

NUCLEAR REGULATORY COMMISSION

Regulatory Docket File

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IN THE MATTER OF:
CONSUMERS POWER COMPANY
(Midland Units 1 and 2)

Docket Nos. 50-329
50-330



Place Chicago, Illinois

Date Wednesday, 2 February 1977

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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Room 2503
 Everett M. Dirksen Building
 219 South Dearborn Street
 Chicago, Illinois

Wednesday, 2 February 1977

Hearing in the above-entitled matter was convened
 pursuant to notice at 9:15 a.m.

BEFORE:

FREDERIC J. COUTAL, Esq., Chairman

DR. EMMETT LOEHLKE, Member

DR. J. VERN LEEDS, Member

APPEARANCES:

(As heretofore noted.)

C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD</u>
Joseph G. Temple (resumed)		2492	2582		2667
Paul F. Orrefice		2697			2739

<u>EXHIBITS</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Staff 5 (Notice of violation, EPA)	2535	
Staff 4 (Section 3 only)		2561
Staff 6 (Group Exhibit A-H, Sensitivities 9/26/75)	2536	
Staff 7 (USA and Mich. impact of permanently terminated.)	2566	
Staff 8 (Group Exhibit A-G, Nuclear Project, 9/26/75)	2556	
Licensee 24 (Wessel memo to Nute 9/27/75)	2617	
Licensee 25 (Black-Veatch study (10/7/76)	2619	
Licensee 26 (Black-Veatch studies, Tables, 4/28/75; 9/30/76)	2619	
Licensee 27 (2 pp. cost advantage)	2619	
Licensee 28 (Cost Table)	2635	
Licensee 29 (Temple handwritten notes)	2660	

P R O C E E D I N G S

CHAIRMAN COUFAL: Are we ready to proceed?

Please let the record show that Mr. Cherry is here for the Interveners other than Dow; Mr. Hoefling, Mr. Kiefer, and Mr. Tourtelotte for the Staff; Mr. Rosco for the Licensee; Mr. Duran, Mr. Pribila, Mr. Nute, Mr. Wessel, and Mr. Edwards for Dow. That's the first time I've been able to do it without missing one.

MR. WESSEL: Mr. Chairman, yesterday's transcript page 2275 the Board again excluded Mr. Thomas Sinclair, who is in charge of the Public Information function of the Dow Michigan Division.

This is an important function that he has. He is just as subject to the order of the Board as we attorneys are. It is his responsibility to be able to follow the case and communicate it to the extent it should be properly be communicated, both within the company and without. He will be guided by whatever direction the Board issues, and I would respectfully request that the Board permit him to attend and listen so that he can perform his function.

It is just as important a function as the legal function.

MR. CHERRY: I have no objection to that.

CHAIRMAN COUFAL: We excluded the other day both the Consumers Public Information Officer and the Dow Public

Information Officer. If we're going to relax the rule, we'll relax it as to both.

MR. CHERRY: I want to make something on the record. I have had experience with both the Public Information Officer at Dow and Consumers.

All of my experience with the Dow Public Information Officer, even back in '71 when relationships were even more strained than they are, that representative was always honest and upstanding.

My experience with Consumers' PR people is that they kind of follow the policy of the company; you know, they're sleazy and move around a bit.

So I want to make it absolutely clear that if the Consumers representative thinks he's going to get a promotion because he can sneak something to Youngdahl and Raymond that he's going to be held in contempt. I want him told that expressly, and then he can stay, too.

CHAIRMAN COWAN: Of course, we expect the Public Information Officer from both Dow and Consumers to obey the exclusion order as we have laid it out, that they are not to talk to the witnesses respecting their testimony, either given or to be given, and we advise counsel both from Dow and Consumers to lay it to them that that's what the rule is.

MR. CHERRY: Maybe it would be safer that, if any stories or memorandums are filed, they will be filed with the

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Board so we can make sure -- at least I'd like to see the Consumers ones filed to make sure. I just simply don't trust them.

CHAIRMAN COUFAL: You mean newspaper accounts?

MR. CHERRY: No, I don't mean newspaper accounts. I mean the Public Information Officer's in-house accounts.

Obviously, witnesses at Consumers can read those in-house accounts, and I think if the Public Information Officers for Dow and Consumers are to be in the room that they ought to file their reports with the parties and the Board as a safety valve.

MR. ROSSO: Reports to whom?

MR. CHERRY: Anything -- anything they write should be filed with this Board.

MR. ROSSO: Their own personal notes?

MR. CHERRY: Anything.

MR. ROSSO: I think that's going a bit far, Mr. Chairman. I really do.

If the PR officer were to send a note to Mr. Youngdahl or Mr. Aymond, in our case, or in theirs to send a note to one of the other prospective witnesses, then I think perhaps that note ought to be filed with the Board in this matter.

But, as I said before, we're in favor of the sequestration order. We want everything to come in just as

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it is, but I think it's going a little far to have a man file his notes that he takes in the courtroom or notes of conversations with members of the press and things like that.

MR. CHERRY: Well, he doesn't have to file those, but anything he disseminates to anyone in the company he ought to file. He's simply not a man to be trusted.

CHAIRMAN COUFAL: The rule is going to go with respect to both companies. Both of you may have something to say if that's what we're going to do. Let's hear from you. I don't know enough about how corporations operate to know whether that's reasonable or unreasonable.

MR. WESSEL: That's no problem. If you want whatever it is they produce, they'll furnish it.

MR. ROSSO: Could I have a couple of minutes to call my office and tell them, then, that he can now come over here?

CHAIRMAN COUFAL: Yes, sure. Go ahead, Mr. Rosso.

(Pause.)

CHAIRMAN COUFAL: All right, counsel are all present.

Mr. Wessel, have you concluded your request?

MR. WESSEL: Yes.

CHAIRMAN COUFAL: Mr. Temple, can you come forward, please?

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Whereupon,

JOSEPH G. TEMPLE

resumed the stand on behalf of Dow Chemical Company and, having been previously duly sworn, was examined and testified further as follows:

XXXXX
CROSS-EXAMINATION (Continued)

BY MR. CHERRY:

Q Mr. Temple, do you remember Midland Intervenor's Exhibit No. 26, which is a comparison of alternative Cases A through E?

A Yes, sir.

Q If Dow were to construct Case C, D, or E at the prices set forth, would that include sufficient funds for compliance with all known environmental regulations, permits?

A Yes, sir.

Q At some point Consumers Power Company made an input to Dow Chemical's corporate review, ultimately -- you know, the Midland Division had made its conclusion, and then the corporate review we went into yesterday, if you will recall, where the corporate review team did not reject the Midland Division's findings but, because of the lawsuit and the size of the lawsuit, they decided to go forward and support Consumers Power Company in the fashion that has been indicated.

And at some point Consumers Power Company made an

input to that corporate review, and what I would like you to tell me is what was the character of the input to the corporate review?

MR. ROSSO: Mr. Chairman, I have an objection to the characterization in the question with regard to what the Dow Corporate Review Board did.

CHAIRMAN COUTAL: I didn't hear that, Mr. Rosso.

MR. ROSSO: I think the question contained a characterization in that the Dow Corporate Review Board decided to go along strictly on the basis of the litigation threat.

MR. CHERRY: Take a look at 2311 and 2312. That was Mr. Temple's testimony when you were not here yesterday.

MR. ROSSO: It was his testimony that that was his opinion, but I object to the characterization that that was in fact the reason for the Dow Corporate Review Board's decision.

MR. CHERRY: He was there when it was made.

MR. ROSSO: I'm sorry, he was not there when it was made, sir. His testimony said he was not in the room when the decision was made by the Dow Corporate Review Board.

BY MR. CHERRY:

Q Mr. Temple, let's just clean that point up.

Your testimony that you made yesterday, was that made in light of your being informed by whoever was making the

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decision as to the basis of their decision?

A No, sir, it was not. I think I said that at the corporate review I was present. Mr. Orefice and the other members of the U. S. Area Board were present. We all heard what the review team had to say, and then they adjourned.

Then they came back and gave the group, myself included, what their conclusion was and did not give us the specific rationale behind that conclusion.

I think I made -- I think the record reads as to that.

Q I appreciate that, Mr. Temple, but other than the recommendations which you had made at the Division level -- essentially that it was bad for Midland -- is the basis for your judgment that the corporate review committee made its judgment based principally on the threat of a lawsuit because that was the significant input by Consumers between September 9 and the time the corporate review team made their decision?

A That is my judgment, but I don't know what the people who went with Mr. Orefice and Mr. Orefice talked about in addition to that.

Q I appreciate that. I just want to know what they heard from the people. I just want to make it clear that the information essentially that was presented to the corporate review is the same information upon which Dow Chemical, Midland Division, had reached its decision, with the addition, however,

of the threat of the lawsuit.

A To the best of my recollection, there were no significant new inputs in my judgment other than the fact that we had been threatened with a lawsuit during the interim period of time.

Q Okay.

Now, is it fair, then, to characterize Consumers' input to the Dow corporate review as essentially the threat of a lawsuit?

A No. I think there was more input than that made, although during the period that Consumers was asked if they wanted to make an input, and indeed did make some inputs, the only meeting that I was present at was the one on the 24th which involved Mr. Raymond.

I know that there were discussions between the various people on the corporate review team with individuals in Consumers that Mr. Youngdahl suggested would be the ones that our people ought to contact in those subject areas where we were willing to let Consumers make an input.

Q And whatever Consumers' input was was made while you were present at the presentation of the Dow corporate review team?

A Well, I assume it was utilized by the corporate review team members in arriving at whatever it was that they said and presented as their summary of their assignment.

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Q All I'm suggesting is that to the extent there was a Consumers input that was not flagged specifically, it was your understanding of the way the review team operated that that was factored into the process?

A That's my understanding.

Q Did there ever come a time, Mr. Temple, when Consumers Power Company formulated a plan to deliberately delay these proceedings so they could continue their construction and in effect finesse the Dow-Consumers problem?

A Not that I'm aware of, Mr. Cherry.

Q Would you take a look at what has been marked and authenticated as Exhibit 25?

A What is that?

Q Particularly paragraph 4 on page 3. Read that and see if that refreshes your recollection.

(Document handed to the witness.)

A Paragraph 4 on page 3?

Q Yes.

MR. CHERRY: I would ask the Board also to read that paragraph, because I think it's quite critical.

(Pause.)

CHAIRMAN COUFAL: The paragraph numbered 4, is that right?

MR. CHERRY: Yes, on page 3 of Midland Intervenor's Exhibit No. 25.

BY MR. CHERRY:

Q Mr. Temple, does that refresh your recollection?

A Well, the part that says, "Consumers said as long as construction continues Consumers has a lever and will drag its feet on the hearing on the merits." I also recall, as the hearings were attempted to be scheduled during the fall, that when delays were suggested Consumers seemed anxious to get on with this particular hearing.

It certainly says what it says. I wasn't at the meeting, but my answer was based on their apparent desire as I perceived it to get on with this particular hearing.

MR. CHERRY: Mr. Chairman, earlier in this proceeding -- I believe it was on Tuesday, when we were downstairs on the second floor -- I made the statement that it was my impression that the lawyers for Consumers Power Company were deliberately trying to stall this proceeding with elongated speeches, long lunch hours, failure to deliver documents on time, failure to answer interrogatories that really should have been answered, et cetera.

Yesterday I characterized in the in camera proceedings the request by Mr. Rosso as a deliberate ploy to further delay these proceedings so that a suspension, when it comes, would come at a point when more was constructed.

I would just like to point out that this memorandum, Exhibit 25, quotes Mr. Falahee -- I want you to

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know who Mr. Falahee is. Mr. Falahee is the General Counsel of Consumers Power Company, and Mr. Falahee has said that Consumers would have a lever and would drag its feet on the merits. I think this is just a further indication of really the kind -- words almost can't describe the kind of intense feeling of sheer hatred and ridicule for the legal process that I feel and have felt that that is going on, supported by a statement by the General Counsel of Consumers Power Company.

If we were in a situation where there was a poor black or Puerto Rican or some member of a minority group or someone who didn't have clout, he'd be disbarred. If we were in a situation where no one had any real kind of power or money in this country, he'd be disbarred. And here we have a company who is operating under a license that manipulates testimony, that pulls all sorts of ploys. We just can't let this go on.

MR. ROSSO: Mr. Chairman, remarks like that, which have been taking place since the beginning of these hearings, have delayed these hearings more than anything else.

We were prepared to move ahead on October 5th. It was the Intervenor who requested an adjournment.

We were prepared to move ahead on November 16th. It was Intervenor who moved for an adjournment.

We were prepared, then, to move ahead on November

22nd, which was the next date. We were prepared to have hearings the next week, and it was the Intervenor's who decide they did not wish to go ahead.

We have been trying every step of the way to move these proceedings ahead. The reason we have been trying to move them ahead has also been stated on the record, not only by us but by Dow.

It's important to us to remove any uncertainty with regard to continued construction of this plant. It's important because of Dow's involvement in the plant and because of the decision that they have to make on the basis of whether this plant is going to go forward or not.

We want those uncertainties removed. We want them removed in the suspension hearing; we want them removed in the remand hearing.

I would submit that nothing we have done has in any way attempted to delay or drag our feet with regard to either the suspension hearing or the remand hearing.

I would point out that we submitted in our brief of September 29 and again in our brief of December 13 specific requests that this Board set a schedule which would lead us to a remand hearing at the earliest possible date this coming spring. We asked that all of the proceedings in this matter be over by June. It was Intervenor's who in their brief said, "Oh, we think it will take two years to get through with the

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remand hearing."

We have been trying to keep to a 5- to 10-months schedule. We wanted a 6-months schedule. The Staff in conversations told us that couldn't be done; it would have to go to a 10-months schedule for the remand proceedings.

So we went along. We put in a schedule, I don't recall exactly when, but a termination in June of this year. It's Mr. Cherry who has said it would take two years on the remand proceeding.

I suspect that if there were a suspension in this case, which I don't think there will be, we will see who will drag their feet.

I really resent those comments, sir, because we have done everything possible to try to move this proceeding ahead --not only this part of the proceeding, the suspension case, but the remand case, because both of those are relevant to Dow and Dow's decision in the future.

MR. TOURTELLOTTE: Mr. Chairman?

CHAIRMAN COUFAL: Yes, Mr. Tourtellotte.

MR. TOURTELLOTTE: It's my understanding that we're in a portion of the hearing where we'll be gathering evidence and are not to be making final arguments.

I understand Mr. Rosso's argument is in response to that of Mr. Cherry. I feel that both of the arguments are out of order at this point in time, and I would ask that

14 they be stricken from the record. I make a motion to strike at this time, and also that Mr. Cherry be admonished to elicit the evidence from the witness at this time and refrain from making any kind of closing arguments until that time comes in the proceeding.

MR. CHERRY: Mr. Chairman, I would oppose that. It is normal in the course of a trial for a lawyer to comment on a document that is in the record.

Mr. Renfrow stipulated yesterday that all documents produced by him were authentic, so we don't have any problem with getting them in the record.

I don't know who this gentleman is. He hasn't been identified. This is the second time I've seen him. I don't remember the first time I've seen him. But if anyone needs admonishing, he ought to go home and find out why the Regulatory Staff swallowed whole-hog everything Consumers Power Company has said and regurgitated it. He ought to ask all his people what would have happened --

MR. FOURIELLETTE: I would object to this, Mr. Chairman.

MR. CHERRY: Don't point your finger anymore, because I don't think you're doing your job.

CHAIRMAN COWLEY: Mr. Cherry, sit down.

MR. CHERRY: You're doing a disservice to the public interest.

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CHAIRMAN COUFAL: Mr. Cherry.

We'll go off the record. We're adjourned.

(Pause.)

CHAIRMAN COUFAL: Back on the record.

No more speeches. Go ahead with your questioning of the witness, Mr. Cherry.

MR. CHERRY: Thank you.

BY MR. CHERRY:

Q Mr. Temple, yesterday we talked about Dow Chemical's lack of confidence in Consumers Power Company as a company. Were there any misrepresentations of which you are aware that were committed by Consumers Power Company over the last five or six years which formed the basis for Dow Chemical's lack of confidence in Consumers?

MR. FOURNELLOTTE: Mr. Chairman, I'm going to object at this time.

Counsel is making side remarks to other counsel directly that are insulting, and I'm going to object right now. Mr. Cherry cannot persist in the style of running roughshod over everybody and insulting them day after day after day. I'm not going to stand for it.

MR. ROSSO: Mr. Chairman --

CHAIRMAN COUFAL: I don't have any idea of what he did or what he said.

MR. ROSSO: I'd like to add something to that. It

has been the case, sir, that constant comments have been made, insulting comments, degrading comments, to other counsel in this room-- within the hearing room, off the record, outside of the hearing room, in the halls, whenever the opportunity arises -- by Mr. Cherry, and I do think this Board should admonish him not to do that.

CHAIRMAN COUFAL: All right.

Mr. Cherry, consider yourself admonished.

Let's go ahead with the witness.

MR. CHERRY: I'm not going to argue the point.

CHAIRMAN COUFAL: Please, just go ahead with the witness.

MR. CHERRY: I never said anything that wasn't called for.

Could I have the last question read, please?

(Whereupon the Reporter read from the record as follows:

QUESTION: "Mr. Temple, yesterday we talked about Dow Chemical's lack of confidence in Consumers Power Company as a company. Were there any misrepresentations of which you are aware that were committed by Consumers Power Company over the last five or six years which formed the basis for Dow Chemical's lack of confidence in Consumers?"

THE WITNESS: There were instances which took

place with various people in Dow where things were said which I think on further passage of time proved inconsistent with some other things that were said. I don't know whether I can characterize them as misrepresentations.

I guess one of the things that concerned me most significantly was in 1974 having signed in good faith the contracts which contained the estimated completion dates of 1979 and 1980, that those contracts were signed about the first of February for a proposition which was to cover about a 25-year period, and 113 days later I met with Mr. Youngdahl, who -- and I think Mr. Howell -- who at that point in time told me that their financial situation was in such severe problems that they felt they could no longer maintain the construction schedule, that there would probably be significant delays which at that time they couldn't quantify, and shortly thereafter began the request for Dow to buy preference stock in Consumers Power and/or to make loans and/or to assist in the financing.

Again, I'm not a financial person, but I wondered whether some of that couldn't be foreseen before the 1st of February, when the completion dates of '79 and '80 were represented to be the most reasonable dates that Consumers could project for the completion of the project -- at least I assumed that. Otherwise, there would have been other dates in there.

BY MR. CHERRY:

Q How much time was there between the financial debacle and the contract signing in 1974?

MR. ROSSO: I object to the characterization "financial debacle."

CHAIRMAN COUFAL: Strike the word "debacle," Mr. Cherry.

BY MR. CHERRY:

Q Would you agree with me -- I'm not going to do that.

Mr. Temple, would you agree with me that the financial problems that occurred to Consumers Power in the '74-'75 period could be characterized, all things considered, as a financial debacle?

A Well, it was certainly a disastrous turn of events financially for Consumers Power Company.

Q Okay, we'll use your words.

How much time elapsed between the financial disastrous state of events and the signing of the contract in 1974?

A Well, again, I'm not privileged to see any of the internal information that related to Consumers' financial condition, but 118 days elapsed between when we signed the contract and when Mr. Youngdahl met with me, and I think there were one or two other Dow people there, and told us

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that the situation was grave indeed.

Q. 118 days.

Can you draw any inferences -- well, let me ask it another way.

