 208:5 stuck [1] 181:20 subbed [1] 301:8 subcontractor [4] 20:22 124:22 125:6 269:6 subject [8] 15:18,22 25:14 27:2 86:19 340:11 340:12 379:7 subjective [1] 178:9 submit [5] 11:20 27:8 98:5 257:20 336:6 submitted [6] 34:5 69:4 260:20 265:10 286:1 304:12 submitting [1] 65:3 subsequent [3] 127:12 279:22 298:7 subsequently [3] 243:10 306:16 356:18 substance [3] 178:10 252:4 350:9 substances [1] 118:5 substantiate [1] 117:7 substantive [1] 107:14 successful [6] 26:11 166:9 169:14,16 241:14 343:15 successfully [1] 309:1 such [15] 9:4 11:14 12:5 102:20 161:4 162:9 165:20 216:20,20 283:15 299:7 313:20 314:6 343:12 344:19 sudden [3] 80:4 181:10 374:1 sue [1] 364:17 sufficient [7] 19:5,20 21:4 89:11 158:8 364:22 365:2 sufficiently [1] 115:5 suggest [3] 88:19 370:5 370:8 suggested [2] 337:18 374:21 suggesting [3] 117:12 132:14 373:21 suggestion [2] 223:15 251:13 suggestions [8] 77:3 90:4 99:11 260:21 334:4 334:5 335:4 337:7 sum [1] 118:5 summary [1] 119:5 summer [4] 105:8 311:2 323:22 347:21 Sunday [1] 61:22 supervise [2] 278:5 279:12 supervised [1] 282:3 supervising [2] 158:1 204:12 supervision [9] 156:4 157:17 203:12,14,22 267:10 269:5 279:20 323:6
--	---	---	---	---

<p>supervisor [19] 62:9,10 62:13 64:4 89:10 90:8 93:6 121:7 182:5 251:3 251:14 260:13 278:7 283:1,15 313:21 314:6 346:15 371:2</p> <p>supervisor's [1] 251:10</p> <p>supervisors [4] 180:11 189:4 201:2 321:8</p> <p>supplement [3] 14:6 164:12,14</p> <p>supplementary [4] 163:4,18 164:18 238:3</p> <p>supplemented [1] 73:14</p> <p>supplied [8] 80:12 289:22 328:10,16,20 329:1 333:13 336:21</p> <p>suppliers [3] 156:18 267:5 291:8</p> <p>supply [1] 277:2</p> <p>supplying [1] 225:4</p> <p>support [69] 14:12,15 19:21 24:22 28:15 46:12 49:5 56:17 87:20,21 90:19 90:19 95:7 131:16 147:13 148:8,18 152:2 153:2,5 155:5,6,22 156:20 157:3 158:15 161:22 163:3,12 163:22 171:13 177:20 179:18 209:19 212:3 213:8 215:21 218:9 219:11 220:2,4 222:3,5 223:4,14 224:12 244:10 244:14 263:20,20 269:18 311:4,8 318:22 319:2 321:10 323:16,17,21 347:7 363:17 364:4 366:22 367:12 368:3,14 371:11 373:4 377:12</p> <p>supported [14] 100:11 142:20 144:6 172:1 183:14 184:12 212:1 241:6 261:7 283:5 309:12 319:1 320:11 367:6</p> <p>supporting [17] 61:3 90:12 126:2 139:11,16 158:16 164:22 169:21 170:4,8,10 173:11 223:1 255:13 265:6 280:6 291:17</p> <p>supportive [1] 141:19</p> <p>supports [8] 28:4 65:19 134:17 149:6 224:10 340:2 348:11 350:8</p> <p>suppose [1] 263:12</p> <p>supposed [7] 101:17 191:11 278:10 284:16 312:9 321:10 354:19</p> <p>supposedly [1] 365:17</p> <p>surface [8] 59:15 107:20 111:19 122:16 135:19 243:4 299:8 360:1</p> <p>surfaced [5] 68:13 131:15 228:22 267:12 306:18</p> <p>surfacing [1] 210:16</p> <p>surprise [2] 26:5,7</p> <p>surprised [4] 26:4 82:21 84:4,9</p>	<p>surreptitiously [1] 49:16</p> <p>survey [2] 148:17 312:1</p> <p>surveys [1] 37:11</p> <p>survived [1] 182:3</p> <p>swear [1] 26:18</p> <p>swung [1] 167:17</p> <p>system [12] 115:18 117:1 123:2 192:22 199:16 200:9,13 201:15 218:15 343:8,14 355:7</p> <p>systematic [2] 376:15 376:15</p> <p style="text-align: center;">-T-</p> <p>T [1] 365:7</p> <p>T.M.I [1] 8:10</p> <p>T.V.A [1] 157:11</p> <p>tab [1] 325:21</p> <p>table [2] 118:12 136:20</p> <p>takes [8] 72:7 74:18 155:6 279:19 282:14 288:16,16 332:11</p> <p>taking [10] 54:10 126:18 135:2 146:16 172:20 180:8 181:13 185:17 190:15 205:8</p> <p>talks [4] 18:5 202:7 261:17 351:16</p> <p>tape [18] 49:14,15 141:22 142:2,5,11,14 143:6 346:21 347:6 350:22 360:9 362:21 363:3,4,4 365:19 366:18</p> <p>tape-recording [1] 142:8</p> <p>taped [1] 82:3</p> <p>tapes [14] 49:19,22 81:10 82:4,5,9 86:4,6,6,10,12 141:9 142:19,22</p> <p>team [2] 6:12 244:7</p> <p>tech [2] 43:16,22</p> <p>technical [57] 4:17 15:5 15:8,18 17:2,6,13,20 18:4 18:18 19:5,20 21:4 28:14 29:2 33:4 45:14 46:1,12 47:2 59:6 65:15 85:1,18 102:17 103:5 109:20 110:12,13,14,17 114:20 118:7 140:6 146:22 147:13 148:8 153:2,5 155:22 157:2 159:11,16 199:21 223:4 233:1,5 246:14,16 308:7 311:8 332:10 339:18 351:14 360:17,19 361:17</p> <p>technically [7] 46:16 59:3 67:3 118:4 197:10 211:19 212:15</p> <p>technique [4] 167:4 290:4 293:4,4</p> <p>techniques [1] 167:2</p> <p>technology [1] 136:19</p> <p>TEI [11] 274:13 275:3 302:13 303:9 306:8 307:13 309:13,17,22 310:3,18</p>	<p>telephone [4] 143:21 222:19 253:10 333:17</p> <p>telling [19] 7:12 27:15 32:6 41:1 57:14 66:17 72:22 97:1 126:17 181:21 205:4 213:1 214:16 239:18 261:10 264:5 328:7 345:14 348:12</p> <p>tells [6] 23:8 34:13 243:18 281:15 341:6 360:5</p> <p>temperature [36] 164:10 164:16 167:21,22 168:2,3 168:7,9,10,11,12,14,16 180:2 186:6,7 187:22 188:4 272:22 273:14 274:11,14 275:2,5,6,9 276:21 277:8 295:8,10 296:21 297:17 299:9 304:19 305:17 328:2</p> <p>temperatures [1] 299:8</p> <p>tend [3] 78:11 86:6,14</p> <p>tended [2] 109:7 116:20</p> <p>tends [2] 109:3 351:20</p> <p>Tennessee [4] 270:6 271:13 279:19 282:15</p> <p>tensile [2] 167:8,10</p> <p>terms [18] 24:20 58:1 71:17 88:7 120:1 126:8,8 126:9 160:9 168:20 172:3 195:3 196:21 197:3 248:21 249:22 250:1 379:7</p> <p>terrible [1] 322:6</p> <p>test [94] 43:17 80:21 82:14 109:18,18 128:1 135:6 160:21 163:13,14 163:15,17,17,21 164:6,10 164:15 165:8,9,14 166:2 167:1,1,11,20 168:12,20 169:4,6,12,13,14,20 180:3 187:1,20 188:1,3,16 191:11,12,18 222:16 225:5 226:7 267:5 271:9 271:11,14,15 272:5 273:13 274:7,8 275:1 276:13,19 277:3,12 281:4 292:7,8,10,16,20 293:3 293:10 294:12,21 298:5 299:14 303:12 305:1,9,12 305:16 307:4 309:10,13 310:4,18 316:10,15 319:22 324:14,18 326:3 326:10,11,14 328:12 331:6,15 332:6</p> <p>tested [6] 56:8 272:7,18 272:20 277:2 287:8</p> <p>testified [1] 17:4</p> <p>testimony [23] 1:10 45:5 72:19 127:8,13,15 131:17 139:2 185:11,12 223:16 240:21 259:18 266:2 314:10 316:18 328:13 333:18 358:11 359:5 378:6 379:10,13</p> <p>testing [69] 55:9,11,13 56:13 59:5 81:1 83:11 84:14 85:4,6,13 86:20 87:6 89:21 90:5 105:15 107:4 119:4 128:6 129:1</p>	<p>134:12,18 160:20 161:15 164:8 166:2 168:22 237:3 238:21 243:13,14 273:5,8 273:9,10 274:1,8 275:8 276:10 277:6 287:14 293:22 294:12 295:4,6 297:22 298:5,6 300:8,10 300:20 301:15,16,20 302:13,16 303:7 308:16 309:9 316:6,11 325:2 326:7 327:1,8,11,22 329:12 331:4</p> <p>tests [40] 166:3,5,21 167:7 179:22 180:1,5,9,13 183:3 183:8 265:2 274:15 275:3 277:7 295:7,12,15,20 296:4,14,19 297:2 299:6 301:10,11 303:19 304:3,5 304:15,17 306:14 307:10 308:18 320:13 326:8 331:3,8,10 332:2</p> <p>thank [6] 64:17 221:8 232:7 244:12 353:21 377:6</p> <p>thanks [3] 248:9 292:22 378:1</p> <p>Thanksgiving [1] 349:4</p> <p>theirs [1] 321:14</p> <p>themselves [5] 290:6 301:11,11 353:11 377:4</p> <p>Theoretically [1] 280:14</p> <p>therefore [5] 91:22 183:11 184:4 238:3 346:12</p> <p>thickness [1] 188:9</p> <p>thinking [4] 139:6 239:16 276:12 341:12</p> <p>third [11] 9:3 12:5,8,10 13:14 29:6 64:18 175:19 179:15 192:1 294:17</p> <p>third-party [3] 227:10 321:22 323:9</p> <p>thorough [3] 9:11 15:2 356:19</p> <p>thought [27] 19:4 44:15 107:12 136:6 138:15 174:4 177:10 200:12 211:6,19 214:7 220:21 232:11 252:1 270:18 280:5 286:12 296:11 310:16 315:13 325:16 332:8 335:4 336:4 341:18 348:1 377:18</p> <p>thoughts [1] 192:15</p> <p>thousands [2] 28:10,10</p> <p>three [19] 43:9 72:2 73:19 74:10 121:17 174:17 176:18 212:10 217:22 235:22 248:7 289:6 294:18 296:21 312:22 340:18 354:14 357:1,14</p> <p>through [85] 5:8 7:11,13 8:4 10:8 11:4,13 15:1,11 28:12 34:20 43:3 46:1 50:17 56:13 60:4,21 67:15 69:4 74:4 75:2,5,8 78:5 88:6 94:7 110:14 115:8 117:22 118:9 119:9 134:12,13,20 135:20</p>	<p>136:3 137:20 138:5 140:11,18,19,21 141:6 145:2 149:4 151:20 155:11 159:3 163:6 168:6 171:19 173:3 175:17 179:6 185:3 186:19 194:1 204:13 206:19 214:2 219:17 225:10 227:2 258:5,18 271:5 275:21 298:9 300:13 307:9,19 308:19 314:12,12 328:9 329:19 332:16 334:16 336:6 343:9,19 355:8,8 369:3 374:20</p> <p>throughout [1] 174:20</p> <p>thrown [1] 47:11</p> <p>Thursday [1] 342:15</p> <p>tie [2] 33:21 73:16</p> <p>tier [1] 116:16</p> <p>timely [2] 59:9 279:5</p> <p>times [12] 32:11 167:18 181:3 194:7 209:5 222:18 240:15 248:17 250:13 290:22 299:2 340:18</p> <p>timing [1] 95:16</p> <p>tired [1] 289:11</p> <p>title [1] 246:1</p> <p>today [9] 6:3,10 7:10 8:6 22:2 133:13 191:16 352:12 377:7</p> <p>together [9] 43:12 47:12 109:2 151:21 162:10 243:20 280:14 343:19 350:20</p> <p>tomorrow [1] 354:1</p> <p>too [17] 4:15,18 11:7,8 73:17 94:17 152:13 158:11 193:21 201:5 226:6 247:8 254:8 284:3 315:15 334:2 350:17</p> <p>took [29] 45:22 71:8 86:22 103:14 118:20 153:22 207:17 212:9 224:13,18 225:3 226:1 246:18 262:13 276:8 277:18 278:17 279:9 300:11 310:5,10,13 321:1 336:3 342:1 343:4 350:16 354:3 360:4</p> <p>top [11] 81:9 92:2 99:6 103:20 122:20 125:18 265:4,7 334:10 373:18 374:15</p> <p>total [1] 37:18</p> <p>totality [1] 53:17</p> <p>totally [7] 34:4 59:18 69:11,14 128:9 304:21 355:20</p> <p>toughness [3] 56:10 167:13 265:1</p> <p>towards [2] 143:15 360:4</p> <p>trace [1] 199:16</p> <p>track [4] 44:7 353:3 355:6 369:13</p> <p>tracking [1] 199:8</p> <p>trail [1] 101:20</p> <p>train [1] 278:14</p>
--	--	--	--	--

<p>training [3] 115:4 153:21 157:18</p> <p>transcribe [1] 82:6</p> <p>transcribed [5] 5:12 82:4 141:10 185:19 348:1</p> <p>transcribing [1] 82:3</p> <p>transcript [10] 26:14,17 27:18 71:12 77:14 139:22 172:21 276:17 348:6 379:12</p> <p>transcriptions [1] 141:11</p> <p>transcripts [18] 13:10 22:4 28:11 45:22 46:5 71:1,2,5,6,10 72:17 74:22 82:7 85:11 86:5,11 141:9 141:15</p> <p>transfer [7] 69:16 144:11 258:2 334:10,11 369:11 373:14</p> <p>transferred [3] 68:5 131:4 244:8</p> <p>transmittal [2] 333:10 333:15</p> <p>transmitted [1] 12:10</p> <p>travel [8] 165:21 220:4 233:8 268:1 290:21 309:20 342:20 348:19</p> <p>traveled [1] 224:1</p> <p>traveling [5] 141:5 268:2 290:17 315:15 349:12</p> <p>treated [5] 119:22 161:14 272:12,17 287:8</p> <p>treatment [19] 104:4 162:13,17 236:14 241:16 241:17,18 264:7 271:22 273:4,9,21 274:22 287:14 292:17 293:6 297:9 316:2 316:8</p> <p>treatments [1] 292:14</p> <p>tremendous [1] 46:9</p> <p>trial [1] 73:10</p> <p>Triangle [16] 271:17 272:16 274:3 277:14 287:12 288:4 294:14 296:10 297:6 298:10 299:4,5,20 300:2 301:7 316:18</p> <p>tried [13] 7:16 40:20 78:1 104:10 107:18 116:19 134:6 288:17 315:18 321:20 343:3,10,21</p> <p>triggered [2] 340:8 341:18</p> <p>trip [5] 290:18,19 291:1 309:21 311:6</p> <p>trips [1] 283:13</p> <p>Trojan [1] 245:11</p> <p>troubled [1] 113:4</p> <p>troubles [1] 209:8</p> <p>true [8] 38:9 70:8 75:8 88:17 90:6 129:3 284:2 379:12</p> <p>trust [5] 10:6 217:5 218:19 219:7 363:1</p> <p>trusted [2] 19:6 228:14</p> <p>trusting [2] 108:22</p>	<p>109:21</p> <p>try [27] 9:13,17 11:5,12 11:15 13:17 24:19 25:1 25:10,17,21 52:14 70:10 72:9 73:9 74:12,19 78:17 81:17 82:1 135:16 146:15 249:7 305:10 353:6,11 372:15</p> <p>trying [17] 30:7 33:17 43:21 76:4 137:20 159:1 178:10 179:7 189:6 198:21 248:3 258:5 303:2 322:18 365:11 372:4 373:11</p> <p>turn [10] 14:2 16:17 44:20 63:1 179:12 192:3 238:9 250:12 318:4 325:18</p> <p>turn-around [2] 226:9 324:16</p> <p>turned [11] 37:12 79:2 82:22 100:8 141:18 225:5 274:9 287:2 289:5 290:2 333:9</p> <p>turns [6] 75:1 101:13 141:4 200:7 273:1 287:11</p> <p>two [70] 3:4 5:7 7:7 21:19 31:13,17 36:6 49:20 53:4 63:4 68:8 74:1 89:3 90:22 95:16 108:2 112:4 120:4 120:10 124:10,16 131:6 131:12,14 132:7 153:4 154:18 158:6,9 162:9 168:8 180:11 213:7 215:22 217:18 218:8 220:13,17 223:2 225:6 226:9,10 228:21 235:21 248:7 250:13,15 278:12 278:13 298:12 312:22 320:21 324:16 325:3,22 327:7 336:13 342:2 344:2 349:17 350:3,14,19 352:2 352:7 353:14,17 358:12 365:8 366:3</p> <p>two-year [1] 153:17</p> <p>type [5] 27:7 96:18 104:5 104:7 302:5</p> <p>typical [5] 147:22 166:21 300:21 322:2 324:16</p> <p>typically [17] 14:15 15:3 18:1 19:13 24:5 32:19 74:9 76:4,6,18 82:5 133:20 167:5 188:15,16 195:5 301:17</p> <p>typing [1] 200:2</p> <p>typographical [2] 335:1 336:8</p>	<p>128:10 167:10 263:4</p> <p>ultimately [9] 48:4,9,20 58:14 87:17 93:22 214:1 218:2 263:2</p> <p>unable [3] 21:9 310:7 312:16</p> <p>unacceptable [2] 355:20 358:14</p> <p>unavailable [1] 13:5</p> <p>unaware [6] 100:17,18 128:9 170:19 211:3 361:7</p> <p>uncomfortable [1] 120:15</p> <p>uncover [1] 132:17</p> <p>undecided [1] 61:12</p> <p>under [22] 6:12 9:7 26:22 48:1 117:1 144:14 183:11 194:3 203:12,14,22 255:18 256:4,6 273:18 280:16 318:9 323:6 332:20 336:3 341:2 361:13</p> <p>underlying [4] 28:22 68:10 70:9,19</p> <p>undermined [1] 57:16</p> <p>undermining [1] 55:14</p> <p>understand [86] 3:3 7:3 10:17 11:16 12:14 18:14 20:20 22:2 43:1 44:6 45:13 46:21 53:17 56:4 59:4 60:5 74:8 83:1 85:3 86:5 89:4 98:11 102:6 105:15 106:4,7 109:13,17 112:16 115:11,12,14 118:3 124:22 133:15 134:1 141:13 142:14 143:20 147:7,14 151:12 154:2,15,20 156:21 159:2 161:6 168:22 179:7 181:12 188:8 212:10 237:17 247:3 249:7 262:1 275:20 277:1 286:5 293:3 296:7 304:2 305:16 308:4 308:16 312:6 322:2 326:9 328:6 331:7 332:5 337:8 346:3 351:13,15 353:15 356:4 358:9 360:20,22 361:4 366:10 368:16 370:6 375:20</p> <p>understandable [1] 79:10</p> <p>understands [3] 114:19 339:21 355:12</p> <p>understood [24] 45:17 93:8 98:12,15,21 99:6 101:17 170:5 181:14 188:14 214:13 240:10 243:4,11 249:1 296:6 297:15 312:21 332:19 338:10 340:6 356:2 373:2 377:2</p> <p>undertake [3] 12:3 190:8 318:14</p> <p>underway [1] 155:8</p> <p>unfairly [2] 55:19 58:11</p> <p>unhappy [1] 213:21</p> <p>union [1] 33:12</p> <p>unique [2] 27:17 308:12</p>	<p>Unit [3] 43:10,17 254:1</p> <p>United [2] 1:1 143:14</p> <p>University [2] 115:2 153:16</p> <p>unless [4] 47:8 95:14 173:13 195:22</p> <p>unnecessary [1] 58:21</p> <p>unqualified [3] 241:9 242:11 367:20</p> <p>unsuccessful [2] 21:3 343:11</p> <p>unable [1] 274:17</p> <p>unwillingness [1] 54:2</p> <p>unworkable [2] 200:11 213:22</p> <p>up [109] 7:11 8:2 11:9 20:16 22:18 26:4 29:15 33:21 37:8 44:8 47:18 52:11,13 53:15,19 55:6 66:6 68:18 69:21 74:13 74:15 77:1 85:15 92:18 93:1,7 94:1,6 95:7 99:16 100:5 106:11 114:14 115:18 119:10,16 123:1,3 124:21 129:14,17,19 130:9 136:6 138:14 148:4 148:5 150:17 153:18 156:5 158:9 160:2 166:4 176:10 183:21 186:9 187:11 188:17 190:5 195:11 206:4 209:10,13 210:12 211:5 214:2,22 221:17,20 223:12 224:22 225:9 226:17 228:6 240:14 247:17 265:20 266:3 269:17 283:9 288:22 294:17 309:20 314:2,2,9,12,15 323:5 329:17 331:15 332:6 335:9 343:10,19 344:4 345:5 349:3,5,14,14,20 350:7 361:2 363:11,20 369:3 370:20 375:22</p> <p>upset [8] 215:14 229:20 346:1 355:17 356:3,22 359:7,10</p> <p>upsetting [1] 316:21</p> <p>urge [3] 70:4,8 86:9</p> <p>urged [1] 318:16</p> <p>urgency [1] 291:13</p> <p>used [31] 37:13 46:10 55:14 56:17 68:21 93:14 95:11 119:21 131:6 152:19 155:1 160:20 161:22 168:11 183:12 192:14 206:10 207:6,7 211:14 238:22 240:4 242:11 275:9 292:12 299:8 334:15 335:12,16 353:14 363:15</p> <p>useful [4] 11:10,19 44:3 72:5</p> <p>using [18] 109:16 159:14 162:15 163:12,12 164:1 205:10 206:21 219:6 237:22 239:1 273:13 295:4 298:1 301:3 308:2 323:6 367:15</p> <p>usual [5] 260:15 304:19</p>	<p>305:11 362:1 379:7</p> <p>usually [2] 17:16 158:2</p> <p>utilize [1] 343:10</p> <p>utilized [1] 265:3</p> <p>utilizing [2] 135:18 255:13</p>
<p>-V-</p>				
<p>V-Notch [17] 163:15,16 163:21 164:10,14,17 167:11 168:12 179:22 180:3 188:1 237:2 238:21 265:2 294:19 295:6 327:22</p> <p>vacation [3] 310:6,11,14</p> <p>vague [1] 176:12</p> <p>valid [1] 118:14</p> <p>validate [2] 119:7 305:10</p> <p>valuable [1] 250:4</p> <p>value [1] 70:5</p> <p>valued [1] 26:8</p> <p>values [1] 179:21</p> <p>variable [8] 162:11,13 163:18,19 165:1 183:10 230:14 238:4</p> <p>variables [7] 161:21 162:7,22 163:4 190:21 251:9,15</p> <p>variance [1] 176:1</p> <p>variation [1] 139:20</p> <p>variety [1] 33:2</p> <p>various [10] 53:10 95:19 126:4 159:3 174:5 192:14 244:11 253:4 288:19 295:21</p> <p>vault [2] 201:19 206:17</p> <p>vendors [3] 291:6 301:1 301:3</p> <p>verbal [3] 40:18 126:15 356:5</p> <p>verbally [4] 77:9,11,11 96:16</p> <p>verbatim [1] 25:1</p> <p>verified [4] 75:16 114:22 191:14 207:22</p> <p>verify [8] 14:8 56:9 75:8 191:16 297:17 305:17 316:11 343:3</p> <p>verifying [2] 56:12 75:13</p> <p>version [5] 27:1,1 53:6 71:14 234:13</p> <p>versus [5] 63:20 184:18 187:19 286:21 364:2</p> <p>vessel [2] 188:10,11</p> <p>viable [2] 282:1 323:3</p> <p>victim [1] 51:15</p> <p>view [21] 18:6 28:7 54:9 58:18 59:11 70:13 91:9 104:9 122:8 125:16 139:18 171:14 193:12,18 199:7 227:5 246:14,17 330:19 336:9 360:4</p> <p>viewed [5] 190:12 199:3 209:18 218:7 371:10</p>				

292:19 300:8 301:21
322:19,21 335:2 362:14
wrote [5] 67:4 109:12
246:13 259:12 319:14

-X-

X [1] 362:15

-Y-

Y [1] 362:15
Yankee [1] 245:19
year [7] 43:9 105:9 222:11
228:13 232:5 260:10
266:10
years [16] 8:9,20 19:16
28:16 32:17 33:6 82:21
109:22 110:4 114:6
131:14 153:12 200:1
241:3 245:12 266:3
yellow [1] 7:11
yet [8] 57:13 71:4,5 74:3
139:21 173:14 179:20
377:16
yourself [1] 116:17
yourselves [1] 10:9

-Z-

Z [1] 362:15
Zarges [17] 31:10,14
35:22 37:20 38:15 63:2,3
63:5 76:8 228:1 233:4,5,6
283:16 314:12 357:9,13
zero [1] 274:12
zone [4] 169:8 276:22
297:17 302:16
zones [1] 294:19



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

April 14, 1998

FILE
EA

Mr. Alain Artayet
[Home Address
Deleted 10 CFR 2.790]

Dear Mr. Artayet:

The purpose of this letter is to confirm the April 10, 1988, telephone conversation between you and Mr. Charles Weil of my staff. During the call, Mr. Weil explained to you that the April 16, 1998 predecisional enforcement conference with Morrison-Knudsen (MK) and Wisconsin Electric Power Company, to which you were invited to attend, has been temporarily postponed. The postponement will enable the NRC to review information that investigators retained by MK provided to us on April 9, 1998, prior to a conference. Mr. Weil will contact you when the conference date is confirmed.

Hopefully, this postponement does not cause you any inconvenience. If you have any questions, please feel free to contact Mr. Weil. He can be reached at toll free telephone (800) 522-3025 or at his direct line (630) 810-4372.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Brent Clayton".

for H. Brent Clayton
Region III Enforcement Officer

cc: Steven D. Bell, Esq.
Office of Enforcement
EA 98-081
RIII Office Allegation Coordinator
AMS No. RIII-1997-A-0035

C/6



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

April 14, 1998

CANCELLATION NOTICE OF SIGNIFICANT LICENSEE MEETING

Name of Contractor: Morrison Knudsen Corporation

Name of Licensee: Wisconsin Electric Power Company

Name of Facility: Point Beach Nuclear Plant

Date and Time of Meeting: Thursday April 16, 1998 at 9:00 a.m. (CDT)

Location of Meeting: U. S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, Illinois 60532-4351

Purpose of Meeting: This meeting is canceled and will be rescheduled at a future date.

Approved by:

A handwritten signature in black ink, appearing to read "J. A. Gavula", written over a horizontal line.

J. A. Gavula, Chief
Engineering Specialist Branch 1

See Attached Distribution

C/7

0-7110

SIGNIFICANT LICENSEE MEETING DISTRIBUTION FOR ENFORCEMENT CONFERENCES

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THOMAS H. ZARGES
PRESIDENT & CEO

April 21, 1998

Mr. John A. Grobe
Director, Division of Reactor Safety
U.S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, IL 60532-4351

Dear Mr. Grobe:

The attached letter responds to your request concerning our mitigation of any chilling effect among MK employees as a result of MK's alleged retaliation against our Group Welding Engineer. This letter has been prepared at my request by Lou Pardi, who manages all of MK's work at NRC-licensed facilities. Since MK's Notice of Violation at Fort St. Vrain, Lou has been extremely attentive to the requirements of 10CFR50.7. I trust you will agree he and his staff have been pro-active to assure all MK's nuclear projects are free from harassment and intimidation and any resulting chilling effects.

The documentation behind the tabs affixed to Lou's letter shows how active MK has been relative to 10CFR50.7. At both Pt. Beach and St. Lucie, MK had specific policies forbidding harassment and intimidation. Both also had procedures for indoctrination and training on 10CFR50 and the reporting of potential violations. Each project also had a procedure encouraging open communication. These procedures provided a means for employees to report any concerns through a "Condition Evaluation Report" form. Each of the 1537 MK employees on these projects was interviewed at termination and specifically asked if the employee had any unresolved safety concerns. No significant concerns were reported.

These aggressive actions, combined with others mentioned in the letter, make me confident MK had all the proper policies, procedures, attitudes, and support in place to mitigate any chilling effect.

C/8

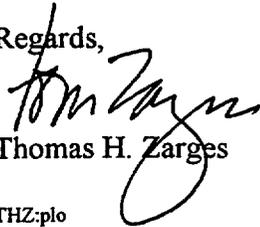
APR 23 1998

Mr. John A. Grobe
April 21, 1998
Page 2

Additionally, the independent and objective investigation performed at my request by Stier, et al, concludes MK did not retaliate against the group welding engineer, and that people at our projects do not perceive we did so. I am awaiting a final report from Stier to determine if any additional actions are advisable or necessary.

Please let me know if I can provide any further information.

Regards,



Thomas H. Zarges

THZ:plo

Attachments

September 18, 1998

EA 98-081

NOTE TO: EA Files

FROM: Charles H. Weil, Enforcement Specialist *CHW*

SUBJECT: STATUS OF MORRISON-KNUDSEN INVESTIGATION

On September 18, 1998, Mary Jane Cooper, attorney at Stier, Anderson, and Malone, called about the status of the firm's investigation into alleged employment discrimination by Morrison-Knudsen, Cleveland, Ohio. Cooper advised essentially as follows:

A new issue, concerning the individual's knowledge during August 1996 of possible problems with E-718 weld rod at the D.C. Cook plant, came up late in the investigation and is still being pursued. Also, the firm's paralegals are currently checking the citations used in the report. Cooper did not anticipate that either action would delay the report, which should be issued by September 30, 1998..

The firm will probably have its investigation report finished by September 30, 1998, and will send six copies to the NRC, two copies to Region III and four to the Office of Enforcement.

Potential withholding of the investigation report from the NRC PDR was discussed and Cooper was referred to 10 CFR 2.790 for the NRC's policies and practices on withholding information from public disclosure.

CONTACT: Charles H. Weil
(630) 810-4372

C/9

From: C. H. Weil
To: Bruce Berson, H. Brent Clayton, James Gavula, J...
Date: Mon, Oct 5, 1998 4:37 PM
Subject: EA 98-081, MORRISON KNUDSEN
Place: OEMAIL

On 10/5/98, Mary Jane Cooper, attorney with Steir, Anderson & Malone (SAM), was contacted about the status of the SAM investigation into alleged employment discrimination by Morrison Knudsen (MK) (EA 98-081). Cooper advised essentially as follows:

Volumes 1-5 of the report have been sent to MK for review and she expected to have the 6th volume to MK by this evening. (Report is estimated at 700 pages).

SAM has retained the original computer disc of the report and has told MK that all suggested changes must be submitted to SAM in writing. The written changes, if any, will be made available to the NRC.

She expects that MK's review will take until Thursday or Friday, 10/15-16/98, and she'll look at the suggested changes on Monday, 10/19/98 (she'll be on vacation starting COB 10/5/98).

I confirmed with her that the NRC would need to review the SAM report and exhibits. She said that she'll have the secretaries start coping the exhibits (estimated at 10,000 pages or more).