Would you agree with me that one of the following inferences has to apply to the situation you've just described:

(1) Either Consumers Power Company was lying to Dow Chemical as of the time of the signing of the 1974 agreement, or

(2) Consumers Power Company's projections aren't worth very much?

MR. ROSSO: I object to "aren't worth very much," sir. If he's talking about a historical point in time, I suspect he ought to use the past tense rather than the present tense.

CHAIRMAN COUFAL: He's talking about a particular projection.

MR. CHERRY: I'm talking about which of those two inferences -- if Mr. Temple would agree with me that on the circumstances he just described, one of the two inferences that I've just described is applicable.

BY MR. CHERRY:

Q. Would you agree with me, Mr. Temple?

A. Well, yes, I would agree with you. I would.

at 20 call it their financial planning was in a bad state of repair, or else we didn't get the whole story.

Q I take it that that is one reason why you testified yesterday that Dow Chemical does not have confidence in Consumers' projections as to the completion costs of the proposed Midland facility?

A Yes, sir.

Q Mr. Temple, was there a misrepresentation by Consumers Power regarding the sale of nuclear fuel made to Dow Chemical Company?

A I have been told that a conversation took place between somebody at Consumers and somebody at Dow, and that was the conclusion of the Dow person involved.
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Q Would you tell me who had the conversation, to the best of your recollection, and then tell me what you were told?

A I am not sure I can remember who had that conversation, but I think it deals with whether Consumers had sold the nuclear fuel for the Midland plant.

We had gotten information that they had, and I think the gist of that conversation was that they had not. And I believe that later on we found that they indeed had sold it.

That is the best of my recollection.

Q To your knowledge, did Consumers Power Company come to negotiating sessions unprepared and unwilling to negotiate realistically and in good faith?

A In my view, in the sessions prior to the one on January 12th, 1977, I think they came to the sessions willing to negotiate.

There was one session in particular, they were not at all prepared to negotiate, nor did they understand their own proposal.

Q Mr. Temple, you have had a good deal of experience with some of the higher management at Consumers Power, and you also very clearly are a pretty sophisticated businessman. And the question I am about to ask you calls for your opinion and judgment, and I wish you would find the wherewithal to answer it.

Based upon your knowledge of management people around

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the world and in Dow and what you observed at Consumers, do you have an opinion as to why Consumers Power Company management is, as you described it yesterday, that is unwilling to take responsibility, take their obligation seriously?

Can you give us some insight based upon your negotiations with Mr. Aymond and Mr. Youngdahl, as to why you believed that?

MR. ROSSC: Mr. Chairman, I don't know where this line of questioning is leading, so I would object to that. It is irrelevant.

I don't know that Mr. Temple has been qualified as an expert on judging managements of utility companies or other companies around.

MR. CHERRY: Mr. Chairman, you don't give a piece of paper to an entity, you give a piece of paper to a company.

If a company is run by people who are dishonest, who hire representatives who continue that pattern of misrepresentation and dishonesty, do you want to live next door to their nuclear power plant?

So the licensee's openness and honesty with a company such as Dow Chemical, is relevant, it seems to me, to the corporation's character, as to whether or not it is fit to play around with pretty dangerous toys.

The question will be expanded more fully in connection

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with Consumers Power Company's qualifications under the Atomic Energy Act when we get to the remanded hearing.

But at the suspension hearing I am entitled to raise the issue to demonstrate that there is on the record, a serious doubt as to whether or not, in my judgment, these executives with childlike qualities should be permitted to continue to construct a plant under the circumstances we have seen, aside from all of the traditional elements; i.e. they have never been right before in their schedule, they come and tell you -- in other words, the real unwillingness to recognize their own default.

I think that Mr. Temple has testified sufficiently in foundation to issue that opinion, because I have asked him to give me his judgment based upon his dealings with Consumers Power Company.

And I think that because of the questions first raised by the Board on the character of Consumers Power Company's possible manipulation of the Temple testimony -- I only say possible because the Board hasn't issued its decision yet, I don't mean to indicate that I think there is any doubt -- and therefore the credibility is indeed an issue in this proceeding. That is why I want to ask the question.

MR. ROSSO: I do want to respond to this very briefly. I don't want to be accused of delaying this hearing again.

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Number one, qualifications of the company to construct and operate the nuclear plant are not a remanded issue. That issue was faced by the AEC before, and ruled upon. It was not appealed, it is not before this Court.

Number two, I thought this Board had instructed all attorneys in this room to refrain from long speeches, characterizations and insulting remarks with regard to other counsel before it.

Number three, this question just simply isn't going anywhere and is irrelevant.

MR. CHERRY: Mr. Chairman, I just want to respond briefly.

It is relevant because of the cost-benefit analysis that was remanded.

If, for example, an company is incompetent to handle a construction budget or a construction schedule, that is going to increase the price of the power plant. And insofar as it has an effect upon the increase in price, then it is a part of the cost-benefit judgment.

I agree that the qualifications of Consumers Power Company as such have not been remanded. But their ability, for example, to make a valid projection, hasn't specifically been remanded, but is part of the cost-benefit analysis, and so it goes to the whole question of whether they are able to make that kind of a judgment.

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MR. RENFROW: Mr. Chairman --

MR. CHERRY: Please, Mr. Renfrow, we agreed, one lawyer at a time.

MR. RENFROW: But the cost-benefit analysis question we addressed in our brief Mr. Chairman. If you look at the cost-benefits you can certainly include everything under the sun underneath cost benefits. But the work of Aeschliman was to review the cost-benefit in light of the remanded issues, not to add anything else to it.

That is in our brief which you have read and made your ruling on.

So I would suggest that Mr. Cherry's comments as to cost-benefit would not apply.

MR. CHERRY: Mr. Chairman, I beg leave to say just one other thing.

I have memorandums in my possession which were produced by Dow Chemical yesterday, where Mr. Renfrow was at a meeting with Milton Wessel in which he said we are going to take a position before the Licensing Board that they don't have to redo the whole cost-benefit analysis, but we will probably lose.

Now what we are having here is a continual misrepresentation of real, honest positions. Do you want me to show you the memorandum?

CHAIRMAN COUFAL: Never mind, Mr. Cherry. I am

ready to rule on the objection.

I am going to sustain the objection as to questions to Mr. Temple which require expertise in the management of companies such as Consumers.

You can ask him, Mr. Cherry, with regard to negotiations he has had with Consumers and whatever he has observed with regard to those negotiations, that is going to the general issue of the circumstances of the Dow plan to buy steam.

BY MR. CHERRY:

Q Mr. Temple, based upon your negotiations with representatives of Consumers Power Company and conclusions that you and Dow have reached concerning that company, can you explain to me, based upon your observations and understanding, why Consumers Power Company has led you to believe that they are essentially an incompetent utility?

And if you disagree with my characterization as an incompetent utility, you tell me that. If not, I will assume you will agree with me.

A I don't think they are incompetent.

Let me try to answer the question this way: As I judge people I come in contact with in business, whether they are the managers in my own company, in major parts of my operation, or in parts of Dow for which I am not responsible, or whether they are dealings with management people from other

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firms, I try to look at what the record says has been achieved by those people in whatever set of circumstances they are in.

I told Mr. Youngdahl and Mr. Howell both, that if I look at the record of Consumers Power Company, I am unimpressed.

Q You are unimpressed?

A Unimpressed.

Q Do you have knowledge, either personal or through conversations that have been reported to you as part of your duties -- let me put it another way.

What I want to solicit from you, particularly in light of some earlier things that were said, is Dow's view about confidence in the Nuclear Regulatory Commission to protect Dow Chemical's interest on the cost-benefit and economic basis.

What I want to know, Mr. Temple, has Dow reviewed the recent Draft Environmental Report prepared by the Regulatory Staff?

A I have not.

Q Do you know if Dow has reviewed it?

A No, I guess I really don't know whether they have or not.

Q Mr. Temple, one of the options that we discussed yesterday and that is suggested in your answers to interrogatories, is waiting for nuclear steam and fuel until the

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beginning of 1985.

Is that correct?

A Yes, sir.

Q Do I take it then it is Dow's position that if there is a suspension of the permit, but a remanded hearing which re-grants Consumers its construction permit so that the facilities are on line by the beginning of 1985, Dow's position is that if it is reliably generated and no other major events take place that could affect that option, Dow will purchase steam and electricity pursuant to the contract?

A Assuming nothing else changes, that is our position.

Q Okay.

But, assuming the contract goes forward without suspension, and the plants are on line, say before 1984, could circumstances occur which would cause Dow to reevaluate its position and not buy steam and nuclear from Consumers Power Company?

A I think we have said continuously that our position is one of supporting the nuclear project, the plan to -- we are treating the contract as it is in effect. We are keeping all of our options open, and we would review the entire situation should anything significant occur.

Q But what if, for example, Consumers' review in March of costal costs indicate an increase of an additional half a billion dollars, would that be a significant event to

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Dow?

A Yes, sir.

In my judgment that would be a significant event.

Q And would an increase of a significant amount of money cause Dow to consider asserting that Consumers had breached because of their failure to bring their plant on line with good faith efforts, and then walk away from the contract even if construction continued and there were no suspension?

A I think we would look at the whole issue.

Q So that is a possibility?

A Including, we would look at that situation if it was, indeed, a conclusion we had also reached at that time.

Q Do you consider that review by Consumers Power Company of Bechtel costs as a significant input to the continuing review by Dow?

A Not significant enough at this stage to call for a reassessment of our position.

Q No, I appreciate that.

But I am talking about in determining the costs and benefits of alternatives.

Do you consider -- well, for example, would you agree not to ever receive in March or April, Consumers Power Company's review of the Bechtel cost estimate of December '76?

Would you tell them to forget their review?

A No, sir.

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Q Why not?

A Well we are interested in having all of these relevant facts that pertain to what the costs and timetable of that plant are going to be.

And that is certainly relevant.

Q Was there a misrepresentation by Consumers Power Company with respect to using funds for their Karns and Marysville plant which had been promised to be used for Midland during this financial disaster period?

A I guess I don't believe that there was a misrepresentation. There were a whole series of meetings which took place in the latter part of that year.

We kept taking the position that all possible -- all funds should be directed to the Midland project. Consumers never agreed that that was a valid position and they were using the period from May 29th, when we were told that their financial circumstances were dire, through the balance of the year and trying to develop a particular construction program for the next year or two.

Q Mr. Temple, would you describe presently the relationship between Dow and Consumers as tenuous?

A Strained, I would say.

Q Strained.

The last subject I want to get into, Mr. Temple concerns -- I have read in the negotiating documents, that

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there has been a continual discussion about the economics of producing backup steam of a million pounds per hour.

And I also read that the parties were very concerned about this coming out in the hearing for fear it would impact cost-benefit analysis.

With that -- with those assertions that I have just made, can you enlighten me about any discussions in which you were privy, or of which you are aware, concerning the economics of the backup steam of a million pounds per hour, and what the concerns of Dow and Consumers were with respect to having that aired or analyzed at the hearing?

A I guess my memory doesn't recall that in the context of the other things we have been talking about as being a major issue, Mr. Cherry.

Q Can you relate for me once again, what the escalation rates for coal prices by Consumers Power Company were in the latter part of last year?

A After they had completed whatever work they were doing to update their data?

Q Yes.

A Well, the escalation rates were -- the base period was 1976, and I believe the escalation was 12 percent per year for the first two years; 10 percent per year for the next three years; and 9 percent per year for the 20-year period which covered the period that our study directed itself to.

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Q 12 percent for the first three years?

A 12 percent for two; 10 percent for three; and 9 percent for 20.

Q The base period is 1976. And then through 1979, what would be the annual escalation, 12 or 10?

A 12 percent.

Q 12 percent through 1970?

A I'm sorry, '77-78 would be 12 percent; '79, '80, '81 would be 10 percent, as I recall; and starting with 1982 it would be 9 percent per year over the 20-year life of the project contract.

Q And Dow's escalation rates based on their actual experience for the same period of time?

MR. RENFROW: Excuse me.

Escalation rates based on actual experience. I think it is proper to ask the question on what Dow's escalation rates were based, but to throw into the question that they are based on Dow's experience when you are talking about escalation rates, seems to me to be improper.

CHAIRMAN COUFAL: This is a reflection back on some testimony that was given yesterday, and I don't remember what -- ask him if he has testified, Mr. Cherry, what has gone into Dow's --

BY MR. CHERRY:

Q You have testified yesterday that your escalation

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rates were based upon your actual experience in buying and selling coal?

A No, sir.

I testified that our base price was based on what we were paying for coal at the time.

Q Yes.

A Our escalation rates are our best judgment --

Q Okay.

A -- of what the price of coal will escalate by over the period of time in question.

Q But isn't that based on your experience in buying and selling over a period of years, comparing, making comparisons?

A No, we don't sell coal. But we do buy coal as other people buy coal, including Consumers buys coal.

Q Okay.

What are the escalation rates that Dow Chemical ---

A 8 percent per year, '77 through '81 and 6 percent per year from '82 on.

Q Have you read any of Consumers' testimony in this proceeding?

A No, sir.

Q I take it after Consumers gave you their revised escalation rate, persons at Dow analyzed them and concluded that Dow's figures were more appropriate?

A That's correct.

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Q Dow's original escalation figures -- let me withdraw that and see if I can restate the event.

Sometime in September of 1976 you received coal prices from Consumers, which you then used to formulate with other things, Dow's escalation rate, is that correct?

A Well, Mr. Burroughs who put the economics together, talked with Consumers people and told them what rates we were going to use and what costs for coal.

And it is my understanding that there was agreement that those rates were appropriate.

We also have a letter to that effect, I believe, which also states that Consumers is in the midst of doing more work on coal and that their estimates may change.

Q Yes, but that letter is dated sometime in September of 1986?

A Yes, I think so.

Q But it is in that period, in the fall?

A The conversation was before the corporate review.

Q Okay.

But it is a recent communication by Consumers in the sense that it isn't two or three years old, but it occurred --

A No, I think September of '76.

Q And the figures that were submitted in that letter were, at that point, agreed to by Consumers and form the basis

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in part of Dow's projections?

A That is my understanding.

Q And you reaffirmed your positions after Consumers came back with higher figures, and concluded that Dow's were correct?

A That's correct.

Q Has Dow Chemical either formally or informally advised Consumers Power Company that it is considering, or has considered, or is continuing to consider, any one of those, filing lawsuit against Consumers Power Company for breach of Consumers' best efforts in having the plant on line by no later than '79, '80?

A Well, I think we had been instructed by Mr. Orrefice to keep all of our options open.

That certainly is one of them. Whether somebody from Dow has communicated we are contemplating that particular kind of action, I guess I don't know.

MR. CHERRY: Mr. Wessel, may I ask if you will represent that Consumers Power Company has been told formally or informally of the possibilities of such a lawsuit?

MR. WESSEL: May I answer?

CHAIRMAN COOPER: Go ahead.

MR. WESSEL: I am not trying to avoid a response, but we are dealing with an area in which one has a public obligation, statements are made and registration of statements, prospectuses and so forth, and I think it would be best for

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me to respond by saying that everything that has been said which I regard to be of substance between Dow counsel and Consumers counsel, the documents were produced.

People will look at those documents differently and they will draw different conclusions from them. The Board may draw differing conclusions even than I do, and I think rather than respond to what the character or nature of the statement was, the specific reference to the document ought to be made and then questions to be asked about it.

There certainly has been reference to the possibility of a claim being asserted that is referred to in the interrogatory responses which are under oath, signed by Mr. Temple.

I think to go further at this point would be inappropriate.

CHAIRMAN COUFAL: Are you suggesting that the particular interrogatory be marked and offered as your response?

MR. WESSEL: I do think that counsel for one of the other parties may conclude to do that, but I think I have responded properly.

BY MR. CHERRY:

Q Turn to the interrogatories.

A What page?

Q 7.

A Pardon me?

Q 7.

mm17

At the bottom of page 7 of your January 1977 answers to interrogatories, you are quoted as stating:

"Dow has expressed concern as to whether Consumers has exerted its best efforts as required under the contract, and has requested assurances from Consumers Power. Consumers Power has responded to Dow as stated that the response was not satisfactory. Dow believes it has rights with regard to Consumers' Power's failure to perform in accordance with its best effort requirements and its conduct in connection with the contract."

That is a true statement?

A Yes, sir.

Q And when you say Dow has expressed concern, that is concern expressed to Consumers Power Company?

A Yes.

Q So it is fair to state that Consumers Power Company has made a threat to Dow Chemical to sue them under conditions that we have earlier described, which may or may not include valid reasons.

And Dow Chemical Company has expressed a concern to Consumers Power Company which might result in Dow asserting a contractual lawsuit against Consumers Power Company.

Is that a fair statement?

A I believe it is.

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Q Would you now agree with me that the relationship is tenuous in addition to being strained?

A Okay.

Q You would agree with me?

A Okay, yes.

MR. CHERRY: I think I have just about concluded.

BY MR. CHERRY:

Q Turn to page 29 of your answers to interrogatories, answer number 12.

I asked Dow a question about the costs and benefits which you currently believe to be applicable in connection with the Midland Nuclear facility.

And in the second paragraph of your answer you said, and I quote:

"However, Dow does not know whether the cost of fuel reprocessing, fuel storage, fuel availability and decommissioning of a facility have been treated in accordance with the requirements of law."

Can you tell me what you meant by that answer?

MR. ROSSO: Mr. Chairman, I guess I have to object to that one on the basis of that is a question which goes to the fuel cycle analysis which the Commission has ruled should not be considered in this proceeding.

That is the basis of my objection to that interrogatory when it was addressed to us, and as I see it, it is

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appropriate to object to that now.

MR. CHERRY: Mr. Chairman, this goes to identifying the cost and benefits. And all I want to know is what his opinion is. I am not going to get into the merits of the fuel cycle, even though I think that the Commission's decision on that is dishonest.

CHAIRMAN COUFAL: I don't have the interrogatory on that.

Does somebody have the interrogatory and they can hand it to me?

MR. ROSSO: Mr. Chairman, if I might continue though, the question of the fuel cycle question and their effect on the cost-benefit analysis have been removed from this hearing and from the proceedings in this matter.

MR. CHERRY: That is not true.

CHAIRMAN COUFAL: I understand that, Mr. Rosso.

MR. CHERRY: That is not true.

The Commission has ruled that you can look at the interim rules to determine whether or not that might tip the balance. So it is not true.

You see, the dishonest act committed by the Commission is only that they won't let you get into the substance, but they got this little rule that they want to look at and you can factor that into this proceeding. It is not true that it is completely out.

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MR. SCURTELLOTTE: I ask that remark be stricken?

CHAIRMAN COUFAL: The "dishonest"?

MR. SCURTELLOTTE: Yes.

CHAIRMAN COUFAL: All right, we will strike
dishonest.

Give me a chance, Mr. Cherry --

MR. CHERRY: But I don't want it indicated that
I think the Commission has acted honestly. I think they have
acted dishonestly.

MR. SCURTELLOTTE: I ask that that be stricken,
Mr. Chairman.

CHAIRMAN COUFAL: If the purpose of your inquiry,
Mr. Cherry -- and you will so represent it -- is to find out
whether these costs that are mentioned in this answer to
interrogatory number --

MR. CHERRY: 12.

CHAIRMAN COUFAL: -- 12 bear on the relationship
between Consumers and Dow with regard to its steam electric
contract, why you may ask the question.

MR. CHERRY: Well, that is the purpose of my inquiry.

My question is simply what he meant by it.

I want to know what his underlying answer was.

But the purpose of my asking is first to find out
what he meant. I don't understand what he meant by the
answer.

mail

CHAIRMAN COUFAL: And if he answers that, do you represent that you are going to ask further questions and see if those costs, whatever they are, bear on the relationship between Dow and Consumers?

MR. CHERRY: Yes.

CHAIRMAN COUFAL: All right, go ahead.

MR. BOSSO: I would like to have the question be re-read at this point.

MR. CHERRY: Just what did you mean by that answer to the interrogatory. It is a simple question. Can you explain your answer.

CHAIRMAN COUFAL: Go ahead, Mr. Temple.

THE WITNESS: I guess I am really -- I really don't know what is meant by that other than what it says, Mr. Cherry, that our people have looked at what has been done in the past, evidently.

But I would judge they felt that based on what they have seen, this may not be a part of it.

I really don't know very much about this particular aspect of it.

BY MR. CHERRY:

Q I want to show you a copy of Midland Intervenor's Exhibit 24. What was a letter that you wrote to the Dow Board of Directors or representatives thereof.

(Handing document to witness.)

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A Yes, sir.

Q Now, in that letter you call Consumers Power Company "these guys," and you indicate that maybe Dow has been used by Consumers Power Company, and generally commenting adversely on Consumers.

Had you explained to me the basis, the complete basis of Dow Chemical's conclusions about Consumers Power Company in all of the answers that you have already given me, or is there anything else that you feel you want to add to make your answer complete, in light of Exhibit 24?

end 2

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MR. ROSSO: Mr. Chairman, I object to the preliminary remarks which characterize the document and ask that they be stricken.

CHAIRMAN COUFAL: Well, tell me specifically; I was watching the document when he asked the question, Mr. Rosso, and he did refer people at Consumers as "these guys." That was accurate.

Now what was your specific objection? Or what beyond that do you object to?

MR. ROSSO: I don't recall. I do not have the document in front of me. I do not recall what other characterizations he had in his question, but I just don't think it is proper for him to read a document -- point it out to the witness; as the witness if it says that. Let's get away from speeches in front of questions.

CHAIRMAN COUFAL: Overruled.

Go ahead and answer, Mr. Temple.

THE WITNESS: I think, Mr. Cherry, all of the factors that I can recall that were the basis for my suggestion to the individual I reported to, then, who was in charge of all the manufacturing divisions in various locations, that if any of the other locations were seriously considering making extensive contractual arrangements with utilities, without telling them how to run their business, we would like to share some of the experiences and the lessons we have

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learned over the last 10 years in dealing with the Michigan utility.

I don't know of anything that I would add as further basis for it.

BY MR. CHERRY:

Q Does the opinion; frustrations and insights, which you held at the time you wrote Midland Intervenor's Exhibit 24, are they still accurate and true as of today?

A Yes, I think so.

Q And I take it from your comments that if you were responsible for making decisions for other divisions, you would be very careful about letting any of them get involved with these guys, or these type of guys in long-term commitments?

MR. ROSSO: I object. There is a proper question in there, perhaps, and that is with utilities; is what the witness says, but "these guys," and "these type of guys," are the kinds of characterizations that are going to make this record look like a mish-mash.

MR. CHERRY: The reference comes from the letter.

CHAIRMAN COUFAL: It does come from --

MR. ROSSO: It is not what it meant, sir.

CHAIRMAN COUFAL: Well, he is accurately citing what is in the letter, Mr. Rosso, that Mr. Temple wrote.

MR. ROSSO: Does the letter say, sir, "these kinds

-b3
of guys?"

CHAIRMAN COUFAL: It says "these guys."

MR. ROSSO: It is not "these types of guys?"

CHAIRMAN COUFAL: And "these types."

MR. CHERRY: I take it the objection is overruled?

CHAIRMAN COUFAL: Yes.

BY MR. CHERRY:

Q Mr. Temple?

A Well, I think the letter says that perhaps it is the particular utility that we have dealt with. I have not dealt with other utilities. From what I have heard of some of the ones our divisions have, their financial achievements and their record certainly says that they may very well be much better operating companies and may very well be somebody that we would consider making some kind of a long-term business arrangement with.

I think anybody, any of the other divisions at Dow contemplating that, should benefit from the experiences that we have had and then make their own decision based on their judgment of the other utilities, some of which I think are very good.

Q But if you were making the decision as to whether or not utilities, long-term commitment to utilities and other divisions around Dow, including the one you formerly headed, were to be made and you believed that Consumers was

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an adequate representative of all utilities, I take it you would not enter into such long-term commitments?

A I would be very, very reluctant to do so.

Q Is there anything else you would like to tell me, Mr. Temple?

A No, sir.

MR. CHERRY: I have finished, then.

CHAIRMAN COUFAL: Mr. Hoefling?

MR. WESSEL: Let me state for the benefit of other counsel who were down first, except for the corrections that have already been served, I will not have any questions. If they think they are reserving something because Dow is going to add something, we do not intend to do that.

CHAIRMAN COUFAL: Thank you, Mr. Wessel.

MR. CHERRY: Mr. Chairman, based upon this morning's examination of Mr. Temple and my review of the transcript and subject to the very slim possibility that the Regulatory Staff will unearth something that I would consider important, I do not intend to and hereby state that I have no further questions at this time, at the suspension hearings, of Dow witnesses.

So I don't want to talk to anybody at the Corporate Review team, and in light of Mr. Temple's testimony, I have no need to examine Mr. Orefice.

MR. WESSEL: First of all, the words "at this time,"

I think should be --

MR. CHERRY: I mean at the suspension hearing, Mr. Wessel. I may very well at a remanded hearing have a lot of questions.

MR. WESSEL: We can deal with that, but I think it was clear to the extent if there was going to be Dow testimony that it was predictable it would be this week. And the witnesses are available.

Second of all, if the Board please, although I assume Mr. Orefice is probably already on his way and can't be stopped, I would like at least to try; if it is the intention of either the Board or the Staff or Consumers, that they have no questions of Mr. Orefice -- I may not be able to stop him anyway, but I would like to request the parties to indicate, if they can, before they complete their own further examination of Mr. Temple, whether they intend to have Mr. Orefice testify.

We do not intend to call him independently, nor do we intend for this Board to call any witnesses at this point.

CHAIRMAN COUFAL: Mr. Hoeffling?

MR. HOEFFLING: I think it is necessary that Mr. Orefice come here and testify as to exactly what the Dow position is and testify as to the events that surrounded Mr. Orefice reaching the conclusion that was reached on the --

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at the Corporate Review.

CHAIRMAN COUFAL: Fine.

Do you want to proceed, Mr. Hoefling? Do you want a few minutes to prepare yourself?

MR. HOEFLING: No; I will go ahead. I don't have very much.

I will mark Staff Exhibit No. 5, notice of violation, Environmental Protection Agency.

(Whereupon, the above-mentioned document was marked Staff Exhibit No. 5 for identification.)

(Counsel distributing documents.)

BY MR. HOEFLING:

Q Staff Exhibit 5, Mr. Temple, are you familiar with that document?

A I have seen it before, yes, sir.

Q Can you tell me what it is?

A I guess it is a finding of violation from the EPA with regard to the operation of our power houses.

Q What is the date of the notice of violation?

A November the 18th.

Q Were you surprised when Dow was served with this notice of violation, Mr. Temple?

MR. CHERRY: I object to the form of the question.

THE WITNESS: Yes, I was surprised.

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BY MR. HOEFLING:

Q Why is that?

A Because we were operating our plants under a consent agreement from the Michigan Air Pollution Control Commission and we were in compliance with that consent agreement.

Q And have you had any discussions with the Environmental Protection Agency subsequent to receiving this notice?

A I personally have not.

Q Are you aware of any discussions that Dow has had with the EPA?

A Yes; there have been a number of phone calls and I think there was a meeting which involved both the EPA and the Michigan Air Pollution Control Commission and Dow.

I guess that's not right -- there have been communications between Dow and the EPA.

Q Can you relate the substance of those communications as you know them?

A Well, I think the --

MR. CHERRY: Excuse me, Mr. Chairman.

I had made a commitment to the Environmental Protection Agency that the head of the Air Pollution Commission who is in this building, that if this subject came up, he would like to send an observer up.

CHAIRMAN COUFAL: Can you have somebody call him?

MR. CHERRY: Could I just have a moment? Mr. Asberger is going. It will just take five minutes.

MR. HOEFLING: Mr. Chairman, I am not sure Mr. Temple has very much information on this topic.

CHAIRMAN COUFAL: Well, then that will be the EPA's problem, I guess. If they run up here fruitlessly, well, then --

MR. WESSEL: Mr. Pribila who had been charge of it says there had not been a meeting.

CHAIRMAN COUFAL: We have got a commitment -- if we have got a commitment to tell the man we are going to talk about him, let's tell him. If it is fruitless, it is just another ones of those days.

(Recass.)

CHAIRMAN COUFAL: Back on the record.

MR. CHERRY: While we are waiting, there are two matters that I would like to take up.

I just asked Mr. Renfrow about the documents that the Board had released yesterday or the day before, and he told me that he would prepare his objections by Monday. I think that is intolerable. I would like them released, unless objections are filed in writing, tomorrow morning.

I was up until 3:30 last night and I am alone.

Point number two, I would like a firm date for both the Staff to answer the interrogatories they are going --

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that you are going to order and Consumers. And I would like that date to be no later than the first thing Monday morning.

It does me no good to prepare direct testimony without having those documents. So I would like to have them by Friday, and it is just absolutely intolerable that a 75-man law firm and who knows how many lawyers and people there are at the Regulatory Staff, can't move forward to do a job.

I accommodate all my obligations at this proceeding. I do the work that I am supposed to do, and I just -- it does me no good to file interrogatories answer which I wanted three weeks ago, have the Board sit on the answers for two weeks. I know you are busy, but so am I. And then, Consumers says they will take another two weeks to answer them.

So I would like you to order them to answer them by no later than Monday with good faith efforts to get them in on Friday or over the weekend, and that if they don't produce reasons for documents privileged by tomorrow morning by 9:00 o'clock, they are automatically released.

I don't see any point in waiting any longer.

CHAIRMAN COUFAL: Mr. Hoefling?

MR. HOEFLING: I don't believe the Board has ruled on the Staff's objections to interrogatories.

CHAIRMAN COUFAL: We are ready to rule; I was going to last night and forgot.

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Mr. Renfrow?

MR. RENFROW: With regard to the interrogatories, Mr. Chairman, Mr. Cherry served on Consumers, Mr. Bacon is now calling back to the company to the appropriate people who have to answer those interrogatories.

Mr. Howell is on his way back. I expect to get from Mr. Bacon today an idea of how long it will take them to get those interrogatories answered. I have told them that they have high priority and that we need to answer them as soon as we can. I just don't know yet when they will be able to. I ought to be able to report back to the Board on the time we think it would take us to do it. We are not dragging our feet in terms of answering them. I told the Board we would report to you forthwith.

I was up late last night myself trying to get ready for this morning. You have asked that those objections be in writing. I have made arrangements to have my secretary come down on Saturday morning, so I can dictate --

CHAIRMAN COUFAL: We don't want to wait until Saturday morning to get them, Mr. Renfrow. Can you scratch them out in longhand on a pad. I don't want a lot of citations.

MR. LEEDS: I don't want to get into any internal business, but we have had an appearance of Ms. Bartleman.

MR. RENFROW: Ms. Bartleman is in Jackson, Mr. Leeds,

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and she is up there with three other lawyers getting the continuing discovery done and the remaining witnesses that we have to put on to come and testify.

DR. LEEDS: Can I finish my question?

MR. RENFROW: I am sorry.

DR. LEEDS: Miss Gibbs and Mr. Miller --

MR. RENFROW: Excuse me, Mr. Leeds; Mr. Miller has been in Africa.

DR. LEEDS: I don't know.

MR. ROSSC : He is unavailable to us. He came into this case. He is due back this week some time; later this week, maybe tomorrow. But he got into this case for the one purpose of that brief; okay? He is not in this case for other things. His schedule is such that he couldn't possibly at this point in time get involved in this case.

Miss Gibbs is also in the same situation. She was brought in for purposes of working on those two briefs.

They have commitments. We have been trying to get a little bit of time from one person, a little bit of time from another so that we can get some of the things done in this tremendous schedule that we have.

But we are producing thousands of documents and answering interrogatories and preparing witnesses, going on with the hearings. I mean, it is just an incredible schedule. We were up until way past midnight, too, getting ready for

today, and we were back down at the office at 8:30 this morning. I mean, you know, there is just so much we can do.

Yesterday I put in a 17-hour day.

MR. CHERRY: Mr. Chairman, there are six lawyers who filed appearances. The traditional rule is that if a lawyer files an appearance, -- Mr. Miller didn't tell us he was going to Africa, and I frankly don't care.

Mr. Rosse indicated yesterday that he was thinking about having his firm withdraw as well as himself, so the firm has been part of a proceeding.

I want to have --

CHAIRMAN COUFAL: Mr. Cherry.

MR. ROSSO: I move for a citation for contempt.

MR. CHERRY: I apologize, Mr. Chairman.

MR. ROSSO: I move immediately for a citation of contempt --

MR. CHERRY: Move all you want.

MR. ROSSO: -- For violation --

MR. CHERRY: But the point I am making is that Mr. Rosse's firm has entered an appearance in this proceeding and what I want is those interrogatories answered no later than Monday and the documents released tomorrow, unless there is a suggestion on the record tomorrowing at 9:00.

And I don't care what their answer is tomorrow. If they come -- come back and tell you they can't do it until

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ten days from now, you have still got to rule that I get those documents at a reasonable time, to use them.

So it is totally irrelevant under the time frame of these proceedings for you to wait for their answer. It seems to me that the best way to do it is to order them to have the interrogatories answers no later than 9:00 Monday morning and then let them petition for relief if they need it. But we have got to get this thing moving, sir. And I cannot use this information unless I get it in a timely fashion.

CHAIRMAN COUFAL: I understand your position.

Overruled. We don't have contempt powers, Mr. Rosso. If you make a motion to what ever we can do within the rules.

MR. ROSSO: I will look for what ever rule, for what ever sanctions there may be.

CHAIRMAN COUFAL: Let's go ahead with Mr. Temple.

MR. TOURTELLOTTE: Mr. Chairman, you do understand that the Staff is not in a position to even begin work on answering the interrogatories until we know which interrogatories are going to withstand objection.

CHAIRMAN COUFAL: Obviously.

Do you have questions of Mr. Temple?

MR. HOEFLING: Is the EPA agency representative here?

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MR. CHERRY: Are you the representative from EPA ?

VOICE: Yes.

CHAIRMAN COUFAL: Go ahead, Mr. Hoeftling.

BY MR. HOEFLING:

Q Mr. Temple, apparently we are not clear as to whether there have been meetings between Dow and EPA. Would you clarify that for us?

A There have been meetings between Dow and the Michigan Air Pollution Control Commission. There have been telephone conversations between the Michigan Air Pollution Control Commission and the EPA. There have been telephone conversations between Dow and the EPA. And a meeting is scheduled on February 14th in Lansing at which Dow will be there, the Michigan Air Pollution Control Commission will be there and the EPA will be there.

Q Do you have any knowledge of the substance of these telephone communications with EPA?

A Well, it is my understanding that, since Dow was scheduled to go the MAPCC hearing on January 18th and present their plan that it was agreed that we should go do that and then following our presentation of the plan and the EPA's people's opportunity to assess it, there would be then a meeting on the 14th of February of the three parties involved.

Q Do you have any idea as to what the implications of this notice of violation would be for Dow?

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A I assume they could probably shut us down. I don't know. My answer is no; I guess I don't. I consider it serious, but I don't know what the specific remedies are that they can seek.

Q But it could conceivably produce a shut down of utilities?

A I don't know. I am not that familiar with the law to know what their courses of action would be.

End #3
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Begin 4

Q Now, when you presented your testimony at Midland --

A In Lansing. For the MAPCC?

Q No, when you presented your testimony in this proceeding in Midland, I believe it was.

A Yes, sir.

Q In December.

Did you have knowledge of this notice?

A Yes, I believe we did.

Q Was it reflected in your testimony?

A I really don't recall.

Q Turning to the Black and Veatch study on the rehabilitation of the Southside Powerhouse, is it a fair statement that Dow has looked at rehabilitation of the Southside Powerhouse and has concluded that that's not feasible?

A I believe that's our conclusion.

Q Has Dow undertaken any formal engineering studies for the construction of new fossil-fired facilities to supply steam?

A No. If we have, they are of a very preliminary nature.

Q Has Dow undertaken any formal engineering studies as to any alternative to supply steam for your Midland plant?

A Well, we've made a proposal to the Michigan Air Pollution Control Commission, which they have accepted subject

to Dow and the staff meeting to work out a new consent agreement.

Q But that's a short-term solution.

A It's a solution that if necessary could carry us until December 31, 1984. It's based on the fact that we expect to be purchasing nuclear steam on March 1, 1982; but if they are not ready then we can operate those facilities until December 31, 1984.

Q Have you looked in a formal fashion at the alternative of coal gasification?

A Yes, we have looked at that. We are proceeding with work in that area in our Louisiana Division, but we are not at this point in time seriously considering that as a remedy for our air pollution control problems in the Michigan Division.

We are interested long-term in coal gasification for Michigan, but not in a short-term with regard to our problems with the Air Pollution Control Commission.

Can I go back and make one additional remark, which might clarify the problem that we're in with regard to the federal EPA and the state Michigan Air Pollution Control Commission?

There seems to be some disagreement between the state people and the federal people as to whether we have a valid consent order or not. We think we have. We signed

it in good faith; and I guess until those parties draw some conclusion as to whether the State of Michigan is right and we do have a valid consent agreement, or whether the federal people are right and we don't, we're proceeding with a plan which we think makes sense and the Air Pollution Control Commission in Michigan, with whom we must deal, thinks makes sense to the extent that they've turned over the job to the staff to work with our people to work out a consent agreement which would extend beyond July of 1980.

Q Are you familiar with the presentation that was made to the Michigan Air Pollution Control Commission?

A Yes, sir.

Q Do you have a copy of that with you?

A Yes, I do.

Q On page 4 --

A Yes, sir.

Q I believe this is Board Exhibit No. 1 for identification.

MR. WESSEL: That number can't be right. Number 1?

MR. HORNUNG: Excuse me. Board Exhibit No. 1 for identification.

BY MR. HORNUNG:

Q On page 4, the first full paragraph, reference is made to discussions with the staff -- and I take that

to be the Michigan Air Pollution Control Commission staff -- indicating that you have an agreement with the staff on issues that need to be clarified in your present consent order.

Can you tell us the substance of that agreement?

A. I think I can tell you two major things that the staff wanted that we have agreed to provide and/or comply with.

The staff wanted more data from Hilland with regard to either SO₂, or the particulate emissions, I'm not sure which. We agreed to provide that additional data.

There also was -- I think it was late in '75 or early '76'; I'm not sure which -- an alleged violation of our SO₂ ambient air quality standard as covered in the consent agreement, and there was a difference of opinion -- well, we would end all this in December, but our agreement calls for us to be measured on a 24-hour period which runs midnight to midnight and then starting again midnight to the next midnight. I think that's the way the federal law is written, if I'm not mistaken.