She also told me that the transcripts from the DOL hearing are included in the exhibits. Therefore, we may not have to ask DOL for copies.

Additionally, she said that Dick Edmister (phonetic spelling) an attorney with MK has kept Jack Grobe apprized of the schedule for releasing the SAM report to the NRC.

In summary the SAM report and exhibits should be to the NRC shortly after 10/19/98.

Chuck.

C/10

October 28, 1998

EA 98-081

NOTE TO: Enforcement File

FROM: Charles H. Weil, Enforcement Specialist

leg III

SUBJECT: FOLLOW-UP TELEPHONE CALL

This afternoon, October 28, 1998, I received a telephone call from Mary Jane Cooper, attorney with the law firm of Stier, Anderson and Malone, investigators for the Morrison-Knudsen Company (MK). Copper provided the following information:

A document has been found that was germane to the hearing before the U.S. Department of Labor (DOL) Administrative Law Judge (ALJ). At that hearing, MK employees testified that the decision to remove the individual was due, in part, to his technical competence. During the testimony, the MK employees referred to a document about "drop-weight testing," but were unable to locate that document for introduction as evidence. The lack of this document in evidence purportedly caused the DOL:ALJ to conclude that MK employees did not testify creditably.

Cooper believes that the document bears directly upon the DOL:ALJ hearing and it will support the testimony of the MK employees. Apparently, the document has a handwritten note by the individual (the victim of the alleged discrimination) that indicates his unfamiliarity with the welding code.

Cooper will forward that document to NRC in a few weeks. In the meantime, her firm is interviewing the MK employees, who discussed that document in their DOL testimony, to ensure that it is the right document.

C/11

From: C. H. Weil *CHW*
To: Michael Stein *ME*
Date: Fri, Dec 11, 1998 6:24 PM
Subject: CLOSEOUT OF WISCONSIN ELECTRIC PORTION OF EA 98-081
Place: OEMAIL

Mike, the "EA Request & Enforcement Strategy Form" for EA 98-081, Morrison Knudsen, dated 12/4/98, does not reflect the decision to write a closeout letter to Wisconsin Electric Power Company (WEPCo) informing WEPCo that the NRC was not considering enforcement action to WEPCo. The letter was also to reflect that a conference was scheduled with Morrison Knudsen and WEPCo was invited to attend.

Please revise the form so that we have that point documented.

Also, I am playing telephone tag with the attorney for Morrison Knudsen about confirming the conference dates and times. That should be done by Monday, 12/14.

I'm in the process of drafting the letters to WEPCo, MK, and the individuals and will have them in to you for a "quick" review either Monday, 12/14, or Tuesday, 12/15/98.

Call me at (630) 810-4372 if you have questions.

Chuck.

CC: H. Brent Clayton, OEMAIL

CHW



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

JAN 5 1999

NOTICE OF SIGNIFICANT MEETING

THIS MEETING IS CLOSED TO PUBLIC ATTENDANCE

Name of Contractor: Morrison Knudsen Corporation

Name of Licensee: Wisconsin Electric Power Company
Point Beach Nuclear Plant

Docket Nos.: 50-266; 50-301

Date and Time of Meeting: Tuesday, January 26, 1999 at 1:00 p.m. (CST)

Location of Meeting: U. S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, Illinois 60532-4351

Purpose of Meeting: To discuss the apparent violation of employee discrimination requirements, EA 98-541.

NRC Attendees:

V. Beaston, Enforcement Specialist, OE
J. Caldwell, Acting Regional Administrator
B. Clayton, Chief, EICS
C. Weil, EICS
J. Grobe, Director, DRS
M. Dapas, Deputy Director, DRP
J. Gavula, Chief, Engineering Specialists Branch 1
B. Burgess, Chief, Reactor Projects Branch 7
Others as designated

Contractor Attendees:

Others as designated

NOTE: Attendance at this meeting by NRC personnel, other than those listed above, should be made known to K. S. GreenBates at 630/829-9738 by COB January 22, 1999.

Approved by: _____

James A. Gavula

James A. Gavula, Chief
Engineering Specialists Branch 1

See Attached Distribution

C/13

Significant Meeting Distribution For Enforcement Conference

H. L. Thompson, Jr., Deputy Executive Director for Regulatory Programs
A. C. Throance, Acting Deputy Executive Director for Regulatory Effectiveness
B. W. Sheron, Acting Associate Director for Technical Review, NRR
B. A. Boger, Acting Associate Director for Projects, NRR
J. Lieberman, Director, Office of Enforcement
J. R. Goldberg, Deputy Assistant, General Counsel for Enforcement, OGC
E. G. Adensam, Acting Director, Division of Reactor Projects III/IV NRR
Chief, PIPB, NRR
Region III Coordinator, OEDO
Project Directorate, NRR
Project Manager, Project Directorate, NRR
M. H. Stein, Enforcement Specialist, Office of Enforcement
B. A. Berson, Regional Counsel, Office of Regional Administrator, RIII
G. E. Grant, Director, Division of Reactor Projects, RIII
M. L. Dapas, Deputy Director, Division of Reactor Projects, RIII
C. D. Pederson, Director, Division of Nuclear Materials Safety, RIII
R. J. Caniano, Deputy Director, Division of Nuclear Materials Safety, RIII
J. A. Grobe, Director, Division of Reactor Safety, RIII
S. A. Reynolds, Deputy Director, Division of Reactor Safety, RIII
DRP Branch Chief
DRS Branch Chiefs
H. B. Clayton, Enforcement/Investigations Officer, RIII
C. H. Weil, Enforcement Specialist, Enforcement/Investigation Staff, RIII
R. M. Lickus, Regional State Liaison Officer, RIII (E-Mail)
M. A. Kunowski, Project Engineer, Division of Reactor Projects, RIII
K. S. GreenBates, Reactor Engineer, Engineering Specialist Branch 1, RIII
PMNS (E-Mail)
RIII Public Affairs (E-Mail)
J. Kweiser, ORA (E-Mail)
P. Buckley, ORA (E-Mail)

From: C. H. Weil *CHW* *KTW* *LTW* *NLW*
To: Beverly Hicks, Janet Kweiser, Linda Cox, Michael...
Date: Wed, Dec 16, 1998 2:43 PM
Subject: ENFORCEMENT CONFERENCES WITH MORRISON KNUDSEN AND INDIVIDUALS
Place: OEMAIL

I just concluded a telephone call with Dick Edmister, the attorney for Morrison Knudsen, and we established the following schedule for predecisional enforcement conferences:

Tuesday	1/26/99	1:00 p.m. (Central)	EA 98-541	Drew Edelman
Tuesday	1/26/99	3:00 p.m. (Central)	EA 98-540	Louis E. Pardi
Wednesday	1/27/99	9:00 a.m. (Central)	EA 98-081	Morrison Knudsen

All three conferences are closed.

Jim Gavula/Charlie Brown
Please prepare and send the meeting notice.

Chuck

CC: Bruce Berson, Charles Brown, H. Brent Clayton, ...

From: Susan Chidakel *OC*
To: C. H. Weil *CHW*
Date: Wed, Dec 16, 1998 3:22 PM
Subject: Re: ENFORCEMENT CONFERENCES WITH MORRISON KNUDSEN AND INDIVIDUALS

Thanks. I'll be there. I'll let you know exactly when after I arrange flights.

>>> C. H. Weil 12/16 2:43 PM >>>

I just concluded a telephone call with Dick Edmister, the attorney for Morrison Knudsen, and we established the following schedule for predecisional enforcement conferences:

Tuesday	1/26/99	1:00 p.m. (Central)	EA 98-541	Drew Edelman
Tuesday	1/26/99	3:00 p.m. (Central)	EA 98-540	Louis E. Pardi
Wednesday	1/27/99	9:00 a.m. (Central)	EA 98-081	Morrison Knudsen

All three conferences are closed.

Jim Gavula/Charlie Brown
Please prepare and send the meeting notice.

Chuck

CC: BAB1, MHS



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

January 8, 1999

EA 98-081

Mr. S. A. Patulski
Site Vice President
Point Beach Nuclear Plant
Wisconsin Electric Power Company
6610 Nuclear Road
Two Rivers, WI 54241

SUBJECT: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS
(U. S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 AND ARB 98-016)
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-97-013)

Dear Mr. Patulski:

This letter is in reference to an apparent violation of U.S. Nuclear Regulatory Commission (NRC) requirements prohibiting discrimination against employees who engage in protected activities (i.e., 10 CFR 50.7, "Employee Protection)." This letter also refers to a March 25, 1998, letter from the NRC that scheduled a predecisional enforcement conference (PEC) on April 16, 1998, with Wisconsin Electric Power Company (WEPCo). The PEC was later postponed until the NRC had the opportunity to review additional investigatory information.

The apparent violation involves the Morrison Knudsen Corporation (MK) discriminating against one of its employees. At the time of the apparent violation, MK was involved in the replacement of steam generators at WEPCo's Point Beach Nuclear Plant. The facts surrounding the apparent violation were previously described in our March 25, 1998, letter to WEPCo.

Since that time, the NRC has received and reviewed an investigation report from a law firm retained by MK. Based on the information obtained from the U.S. Department of Labor (i.e., Occupational Safety and Health Administration's investigation report and the Recommended Decision and Order of the Administrative Law Judge), the NRC Office of Investigations, and the investigation conducted for MK by the law firm, a violation of NRC requirements may have occurred involving MK. While the available information indicates that a violation may have occurred, it appears that WEPCo was not involved in the apparent violation. After consultation with the Director, NRC Office of Enforcement, the NRC has concluded, absent new information, that WEPCo will not be cited for a violation of 10 CFR 50.7 and has closed the portion of this enforcement action concerning WEPCo. Nevertheless, WEPCo is reminded that it is responsible for the actions of its contractors, sub-contractors, and vendors, and it is suggested that WEPCo review the enclosed NRC Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," dated May 14, 1996, (61 Federal Register 24336).

C/14

While the NRC has closed the portion of this action concerning WEPCo, the NRC is continuing its review of the apparent violation and in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The NRC has scheduled a transcribed PEC with MK on January 27, 1999, at 9:00 a.m. (CST) in the NRC Region III office. WEPCo is invited to attend and participate in the conference.

The January 27, 1999, transcribed PEC will be closed to public observation because it concerns the performance of certain employees. However, the Enforcement Policy permits the employee or former employee who was the subject of the alleged discrimination to participate in the conference. Accordingly, the complainant will be invited to attend the conference. He may participate by observing the conference and if desired, following the presentations by MK and WEPCo, should WEPCo choose to make a presentation, address his view on why he believes discrimination occurred and his views on the presentations. In no case will the NRC staff permit MK, WEPCo, or the individual to cross-examine or question each other. MK and WEPCo will then be afforded an opportunity to respond, and the NRC may ask some clarifying questions.

The decision to hold an enforcement conference with MK does not mean that the NRC has made a final determination on enforcement action in this case. While the NRC normally relies on the OI report and the DOL's findings in determining whether a violation occurred when such findings are based on an adjudicatory proceeding, the conference is being held to obtain any additional information that will enable the NRC to make an informed enforcement decision. In addition, the conference is an opportunity for MK to provide perspectives on: (1) the severity level of the apparent violation; (2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy; and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

The NRC's March 25, 1998, letter also asked WEPCo to answer several questions at the April 16, 1998, PEC. Submission of the answers to those questions was subsequently postponed with the cancellation of the April 16, 1998, PEC. WEPCo's response to those questions is no longer necessary since the NRC has concluded that, absent new information, WEPCo will not be cited for a violation of 10 CFR 50.7 in this specific matter.

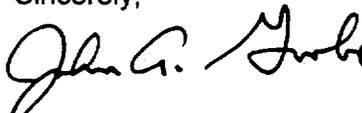
Please contact Mr. Charles H. Weil of the NRC Region III Enforcement Staff if you have any questions or comments regarding this matter, or to make arrangements for WEPCo's participation in the January 27, 1999, conference. Mr. Weil can be reached at telephone number 1-800-829-9755

S. Patulski

-3-

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the required written response will be placed in the NRC Public Document Room.

Sincerely,



John A. Grobe, Director
Division of Reactor Safety

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR-27

Enclosure: NRC Policy Statement, "Freedom of Employees
in the Nuclear Industry to Raise Safety Concerns
Without Fear of Retaliation, dated May 14, 1996

cc w/enclosure:

R. Grigg, President and
Chief Operating Officer, WEPCo
A. Cayia, Plant Manager
B. Burks, P.E., Director
Bureau of Field Operations
Cheryl L. Parrino, Chairman,
Wisconsin Public Service Commission
State Liaison Officer
T. Zarges, President and Chief Executive Officer,
MK Engineering and Construction Group
R. Edmister, Associate General Counsel,
MK Engineering and Construction Group
P. Hickey, Esq., Shaw, Pitman
NRC Office of Enforcement
J. Goldberg, OGC
B. Boger, NRR
C. Carpenter, NRR
L. Gundrum, NRR
R. Medlock, Director,
OSHA Cleveland Area Office
B. Berson, RIII
B. Burgess, RIII
C. Chidakel, OGC
M. Stein, OE
R. Paul, OI:RIII
OAC:RIII

[Federal Register: May 14, 1996 (Volume 61, Number 94)]

[Notices]

[Page 24336-24340]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr14my96-136]

NUCLEAR REGULATORY COMMISSION

Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this policy statement to set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining such an environment rests with each NRC licensee, as well as with contractors, subcontractors and employees in the nuclear industry. This policy statement is applicable to NRC regulated activities of all NRC licensees and their contractors and subcontractors.

DATE: May 14, 1996

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2741.

SUPPLEMENTARY INFORMATION:

Background

NRC licensees have the primary responsibility to ensure the safety of nuclear operations. Identification and communication of potential safety concerns¹ and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility. In the past, employees have raised important issues and as a result, the public health and safety has benefitted. Although the Commission recognizes that not every concern raised by employees is safety significant or, for that matter, is valid, the Commission concludes that it is important that licensees' management establish an environment in which safety issues are promptly identified and effectively resolved and in which employees feel free to raise concerns.

Although hundreds of concerns are raised and resolved daily in the nuclear industry, the Commission, on occasion, receives reports of individuals being retaliated against for raising

concerns. This retaliation is unacceptable and unlawful. In addition to the hardship caused to the individual employee, the perception by fellow workers that raising concerns has resulted in retaliation can generate a chilling effect that may discourage other workers from raising concerns. A reluctance on the part of employees to raise concerns is detrimental to nuclear safety.

As a result of questions raised about NRC's efforts to address retaliation against individuals who raise health and safety concerns, the Commission established a review team in 1993 to reassess the NRC's program for protecting allegers against retaliation. In its report (NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," January 7, 1994) the review team made numerous recommendations, including several recommendations involving issuing a policy statement to address the need to encourage responsible licensee action with regard to fostering a quality-conscious environment in which employees are free to raise safety concerns without fear of retribution (recommendations II.A-1, II.A-2, and II.A-4). On February 8, 1995, the Commission after considering those recommendations and the bases for them published for comment a proposed policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," in the Federal Register (60 FR 7592, February 8, 1995).

The proposed policy statement generated comments from private citizens and representatives of the industry concerning both the policy statement and NRC and Department of Labor (DOL) performance. The more significant comments related to the contents of the policy statement included:

The policy statement would discourage employees from bringing their concerns to the NRC because it provided that employees should normally provide concerns to the licensee prior to or contemporaneously with coming to the NRC.

1. The use of a holding period should be at the discretion of the employer and not be considered by the NRC in evaluating the reasonableness of the licensee's action.
2. The policy statement is not needed to establish an environment to raise concerns if NRC uses its authority to enforce existing requirements by pursuing civil and criminal sanctions against those who discriminate.
3. The description of employee concerns programs and the oversight of contractors was too prescriptive; the expectations concerning oversight of contractors were perceived as the imposition of new requirements without adherence to the Administrative Procedure Act and the NRC's Backfit Rule, 10 CFR 50.109.
4. The need for employee concerns programs (ECPs) was questioned, including whether the ECPs fostered the development of a strong safety culture.
5. The suggestion for involvement of senior management in resolving discrimination complaints was too prescriptive and that decisions on senior management involvement should be decided by licensees.

In addition, two public meetings were held with representatives of the Nuclear Energy Institute (NEI) to discuss the proposed policy statement. Summaries of these meetings along with a revised policy statement proposed by NEI were included with the comments to the policy

statement filed in the Public Document Room (PDR).

This policy statement is being issued after considering the public comments and coordination with the Department of Labor. The more significant changes included:

1. The policy statement was revised to clarify that senior management is expected to take responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved as opposed to being personally involved in the resolution of these matters.
2. References to maintenance of a "quality-conscious environment" have been changed to "safety-conscious environment" to put the focus on safety.
3. The policy statement has been revised to emphasize that while alternative programs for raising concerns may be helpful for a safety-conscious environment, the establishment of alternative programs is not a requirement.
4. The policy statement continues to emphasize licensees' responsibility for their contractors. This is not a new requirement. However, the policy statement was revised to provide that enforcement decisions against licensees for discriminatory conduct of their contractors would consider such things as the relationship between the licensee and contractor, the reasonableness of the licensee's oversight of the contractor's actions and its attempts to investigate and resolve the matter.
5. To avoid the possibility suggested by some commenters that the policy statement might discourage employees from raising concerns to the NRC if the employee is concerned about retaliation by the employer, the statement that reporting concerns to the Commission "except in limited fact-specific situations" would not absolve employees of the duty to inform the employer of matters that could bear on public, including worker, health and safety has been deleted. However, the policy statement expresses the Commission's expectation that employees, when coming to the NRC, should normally have provided the concern to the employer prior to or contemporaneously with coming to the NRC.

Statement of Policy

The purpose of this Statement of Policy is to set forth the Nuclear Regulatory Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their own management and the NRC without fear of retaliation. A safety-conscious work environment is critical to a licensee's ability to safely carry out licensed activities.

This policy statement and the principles set forth in it are intended to apply to licensed activities of all NRC licensees and their contractors,² although it is recognized that some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (e.g., establishment of a method to raise concerns outside the normal management structure such as an employee concerns program) may not be practical for very small licensees that have only a few employees and a very simple management structure.

The Commission believes that the most effective improvements to the environment for raising concerns will come from within a licensee's organization (or the organization of the licensee's contractor) as communicated and demonstrated by licensee and contractor management. Management should recognize the value of effective processes for problem identification and

resolution, understand the negative effect produced by the perception that employee concerns are unwelcome, and appreciate the importance of ensuring that multiple channels exist for raising concerns. As the Commission noted in its 1989 Policy Statement on the Conduct of Nuclear Power Plant Operations (54 FR 3424, January 24, 1989), management must provide the leadership that nurtures and maintains the safety environment.

In developing this policy statement, the Commission considered the need for:

- (1) licensees and their contractors to establish work environments, with effective processes for problem identification and resolution, where employees feel free to raise concerns, both to their management and to the NRC, without fear of retaliation;
- (2) improving contractors' awareness of their responsibilities in this area;
- (3) senior management of licensees and contractors to take the responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved; and
- (4) employees in the regulated industry to recognize their responsibility to raise safety concerns to licensees and their right to raise concerns to the NRC.

This policy statement is directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. It is intended to reinforce the principle to all licensees and other employers subject to NRC authority that an act of retaliation or discrimination against an employee for raising a potential safety concern is not only unlawful but may adversely impact safety. The Commission emphasizes that employees who raise concerns serve an important role in addressing potential safety issues. Thus, the NRC cannot and will not tolerate retaliation against employees who attempt to carry out their responsibility to identify potential safety issues.³

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to investigate allegations that employees of licensees or their contractors have been discriminated against for raising concerns and to take enforcement action if discrimination is substantiated. The Commission has promulgated regulations to prohibit discrimination (see, e.g., 10 CFR 30.7 and 50.7). Under Section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor also has the authority to investigate complaints of discrimination and to provide a personal remedy to the employee when discrimination is found to have occurred.

The NRC may initiate an investigation even though the matter is also being pursued within the DOL process. However, the NRC's determination of whether to do so is a function of the priority of the case which is based on its potential merits and its significance relative to other ongoing NRC investigations.⁴

Effective Processes for Problem Identification and Resolution

Licensees bear the primary responsibility for the safe use of nuclear materials in their various licensed activities. To carry out that responsibility, licensees need to receive prompt notification of concerns as effective problem identification and resolution processes are essential to ensuring safety. Thus, the Commission expects that each licensee will establish a safety-conscious environment where employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.

A safety-conscious environment is reinforced by a management attitude that promotes employee confidence in raising and resolving concerns. Other attributes of a work place with

this type of an environment may include well-developed systems or approaches for prioritizing problems and directing resources accordingly; effective communications among various departments or elements of the licensee's organization for openly sharing information and analyzing the root causes of identified problems; and employees and managers with an open and questioning attitude, a focus on safety, and a positive orientation toward admitting and correcting personnel errors.

Initial and periodic training (including contractor training) for both employees and supervisors may also be an important factor in achieving a work environment in which employees feel free to raise concerns. In addition to communicating management expectations, training can clarify for both supervisors and employees options for problem identification. This would include use of licensee's internal processes as well as providing concerns directly to the NRC.⁵ Training of supervisors may also minimize the potential perception that efforts to reduce operating and maintenance costs may cause supervisors to be less receptive to employee concerns if identification and resolution of concerns involve significant costs or schedule delays.

Incentive programs may provide a highly visible method for demonstrating management's commitment to safety, by rewarding ideas not based solely on their cost savings but also on their contribution to safety. Credible self assessments of the environment for raising concerns can contribute to program effectiveness by evaluating the adequacy and timeliness of problem resolution. Self-assessments can also be used to determine whether employees believe their concerns have been adequately addressed and whether employees feel free to raise concerns. When problems are identified through self-assessment, prompt corrective action should be taken.

Licenses and their contractors should clearly identify the processes that employees may use to raise concerns and employees should be encouraged to use them. The NRC appreciates the value of employees using normal processes (e.g., raising issues to the employee supervisors or managers or filing deficiency reports) for problem identification and resolution. However, it is important to recognize that the fact that some employees do not desire to use the normal line management processes does not mean that these employees do not have legitimate concerns that should be captured by the licensee's resolution processes. Nor does it mean that the normal processes are not effective. Even in a generally good environment, some employees may not always be comfortable in raising concerns through the normal channels. From a safety perspective, no method of raising potential safety concerns should be discouraged. Thus, in the interest of having concerns raised, the Commission encourages each licensee to have a dual focus: (1) on achieving and maintaining an environment where employees feel free to raise their concerns directly to their supervisors and to licensee management, and (2) on ensuring that alternate means of raising and addressing concerns are accessible, credible, and effective.

NUREG-1499 may provide some helpful insights on various alternative approaches. The Commission recognizes that what works for one licensee may not be appropriate for another. Licensees have in the past used a variety of different approaches, such as:

- (1) an "open-door" policy that allows the employee to bring the concern to a higher-level manager;
- (2) a policy that permits employees to raise concerns to the licensee's quality assurance group;
- (3) an ombudsman program; or

(4) some form of an employee concerns program.

The success of a licensee alternative program for concerns may be influenced by how accessible the program is to employees, prioritization processes, independence, provisions to protect the identity of employees including the ability to allow for reporting issues with anonymity, and resources. However, the prime factors in the success of a given program appear to be demonstrated management support and how employees perceive the program. Therefore, timely feedback on the follow-up and resolution of concerns raised by employees may be a necessary element of these programs.

This Policy Statement should not be interpreted as a requirement that every licensee establish alternative programs for raising and addressing concerns. Licensees should determine the need for providing alternative methods for raising concerns that can serve as internal "escape valves" or "safety nets." 6 Considerations might include the number of employees, the complexity of operations, potential hazards, and the history of allegations made to the NRC or licensee. While effective alternative programs for identifying and resolving concerns may assist licensees in maintaining a safety-conscious environment, the Commission, by making the suggestion for establishing alternative programs, is not requiring licensees to have such programs. In the absence of a requirement imposed by the Commission, the establishment and framework of alternative programs are discretionary.

Improving Contractors' Awareness of Their Responsibilities

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Thus, licensees are responsible for having their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation.

Nevertheless, certain NRC requirements apply directly to contractors of licensees (see, for example, the rules on deliberate misconduct, such as 10 CFR 30.10 and 50.5 and the rules on reporting of defects and noncompliances in 10 CFR Part 21). In particular, the Commission's prohibition on discriminating against employees for raising safety concerns applies to the contractors of its licensees, as well as to licensees (see, for example, 10 CFR 30.7 and 50.7).

Accordingly, if a licensee contractor discriminates against one of its employees in violation of applicable Commission rules, the Commission intends to consider enforcement action against both the licensee, who remains responsible for the environment maintained by its contractors, and the employer who actually discriminated against the employee. In considering whether enforcement actions should be taken against licensees for contractor actions, and the nature of such actions, the NRC intends to consider, among other things, the relationship of the contractor to the particular licensee and its licensed activities; the reasonableness of the licensee's oversight of the contractor environment for raising concerns by methods such as licensee's reviews of contractor policies for raising and resolving concerns and audits of the effectiveness of contractor efforts in carrying out these policies, including procedures and training of employees and supervisors; the licensee's involvement in or opportunity to prevent the discrimination; and the licensee's efforts in responding to the particular allegation of discrimination, including whether the licensee reviewed the contractor's investigation, conducted its own investigation, or took reasonable action to achieve a remedy for any discriminatory action and to reduce potential chilling effects.

Contractors of licensees have been involved in a number of discrimination complaints that are made by employees. In the interest of ensuring that their contractors establish safety-conscious environments, licensees should consider taking action so that:

(1) each contractor involved in licensed activities is aware of the applicable regulations that prohibit discrimination;

(2) each contractor is aware of its responsibilities in fostering an environment in which employees feel free to raise concerns related to licensed activities;

(3) the licensee has the ability to oversee the contractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination by obtaining reports of alleged contractor discrimination and associated investigations conducted by or on behalf of its contractors; conducting its own investigations of such discrimination; and, if warranted, by directing that remedial action be undertaken; and

(4) contractor employees and management are informed of (a) the importance of raising safety concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the NRC.

Adoption of contract provisions covering the matters discussed above may provide additional assurance that contractor employees will be able to raise concerns without fear of retaliation.

Involvement of Senior Management in Cases of Alleged Discrimination

The Commission reminds licensees of their obligation both to ensure that personnel actions against employees, including personnel actions by contractors, who have raised concerns have a well-founded, non-discriminatory basis and to make clear to all employees that any adverse action taken against an employee was for legitimate, non-discriminatory reasons. If employees, allege retaliation for engaging in protected activities, senior licensee management should be advised of the matter and assure that the appropriate level of management is involved, reviewing the particular facts and evaluating or reconsidering the action.

The intent of this policy statement is to emphasize the importance of licensee management taking an active role to promptly resolve situations involving alleged discrimination. Because of the complex nature of labor-management relations, any externally-imposed resolution is not as desirable as one achieved internally. The Commission emphasizes that internal resolution is the licensee's responsibility, and that early resolution without government involvement is less likely to disrupt the work place and is in the best interests of both the licensee and the employee. For these reasons, the Commission's enforcement policy provides for consideration of the actions taken by licensees in addressing and resolving issues of discrimination when the Commission develops enforcement sanctions for violations involving discrimination. (59 FR 60697; November 28, 1994).

In some cases, management may find it desirable to use a holding period, that is, to maintain or restore the pay and benefits of the employee alleging retaliation, pending reconsideration or resolution of the matter or pending the outcome of an investigation by the Department of Labor (DOL). This holding period may calm feelings on-site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising

concerns, the employee involved in the dispute will not lose pay and benefits while the action is being reconsidered or the dispute is being resolved. However, inclusion of the holding period approach in this policy statement is not intended to alter the existing rights of either the licensee or the employee, or be taken as a direction by, or an expectation of, the Commission, for licensees to adopt the holding period concept. For both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary. A licensee may conclude, after a full review, that an adverse action against an employee is warranted.⁷ The Commission recognizes the need for licensees to take action when justified.

Commission regulations do not render a person who engages in protected activity immune from discharge or discipline stemming from non-prohibited considerations (see, for example, 10 CFR 50.7(d)). The Commission expects licensees to make personnel decisions that are consistent with regulatory requirements and that will enhance the effectiveness and safety of the licensee's operations.

Responsibilities of Employers and Employees

As emphasized above, the responsibility for maintaining a safety-conscious environment rests with licensee management. However, employees in the nuclear industry also have responsibilities in this area. As a general principle, the Commission normally expects employees in the nuclear industry to raise safety and compliance concerns directly to licensees, or indirectly to licensees through contractors, because licensees, and not the Commission, bear the primary responsibility for safe operation of nuclear facilities and safe use of nuclear materials.⁸ The licensee, and not the NRC, is usually in the best position and has the detailed knowledge of the specific operations and the resources to deal promptly and effectively with concerns raised by employees. This is another reason why the Commission expects licensees to establish an environment in which employees feel free to raise concerns to the licensees themselves.

Employers have a variety of means to express their expectations that employees raise concerns to them, such as employment contracts, employers' policies and procedures, and certain NRC requirements. In fact, many employees in the nuclear industry have been specifically hired to fulfill NRC requirements that licensees identify deficiencies, violations and safety issues. Examples of these include many employees who conduct surveillance, quality assurance, radiation protection, and security activities. In addition to individuals who specifically perform functions to meet monitoring requirements, the Commission encourages all employees to raise concerns to licensees if they identify safety issues⁹ so that licensees can address them before an event with safety consequences occurs.

The Commission's expectation that employees will normally raise safety concerns to their employers does not mean that employees may not come directly to the NRC. The Commission encourages employees to come to the NRC at any time they believe that the Commission should be aware of their concerns.¹⁰ But, while not required, the Commission does expect that employees normally will have raised the issue with the licensee either prior to or contemporaneously with coming to the NRC. The Commission cautions licensees that complaints that adverse action was taken against an employee for not bringing a concern to his or her employer, when the employee brought the concern to the NRC, will be closely scrutinized by the NRC to determine if enforcement action is warranted for discrimination.

Retaliation against employees engaged in protected activities, whether they have raised

concerns to their employers or to the NRC, will not be tolerated. If adverse action is found to have occurred because the employee raised a concern to either the NRC or the licensee, civil and criminal enforcement action may be taken against the licensee and the person responsible for the discrimination.

Summary

The Commission expects that NRC licensees will establish safety-conscious environments in which employees of licensees and licensee contractors are free, and feel free, to raise concerns to their management and to the NRC without fear of retaliation.

Licensees must ensure that employment actions against employees who have raised concerns have a well-founded, non-discriminatory basis. When allegations of discrimination arise in licensee, contractor, or subcontractor organizations, the Commission expects that senior licensee management will assure that the appropriate level of management is involved to review the particular facts, evaluate or reconsider the action, and, where warranted, remedy the matter.

Employees also have a role in contributing to a safety-conscious environment. Although employees are free to come to the NRC at any time, the Commission expects that employees will normally raise concerns with the involved licensee because the licensee has the primary responsibility for safety and is normally in the best position to promptly and effectively address the matter. The NRC should normally be viewed as a safety valve and not as a substitute forum for raising safety concerns.

This policy statement has been issued to highlight licensees' existing obligation to maintain an environment in which employees are free to raise concerns without retaliation. The expectations and suggestions contained in this policy statement do not establish new requirements. However, if a licensee has not established a safety-conscious environment, as evidenced by retaliation against an individual for engaging in a protected activity, whether the activity involves providing information to the licensee or the NRC, appropriate enforcement action may be taken against the licensee, its contractors, and the involved individual supervisors, for violations of NRC requirements.