The state wanted to have the 24-hour period be a running 24-hour period, which would start anytime we had any problem they could start the 24-hour period going. We have agreed in the new consent order that we would go beyond what I think the federal law is, although I'm not that familiar with it, and we would agree to a running 24-hour period as

being our period of measurement.

These are the two main things that we've agreed to in the pre-July 1989 period.

Q Right.

Now, the area of providing more data, will that require a dollar outlay by Dow to meet that commitment?

A I can't tell you.

Q You can't tell us if there are dollars involved?

A I'm sure there are some, but in comparison to some of the other figures here I don't think they're significant.

Q Would a million dollars be too much?

A Way too much, I think.

Q Pardon me?

A Way too much.

Q Way too much.

Are there any other dollar items that are involved in this pre-1989 period to satisfy the staff on the consent order?

A Not that I'm aware of.

Q How --

A Excuse me, sir, let me add something to that.

The staff is looking at the whole period up to 1989, and then they also want to know what we're going to do beyond 1989. They want the two pieces to make the

package that they're going to agree to.

So there are some things we'll have to do before 1980 to enable us to operate the powerhouses the way we need to in order to comply with the plan that we've presented.

I didn't want to indicate to you we're not spending any more money before 1980.

Q Now, again on page 4, the bottom paragraph, in your presentation you reached the conclusion that the only practical alternative that would permit you to meet emission regulations for the State of Michigan is to eliminate coal as your fuel.

What is the basis for your conclusion that coal would not enable you to meet the State of Michigan standards?

A Well, these powerhouses are very old, and the only way -- I think it's correct to say the only way we can meet the emission standards without investing additional significant sums of capital in the form of ball stacks, precipitators and scrubbers in these old powerhouses, which we would have to do in order to keep the emissions in compliance -- which we could probably build and construct and have ready to go by mid-1980, only to have those, that investment carry us from mid-1980 until March 1, 1982, when we expect to shut down and take steam from the nuclear plant, or at most, even if we had to run those powerhouses until the end of 1984, which is absolutely the longest that we

think they're capable of running reliably, economically and safely -- it just doesn't make any sense in comparison to the alternative.

Q So it's a judgment based on capital cost of putting in the equipment to burn coal and to meet the State of Michigan emission standards?

A Yes, I think that's a fair statement.

Q The solution that you proposed to the MISO was to burn oil?

A That's correct.

Q What is your oil source?

A Dow currently has under construction on the Gulf Coast a 200,000 barrel a day chemical refinery from which we will extract chemical raw materials, and another product coming out of that refinery is significant quantities of oil which would be satisfactory for burning in these powerhouses.

Q Where does the crude oil come from?

MR. CHERRY: I'm sorry. I didn't hear the question.

BY MR. HOEPLING:

Q Where does the crude oil come from for that function?

A I think it would be foreign crude.

Q Can you give us any more specificity than that?

A No, I can't, but we're investing several hundreds

of millions of dollars in the refinery, and I'm sure our hydrocarbon purchasing people would know where they're going to get that crude. I don't personally know that.

Q Have you discussed the use of oil to fire your boilers for the post-1980 period with the Federal Energy Administration?

A To the best of knowledge, no, we have not.

Q You've had no contact with the FEA on the use of oil as a fuel to fire your steam boilers?

A With regard to this proposal, I think that's correct, we have not had that communication.

Q Have you had any communications with the FEA on the use of oil as a fuel?

MR. WESSEL: Are you speaking generally? I think the question was unlimited?

CHAIRMAN COUFAL: Are you talking about with respect to that plant, Mr. Hoebling?

MR. HOEBLING: Just in general at this point.

THE WITNESS: Well, we had some communications with them when we implemented the fuel switching program which we are now on, which was back in mid-1974.

BY MR. HOEBLING:

Q What was the subject of those communications?

A I really don't know. I wasn't involved in it. We were able to get agreement from them to the extent an

agreement was required that we could burn the fuel oil which came out of our Bay City refinery.

Q You haven't had any discussions with them on the most recent proposal to the IEPCC?

A To the best of my knowledge, that's correct.

Q Turning to the January 13, 1977, document, Midland Intervenor's Exhibit No. 26 for identification, this is a comparison of alternatives for supplying steam.

The nuclear plant costs that were used in this study were supplied by Consumers?

A Is this the one that says "Response to Second Set of Interrogatories"?

Q This is a --

MR. CHERRY: Case A, B, C, D, E.

THE WITNESS: Okay. Thank you.

Would you repeat the question? I was searching for the document.

BY MR. HOEFLING:

Q The data that was used to develop Cases A and B, the nuclear data, was supplied by Consumers Power Company, is that correct?

A That's correct.

Q Calculations under the rate formulas in the contract were performed using that data to develop steam costs?

A I think that's correct, if I understand the

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question.

Q Could you tell me how the nuclear steam cost was developed for Cases A and B?

A The data was all provided from Consumers Power Company and was utilized by the same gentleman who has repeatedly made these evaluations over the last five or six years. I assume he made them the same way.

Q What has he done for the last five or six years? How has he developed the steam cost? Has he gone through the rate formulas in the contract?

A Yes.

Q Who made these calculations? Mr. Burroughs?

A Mr. Burroughs, I think, made these calculations.

Q On Attachment 1, as I understand it the costs on this attachment are expressed in 1982 dollars and are the yearly cost for the year 1982, is that correct?

A I believe that's correct. Those are first-year costs of operation.

Q Now, turning to Case C, which is the third attachment from the back --

A Yes, sir.

Q -- what was the source of the information that went into this estimate?

A Well, the capital cost estimate was based on the Black and Ventch study that I think was made during 1976 for

11 us and updated by Mr. Burroughs. And the coal costs, of course, are our estimates, as we've discussed previously in the hearings. And limestone and feedwater and operation and maintenance are our own projections based on experience of what those factors would be.

Q Okay.

Now, at the bottom of that sheet, "UDFC" -- what does that mean?

A Direct fixed capital.

Q Okay.

"Total AFC plus WC" -- what does that mean?

A Well, "WC" is working capital, and I guess I'm not sure what "AFC" is.

Q Mr. Schick is the individual who worked this sheet up?

A Mr. Schick and Mr. Burroughs apparently both worked on it.

Q I note the initials "JLS" at the top of the sheet.

A Oh, I'm sorry. I was looking at the cover letter. Apparently he did this.

Q The feedwater cost, what does that mean?

A Well, I assume it means just what it says -- the cost of water plus the treatment required in order to give the water the quality that can be used in the boilers, perhaps including some steam condensate recycle capital. I'm not

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too sure of the latter, but it's that sort of thing.

Q The same thing with the limestone, the expenses associated?

A That's just the cost of the limestone, I think.

Q Just the cost of the bulk limestone.

The high-sulfur coal, that gets us back to your 1976 base cost and the escalation figures that we talked about before?

A Yes, sir.

Q Operation and maintenance, where did that number come from?

A Well, that's our own experience in operation and maintenance of running powerhouses burning high-sulfur coal.

Q Yesterday you testified, I believe, that in your opinion the Midland Nuclear Project was no longer cost-benefit justified to Dow. Is that an accurate characterization of the testimony yesterday?

A I said that in my judgment the Midland Nuclear Project would be most likely to be disadvantageous to Dow.

Q Okay.

Did the information about the economic comparisons in the January 13 memorandum -- did that form the basis for your judgment?

A I think we talked about that yesterday. When we looked at the economic factors, which are one factor in making

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of this type, we looked at the 20-year levelized view of the nuclear project versus our own project.

I think . . . said yesterday that the nuclear project was favorable by approximately \$4 million per year on a 20-year levelized look.

Q I want to go back to your recollection of the September 31 meeting between Consumers and Dow.

A Which I did not attend.

Q Yes.

But you do have an awareness of what happened at that meeting?

A Yes, sir.

Q What is your recollection of the nature of Consumers' comments on a potential lawsuit?

A Well, I think they're best represented in the notes of the people who attended the meeting, which have been produced and have been the subject of cross-examination.

My understanding is that there was a discussion which said that if Dow did not support Consumers' position "Dow and Consumers are going to have one hell of a lawsuit." That's one of the quotes in there.

I feel that we were threatened with a lawsuit.

Q I want to show you Staff Exhibit No. 4 for identification, Section 3.

(Document handed to the witness.)

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Staff Exhibit 4 is the agreement between Consumers and Dow. Are you familiar with that section of the General Agreement?

A Yes, I'm generally familiar with it. It was quoted in Mr. Nute's notes with regard to that meeting.

Q Is that the section that those notes referred to?

A I believe this is the Section 3 that was referred to by Mr. Bacon in that meeting.

Q At the September 24 meeting between Consumers and Dow at which you were present?

A Yes, sir.

Q Could you tell us the nature of the Consumers' discussion regarding a potential lawsuit?

A Yes, I think I can.

That meeting was scheduled to allow the Consumers people to make an input to Dow during the course of this corporate review, which was to convey to us any information that they had that they felt they wanted to convey to us, plus to allow them to make sure that we understood what the impact might be on Consumers Power Company if the Michigan Division position or conclusion, which is that the nuclear plant will most likely be disadvantageous to the Midland plant, to Dow's Midland plant, what the implications would be if that also became Dow's position.

Mr. Aymond was the principal speaker and went

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through several cases. Again, I think we discussed to some extent yesterday that one case was if Dow's position was that we were tremendously enthusiastic about the project still, that that would create no licensing problems; if we acknowledged that we were still in support of the project and that we were anxious to get steam and power but that we were beginning to run out of time and the costs were putting severe strains on us, that if it got pushed out any longer we might be forced to reconsider our position.

I think the third case was if we said we didn't really like the project anymore, if that became the Dow corporate position, and that we were only going along with it because we had a contract. That would make the odds of retaining the license about 50-50, and that if we repudiated the contract that they would probably lose their license. And in either of the latter two cases -- I believe it's reflected in Mr. Aymond's notes, and it's my general recollection -- that Consumers would have substantial financial losses based on the cancellation and/or the delay, that there may be irreparable damage to Consumers Power and they would seek whatever means were at their disposal to recover all possible damages from Dow.

Q Was that particular section of the contract referred to in this meeting?

A I'd have to look again at the meeting notes. I

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don't remember.

Q Based on your recollection.

A I really don't know.

MR. HOEFLING: The Staff would move that Section 3 of the contract be admitted in evidence at this time.

CHAIRMAN COUFAL: Didn't the whole contract come in at one time or another.

MR. ROSSO: The contract was identified, I believe, but I don't believe it's been admitted in evidence.

MR. HOEFLING: It's been identified, yes.

MR. WESSEL: There hasn't been an exhibit offered in evidence since I've been here.

CHAIRMAN COUFAL: That's true, Mr. Wessel.

MR. RENFROW: I think it was put in the other proceeding as Mapleton Exhibit 27, I believe. We had this discussion once before about whether that was made a part of this record. As far as I know, that is not an exhibit in evidence. I believe it was marked for identification.

CHAIRMAN COUFAL: If it's never been received, then your motion, of course, is in order, Mr. Hoefling.

The thing that bothers me is whether we should put the whole thing in or just that section. Does someone want to speak to that?

MR. HOEFLING: I think that we have in front of the witness now and the Staff has identified the General

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Agreement, to which there have been numerous amendments. The particular portion of the agreement that the Staff is interested in is Section 3.

If other parties, for whatever reason, wish to move the entire agreement in, fine; but the Staff -- I feel that as far as the other parts of that agreement go, there are all kinds of questions as to whether or not we have all the backup, supplementary information to present a complete contract.

CHAIRMAN COUPAL: I think it is in evidence that Section 3 today is the same as it's always been. Didn't that come out yesterday?

MR. HOEFLING: Yes, I think we've got that on the record.

CHAIRMAN COUPAL: Is there an objection from anybody regarding the receipt of Section 3 of Midland Inverness's Exhibit --

MR. HOEFLING: Staff Exhibit 4.

CHAIRMAN COUPAL: Staff Exhibit 4.

(No response.)

There being no objection, we'll receive the document, the section of the document referred to by counsel.

(Section 3 of the document previously marked as Staff Exhibit No. 4 for identification was received in evidence.)

CHAIRMAN COUFAL: Since it's only a section, it might be convenient to bind that in the transcript for people reviewing the record. Do you want to make that suggestion, Mr. Hoeffling?

MR. HOEFLING: Pardon me, I didn't hear that.

CHAIRMAN COUFAL: Since it's only one section of the contract, for the purpose of convenience we could bind it directly in the transcript.

MR. HOEFLING: I think that's a good suggestion, but we have a problem producing enough copies to give to the Reporter. I think we're going to need thirty copies.

CHAIRMAN COUFAL: Can you handle that or not?

MR. HOEFLING: I think we can handle that.

MR. WESSEL: It's very short -- only a page or two.

CHAIRMAN COUFAL: The Reporter can copy it into the transcript.

(Document follows.)

GENERAL AGREEMENT BETWEEN CONSUMERS POWER COMPANY AND THE
DOW CHEMICAL COMPANY

SECTION 3

LICENSING AND OTHER ASSISTANCE

Dow shall, to the extent requested by Consumers Power and at Dow's expense, prepare or assist in the preparation of reports, data, descriptions, drawings and calculations in order that Consumers Power may obtain the necessary permits, licenses and approvals for the construction and operation of the Generating Plant, including the furnishing of services of technical personnel to make adequate presentations of such reports, data, descriptions, drawings and calculations at meetings and hearings.

Without in any way limiting the foregoing, Dow shall prepare or assist in the preparation of an emergency plan, satisfactory to AEC, Consumers Power and Dow, covering evacuation of the personnel in Dow's Midland Plant and other necessary action in connection therewith, and shall promptly execute said plan whenever required to do so by said plan or by AEC or in the unlikely event that there is an incident at the Generating Plant which may present a nuclear hazard to such personnel.

Dow shall also cooperate fully with Consumers Power to ensure that all conditions of the permits, licenses and approvals for the construction and operation of the Generating

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Plant are met insofar as Dow property, facilities, personnel and activities may be affected.

All of Dow's obligations set forth in this Article 3 shall be performed as expeditiously as practicable, due consideration being given to Consumers Power's schedules for obtaining and maintaining the necessary permits, licenses and approvals for the construction and operation of the Generating Plant.

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CHAIRMAN COUFAL: There are, as Mr. Wessel aptly notes, there are a lot of exhibits here identified but not offered.

MR. WESSEL: If the Chair please, everybody has been asking questions about documents not in evidence. I never heard of it before. I just assumed we were going to deal in an administrative fashion, whereby when the document was authenticated and referred to it was in fact in evidence.

It doesn't make any difference to me.

MR. CHERRY: Mr. Chairman, the reason that I did not offer the documents at those points was simply because of a comment that the Board Chairman made --maybe I misheard the Board Chairman-- during the first day of my cross-examination, when you stated that I couldn't offer any documents in evidence until I was putting on my case.

CHAIRMAN COUFAL: If I made that statement it was, of course, flatly wrong, Mr. Cherry.

MR. CHERRY: That's the only reason I have failed to offer 1 through 27 of Midland Intervenor's Exhibits except 4, and I'll do that at some time.

CHAIRMAN COUFAL: If I said that --

MR. CHERRY: I don't think it's applicable in administrative proceedings, but I just followed your rule. In light of what just took place, I'll make the offer later.

CHAIRMAN COUFAL: Okay.
Go ahead, Mr. Hoefling.

MR. HOEFLING: I have a set of exhibits that I want to have marked now; three exhibits, two are group exhibits.

Staff Exhibit 6, Group Exhibit A-H for identification.

CHAIRMAN COSTAL: What is the number?

MR. HOEFLING: Number 6, A-H.

(The document dated 9/26/76, titled first page "Sensitivities," 3 pages, was marked Staff Exhibit No. 6, Group Exhibit A-H, for identification.)

MR. HOEFLING: Staff Exhibit No. 7 for identification, one page, entitled "USA and Michigan Impact if Permanently Terminated by NRC."

(The document titled "USA and Michigan Impact of Permanently Terminated by NRC" was marked Staff Exhibit No. 7 for identification.)

MR. HOEFLING: And Staff Exhibit 8, Group Exhibit A-G, titled "Nuclear Project," dated 9/26/76.

(The document titled "Nuclear Project," 9/26/76, 7 pages, was marked Staff Exhibit No. 8, Group Exhibit A-G, for identification.)

BY MR. HOEFLING:

Q Mr. Temple, did you attend the corporate review?

A Yes, sir.

Q Which I take it took place in Midland on September 27th?

A It took place in Midland. I think that was the date.

DR. LEEDS: Excuse me, Mr. Hoefling, I hate to interrupt your cross-examination, but I have heard a couple of times about corporate review and attending a corporate review.

Was there a day in which a presentation was made at a corporate review which took a period of days to complete, to prepare the background information for?

THE WITNESS: No, there was a meeting which took place, it was a Monday, I think it was the 27th, which this group of -- I believe it was seven people, who had specific assignments to perform in connection with reassessing the conclusion that the division came to for Mr. Orrefice.

They did their work over a period of time; I think over a couple of weeks, and they reported then at a meeting which took about two hours.

DR. LEEDS: That is the corporate review?

THE WITNESS: Yes, that is the corporate review, sir.

DR. LEEDS: Thank you very much.

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BY MR. HOEFLING:

Q At the corporate review, as I understand it, members of the team made presentations to Mr. Orrefice and the other members of the Board present?

A Yes, that is correct, the Dow USA Board.

Q Now would you look at Staff Exhibit No. 6.

A Nine aren't numbered. Could you tell me what it looks like?

Q The first page is "Sensitivities," followed by seven more pages, including several graphs.

A Yes, sir.

Q Do you recognize these sheets?

A Yes.

Most of these were used in the corporate review. I think maybe the last two might have been backup type data.

Q Pardon me?

A The last two sheets I don't recall being used as such at the review, but I think are the backup data for some of the other data that is presented.

Q These were the sheets that were used to make a presentation to Dow USA Board members, with the exception of possibly the last two?

A That's correct.

Q Staff exhibit 7, do you recognize that?

A Yes.

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Q What is that?

A What is it?

Q Yes.

A Well this was probably used in the form of a transparency and Mr. Decker commented on his area of assignment, which was to consider the impact of the division's position on the national energy programs of nuclear power in the United States and on the State of Michigan.

A I think he told us that these were his feelings as to what kind of impact there would be.

Q Staff Exhibit 3, the first plate of which is entitled Nuclear Project, Group Exhibit 8-A through G, do you recognize those?

A Yes, sir.

Q Were they also used in the presentation made to the --

A I believe all of these were used in the form of transparency to talk from, were part of the presentation.

Q Did you participate in that review or were you basically a spectator?

A I was principally a spectator.

Q Now at the conclusion of the review, were you given explicit instructions to cooperate with Consumers and provide testimony for this proceeding?

A We were given instructions to cooperate with Consumers, to provide knowledgeable witnesses who would answer

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questions fully and truthfully and to support the nuclear project until situations -- or the situation changed significantly, at which time the entire Dow position would be reviewed, and to make sure that we kept all options open while we were undertaking this responsibility.

Q Well, I am interested now in instructions that were given with regard to cooperation with Consumers in this proceeding.

Who instructed you along those lines?

A Mr. Orrefice.

Q What did he say?

A Well, he specifically said we will present knowledgeable witnesses; he said that he had concluded that conditions had not changed such that we should alter our position as being one in support of the nuclear project. And that we should fulfill all our obligations under the contract as we understood them to be.

Q Did he --

A And to keep our options open and so forth, as I have covered before. That is my recollection of what he said.

Q Now, when he said that, did he tell you that you were to defer to Consumers on the issues that were to be the subject of the testimony and the scope of that testimony?

A I don't think he got into that particular detail of his instructions.

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Q Just general instructions to you?

A That's my recollection.

MR. HOEFLING: No further questions.

CHAIRMAN COUFAL: Mr. Renfrow?

MR. CHERRY: Mr. Chairman, before redirect starts, I just have one question that I would like to ask. It will take me just a couple of moments to do my cross.

May I do that?

CHAIRMAN COUFAL: Yes.

MR. CHERRY: Thank you.

BY MR. CHERRY:

Q Mr. Temple, did Consumers Power Company ever tell Dow Chemical Company not to worry about the Regulatory Staff because Consumers, in effect, had them in hand and the Staff would do what Consumers wanted?

A Is that the question?

Q Yes.

A I don't ever recall hearing that from a Consumers' person.

Q Did you ever hear any conversation that one of the lawyers for Consumers Power Company had stated Consumers had undertaken the obligation to prepare the Regulatory Staff for this proceeding?

A I am not sure whether I heard something like that or not.

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Q I would ask if you could be provided with, to refresh your recollection, a memorandum in the files by Mr. Duran, produced by Milton Wessel of Dow Chemical, re: Dow-Consumers Power Meeting of 9/29/76, and specifically referring to the following portions of page 1, quote:

"Rex. . ." in reference to Rex Renfrow. . .

"stated at the meeting that the statement that Larry Brenner has been chosen to try the case.

"Rex stated that this assignment came from the meeting with Consumers Power Company."

And then a little bit down, saying:

"Rex stated that Marty. . ." reference to Martin Balch of the Staff. . ."is now on his way to Europe."

Stated that Dick Brown who has had an appearance in this proceeding is preparing to hear this.

"Rex pointed out that Dick has now come over to take some of his job, but is not ready to handle the job at the hearing. That is what Brenner is going to do. Rex stated that on the bottom line we can get them ready to go to the hearing and that Rex had given Consumers Power Company Roy Wells' and Dick Keeley's names as prospective witnesses for the Staff in an effort to get them ready for the hearing."

I ask if that refreshes your recollection as to whether or not the manipulation of Consumers Power Company to

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testimony in this proceeding was intended to reach into a United States Government agency.

MR. RENDEW: Object to the characterization of that, Mr. Chairman.

CHAIRMAN COUFAL: Strike the characterization, Mr. Cherry.

THE WITNESS: I don't think I was at this meeting, so I didn't hear any of this. So whatever it says there, I guess it says there. I don't really think -- I don't know what to say to this.

MR. CHERRY: Have you seen that, Mr. Tourtelotte? That is all I have.

CHAIRMAN COUFAL: Mr. Rendew?

MR. TOURTELLOTTE: Mr. Chairman, I would like to ask of the Chair what is the function of counsel asking me questions during cross-examination of the witness.

MR. CHERRY: I would be delighted to answer if the Board wishes.

CHAIRMAN COUFAL: Why don't we wait until the noon hour.

I don't know of any.

MR. TOURTELLOTTE: Well, I object to that sort of behavior again. The purpose is clear. It isn't in keeping with the ordinary conduct of an attorney in a United States Court, and I would ask that the Board Chairman admonish

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Mr. Cherry to refrain from this type of conduct.

Now I also want to make this one point and that is, I seem to be making these objections and they just float away. Now, is Mr. Cherry required to behave in a way that an attorney does in a United States Court, or is he not?

If he is, I think I am entitled to the protection of having him admonished when he deserves it.

And if not, then correct me.

CHAIRMAN COUFAL: Counsel is right, Mr. Cherry.

Please conduct yourself according to the rules, which you know very well.

MR. CHERRY: Counsel is right that there are rules applicable to lawyers, or you agree with the statements that he has made?

CHAIRMAN COUFAL: I agree that -- I agree with him that it is the responsibility of lawyers in this proceeding to address the Board and not each other, without the express permission of the Board.

MR. CHERRY: Okay. In light of Mr. Tourtellotte's statement, I would like to tell the Board why I addressed Mr. Tourtellotte. I think in light of the circumstances, I am entitled to do so.

CHAIRMAN COUFAL: Mr. Cherry, I don't want to -- we have got Mr. Temple here to listen to testimony. Let's just conduct ourselves as I have indicated from now on out, and get

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along with it as soon as we can. I am sure you will find ample opportunity to address the Board on that and many other subjects.

MR. CHERRY: Okay.

It had to do with Mr. Tourtellotte's responsibility as an officer of the Court. That is why I did it. But, I will address it later.

CHAIRMAN COUFAL: Okay, Mr. Renfrow, are you ready to go with Mr. Temple?

MR. RENFROW: I am, Mr. Chairman. I would like a couple of minutes, and let me tell you why.

Mr. Hoefling asked some of the same questions that I had, but I have got them in different places and I haven't had a chance to mark them.

So I have two suggestions; either we take a couple of minutes and continue; or we can take an early lunch hour and over the lunch hour I will do that.

CHAIRMAN COUFAL: It is ten minutes of twelve.
What is your pleasure?

MR. WESSEL: If there is a recess, I have a question to ask Mr. Temple based upon the Staff's cross, which I prefer to be asked before we have a recess, before anybody can make any suggestions of having any discussions outside the presence of the Court.

CHAIRMAN COUFAL: Okay, go ahead.

MR. WESSEL: I don't want to interrupt Consumers.

MR. BENFROW: Go ahead.

MR. WESSEL: Mr. Hoefling asked you a question specifically, as I wrote it down; did Mr. Orrifice say that you were to defer to Consumers Power with regard to the issues on the scope of the testimony.

Do you recall that question or question in that substance?

THE WITNESS: Yes.

MR. WESSEL: Without regard to any comments which were made by any counsel that may have been present at the meeting in which Mr. Orrifice gave you your instructions, would you please state everything that was said with regard to the question of the production of witnesses for the proceeding which we are now in?

THE WITNESS: Well, what was said by Mr. Orrifice or others, other than counsel?

MR. WESSEL: Yes.

But please, if you can, try not to state, unless the Board directs you to, what responses if any, were given by any attorneys to questions posed of attorneys by those present at the meeting who are not attorneys.

THE WITNESS: Okay.

One of the issues that came up during the corporate review was the suggestion which was made at the September 21st

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meeting between the lawyers for Consumers and the Dow lawyers, that it might be -- I may phrase it wrong, but it might be a good idea to get a Dow witness from the US area, or corporate area who is not aware of the conclusion that was reached by the Michigan Division.

Mr. Orrefice made a specific point of saying that we will provide knowledgeable witnesses, the most knowledgeable witnesses, and they will answer the questions fully and truthfully.

MR. WESSEL: Now see if you can answer the following question yes, or no.

Was a question asked as to whether it was proper for Dow to produce a witness who does not have knowledge, and was an answer given?

THE WITNESS: By the attorneys?

MR. WESSEL: I have just asked a question as to whether a question was asked and an answer given.

Yes, by the attorneys.

THE WITNESS: Yes, I think the question was asked.

MR. WESSEL: The answer is yes.

If anybody wishes to ask further, I have an objection on the grounds of attorney-client privilege. And if the Board overrules me, it overrules me.

MR. CHERRY: I think we should hear the whole story. I think Mr. Wessel can't have his cake and eat it,

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1 and it seems to me that there is implicit in what Mr. Temple
2 just stated, which is supported by the documents, that
3 Consumers had made a suggestion that the Dow witness not be
4 so knowledgeable about the situation in an effort to keep out
5 what we have unearthed here.

6 And I think if that issue came up before a Court
7 or the Board, as a legal matter it bears on this thing and I
8 think the privilege has been waived because of the manner in
9 which the direct testimony was just suggested.

10 But in any event I think the privilege ought to be
11 overruled and we ought to hear the question and the answer
12 by Mr. Temple.

13 CHAIRMAN COUFAL: Will the Reporter read back to
14 the Board the last question and answer?

15 (Whereupon, the reporter read from the record
16 as requested.)

17 CHAIRMAN COUFAL: I am having trouble following
18 your last question, Mr. Wessel, and with your indulgence, I
19 am going to ask the reporter to read it one more time.

20 (Whereupon, the reporter read from the record
21 as requested.)

22 CHAIRMAN COUFAL: MR. Temple, with reference to
23 the question you answered for Mr. Wessel -- Mr. Wessel, you
24 stop me if I am treading where you have an objection, there
25 is reference to an attorney in this question and answer

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1 situation.

2 Was the question asked by the attorney, or was the
3 question answered by an attorney?

4 THE WITNESS: The question was not asked by an
5 attorney.

6 (Board conferring.)

7 CHAIRMAN COUFAL: All right, the objection is
8 sustained. It was not an objection, I guess.

9 MR. WESSEL: There was an objection to Mr. Cherry's
10 question. If I did, I should have.

11 CHAIRMAN COUFAL: Your objection to Mr. Cherry is
12 sustained on the grounds of privilege.

13 MR. WESSEL: Thank you.

14 MR. ROSSO: Mr. Chairman, the last word we had
15 was at your pleasure. Do you want to break for an early
16 lunch, or shall we take a few minutes?

17 CHAIRMAN COUFAL: It is 12 o'clock. What does
18 everybody else want to do?

19 MR. CHERRY: I think if we finish Mr. Temple, and
20 we can do it in half an hour, maybe he can get out of here.

21 How long is Consumers going to be?

22 MR. RENFROW: We can't do it in half an hour,
23 Mr. Chairman.

24 MR. CHERRY: Let's not take any three-hour lunch,
25 because I would like to be bak here at one o'clock.

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1 MR. ROSSO: I move to strike the comment.

2 CHAIRMAN COUFAL: I am not going to strike that
3 comment, Mr. Rosso. But, I am in agreement that we ought to
4 shorten up our lunch hour.

5 Mr. Renfrow, you said it would take you a few
6 minutes to get ready?

7 MR. RENFROW: Yes.

8 CHAIRMAN COUFAL: Okay.

9 Let's take until one o'clock.

10 MR. RENFROW: Thank you, Mr. Chairman.

11 MR. CHERRY: Thank you, Mr. Chairman.

12 (Whereupon, at 12 Noon, the hearing was recessed
13 to resume at 1:00 p.m. this same day.)
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AFTERNOON SESSION

(1:00 p.m.)

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CHAIRMAN COUFAL: Are we ready to proceed, Mr. Renfrow?

MR. WESSEL: Mr. Chairman, in speaking with Mr. Rosso over the luncheon recess, he gave me a document which had previously been produced but which on itself has notes, and there are some handwritten notes on the outside which bear upon, or at least I assume may bear upon his testimony.

I was able to get copies of the handwritten notes. I do not have copies of the documents themselves because there wasn't time to get them. I would like to pass out copies of the handwritten notes which are headed, "DNE, Please return for October Dow Board," and let the parties look at the document which bears Mr. Orrefice's notes, which is a copy of Mr. Temple's letter dated September 15, 1976 to Mr. Orrefice which has been previously identified.

They do bear on Mr. Orrefice's testimony. I will hand the original to Mr. Cherry with a Xerox of the notes that are attached with the request that he hand it to the Staff and to Consumers.--

MR. CHERRY: I will.

MR. WESSEL: -- and then return the original to me.

(Counsel distributing copies.)

CHAIRMAN COUFAL: Is it something that you think

1 we should see, that is going to be referred to this after-
2 noon?

3 MR. WESSEL: No, I do not.

4 CHAIRMAN COUFAL: Mr. Temple?

5 Whereupon,

6 JOSEPH G. TEMPLE

7 resumed the stand on behalf of Dow Chemical Company and,
8 having been previously sworn, was examined and testified
9 further as follows:

10 (Pause.)

11 CHAIRMAN COUFAL: Mr. Renfrow?

12 REDIRECT EXAMINATION

13 BY MR. RENFROW:

14 Q Mr. Temple, who signed the 1974 contracts on be-
15 half of Dow with Consumers Power Company?

16 A I think Dr. Barnes signed those contracts.

17 Q Which entity was that for, the Dow Chemical
18 Company, Dow U.S.A., or Dow Michigan Division?

19 A At the time he was President of Dow Chemical U.S.A.,
20 he was also a member of the board. I believe he signed them
21 for the Dow Chemical Company.

22 Q Were those contracts reviewed by the Dow Chemical
23 Company board prior to the time that they were entered into?

24 A No, not by the board, Mr. Renfrow. I made a pre-
25 sentation to the Executive Committee on the important aspects

rb3 1 of the nuclear contracts; the economics at that time of the
2 nuclear project versus the Dow alternatives and identified
3 the various changes that took place during that period of re-
4 negotiation.

5 Q Which executive committee now? The reason I am
6 asking the question is; I want to be sure we understand the
7 difference between the Dow U.S.A Operating Board, the Execu-
8 tive Committee you just started to talk about, the Dow
9 Chemical Company which signed the contracts.

10 A The Executive Committee is of the Dow Chemical
11 Company. It is composed of five to seven members of the
12 Board of Directors of the Dow Chemical Company, some of
13 them may be also part of Dow U.S.A., but they are members of
14 the Dow board, big board.

15 Q But they would not necessarily have to be members
16 of the Dow U.S.A. Operating Board that you have spoken about
17 previously?

18 A That actually wasn't in existence at that time.

19 Q Now that there is a Dow U.S.A. Operating Board, is
20 there still an Executive Committee?

21 A Executive Committee of the big board; yes, there is.

22 Q Do you have a copy of your testimony at the stand
23 with you?

24 A Yes, I do.

25 Q Will you refer to the last four lines on page 2 and

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1 the first four lines on page 3 of that testimony, please?

2 A Yes, sir.

3 MR. RENFROW: For the parties, that testimony can
4 be found on the November 30th transcript, page 220.

5 BY MR. RENFROW:

6 Q Is that the Dow Chemical Company's position as
7 you understood it on November 5, 1976?

8 A What was the date, Mr. Renfrow?

9 Q November 5, 1976; that was the date, Mr. Temple,
10 that the testimony you are referring to was filed with the
11 Board.

12 A Yes; that is the position of Dow.

13 Q Now on November 30th and December 1, 1976, you
14 testified in this proceeding in Midland. Was that the Dow
15 Corporate position at the time you testified, then?

16 A Yes, sir.

17 Q Is that the Dow Corporate position as you know it
18 today?

19 A Yes, sir.

20 Q I would like to go back now. I would like to ask
21 you when that Dow Corporate position was made?

22 MR. CHERRY: Are we talking about the bottom of
23 3 and the top of 4 of his testimony?

24 MR. RENFROW: It is on page 2, the last four lines,
25 and the first four lines of page 3.

rb4
1 MR. CHERRY: Okay.

2 THE WITNESS: That decision was made by Mr.
3 Orrefice at the -- as we called it, the Corporate Review,
4 I think it was September 27th, and is unchanged at the present
5 time.

6 BY MR. RENFROW:

7 Q The next question I have, Mr. Temple; I believe
8 you partially answered. Who actually made that decision on
9 behalf of Dow Chemical Company?

10 A Mr. Orrefice made that decision.

11 Q When he made that decision, did he consult with
12 anybody else?

13 A Well, as I think I have communicated earlier, he
14 consulted with other members of the Dow U.S.A. Operating
15 Board and then came back into the Corporate Review group and
16 announced that that was his position.

17 Q Were the members of the -- these were members of
18 the Dow Operating Board that he consulted?

19 A Dow U.S.A., right.

20 Q Okay.

21 Can you tell me what their names were?'

22 A I think I have already given them. I think they
23 are in the transcript, but I can go through it again. Mr.
24 Orrefice, of course, is the president; Mr. David Rooke was
25 a member of the Dow U.S.A. Operating Board that was present;

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1 Mr. Moran was present at the time and is now deceased; Mr.
2 Pruitt was present, and the other member of the Operating
3 Board was Mr. Leathers who was not present at the Corporate
4 Review nor in consultation with Mr. Orrefice at that particu-
5 lar time.

6 I think I got them all.

7 Q As I understand, then, after about a two-hour
8 meeting, these men went into another room by themselves and
9 came back out and Mr. Orrefice said: This is the Dow posi-
10 tion.

11 MR. CHERRY: Objection; leading the witness. This
12 is redirect.

13 CHAIRMAN COUFAL: Overruled.

14 BY MR. RENFROW:

15 Q What I would like to know now --

16 A Do you want to -- me to answer?

17 Q I'm sorry.

18 A Yes; that's correct.

19 Q Excuse me, Mr. Temple.

20 What I would like to go back to now is the time
21 immediately prior to that meeting with Mr. Orrefice, Mr.
22 Moran and Mr. Pruitt:

23 Would you describe for us what happened immed-
24 iately prior to the time that they went into, by themselves,
25 to make the decision, in general terms?

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1 A The meeting started about 10:00 and all of the --
2 each one of the members of the Corporate Review Committee
3 who had been assigned the task to work on with the idea of
4 determining in any way that they could proceed whether in any
5 respect whatsoever, the Division conclusion or the basis for
6 it, were not valid and solid.

7 And each one of these people did their job and
8 then reported. Some of the subjects had to do with subjects
9 other than the decision itself. But the impact of what de-
10 cision might have -- it became the Dow Corporate position and
11 they all reported.

12 Q Were any of the members of the task force --
13 excuse me -- strike that:

14 Were any of the task force heads who reviewed the
15 Michigan Division position, members of the Dow Operating
16 Board?

17 A The Dow U.S.A. Operating Board?

18 Q Yes.

19 A No.

20 Q Mr. Orrefice came back from his meeting with the
21 four gentlemen you mentioned and communicated his decision or
22 their decision to you. Was anybody else in the room with you?

23 A Yes; all of the members of the Review team were
24 there. Again, I think this is in the transcript from the
25 December 1st hearings. I will try to remember all of them.

1 Q I didn't ask you for all of them. Now were the
2 three members of the Dow Operating Board also there when he
3 communicated the decision?

4 A Yes; I believe they all returned.

5 Q But Mr. Orrefice was the spokesman?

6 A That is correct.

7 Q To the best of your recollection, Mr. Temple, what
8 exactly did he say to the members of the task force and the
9 Operating Board who were assembled in that room?

10 A He said that it was his conclusion that circum-
11 stances have not changed sufficiently to cause us to alter
12 our position as being in support of the Midland nuclear pro-
13 ject and that we are to proceed on that basis. We are to
14 cooperate with Consumers and that we are to keep all of our
15 options open and that we are to be prepared to recommend
16 when we feel circumstances have changed to the extent that
17 that decision should be reevaluated.

18 He also talked with regard to the issue of wit-
19 nesses, as we brought out this morning.

20 I think that is the essence of it.

21 Q Back in 1974 when Dow's Executive Board looked at
22 entering into the 1974 contracts which are Exhibits 7-A,B
23 and C to Mr. Howell's testimony, what circumstances did that
24 Executive Board review at that time?

25 A Well, I don't know that I can recall all of the

rb8 1 items that I reviewed. But as I said, I indicated -- I de-
2 scribed Dow's projected cost for steam and electricity under
3 the nuclear contract and the similar costs if we were to go
4 ahead and build our own power house, which was essentially
5 alternative C as defined in the discussion this morning.

6 And at that time there was a significant, very
7 significant advantage to the nuclear project

8 We also discussed the fact that we could continue
9 to operate our power houses beyond the start of the nuclear
10 plant and there was some changed conditions with regard to de-
11 fining the so-called nonrecoverables. I remember discuss-
12 ing that.