The Commission recognizes that the actions discussed in this policy statement will not necessarily insulate an employee from retaliation, nor will they remove all personal cost should the employee seek a personal remedy. However, these measures, if adopted by licensees, should improve the environment for raising concerns.

Dated at Rockville, Maryland, this 8th day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

January 8, 1999

EA 98-081

Mr. Thomas H. Zarges
President and Chief Executive Officer
Engineering and Construction Group
Morrison Knudsen Corporation
1500 West 3rd Street
Cleveland, OH 44113

SUBJECT: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS
(U. S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 AND ARB 98-016)
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-97-013)

Dear Mr. Zarges:

This letter is in reference to an apparent violation of U.S. Nuclear Regulatory Commission (NRC) requirements prohibiting discrimination against employees who engage in protected activities (*i.e.*, 10 CFR 50.7, "Employee Protection). This letter also refers to a March 25, 1998, letter from the NRC that scheduled a predecisional enforcement conference (PEC) on April 16, 1998, with Morrison Knudsen (MK) Corporation and Wisconsin Electric Power Company (WEPCo). The PEC was later postponed until the NRC had the opportunity to review additional investigatory information.

The apparent violation involves alleged employment discrimination by MK against a former employee. At the time of the apparent violation, MK was involved in the replacement of steam generators at WEPCo's Point Beach Nuclear Plant. The facts surrounding the apparent violation were previously described in our March 25, 1998, letter to MK.

Since that time, the NRC has received and reviewed an investigation report from a law firm retained by MK. Based on the information obtained from the U.S. Department of Labor (*i.e.*, Occupational Safety and Health Administration's investigation report and the Recommended Decision and Order of the Administrative Law Judge), the NRC Office of Investigations, and the investigation conducted for MK by the law firm, a violation of NRC requirements may have occurred.

While the available information indicates that a violation may have occurred, it appears that WEPCo was not involved in the apparent violation. After consultation with the Director, NRC Office of Enforcement, the NRC has concluded that, absent new information, WEPCo will not be cited for a violation of 10 CFR 50.7 and has closed the portion of this enforcement action concerning WEPCo.

While the NRC has closed the portion of this action concerning WEPCo, the NRC is continuing its review of the apparent violation and in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The NRC

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has scheduled a transcribed PEC with MK on January 27, 1999, at 9:00 a.m. (CST) in the NRC Region III office. WEPCo has been invited to attend and participate in the conference.

The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review.

The January 27, 1999, transcribed PEC will be closed to public observation because it concerns the performance of certain employees. However, the Enforcement Policy permits the employee or former employee who was the subject of the alleged discrimination to participate in the conference. Accordingly, the complainant will be invited to attend the conference. He may participate by observing the conference and if desired, following the presentations by MK and WEPCo, should WEPCo choose to attend and make a presentation, address his view on why he believes discrimination occurred and his views on the presentations. In no case will the NRC staff permit MK, WEPCo, or the individual to cross-examine or question each other. MK and WEPCo will then be afforded an opportunity to respond, and the NRC may ask some clarifying questions.

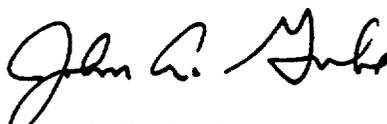
The decision to hold an enforcement conference with MK does not mean that the NRC has made a final determination on enforcement action in this case. While the NRC normally relies on the OI report and DOL's findings in determining whether a violation occurred when such findings are based on an adjudicatory proceeding, the conference is being held to obtain any additional information that will enable the NRC to make an informed enforcement decision. In addition, the conference is an opportunity for MK to provide perspectives on: (1) the severity level of the apparent violation; (2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy; and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII. Enclosed is a list of suggested areas of discussion for the PEC. This list should not be viewed as exhaustive or controlling.

The NRC Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns without Fear of Retaliation," dated May 14, 1996, (61 Federal Register 24336) is enclosed for consideration in preparation for the PEC.

Please contact Mr. Charles H. Weil of the NRC Region III Enforcement Staff if you have any questions or comments regarding this matter. Mr. Weil can be reached at telephone number 1-800-829-9755 or (630) 810-4372.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and any written response will be placed in the NRC Public Document Room.

Sincerely,



John A. Grobe, Director
Division of Reactor Safety

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR-27

Enclosures: As stated

cc: w/encl: R. Grigg, President and
Chief Operating Officer, WEPCo
S. Patulski, Site Vice President, WEPCo
A. Cayia, Plant Manager
B. Burks, P.E., Director
Bureau of Field Operations
Cheryl L. Parrino, Chairman,
Wisconsin Public Service Commission
R. Edmister, Esq., Associate General Counsel,
MK Engineering and Construction Group
P. Hickey, Esq., Shaw, Pitman
State Liaison Officer
Office of Enforcement
M. Stein, OE
J. Goldberg, OGC
S. Chidakel, OGC
B. Berson, RIII
B. Burgess, RIII
B. Boger, NRR
C. Carpenter, NRR
L. Gundrum, NRR
R. Paul, OI:RIII
OAC:RIII
R. Medlock, Director,
OSHA Cleveland Area Office

Discussion Topics
for
Morrison Knudsen
Predecisional Enforcement Conference

The following is a list of topics to be discussed at the Morrison Knudsen Predecisional Enforcement Conference on January 27, 1999. This is a list of suggested topic discussions and is neither exhaustive nor controlling.

- A. Describe the foundation for the individual's December 23, 1996 performance appraisal. Include any documents generated during the approximate period July - December 1996, both positive and negative, related to his performance. Describe any differences between the individual's December 23, 1996 performance review and previous reviews.
- B. Describe the results of previous audits of Morrison Knudsen performed by Hartford Steam Boiler Company or other audits of the Morrison Knudsen Nuclear Program, including actions taken related to Morrison Knudsen employees who were responsible for the areas in which Hartford Steam Boiler Company found deficiencies.
- C. Describe the decision making process of the managers and supervisors involved with: (1) relieving the individual from the position of Group Weld Engineer; and (2) transferring the individual from the main office in Cleveland, Ohio, to a field location at Parkersburg, West Virginia.
- D. Describe the corrective actions taken by Morrison Knudsen following the violation of 10 CFR 50.7 at the Fort St. Vrain Station (EA 95-079, dated August 14, 1995). Include a discussion as to why those corrective action were apparently ineffective in preventing the issue under discussion.

Hi, my name is Kevin Tobin. I'm the Director of Human Resources for the Engineering and Construction Group of Morrison Knudsen. We at MK have always been proud of our accomplishments, or responsiveness to our customers and our CAN DO attitude towards everything we tackle. What has made MK a success in the past, makes us successful today, and will bring success to us in the future are our people. This key asset and resource must be treated in a consistent and fair manner in all personnel actions including hiring, promoting, disciplining, and in conducting a termination. As a minimum, each manager and supervisor need to have a basic understanding of the employment laws and regulations which we must comply.

The purpose of this video is to help managers and supervisors understand the basics of employment laws and regulations, and how those laws apply when handling various personnel actions. This video will cover the American with Disabilities Act, Sexual Harassment Laws, Laws governing various discrimination practices, the Family Medical Leave Act, the Whistle Blower Act. In addition to the laws and regulations I just mentioned, we will highlight some of the key points to consider when it is necessary to reduce the workforce.

This video is an introductory guideline intended to provide you with a little knowledge regarding Federal employment requirements. By itself, this video will not provide the answers to every potential employee relations issue or problem, but will hopefully guide you in managing your work group and encourage you to seek other internal MK resources when you're not sure what you should do.

[Federal Register: May 14, 1996 (Volume 61, Number 94)]

[Notices]

[Page 24336-24340]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

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NUCLEAR REGULATORY COMMISSION

Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this policy statement to set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining such an environment rests with each NRC licensee, as well as with contractors, subcontractors and employees in the nuclear industry. This policy statement is applicable to NRC regulated activities of all NRC licensees and their contractors and subcontractors.

DATE: May 14, 1996

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2741.

SUPPLEMENTARY INFORMATION:

Background

NRC licensees have the primary responsibility to ensure the safety of nuclear operations. Identification and communication of potential safety concerns¹ and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility. In the past, employees have raised important issues and as a result, the public health and safety has benefitted. Although the Commission recognizes that not every concern raised by employees is safety significant or, for that matter, is valid, the Commission concludes that it is important that licensees' management establish an environment in which safety issues are promptly identified and effectively resolved and in which employees feel free to raise concerns.

Although hundreds of concerns are raised and resolved daily in the nuclear industry, the Commission, on occasion, receives reports of individuals being retaliated against for raising concerns. This retaliation is unacceptable and unlawful. In addition to the hardship caused to

the individual employee, the perception by fellow workers that raising concerns has resulted in retaliation can generate a chilling effect that may discourage other workers from raising concerns. A reluctance on the part of employees to raise concerns is detrimental to nuclear safety.

As a result of questions raised about NRC's efforts to address retaliation against individuals who raise health and safety concerns, the Commission established a review team in 1993 to reassess the NRC's program for protecting allegers against retaliation. In its report (NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," January 7, 1994) the review team made numerous recommendations, including several recommendations involving issuing a policy statement to address the need to encourage responsible licensee action with regard to fostering a quality-conscious environment in which employees are free to raise safety concerns without fear of retribution (recommendations II.A-1, II.A-2, and II.A-4). On February 8, 1995, the Commission after considering those recommendations and the bases for them published for comment a proposed policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," in the Federal Register (60 FR 7592, February 8, 1995).

The proposed policy statement generated comments from private citizens and representatives of the industry concerning both the policy statement and NRC and Department of Labor (DOL) performance. The more significant comments related to the contents of the policy statement included:

The policy statement would discourage employees from bringing their concerns to the NRC because it provided that employees should normally provide concerns to the licensee prior to or contemporaneously with coming to the NRC.

5. The use of a holding period should be at the discretion of the employer and not be considered by the NRC in evaluating the reasonableness of the licensee's action.

6. The policy statement is not needed to establish an environment to raise concerns if NRC uses its authority to enforce existing requirements by pursuing civil and criminal sanctions against those who discriminate.

7. The description of employee concerns programs and the oversight of contractors was too prescriptive; the expectations concerning oversight of contractors were perceived as the imposition of new requirements without adherence to the Administrative Procedure Act and the NRC's Backfit Rule, 10 CFR 50.109.

8. The need for employee concerns programs (ECPs) was questioned, including whether the ECPs fostered the development of a strong safety culture.

9. The suggestion for involvement of senior management in resolving discrimination complaints was too prescriptive and that decisions on senior management involvement should be decided by licensees.

In addition, two public meetings were held with representatives of the Nuclear Energy Institute (NEI) to discuss the proposed policy statement. Summaries of these meetings along with a revised policy statement proposed by NEI were included with the comments to the policy statement filed in the Public Document Room (PDR).

This policy statement is being issued after considering the public comments and coordination with the Department of Labor. The more significant changes included:

1. The policy statement was revised to clarify that senior management is expected to take responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved as opposed to being personally involved in the resolution of these matters.
2. References to maintenance of a "quality-conscious environment" have been changed to "safety-conscious environment" to put the focus on safety.
3. The policy statement has been revised to emphasize that while alternative programs for raising concerns may be helpful for a safety-conscious environment, the establishment of alternative programs is not a requirement.
4. The policy statement continues to emphasize licensees' responsibility for their contractors. This is not a new requirement. However, the policy statement was revised to provide that enforcement decisions against licensees for discriminatory conduct of their contractors would consider such things as the relationship between the licensee and contractor, the reasonableness of the licensee's oversight of the contractor's actions and its attempts to investigate and resolve the matter.
5. To avoid the possibility suggested by some commenters that the policy statement might discourage employees from raising concerns to the NRC if the employee is concerned about retaliation by the employer, the statement that reporting concerns to the Commission "except in limited fact-specific situations" would not absolve employees of the duty to inform the employer of matters that could bear on public, including worker, health and safety has been deleted. However, the policy statement expresses the Commission's expectation that employees, when coming to the NRC, should normally have provided the concern to the employer prior to or contemporaneously with coming to the NRC.

Statement of Policy

The purpose of this Statement of Policy is to set forth the Nuclear Regulatory Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their own management and the NRC without fear of retaliation. A safety-conscious work environment is critical to a licensee's ability to safely carry out licensed activities.

This policy statement and the principles set forth in it are intended to apply to licensed activities of all NRC licensees and their contractors,² although it is recognized that some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (e.g., establishment of a method to raise concerns outside the normal management structure such as an employee concerns program) may not be practical for very small licensees that have only a few employees and a very simple management structure.

The Commission believes that the most effective improvements to the environment for raising concerns will come from within a licensee's organization (or the organization of the licensee's contractor) as communicated and demonstrated by licensee and contractor management. Management should recognize the value of effective processes for problem identification and resolution, understand the negative effect produced by the perception that employee concerns are unwelcome, and appreciate the importance of ensuring that multiple channels exist for

raising concerns. As the Commission noted in its 1989 Policy Statement on the Conduct of Nuclear Power Plant Operations (54 FR 3424, January 24, 1989), management must provide the leadership that nurtures and maintains the safety environment.

In developing this policy statement, the Commission considered the need for:

- (1) licensees and their contractors to establish work environments, with effective processes for problem identification and resolution, where employees feel free to raise concerns, both to their management and to the NRC, without fear of retaliation;
- (2) improving contractors' awareness of their responsibilities in this area;
- (3) senior management of licensees and contractors to take the responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved; and
- (4) employees in the regulated industry to recognize their responsibility to raise safety concerns to licensees and their right to raise concerns to the NRC.

This policy statement is directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. It is intended to reinforce the principle to all licensees and other employers subject to NRC authority that an act of retaliation or discrimination against an employee for raising a potential safety concern is not only unlawful but may adversely impact safety. The Commission emphasizes that employees who raise concerns serve an important role in addressing potential safety issues. Thus, the NRC cannot and will not tolerate retaliation against employees who attempt to carry out their responsibility to identify potential safety issues.³

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to investigate allegations that employees of licensees or their contractors have been discriminated against for raising concerns and to take enforcement action if discrimination is substantiated. The Commission has promulgated regulations to prohibit discrimination (see, e.g., 10 CFR 30.7 and 50.7). Under Section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor also has the authority to investigate complaints of discrimination and to provide a personal remedy to the employee when discrimination is found to have occurred.

The NRC may initiate an investigation even though the matter is also being pursued within the DOL process. However, the NRC's determination of whether to do so is a function of the priority of the case which is based on its potential merits and its significance relative to other ongoing NRC investigations.⁴

Effective Processes for Problem Identification and Resolution

Licensees bear the primary responsibility for the safe use of nuclear materials in their various licensed activities. To carry out that responsibility, licensees need to receive prompt notification of concerns as effective problem identification and resolution processes are essential to ensuring safety. Thus, the Commission expects that each licensee will establish a safety-conscious environment where employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.

A safety-conscious environment is reinforced by a management attitude that promotes employee confidence in raising and resolving concerns. Other attributes of a work place with this type of an environment may include well-developed systems or approaches for prioritizing problems and directing resources accordingly; effective communications among various

departments or elements of the licensee's organization for openly sharing information and analyzing the root causes of identified problems; and employees and managers with an open and questioning attitude, a focus on safety, and a positive orientation toward admitting and correcting personnel errors.

Initial and periodic training (including contractor training) for both employees and supervisors may also be an important factor in achieving a work environment in which employees feel free to raise concerns. In addition to communicating management expectations, training can clarify for both supervisors and employees options for problem identification. This would include use of licensee's internal processes as well as providing concerns directly to the NRC.⁵ Training of supervisors may also minimize the potential perception that efforts to reduce operating and maintenance costs may cause supervisors to be less receptive to employee concerns if identification and resolution of concerns involve significant costs or schedule delays.

Incentive programs may provide a highly visible method for demonstrating management's commitment to safety, by rewarding ideas not based solely on their cost savings but also on their contribution to safety. Credible self assessments of the environment for raising concerns can contribute to program effectiveness by evaluating the adequacy and timeliness of problem resolution. Self-assessments can also be used to determine whether employees believe their concerns have been adequately addressed and whether employees feel free to raise concerns. When problems are identified through self-assessment, prompt corrective action should be taken.

Licensees and their contractors should clearly identify the processes that employees may use to raise concerns and employees should be encouraged to use them. The NRC appreciates the value of employees using normal processes (e.g., raising issues to the employee supervisors or managers or filing deficiency reports) for problem identification and resolution. However, it is important to recognize that the fact that some employees do not desire to use the normal line management processes does not mean that these employees do not have legitimate concerns that should be captured by the licensee's resolution processes. Nor does it mean that the normal processes are not effective. Even in a generally good environment, some employees may not always be comfortable in raising concerns through the normal channels. From a safety perspective, no method of raising potential safety concerns should be discouraged. Thus, in the interest of having concerns raised, the Commission encourages each licensee to have a dual focus: (1) on achieving and maintaining an environment where employees feel free to raise their concerns directly to their supervisors and to licensee management, and (2) on ensuring that alternate means of raising and addressing concerns are accessible, credible, and effective.

NUREG-1499 may provide some helpful insights on various alternative approaches. The Commission recognizes that what works for one licensee may not be appropriate for another. Licensees have in the past used a variety of different approaches, such as:

- (1) an "open-door" policy that allows the employee to bring the concern to a higher-level manager;
- (2) a policy that permits employees to raise concerns to the licensee's quality assurance group;
- (3) an ombudsman program; or
- (4) some form of an employee concerns program.

The success of a licensee alternative program for concerns may be influenced by how accessible the program is to employees, prioritization processes, independence, provisions to protect the identity of employees including the ability to allow for reporting issues with anonymity, and resources. However, the prime factors in the success of a given program appear to be demonstrated management support and how employees perceive the program. Therefore, timely feedback on the follow-up and resolution of concerns raised by employees may be a necessary element of these programs.

This Policy Statement should not be interpreted as a requirement that every licensee establish alternative programs for raising and addressing concerns. Licensees should determine the need for providing alternative methods for raising concerns that can serve as internal "escape valves" or "safety nets." ⁶ Considerations might include the number of employees, the complexity of operations, potential hazards, and the history of allegations made to the NRC or licensee. While effective alternative programs for identifying and resolving concerns may assist licensees in maintaining a safety-conscious environment, the Commission, by making the suggestion for establishing alternative programs, is not requiring licensees to have such programs. In the absence of a requirement imposed by the Commission, the establishment and framework of alternative programs are discretionary.

Improving Contractors' Awareness of Their Responsibilities

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Thus, licensees are responsible for having their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation.

Nevertheless, certain NRC requirements apply directly to contractors of licensees (see, for example, the rules on deliberate misconduct, such as 10 CFR 30.10 and 50.5 and the rules on reporting of defects and noncompliances in 10 CFR Part 21). In particular, the Commission's prohibition on discriminating against employees for raising safety concerns applies to the contractors of its licensees, as well as to licensees (see, for example, 10 CFR 30.7 and 50.7).

Accordingly, if a licensee contractor discriminates against one of its employees in violation of applicable Commission rules, the Commission intends to consider enforcement action against both the licensee, who remains responsible for the environment maintained by its contractors, and the employer who actually discriminated against the employee. In considering whether enforcement actions should be taken against licensees for contractor actions, and the nature of such actions, the NRC intends to consider, among other things, the relationship of the contractor to the particular licensee and its licensed activities; the reasonableness of the licensee's oversight of the contractor environment for raising concerns by methods such as licensee's reviews of contractor policies for raising and resolving concerns and audits of the effectiveness of contractor efforts in carrying out these policies, including procedures and training of employees and supervisors; the licensee's involvement in or opportunity to prevent the discrimination; and the licensee's efforts in responding to the particular allegation of discrimination, including whether the licensee reviewed the contractor's investigation, conducted its own investigation, or took reasonable action to achieve a remedy for any discriminatory action and to reduce potential chilling effects.

Contractors of licensees have been involved in a number of discrimination complaints that are

made by employees. In the interest of ensuring that their contractors establish safety-conscious environments, licensees should consider taking action so that:

(1) each contractor involved in licensed activities is aware of the applicable regulations that prohibit discrimination;

(2) each contractor is aware of its responsibilities in fostering an environment in which employees feel free to raise concerns related to licensed activities;

(3) the licensee has the ability to oversee the contractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination by obtaining reports of alleged contractor discrimination and associated investigations conducted by or on behalf of its contractors; conducting its own investigations of such discrimination; and, if warranted, by directing that remedial action be undertaken; and

(4) contractor employees and management are informed of (a) the importance of raising safety concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the NRC.

Adoption of contract provisions covering the matters discussed above may provide additional assurance that contractor employees will be able to raise concerns without fear of retaliation.

Involvement of Senior Management in Cases of Alleged Discrimination

The Commission reminds licensees of their obligation both to ensure that personnel actions against employees, including personnel actions by contractors, who have raised concerns have a well-founded, non-discriminatory basis and to make clear to all employees that any adverse action taken against an employee was for legitimate, non-discriminatory reasons. If employees allege retaliation for engaging in protected activities, senior licensee management should be advised of the matter and assure that the appropriate level of management is involved, reviewing the particular facts and evaluating or reconsidering the action.

The intent of this policy statement is to emphasize the importance of licensee management taking an active role to promptly resolve situations involving alleged discrimination. Because of the complex nature of labor-management relations, any externally-imposed resolution is not as desirable as one achieved internally. The Commission emphasizes that internal resolution is the licensee's responsibility, and that early resolution without government involvement is less likely to disrupt the work place and is in the best interests of both the licensee and the employee. For these reasons, the Commission's enforcement policy provides for consideration of the actions taken by licensees in addressing and resolving issues of discrimination when the Commission develops enforcement sanctions for violations involving discrimination. (59 FR 60697; November 28, 1994).

In some cases, management may find it desirable to use a holding period, that is, to maintain or restore the pay and benefits of the employee alleging retaliation, pending reconsideration or resolution of the matter or pending the outcome of an investigation by the Department of Labor (DOL). This holding period may calm feelings on-site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the action is

being reconsidered or the dispute is being resolved. However, inclusion of the holding period approach in this policy statement is not intended to alter the existing rights of either the licensee or the employee, or be taken as a direction by, or an expectation of, the Commission, for licensees to adopt the holding period concept. For both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary. A licensee may conclude, after a full review, that an adverse action against an employee is warranted.⁷ The Commission recognizes the need for licensees to take action when justified.

Commission regulations do not render a person who engages in protected activity immune from discharge or discipline stemming from non-prohibited considerations (see, for example, 10 CFR 50.7(d)). The Commission expects licensees to make personnel decisions that are consistent with regulatory requirements and that will enhance the effectiveness and safety of the licensee's operations.

Responsibilities of Employers and Employees

As emphasized above, the responsibility for maintaining a safety-conscious environment rests with licensee management. However, employees in the nuclear industry also have responsibilities in this area. As a general principle, the Commission normally expects employees in the nuclear industry to raise safety and compliance concerns directly to licensees, or indirectly to licensees through contractors, because licensees, and not the Commission, bear the primary responsibility for safe operation of nuclear facilities and safe use of nuclear materials.⁸ The licensee, and not the NRC, is usually in the best position and has the detailed knowledge of the specific operations and the resources to deal promptly and effectively with concerns raised by employees. This is another reason why the Commission expects licensees to establish an environment in which employees feel free to raise concerns to the licensees themselves.

Employers have a variety of means to express their expectations that employees raise concerns to them, such as employment contracts, employers' policies and procedures, and certain NRC requirements. In fact, many employees in the nuclear industry have been specifically hired to fulfill NRC requirements that licensees identify deficiencies, violations and safety issues. Examples of these include many employees who conduct surveillance, quality assurance, radiation protection, and security activities. In addition to individuals who specifically perform functions to meet monitoring requirements, the Commission encourages all employees to raise concerns to licensees if they identify safety issues ⁹ so that licensees can address them before an event with safety consequences occurs.

The Commission's expectation that employees will normally raise safety concerns to their employers does not mean that employees may not come directly to the NRC. The Commission encourages employees to come to the NRC at any time they believe that the Commission should be aware of their concerns.¹⁰ But, while not required, the Commission does expect that employees normally will have raised the issue with the licensee either prior to or contemporaneously with coming to the NRC. The Commission cautions licensees that complaints that adverse action was taken against an employee for not bringing a concern to his or her employer, when the employee brought the concern to the NRC, will be closely scrutinized by the NRC to determine if enforcement action is warranted for discrimination.

Retaliation against employees engaged in protected activities, whether they have raised concerns to their employers or to the NRC, will not be tolerated. If adverse action is found to

have occurred because the employee raised a concern to either the NRC or the licensee, civil and criminal enforcement action may be taken against the licensee and the person responsible for the discrimination.

Summary

The Commission expects that NRC licensees will establish safety-conscious environments in which employees of licensees and licensee contractors are free, and feel free, to raise concerns to their management and to the NRC without fear of retaliation.

Licensees must ensure that employment actions against employees who have raised concerns have a well-founded, non-discriminatory basis. When allegations of discrimination arise in licensee, contractor, or subcontractor organizations, the Commission expects that senior licensee management will assure that the appropriate level of management is involved to review the particular facts, evaluate or reconsider the action, and, where warranted, remedy the matter.

Employees also have a role in contributing to a safety-conscious environment. Although employees are free to come to the NRC at any time, the Commission expects that employees will normally raise concerns with the involved licensee because the licensee has the primary responsibility for safety and is normally in the best position to promptly and effectively address the matter. The NRC should normally be viewed as a safety valve and not as a substitute forum for raising safety concerns.

This policy statement has been issued to highlight licensees' existing obligation to maintain an environment in which employees are free to raise concerns without retaliation. The expectations and suggestions contained in this policy statement do not establish new requirements.

However, if a licensee has not established a safety-conscious environment, as evidenced by retaliation against an individual for engaging in a protected activity, whether the activity involves providing information to the licensee or the NRC, appropriate enforcement action may be taken against the licensee, its contractors, and the involved individual supervisors, for violations of NRC requirements.

The Commission recognizes that the actions discussed in this policy statement will not necessarily insulate an employee from retaliation, nor will they remove all personal cost should the employee seek a personal remedy. However, these measures, if adopted by licensees, should improve the environment for raising concerns.

Dated at Rockville, Maryland, this 8th day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

January 8, 1999

EA 98-081

Mr. Alain Artayet
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(a)]

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE
(U.S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 AND ARB 98-016)
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-97-013)

Dear Mr. Artayet:

The Nuclear Regulatory Commission (NRC) has scheduled a transcribed predecisional enforcement conference with Morrison Knudsen Corporation (MK) on Wednesday, January 27, 1999, at 9:00 a.m. (CST) in the NRC Region III office, 801 Warrenville Road, Lisle, Illinois, to discuss issues related to your allegation of employment discrimination against MK. Wisconsin Electric Power Company (WEPCo) was invited to attend the conference because a part of the alleged discrimination concerned MK welding procedures used during the replacement of steam generators at WEPCo's Point Beach Nuclear Power Plant.

The NRC's Enforcement Policy (Policy) as amended by a policy change, Policy and Procedures for Enforcement Actions: Policy Statement, 62 FR 13906 (March 24, 1997), permits the employee or former employee who was the subject of the alleged discrimination the opportunity to participate in a conference. Therefore, you are being given an opportunity to participate in the above scheduled conference. (A copy of the Policy is an attachment to the enclosed letter to MK. Please see Section V of the Policy.)

You may participate by observing the enforcement conference and if desired, following the MK and WEPCo presentations, should WEPCo attend the conference, make a presentation to address your view on why you believe discrimination occurred and your view on the presentations. We request that your presentation be no more than one hour. MK and WEPCo will be afforded opportunities to respond to your presentation, and the NRC staff may ask you some clarifying questions. If you are unable to attend in person, arrangements may be made for you to participate by telephone or for you to submit a written response to the MK and WEPCo presentations. As of December 17, 1998, it is our understanding that you plan to attend the conference on January 27, 1999.

The purpose of the conference is to examine MK's position with regard to the Recommended Decision and Order by the U.S. Department of Labor (DOL) Administrative Law Judge, the Preliminary Order of the DOL Administrative Review Board and the conclusion made by the NRC Office of Investigations (OI). (A copy of the OI report synopsis is also attached to the enclosed letter to MK.) Further, the purpose of the conference is not to investigate or question your position on the alleged discrimination. In no case will the NRC staff permit you, MK, or

C/116

7/15

A. Artayet

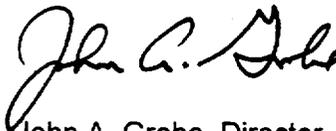
-2-

WEPCo to cross-examine or question each other. The NRC presiding officer has the authority to ensure that the meeting is conducted in a fair and impartial manner and to end the conference or limit participation should any party become unruly. The process and procedures for this conference will be further explained at the beginning of the conference.

Please be advised that your cost of transportation to Region III for the conference must be borne by you. Also, you are welcome to have counsel or a personal representative accompany you to an enforcement conference or assist you in preparing your response if you should choose that option. However, the cost of any such counsel or personal representative and their transportation costs must likewise be borne by you.

If you have any questions, please call either Chuck Weil or Brent Clayton of the RIII Enforcement Staff at toll free telephone number 1-800-522-3025. Please contact either Mr. Weil or Mr. Clayton at least three business days before the conference to reconfirm your participation.

Sincerely,



John A. Grobe, Director
Division of Reactor Safety

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR -27

Enclosures: 1. NRC Letter to MK
2. NRC Letter to WEPCo

cc w/enclosures [HOME ADDRESS DELETED]:
Steven D. Bell, Esq.

cc w/o enclosures [HOME ADDRESS DELETED]:
T. Zarges, MK
S. Patulski, WEPCo
P. Hickey, Esq., Shaw, Pitman
Office of Enforcement
Enforcement Coordinators
RI, RII and RIV
RIII Office Allegation Coordinator

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

From: C. H. Weil *RTT*
To: Michael Stein *OE*
Date: Wed, Jan 27, 1999 7:42 PM
Subject: POINT BEACH ATTENDANCE AT MK CONFERENCE (EA 98-081)
Place: OEMAIL

Mike, attached for the OE file is a memo documenting a conversation with the Wisconsin Electric Power Company's (WEPCo) licensing staff and the decision that WEPCo would not be attending the predecisional enforcement conference with the Morrison Knudsen Company.

Chuck

CC: OEMAIL

C/17

January 27, 1999

EA 98-081

NOTE TO: EA File

FROM: Charles H. Weil, Enforcement Specialist

SUBJECT: ENFORCEMENT CONFERENCE ATTENDANCE BY WISCONSIN
ELECTRIC POWER COMPANY

By letter dated January 8, 1999, the NRC notified the Wisconsin Electric Power Company (WEPCo) of a predecisional enforcement conference (PEC) on January 27, 1999, with WEPCo's contractor Morrison Knudsen Company (MK), and invited representatives of WEPCo to attend the conference at the Region III office. On January 25, 1999, I contacted Douglas Johnson of the WEPCo licensing staff in response to a telephone message left by him. Mr. Johnson stated that WEPCo had decided not to attend the PEC.

CONTACT: Charles H. Weil
(630) 810-4372

From: C. H. Weil ^{III}
To: Michael Stein ^{OE}
Date: Thu, Jan 28, 1999 9:58 AM
Subject: COMPLAINTANT'S ATTENDANCE AT MK CONFERENCE (EA 98-081)
Place: OEMAIL

Mike, attached for the OE file is a memo documenting conversations with the complainant about his attendance at the predecisional enforcement conference with Morrison Knudsen on January 27, 1999 (EA 98-081).

CC: OEMAIL

CHW

January 28, 1999

EA 98-081

NOTE TO: Enforcement File

FROM: Charles H. Weil, Enforcement Specialist

SUBJECT: COMPLAINANT'S ATTENDANCE AT PREDECISIONAL
ENFORCEMENT CONFERENCE

On December 18, 1998, the complainant in the Morrison Knudsen employment discrimination case was contacted and told that a predecisional enforcement conference (PEC) for this matter was scheduled for January 27, 1999, in the NRC Region III office. At that time, the complainant indicated he would attend the PEC and his attendance was confirmed with him in a letter dated January 8, 1999.

On January 26, 1999, the complainant contacted Region III Enforcement Officer H. Brent Clayton and advised that he (the complainant) would not be attending the PEC because he was in the process of changing jobs. Clayton informed the complainant that the NRC would forward a copy of the PEC transcript to him for his review and comment. The complainant agreed to return his comments to Region III within 15 days of receiving the transcript.

cc: M. Stein, OE
OE Mail

CONTACT: Charles H. Weil
(630) 810-4372

January 27, 1999

EA 98-081

NOTE TO: EA File

FROM: Charles H. Weil, Enforcement Specialist *CHW*

SUBJECT: ENFORCEMENT CONFERENCE ATTENDANCE BY WISCONSIN
ELECTRIC POWER COMPANY

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CONTACT: Charles H. Weil
(630) 810-4372

CHW

January 28, 1999

EA 98-081

NOTE TO: Enforcement File

FROM: Charles H. Weil, Enforcement Specialist ~~OF~~ LN

SUBJECT: COMPLAINANT'S ATTENDANCE AT PREDECISIONAL
ENFORCEMENT CONFERENCE

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cc: M. Stein, OE
OE Mail

CONTACT: Charles H. Weil
(630) 810-4372

C/20

SHAW PITTMAN
POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2300 N Street, N.W.
Washington, D.C. 20037-1128
202.663.8000
Facsimile 202.663.8007

J. PATRICK HICKEY, P.C.
202.663.8103
patrick_hickey@shawpittman.com

New York
Virginia

February 3, 1999

By Federal Express

Bruce Berson, Esquire
NRC Regional Counsel
U.S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, Illinois 60532-4351

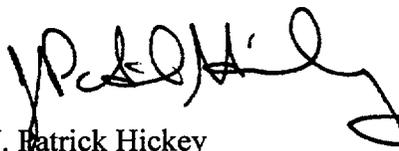
Dear Mr. Berson:

In accordance with your request, enclosed is a videotape utilized by Morrison Knudsen Corporation ("MK") in training employees concerning 10 C.F.R. 50.7, as well as other laws relating to employees. Mr. Pardi initiated the preparation of this training aid following the Fort St. Vrain incident. Mr. Edleman provided support in the production of the tape. The discussion of § 50.7 on the video is conducted by Mr. Edmister, MK's Associate General Counsel. I have also enclosed a copy of the script and accompanying slides for your convenience.

MK's training program on this topic is more fully described and documented in Mr. Pardi's letter of April 21, 1998 to Mr. Grobe. While the materials enclosed with that letter related to St. Lucie and Point Beach, the same program has been utilized more recently on MK projects at Calvert Cliffs and Waltz Mill. In addition, MK is reviewing the program to identify areas for improvement.

Please let me know if we can provide further information.

Very truly yours,



J. Patrick Hickey

Counsel to Morrison Knudsen Corporation

Enclosures

cc: Thomas H. Zarges (w/o enclosures)

EA 92-021
ORIGINAL TO OS 2/4/99

C/21
FEB 04 1999

I. A. The Americans With Disabilities Act

The Americans with Disability Act (Public Law #101-336) gives civil rights protection to people with disabilities. Here are the exact words of the law as they apply to employment.

“No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, condition, and privileges of employment.”

The ADA covers all of Morrison Knudsen Corporation’s operations.

B. Disability means:

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on
screen
(slide 2)

1. Having a physical or mental impairment that substantially limits a major life activity, such as walking, seeing, hearing, or reaching.
(includes injury or illness)
2. Having a record of such impairment (e.g., a person who has recovered from cancer).

3. Being regarded as having such an impairment, even when no limitations exist (e.g., a person with AIDS or one who is scarred from burns).

Qualified individual with a disability means:

- A person with a disability who, with or without reasonable accommodations, can perform the essential functions of the job being held or sought.

C. Interviewing Applicants With Disabilities

Interviewing applicants with disabilities might be a new experience for you. It's common to worry whether you will say and do the right things. Your main focus should be on applicants' abilities, not their disabilities. Here are guidelines to follow:

1. Keep all questions job-related.
2. Don't assume that a person can or can't do something, based on an apparent disability.
3. Feel free to ask applicants about their qualifications - i.e., whether they

Bulletin
on
screen

(slide 3)

can perform the job.

Examples Of Questions You Can't Ask	Appropriate Ways To Ask For Information
1. Does your wheelchair limit you from lifting or reaching?	The job you're applying for requires being able to lift and stack parcels up to 50 pounds. Can you do that?
2. I understand you are epileptic. Are you taking medications that might make you drowsy?	On this job you'll have to drive to a work site across town at unexpected times. Any problems with that?
3. I guess you'll need some kind of special lighting or magnifiers because of your visual impairment.	Your background and qualifications fit our needs. I'd like to show you our workstations so you can tell us what, if any, kind of accommodations you might need.

D. Reasonable Accommodation And Undue Hardship

The ADA requires reasonable accommodation for applicants and workers with

disabilities when such accommodations are needed and would not impose undue hardship on the employer. Let's look at these terms more closely.

Reasonable accommodations may include:

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on
screen

(slide 4)

1. making existing facilities readily accessible to people with disabilities
2. offering a flexible or modified work schedule (with no loss in total hours worked)
3. acquiring or modifying certain equipment or devices
4. providing qualified readers or interpreters

Undue hardship means that the accommodation causes significant difficulty or expense to the employer. These factors should be used when deciding whether an accommodation would cause undue hardship:

1. the size of business - including the number of employees, number and type of facilities, and budget size
2. the type of operation

3. the nature and cost of the accommodation

E. Essential functions of a job

1. Knowing the essential functions of a job is always useful in recruiting, interviewing, and training employees. The ADA does not ask employers to hire anyone who cannot perform the essential functions of a given job.
2. Examples of essential job functions are:

For an: Assistant Superintendent

1. Directs a specialized discipline or an assigned segment of a project.
2. Enforce work rules and safety programs

For an: Assistant General Superintendent

1. Responsible (fully or partially) for a geographic area or a functional area of

construction such as
carpentry, mechanical,
electrical

2. Enforce work rules and safety programs.

For a: General Superintendent

1. Responsible for all construction activities on a project.

2. Enforce work rules and safety programs.

II. A. Family and Medical Leave Act

Have book
available
for showing
on video

Per the Family and Medical Leave information as found on page 10 of the 1996 MK Flex Handbook our employees are eligible for Family and Medical Leave if they have at least one year of vesting service.

The employee may request time off (up to 12 weeks in a 12-month period) with the assurance of a job upon return to work if their leave is to care for a newborn or newly placed adopted or foster child; to care for their seriously ill or injured child, spouse, or parent; or because of their own serious illness or injury. MK requires medical certification from the employee if they are seeking leave for their own or a family member's serious health condition. The employee is expected to give at least 30 days advance notice of leave, to the extent that advance notice is practical. The provisions of this policy may vary in those states where family leave policies are required by law; the Family and Medical Leave Act does not supersede any provisions of state or local law providing greater leave rights.

B. Leave Time - The following limits apply:

- If both parents work for MK, the 12-week maximum leave may be taken by either one of the parents, or divided between the two parents on a schedule subject to the prior approval of both employees' supervisors.
- Reduced or intermittent leave (such as working fewer days per week or fewer hours per day) may be taken only if such a schedule is needed for medical reasons and the employee provides medical certification of that need.

Salary Continuation - Family and Medical Leave is unpaid except:

- If the employee's leave is for their own medical condition, they must use paid time off.
- To care for a child, parent or spouse, they must use paid time off per "Post Merger Benefit" letter by R. Tinstman dated 9/17/96.

Unpaid partial days for Family and Medical Leave are allowed for employees who are exempt from the provisions of the Fair Labor Standards Act as well as non-exempt employees.

Benefit Plans - Employee benefit plans, except Long-Term Disability, will continue per the provisions of each plan during the leave. The employees contributions for continued coverage will be deducted from their pay upon their return to work.

Reinstatement - Employees returning from Family and Medical Leave will be returned to their former positions, or equivalent positions.

If an employee does not return to work at the expiration of the leave, their employment will be terminated. The termination reason will be physical or mental incapacity if the leave was for personal medical condition; the

employee will be deemed to have resigned if the leave was to care for a family member.

C. Forms for Use

1. Certification of health care provider
2. Employer response to employee request for family or medical leave .

Get forms from business manager.

I know I have given you a lot of information. For further review and reference please consult your MK Handbook, or call Kevin Tobin or me for assistance.

Kathy will now talk about sexual harrassment.

SEXUAL HARASSMENT

The Cost of Sexual Harassment can be quite high. Not only can lawsuits be filed against the company but employees can be held personally accountable for harassing behavior.

Let's define just what is sexual harassment ??

Sexual Harassment is a form of unlawful sex discrimination. There are two types:

- * "Quid Pro Quo" Harassment. This is the classic "go to bed with me or your don't get this job". It includes any demand for a sexual favor in exchange for some job related benefit (hiring, pay, promotion, etc.) or preferential treatment.
- * "Hostile Environment" Harassment. This is the creation of a hostile work environment through conduct which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual Harassment can include verbal or physical conduct - examples of such conduct are:

- * requiring sexual favors for some job related benefit (hiring, pay, promotion, etc);
- * using sexually suggestive or obscene language (including sexist language);
- * telling jokes of a sexual nature (dirty jokes);
- * making sexual propositions;
- * repeatedly asking a co-worker for a date when the person is not interested;
- * making derogatory or vulgar comments about a person's sex;
- * making threats of physical harm;
- * leering, whistling, or making obscene gestures;
- * commenting about an individual's body;
- * displaying sexually suggestive objects or pictures (sexist cartoons, nude pin-ups); and
- * hitting, pushing, pinching, touching, or brushing against another's body.

Who Can Commit Sexual Harassment?

Sexual Harassment can be committed by males, females, supervisors, co-workers, and non-employees (e.g. employees of our customers or vendors). Liability will be found more quickly in a case of supervisory harassment since this is really an abuse of power and the victim is more defenseless than from co-worker harassment.

How Do You Know If it's Sexual Harassment or a Friendly Flirtation?

What one person views as trivial another may view as oppressive harassment. The court determines whether a reasonable person would consider the conduct sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment by considering the following factors: (1) who was the harasser; (2) nature of the words or conduct; (3) context in which it occurred; and (4) frequency of conduct. We can still compliment each other, but not by sexual suggestion or innuendo. And we can still ask each other out on dates, but not if the other person's verbal or nonverbal cues indicate the invitation is not welcomed (supervisors should avoid dating subordinates).

How to determine if conduct is Sexual Harassment ??

First, starting with common sense helps
Second, use the following four-part test

- SLIDE
5
- * Would you say it to or do it in front of your spouse or parents;
 - * Would you say it to or do it in front of a colleague of the same sex;
 - * Would you like your behavior reported in your local newspaper or shown on TV; and
 - * Does it need to be said or done at all ?

The company has adopted a Policy Against Sexual Harassment which covers the following:

- * Sexual Harassment of any type in the workplace is prohibited;
- * Employees who sexually harass others are subject to disciplinary action, including dismissal;
- * Employees may complain of incidents of sexual harassment to their supervisor, but if uncomfortable doing so, may contact any manager or supervisor.

Copies of the Policy should be posted in every Company office.

As a manager or supervisor of the company what should you do if an employee complains of Sexual Harassment ??

- * Immediately contact the Human Resources Department as they will be responsible to promptly and thoroughly investigate and then take appropriate action.

Dick, let's discuss the whistleblower act

Whistleblower Protection

These are properly referred to as “employee protection” laws and are contained in several statutes. They protect the employee against retaliation by his or her employer for reporting:

- **Violation of laws or regulations**
- **Safety concerns**
- **Fraud, waste or abuse**

You will find these in;

OSHA

Environmental laws

NRC Licensed Facilities

DOE projects

and in addition several states have passed similar laws.

The bottom line: One or more of these laws will apply to all MK projects.

These laws prohibit an employer from demoting, terminating or otherwise retaliating against an employee who has reported potential violations or concerns to the government or to his/her employer.

These laws also give the employee the right to refuse to participate in any activity that violates the law or regulations. Most commonly this means that an employee may refuse to perform to work in an unsafe manner. Such refusal is not to be treated as insubordination--even if the employee is incorrect in his perception. As a supervisor you are charged to take reasonable action to remedy the condition or to

convince the employee that the condition is not really unsafe and does not violate safety regulations.

10 CFR 50.7

10 CFR 50.7 is a special regulation that applies to NRC Licensed Facilities. It protects employees who report safety or nuclear violations to the NRC or their employer.

50.7 also has been interpreted to prohibit creating an environment so hostile that employees are reluctant to report safety matters to their superiors or to the NRC regulators.

MK has pledged to the NRC that it will not allow this to occur on any of our projects at licensed nuclear facilities.

For this reason I would like to emphasize that no employee should ever be criticized for reporting a perceived safety violation to anyone. The company has an open door policy. No one should be criticized or disciplined for availing himself of this policy. [Obtain Pardi's letter and search for quotes or use it as a handout.]

How does the NRC determine that a "hostile environment" exists? Employee complaints are the usual trigger. The NRC investigator may in investigating any matter conduct employee interviews without the employer present. If the responses are not satisfactory, MK will receive a notice of violation. The fines are high and jeopardize getting future work at licensed facilities.

Please ensure that all MK and subcontract employees are familiar with our open door policy and will respond positively to questions like, "would feel free to go directly to MK's project manager if you saw that there was an unsafe

operation being performed.”

Many craft employees, when asked this question, will respond “no”. Why? Because they are trained, by the union and other employers, that they have but one boss. They are conditioned to only go to their foreman. However, this is not the intent of the Investigator’s question. He may presuppose that the foreman is the problem, but not expressly state this in the question.

Please explain to all employees that unsafe conditions should be reported to their supervisor or in his absence or refusal to recognize it, to higher authority and/or MK’s onsite safety representative. No employee should ever feel compelled or pressured to work under unsafe conditions. If an employee is ever asked by an investigator if he feels free go to a higher supervisor, his response should be “yes” without hesitation.

The Craft foremen must be made expressly aware of our policy. They must know that they cannot retaliate against anyone who goes “over their head” to report a safety concern.

When this kind of situation occurs--such as a craft employee insisting on not doing something or being chewed out for talking to the client or the “big boss”--special attention must be given to resolving and getting proper closure to the incident. There is sometimes a very fine line between insubordination and maintaining discipline and on the other hand, MK’s “open door” policy. Finding the the right answer may be difficult. My advice? Be sensitive to this conflict and strike a balance between the two concepts. Do the best you can to be fair. When you are uncomfortable or have doubts as to how to handle a given situation, consult with your management or Mike Nicholson.

I would like to point out that the regulation specifically states: [quote] "An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons from adverse action dictated by nonprohibited considerations." Let me translate. Just because someone reports a safety concern does not mean he or she is immune from future disciplinary action or layoff.

So what happens when an employee files a complaint.

The fact that an employee has reported safety violations and was discharged is sufficient for an agency to begin an investigation. It then becomes incumbent upon the employer to demonstrate that it had legitimate business reasons for the termination.

In the final analyses the employee will have the burden of proving that the action taken was in retaliation by the employer for engaging in protected activity.

Later in this program , Kevin Tobin will be discussing ways to enhance MK chances of prevailing against unfounded challenges by employees. With proper forethought and documentation we can defend our right to terminate for cause or litigimate reductions in force.

Various discriminations and EEO laws at the federal level are viewed to be the dominant EEO laws. These include The Civil Rights Act of 1964, The Age Discrimination in Employment Act, and The Americans with Disability Act. Collectively, these laws make it illegal for employers to discriminate against anyone based on race, creed, color, religion, national origin, disability, or veterans status. This is our company policy, and we will comply with these laws during the entire employee/employer relationship including hiring, promoting, disciplinary actions and termination.

The decisions that are made when taking these actions have to be based on job related reasons. We know that a person should be hired based on the applicant's education and prior work related experience. Not because the applicant is only 33 years of age and has an Irish sounding surname, and the hiring authority's last name is O'Malley or McGraw.

We know that an employee should be promoted to the position of manager of project controls because he or she did the best job as the project controls engineer and is otherwise qualified for the job. The position should not be filled based on the non job related reason that he or she goes to a certain church or synagogue or doesn't go to one at all.

When it comes to the terminating of an employee due to poor performance or a group of employees due to a down turn of business or a reduction in force, the same principles apply. The decision why one person is laid off over another must be based on a job related, business decision.

If you are faced with a reduction in force, and you are trying to determine which of the three electricians have to be laid off, you should ask the foreman or general foreman to develop the list of employees and who should go first. Again this list should be based on job related work performance. It is critical that these performance records are documented. At the same time, but in a separate action, the superintendent should develop a similar list with his or her recommendation on the order of the lay off. Again this must be based on business related documented reasons and justifications. This documentation should not be done after the decision has been made relative to the lay off and serve only to justify the decision.

It is critical when coming to these decisions that specific documentation be made when the effected employee or employees are in a protected class or may have been a whistle blower. What I mean is that you have to be very specific in documenting why you are laying off the female electrician and not her male counterpart. Why are you keeping the 27 year old pipe fitter and "rifting" the fitter who is 30 years his senior. Why is the first iron worker to be laid off also the one who was complaining about the safety problem or violation.

I'm not saying that you can't lay off the older worker or the female employee or any other person in a protected class but it will be up to you to clearly demonstrate the reason is job related.

When congress wrote these various EEO laws, they provided for the remedy for any discrimination cases to be sought through the federal Equal Employment Opportunity Commission or the applicable agency at the state level as well as through a law suit in civil

court. It is the responsibility of the federal or state agency to investigate any reasonable discrimination charge and render a decision. If the company is found guilty the penalties could include reinstatement of employment as well as payment of back and front pay.

As I said the grieved individual can also seek remedy through the court system and sue the company and you in civil court. That's right, your hearing is not going bad. You as an individual can be named as a defendant in one of these cases. I can tell you from first hand knowledge it is not fun. You get to know first hand what it is to be deposed, what it is to be asked questions about an action that may have occurred 1 or 2 or even 3 years earlier. You know what it is to have some sleepless nights.

I'm not telling you this so that you will not make a decision, or to make you knuckle under and make the easy decision. I'm telling you this so that you know how to make the right decision - what factors should go into making that decision.

Finally, it is important to us as a company that we comply with these various employment laws. And in complying with them, if decisions are made that we believe to be right, we still may receive a discrimination charge or even be sued. That is part of the society that we are in, and it is the cost of doing business. If we do get sued, and we believe that the action in question was right, we will defend the company in those cases, and tell the individual that we will see them in court.

In closing, I want to emphasize that when you are faced with these various decisions in the employment arena, and that you even remotely feel that you may be on thin ice, give us a call in the Cleveland office. Call either Clint Simmons or myself, and if neither one of us are available call Dick Edmister. If the question is related to a craft employee, call Marty Brennan Director, Labor Relations in the Boise Office. Let's talk about the situation that you are facing. Chances are we will come to the same conclusion that you have already reached. It is better to spend a little time up front in these employment related situations and come to the right conclusion, than to spend a great deal of time and a lot of money at a later date.

Richard R. Edmister - Assoc. General Counsel & Assistant Secretary

Kevin R. Tobin - Director, Human Resources

Clinton C. Simmons - Manager, Human Resources

Kathy A. Evans - Human Resources Consultant

Drew T. Edleman - Director, Performance Systems



**MORRISON
KNUDSEN
CORPORATION**

What is a Disability?

1. **Physical or mental impairment that substantially limits major life activity**
2. **Having a record of such impairment**
3. **Being regarded as having such an impairment**

Guidelines - Interviewing applicants with disabilities

1. **Keep all questions job related**
2. **Don't assume abilities based on apparent disability**
3. **Feel free to ask about their qualifications**

Reasonable Accommodations may include:

1. Making existing facilities readily accessible to people with disabilities
2. Offering a flexible work schedule
3. Acquiring or modifying certain equipment or devices
4. Providing qualified readers or interpreters

Four-part test

- In front of spouse or parent
- In front of a colleague of the same sex
- Behavior reported in paper or on TV
- Does it need to be said or done at all

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New York
Virginia

February 3, 1999

By Federal Express

Bruce Berson, Esquire
NRC Regional Counsel
U.S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, Illinois 60532-4351

Dear Mr. Berson:

This will confirm that in accordance with your request, we have destroyed all copies of the transcripts we received of the Enforcement Conferences held at Region III on January 26 and 27, 1999.

Very truly yours,



J. Patrick Hickey

Counsel to Morrison Knudsen Corporation

C/22

*ER 75-081
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February 12, 1999

BY FEDERAL EXPRESS

Mr. John A. Grobe
Director, Division of Reactor Safety
U.S. Nuclear Regulatory Commission, Region III
801 Warrenville Road
Lisle, IL 60532-4351

Dear Mr. Grobe:

At the Predecisional Enforcement Conference held on January 27, 1999, Morrison Knudsen Corporation (MK) was invited to provide information relative to the credibility of statements made by Alain Artayet during the hearing on his DOL complaint before the Administrative Law Judge, and later during his extensive interviews by Stier, Anderson & Malone, the firm retained by MK to perform an independent investigation of Mr. Artayet's allegations. The accompanying memorandum addresses some of the most significant discrepancies in his testimony.

With regard to each topic, we have quoted or summarized Mr. Artayet's statements and the countervailing evidence, with references to the record of the DOL hearing or the Stier interviews. We have also addressed the significance of the evidence on each point to the ultimate issue of whether Mr. Artayet was transferred from his position as Group Welding Engineer in retaliation for protected activity. For convenience we have listed in summary fashion the major points related to each topic in an appendix at the end of the analysis.

We believe the evidence conclusively demonstrates that Mr. Artayet was not properly performing his job responsibilities. He tried to conceal the deficiencies in his performance from his supervisors and later during the DOL hearing and the Stier interviews. However, they gradually became apparent to Mr. Pardi, and led to the decision to remove Mr. Artayet from Power Division work and later from his Group Welding Engineer position. These decisions were properly based on his performance, not on any improper motive to retaliate against him for protected activity. Accordingly, no violation of 10 CFR 50.7 has occurred.

C/23

Mr. John A. Grobe
February 12, 1999
Page 2

Please let us know if you have any questions on these materials or any other areas related to the NRC's enforcement decision in this matter. As discussed with Mr. Berson, I am providing copies of these materials to Mr. Stein and Ms. Chidakel.

Very truly yours,



J. Patrick Hickey
Counsel to Morrison Knudsen

Enclosure

cc: with enclosures
Mr. Thomas H. Zarges, President and CEO
Michael H. Stein, Esq., Office of Enforcement
Susan S. Chidakel, Esq., Office of the General Counsel

ANALYSIS OF TESTIMONY BY ALAIN ARTAYET

I. ARTAYET TESTIFIED FALSELY CONCERNING HIS RESPONSIBILITY FOR SITE-SPECIFIC WPS'S

Artayet's principle responsibility as the group welding engineer was to assure that Morrison Knudsen's ("MK") welding procedures met all applicable codes and standards. When he was removed as the group welding engineer for failing to assure the adequacy of MK's welding procedures, Artayet took the position that he was not responsible for site-generated welding procedures and that he was being discriminated against for calling deficiencies in the site WPS's to MK's (Pardi's) attention. Artayet deliberately tried to avoid his responsibility for deficiencies in MK's welding procedures by testifying falsely that he was not responsible for the WPS's, despite overwhelming evidence to the contrary.

- A. Artayet denied responsibility for assuring that the site WPS's were ASME Code compliant and free of deficiencies. He testified at the Department of Labor ("DOL") hearing that "it's not the group welding engineer's responsibility" to approve the site-specific welding procedures.¹ Further, Artayet denied that it was his responsibility to see that all "welding procedures are properly qualified, written, and implemented."²
- B. Evidence demonstrates that it was Artayet's responsibility, as the group welding engineer, to assure that all WPS's were Code-compliant and free of deficiencies.

¹ DOL testimony, p. 65.

² DOL testimony, p. 90.

1. Artayet gave to the Stier interviewers a copy of a memorandum written by Artayet in May 1995, addressing the responsibilities of the group welding engineer.³ Artayet wrote in the memorandum that the welding supervisor (on site) “can only modify nonessential variables on WPS’s.”⁴ In response, Pardi wrote several handwritten notes on the memo; in one note, Pardi wrote: “I would not want any project modifying any WPS variable essential or nonessential w/o welding engineering approval.”⁵

Artayet admitted that after reviewing the document, he understood that Pardi “didn’t want welding supervisors in the field . . . to be revising welding procedures. He felt that should be [the] group welding engineer.”⁶

Further, Artayet understood Pardi’s comment to mean that: “I don’t want nobody changing welding procedures, whether they’re essential or non-essential variables, without me saying go ahead. Which was a step higher than the way we’ve been doing business in the past which, to me, was damn, you know, okay, if that’s what you want, we’ll do that. . . . And at that point I even . . . told Rusty that if you change procedures, make sure

³ DN 629-31.

⁴ DN 631; Artayet testimony to Stier, pp. 528-29 (discussing the memorandum).

⁵ DN 631.

⁶ Artayet testimony to Stier, pp. 528.

you send them to me for review. . . . Rusty and I had a discussion like that.”⁷

2. Morrison Knudsen Quality Assurance Instruction (“QAI”) 11.2, § 2.2,⁸ providing procedures for the control of welding procedure qualifications, states that the group welding engineer “is responsible for the review of all project specific ASME and AWS welding procedure specifications (WPS’s).”⁹
3. Artayet acknowledged at the DOL proceedings that he told Gorden “that QAI-11.2 and 11.1 indicate in there that it’s a requirement of the quality assurance department that those welding procedures be sent to me for review”¹⁰
4. Walcutt admitted at the DOL hearing that “Pardi looked at Alain as the corporate welding engineer and expected Alain to ensure that the welding program met code and contract requirements.”¹¹

⁷ Artayet testimony to Stier, p. 530; see also Artayet testimony to Stier, p. 545 (“I was trying to figure out what’s in Lou Pardi’s head, what does he expect me to do? And his reply was: I don’t want to have welding supervisors, project welding engineers, non-degreed individuals, to revise welding procedures without you approving it.”).

⁸ DN 8217 (effective date March 15, 1996); DN 8262 (effective date September 23, 1996).

⁹ DN 8217.

¹⁰ DOL testimony, p. 57.

¹¹ DOL testimony, p. 237.

In his Stier interview, Walcutt stated—regarding the problems found in the Hartford Steam Boiler audit—that “I would have expected that to be caught if [Artayet] was spending time acting as the group welding engineer and spending the necessary time, he would have caught that.”¹²

Walcutt further stated—regarding the problems in the site WPS’s identified in the QFR—that “the group welding engineer, for whatever reason, didn’t do an adequate overview of the site specific WPS’s.”¹³

5. Pardi said that he “made these expectations clear to Alain the very first time he and I met . . . that he would be ultimately responsible for the quality of MK’s welding procedures.”¹⁴ Pardi said that there was “no doubt in his mind that was [Artayet’s] job,” to assure the quality of all of the welding procedures.¹⁵ Further, Pardi had “numerous sidebar conversations” with Artayet about his responsibilities, and stated “the man would have to be deaf not to have a clear understanding of what I expected of him.”¹⁶

¹² Walcutt testimony to Stier, p. 303.

¹³ Walcutt testimony to Stier, p. 435.

¹⁴ Pardi testimony to Stier, p. 78; see also Pardi testimony to Stier, p. 81 (“My conversations with him [Artayet] of my expectations of him, again, from the very first week I was with MK, he knew that my expectations were that he would be responsible for the quality of our welding procedures.”); pp. 105-06, pp. 112-13.

¹⁵ Pardi testimony to Stier, p. 103.

¹⁶ Pardi testimony to Stier, p. 106.

6. The project staff, including Bingham and Cepkauskas, similarly recognized Artayet's responsibility to review these procedures.¹⁷

SIGNIFICANCE OF EVIDENCE

Artayet's assertion to the ALJ—that he had no responsibility for deficiencies found in the Hartford Steam Boiler audit and, therefore, Pardi's decision to remove him from Power Division projects was pretextual—cannot be credited in light of Artayet's own statements acknowledging that responsibility. Artayet's admissions are further confirmed by the documentary evidence of the QAI, by Artayet's understanding of Pardi's comments on the 1995 memorandum, and by the corroborating testimony of Walcutt, Pardi and others. (Indeed, it would seem illogical to have a corporate-level GWE who did not have reviewing responsibility over project-level welding and responsibility for insuring that observed deficiencies are corrected). Those obligations were an important part of the duties of Artayet's employment, for which his employer could (and did) hold him accountable. Artayet's non-performance of these duties was the cause of his removal from the GWE position.

¹⁷ See Bingham testimony to Stier, p. 140 (“Q. And then [Gorden] would provide the PQR and presumably the WPS, too But then Rusty would create a site specific WPS based on the PQR? A. That's my understanding. Q. And then Rusty would send that back to Alain and he would review it and he had the right to say, no . . . A. Right.”); See Cepkauskas testimony to Stier, p. 160 (“A. I firmly believe that all of the WPS's were reviewed by Alain. Q. Prior to that audit? A. Prior to that audit.”).

II. ARTAYET FALSELY CLAIMED THAT HE UNDERSTOOD DROP WEIGHT TESTING REQUIREMENTS

An important indication that Artayet was not technically competent to perform as the group welding engineer is Artayet's lack of understanding of drop weight testing requirements for welding procedure qualifications. Any welding engineer familiar with ASME Section III requirements would know that the qualification test pieces for a weld procedure to be used to weld steam generator girth welds would require drop weight tests of the weld metal. Artayet did not understand this and falsely claimed that he did. If the site welding engineer had not caused the drop weight tests to be performed, the WPS's used at Point Beach would not have been properly qualified.

A. Artayet falsely claimed that he understood that drop weight tests in the weld metal (not the base material) were required, and that he had never said they were not.

1. In response to the question of whether Artayet had said that he was performing drop weight tests in the base metal, to determine the temperature at which to conduct Charpy tests on the weld metal, Artayet answered:

“I would say that? That I do drop weight testing on the base material so I can use that to decide to do Charpy in weld metal zone? That doesn't make sense.”¹⁸

¹⁸ Artayet testimony to Stier, p. 1978-79.

2. “[Others were] saying that I had said that drop weight testing was not required. And that was not the case.”¹⁹

3. “Q. [Y]ou always understood the drop-weight testing was required?

A. Yes, ma’am.”²⁰

4. “Yes, it was clear. It was clear we needed to do drop weight testing.”²¹

B. In fact, Artayet’s actions during the project demonstrate that Artayet did not understand ASME Code requirements for conducting drop weight tests to establish the Charpy V-Notch test temperature. Artayet erroneously believed that drop weight tests could properly be performed in the base metal for this purpose.

1. During his Stier interview, Artayet admitted his mistaken view that drop weight tests could be performed in the base metal: “Rusty shared with me that in the past they’ve done drop weight testing in the weld metal zone. At the time I believe I said, ‘We did?’ I thought we did it in the base material zone. . . . And it turned out that was a fact, that we did do drop weight testing in the weld metal zone in the past.”²² If Artayet was suggesting to Stier that his misapprehension was quickly corrected, the

¹⁹ Artayet testimony to Stier, p. 721.

²⁰ Artayet testimony to Stier, p. 1071.

²¹ Artayet testimony to Stier, p. 714.