13 There may have been some other things, Mr. Renfrow.
14 I can't recall them right now. I tried to highlight the
15 significant changes and the economics.

16 Q At the time that you discussed that with the
17 Executive Board, did you review with them or someone in your
18 staff, the legal aspects of that, entering into those con-
19 tracts?

20 MR. WESSEL: I think I have to object, if the
21 Board please. My objection is on the grounds of relevance.
22 If this is tied up to an issue in this case; that is, one
23 that is before the Board, I withdraw the objection. There
24 is, however, as the Board now I think knows, an entirely in-
25 dependent issue between the parties which relates to the

1 nature of their contractual relationship and in part, the
2 nature of the representations made, reliance by Dow in 1974
3 and so on.

4 I don't know the purpose of the questioning at
5 this point. If it has a relationship to this case, I with-
6 draw the objection. If it is related to something between
7 Dow and Consumers, contractual issue, then I do object.

8 MR. RENFROW: As I have stated to Mr. Wessel be-
9 fore, I am not speaking to the Dow-Consumers contractual re-
10 lationship outside of this hearing. I am speaking solely to
11 the review that took place in 1974, and I would like to de-
12 termine what the circumstances they looked at; the Executive
13 Board looked at when they originally entered into that
14 contract.

15 And I am just asking Mr. Temple to tell me what
16 pieces they looked at the time they entered into the contract.

17 MR. WESSEL: Why? What does that have to do with
18 this case?

19 I understand what he is doing but I don't know --
20 see the relevance.

21 CHAIRMAN COUFAL: Can you explain, Mr. Renfrow?

22 MR. RENFROW: Sir?

23 CHAIRMAN COUFAL: Can you explain?

24 MR. RENFROW: Sure.

25 What I would like to do is get to the circumstances

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that were looked at then and find out what circumstances that were looked at by the Executive Board of Dow U.S.A. between then and the time in 1976 --

CHAIRMAN COUFAL: Somebody coughed in the middle of your sentence. Would you repeat your last sentence?

MR. RENFROW: Sure.

I would like to determine what circumstances were looked at in 1974. I am going to ask him whether the Dow Executive Board or the U.S.A. Board reviewed the situation between '74 and '76 to examine what circumstances they looked at; the question that is based upon, the testimony about the circumstances have not changed sufficiently.

MR. WESSEL: If I understood Consumers position in this case, it is that the only relevant consideration is the Dow Corporate position at this time, which has been stated.

If Mr. Renfrow is seeking to impeach the Dow Corporate position at this time, then I will withdraw the objection.

MR. RENFROW: I am not seeking to impeach it, Mr. Chairman. What I am seeking to do is to get on the record, hopefully in one place, the Dow Corporate position before this Board. I don't think at this time I have anything to impeach.

MR. WESSEL: He has the Dow Corporate position.

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I am sorry to urge this upon the Board. It is clear that there are many other things involved beyond just the limited albeit large issues in this case. And I fail to see the relevance of this issue to this case.

I would welcome the Staff's comments.

MR. CHERRY: I don't know if you would welcome mine, but I will give them anyway.

I support Mr. Wessel on this particular objection, for the following reason:

This is redirect of his own witness. If on cross-examination a witness' direct is put in better perspective all that can be said on redirect is to try to impair that testimony.

The witness has explained what the Dow Corporate position is on cross-examination; in other words, put so meat to the generalized statement in his testimony, and has reaffirmed those statements here.

And it seems to me that Mr. Renfrow is now trying to impeach the answer of his own witness. He can't do that. That is just not permitted.

On the other hand, I think that the dispute between Consumers and Dow is very much a part of this case and I think that the relative rights and obligations of lawsuits between the two parties is very much a part of this case.

So I think I would agree with Mr. Wessel so long as

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1 Consumers maintains the position that that lawsuit is not --
2 because that is their position and if for them to ask the
3 question; they are impeaching their answer.

4 However, if Mr. Renfrow will now state that the
5 contract and its relative rights and obligations and the dis-
6 pute is an issue, then I think he has a right to ask the
7 question.

8 CHAIRMAN COUFAL: Do you have any comments, Mr.
9 Hoefling?

10 (Pause.)

11 MR. HOEFLING: Mr. Chairman, the Staff is unclear,
12 I think, as Mr. Wessel is, as to the particular relevance of
13 this line of questioning. I think Mr. Renfrow has explained
14 it once or twice, but the Staff still doesn't appreciate it.

15 CHAIRMAN COUFAL: Well, address this, Mr. Renfrow.
16 Mr. Wessel has stated that Consumers' position with regard to
17 the obligations between Dow and Consumers depend upon Con-
18 sumers-Dow contract and their intentions with regard to what
19 is going to happen to that contract as it now exists.

20 However, this morning and yesterday, and for a long
21 time, we have gone into a lot of history with regard to how
22 the contract was originally, what it was in 1974, what it is
23 in 1976.

24 So I think if it is relevant on redirect. Now
25 can you tell us specifically where your relevant situation is

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1 going?

2 MR. RENFROW: The relevancy of this situation, Mr.
3 Chairman, is that what is stated in the testimony as Mr.
4 Temple has stated was stated to him: The circumstances have
5 not changed sufficiently.

6 I will go back and get it, since I --

7 CHAIRMAN COUPAL: I remember that; go ahead.

8 MR. RENFROW: Okay -- for Dow to change its posi-
9 tion of supporting the plant, in essence. And that is not
10 quite what Mr. Temple has consistently testified to, but that
11 is the import of it.

12 Now we have a lot of testimony now in the record as
13 to Mr. Temple's opinion on that position and what that meant
14 and what that is based on and why that's there.

15 Now I am entitled on redirect -- and it is relevant
16 to go back to the circumstances and have Mr. Temple set forth
17 before this Board the circumstances that were looked at and
18 which circumstances have not changed sufficiently.

19 Now that was gotten into -- we went through as you
20 say, all of this stuff on the history and why they got to
21 where they got.

22 And I am going to come back and now ask the ques-
23 tion as to which circumstances.

24 DR. LEEDS: Isn't your question this time: Did
25 the Board have legal advice?

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MR. RENFROW: I am not going to ask him what it was. I am not going to ask him what it was. All I want to know is: Is that one of the inputs that went into the Board when they entered in the 1974 contract, which the contracts -- before the Board.

DR. LEEDS: The Dow Executive Board.

MR. RENFROW: Yes.

DR. LEEDS: Of the Dow Company?

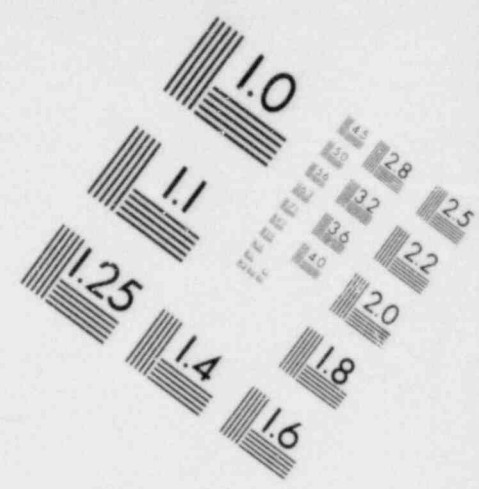
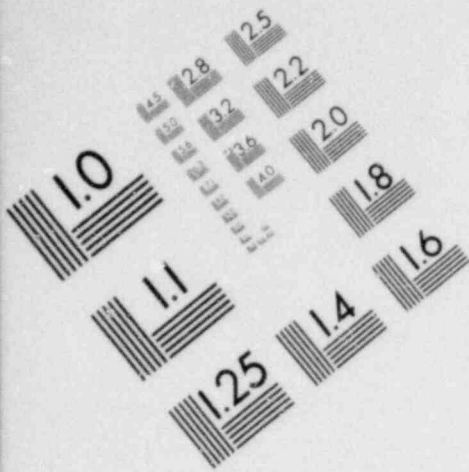
MR. RENFROW: That is why I wanted to be sure to straighten that all out.

MR. WESSEL: Let me just state: Let him answer this question. I am going to be objecting as this proceeds. But I want to remind the Board that that broad document discovery we received without letterhead from Mr. Bacon which we responded by asking what was its relevance, to which we have yet to receive any further answer -- so I think there is a real question in this case whether or not some of what is going on is not for the purpose of discovery, conscious or otherwise.

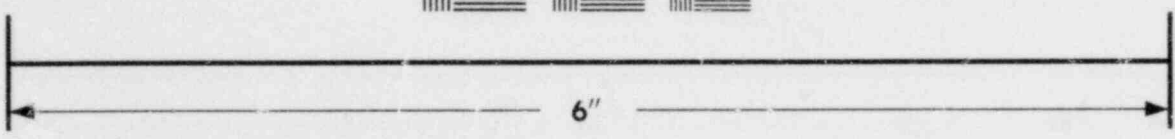
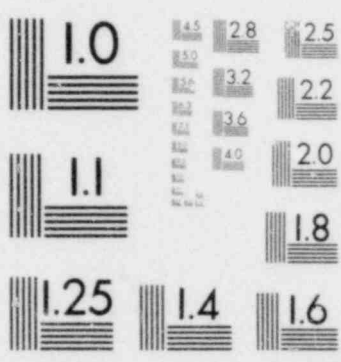
And I must therefore continue this objection.

CHAIRMAN COUFAL: You are welcome to do that, Mr. Wessel.

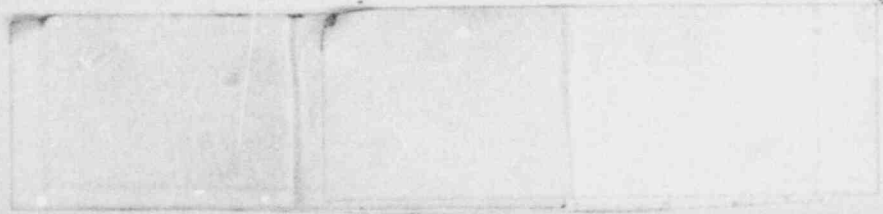
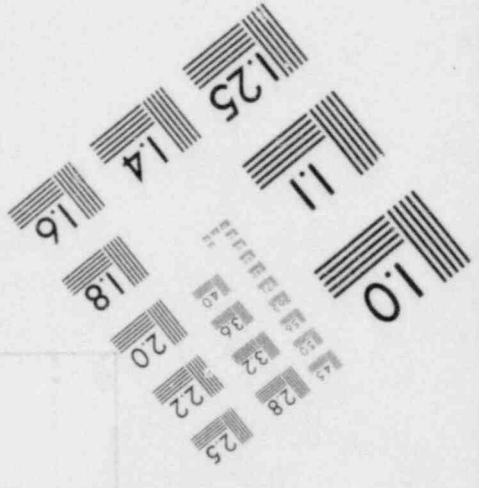
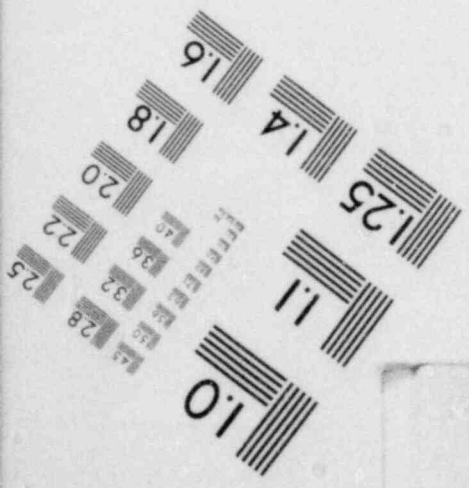
My personal feeling and the Board's feeling on this is that there was reference in the witness' testimony that Mr. Orrefice said that circumstances had not changed.

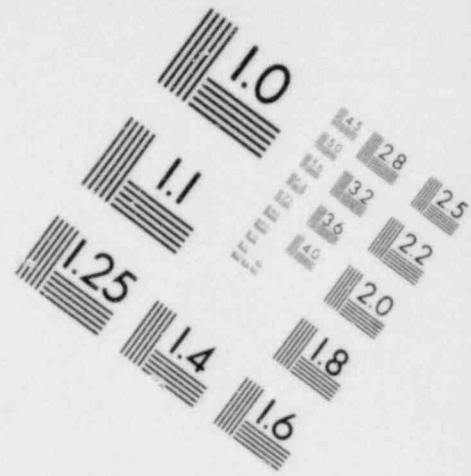
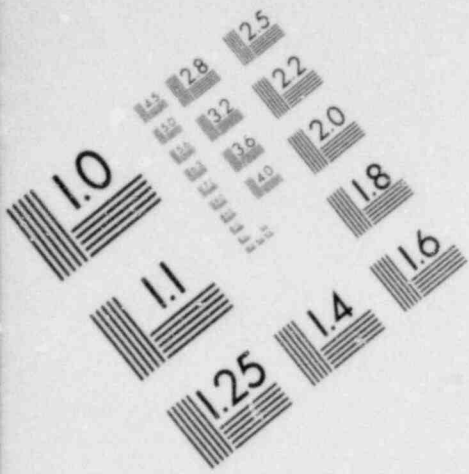


**IMAGE EVALUATION
TEST TARGET (MT-3)**

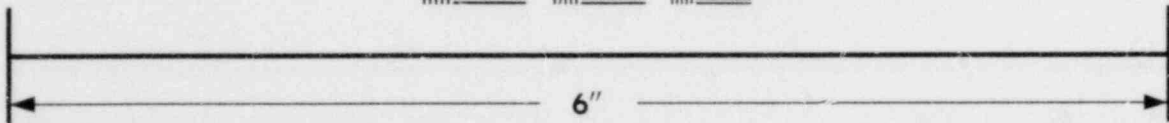


MICROCOPY RESOLUTION TEST CHART

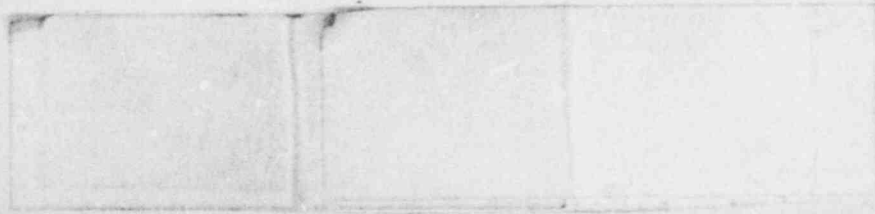
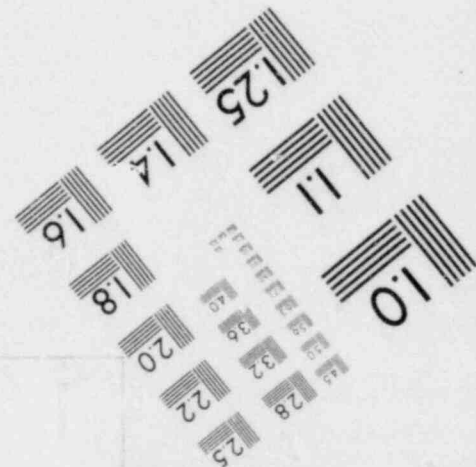
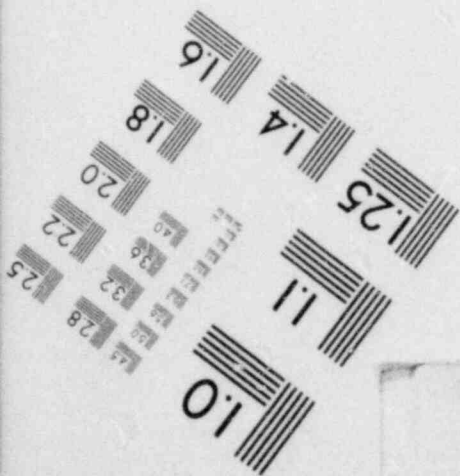




**IMAGE EVALUATION
TEST TARGET (MT-3)**



MICROCOPY RESOLUTION TEST CHART



rb15
1
2 And I think counsel has got a right to ask him
3 what circumstances were, that had not changed.

4
5 MR. WESSEL: Surely he doesn't want to show the
6 circumstances have changed.

7
8 MR. RENFROW: I don't know what that has got to
9 do with anything, Mr. Chairman.

10
11 But I do want to say two things:

12
13 If Mr. Wessel will look, we have not responded to
14 his denial; those items that we thought related to costs
15 and schedule. That's why we asked for them.

16
17 I will give him my personal representation that
18 that document request was intended to help Consumers inso-
19 far as Dow's costs and their schedules and what they are
20 based on.

21
22 Again, I am not representing nor am I trying to
23 represent Consumers Power Company in any contract dispute
24 that they may or may not have with Dow Chemical Company, and
25 I don't intend to do that in this proceeding.

26
27 I don't think I can go any further than make
28 that representation to you. I will make it to Mr. Wessel
29 on the record in this case.

30
31 CHAIRMAN COUFAL: Can anybody restate the ques-
32 tion?

33
34 MR. RENFROW: I can.
35

rb16
1 BY MR. RENFROW:

2 Q Mr. Temple, in 1974 when you made your presentation
3 to the Dow Executive Board, did you discuss with them the
4 legal aspects of the entering into the contract?

5 CHAIRMAN COUFAL: Is that the end of your question?

6 MR. RENFROW: That's it.

7 MR. WESSEL: I gather the objection has been over-
8 ruled.

9 CHAIRMAN COUFAL: Is that the question you are
10 objecting to?

11 MR. WESSEL: Yes.

12 CHAIRMAN COUFAL: Now answer that yes or no, if
13 you know.

14 MR. WESSEL: I would not object to this on attorney-
15 client. I might have that objection later.

16 THE WITNESS: I can't recollect that that area was
17 gone into extensively at that review. This was contracts
18 that had been initialed by attorneys and looked over by
19 attorneys. I did not have an attorney with me when the
20 presentation was made.

21 (Pause.)

22 BY MR. RENFROW:

23 Q That that time, Mr. Temple -- again we are going to
24 talk about this 1974 meeting --

25 Did you discuss or review with them the

b17

1 environmental or energy conservation aspect of the Midland
2 Division alternatives, both power and steam?

3 A Would you repeat the question, please, Mr. Renfrow?

4 Q Sure.

5 Did you discuss with the Dow Executive Board the
6 environmental and energy conservation aspects to the Midland
7 Division alternatives, both power and steam?

8 A I don't think specifically, although the base case
9 was, as far as I know has always been, designed to comply if
10 ever built, with the prevailing air quality standards of
11 Michigan and the United States.

12 I believe that was incorporated in the alternative,
13 but I don't believe I specifically discussed it. I am sure
14 I did discuss the fact that we are operating existing power
15 houses under our consent agreement which expires in July of
16 1980. And I cautioned the Executive Committee, that even
17 though we were getting permission to run these power houses,
18 that we had that problem to face if we ever really chose to
19 do anything about that alternative, or that privilege.

20 Q Did you discuss with them the decision that inso-
21 far as Dow was concerned nuclear safety was not an issue with
22 regard to Midland?

23 A That had been Dow's position for some time. Dow
24 had a specific committee of the board assigned to that subject
25 earlier in the life of the project, and that's what they had

rb13

1 concluded. We felt that that was a responsibility of Consumers
2 Power and the responsibility of the NRC to make sure that
3 the safety of the plant was indeed looked after and it was a
4 safe plant.

5 We did not feel that we knew of anything that
6 would cause us to feel that we should take a more prominent
7 position with regard to the safety aspects of it.