²² Artayet testimony to Stier, pp. 711-12.

documentary and other evidence shows that his error persisted from at least January 1996 until July 17, 1996.

2. Triangle Engineering, Inc. ("TEI") was the laboratory hired to perform the testing of the weld coupons. TEI representative Robert Coulstring indicated that from his initial contacts with Artayet in January 1996 and continuing until July 17, 1996, Artayet did not understand that drop weight tests in the weld metal were necessary:

"A. The first I would have heard of this, the notes on that piece of paper that you also have on July 17. Until that point there was no discussion of weld metal drop weights either in our initial quotation to Morrison Knudsen or their visit here to approve us way back in January."²³

Further:

"Q. Were drop weight tests discussed at all [before July 17]?"

A. Yes.

Q. In the base metal?

A. Correct.

²³ Coulstring testimony to Stier, p. 55.

Q. Even back when they visited you [in January], was Alain talking about doing them in the base metal?

A. Yes.”²⁴

Additionally:

“Q. I understood that Mr. Artayet had told you that he wanted this drop weight testing done in the base metal so that he could determine the temperature at which to conduct the Charpy impact tests at a later point.

A. Yes.”²⁵

3. Artayet’s purchase requisitions and purchase orders (“PO’s”) demonstrate that he didn’t understand that drop weight tests were required in the weld metal. Artayet’s May 28, 1996 purchase requisition²⁶ requested that unwelded base material coupons “1a and 2a shall be drop weight tested.”²⁷ Further, the requisition contained language indicating that the results of these base material drop weight tests would be used to establish the Charpy V-Notch test temperature in the weld metal for those procedures:

²⁴ Id.

²⁵ Coulstring testimony to Stier, pp. 24-25.

²⁶ DN 9644-46.

²⁷ DN 9646.

Artayet wrote that the results would be used “to determine NDTT,”²⁸ (nil ductility transition temperature), which is used to determine the test temperature for Charpy V-Notch tests. The May 29, 1996 PO contained the same language.²⁹

4. Artayet didn't include directions to perform drop weight tests in the TEI purchase requisition, faxed to TEI on July 10, 1996.³⁰
5. Gorden knew that Artayet had filled out purchase requisitions and PO's, directing that drop weight tests be performed in the unwelded base material, and thus Gorden questioned Artayet: “[Artayet] ordered base material coupons from Triangle Engineering, with drop weight testing on it. And Alain's statement was: I took care of the requirement for drop weight testing for the qualification.”³¹ Artayet indicated that the drop weight tests in the base material were necessary to “establish our temperatures for testing our Charpy impacts.”³² Gorden “vehemently disagreed” with Artayet on this point³³ and had “many phone

²⁸ Id.

²⁹ DN 2674-75.

³⁰ DN 10984-87.

³¹ Gorden testimony to Stier, p. 242.

³² Gorden testimony to Stier, p. 248; see also Coulstring testimony to Stier, pp. 24-25 (agreeing that Artayet requested drop weight testing in the base metal in order to determine the temperature at which to conduct Charpy impact tests).

³³ Gorden testimony to Stier, p. 248.

conversations back and forth” with Artayet, in which Gorden disagreed with Artayet’s choice to perform drop weight tests on base material.³⁴

6. In Artayet’s July 11, 1996 fax to Gorden—attaching the TEI purchase requisition transmitted by the July 10 fax (discussed above)—Artayet indicated to Gorden that he had not ordered weld metal drop weight tests: “drop weight [tests] of weld metal zone is not used, and would require further coupons, if needed (yet, to be determined).”³⁵

This is the fax cover sheet which provoked Cepkauskas’ comment to Pardi about Artayet not understanding drop weight test requirements. Both Pardi and Cepkauskas testified about this fax at the DOL hearing, but were unable to produce a copy of the fax. It was later discovered and produced.

7. Artayet was responsible for qualifying the Point Beach welding procedures by July 20, 1996. However, Artayet’s July 15, 1996 purchase order to TEI for additional qualification tests contained no request for drop weight tests.³⁶

³⁴ Gorden testimony to Stier, p. 248.

³⁵ DN 10983.

³⁶ DN 9619-23.

Finally, on July 16, Artayet contacted experts at the direction of Evans.

Artayet's handwritten notes on the PO indicate that as of July 16, Artayet was considering performing drop weight tests.³⁷

8. Artayet sent a fax to Evans and Gorden on July 17, 1996,³⁸ in which he attached the July 15, 1996 PO,³⁹ discussed above; Artayet's note on the fax cover memo to Evans and Gorden indicated uncertainty about how to conduct drop weight tests.⁴⁰
9. On July 17, 1996, Artayet received a fax from Bill Fisher at Westinghouse, forwarding to Artayet Westinghouse specifications which demonstrated that drop weight testing was indeed required in the weld metal.⁴¹ Artayet immediately faxed these specifications to Robert Coulstring and Dennis Yeaton at TEI, on the same day that he received them from Westinghouse.⁴²
10. On August 8, 1996, the site—which by then had been delegated the task of qualifying the welding procedures—ordered drop weight tests.⁴³
Unfortunately, they discovered that they had to re-weld coupons, because

³⁷ DN 9620.

³⁸ DN 2634.

³⁹ DN 2635-41.

⁴⁰ DN 2634.

⁴¹ DN 2643.

⁴² DN 2642.

Artayet had ordered an insufficient quantity of welded test coupons to conduct (destructive) drop weight tests. Further, such insufficient number of coupons ordered indicates that Artayet never intended to conduct drop weight tests in the welded coupons. TEI representative Coulstring explained:

“Q. But there were no weld metal—no drop weight tests[s] being conducted in the weld metal?

A. That’s correct. I don’t believe there was sufficient material.”⁴⁴

11. Gorden also stated that Artayet didn’t order enough coupons to allow for drop weight tests: “With the twelve inch long coupon, I don’t believe that if you do drop weight testing the way it should be done, that there is enough material in a twelve inch coupon to do all the required testing. And that was an issue I raised I know verbally with Alain, I didn’t feel twelve inch coupons were adequate for qualifying the procedure. If you had any retest whatsoever to do there is not enough material. . . .”⁴⁵

Footnote continued from previous page

⁴³ See DN 9624 (August 8, 1998 PO indicating first time that weld metal drop weight tests are ordered).

⁴⁴ Coulstring testimony to Stier, p. 40; see also Coulstring testimony to Stier, p. 73 (“Q. Did you ever do any drop weight tests in the weld metal zone for Morrison Knudsen? A. Insufficient material to perform drop weight tests. We did not perform any weld metal drop weight tests.”).

⁴⁵ Gorden testimony to Stier, pp. 310-311.

12. Artayet admitted that weld metal drop weight tests were never ordered while he was in charge of the qualification of the Point Beach weld procedures: “And I think we never got around to doing drop weight testing [O]n August 1 [1996], Rusty Gorden was delegated to do procedure qualifications and they went ahead and did their own coupons. So, therefore, we never went back to do drop weight testing on the coupons we did in Memphis.”⁴⁶
13. The Code is clear about how to orient the weld metal drop weight test specimen: “The specimen shall be transverse to the longitudinal axis of the weld with the area of the notch located in the weld. The length of the notch of the Charpy V-Notch specimen shall be normal to the surface of the weld. Where drop weight specimens are required, the tension surface of the specimen shall be oriented parallel to the surface of the test weld assembly.”⁴⁷

However, despite the clear statement in the Code, Artayet’s excuse for not ordering drop weight tests was that the Code was unclear concerning “the

⁴⁶ Artayet testimony to Stier, p. 714.

⁴⁷ DN 7493-94 (citing Code, Section III, Subsection NB, Subparagraph NB-4334.1).

orientation of the specimen” during drop weight tests.⁴⁸ Artayet claimed there was “inconsistency in the code” about the issue.⁴⁹

Of course, if Artayet in fact was unclear about how to perform the tests, he should have sought clarification from more knowledgeable sources.

SIGNIFICANCE OF EVIDENCE

The purchase orders and requisitions prepared by Artayet demonstrate clearly that he was not ordering drop weight tests in applications where the Code required them. Artayet’s attempts to excuse this dereliction by creating a “complexity” concerning testing methods all but acknowledges the deficiencies in his performance. But for the activities of the site personnel in correcting these deficiencies, the Point Beach WPS’s would not have been properly qualified.

Artayet’s inadequate knowledge of Code requirements amply justified the views that the project personnel expressed on many occasions to Pardi, that Artayet was not up to the job. Pardi was slow to reach the same conclusion, until the findings in the Hartford Steam Boiler audit left him no alternative but to remove Artayet from his projects. Artayet’s unsupported claim that Pardi was motivated by an improper reason cannot overcome the uncontroverted evidence of Artayet’s

⁴⁸ Artayet testimony to Stier, p. 753; see also p. 712 (Artayet didn’t perform drop weight tests because the Code was “very unclear as to how proceed about how to do drop weight testing in the weld metal zone, the orientation of the crack starter bead . . .”).

⁴⁹ Artayet testimony to Stier, p. 713.

inadequate performance and the resulting loss of confidence in him by the site personnel and Pardi.

III. ARTAYET TESTIFIED FALSELY ABOUT OTHER PROBLEMS REGARDING HIS JOB PERFORMANCE

Artayet's inability to direct the weld procedure qualification process in an effective manner is another clear example of his inadequate performance and could have jeopardized the project schedule and the quality of MK's WPS's. In addition, his lack of understanding of codes and specifications caused him to require Charpy V-Notch test specimens at a temperature much lower than that required by the applicable codes and standards, a temperature at which it is highly unlikely that the Charpy V-Notch specimens would ever meet job requirements. On both these points he testified falsely in an effort to conceal his own deficiencies.

- A. Artayet testified falsely at the DOL hearing concerning the number of welding procedures that he successfully qualified, while he was responsible for providing the Point Beach welding procedures.
 1. Artayet testified that "we failed, I believe, two tests out of eight that we performed" while he was responsible for the Point Beach WPS qualification process.⁵⁰
 2. At another point, Artayet testified that he had successfully qualified between 5 and 7 procedures.⁵¹

⁵⁰ DOL testimony, p. 54

⁵¹ DOL testimony, pp. 115-16.

3. Despite the fact that Artayet had committed to have all of the welding procedures qualified by July 20, 1996, TEI test reports show that only two procedures—Priorities #10 and #11—had been successfully tested and qualified while Artayet was responsible for the qualification process.⁵² Further, on July 17, 1996, Artayet faxed a status report⁵³ on his qualification efforts in Memphis to Evans and Gorden, effectively turning over the qualification to the site. Artayet's status report indicates that no welding procedures had yet passed TEI tests, though Priorities #10 and #11 subsequently passed tests at the lab.⁵⁴

B. Artayet testified that some of the test failures on procedures he was responsible for qualifying were due to stringent design requirements imposed by Westinghouse (*e.g.*, a +10° F test temperature requirement for Charpy V-Notch qualification tests)⁵⁵ and that he contributed to having Westinghouse change this test temperature requirement:

“Q. And it was your response to Mr. Bingham that the reason that those samples failed was because of the specifications placed upon the procedures by the owner?”

⁵² DN 9576-9612.

⁵³ DN 2666-68.

⁵⁴ DN 2667.

⁵⁵ DOL testimony, pp. 53, 117-19.

A. The design specifications, correct, the technical specifications which I had told him about.

Q. And did you then participate in any way in having those design specifications changed?

A. Yes, I did.”⁵⁶

1. In fact, Artayet mistakenly imposed the +10° F test temperature requirement for Charpy V-Notch qualification tests. Artayet’s handwritten notes indicate that he imposed the +10° F test temperature requirement because he didn’t understand the ASME Code provision relating to establishing Charpy V-Notch tests.⁵⁷
2. In addition, Artayet submitted into evidence in the DOL proceeding Andy Walcutt’s November 4, 1996 memorandum, edited by Artayet, which states that Artayet “contacted Marv Carpenter of Westinghouse Pensacola. This discussion identified that Westinghouse’s standard practice was to do their Charpy V-Notch testing at +55F and not the +10F temperature they were requiring SGT to test at. This information . . . [was] passed on to Paul [Evans] and used by SGT to obtain more reasonable requirements from Westinghouse.”⁵⁸

⁵⁶ DOL testimony, pp. 118-19.

⁵⁷ DN 2614; see detailed analysis of this point at the Stier Report, pp. 359-61.

⁵⁸ DN 632.

3. However, Westinghouse engineer Marvin Carpenter stated that he discussed the Charpy V-Notch temperature issue with Evans, and not with Artayet.⁵⁹
4. Evans stated that he did not know the basis for Artayet's selection of the +10° F Charpy V-Notch test temperature that he used, and that when Evans asked Artayet about this, "Artayet was unable to provide him an answer."⁶⁰ However, Evans "did not believe that this was a Westinghouse requirement," and contacted Marv Carpenter at Westinghouse.⁶¹ Based on information Evans obtained from Westinghouse, Evans "raised the Cv test temperature to +55° F for the Cv tests he ordered."⁶²

SIGNIFICANCE OF EVIDENCE

Despite Artayet's claims, his performance in obtaining the timely completion of the WPS's required by the project was woefully deficient. It is undisputed that at the readiness review meeting at the site, there were no procedures ready for review. It is equally clear that Artayet was responsible for this deficiency.

Artayet's similarly inaccurate claim that the erroneous +10° F temperature was the result of the design specifications, and that he corrected it, is clearly rebutted

⁵⁹ Carpenter's 8/24/98 Interview Memorandum, p. 4.

⁶⁰ Evans' 9/3/98 Interview Memorandum, p. 6.

⁶¹ Id.; see also Evans testimony to Stier, pp. 34 ("[T]he tensile results that we needed would not work with 24 hours of post weld heat treat. It failed. So I had to go back and dicker with Westinghouse and talk to them and explain to them where we were at.").

by the Westinghouse representative and by Paul Evans. The reality is that this is another documented instance of Artayet's lack of competence, and of his willingness to falsify the facts to conceal his inadequacies.

IV. ARTAYET MADE FALSE STATEMENTS TO HIS SUPERVISOR, WALCUTT, TO INDUCE WALCUTT TO BELIEVE THAT ARTAYET WAS PERFORMING SATISFACTORILY

Artayet was aware of his own performance deficiencies, as evidenced by a memorandum he wrote to his supervisor (Walcutt) in early November 1996. In an effort to defend his position he misrepresented his activities relative to drop weight tests, procedure qualification activities under his direction at Memphis, and his erroneous use of the +10°F Charpy V-Notch temperature. Statements made in his memo sharply contrast with testimony and information provided by others.

A. Artayet lied to Walcutt about whether he had told the Point Beach site that drop weight testing was not required.

1. When Walcutt asked Artayet whether he had told the site that drop weight tests were not required, Artayet "looked at me like I was crazy, [and said] 'I didn't say anything like that.'"⁶³

Walcutt then testified at the DOL hearing that he "had no evidence that [the drop weight test issue] was a valid problem."⁶⁴ The ALJ relied on

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⁶² Evans' 9/3/98 Interview Memorandum, p. 6.

⁶³ Walcutt testimony to Stier, p. 253.

such testimony from Walcutt in holding that Artayet never recommended that drop weight testing not be used: “Walcutt testified that complainant had never recommended that drop weight testing not be used thereby indicating that Pardi’s asserted loss of confidence in complainant was based on an erroneous premise.”⁶⁵ However, the authorities cited above in Section II show that weld metal drop weight tests were mandated by the Code and the applicable specifications, that Artayet didn’t understand they were required, and that Artayet never ordered weld metal drop weight tests while he was responsible for qualifying procedures.

B. On November 3, 1996, Artayet provided a memorandum to Walcutt, in response to indications that the site was displeased with Artayet’s performance and his job was in jeopardy. This memorandum contained false and misleading information regarding Artayet’s handling of the WPS qualification process for Point Beach.⁶⁶

1. In the November 3 memo to Walcutt, Artayet misrepresented the number of procedures that he successfully qualified in Memphis. Artayet wrote that “Memphis successfully completed and tested 6 of 8 WPS’s.”⁶⁷

However, TEI test reports show that only two procedures—Priorities #10

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⁶⁴ DOL hearing, p. 281.

⁶⁵ ALJ opinion, p. 7.

⁶⁶ DN 151-58.

⁶⁷ DN 158.

and #11—were successfully tested and qualified while Artayet was responsible for the qualification process.⁶⁸

2. Artayet attempted in the November 3 memo to excuse his findings by claiming that stringent test temperature requirements made Artayet's qualification process difficult: "[Westinghouse] actually tested welding procedures for SG at higher +55° F temperatures for charpy V-Notch. . . . This information was passed onto Paul Evans. This provided help to the SGT to discuss with WE testing at higher temperature of +55° F for charpy V-Notch (*instead of +10° F agreed earlier by SGT*)"⁶⁹ In fact, the +10° F temperature was imposed by Artayet because he did not understand ASME Code requirements.⁷⁰
3. Further, Artayet did not inform Walcutt that these coupons required drop weight tests in the weld metal, which Artayet had failed to order. This failure to require drop weight tests would have disqualified several of Artayet's procedures if he had remained in charge of the WPS qualification process for Point Beach, since drop weight tests were required. See supra, Section II. Artayet also did not inform Walcutt that he had failed to order sufficient coupons to conduct drop weight tests for these priorities. See supra, Section II.B.10.

⁶⁸ DN 9576-9612.

⁶⁹ DN 151 (emphasis added).

⁷⁰ DN 2614; issue summarized at Stier Report, pp. 360-61.

- C. Walcutt relied on the points in Artayet's memo⁷¹ to prepare Walcutt's own memorandum of November 4, 1996, in defense of Artayet.⁷² Artayet modified Walcutt's memo before it was finalized,⁷³ and provided by Walcutt to Pardi.⁷⁴
1. Walcutt's memo repeats a false explanation provided by Artayet's mistaken view that drop weight testing "could be done in either the base or weld metal."⁷⁵ See supra, Section II.B.
 2. Notwithstanding its false and misleading statements, Artayet offered Walcutt's memo of November 4 into evidence at the DOL hearing.⁷⁶

SIGNIFICANCE OF EVIDENCE

The evidence of Walcutt's warning to Artayet that his job was in jeopardy and Artayet's deliberately misleading response confirms the complaints about Artayet's performance, and Artayet's willingness to fabricate evidence to protect his position. If Artayet believed that his performance regarding the Point Beach welding procedures had been satisfactory, he could simply have pointed out his accomplishments to rebut any unjustified complaints. But Artayet knew that: (1) the procedures had not been completed on time; (2) his PO's and requisitions did

⁷¹ Walcutt testimony to Stier, p. 571-72.

⁷² DN 164.

⁷³ Artayet testimony to Stier, pp. 1077-78; see DN 632 (including Artayet's handwritten changes to Walcutt's memo).

⁷⁴ Walcutt testimony to Stier, pp. 264, 572.

⁷⁵ DN 164.

⁷⁶ DN 164 (Exhibit #5 at the DOL hearing; DOL transcript, p. 311).

not direct weld metal drop weight testing as required by the Code; and (3) he had mistakenly imposed unnecessarily stringent test requirements, which were later eliminated.

Artayet's only avenue was to rewrite the history of his involvement, which he did in his November 3 memo to Walcutt. Because Walcutt lacked technical welding expertise, Walcutt adopted Artayet's positions and used them in Artayet's defense, as Artayet had planned. Artayet's counsel elicited this unfounded testimony from Walcutt before the ALJ.

V. ARTAYET FALSELY TESTIFIED THAT HE WAS NOT PROVIDED SITE-SPECIFIC WPS'S BY THE POINT BEACH STAFF

Artayet knew that his responsibilities included review of WPS's, despite his testimony to the contrary. In an effort to further remove himself from the responsibility for the site WPS's, he testified falsely that the site did not provide the WPS's for him to review.

A. Artayet testified at the DOL hearing that the site failed to provide him with draft copies of the Point Beach WPS's:

"A. . . . I asked Mr. Gorden to please send [the welding procedures] to me for me to review and assess their acceptability.

Q. Okay. Now, did Mr. Gorden do that?

A. No, sir"⁷⁷

⁷⁷ DOL testimony, p. 56.

B. However, the welding procedures were being sent to Artayet.

1. Gorden stated that he believed that the site welding engineers (Don Huffstodt, Barry Ditzler, and Paul Evans) were submitting the draft PQR's and site specific WPS's to Artayet, to help Artayet create the corporate WPS's and PQR's: "I know that we sent them to him from the site because we had done the welding, so we had the qualification test data form and the test reports, and in a lot of cases we actually gave him a rough draft of the PQRs also. So that we would get a quick turn-around. Which we did get, like a one day turn-around from the time he got them."⁷⁸ Further:

"Q. Do you know how Alain came to obtain those site specific procedures?

A. I am sure he got them from the welding engineers that work for me.

Q. By way of mail? Or fax?

A. Mail, fax, and some of them may have been through the normal control distribution.

.....

Q. And [the names of the engineers who sent them] is?

⁷⁸ Gorden testimony to Stier, pp. 326-27.

A. Don Huffstodt, Barry Disler and Paul Evans.”⁷⁹

2. Evans stated that he provided Artayet with draft site WPS’s and draft PQR’s before those in the formal approval process saw the site WPS’s: “PQR’s were made in draft form, and sent to Artayet in corporate style.”⁸⁰ Further, Evans “sent Artayet the filled out copies of the corporate PQR and WPS that the site created.”⁸¹ Evans “provided [Artayet] with the site WPS’s as a ‘courtesy’ to give him the opportunity to review and suggest changes. Providing them to him at this early stage actually meant that Artayet saw the site WPS’s and had a chance to comment on them before the client”⁸² Finally:

“Evans said that he may have initially handwritten the site WPS’s and PQR’s he sent Artayet, but for 99% of them he used a computer to prepare them. In either case, Evans said that Artayet had the opportunity to review the site WPS’s and to contact the site with any of his concerns before they were sent to the client or anyone else in the approval process.”⁸³

⁷⁹ Gorden testimony to Stier, p. 461; see also Gorden testimony to Stier, pp. 369, 371.

⁸⁰ Evans’ 9/3/98 Interview Memorandum, p. 3.

⁸¹ Evans’ 9/3/98 Interview Memorandum, p. 4.

⁸² Evans’ 9/3/98 Interview Memorandum, p. 5; see also Artayet testimony to Stier, pp. 1060-62 (Artayet agreed that Evans had sent him draft PQR’s, but limited it to “maybe on one or two occasions.”).

⁸³ Evans’ 9/3/98 Interview Memorandum, p. 5 (in reviewing the Interview Memorandum, Evans added to the last statement: “Until such time when time was of the essence
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3. Document Transmittal Logs (“DTL’s”) indicate that Artayet also received his own set-of finalized original and revised site WPS’s on 12 occasions between October 23 and December 5, 1996.⁸⁴ Artayet conceded this in his DOL testimony.⁸⁵

SIGNIFICANCE OF EVIDENCE

Artayet attempted to evade his responsibility by claiming he was denied access to the welding procedures he was required to review. The documents and the evidence of the witnesses demonstrate that in fact Artayet was being sent copies of these procedures, and had ample opportunity to meet his review obligations.

Of course, it would be no satisfactory answer for Artayet to abandon this work because of problems with transmittals from the site. Artayet had ready access to management resources to deal with such resistance, had it arisen. Further, Artayet had a clear obligation not to neglect his duty simply because performance required some additional effort on his part. The Stier investigation makes clear that the site (especially Paul Evans) was providing the procedures in draft to Artayet, but that Artayet abdicated almost totally his duty to insure that the site’s procedures were Code-compliant.

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and the procedures were being reviewed concurrently by the customer and Artayet. P.E. 9/9/98”).

⁸⁴ DN 9789-90.

VI. ARTAYET TESTIFIED FALSELY CONCERNING HIS ATTEMPTS TO CORRECT THE POINT BEACH SITE WPS'S

Despite previous testimony that he did not have responsibility for the Point Beach WPS's, Artayet later testified that he made every attempt to get the site to correct procedural deficiencies. His differing excuses for why the deficiencies he identified were not corrected are not believable, and in any event do not justify his failure to take effective action to remedy these problems.

A. Artayet testified at the DOL hearing that he told Walcutt that Gorden had failed to implement Artayet's corrections to the site WPS's, and then offered to the ALJ and Stier a series of excuses for the failure to resolve these issues with the site:

1. Artayet testified that shortly after his return from Colorado Springs, "I told Andy Walcutt that [Gorden] had not taken care of my concerns and did not include them, that my observations and comments were not included in what appeared to be the last distribution of the welding procedures."⁸⁶
2. Artayet further testified that Walcutt told him that there was not time to correct the WPS's and that Walcutt also said, "Let's not do anything" about Artayet's suggested corrections.⁸⁷

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⁸⁵ DOL testimony, pp. 62-63 ("Those [WPS's] were finalized and they were submitted to Mr. Walcutt and I as part of the distribution process required by the quality assurance program.").

⁸⁶ DOL testimony, p. 70.

⁸⁷ DOL testimony, p. 70.

3. However, on cross-examination, Artayet testified that he thought Walcutt was going to contact somebody at the site—either Cepkauskas, Bingham, or Gorden—about the corrections not having been implemented by Gorden: “I thought Mr. Walcutt was going to do that.”⁸⁸

4. Finally, in his Stier interview, Artayet claimed that when he told Walcutt in December 1996 that Gorden had not made changes to the WPS’s, Walcutt said, “I’m sick and tired of these people not paying attention to us. . . . Forget it. We’re not going to change [the WPS’s].”⁸⁹

B. Walcutt testified at the DOL hearing that he simply didn’t discuss with Artayet the fact that Gorden didn’t respond to Artayet’s criticisms of site WPS’s:

“Q. [D]id Mr. Artayet report to you that he had found that Rusty Gorden had failed to respond to Mr. Artayet’s criticisms of several site-specific WPS forms?”

A. No.

Q. . . . [D]id he offer to fix any deficiencies in the WPS forms prior to the upcoming Hartford audit?

A. It wasn’t discussed.”⁹⁰

⁸⁸ DOL testimony, p. 108.

⁸⁹ Artayet testimony to Stier, p. 1236.

⁹⁰ DOL testimony, p. 247.

Further, Walcutt testified:

“Q. Is it your testimony that at no time in December did Mr. Artayet come to you and say that he had reviewed the site-specific Point Beach welding procedures and that there were problems with them?

A. Right.”⁹¹

1. In his Stier interview, Walcutt stated that the only corrections to the procedures that Artayet told him about were editorial, and that Artayet didn't inform him of serious problems with the site welding procedures:

“Q. So Alain was off on assignment in DuPont when he was getting these site specific procedures, he was telling you that there were minor problems?

A. Minor editorial. Clean them up, and you know, call the site, tell them to clean them up. Nothing that warranted action. Alain didn't indicate any concern that needed action. Minor editorials. Next revision. And that's how I took it.”⁹²

Additionally:

⁹¹ DOL testimony, p. 286.

⁹² Walcutt testimony to Stier, p. 282.

“Q. So I take it that prior to the Hartford audit Alain never called any attention to anything major?

A. [T]here was nothing that I considered major.”⁹³

SIGNIFICANCE OF EVIDENCE

Within Artayet’s conflicting versions of these events, three important points are clear. First, Artayet knew in mid-December that his corrections to the site WPS’s had not been implemented. He claims that he had received copies of the final site procedures, and raised this point with Walcutt.

Second, though Artayet attempts to shift the blame to Walcutt, either because Walcutt undertook to resolve the issues and failed to follow through (version 1), or because Walcutt directed that they ignore the problem because of lack of time before the audit (version 2), or because Walcutt was angry at the site’s response (version 3), it is apparent that Artayet’s interest in insuring the adequacy of the site procedures was completely secondary to his own self-protection. This cavalier approach to Code compliance shows why his removal as GWE was not only non-retaliatory, but was justified to protect the quality of the MK welding program.

Finally, and perhaps most telling, Artayet advanced at the DOL hearing his claim that he had gone to Pardi’s office at about this time and informed Pardi of the problems with the procedures which Gorden had ignored, and which would lead

to problems with the Hartford Steam Boiler audit. Though this testimony is demonstrably false (see Section VII, immediately following), it confirms that Artayet knew he had responsibility for these procedures, and tends to suggest that his three “excuses” for why no follow-up occurred were also invented by Artayet.

VII. ARTAYET TESTIFIED FALSELY CONCERNING AN ALLEGED MID-DECEMBER MEETING WITH LOU PARDI

Perhaps Artayet’s most obviously false testimony relates to his allegation that he met with Pardi for two and one-half hours in mid-December and detailed the deficiencies in the Point Beach WPS’s to Pardi. This testimony was central to Artayet’s effort to win at any cost in the proceeding he brought against MK. The Stier investigation has provided compelling evidence that this meeting never occurred, and that Artayet was deliberately presenting evidence he knew to be false.

A. Artayet testified that he had a two and one-half hour meeting with Lou Pardi during the week of December 16, 1996, in which he was removed from his nuclear GWE responsibilities, because of conflicts with Bingham and Cepkauskas related to Artayet’s review of the site-specific welding procedures:

1. “Q. Now, at about this same time [as Artayet allegedly pointed out problems with the Point Beach welding procedures to Walcutt], did you have an invitation to go to Mr. Pardi’s office?

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⁹³ Walcutt testimony to Stier, p. 284.

A. Yes.

.....

Q. What did Mr. Pardi tell you during this meeting in December? Do you remember the date?

A. It was about the week just before Christmas, December 16th week. I'm not sure what day it was.

Q. Okay. What did Mr. Pardi tell you during this meeting?

A. Basically, he was removing me from the nuclear responsibilities in relationship only to the steam generator replacement team activities”⁹⁴

2. “Q. Did Mr. Pardi tell you why he was removing you?”

A. Yes, sir, he did. . . . He told me that he was removing me from the steam generator team work because I had personality conflicts with Marty Cepkauskas and Max Bingham.

.....

Q. And were those problems ones related to your review of welding procedures at the Point Beach plant?

⁹⁴ DOL testimony, pp. 71-72.

A. I believe so, yes.

Q. Did Mr. Pardi tell you that?

A. Yeah.”⁹⁵

3. During his Stier interview, Artayet repeated his allegations from the DOL hearing. Artayet stated that he met with Pardi and told Pardi that Artayet had contacted the site about problems with the site’s preparation of welding procedures.⁹⁶

4. Artayet also stated during his Stier interview that he had concluded that his meeting with Pardi occurred on Thursday, December 19, 1996,⁹⁷ because in his carpool on the way home that night, Artayet’s carpool associate, John Luf, told Artayet that “it was a lousy way to end the week and a lousy way to start a weekend.”⁹⁸

Despite the reference to “the weekend,” the alleged meeting with Pardi could not have occurred on a Friday. Mr. Luf recalled calling Pardi the day after Artayet referred to his situation in the carpool going home: “That stimulated me to call Lou the next day. I had never talked to the guy ever,

⁹⁵ DOL testimony, pp. 72-73.

⁹⁶ Artayet testimony to Stier, p. 1285.

⁹⁷ Artayet testimony to Stier, pp. 1266-67.

⁹⁸ Artayet testimony to Stier, p. 1267.

and actually what I wanted to do is I wanted to call him up and make an appointment to just come up and talk to him person to person.”⁹⁹

If Artayet had met with Pardi on a Friday, the next day was Saturday, and Luf was not at work. Thus, Artayet concluded that his meeting with Pardi occurred on a Thursday.

5. However, the Stier interviewers informed Artayet that because of Pardi’s travel schedule, the meeting could not have taken place on Thursday, December 19, 1996, as Pardi was in Florida on business from early that Thursday morning until late Friday.¹⁰⁰

B. Upon being informed that the meeting couldn’t have taken place on Thursday, December 19, 1996, Artayet revised his interview statement, now stating to the Stier interviewers that the meeting occurred on Thursday, December 12, 1996.¹⁰¹ However, the alleged meeting with Pardi could not have occurred on Thursday, December 12, either. Pardi was in North Dakota for a meeting on December 11

⁹⁹ Luf testimony to Stier, p. 42; see Artayet testimony to Stier, pp. 1367-68 (confirming that the “following day” after Artayet informed the carpool, Luf “had a conversation with Lou and he talked to him on the phone and tried to convince Lou that he was making a mistake.” The day before, “[o]n Thursday [Luf] never gave me any indication on the way home that he was going to do that.”).

¹⁰⁰ Artayet testimony to Stier, p. 1958; DN 8700, 8714-15 (Pardi’s calendar and travel expense report); see also Stier Report, pp. 532-33 (detailing Pardi’s travel records).

¹⁰¹ Artayet testimony to Stier, p. 1958; DN 10748 (Artayet’s written comments on errata sheet).

and 12, and returned to Cleveland on the evening of December 12,¹⁰² not in time for an afternoon meeting with Artayet.

C. Additional proof that no meeting between Artayet and Pardi occurred on December 12 comes from Artayet's claim that when he met with Pardi, he pointed out to Pardi deficiencies in the welding procedures which Gorden had not corrected.¹⁰³ However, Artayet testified that the first person he told about this problem was Walcutt, when Walcutt returned to the office following his trip to Colorado Springs.¹⁰⁴ Artayet and Walcutt had been in Colorado together for a meeting; Artayet flew back to Cleveland on December 11, 1996;¹⁰⁵ Walcutt returned to Cleveland on December 12,¹⁰⁶ but did not come into the office on that day.¹⁰⁷ Thus, Artayet couldn't have told Walcutt about the problems with the Point Beach site until after December 12:

“Q. So the first time [Walcutt] was hearing that you had made some suggestions to Rusty was when he came back from Colorado?

A. That's correct.”¹⁰⁸

¹⁰² DN 8700; see also Stier Report, p. 534 (detailing Pardi's travel records).

¹⁰³ Artayet testimony to Stier, p. 1285.

¹⁰⁴ DOL testimony, pp. 69-70.

¹⁰⁵ DN 6446-47 (log of Artayet's trips).

¹⁰⁶ DN 9829-30 (Walcutt's travel and expense report).

¹⁰⁷ Artayet testimony to Stier, p. 1270.

¹⁰⁸ Artayet testimony to Stier, p. 1227-28.

D. Artayet claimed that the tape he secretly recorded of his January 15, 1997 discussion with Edleman would prove that the meeting with Pardi occurred and would show that Pardi committed perjury when he denied the meeting. In fact, it supports the view that no December meeting between Pardi and Artayet occurred. Had there been such a meeting, it would have been highly likely that Artayet would have mentioned it, since he claims to believe Pardi's action was in retaliation for Artayet's disclosure of deficiencies in project WPS's. Instead, the tape shows Edleman referring to an occasion "before Christmas" when Edleman informed Artayet of Pardi's comments. Edleman says:

"Well, there's been a lot of conversations, you know, the whole issue that's gone on in the past, with ah, you know Max Bingham better than I do, and, and (break) with ah, I guess *it was before Christmas or something when I told you, Lou talked to me about it.*"¹⁰⁹

SIGNIFICANCE OF EVIDENCE

The extraordinary claim by Artayet that he had a mid-December meeting with Pardi—a claim in which Artayet persisted despite unanswerable documents showing that the meeting never took place—casts significant light on the merits of Artayet's claim and the primary issue on which the NRC is considering

¹⁰⁹ DN 10902 (transcript of Walcutt/Artayet discussion on 1/15/97, p. 1) (emphasis added); see also DN 10903 (transcript of Walcutt/Artayet discussion on 1/15/97, p. 2) (Edleman: "Ah, I think it's something that's been festering for a long time and ah, (break) it's been festering for a long time better than I do, and I guess the first time I heard about it was *when Lou talked to me before Christmas* and, ah, (break) was trying to push the issue off . . .") (emphasis added).

enforcement action. It seems clear that Artayet knew in mid-December that he was likely to be removed from his job. He said that to his carpool associates, and to his wife.¹¹⁰

When he was removed as GWE on January 15, 1997, Artayet determined to defend himself by claiming that the removal was in retaliation for protected activity. However, he knew what the true facts were, and that there would be ample evidence of his poor performance. He therefore attempted to bolster his claim and swore at the DOL hearing that he had disclosed welding deficiencies to Pardi in December. Furthermore, Artayet claimed that Pardi did not respond to these described deficiencies, but told Artayet that he was off steam generator work.¹¹¹ (Artayet offers no credible explanation of why Pardi would take no action to prevent the adverse findings of the Hartford Steam Boiler audit if Artayet had told him of the deficiencies in advance).

Absent this claim of protected activity (by disclosing the procedural deficiencies) and linking it to the adverse employment action of removing Artayet from Power Division work, Artayet presumably saw no hope of reversing his removal. In addition, Artayet sought to undermine Pardi's testimony that Pardi was insistent that WPS's be error-free and expected Artayet to bring problems to his attention if necessary.

¹¹⁰ Artayet testimony to Stier, pp. 1360-61.

¹¹¹ Artayet testimony to Stier, pp. 1286-87.

The Stier investigation of this issue establishes with a high degree of certainty that Artayet's description of the Pardi meeting is not simply mistaken, but was deliberately fabricated by Artayet. He described details of the meeting which are not consistent with a slightly faulty recollection, and he persisted in his story even when confronted with indisputable physical facts to which he could offer no explanation. He presented his testimony in complete disregard of the truth, and of the oath he took in the DOL proceeding and in his certification of the accuracy of what he told to Stier.

Removing the fabricated evidence of Artayet—and the false testimony he created through Walcutt—from the equation, the record compiled by Stier comprehensively documents a persuasive picture of poor job performance recognized at the site and reported to Pardi, who had insisted and expected that Artayet would insure that the site procedures were Code-compliant and error-free. When the Hartford Steam Boiler audit showed Pardi that Artayet had failed in his responsibilities, Pardi properly held Artayet accountable. The evidence that this January 2 audit report tipped the balance in Pardi's mind and led to Artayet's removal is corroborated by the external circumstances and witnesses, and is, we submit, credible by any objective evaluation. The complete record establishes that no violation of 10 C.F.R. § 50.7 occurred, and no enforcement action on this basis is appropriate.

APPENDIX

ISSUE	ARTAYET MISREPRESENTATION	FACTUAL ACCOUNT ¹	SIGNIFICANCE
<p>I. Responsibility for site specific welding procedures (<u>See</u> Analysis, pp. 1-5).</p>	<p>Denied responsibility for assuring all of MK's welding procedures were Code-compliant and free of deficiencies.</p>	<ul style="list-style-type: none"> - Artayet's memorandum annotated by Pardi indicated GWE responsibility for WPS's. Artayet testified that he read and understood memo. - MK Quality Assurance Instructions QAI-11.2 requires GWE review; Artayet acknowledged this. - Pardi, Walcutt, Bingham, and Cepkauskas recognized Artayet's responsibility for the WPS's. 	<ul style="list-style-type: none"> - Artayet had ultimate responsibility for insuring Code-compliant, error-free WPS's. - Artayet's failure to find errors in WPS's and to correct them prior to their use in the field was the cause of his removal from the GWE position.
<p>II. Requirements for Drop Weight Testing of WPS qualification coupons (pp. 6-16).</p>	<p>Artayet falsely claimed that he understood that DWT's of the weld metal were required.</p>	<ul style="list-style-type: none"> - Artayet did not understand requirements for DWT and incorrectly specified that DWT's be performed in the base metal. - July 11, 1996 fax cover sheet confirms Artayet did not understand weld metal DWT's. - Artayet's own testimony as well as that of site welding engineers and test lab personnel demonstrate that Artayet did not understand Code requirements. - Artayet prepared purchase orders to the test lab omitting required weld metal DWT's. 	<ul style="list-style-type: none"> - If site welding engineering had not caused weld metal DWT's to be performed, Point Beach steam generator girth welds would have been welded without a properly qualified WPS. - Artayet's lack of knowledge of Code requirements justified the conclusion that Artayet was not up to the job of GWE.
<p>III. Artayet's job performance (pp. 16-20).</p>	<ul style="list-style-type: none"> - Artayet testified that he was successful in qualifying "between 5 and 7" WPS's. - Artayet testified that he could not qualify some of the WPS's due to stringent requirements imposed by Westinghouse. - Artayet took credit for correcting "erroneous" Westinghouse requirement (i.e., +10°F Charpy test temperature). 	<ul style="list-style-type: none"> - Only two procedures were qualified during the time when Artayet was responsible for the qualification of weld coupons. - Artayet himself imposed erroneous Charpy impact test temperature because he did not understand Code and Westinghouse requirements. - Westinghouse welding engineer confirmed that Westinghouse had not imposed requirement as claimed by Artayet. Site welding engineer (Evans) corrected Artayet's error. 	<ul style="list-style-type: none"> - Artayet's lack of understanding of Code and Westinghouse requirements delayed qualifications of WPS's and confused the entire WPS qualification effort. - He failed to obtain timely completion of the WPS's for the project.

¹ As determined by testimony of others and/or the Stier investigation.

ISSUE	ARTAYET MISREPRESENTATION	FACTUAL ACCOUNT ¹	SIGNIFICANCE
<p>IV. Artayet attempted to cover up his performance problems by providing false information to his supervisors (pp. 20-24).</p>	<ul style="list-style-type: none"> - Artayet told Walcutt that he always knew that weld metal DWT's were required. - He told Walcutt he qualified 6 of 8 WPS's. - Artayet told Walcutt that stringent test requirements made WPS qualifications difficult; i.e., +10°F Charpy temperature. - Artayet provided false memoranda to Walcutt, Pardi, and the ALJ. 	<ul style="list-style-type: none"> - Testimony and facts in item II above clearly indicated Artayet did not understand DWT requirements. - In fact only two WPS's were qualified by him. - Artayet himself had imposed +10°F Charpy temperature. 	<ul style="list-style-type: none"> - Artayet knew that there were serious deficiencies in his performance and grossly misrepresented his performance to Walcutt in an effort to protect his position.
<p>V. Review of site WPS's (pp. 24-27).</p>	<ul style="list-style-type: none"> - Artayet testified that he could not review the site WPS's because the site failed to provide him with copies of the WPS's. 	<ul style="list-style-type: none"> - Testimony of Evans and Gorden and completed documented transmittal forms clearly show Artayet received draft and final WPS's. 	<ul style="list-style-type: none"> - Artayet in fact neglected his obligation to assure that MK's procedures were Code-compliant and free of deficiencies.
<p>VI. Attempts to correct procedural deficiencies in the Point Beach WPS's (pp. 28-32).</p>	<ul style="list-style-type: none"> - Artayet testified that he made every attempt to get procedural deficiencies corrected; Artayet blamed Walcutt for not getting corrections implemented. 	<ul style="list-style-type: none"> - Artayet failed to take effective action to correct procedural deficiencies. - Artayet made no attempt to call procedural deficiencies to MK's project or corporate management. 	<ul style="list-style-type: none"> - Artayet failed to perform his single most important duty: to assure MK's WPS's were Code-compliant and free of deficiencies. He was willing to allow procedures with known deficiencies to be used on a steam generator project.
<p>VII. Artayet's alleged mid-December meeting with Pardi (pp. 32-39).</p>	<ul style="list-style-type: none"> - Artayet testified that he had a 2 1/2 hour meeting with Pardi in mid-December 1996 during which he pointed out WPS deficiencies. 	<ul style="list-style-type: none"> - Overwhelming evidence indicates meeting never took place but was fabricated by Artayet. - Pardi's travel records confirm that no meeting took place. - Pardi was unaware of deficiencies until the Hartford Steam Boiler audit. 	<ul style="list-style-type: none"> - Artayet fabricated meeting to try to convince ALJ and others that he made every attempt to correct WPS's and therefore fulfilled his obligations. - When Pardi first learned of deficiencies on January 2, he properly held Artayet responsible. - Artayet's willingness to testify falsely in this regard shows his version of events to be unworthy of belief.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

February 18, 1999

*MHS — Both
do we have the
attachments?
pls
EA 98-081*

EA 98-081

MEMORANDUM FOR: Richard C. Paul, Director
Office of Investigations (OI), Region III

FROM: H. Brent Clayton, Enforcement/Investigations Officer *H. Brent Clayton*
Region III

SUBJECT: FALSE INFORMATION ALLEGEDLY PROVIDED TO THE
OFFICE OF INVESTIGATIONS AND THE DEPARTMENT OF
LABOR ABOUT EMPLOYMENT DISCRIMINATION INVOLVING
THE MORRISON KNUDSEN COMPANY

The staff is currently processing a potential escalated enforcement action (EA 98-081) involving alleged employment discrimination by the Morrison Knudsen (MK) Company at its office in Cleveland, Ohio. The issue was investigated by the Office of Investigations (OI File No. 3-97-013) and testimony was heard by an Administrative Law Judge (ALJ) of the U.S. Department of Labor (97-ERA-34 and ARB 98-016).

A transcribed predecisional enforcement conference was held with MK on January 27, 1999. During that conference, MK representatives alluded that the complainant in the case may have provided false information during testimony before the ALJ and during an interview with OI. The information is more fully described in the enclosed letter from MK's attorney, dated February 12, 1999, and the conference transcript (pp 90-99 and 133-138).

Attachments: As stated

cc w/attachments: RIII:OAC

cc w/o attachments: Office of Enforcement
J. Grobe, RIII
J. Gavula, RIII
B. Berson, RIII
S. Chidakel, OGC
M. Stein, OE

CONTACT: Charles H. Weil
(630) 810-4372

~~PREDECISIONAL INFORMATION, NOT FOR DISCLOSURE WITHOUT THE APPROVAL OF
THE DIRECTOR, NRC OFFICE OF ENFORCEMENT.~~

C/24

From: Charles H. Weil ^{III} ~~III~~ ^{NRC} ~~NRC~~ ^{OE} ~~OE~~
To: Bruce Berson, Maitri Banerjee, Michael Stein, S...
Date: Mon, Mar 1, 1999 7:36 PM
Subject: MORRISON KNUDSEN EMPLOYMENT DISCRIMINATION CASE (EA 98-081)
Place: OEMAIL

As Mike requested, I have sent our attorneys' review of the evidence in the Morrison Knudsen discrimination case to Region III management. I also reminded them that we will need to talk about this evaluation and the supplemental information submitted by MK following the conferences. Additionally, I reminded them that we are awaiting the response from the complainant after reviewing the conference transcribed and MK's rebuttal to the complainant's response. Therefore, we're at least 45 to 60 days away from having a final enforcement panel on this case.

Please call me if you feel an earlier discussion is needed to discuss our attorneys' review and the MK supplemental information, and I will schedule an interim enforcement board.

Note to Maitri:

By letter dated 1/8/99, the NRC informed Wisconsin Electric Power that enforcement action would not be taken against the Point Beach facility. What remains to be done is to make enforcement decisions about the individuals and MK.

Chuck

CC: OEMAIL

C/25

From: Charles Weil *lit lit OE - 01*
To: Bruce Berson, Michael Stein, Richard Paul
Date: Thu, Mar 18, 1999 4:17 PM
Subject: LETTER TO MK COMPLAINANT
Place: OEMAIL

Earlier this afternoon I sent you an "e-mail" with a draft letter to the MK complainant attached to that e-mail and asked for your review and comments. Within the last hour I've talked to the complainant and had to make a slight alteration to the original draft. Please disregard FILE: G:\EICS\98-081.COM and use the attached, G:\EICS\98-081.CO2.

Sorry for any inconvenience, but you now have the latest and greatest. Chuck

CC: Brent Clayton, OEMAIL

Chap

EA 98-081

Mr. Alain Artayet
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(A)]

SUBJECT: MORRISON KNUDSEN PREDECISIONAL ENFORCEMENT CONFERENCE
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-97-013)

Dear Mr. Artayet:

This letter is in reference to your request to be provided with information that Morrison Knudsen Inc. (MK) furnished to the NRC following the January 27, 1999, predecisional enforcement conference (PEC) with MK. We very carefully reviewed your request and concluded that the information would be sent to you. As discussed with you on March 18, 1999, by Mr. Charles H. Weil of the NRC Region III Enforcement Staff, this additional information is being provided with the understanding that you are not required to respond to the NRC. However, should you choose to provide a written response, please return your comments to us within 15 days of receiving this letter.

While this letter, and its enclosure, have not been placed in the NRC's Public Document Room (PDR), you should be aware that the letter and the enclosure are subject to release under the Freedom of Information Act (FOIA). Should a FOIA be received for these documents, the documents will then be placed in the PDR with sections about your personal privacy (*i.e.*, your home address, telephone number, etc.) redacted.

Should you have any questions or comments, please feel free to contact Mr. Weil at telephone numbers 1-800-522-3025 or (630) 810-4372. In Mr. Weil's absence, please contact Mr. H. Brent Clayton, NRC Region III Enforcement Officer at telephone numbers 1-800-522-3025 or (630) 810-4373.

Sincerely,

John A. Grobe, Director
Division of Reactor Safety

Enclosure:
2/12/99 MK Letter

cc w/encl.
Steven D. Bell, Esq.

cc w/o encl.
J. Patrick Hickey, Esq.
Thomas Zarges
Office of Enforcement
S. Chidakel, NRC:OGC

M. Stein, NRC:OE

FILE NAME: G:\EICS\98-081.CO2

To receive a copy of this document, indicate in the box: "C" = Copy w/o att/encl "E" = Copy w/att/encl "N" = No copy

OFFICE	RIII	C	OI:RIII	C	RIII	N	OE	C	RIII	C	RIII	C
NAME	Weil		Paul		Berson		Stein		Clayton		Grobe	
DATE	03/ /99		03/ /99		03/ /99		03/ /99		03/ /99		03/ /99	

OFFICIAL RECORD COPY

March 25, 1999

Regional Administrator
U.S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, IL 60532-4351

Subject: REPLY TO EA 98-081

Dear Regional Administrator:

I was unable to attend the predecisional conference with Morrison Knudsen, due to work commitments. This letter is being sent to state my perspective and clarify some issues brought up during the predecisional conference without repeating statements made by all parties during the DOL hearing process.

In early January 1997, after MK's annual nuclear audit performed by The Hartford Steam Boiler (HSB) Inspection and Insurance Company, my supervisor (Mr. Walcutt, Director of Quality Assurance) requested that I review all of the Point Beach Steam Generating Team, Ltd. (SGT) project WPS and provide him with a report. All of the SGT Ltd. Point Beach (PB) WPSs had been prepared and approved per MK's QA program by Mr. Rusty Gorden, Project Welding Engineer at PB, and Mr. Mike Hendricks, Project Quality Manager at PB who currently is the Corporate Quality Director at MK. My approval of these site-specific welding procedures was not required by MK's QA program, but on November 6, 1996 I had informed Mr. Gorden of deficiencies with the SGT Ltd. project specific PB-WPSs via facsimile. These PB-WPSs were obtained from one of the first distributions to the corporate office. I was surprised to get these first WPSs because Mr. Gorden had previously indicated to me that he would only send PB-WPSs to me as a courtesy. Contrary to Mr. Gorden's comments to me via a follow-up phone call at that time, he elected to ignore my concerns. I discovered this at a later date with further PB-WPS distribution(s) in December within a couple weeks before the HSB audit.

I do not recall a meeting on January 2, of 1997 with Mr. Edleman, nor was I aware of any activities by upper management (including by Mr. Walcutt) to remove me from all Corporate/Group Welding Engineer responsibilities before January 14, 1997. It is important to note that although Mr. Edleman oversaw our department administratively, he was not part of MK's organizational chart for the nuclear QA programs, and he never participated in any nuclear audits. After I finished my report on January 14th, Mr. Walcutt gave it to Mr. Pardi. A few hours later Mr. Walcutt informed me that Mr. Pardi had stated that I "was expendable and Mr. Bingham and Mr. Cepkauskas were not." On that same day my report was also faxed to Mr. Bingham, who was the Project Manager at Point Beach for the SGT Ltd. On January 15, 1997, within 24 hours of releasing my report, I was removed from my Corporate/Group Welding Engineer position and all associated responsibilities. I was not issued a transfer to another project on January 15, 1997. I felt I was being retaliated against because of this report.

C/27

Although I filed an affidavit with Mr. Medlock, the initial OSHA-DOL investigator, he was unable to attend the meeting he had set up with my attorney and me, and never spoke to me in person. He did speak with MK and ruled in their favor. At that point I appealed to present my case.

On February 7, 1997, I was offered a transfer to the Washington Works project in Parkersburg, West Virginia. This was DuPont's largest chemical facility in the country that MK has had since I believe it was 1989 with a maintenance contract. MK currently still has a contract on this DuPont project. I felt I had no other work choices at MK at that time, so I accepted the position, which meant being away from my family during the week. My position there was Area Field Engineer reporting to the Area Project Engineer. Mr. Zarges stated during the conference that while I worked in WV, I was a supervisor of piping systems, provided consultation on welding, and I had a modest staff. This was not true. As you will see in the enclosed organization chart and job description, I was transferred as an Area Field Engineer. I had no staff, was not involved with welding (because 95+% of prefabricated piping systems were mechanically assembled), and was not in a supervisory position. No one reported to me on that project. There was another person in the same position, who worked the night shift. During November 11-22, 1996, I temporarily replaced the MK Welding Supervisor (who was in training) on this DuPont Washington Works project, as I testified during the DOL hearing, but that was not the position I occupied upon my transfer.

On Thursday September 25, 1997, Mr. Garrett (V.P. of Construction in the Industrial/Process Division) called me to ask if I wanted my name to be added to an organizational chart, as a project QC manager, for a bid proposal. This proposal was near completion and was supposed to be submitted by MK to the DuPont Chattanooga project located in Tennessee on Monday, September 29, 1997. No mention was made of bringing me to the Cleveland office because the proposal was due on Monday. My last day at DuPont was Tuesday September 30, 1997. On my last day, no one was available on the project from human resources (and I looked everywhere) to let me know if I was laid-off, fired, or being considered for another transfer. With assistance from my attorney who talked to MK's law firm and my phone call on October 7, 1997 with Mr. Kevin Tobin, Corporate Director of Human Resources, I was finally informed that I was laid-off.

On November 4, 1997 the Administrative Review Board from the U.S. Department of Labor issued the Preliminary Order to reinstate me to my former position as Corporate/Group Welding Engineer with the same terms, conditions and privileges I previously enjoyed. I soon found out that this new situation was not only awkward, but also hostile. I was given my title back, but none of the terms, conditions and privileges was the same. When I returned, MK had two other persons performing my prior job duties, and I was told my new boss was Mr. Pardi, the same person who at the DOL hearing had admitted he was responsible for removing me from my position in the first place. This action alone felt to me like harassment and intimidation, because at that time the other two welding engineers reported to Mr. Walcutt, Group Quality Director, who at that time was still in his same position. When I mentioned this change in my job terms and conditions, the other two welding engineers were both then asked to also report to Mr. Pardi. On November 21, 1997, the QA manual was revised to show this organizational change.

My job duties also were definitely not the same that I previously held. The immediate focus on one of my first assignments given by Mr. Pardi also left me with feelings of further harassment and intimidation by him. This assignment was developing a dissertation on linking inconsistencies and providing insights associated with impact testing under the ASME Nuclear Codes. The same issues had surfaced as a means of contention during the DOL hearing, which showed insensitivity by Mr. Pardi.

MK also contends that my work lacked technical competence. However, I worked for MK for over 9+ years and my annual performance evaluations and feedback from other nuclear and non-nuclear project managers do not reflect this contention. During the hearing, my supervisor, a client representative, and several other co-workers also testified that I was competent at my job. Even after I was removed as corporate/group welding engineer, Mr. Walcutt contacted me at the DuPont site on several occasions for technical welding advice involving a procedure qualification for the Washington Works project. During the Stier, Anderson and Malone (S.A.M) interrogation, a memo written by Mr. Walcutt to Mr. Pardi, was presented to me by S.A.M showing MK withheld favorable information during the DOL hearing about my performance at MK. This was information sent to Mr. Walcutt by one of several MK project managers during an inquiry Mr. Walcutt made in late 1996, as part of my overall evaluation.

I have spent over 23 years dealing with many different aspects of welding. I would like to note that I have a degree in welding engineering from the Ohio State University and that I have been a member of the ASME Section IX subgroup on brazing (including participating in welding procedure/performance qualification and strength of materials code committees) since February 1992.

Mr. Zarges and Mr. Pardi also note during the conference that I have a very limited nuclear background. For the record, I have nuclear experience working hands-on as a pipefitter-welder at several nuclear power plants including Zimmer, Fermi II, Midland, and Perry Unit 1 Nuclear Power Plants while they were under construction during 1978 and 1984 working closely with engineers, supervisors, and inspectors. I worked as an intern for the Test & Operations Support Group of the Nuclear Engineering Department during the start-up phase of the Perry Unit #1 Nuclear Power Plant for the Cleveland Electric Illuminating Company during the summer of 1986. I was responsible for the development of work packages, field engineering, and coordination of craft workers to perform design modifications and corrective maintenance on nuclear systems and components. I worked as a welding engineer trainee for TVA in the Department of Codes, Standards, Welding & NDE in the Division of Nuclear Engineering during the summer of 1987.

As indicated during the S.A.M interrogation, in late 1993 I was responsible for overseeing the MK and Babcock Wilcox Nuclear Technologies (BWNT) first demonstration of the GTAW narrow groove process on carbon steel to verify the ability to comply with ASME Section III welding requirements (including charpy-V notch and weld metal drop-weight testing) as part of the early phase of the Florida Power & Light (FPL) St. Lucie steam generator replacement project. Because of complications (such as unacceptable drop-weight nil-ductility transition temperature selections and noncompliance to several purchase order requests), I declined accepting this demonstration as an

official welding procedure qualification for MK and an official WPS+PQR was never prepared and certified by me.

In 1992, I also developed the "MK & Westinghouse Project Welding Manual" (see enclosure) for use at the Fort St. Vrain Decommissioning Project and I provided many hours of services during the duration of this project. The Westinghouse QA department and the MK project manager were also very happy with my performance and the welding program at the Fort St. Vrain project.

There are several "chilling" events that I feel occurred during this whole process showing MK's insensitivity to 10 CFR 21. I feel dealing with a large corporation, government organizations, and investigative prosecuting attorneys (i.e., NRC and Stier, Anderson and Malone) intimidated many people both in the nuclear and non-nuclear environments at MK. I am aware that many people I knew did not want their names involved in this case for obvious reasons. One witness I had planned to bring in as a character witness from a DuPont project was called by the secretary of MK's legal department and told he was not required to appear as a witness if subpoenaed. When this same person questioned the impact testifying would have on his MK position at the DuPont project, the legal secretary replied "I don't know" and hung up on him. He backed out as one of my witnesses. Another potential witness who had previously worked at Point Beach submitted his resume for a position at MK shortly around the time of the DOL hearing. A friend happened to run into a recruiter that he knew, and was told that this witness would not be considered for employment by an MK executive who reported to Mr. Pardi. In addition, some other people later felt intimidated when they interviewed with Stier, Anderson, & Malone. First, they were contacted by MK's legal department and not directly by the Stier agency. Second, the interviews were performed just two doors down from Tom Zarges' office and around the corner from Mr. Pardi's office, where they were exposed for identification by upper management. In one instance, Mr. Pardi called the other welding engineer up to his office to ask him the name of the person who was sitting in the interrogation room with Ms. Mary Jane Cooper, and unfortunately the person's name was given to Mr. Pardi by this individual.

Mr. Walcutt told me that one of the reasons he was leaving for the Ukraine project was because he did not have the "authority and organizational freedom to perform his duties" as the Director of Quality responsible for the nuclear program under 10 CFR 50 Appendix B. Based on unlawful actions taken against me and statements made during the predecisional conference by Mr. Zarges and Mr. Pardi, MK's upper management violated 10 CFR 50 Appendix B by not allowing me to perform QA functions with sufficient authority and organizational freedom to identify quality problems.

During the S.A.M. investigation I was left with the impression that they did not understand a lot of the technical issues I was trying to explain, especially drop-weight and charpy-V notch impact testing.

Concerning the heat input debate, my clear observations indicated that the SGT Ltd. PB WPS-No. GT-SM/3.3-2PB exceeded the maximum heat input of 64.7 kJ/in for the GTAW process that I had specified on corporate WPS-No. GT-SM/3.3-3. The test data recorded on the supporting PQR-No. GT-SM/3.3-Q2 reflected the actual ranges monitored during welding of the test coupon, and the

64.7 kJ/in. value was actually recorded for bead numbers 32-43 on this PQR. The maximum heat input that I specified on corporate WPS-No. GT-SM/3.3-3 for the GTAW process was based on the actual heat input applied during welding at the location where the charpy-V notch specimens were removed from the test weldment. Project personnel apparently did not agree with this engineering judgement, and elected to use higher heat input values of 67.2 and 73.3 kJ/in recorded on the SGT Ltd. approved PB WPS-No. GT-SM/3.3-2PB. The higher heat input values selected by the SGT Ltd. were not recorded on supporting PQR-No. GT-SM/3.3-Q2. My observation was classified as a Level - IV violation by the NRC in the WEPCO NRC Notice of Violation EA 97-347 "for the failure to perform the steam generator girth weld with a qualified procedure." The NRC added "this is a concern because unqualified welds could result in the subsequent degradation of related pressure boundaries." A letter reflecting these statements was sent by WEPCO to MK and received on April 3, 1998. Shortly thereafter, MK initiated settlement proceedings and requested that I no longer report to the office.

Sincerely,



Alain Artayet

Cc w/enclosure:

Mr. S. Bell, Esq.

Mr. H. Brent Clayton

Mr. James Lieberman

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

RESPONSIBILITIES

The first responsibility of the individuals listed below is to ensure all personnel have the required knowledge, skills and attitude required for a safe working environment.

PROJECT SUPERINTENDENT - Reports to the Project Manager. Directs operations of all Superintendents. Ensures performance of their work. Monitors field performance against Cost / Schedule / Productivity requirements. Leads actions with trade unions in regards to manpower requirements, organization and ensuring quality.

LEAD SUPERINTENDENT - Reports to the Project Superintendent. Helps Assistant Supt. plan work within discipline areas. Reviews design and assists with schedule development in conjunction with the Area Project Engineer. Directs Assistant Superintendents in performance of their weekly tasks and supplies them with design and coordination input. Ensures manpower and tool availability for the Assistant Supt..

ASSISTANT SUPERINTENDENT - Reports to the Lead Superintendent with matrixed responsibility to the Area Project Engineer. Plans and directs day to day activities of manpower and materials in field operations. Directs field operations of crafts through interactions with Foreman and General Foreman. Coordinates activities of Subcontractors with area requirements. Ensures adherence to current quality and project design requirements. Marks-up drawings for existing conditions and progress. Submits daily field reports to Area Team. Assembles Critical Task plans. This position has the primary responsibility for field craft direction and is intended to be in the field as much as possible.

ECU LEAD FIELD ENGINEER - Reports to the Project Manager. Ensures all Field Engineers are working in a consistent manner and meeting project objectives. Reports to and acts as liaison with the Project Manager for all Field Engineers. Has responsibilities as the Field Engineer for his specific area. Assembles Critical Task Plans as required.

ECU FIELD ENGINEER - Reports to the ECU Lead Field Engineer. Responsible for coordination and management for all small projects and Work Orders relating to his area. This includes working with cost & schedule engineer in developing specific controls. Ensures adherence to current quality and project design requirements. Initiates, monitors and controls Field Change Requests and Requests For Information's relating to the area.