8 Q What was that?

9 A I guess my answer was, no; we didn't cover that
10 specific issue, to the best of my knowledge, at the review
11 for the Executive Committee.

12 Q But it had been covered previously?

13 A Yes, sir, and it was -- yes, sir.

14 Q Did you discuss with the Dow Executive Board the
15 impact of entering into the contract on the Midland community?

16 A I am not sure I know what you mean, Mr. Renfrow,
17 by the impact of entering into the contract.

18 Q Well, you told me you discussed economics?

19 A Right.

20 Q What are the impacts that could be if the steam
21 you sought to get was economical, that would allow Dow to
22 grow; and therefore, it would have an impact on the Midland
23 community? Did you discuss that type of impact with the
24 Dow Executive Board?

25 A I think as I talked about the economics, I would

rb19
1 be surprised if I didn't say that this steam would make the
2 Midland location more competitive from an energy point of
3 view, than it had been in the past and maybe more competitive
4 than other Dow locations in the future, or at least equiva-
5 lent to other Dow locations.

6 MR. CHERRY: We are talking about 1974 now?

7 THE WITNESS: Yes.

8 MR. RENFROW: Yes, sir.

9 BY MR. RENFROW:

10 Q And did you discuss the -- with the Dow Executive
11 Board -- the impact on Consumers Power Company of an -- enter-
12 ing into these contracts?

13 A No, sir.

14 Q Did you discuss with the Dow Executive Board the
15 impact on the National Energy Progra?

16 A No, sir.

17 Q Did you discuss with the Dow Executive Board the
18 impact on nuclear power in the United States by entering into
19 this contract?

20 MR. CHERRY: I will object to this question. And
21 also, just for the sake of argument, I object to the former
22 two questions.

23 NEPA doesn't care whether this company goes bank -
24 rupt if they are about to do something to destroy the environ-
25 ment. This company cannot support a nuclear plant because it

20 1 would look good for the Nuclear Regulatory Staff or the
2 Nuclear Regulatory Commission, or nuclear power in the United
3 States.

4 And there has been no suggestion here that Consumers
5 is tied into an international grid so that a need for power
6 somehow affects the United States.

7 I think those issues are totally irrelevant. I
8 would ask the Board to deal with that.

9 CHAIRMAN COUFAL: Overruled.

10 There has been a great deal of inquiry here in the
11 last couple of days about Dow's motives and Consumers' mo-
12 tives for doing what they have done. And this to me seems
13 to bear upon that issue, if that issue is important.

14 Go ahead, Mr. Temple.

15 Mr. Renfrow?

16 MR. RENFROW: Thank you.

17 BY MR. RENFROW:

18 Q Did you discuss the impact with the Dow Executive
19 Board of entering into these contracts, on the State of
20 Michigan?

21 A No, I didn't, but this was like the -- there were
22 19 for -- sort of interim arrangements which lasted 10 years
23 so that it really wasn't a new thing that we were talking
24 about entering into. It was another phase of the nuclear
25 agreement.

b21

1 Q Had you considered prior to this time, then, the
2 impact on entering into these contracts on the National
3 Energy Program?

4 A Prior to 1974.

5 Q Yes -- well, these 18 supplemental agreements that
6 you said were going on.

7 A No; I was in the Division since early 1973 and
8 that was not a question with regard to the one or two ex-
9 tensions that I may have signed.

10 Q Do you know whether or not the Executive Committee
11 had considered those prior to that time?

12 A I don't know.

13 Q What about the impact on nuclear power in the
14 United States?

15 A I don't know.

16 Q Now between the time that -- 1974 when the Execu-
17 tive Board reviewed entering into the contract and the
18 review made by the Dow Operating Board September of 1976, did
19 the Dow Operating Board, Dow Executive Board or the Dow
20 Chemical Company Board, review the circumstances surrounding
21 these contracts?

22 A I am not sure I understand the question, Mr.
23 Renfrow.

24 Q I will break it into parts for you.

25 After 1974 when you reviewed entering -- the

rb22

circumstances surrounding entering into the contract with the Dow Executive Board, did that Board review again at any time between 1974, September of 1976, the circumstances of the Dow-Consumers contract?

A To the best of my recollection, there was one issue which I brought before the -- I think it was the Executive Committee or at least several members of the Executive Committee, with regard to the Dow-Consumers relationship.

Q When you brought that before the Board, did they review the entire matter at that time, or just the one specific item.

Q Well, the specific item had very -- fairly long-range and far reaching impact. Therefore, there was discussion with regard to the Dow-Consumers relationship.

Would you like me to tell you what the specific issue was?

Q Yes, sir.

A Well, it occurred in 1974. I will say it was summer or early fall. And it was our exploration with them of whether there was any interest on the part of Dow in responding positively to requests from Consumers to buy Consumers preference stock or advance money in some way into the Consumers Power Company, at which point in time there was a fair amount of discussion on the part of the people there, of their general view of where we were at at the present time,

rb23 1 which was a particular point in time when we knew the job was
2 either going to go down or the program drastically curtailed
3 and the startup date stretched out significantly.

4 So there was discussion but no conclusion was
5 drawn other than the fact that there was no circumstance under
6 which any of those people could envision advancing money to
7 Consumers.

8 Q What is the return on investment that you, Dow,
9 usually requires before they will invest in something outside
10 of the company?

11 A I think I could say with rare exceptions we are
12 interested in investing our money in projects which are
13 totally Dow, and there are some foreign countries where that
14 is not possible. But our investment -- objective would be
15 to invest in operations in countries where we could have the
16 controlling interest.

17 So you -- if you invest money in Chile, for in-
18 stance, you need a higher return on investment than you need
19 in an investment in the United States.

20 Q What do you expect as a return on investment in
21 the United States?

22 A I would say in the range of 30 percent ROI before
23 taxes.

24 Q The Michigan Public Service Commission never al-
25 lowed Consumers that rate of return; did they?

1 A No.

2 Q You said you spoke to some of the members of the
3 Board of Directors.

4 A Some of the members of the Executive Committee.

5 Q Was there a formal meeting of the Executive Com-
6 mittee to consider this?

7 A I really don't know. In Dow all of the members
8 of the Executive Committee are executives of the company in
9 Midland. And a meeting of that committee can be called with-
10 out making it a formal meeting. And generally a quorum can
11 be obtained.

12 The real answer is I don't know whether it was a
13 formal meeting or called meeting to review that specific
14 request.

15 Q Were there any other times between 1974 when you
16 entered into the contract and September of 1976 when the
17 Dow Executive Board reviewed the circumstances surrounding the
18 Dow-Consumers contract?

19 A Was -- it was the Dow U.S.A. Operating Board who
20 reviewed it in September?

21 Q I am sorry. Go ahead.

22 A No; I don't think there was any other occasion
23 where I felt the need or anybody from the Executive Committee
24 felt the need to call a meeting to review something pertain-
25 ing to Consumers Power-Dow relationship.

rb25 1 I am sure that I talked to individually, people,
2 and updated people who happened to be on the Executive Com-
3 mitte, for instance, Mr. Orrefice.

4 Q Was there any time between September of 1974 and
5 -- excuse me -- between 1974 when the contracts were entered
6 into and September of 1976 when the Dow Chemical Company
7 Board of Directors reviewed the circumstances surrounding the
8 Dow Consumers contract?

9 A I am not a member of that Board, but to my knowledge
10 other than perhaps some updating which might have taken
11 place, the Board on the September meeting heard a review from
12 Mr. Orrefice based on that letter of September 8th which has
13 been tendered.

14 Q One more group:

15 Is there any time between 1974 when the contracts
16 were entered into and 1976 when Dow Operating Board, the
17 Dow U.S.A. Operating Board reviewed the circumstances sur-
18 rounding the Dow Consumers contract, that the Dow U.S.A.
19 Operating Board reviewed?

20 A I don't really think so, Mr. Renfrow.

21 Q Okay.

22 Mr. Temple, are there any other divisions or --
23 excuse me -- any other operating boards or board of directors
24 that reviewed your decisions when you were head of the Michigan
25 Division of Dow Chemical Company?

rb26
1 Q I would like for you to go back to your testimony
2 now, the same place we looked before; the last three lines
3 on page 2, and the first four lines on page 3.

4 Are the circumstances referred to there that have
5 not changed the same general circumstances, areas of circum-
6 stances, that we discussed, that the Dow Executive Board re-
7 viewed in 1974?

8 A I don't think it is the intent of Mr. Orrefice
9 to exclude any kinds of circumstances that he might think
10 would be significant, which might change in the future, if
11 I understand your question right, Mr. Renfrow.

12 Q I guess what I would like to know, Mr. Temple, is:
13 Of your own personal knowledge, what circumstances was
14 Mr. Orrefice referring to in his statement to you in your
15 testimony; that circumstances had not changed sufficiently
16 to alter the Dow position?

17 A Well, he didn't elaborate specifically, as I indi-
18 cated, nor did he exclude anything. But I would suggest that
19 there were -- anything that might happen which would adversely
20 impact the costs of nuclear steam or anything which might
21 happen which would change our own internal alternative more
22 unfavorably than had happened at that point in time with re-
23 gard to the nuclear project.

24 I am sure that -- he would just not exclude any-
25 thing. If the Board suspended the license, that would be

arb27

1 very significant. If the cost of the project went up \$200
2 million, that would be very significant. If the startup date
3 stretched, that would be very significant.

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1 Q Do you have with you a copy of Dow's response to
2 interrogatories?

3 A Which ones?

4 Q The first response, I believe.

5 A To Mr. Cherry's interrogatories?

6 Q Yes.

7 A Yes, I believe I do.

8 Q Would you look at Interrogatory 13? Do you
9 have that? It's on page 30.

10 A Yes, sir.

11 Q The interrogatory asks for Dow to state its changes
12 of circumstances since 1973 in its relationship with
13 Consumers.

14 A Yes, sir.

15 Q And Dow has submitted these answers under your
16 signature as the changes of circumstances, is that correct?
17 Excuse me, the most significant ones.

18 A Yes, that's correct.

19 Q Are there any other changes in circumstances which
20 you regard as significant which were not listed in that
21 interrogatory answer?

22 A Well, I view the threatened lawsuit very seriously.

23 Q Do you consider that a change in circumstances?

24 A Not since the Dow position was established on
25 September 27th.

lt 2 1 Q In your testimony, do you consider that a changed
2 circumstance, going back to those three lines on that page?

3 A The same page 30?

4 Q No, your testimony, the last three lines of page
5 2.

6 A Again, I have to say that when Mr. Orrefice made
7 this decision he was aware of the threats that had been made,
8 and apparently in his judgment, for whatever reason I don't
9 know since the discussion took place outside of my presence,
10 he included that in the circumstances when he said circum-
11 stances have not changed sufficiently for us to alter our
12 position.

13 Q Did he say that expressly to you?

14 A No. He was not in the room. No, he did not say
15 that. As I recall, he did not specifically give any reason
16 or identify or exclude any circumstances that he was con-
17 sidering as potential for change.

18 Q So as far as any testimony that you have on what
19 he considered when he said those words, any testimony as to
20 what basis he gave for any of these things is just your own
21 personal opinion, is that correct?

22 A If I understand the question right, I don't know
23 all of the reasons that Mr. Orrefice had for making the
24 decision that he made.

25 Q Let me ask the question to you differently.

1 A Okay.

2 Q Do you know what information Mr. Orrefice relied
3 upon in making the decision as opposed to what information
4 he had in front of him when he did it?

5 A I certainly don't know all of the information
6 he relied upon. I assume he utilized the information in my
7 letter to him of September 8 with regard to the Division
8 position. I'm sure he considered the information that was
9 developed by the Corporate Review Committee. I'm sure he
10 considered the information and the facts as he heard them
11 when Mr. Aymond was there on September 24th.

12 What else he considered, I don't know.

13 Q I'm having a problem with the word "utilized."
14 I would like to know if Mr. Orrefice has stated to you the
15 basis upon which he made the decision which is reflected in
16 your testimony.

17 A No, sir, he really didn't.

18 Q So that anything, any items that you testify to
19 as to why that decision was made are just your personal
20 opinions of that and not based on something Mr. Orrefice has
21 communicated to you, is that correct?

22 A Let me make sure I don't get myself in a problem
23 here.

24 I know that he considered the lawsuit as a factor.
25 I don't know anything else that he considered in making his

t 4
1 Q That's my problem.

2 Let's go to page 2311 and 2312 of the transcript.
3 Perhaps we can do it more easily that way.

4 (Document handed to the witness.)

5 Why don't you review that?

6 CHAIRMAN COUFAL: Is that a transcript of yesterday's
7 proceedings?

8 MR. RENFROW: Yes, sir, Mr. Chairman.

9 CHAIRMAN COUFAL: 23- something?

10 MR. RENFROW: 2311 and 2312.

11 (Pause.)

12 BY MR. RENFROW:

13 Q Have you reviewed those now?

14 A Yes, I've looked at that.

15 Q On that page, on line 12 of 2311, in response to
16 a question from Mr. Cherry --

17 A Excuse me. Which line?

18 Q Line 12, page 2311 -- 12, 13, 14, and 15. The
19 answer appears on 16.

20 You state that in your judgment the only signifi-
21 cant reason for the corporate findings or conclusion was
22 the lawsuit, is that right?

23 A That's right.

24 Q Did Mr. Orrefice ever tell you that?

25 A No, sir, and I think I indicate over here on the

5
1 other board that the decision was reached in consultation
2 with other people in a room in which I was not present.

3 Q Let's go back to your interrogatory answers, page
4 30, the answers to Mr. Cherry.

5 I'd like you to go back and look at the question
6 that was asked on page 29.

7 A Yes.

8 Q The question was asked whether there exists in
9 your relationship with Consumers any "change of circumstance"
10 other than those which existed in 1973.

11 Now, your answer then says that there have been
12 several "changes of circumstances" since '73 and lists them.

13 Was the litigation which you spoke about at page
14 2311 and 2312 to you a significant change in the relationship
15 with Consumers between 1973 and the date these interrogatories
16 were signed by you on January 25, '77?

17 A Well, I would say the answer given says there
18 are several, the most significant, and I still think the
19 most significant are the ones which have escalated the cost
20 of the plant tremendously and have stretched the startup
21 date and have essentially removed the economic advantage of
22 the nuclear steam versus the Dow alternative.

23 I think the lawsuit, the threatened lawsuit, is
24 significant and important. Maybe it should have been listed
25 here. I don't know. But the most significant, more

It 6 1 significant than that is the problems which have occurred
2 over the last ten years which have gotten the two parties
3 where we are now, and if Consumers can go forward and con-
4 struct the plant and bring it on line our plan at the present
5 time is to purchase steam and power.

6 MR. WESSEL: May I request the witness to read
7 that paragraph he answered carefully, that he's been testify-
8 ing about?

9 CHAIRMAN COUFAL: To himself, you mean?

10 MR. WESSEL: To himself. Slowly.

11 (Pause.)

12 THE WITNESS: There are times when I wish I was
13 a lawyer.

14 MR. CHERRY: You are a lawyer.

15 MR. RENFROW: One of the better ones in the room,
16 as a matter of fact.

17 THE WITNESS: I think perhaps the question of
18 the threatened lawsuit and the circumstances between Dow and
19 Consumers which would cover that is perhaps covered in the
20 next-to-the-last sentence there, under "Consumers' approach
21 toward its obligations to Dow has also affected the Dow-
22 Consumers Power relationship."

23 MR. CHERRY: Mr. Chairman, I'd like to be fair
24 to the witness. The interrogatory answers says there are
25 a lot of changes, the most significant of which are

t 7
1 And it isn't a complete listing. Mr. Renfrow was being
2 unfair to the witness asking the witness why it was not,
3 when by definition it implies otherwise.

4 MR. RENFROW: I did not ask him that question.
5 I pointed out to him most significant. I just asked him a
6 question about whether these, and Mr. Wessel then asked him
7 to read the paragraph in its entirety.

8 MR. WESSEL: I dislike interrupting somebody's
9 examination, and I recognize this is not the traditional
10 redirect at all. It's quite different circumstances.

11 But it's clear from the responses to the inter-
12 rogatories that these are drafted, necessarily so, by
13 lawyers to reflect the company position; and, even though
14 Mr. Temple did sign them and verify them, he doesn't always
15 know what's in the lawyers' minds.

16 I dislike in effect what one might call "coaching"
17 or helping the witness, but this is the kind of thing where
18 it's almost essential.

19 CHAIRMAN COUFAL: There's no objection pending.
20 I guess I just heard discussion.

21 MR. WESSEL: That was my explanation to the Board.

22 CHAIRMAN COUFAL: Go ahead, Mr. Renfrow.

23 MR. RENFROW: I'm not sure he had finished.
24 Could we have his last answer back? I'm sorry.

25 (Whereupon the Reporter read from the record

8
as follows:

THE WITNESS: "I think perhaps the question of the threatened lawsuit and the circumstances between Dow and Consumers which would cover that is perhaps covered in the next-to-the-last sentence there, under 'Consumers' approach towards its obligations to Dow has also affected the Dow-Consumers Power relationship.'"

BY MR. RENFROW:

Q Was that all of your answer?

A I don't have anything more to say.

Q The Orrefice communication of the Dow corporate position on September 27, 1976, do you know how that was communicated to Consumers Power Company?

A I believe Mr. Wessel communicated it to one of the attorneys.

MR. RENFROW: Can I have this marked as Consumers Power Exhibit 24.

(The document referred to was marked Licensee's Exhibit No. 24 for identification.)

It's a memorandum from Mr. Wessel to Mr. Nute, dated September 27, 1976.

BY MR. RENFROW:

Q Would you review that document? Is this the

9
1 first time you've seen it?

2 (Document handed to the witness.)

3 I'm not going to ask you any questions other than
4 the second paragraph of the first page. I just gave it to
5 you to try to refresh your recollection.

6 A Thank you.

7 Q Have you ever seen that document before?

8 A I think I may have seen this.

9 Q Does that refresh your recollection on how the
10 Dow corporate position was communicated to Consumers Power
11 Company?

12 A Yes. Apparently Mr. Wessel called Mr. Bacon.

13 Q The position communicated by Mr. Wessel is that
14 circumstances have not changed sufficiently to cause modifi-
15 cation in Dow's commitment for nuclear-produced steam and
16 electricity, is that correct?

17 A Yes, I think as far as I know that says the same
18 thing that I've said.

19 Q I think it is, too.

20 I'm going to ask you to look through that again.

21 (Witness reading.)

22 I'm going to ask you if those notes reflect Mr.
23 Wessel communicating to Mr. Bacon that the lawsuit we have
24 been discussing was a significant factor in that decision.

25 A I guess in scanning it I don't see it mentioned

10
1 here.

2 Q Mr. Temple, I'd like to change areas on you now.
3 I'm a little confused about the Black and Veatch study. This
4 is a Black and Veatch study dated October 7, 1976, which I
5 believe is 25.

6 MR. RENFROW: I'd like to have this marked as
7 Licensee's 25.

8 (The document referred to was
9 marked Licensee's Exhibit No.
10 25 for identification.)

11 (Documents distributed.)

12 CHAIRMAN COUFAL: Is this 26?

13 MR. RENFROW: I believe it's 25.

14 MR. ROSSO: It's 25, sir. The number 26 is related
15 to discovery, I guess.

16 MR. RENFROW: I would like to have this document
17 marked as 26.

18 (The document referred to was
19 marked Licensee's Exhibit No.
20 26 for identification.)

21 (Documents distributed.)