AREA PROJECT ENGINEER - Responsible for overall coordination of area construction. Maintains continuous dialogue with plant personnel to ensure required plant / construction coordination. Manages lump-sum contracts with assistance of contracts manager. Responsible for establishing and maintaining project schedule with assistance of project controls scheduler. Ensures adherence to current quality and project design requirements. Coordinates efforts of area superintendents and subcontractors.

Issues all RFI's & FCR's pertaining to the area. Maintains control of the project budget with assistance of the area cost engineer.

AREA FIELD ENGINEER - Reports to the Area Project Engineer. Assists Area Project Engineer in coordinating area construction. Resolves design and construction issues occurring in the field. Ensures project design and quality requirements are being maintained. Formulates plan for specific critical tasks i.e. shut downs and tie in's with assistance from project coordinators, area schedulers, supt.'s and client interfaces.

NIGHT AREA FIELD ENGINEER - Reports to the Area Project Engineer. Assists Area Project Engineer. Resolves design and construction issues occurring in the field. Ensures project design and quality requirements are being maintained. Formulates criteria plan for specific critical tasks, i.e. shut downs and tie in's with assistance from project coordinators, area schedulers, supt.'s and client interfaces.

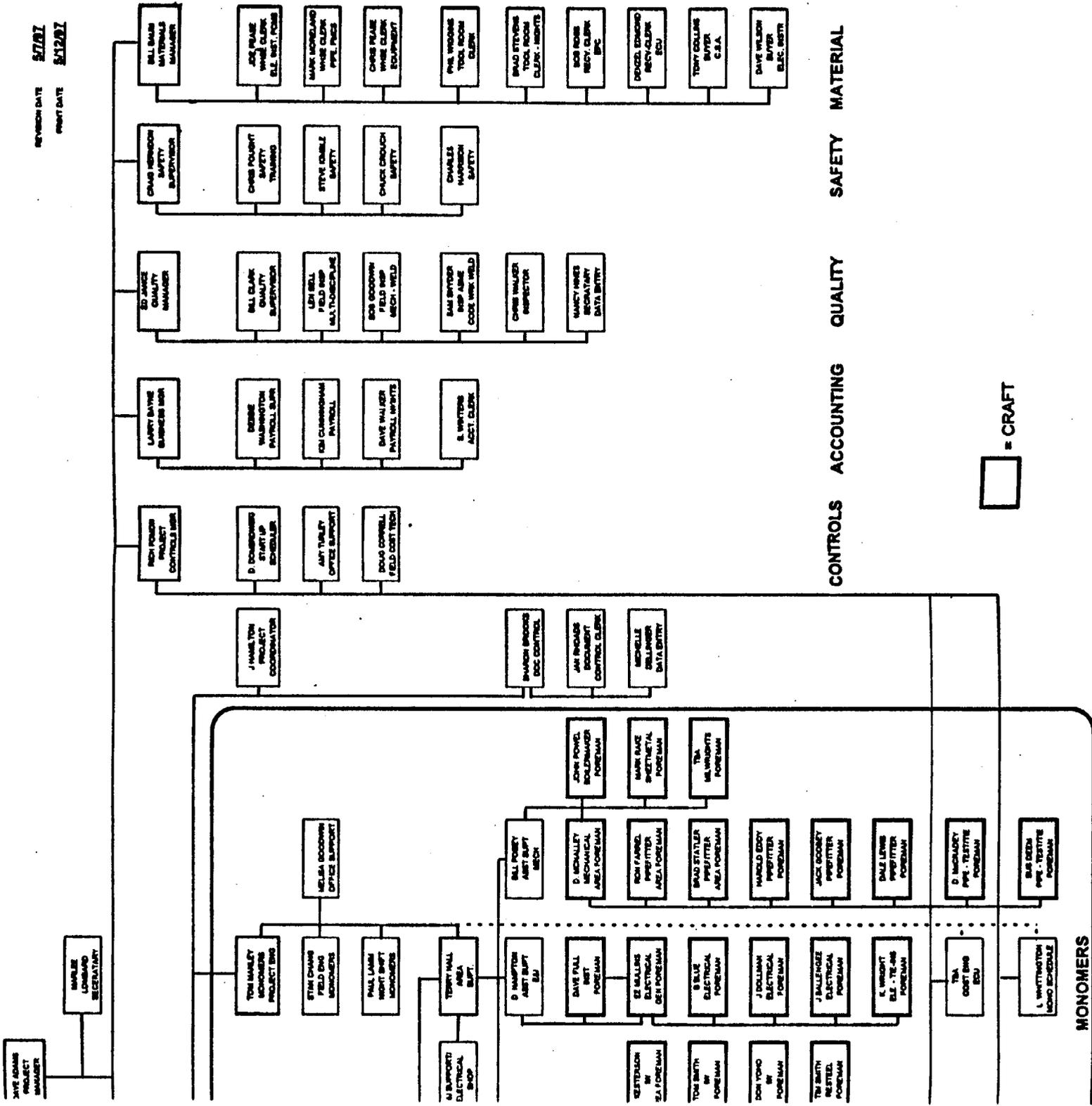
PROJECT COORDINATOR - Reports to the Project Engineering Manager. Assists and Directs area teams, supt. and schedulers in the establishment and control of critical project tasks (i.e. tie in's and shutdowns and start-ups). Works closely with start-up scheduler and Area Teams in determining shut down and start up inter-relationships and sequence. Ensures coordination of project controls with field operations by reviewing and directing project controls for accuracy and relevance to field construction requirements.

PROJECT CONTROLS MANAGER - Reports to the Project Engineering Manager. Responsible for developing work breakdown structure. Providing master and detailed construction schedules. Provides and maintains cost control system; monitoring and analyzing project planning cost and schedule performance, issues weekly field information on status of cost and schedule along with monthly narratives for deviations from schedule. Assumes the lead in preparation of the monthly monitor report.

FIELD DESIGN ENGINEERS - Reports to the Project Engineering Manager. Reviews all home office design for constructability and compliance with field requirements. Takes a lead role in coordinating and informing field supt. and area managers at all design aspects. Reviews all discipline specific RFI's and answers or follow resolution of answers through the Home office design team. Participates in area schedule and coordination efforts. Input to and coordination of site generated POs and contracts along with overseeing specific procurement requirements. Keeps area project engineers aware of design changes for FCR's and schedule maintenance.

PROJECT ENGINEERING MANAGER - Reports to the Project Manager. Maintains and ensures compliance with the functional aspects of the project management program. Has responsibility for the project controls function, major capital project work and the field design engineers. Provides leadership for the Area Project Engineers insuring that we deliver the projects with care, custody and control. The Project Engineering Manager is responsible for problem solving and providing solutions for the Project Manager as opportunities present themselves.

STRUCTION ORGANIZATION





UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

March 25, 1999

EA 98-081

Mr. Alain Artayet
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790(A)]

SUBJECT: MORRISON KNUDSEN PREDECISIONAL ENFORCEMENT CONFERENCE
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-97-013)

Dear Mr. Artayet:

This letter is in reference to your request for information that Morrison Knudsen Inc. (MK) furnished to the NRC by letter dated February 12, 1999. We carefully reviewed your request and concluded that the information would be sent to you. As discussed with you on March 18, 1999, by Mr. Charles H. Weil of the NRC Region III Enforcement Staff, this additional information is being provided with the understanding that you are not required to respond to the NRC. However, should you choose to provide a written response, please return your comments to us within 15 days of receiving this letter.

While this letter, and its enclosure, have not been placed in the NRC's Public Document Room (PDR), you should be aware that the letter and the enclosure are subject to release under the Freedom of Information Act (FOIA) following the completion of the NRC enforcement process. Should a FOIA request be received for these documents, the documents will then be placed in the PDR with exempt material, such as your home address and telephone number, removed.

Should you have any questions or comments, please feel free to contact Mr. Weil at telephone numbers 1-800-522-3025 or (630) 810-4372. In Mr. Weil's absence, please contact Mr. H. Brent Clayton, NRC Region III Enforcement Officer at telephone numbers 1-800-522-3025 or (630) 810-4373.

Sincerely,

A handwritten signature in cursive script that reads "John A. Grobe".

for John A. Grobe, Director
Division of Reactor Safety

Enclosure: Morrison Knudsen's letter, dated February 12, 1999

cc w/encl: Steven D. Bell, Esq.

cc w/o encl: J. Patrick Hickey, Esq.
Thomas Zarges
Office of Enforcement
S. Chidakel, NRC:OGC
M. Stein, NRC:OE

C/28



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

March 25, 1998

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EA 98-081

Mr. Thomas H. Zarges
President and Chief Executive Officer
Engineering and Construction Group
Morrison Knudsen Corporation
1500 West 3rd Street
Cleveland, OH 44113

**SUBJECT: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS
(U. S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 and ARB 98-016)
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-97-013)**

Dear Mr. Zarges:

This is in reference to an apparent violation of NRC requirements prohibiting discrimination against employees who engage in protected activities (i.e., 10 CFR 50.7). The apparent violation involves the Morrison Knudsen Corporation (MK) discriminating against one of its employees at the MK corporate office in Cleveland, OH. At the time of the apparent violation, MK was involved in the replacement of steam generators at the Wisconsin Electric Power Company's (WEPCo) Point Beach nuclear plant. This apparent violation was discussed with Margaret Cunningham of your staff on March 16, 1998 and Lou Pardi on March 17, 1998.

The apparent violation is based on findings from a U.S. Department of Labor (DOL) proceeding (97-ERA-34). The presiding Administrative Law Judge (ALJ) in the DOL proceeding found, in a Recommended Decision and Order issued on October 28, 1997, that MK's removal of the complainant from his position as group welding engineer (GWE) and his subsequent reassignment to an "inferior job" constituted an adverse employment action. Further, the removal of complainant from the position as GWE within 24 hours after he engaged in protected conduct (his findings concerning weld procedures used by MK at the Point Beach plant) raises the inference as a matter of law that his removal was in retaliation for his protected activities. The DOL ALJ's Recommended Order required MK to reinstate the complainant to the position of GWE at MK's office in Cleveland, OH, and the complainant be given the same compensation, terms, conditions, and privileges as he previously had as GWE. In a Preliminary Order, issued on November 4, 1997, the DOL Administrative Review Board (ARB) (ARB Case No. 98-016) confirmed the findings and order of the DOL ALJ. Copies of the DOL ALJ's Recommended Decision and Order and the DOL ARB's Preliminary Decision are enclosed (Enclosures 1 and 2).

The NRC Office of Investigations (OI) also investigated this matter (OI Case No. 3-97-013,) and reached the same conclusion as the DOL. Enclosure 3 is the synopsis of the OI report.

C/29

The NRC staff's review of the DOL and OI findings indicate that the action taken against this individual was in apparent violation of 10 CFR 50.7. Therefore, this apparent violation is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 (Enclosure 4). The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review.

A transcribed predecisional enforcement conference to discuss this apparent violation has been scheduled for April 16, 1998. The NRC requests that you and Messrs. Lou Pardi, Drew Edleman, and Andy Walcutt be present at the conference. Since the performance of MK employees will be discussed during the conference, the conference will be closed to public observation. However, the NRC licensee, WEPCo, has been requested to attend. In addition, the NRC's Enforcement Policy, as amended by, Policy and Procedure for Enforcement actions: Policy Statement, 62 FR 13906 (March 24, 1997), permits the employee or former employee who was the subject of the alleged discrimination to participate in the conference. Accordingly, the complainant will be invited to attend the conference. He may participate by observing the conference and if desired, following the presentations by MK and WEPCo, make a presentation to address his view on why he believes discrimination occurred and his views on the other presentations. Morrison Knudsen and WEPCo will then be afforded an opportunity to respond, and the NRC may ask some clarifying questions. In no case will the NRC staff permit you or the individual to cross-examine or question each other.

Following the conference with MK and the WEPCo, Messrs. Pardi, Edleman, Walcutt, and you will be invited to hold individual, transcribed, predecisional enforcement conferences with the NRC if any of you wishes to make the NRC aware of any additional information. Should these conferences be requested, they will be held on the afternoon of April 16, 1998, and each will involve only the individual, the individual's counsel (if represented) and the NRC.

The decision to hold an enforcement conference does not mean that the NRC has made a final determination on enforcement action in this case. While the NRC normally relies on the DOL's findings in determining whether a violation occurred when such findings are based on an adjudicatory proceeding, the conference is being held to obtain any additional information that will enable the NRC to make an informed enforcement decision. In addition, the conference is an opportunity for MK to provide its perspectives on: 1) the severity level of the apparent violation; 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy; and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

We note that MK was the subject of a previous NRC escalated enforcement action (EA 95-079). That enforcement action was issued on August 14, 1995, and concerned a Severity Level II violation of 10 CFR 50.7 by MK at the Fort St. Vrain nuclear plant. By letter dated September 13, 1995, MK responded to that violation and provided a description of the

corrective actions taken to prevent recurrence of a similar violation in the future. In this regard, the NRC requests that MK be prepared to address why its actions in response to the previous employment discrimination violation were not effective in precluding the action taken against the complainant in the current matter. Also enclosed for the information of MK and its employees are copies of NRC Information Notice No. 98-04, "1997 Enforcement Sanctions for Deliberate Violations of NRC Employee Protection Requirements" (Enclosure 5), and NRC Policy Statement "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," (Enclosure 6).

While we recognize that MK has appealed the DOL ALJ's decision in this case, the NRC must review this matter to determine whether a violation of 10 CFR 50.7 may have occurred. Such a violation, if it occurred, could have a chilling effect on other MK employees in that it might deter them from identifying any nuclear safety related concerns they may have.

In addition, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, in order for the Commission to determine whether regulatory action needs to be taken pending a determination as to whether enforcement action is to be taken for the issues to be discussed at the conference, and to ensure compliance with NRC regulatory requirements, you are required to provide this office, within 30 days of the date of this letter, or if possible before the April 16, 1998 conference, a response in writing and under oath or affirmation that describes actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within your organization.

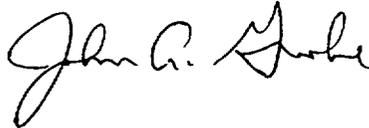
In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the required written response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding

Mr. T. H. Zarges

- 4 -

confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Grobe". The signature is fluid and cursive, with the first name "John" being the most prominent.

John A. Grobe, Director
Division of Reactor Safety

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR -27

Enclosures: 1. ALJ's Recommended Decision and Order
2. ARB's Preliminary Order
3. OI Report Synopsis
4. NRC Enforcement Policy
5. Information Notice 98-04
6. NRC Policy Statement

cc w/enclosures (1-6):
L. Pardi
D. Edleman
A. Walcutt

Mr. T. H. Zarges

- 5 -

cc w/enclosures (1 - 3):

R. Grigg, President and

Chief Operating Officer, WEPCo

S. Patulski, Site Vice President

Point Beach Nuclear Plant

A. Cayia, Plant Manager

B. Burks, P.E., Director

Bureau of Field Operations

Cheryl L. Parrino, Chairman,

Wisconsin Public Service Commission

State Liaison Officer

NRC Office of Enforcement

J. Goldberg, OGC

B. Boger, NRR

C. Carpenter, NRR

L. Gundrum, NRR

R. Medlock, Area Director,

OSHA Cleveland Area Office

bcc w/o enclosures:

Region III Office Allegation Coordinator

(AMS No. RIII-1997-A-0035)

U.S. Department of Labor

OCT 28 1997

Office of Administrative Law Judges
Seven Parkway Center
Pittsburgh, Pennsylvania 15220



CASE NO. 97-ERA-34

In the Matter of

ALAIN ARTAYET

Complainant

v.

MORRISON KNUDSEN CORPORATION

Respondent

Appearances:

Steven D. Bell, Esq.

Lynn R. Rogozinski, Esq.

For the Complainant

Keith A. Ashmus, Esq.

Heather L. Areklett, Esq.

For the Respondent

BEFORE: DANIEL L. LELAND

Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851, which prohibits Nuclear Regulatory Commission Licensees from discharging or otherwise discriminating against an employee who has engaged in activity protected under the Act. Alain Artayet (complainant) filed a complaint under the Act on February 18, 1997, which was investigated by the Occupational Safety and Health Administration and found to be without merit. Complainant made a timely request for a hearing before an administrative law judge, and a hearing was held before the undersigned in Cleveland, Ohio on June 11 and 12, 1997. Complainant's exhibits (CX) 5, 6, 12, 20, 26, 51, 52, and 53, and respondent's exhibits (RX) A-L were admitted into evidence. At the close of the hearing the parties were given sixty days to submit briefs, and the due date for filing briefs was later extended to September 22, 1997. Both parties filed timely briefs.

Summary of the Evidence

Complainant holds a Bachelor of Science Degree in Welding Engineering from Ohio State University and began working at Morrison Knudsen Corporation (respondent) in June 1988 as a Corporate Welding Engineer, also called Group Welding Engineer (GWE). (TR 33) Respondent is an international engineering and construction company which performs work on nuclear power plants among others. The GWE is located in respondent's Quality Assurance Department. (TR 33) The head of the Quality Assurance Department is Tom Zarges, the Division Executive is Lou Pardi, and the Group Quality Director is Andrew Walcutt, complainant's immediate superior. (TR 35; CX 52) The quality assurance program is required by 10 CFR 50. (TR 34) In 1995, respondent and Duke Engineering Services formed a company called SGT Ltd. which replaces steam generators at nuclear power plants and which has its own quality assurance program. (TR 38; CX 53) The president of SGT Ltd. is Martin Cepkauskas and the Group Quality Director is Andrew Walcutt to whom complainant reported. (TR 39) As GWE, complainant was responsible for oversight of the activities of Project Welding Engineers (PWE) and qualifying welding procedures. (TR 41)

In 1995, SGT Ltd. was awarded a contract to replace two steam generators at the Point Beach Unit Two nuclear power plant in Two Rivers, Wisconsin. (TR 43) The project required a large amount of welding. (TR 44) In May 1996, Max Bingham, the project manager, asked complainant to help develop the welding procedures to be used at Point Beach. (TR 45-46) Bingham wanted complainant to delegate the qualification of the welding procedures at Point Beach to the PWE, Eugene "Rusty" Gorden. (TR 46) Qualification of welding procedures was the function of the GWE. (TR 60-63) Complainant at first refused because he was unfamiliar with Gorden's technical capabilities. (TR 47) Complainant then began the process of qualifying the welds at a site in Memphis, Tennessee in May or June 1996. (TR 49) In July 1996, Bingham again asked complainant to delegate qualification of the welds at Point Beach to Gorden and complainant's refusal to do so angered Bingham. (TR 50-51) Complainant then acquiesced in the delegation of the remaining welds which Gorden accomplished in Chicago. (TR 53)

Complainant emphasizes that the PWE, not the GWE, was responsible for developing the site-specific welding procedures to be used at Point Beach. (TR 55, 65-66; see also CX 51; RX C 1, p. 1; § 9.2.5) The GWE was responsible for submitting generic welding procedures to the PWE who tailored them to the needs at Point Beach. (TR 55) Gorden was supposed to send the site-specific welding procedures to complainant for review but he failed to do so despite complainant's request to see them. (TR 56-57) At the end of October 1996, complainant for the first time reviewed the site-specific welding procedures written by Gorden and found five of them to be unacceptable. (TR 57) On November 6, 1996, complainant sent a fax to Gorden identifying the deficient welding procedures and calling Gorden's attention to the codes of the American Society of Mechanical Engineers. (TR 58-60; CX 6) Gorden, however, ignored complainant's comments. (TR 62) Complainant stated that he informed Walcutt of the problems in the welding procedures for Point Beach but Walcutt felt that as the Hartford Insurance Company audit was coming up on December 30-31, 1996, nothing should be done to correct the problems. (TR 70)

(Walcutt denies that complainant informed him of the welding deficiencies at Point Beach or that Walcutt told him to take no action. (TR 247)). Complainant's offer to work with Gorden to remedy the welding problems was also assertedly rejected. (TR 71)

During the week of December 16, 1996, complainant states that Pardi met with him and removed him from nuclear responsibilities for steam generator replacement citing complainant's personality conflicts with Cepkauskas and Bingham. (TR 72) (Pardi denied that this meeting ever took place or that he removed complainant from his supervision of welding at nuclear power plants at this time. (TR 163)) Walcutt asked complainant to prepare for the upcoming Hartford audit and complainant informed him that the audit would reveal deficiencies in the welding procedures at Point Beach. (TR 75-76) The audit was performed on December 30-31, 1996, and on January 6, 1997, Hartford issued a report finding fault with the Point Beach welding procedures. (TR 76-77, 79-80; RX D 1) Upon reading the audit report Walcutt asked complainant to review all the welding procedures for Point Beach. (TR 80) Complainant reviewed the Point Beach welding procedures and wrote an eight page report which he gave to Walcutt on January 14, 1997 who in turn delivered a copy to Pardi and Bingham. (TR 80-81; see CX 12) On the morning of January 15, Walcutt also asked complainant to prepare a report on the welding procedures at the D. C. Cook project. (TR 83-84) Complainant informed Walcutt that there were deficiencies in the D. C. Cook project which were similar to those at Point Beach. (TR 85-86)

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Later on the morning of January 15, complainant was summoned to the office of Drew Edleman, complainant's administrative superior, who told complainant that he was being removed from the GWE position because of personality conflicts with Cepkauskas and Bingham. (TR 86) After his removal as GWE complainant continued to work on his report on D. C. Cook and submitted a report on the welding deficiencies at that facility on January 22, 1997. (TR 87, 264-267; CX 20) Complainant was transferred to Parkersburg, WV on February 7, 1997 as an area field engineer on the night shift. (TR 88) Since that date, he has been living away from his family in Cleveland and has been unable to participate in his children's school activities. (TR 88) Complainant has incurred approximately \$10,000 in attorney fees in connection with this litigation. (TR 89)

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Louis E. Pardi, whose title is executive vice president of respondent's Power Division, testified that he relied on the complainant to be respondent's welding expert in all matters, particularly qualification of welds, development of corporate welding procedures, and solving welding problems that arose on specific sites. (TR 156, 159) He recalled being told that there was friction between complainant and project personnel at Point Beach regarding qualification of welds and specific welding requirements. (TR 159-160) Pardi remembered seeing a memo from the complainant that drop weight testing was not required at Point Beach which is contrary to what he stated about the D. C. Cook project. (TR 161) In his testimony, Cepkauskas also mentioned the friction between complainant and site personnel and the memo regarding drop weight testing and that he informed Pardi of this. (TR 146, 147) Neither Pardi nor Cepkauskas could produce the memo and Pardi admitted that he had not read the memo. (TR 150, 190) After

being informed of the welding deficiencies found in the Hartford audit, Pardi decided to remove complainant as GWE. (TR 161) As complainant was not in Pardi's chain of command, Pardi told Edleman about the findings in the audit, and after rejecting the idea of relieving complainant only of his jurisdiction over nuclear facilities, they decided to relieve complainant of his duties as GWE. (TR 163-164) The final decision to terminate complainant was made on January 15. (TR 164; see also TR 204-206) Complainant's memorandum regarding Point Beach was considered when the decision was made. (TR 196-197) Pardi averred that the decision to remove the complainant was based on his friction with the project personnel, his determination not to use drop weight testing, and the Hartford audit. (TR 165-166)

Andrew Walcutt is the Group Quality Director for the respondent and was complainant's supervisor. (TR 235-236) He stated that the GWE is responsible for development of the corporate welding program, adherence to the welding codes, providing technical advice to project personnel, and qualification of welding procedures. (TR 236) He recalled a meeting complainant and he had with Gorden in November or December 1995 where an agreement had been reached between complainant and Gorden, but complainant changed his mind the next day. Walcutt told complainant that he should not go back on his word. (TR 237-238) Walcutt also referred to a meeting in July 1996 among Bingham, complainant and himself in which Bingham expressed dissatisfaction with complainant's performance, particularly his delegation of qualifying welds to some one who was not working at Point Beach. (TR 241-242) In the Fall of 1996, Pardi told Walcutt that he had lost confidence in complainant because he failed to recommend drop weight testing. (TR 242-243) Walcutt later found, however, that complainant had not taken this position. (TR 243-244, 281-282) Walcutt also stated that the failure of the welds in Memphis was caused by a discrepancy in testing requirements and was not solely complainant's fault. (TR 244-245) The witness denied that complainant told him that Gorden had failed to respond to his criticisms of the site-specific welds at Point Beach, or that he ordered complainant not to remedy any deficiencies. (TR 247)

Following the Hartford audit, Walcutt instructed complainant to review all the site-specific welding procedures at Point Beach. (TR 250) On January 28, 1995, Walcutt wrote a memo to Tom Zarges (RX D) stating in part that the errors found in the audit could have been prevented by effective communication between the GWE and the PWE. (TR 254) Complainant was not solely responsible for the problems found by the audit and Gorden also contributed to the breakdown in communications. *Id.* Walcutt recommended that Gorden be replaced as PWE. (TR 254-255) The witness was told by complainant that D. C. Cook had similar problems to those at Point Beach, but he did not ask complainant to investigate D. C. Cook. (TR 256) No mention of complainant's review of the D. C. Cook project was made to Pardi, Edleman, or Zarges. (TR 256-257) Walcutt acknowledged that complainant's reassignment to Parkersburg occurred after he wrote the memo about D. C. Cook, but he denies that there was any connection. (TR 261, 265, 266-267)

Gorden developed the site specific welding procedures for Point Beach and in so doing he changed the corporate welding procedures, which was a violation of respondent's quality

assurance program. (TR 270-272) Walcutt told Pardi and Cepkauskas that the problems in Point Beach's welding procedures identified by complainant were not his fault. (TR 274) Complainant always performed competently and professionally as a welding engineer, but had problems communicating. (TR 275) The only valid reason to remove complainant from his position was his failure to communicate with the project team. (TR 294) This problem was not mentioned, however, in complainant's evaluation in December 1996. (See RX G; see also TR 231-232)

Findings of Fact and Conclusions of Law

42 U.S.C. § 5851 provides that:

- (1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee...
 - (A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954;
 - (B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;
 - (C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;
 - (D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, ... or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;
 - (E) testified or is about to testify in any such proceeding or;
 - (F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purpose of the Atomic Energy Act of 1954, as amended.

To establish a prima facie case of discrimination under § 5851, the complainant must show: (1) his employer is subject to the Act; (2) the complainant engaged in protected activity; (3) the complainant was subject to adverse employment action; (4) his employer was aware of the protected activity when it took the adverse action, and (5) an inference that the protected activity was the likely reason for the adverse employment action. *Zinn v. University of Missouri*, 93-ERA- 34 and 36 (Sec'y, January 18, 1996). See also *Carroll v. U. S. Dept. of Labor*, 78 F. 3d

352 (8th Cir. 1996). If the complainant proves a prima facie case, the burden of production shifts to the employer to articulate a legitimate nondiscriminatory reason for the adverse action. *Carroll*, 78 F. 3d at 356. Where the employer articulates a legitimate nondiscriminatory reason for the adverse action, the complainant has the ultimate burden of persuading that the reasons articulated by his employer were pretextual, either by showing that the unlawful reason more likely motivated the employer or by showing that the proffered explanation is unworthy of credence. *Nichols v. Bechtel Construction Co.*, 87-ERA-44 (Sec'y, October 26, 1992), *Carroll*, *supra*, *Kahn v. U. S. Secretary of Labor*, 64 F. 3d 271, 278 (7th Cir. 1995).

Complainant alleges three separate adverse employment actions taken as a result of his protected activity: (1) his removal from jurisdiction over nuclear power plants in December 1996 as a result of his finding of welding deficiencies at Point Beach, (2) his removal as GWE on January 15, 1997 resulting from his January 14, 1997 report on the Point Beach welding problems, and (3) his reassignment to Parkersburg, WV following his report on the flaws in the welding procedures at D. C. Cook. It is necessary to determine if complainant has made a prima facie case as to each of these incidents.

Respondent concedes that is subject to the Act. Moreover, complainant's performance of quality assurance functions constitutes protected activity under the Act. See *Mackowiak v. University Nuclear Systems, Inc.*, 735 F. 2d 1159, 1163 (9th Cir. 1984), *Bassett v. Niagara Mohawk Power Co.*, 86-ERA-2 (Sec'y, July 9, 1986). With regard to the first allegation of retaliation, Pardi denied that a meeting with complainant took place in December 1996 in which he removed him from his nuclear responsibilities and his version is supported by the testimony of Edleman and Walcutt. Assuming that Pardi did remove complainant from jurisdiction over nuclear power plants and that this constitutes adverse employment action, the evidence is not persuasive that Pardi knew about complainant's protected activity prior to the meeting and that his removal was in retaliation for his protected activity. I reach the same conclusion regarding complainant's report on the D. C. Cook project. Walcutt credibly testified that he never told Zarges, Pardi, or Edleman of complainant's report on the welding deficiencies at D. C. Cook, and therefore, his reassignment to Parkersburg could not have been in retaliation for his report. Therefore, complainant has failed to make out a prima facie case with regard to these two incidents.

I reach a different conclusion with regard to complainant's removal as GWE and subsequent reassignment to Parkersburg. Respondent argues that Pardi and Edleman had already decided to replace complainant as GWE before they were aware that he drafted the report on the Point Beach welding deficiencies on January 14, but I do not find Pardi's testimony to be credible on this point. Furthermore, the adverse employment action, i.e., complainant's actual removal from his position as GWE, did not take place until January 15, one day after Pardi was given the report on Point Beach. Therefore, I find that respondent was aware of complainant's protected activity when he was replaced as GWE. Respondent also maintains that complainant's removal as GWE and reassignment to a different position in Parkersburg was not an adverse employment action because he was not discharged and there was no decrease in pay. However, complainant's

new position in Parkersburg as an area field engineer does not have the corporate responsibilities involved in his prior position as GWE and is clearly less prestigious. See *DeFord v. Secretary of Labor*, 700 F. 2d 281, 287 (6th Cir. 1983). See also *McMahan v. California Water Quality Control Board, San Diego Region*, 90-WPC-1 (Sec'y, July 16, 1993), in which it was held that a transfer was an adverse action in that it prevented the complainant from performing supervisory duties and field enforcement which he preferred. Respondent also argues that "relocation is a way of life" at Morrison Knudsen and that respondent maintains facilities much further from Cleveland than Parkersburg to which complainant could have been reassigned. The fact that complainant could have been sent to more remote locations has no significance, however, as complainant's reassignment from Cleveland to Parkersburg has clearly inconvenienced him and separated him from his home and family in Cleveland. I therefore conclude that complainant's removal as GWE and his subsequent reassignment to an inferior job in Parkersburg constitute adverse employment action. Finally, complainant's removal from the position as GWE within twenty four hours after he engaged in protected conduct raises the inference as a matter of law that his removal was in retaliation for his protected activity. *Couty v. Dole*, 886 F. 2d 147, 148 (8th Cir. 1989). Complainant has therefore made out a prima facie case.

Respondent has cited as the reasons for complainant's removal and reassignment his overall performance as GWE, more specifically his recommendation that drop weight testing not be used, the deficiencies found in the Hartford audit, and his friction with on-site personnel. Complainant therefore has the burden of proving that these reasons are pretextual. *Kahn*, 64 F. 3d at 278.

The drop weight testing excuse clearly lacks credibility. Pardi testified of seeing a memo shown to him by Cepkauskas regarding the drop weight testing but could not recall the content of the memo. Cepkauskas was unable to produce the memo. Walcutt testified that complainant had never recommended that drop weight testing not be used thereby indicating that Pardi's asserted loss of confidence in complainant was based on an erroneous premise. Pardi also blamed the welding defects noted in the Hartford audit on complainant, but Walcutt, who has far more technical knowledge than Pardi regarding the welding requirements, stated that Gorden was responsible for these errors as it was his obligation to develop the site-specific welding procedures. Gorden actually changed the corporate welding procedures complainant had sent him in violation of the respondent's quality assurance program. When complainant discovered the unacceptable welding specifications devised by Gorden, he informed him of the deficiencies and tried without success to have Gorden remedy them. Moreover, Walcutt informed Pardi that the deficiencies cited in the audit were not complainant's fault, which indicates that Pardi knew that complainant was not to blame and removed him anyway. Walcutt stated that complainant always acted in a competent and professional manner as a welding engineer. Thus the first two articulated reasons for removing complainant are clearly pretextual.

Walcutt asserted that the only valid reason for removing complainant as GWE was his failure to communicate with project personnel. Initially, I find it difficult to accept that complainant would be relieved of his duties for this relatively insignificant reason. There is

certainly no evidence in the record that this so called "friction" with on site personnel was so persistent or egregious that it affected the efficiency of respondent's construction work. It would also appear that the cause of much of the "friction" was complainant's insistence on not delegating the qualification of the welds to Gorden, whose competence he questioned, apparently with good reason. Some of the "friction" also resulted from complainant's strict adherence to the standards in respondent's quality assurance program and the natural tension that may have taken place with the project personnel who were attempting to adhere to precise schedules. As the court in *Mackowiak* observed, "contractors regulated by § 5851 may not discharge quality control inspectors because they do their job too well." *Mackowiak*, 735 F. 2d at 1163. Finally, I note that Walcutt did not discuss complainant's communication problems in the performance evaluation completed in December 1996 only twenty-three days before he was removed as GWE allegedly for this reason. If complainant's failure to communicate had been such a serious problem, it would have been cited in his performance appraisal. Therefore, I conclude that this purported reason was also pretextual.

As complainant has made out a prima facie case and proven that respondent's purported reasons for the adverse employment action were pretextual, I conclude that respondent has violated § 5851. Complainant is therefore entitled to reinstatement to his position as GWE and reimbursement for attorney fees.

Recommended Order

Morrison Knudsen Corporation is ORDERED to:

(1) Reinstate complainant to the position of Group Welding Engineer at its office in Cleveland, Ohio and to the same compensation, terms, conditions, and privileges of employment he previously had, and

(2) Reimburse complainant for the reasonable cost of attorney fees he has expended in pursuing his complaint.

Within thirty (30) days of the date of this decision and order, complainant's counsel shall submit a fully supported fee application detailing his hourly fee, the number of hours expended on this proceeding, and any associated litigation expenses. Respondent will have fifteen (15) days to respond with any objections.



DANIEL L. LELAND

Administrative Law Judge

NOTICE: This Recommended Decision and Order and the administrative file in this matter will be forwarded for final decision to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. The Administrative Review Board was delegated jurisdiction by Secretary Order dated April 17, 1996, to issue final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. *See* 61 Fed. Reg. 19978 and 19982 (1996).

SERVICE SHEET

Case Name: ALAN ARTAYET
Case Number: 97-ERA-034
Title of Document: RECOMMENDED DECISION AND ORDER

I hereby certify that on OCT 28 1997 a copy of the above-entitled document was mailed to the following parties:


LAURA ANN BROWN
Legal Technician

UNITED PARCEL SERVICE

Administrative Review Board
United States Department of Labor
Room S-4309, Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, DC 20210

CERTIFIED MAIL

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Keith A. Ashmus, Esq.
Heather L. Areklett, Esq.
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REGULAR MAIL

Associate Regional Solicitor
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Cleveland, OH 44199

REGULAR MAIL

Administrator, ESA
Wage and Hour Division, US DOL
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Washington, DC 20210

Rob Medlock, Area Director
OSHA, Cleveland Area Office
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Cleveland, OH 44199

Barry J. Harber, District Director
U.S. Department of Labor
AJC Federal Office Building
1240 East Ninth Street, Room 817
Cleveland, OH 44199

Deputy Associate Solicitor
Division of Fair Labor Standards
Office of the Solicitor
U.S. DOL, Room N-2716
200 Constitution Avenue, NW
Washington, DC 20210



In the Matter of:

ALAIN ARTAYET,

ARB CASE NO. 98-016

COMPLAINANT,

(ALJ CASE NO. 97-ERA-34)

v.

DATE: NOV 4 1997

MORRISON KNUDSEN CORPORATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**NOTICE OF REVIEW
AND
ORDER ESTABLISHING BRIEFING SCHEDULE
AND
PRELIMINARY ORDER**

The Recommended Decision and Order (R. D. and O.) issued on October 28, 1997 by the Administrative Law Judge (ALJ) has been transmitted to the Board for review. The following briefing schedule is established in this case. Respondent may file an initial brief, not to exceed 30 double spaced typed pages, on or before **December 3, 1997**. Complainant may file a reply brief, not to exceed 30 double spaced typed pages, on or before **January 2, 1998**. Respondent may file a rebuttal brief, exclusively responsive to the reply brief and not to exceed 10 double spaced typed pages, on or before **January 20, 1998**.

All pleadings are expected to conform to the page limitations and should be prepared in Courier 12 point, 10 character-per-inch type or larger, with minimum one inch left and right margins and minimum 1¼ inch top and bottom margins, printed on 8½ by 11 inch paper.

An original and four copies of all pleadings and briefs shall be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4309, Washington, D.C., 20210 (Telephone Number, 202-219-4728; Facsimile Number 202-210-0215)

PRELIMINARY ORDER

As noted, on October 28, 1997, the ALJ issued the R. D. and O. in this case arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (Supp. IV 1992), as amended by the Comprehensive National Energy Policy Act of 1992 (CNEPA), Pub. L. No. 102-486, 106 Stat. 2776, 3123. The ALJ found that Respondent had violated § 5851 and that Complainant is entitled to both reinstatement to his former position and reimbursement for attorney fees..

The following preliminary order is hereby entered:

Respondent shall reinstate Complainant to the position of Group Welding Engineer at its office in Cleveland, Ohio at the same compensation, terms, conditions, and privileges of employment which Complainant had previously enjoyed, and

Following the procedures described in the ALJ's R. D. and O., Respondent shall reimburse Complainant for reasonable attorney fees and costs which were expended in the pursuit of this complaint.

SO ORDERED.



DAVID A O'BRIEN
Chair



KARL J. SANDSTROM
Member



JOYCE D. MILLER
Alternate Member

SYNOPSIS

This investigation was initiated on March 13, 1997, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if the former Corporate Welding Engineer (CWE) for Morrison Knudsen Corporation had been discriminated against for raising safety concerns.

Based on the evidence developed during the investigation, it is concluded that there is sufficient evidence to substantiate the alleged employment discrimination against the former CWE.

March 26, 1999

Regional Administrator
U. S. Nuclear Regulatory Commission
Region III
801 Warrenville Road
Lisle, IL 60532-4351

Subject: REPLY TO EA 98-081 (ADDITIONAL ATTACHMENT)

Dear Regional Administrator:

I have enclosed a copy of the cover page from the Fort St-Vrain Welding Manual, which I had listed as an enclosure on page 4 of my March 25, 1999 reply to EA 98-081. I inadvertently left this out with my original reply. Please include this with the Washington Works job description and organizational chart attachments of the subject reply. If you have any further questions, please contact me.

Sincerely,



Alain Artayet

Cc w/enclosure:
Mr. S. Bell, Esq.
Mr. H. Brent Clayton
Mr. James Lieberman

CERTIFIED MAIL
RECEIPT ACKNOWLEDGMENT OBTAINED VIA INTERNET

C/30



MORRISON KNUDSEN CORPORATION
MK-FERGUSON GROUP

PROJECT WELDING MANUAL FORT ST-VRAIN (C-3906)

COVER PAGE

MORRISON KNUDSEN CORPORATION
MK-Ferguson Group

AND

WESTINGHOUSE ELECTRIC CORPORATION
Nuclear & Advanced Technology Division

WESTINGHOUSE TEAM DECOMMISSIONING PROJECT WELDING MANUAL

First Issue
9-10-92

Prepared by: Alain Artayet
A. S. Artayet
MK-Ferguson Group Welding Engineer

Approved by: W. J. Hug
W. J. Hug
Westinghouse Team Operations Manager
(MK-Ferguson Group Project Manager for FSV)

M. S. Kachun
M. S. Kachun
Westinghouse Team Lead Site QA Engineer



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

April 8, 1999

EA 98-081

Mr. Thomas H. Zarges
President and CEO
Morrison Knudsen Corporation
MK Ferguson Plaza
1500 West Third Street
Cleveland, OH 44113-1406

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE

Dear Mr. Zarges:

This refers to our letter dated April 1, 1999, which forwarded to Morrison Knudsen Corporation (MK) two letters from the complainant in a pending enforcement action involving an apparent violation of 10 CFR 50.7, "Employee Protection." The letters concerned the complainant's review of the transcripts of the predecisional enforcement conference (PEC) held with MK on January 27, 1999. In sending the complainant's letters to MK, we forgot to include a copy of the PEC transcript for MK. Please excuse our oversight and we are sorry for any inconvenience caused by that omission.

MK is not required to respond to this letter. However, should you choose to provide a written response, please return your comments to us within 15 days of receiving this letter.

While this letter, and its enclosure, have not been placed in the NRC's Public Document Room (PDR), you should be aware that the letter and the enclosure are subject to release under the Freedom of Information Act (FOIA) following the completion of the NRC enforcement process. Should a FOIA request be received for these documents, the documents will then be placed in the PDR with any personal privacy information removed.

Should you have any questions or comments, please feel free to contact Mr. Charles H. Weil of the NRC Region III Enforcement Staff. Mr. Weil can be reached at telephone number (630) 810-4372. In Mr. Weil's absence, please contact Mr. H. Brent Clayton, NRC Region III Enforcement Officer at telephone number (630) 810-4373.

Sincerely,

John A. Grobe, Director
Division of Reactor Safety

Enclosure: PEC Transcript

cc w/encl: P. Hickey, Esq.

cc w/o encl: A. Artayet
S. Bell, Esq.
S. Chidakel, OGC
M. Stein, OE
B. Berson, RIII

C/31

OPTIONAL FORM 98 (7-90)

FAX TRANSMITTAL

of pages: 7



MK-FERGUSON PLAZA
1500 WEST 3RD STREET
CLEVELAND, OHIO U.S.A 44113 1406
PHONE: (216) 523-3777
FAX: (216) 523 5000

To: <i>SURAN CHODAKEL</i>	From: <i>CHUCK WEL</i>
Phone #:	Phone #:
Fax #:	File #:
NSN 7540-01-317-7308	5099 101
GENERAL SERVICES ADMINISTRATION	

THOMAS H. ZARGES
PRESIDENT & CEO
ENGINEERS & CONSTRUCTORS

April 22, 1999

Mr. John A. Grobe, Director
Division of Reactor Safety
United States Nuclear Regulatory Commission
Region III
801 Warrenville Rd.
Lisle, Ill 60532-4351

Dear Mr. Grobe:

Thank you for the opportunity to respond to Mr. Alain Artayet's letters of March 25 and 26, 1999, concerning the predecisional enforcement conference held with Morrison Knudsen Corporation ("MK") on January 27, 1999. The most striking point about Mr. Artayet's comments is his failure to address the major items of my presentation on the critical issues related to NRC enforcement. He discusses at some length a number of topics which are tangential at best, but makes no answer to the evidence discussed at the conference which demonstrated (1) his undeniably inadequate performance as Group Welding Engineer ("GWE"); (2) his removal from nuclear-related work prior to his January 14, 1997 preparation of the Quality Finding Report ("QFR"); and (3) his numerous false and inconsistent statements which make his testimony unworthy of belief.

We are nonetheless responding briefly to correct some of his misstatements and put his comments in their proper context. The following topics are addressed in the order listed: (1) the GWE's responsibility for site welding procedures; (2) Mr. Artayet's January 2, 1997 meeting with Mr. Drew Edleman and his removal from Power Division work; (3) Mr. Artayet's duties at Parkersburg and return to the Cleveland office; (4) his technical experience; (5) the Stier investigation; (6) the independence of MK's QA department; and (7) Mr. Artayet's erroneous "observations" regarding the heat inputs for the Point Beach WPS.

I. The GWE's Responsibility for Site Welding Procedures

Ignoring all the evidence, Mr. Artayet repeats the inaccurate claim that he was not responsible for errors in the site welding procedures (WPS's), and was not required "by MK's QA program" to approve those procedures. The Stier report

COPY TO: J. GROBE M. STEIN
J. GARDNER S. CHODAKEL
B. BERSON C. WEL
B. CLAYTON RE: EA FILE

~~RE~~ EA 98-081

C/32

MORRISON KNUDSEN CORPORATION

Mr. John A. Grobe, Director
April 22, 1999
Page 2

summarizes the evidence demonstrating that Mr. Artayet was receiving and reviewing site WPS's, and that he recognized and acknowledged his responsibility as GWE for insuring that project welding procedures drafted at the site were ASME Code-compliant and free of deficiencies. In addition to the procedures quoted below, his duties were amplified and spelled out in a number of written and verbal directions from Mr. Pardi, as Mr. Artayet admitted. Indeed, the position of a GWE would be difficult to justify in the absence of such an oversight function. If each project welding engineer were independent of corporate control, there would seem little need for a corporate-level welding supervisor like Mr. Artayet.

At Point Beach, the site-generated procedures may have failed to address adequately the role of the GWE, but the corporate procedures written by Mr. Artayet, especially QAI-11.1 and 11.2, recognize this responsibility. Mr. Artayet acknowledged this at the DOL hearing (Transcript, pp. 56-57), and the NRC's Inspection Report does the same. In Inspection Report 99901329/98-01, the inspectors noted that MK's quality assurance documentation supported the management expectation that site WPS's should be "closely monitored and approved by the MK GWE." (p. 8).

Thus, although Mr. Artayet continues to deny responsibility for his inadequate discharge of this important duty, neither the existence of his duty nor his neglect of it is open to serious question.

II. Mr. Artayet's January 2nd Meeting with Drew Edleman and
Removal from Power Division Work

As the Stier Report reflects, the decision to remove Mr. Artayet from Power Division work was made by Mr. Pardi before any protected activity by Mr. Artayet was brought to his attention. Mr. Pardi acted immediately upon learning the findings of the Hartford Steam Boiler (HSB) audit, performed on December 30-31, 1996. His removal of Mr. Artayet from Power Division work made it highly unlikely that Mr. Artayet would continue as GWE, because there would not be sufficient work in the other (Process) Division to warrant retention in that position.

Mr. Artayet limits his comment on these critical events to the narrow claim that he does not recall meeting with Mr. Edleman on January 2, 1997, when Mr. Edleman told Mr. Artayet of Mr. Pardi's decision. But his memory loss does not diminish the impact of the secret tape recording Mr. Artayet made of his January 15 meeting with Mr. Edleman. That tape clearly shows that: (1) Mr. Edleman had discussed with Mr. Artayet his removal from the Power Division work *prior to the January 15 meeting*, and (2) although Mr. Edleman had agreed to explore the possibility of keeping Mr.

MORRISON KNUDSEN CORPORATION

Mr. John A. Grobe, Director
April 22, 1999
Page 3

Artayet as the welding engineer for Process Division work, that responsibility was being reconsidered, and Mr. Artayet was at risk of losing both.

Moreover, Mr. Artayet concedes that he was removed from nuclear work before he wrote the January 14 Quality Finding Report, but falsely claims this removal took place at a meeting with Mr. Pardi on December 12 or December 19, 1996, both dates when Mr. Pardi was not present in MK's Cleveland office. The Stier Report collects the unassailable evidence that this claimed meeting with Mr. Pardi was fabricated by Mr. Artayet to bolster his Department of Labor complaint. Whether or not Mr. Artayet recalls the January 2 meeting with Mr. Edleman, Mr. Artayet is unable to avoid the clear proof that this significant adverse action, against him, which made his removal as GWE inevitable, occurred before he had engaged in protected activity, and was legitimately based on his poor job performance.

III. Mr. Artayet's Duties at Parkersburg and Return to the Cleveland Office

Mr. Artayet addresses some details of his employment duties in Parkersburg and his return to Cleveland. The relevance of these events to his removal from the GWE position is not apparent, nor explained by Mr. Artayet. It is correct that relations with Mr. Artayet after he was ordered reinstated in his position were somewhat awkward, since we had concluded he was not capable of discharging the duties of that job. That concern, in addition to elements of Mr. Artayet's conduct after returning to Cleveland, were important factors leading to our decision to settle our dispute and remove Mr. Artayet from our organization.

We note that Mr. Artayet refers to and attaches to his letter a cover sheet from an MK Project Welding Manual, an organization chart, and several other MK documents, which apparently were retained by Mr. Artayet, notwithstanding his personal certification as part of the settlement agreement that he had returned all company documents.

IV. Mr. Artayet's Lack of Technical Experience

Mr. Artayet makes no direct response to MK's proof that he lacked the technical competence required for his job as GWE. Unable to challenge the records and testimony collected by Stier which document his lack of understanding of ASME requirements and poor performance as GWE, Mr. Artayet chooses instead to discuss his experience as a welder. Most of the background he describes is simply irrelevant, because it does not reflect experience in welding engineering in the nuclear environment, the job in which MK found him deficient.

MORRISON KNUDSEN CORPORATION

Mr. John A. Grobe, Director
April 22, 1999
Page 4

Thus, while Mr. Artayet worked as a pipefitter-welder on the construction of several nuclear plants, this work is a far cry from the task of applying the ASME Code to nuclear welding. Indeed, Mr. Artayet recognized this distinction in his Stier interview. (Artayet testimony to Stier, pp. 31-32.) Mr. Artayet further admitted to his Stier interviewers (1) that he did not learn the ASME Code as part of his program at Ohio State, (2) that he was not familiar with the Code when he came to MK, and (3) that his first experience developing welding procedures under Section III of the Code was during the Point Beach project (pp. 38-42, 165, 168-69, 292-96).

In fact, prior to his work for Point Beach (where Mr. Artayet's failure to qualify welding procedures forced the site to assume this responsibility), Mr. Artayet had never provided significant welding engineering services to another nuclear project. His claim that nuclear project managers recognized his talents cannot be supported. The Point Beach managers, Marty Cepkauskas and Max Bingham, were the only nuclear project managers Mr. Artayet worked with while performing nuclear engineering functions, and they considered his performance unacceptable. Though Mr. Artayet worked at Fort St. Vrain, the MK work there was in support of decommissioning. Only minimal welding was involved, and Mr. Artayet was not required to utilize Section III of the ASME Code in performing such work. Mr. Artayet's committee work on brazing is equally irrelevant, as this process was not used during the welding of the steam generators at Point Beach.

Mr. Artayet suggests that he was "responsible for overseeing" the qualification of a welding procedure for the St. Lucie project, but that he "declined accepting" because of "complications." As the Stier Report documents (pp. 111-117), this incident is simply another example of Mr. Artayet failing to perform his assigned tasks. Although directed to qualify a welding procedure, he failed to do so, and then sought to excuse his nonperformance by claiming the written directions to him were unclear (though he took no action to obtain any clarification). The incident in no way establishes his technical competence. It is simply another example of his failure to do his job.

V. Impact of Investigations on Mr. Artayet

Mr. Artayet's response includes some vague allegations of what he calls "chilling events . . . showing MK's insensitivity to 10 CFR 21" (presumably referring to 10 CFR § 50.7). He complains that dealing with the NRC and with Stier, Anderson & Malone was intimidating to "many people." Absent any specifics, we cannot respond, but we note the following concerning the Stier investigation:

MORRISON KNUDSEN CORPORATION

Mr. John A. Grobe, Director
April 22, 1999
Page 5

- We directed the Stier team to be sensitive to any possible reluctance or hesitancy on the part of any witnesses, and to do everything they could to make the witnesses comfortable with their participation. All employees were reassured that there would be no retaliation for cooperating with Stier.
- We solicited Mr. Artayet's participation in the Stier investigation, and he voluntarily agreed to cooperate fully. He was always accompanied by his personal attorney whenever he met with the Stier interviewers.
- Mr. Artayet's comments to the Stier interviewers frequently indicated his positive view of the thoroughness and the objectivity of their investigation. At no time during the investigation did he express any concerns in these areas.
- Stier also comments that Mr. Artayet was asked on several occasions for the names of any witnesses who had information relevant to the issues in the investigation. Except in a few cases of witnesses with knowledge relevant only to subordinate issues not in dispute, all were interviewed.

Mr. Artayet also claims an "impression" that the Stier team did not understand the technical issues being addressed. The report speaks for itself, and we are aware of no instance where its findings have been proven inaccurate. Moreover, to insure the technical accuracy of the investigation, Mr. Artayet was asked to recommend a technical advisor to assist Stier. When Mr. Artayet recommended Mr. Hlifka, I made him available to the team, and he continued thereafter to assist their efforts. Mr. Artayet never raised the issue he presently addresses during the course of the investigation.

VI. MK's QA Department Is Organizationally Independent

Mr. Artayet injects without support a challenge to the organizational freedom of our QA organization, and provides an alleged statement of Mr. Walcutt, the former Group Quality Director, concerning Mr. Walcutt's reason for transferring to an international position. He also claims that he himself (Artayet) lacked organizational freedom to identify quality problems, in violation of Appendix B.

This claim is remarkable for its complete absence of proof and specificity as to what is being alleged. It is even more striking because raised by Mr. Artayet, who was removed as GWE precisely because of his failure to properly identify quality

MORRISON KNUDSEN CORPORATION

Mr. John A. Grobe, Director
April 22, 1999
Page 6

problems in the MK welding program. I limit my response to pointing out that the NRC has inspected, as recently as last year, the MK QA program, as have utilities for whom we have provided nuclear services. None have raised an issue of any lack of QA independence. In addition, on two occasions we have engaged Duke Engineering and Services to review the Steam Generator Team Ltd. QA program, which is in all significant respects similar to MK's. Duke found that the SGT Group Quality Director, who is also MK's Group Quality Director, has "sufficient independence of production pressures, and has access to appropriate management levels to meet [applicable] requirements."

Unrelated to the issue of QA independence, we did conclude that our organization structure impaired our ability to supervise Mr. Artayet adequately. Accordingly, we have since effected a reorganization so that (1) the GWE reports to Mr. Pardi, who has strong technical credentials, and (2) the Group Quality Director reports directly to myself, and is able to consult with Mr. Pardi on any technical matter.

VII. Mr. Artayet's Erroneous "Observations" Regarding the Heat Inputs for the Point Beach WPS

Mr. Artayet's comments on what he calls the "heat input debate" apparently stem from the discussion at the Enforcement Conference of whether the findings in the QFR were valid. (See Transcript pp. 43-48.) Mr. Pardi raised a question concerning a specific finding related to maximum heat input on a WPS used at Point Beach.

Mr. Artayet's March 25 letter erroneously claims that his "clear observations" indicated that the heat input used on the site WPS exceeded that of the corporate WPS. In fact, although Mr. Artayet reviewed the site WPS in question prior to December 1996, the non-conformance between the site WPS and the corporate WPS was not identified until the HSB auditor called it to MK's attention at the end of December. The HSB Audit Report dated January 1, 1997 identified the non-conformance of the site WPS to the corporate WPS (Finding No. 2). This issue was simply repeated by Mr. Artayet in his QFR written on January 14.

The Level IV violation issued by the NRC on September 15, 1997 related to the ASME Code requirement that a WPS be supported by a PQR as to all essential variables, and that Charpy test specimens be taken from the areas of maximum heat input in the sample weld. While Mr. Artayet addressed this issue in the QFR he came to the conclusion that this requirement was not applicable to Pt. Beach WPS's and that there was no Code violation.

MORRISON KNUDSEN CORPORATION

Mr. John A. Grobe, Director
April 22, 1999
Page 7

In summary, Mr. Artayet failed to identify the non-conformance of the site WPS to the corporate WPS during his original review, and thereby precipitated the most serious finding in the HSB audit. He also erroneously concluded there was not a Code requirement relative to the location of Charpy test specimens as found by the NRC in the Notice of Violation.

If his comment about the timing of settlement discussions with his attorney is meant to suggest that it was prompted by the Notice of Violation, MK was aware of the Violation several months before settlement discussions. Moreover, as I indicated earlier, the decision to settle this matter was based in substantial part on the difficulties caused by Mr. Artayet's conduct in the office after he was ordered reinstated by the Administrative Law Judge.

In summary, despite his insistence that he had the necessary technical experience, Mr. Artayet's lack of understanding of ASME Code requirements and his job performance errors—errors which could have led to significant consequences in MK's Power work in the field—forced MK to remove him as GWE. MK's action in removing Mr. Artayet as GWE was necessary and non-retaliatory. No violation of 10 C.F.R. § 50.7 occurred, and no enforcement action on this basis is appropriate.

MK remains committed to insuring a safety conscious work environment, where all concerns regarding safety-related activities can be freely and fully addressed. We adopted strong programmatic measures following the Fort St. Vrain enforcement action in 1995, and are reviewing our efforts in light of insights gained through our investigation of Mr. Artayet's claim. As we identify areas for additional enhancements, we will be undertaking improvements to continue to insure our full compliance with the letter and the spirit of these requirements.

Regards,


Thomas H. Zarges

cc: J. P. Hickey, P.C., Shaw Pittman
E. H. Stier, Stier Anderson & Malone

From: Charles Weil - III
To: James Lieberman, Michael Stein - OE
Date: Tue, Jun 29, 1999 6:15 PM
Subject: MORRISON KNUDSEN (EA 98-081)
Place: OEMAIL

Region III has reviewed the draft letter to the attorney for Morrison Knudsen (MK) and has the following comments:

1. The questionnaire and the results of the survey should not be submitted to Region III. While the enforcement action is being developed as a result of a review of MK welding procedures at Point Beach, MK is a large national company, working in all of the Regions (Fort St. Vrain, Point Beach, St. Lucie, and Calvert Cliffs). Therefore, Region III believes that the survey results should be reviewed by HQ, rather than in a Region. Region III suggests the NRR vendor group. As an alternative, the survey results could be reviewed by Region I since MK's next project will be at Calvert Cliffs and that is where the survey of a temporary job site would be conducted.

2. The letter should read "MK and SGT" throughout, rather than just "MK" in most places.

Please call me at (630) 810-4372 with questions.

Chuck

CC: Brent Clayton, Bruce Berson, John Grobe, OEMAIL...

identi
& quals to do surveys.
→ Experience & Qualls of auditor
- Address issues that arise out of
Survey

C/33

From: Charles Weil *RTI*
To: Michael Stein *DE*
Date: Thu, Jul 8, 1999 5:05 PM
Subject: CONCURRENCE ON LETTER TO MK ATTORNEY (EA 98-081)
Place: OEMAIL

Mike,

As requested, this "e-mail" confirms our discussion on Thursday, July 8, 1999, that Region III concurs in the proposed letter to the attorney for Morrison Knudsen (EA 98-081) outlining the provisions for a possible confirmatory order.

Chuck

CC: OEMAIL

C/34

From: Charles Weil *CW*
To: Brent Clayton, Bruce Berson, John Grobe, Michae... *LT*
Date: Tue, Aug 10, 1999 4:40 PM
Subject: MORRISON KNUDSEN (EA 98-081; EA 98-540; EA 98-541)
Place: OEMAIL

Mike Stein, OE, is in the process of drafting a confirmatory order to Morrison Knudsen (EA 98-081). It is my understanding that we would not be taking enforcement action against either of the individuals involved, so I drafted the attached closeout letters. Please review and send me your comments. The letters to the individuals will be released the same day that the confirmatory order is sent to MK. Chuck

CC: OEMAIL

C/35

EA 98-540

Mr. Louis E. Pardi
Vice President
Engineering and Construction Group
Power Division
Morrison Knudsen Corporation
1500 West 3rd Street
Cleveland, OH 44113-1406

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-1998-013
U.S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 AND ARB-98-016

Dear Mr. Pardi:

This letter is in reference to investigations conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) and the U.S. Department of Labor into alleged employment discrimination by managers of the Morrison Knudsen Corporation (MK) against an employee in the MK corporate office, Cleveland, OH, in apparent violation of 10 CFR 50.7, "Employee Protection." At the time of the apparent violation, MK was involved in the replacement of steam generators at the Wisconsin Electric Power Company's Point Beach Nuclear Power Plant. A predecisional enforcement conference was held on January 26, 1999. Based upon a review of the evidence developed during the investigations and the predecisional enforcement conference, the NRC has concluded that enforcement action against you is not warranted ~~in this matter.~~

All final NRC documents, including the final OI investigation report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of information in accordance with the FOIA.

Enclosed is a copy of the enforcement action that was issued to MK as a result of the investigation. A copy of the synopsis of the OI report was provided to you by letter dated January 8, 1999. If you have any questions or comments regarding this matter, please contact Mr. H. Brent Clayton, NRC Region III Enforcement Officer. Mr. Clayton can be reached at telephone numbers (800) 522-3025 or (630) 829-9500.

Sincerely,

J. E. Dyer
Regional Administrator

Enclosure: As stated

cc w/enclosure: R. R. Edmister, Associate General Counsel
MK Engineering and Construction Group
P. Hickey, Esq., Shaw, Pitman

FILE NAME: G:\EICS\98-540 CLOSEOUT LETTER

**PREDECISIONAL INFORMATION, NOT FOR RELEASE WITHOUT THE APPROVAL OF THE
DIRECTOR, NRC OFFICE OF ENFORCEMENT**

EA 98-541

Mr. Drew Edleman
Director, Performance Systems
Engineering and Construction Group
Power Division
Morrison Knudsen Corporation
1500 West 3rd Street
Cleveland, OH 44113-1406

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-1998-013
U.S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 AND ARB-98-016

Dear Mr. Edleman:

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P. Hickey, Esq., Shaw, Pitman

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**PREDECISIONAL INFORMATION, NOT FOR RELEASE WITHOUT THE APPROVAL OF THE
DIRECTOR, NRC OFFICE OF ENFORCEMENT**

From: Charles Weil ^{III}
To: Brent Clayton, ^{III} Gregory Cwalina, ^{RR} Michael Stein, ... ^{OE}
Date: Mon, Sep 13, 1999 7:35 PM
Subject: Re: MK Order

MI Region III
Comments

Mike, my comments are with Section V of the Order.

1. Sections V.3 and V.4 are very clear that the MK home office is included. However, Sections V.1 and V.2 are not as definitive. Suggest that language be added to Sections V.1 and V.2 to definitely include the home office in Cleveland.
2. Section V.1 sets a deadline of January 2000 for MK to hire a consultant and evaluate the MK employee concerns program. Is January 2000 a realistic date to accomplish both tasks considering we are now in mid-September? I suggest that we give MK at least 6 months to do both.

>>> Michael Stein 09/13 3:59 PM >>>

Please see my latest draft of the MK Order. It is near completion and we will soon be sending it to the EDO's office and to the licensee for confirmation of its acceptance. Please send me any minor editorial comments and all of your concurrences: for NRR, OGC, & Region III.

The major difference between this version and the last version was that all information will now be sent to the NRR branch chief for QA and Vendor Inspection.

Thanks,

Mike

CC: Dennis Dambly, Jim Dyer, Richard Borchardt

0/36

From: Susan Chidakel *SC*
To: Michael Stein *MS*
Date: Wed, Sep 15, 1999 3:35 PM
Subject: Re: Comments

NLO
OGC ~~_____~~
9/15/99

~~_____~~

yes with changes

>>> Michael Stein 09/15 3:34 PM >>>
Susan,

I left word for Fay to ask you to call me. I found your comments on my chair. Do we have a No Legal Objection from OGC with these comments?

Thank you,

Mike