22 MR. RENFROW: I'd like to have this 2-page
23 document marked as 27.

24 (The document referred to was
25 marked Licensee's Exhibit No.
27 for identification.)

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ER

1 BY MR. RENFROW:

2 Q Have you had a chance to look at those documents?

3 A Yes.

4 Q Exhibit 25 is a Black and Veatch October 7
5 document, correct?

6 A The one written to Decker?

7 Q Yes, sir.

8 I would like for you to turn to Table II in that
9 document.

10 A Table II?

11 Q Yes, sir.

12 Was that document used as the basis for the
13 answers in your interrogatories which refers to costs,
14 alternative coal units?

15 A No, sir. I don't believe that this is the study
16 that is the basis for that.

17 I think this is the same one Mr. Cherry showed me
18 yesterday. The Dow alternative was put together prior to the
19 September 27 -- well before -- really before the September
20 13th meeting with the negotiating team, and was reviewed, I
21 believe that was Mr. Klomprens' assignment -- not Mr. Klomprens,
22 Mr. Gohrban's, assignment as a member of the corporate review
23 team, to review the economics. And this data is after
24 the corporate review took place.

25 Q Now will you look at -- let me ask just a final

1 question because I want to be sure I understand all of this.

2 So as far as you know, none of the cost numbers
3 that you have provided us in your testimony, or in your
4 answers to interrogatories, are based on the information
5 provided by Black and Veatch in this October 7, 1976 letter to
6 Mr. Decker?

7 A As far as I know that is correct.

8 Q Okay.

9 Now let's go to Exhibit 26, which is Black and Veatch
10 Table II dated April 28, 1975. That is Table II, Table III
11 and another Table II dated September 30th, 1976.

12 A Yes, I see them.

13 Q Now first of all, I am a little confused. I just
14 want to be sure it is straight on the record.

15 Table II has a number 24 on it -- back Table II.
16 And front Table II has a number 26 on it, circled.

17 A Yes.

18 Q Now these -- can you tell me the difference between
19 24 and 26?

20 MR. WESSEL: I guess I object, if the Board please.
21 One can spend the rest of one's life doing this with documents
22 in this case; Mr. Cherry had a problem with the Black and
23 Veatch material; in fact I have also. He came up and asked
24 us what it was, and Mr. Nute responded to him.

25 The president of our company is sitting over in the

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1 Palmer House waiting for a call. I said 12 o'clock, and he
2 may sit there for the rest of the day if this continues.

3 I think we ought to get on with it, and if there
4 is an explanation they really want, Mr. Nute will go out and
5 give it to them. We will all get it for him.

6 This is really not proper cross-examination.

7 CHAIRMAN COUFAL: Where are you going, Mr. Renfrow?

8 MR. RENFROW: Where I am going is, I believe I know
9 the difference in these, Mr. Chairman --

10 MR. WESSEL: Well, let's get it on the record.

11 MR. ROSSO: That is what we are trying to do,
12 Mr. Wessel.

13 MR. WESSEL: Don't go through this foolishness.
14 We can spend the rest of his life with this with Mr. Temple.

15 MR. ROSSO: The way to get it on the record,
16 Mr. Wessel, is for the witness to tell us what the difference
17 is.

18 CHAIRMAN COUFAL: Gentlemen, tell me what you are
19 doing.

20 MR. RENFROW: Yes, sir.

21 I believe, and I just want to get on the record
22 that these are two studies that were used as the basis for the
23 September meeting to get to the alternative cost numbers.

24 What I want to establish is which set goes with
25 which number. The third set of documents I have given are

mm4 1 what I believe to be prepared by the Michigan Division in
2 their review and presented to the task force for their review.
3 And I want to be sure I know the basis for those numbers
4 before I ask them any questions, because I don't want him and
5 me to be confused on the record about what we are talking about.

6 MR. WESSEL: If the Board please, I am not suggesting
7 it is irrelevant, but this is no way to move on. We are
8 spending an enormous amount of time on, I must say, junk.

9 NOW, if he wants an explanation of this, let's give
10 it to him and let's straighten out the record.

11 But we can continue with this kind of question and
12 answer on an interminable basis.

13 MR. CHERRY: However, Mr. Wessel has not observed
14 that Mr. Renfrow's questioning on this basis is consistent with
15 the Falahee, general counsel for Consumers, direction to
16 delay while construction continues. So there probably is an
17 explanation.

18 CHAIRMAN COUFAL: Can you explain, Mr. Temple, the
19 difference between 24 and 26?

20 THE WITNESS: No, sir, I cannot.

21 BY MR. RENFROW:

22 Q Mr. Temple, look at the -- let me ask you a
23 different question. Maybe I can help my fellow counsel,
24 Mr. Wessel, out.

25 Were these the Black and Veatch numbers that were

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used as the basis for the alternative cost numbers that appear in the review done by the Michigan Division?

MR. CHERRY: I'm sorry, I don't know what these mean, I don't know which review he is talking about, and that question won't give the record an answer that is understandable.

MR. WESSEL: Can Mr. Nute explain?

MR. CHERRY: I have no objection to Mr. Nute explaining.

MR. NUTE: The document you are referring to is number 24. What you have marked as your Exhibit 26 is attached to the October 7th letter to Mr. Decker.

As I recall, it was telecopied to Mr. Decker on the 30th, and then sent to him by a letter on the 7th. They are the same tables, as far as I can tell.

MR. RENFROW: Mr. Nute, now, just so that we understand, what you are telling me is that your number 24 and your number 26, which I have marked as Exhibit 26, are the same tables that appear in the October 7 letter to Mr. Decker from Black and Veatch?

MR. NUTE: In your Exhibit 26 as a Table attached to the third page, which is Black and Veatch Table II and has a number 24 circled in the corner. That is the same table as attached to the October 7th letter to Mr. Decker.

MR. RENFROW: Right.

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1 BY MR. RENFROW:

2 Q Mr. Temple, let's refer to the first two pages of
3 Exhibit 26.

4 A Behind the letter?

5 Q No, sir, Exhibit 26 is the four-page exhibit that
6 Mr. Nute and I were just discussing.

7 A Oh, I'm sorry.

8 Q Are those the numbers -- are the figures that are
9 provided by Black and Veatch in the first two pages of Exhibit
10 26, figures that were used by the Michigan Division negotiating
11 team when they looked at the economics of nuclear versus a
12 coal alternative?

13 A I don't know, Mr. Renfrow.

14 Q Will you look at Exhibit 27.

15 A 27?

16 Q Yes.

17 A Yes, sir.

18 Q Can you identify what those two pages are for me,
19 please?

20 A These were two pages which were used by Mr. Gohrban
21 in the corporate review to present the economic picture of
22 the nuclear alternative versus the Dow internal alternative.

23 Q Do you know in the fossil alternative only for coal,
24 what Mr. Gohrban relied upon to reach these numbers?

25 First, for capital cost?

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A He relied on a Black and Veatch study, and I am unable to identify which one it is. But it was the same one that Mr. Burroughs relied upon, to the best of my knowledge, when he developed the economics for the Division.

MR. RENFROW: Mr. Chairman, before we go too far, I have looked at my document. I guess I will try to solve Mr. Wessel's problem. The only two Black and Veatch documents that I find are the April 28th, '75 and September 30, '76 documents.

If Mr. Wessel can establish for us what was used by Mr. Burroughs and by Mr. Gohrban for the April 26th, 1975 study, which was marked as the first two pages of Exhibit 26, I would be satisfied if I am incorrect and they will correct me.

Tell me which capital costs they used? Then we can go on.

R. NUTE: I will be glad to answer that, Mr. Chairman.

Mr. Burroughs and I prepared the information which I think Mr. Gohrban relied on. He took the April estimate and updated it to the best of his ability. Then the Black and Veatch study of October 7th came in, which was essentially another update which came in too late, beyond the corporate review.

I believe the economic evaluation people looked at

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1 their update, looked at the Black and Veatch update, didn't
2 see any significant difference.

3 That is the basis of these two sets.

4 So it was the April -- the last update by Black and
5 Veatch that was increased by the Dow economic evaluation people
6 which was the basis for Mr. Gohrban's using.

7 That is the answer.

8 MR. CHERRY: So that is the last two pages of
9 Exhibit -- Consumers' Exhibit 26, which is marked 24, which
10 is the same as attachment 25 of Consumers, which were by
11 these virtues an update which were in effect used by
12 Mr. Burroughs in preparation of the Midland Intervenor's
13 Exhibit 26 and, I take it, just so there is no dispute on
14 the record --

15 MR. RENFROW: Let's make it clear on the record.

16 Mr. Nute, would you produce the updates in your
17 documents which Mr. Burroughs did?

18 MR. CHERRY: Wait a minute, can I have Mr. Nute
19 answer my question. I think it is yes, then you can go about
20 whatever you want.

21 MR. NUTE: You referred to Consumers Power Exhibit
22 26?

23 MR. CHERRY: Yes, the last two pages of it which
24 has 24 in the upper right-hand corner, which are September
25 30, 1976 figures which are identical to the attachments to

mm9 1 Exhibit 25 sent to Decker.

2 I take it the sense of your statement is that the
3 September 30, 1975 figures were effectively used by Dow in
4 preparing Case A, B, C, D and E in Midland Intervenor's
5 Exhibit 26, although it --

6 MR. NUTE: No, they do not.

7 They arrived after --

8 MR. CHERRY: No, you said they were reviewed and
9 there was no significant difference between that and Dow's
10 update.

11 MR. NUTE: That is right.

12 MR. CHERRY: That is why I said they were effectively
13 used in connection with the update.

14 MR. NUTE: Those are your words, Mr. Cherry.

15 MR. CHERRY: Okay. I was told there is no
16 difference, that is the same thing.

17 MR. RENFROW: Did you produce in your documents,
18 Mr. Nute, the Burroughs' update he did on the April '75
19 Black and Veatch study?

20 MR. NUTE: I think in those corporate review
21 documents that was discovered, they were produced. I also
22 recollect that information was given to Consumers Power by
23 Mr. Burroughs over the telephone.

24 MR. RENFROW: Mr. Chairman, my difficulty is that
25 these corporate review documents are where these came out of,

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1 and I am having difficulty. I don't want to ask Mr. Temple
2 questions based on this.

3 If it is not the correct document, if you can
4 identify for me that that document -- what that is exactly,
5 I will pull it out of there and use that one.

6
7 CHAIRMAN COUFAL: Mr. Renfrow, we are having
8 trouble hearing what you are saying. I don't ask you to repeat
9 anything, but speak up, please?

10 MR. RENFROW: I will.

11 CHAIRMAN COUFAL: Mr. Nute, I might say the same
12 thing for you.

13 MR. NUTE: Mr. Chairman there were a number of
14 studies that were produced as part of the corporate review
15 documents because we didn't know which ones Mr. Gohrban
16 relied upon. So we produced all of them.

17 Those are all -- have Mr. Burroughs' name in the
18 corner, and I assume those are the ones that Mr. Gohrban
19 relied upon.

20 Now it was my understanding that Mr. Burroughs
21 gave Consumers Power both the numbers that we used in the
22 corporate review and, later when this October 7 update came
23 in, it was on a Saturday, Mr. Burroughs gave Consumers
24 those numbers.

25 So, Consumers has them.

Now also the original Black and Veatch study upon

mm11: which this is based was given to Consumers, because I, personally,
1 gave it to them myself.

2 MR. WESSEL: And if the Board please, this is neither
3 proper redirect or recross or whatever it is we are talking
4 about.

5 If there is an issue, a factual determination to
6 be made, we can produce it, we can produce it, we can resolve
7 it and it doesn't require the testimony of this witness. I
8 have been a trial lawyer long enough to know how you keep
9 somebody so you can get him overnight, get the transcript back
10 and discuss what you are going to do the next morning. And
11 that may or may not be what is going on here.

12 But I am anxious to see this cross-examination
13 proceed and get concluded and go on with Mr. Orrefice, and not
14 to have somebody held overnight, if that is the purpose, in
15 order to be able to think about what he was going to ask the
16 next morning.

17 MR. RENFROW: Mr. Chairman, I don't want to hold
18 Mr. Temple overnight. I would like to get rid of him myself.

19 MR. WESSEL: I am talking about Mr. Orrefice, not
20 Mr. Temple.

21 DR. LEEDS: Mr. Renfrow, I am not sure I am following
22 what your problem is.

23 Is the line of questions you are going to, to find
24 out whether this gentleman knows which studies were used in
25

mm12

1 the corporate review?

2 Can you just ask him that question?

3 MR. RENFROW: I was getting to that, and the answer
4 was, they weren't these. And that is why I got in the
5 conversation with Mr. Nute, which I think his answer is, he
6 doesn't know.

7 And the answer to your question is, because we
8 have a lot of numbers from Dow as to what their alternative
9 costs are and all I want to do is get straight on the record
10 which one of these documents match up with which one, so this
11 Board will have the cost information in front of them.

12 We have costs from the Staff, costs from Dow, and
13 costs from Consumers. We are going to have to make a decision
14 on cost, and unless you know what it is based on --

15 MR. WESSEL: But we don't need this witness to
16 get that. It has got nothing really to do with is direct or
17 otherwise because he said he didn't know very much about
18 the Black and Veatch material.

19 MR. CHERRY: And in addition, Dr. Leeds, this
20 Board is not going to make a decision on costs in this
21 proceeding.

22 All you are going to do is say, are they sufficiently
23 complicated so that going any further is going to foreclose some
24 real alternatives that we want to look at.

25 All we have to do is identify that issue. We are

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not going to reach any final conclusions here.

CHAIRMAN COUFAL: Mr. Renfrow, can Mr. Wessel solve it for you by getting you the information, whatever numbers were used for whatever data you are talking about and approach it in that way?

This witness has said he doesn't know much about these pieces of paper.

MR. RENFROW: Mr. Chairman, I guess my real problem is that Mr. Orrefice, I know, is not going to be able to testify what Mr. Temple's Midland Division did.

And I would like to get the study that Midland Division did on coal and coal capital costs in. And Mr. Wessel, that is all I attempted to do -- if you want to say something before I finish, go ahead.

MR. WESSEL: I don't want to.

MR. RENFROW: I believe we probably would be able to do what we wanted to if Mr. Wessel will provide that information to us and then stipulate it in as an exhibit, provided the other parties would agree so that we can rely upon it in our findings.

But I have difficulty doing that without a witness.

DR. LEEDS: Mr. Renfrow, my problem is this:

I thought Mr. Temple testified -- and correct me if I am wrong -- that he took himself out of the corporate review team or group or whatever it is, which produced these data.

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1 So how would this witness know which ones were
2 used?

3 MR. RENFROW: Two sets of data used, at least as
4 I understand it, plus a third set that Mr. Cherry talked about
5 yesterday.

6 One that is updated; there was a Michigan Division
7 review on economics, as I understood it; and then a Dow review.
8 And I understand that Mr. Burroughs had looked at it and
9 supplied that information to Mr. Gohrban in the corporate
10 review.

11 What I want to do is just identify the exact
12 documents that were there, and if Mr. Wessel is willing to
13 agree to that, I am happy to do it that way.

14 MR. WESSEL: Mr. Nute has handed to me documents
15 produced in December; one is dated September 23, 1976, J. R.
16 Burroughs, headed 1982 to 2002, Levelized Energy Costs,
17 Nuclear Against Coal, which you should have. And if you don't,
18 you are welcome to see our copy.

19 And secondly, another one dated September 23, '76
20 by Burroughs, entitled Nuclear Advantage Over Alternate Dow
21 Processed Steam Byproducts Power Plant, same date.

22 DR. LEEDS: Mr. Renfrow, you still haven't answered
23 my question.

24 Is this the right witness to get at this from?

25 MR. RENFROW: Well, I am asking the question.

15
1 BY MR. RENFROW:

2 Q Did the Michigan Division do an economic review
3 prior to the time they made their decision?

4 A Yes.

5 Q Now, was that information then provided to the
6 Dow USA review board as part of their review in reaching their
7 decision?

8 A Yes.

9 MR. RENFROW: Does that answer your question,
10 Dr. Leeds?

11 DR. LEEDS: No, because the question was, did
12 this gentleman do it, and you didn't ask that question.

13 Do you want me to ask him?

14 MR. RENFROW: Dr. Leeds, you can ask him. He has
15 already told me Mr. Burroughs did it.

16 DR. LEEDS: Then we need Mr. Burroughs, don't we?

17 MR. RENFROW: I don't think we do.

18 All I need him to do is identify the documents for
19 me.

20 MR. WESSEL: We have just done that. He doesn't
21 know that. Here they are. I want to get on with the witness
22 and get on with Mr. Orrefice.

23 DR. LEEDS: Let me ask the question:

24 Mr. Temple, do you know which specific Black and
25 Veatch studies were used in the corporate review documents?

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1 THE WITNESS: I think Mr. Nute said that the basic
2 study was the one that was done in April, and that that was
3 updated by Mr. Burroughs to use in the Division's economic
4 study.

5 DR. LEEDS: I am going to be picky.

6 Do you know from personal knowledge which ones were
7 used?

8 THE WITNESS: No, sir, I don't.

9 DR. LEEDS: Thank you, sir.

10 BY MR. RENFROW:

11 Q Do you know what the escalation or the increase,
12 percentage increase of the cost of the coal unit between the
13 April 28th, '75 projection from Black and Veatch to the
14 September 30th, '76 projection by Black and Veatch was?

15 MR. CHERRY: Mr. Chairman, I do not believe that
16 in light of Dr. Leeds' question to Mr. Temple, that we should
17 continue fruitfully with this.

18 Dow has been extremely willing to supply information
19 on a very quick basis, both pursuant to their priority 5
20 request in interrogatories, and the documents are there.

21 As a matter of fact, Mr. Renfrow's answer has already been
22 computed by Dr. Timm from information that Consumers gave
23 us which they received from Dr. Timm -- from Dow Chemical
24 Company.

25 So it is all in documents, and I don't see

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1 that we need discovery of Mr. Renfrow's on the witness. And
2 this certainly is not redirect of his own testimony.

3 I think we have gone far enough, and I would move
4 that unless he is going to ask --

5 MR. RENFROW: I will withdraw the question.

6 CHAIRMAN COUFAL: He withdrew the question.

7 MR. CHERRY: How about withdrawing any of the others.
8 Where do we go?

9 MR. RENFROW: We are going to leave that until I
10 find those documents, Mr. Cherry.

11 BY MR. RENFROW:

12 Q Will you go back to your answers to interrogatories,
13 please?

14 Interrogatory 4.

15 A Intervenor's interrogatories?

16 Q Yes, sir.

17 A I am ready, Mr. Renfrow. I haven't read them all --

18 Q Okay.

19 But I really would like for you to go to your
20 answers that are "i" on page 13, and over to 14.

21 I am particularly interested in the study. Do
22 you have a draft of that study done yet? Do you have any
23 results from the study requested?

24 A No, we don't.

25 We would expect that study to be completed sometime

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1 in July.

2 Q If you were going to -- looking into what you
3 wanted the study for, are you looking to switch energy-
4 intensive production of energy-intensive products to some
5 other Dow manufacturing plant, or to discontinue that line?

6 A Again I think we got into this yesterday.

7 Assuming the product is one in which Dow can
8 profitably manufacture and sell, we would switch production
9 to some other area where our energy costs were more favorable,
10 not go out of business.

11 If it is a bad product, why we might consider
12 shutting down and just terminating the product line.

13 Q Okay.

14 Then would you bring in other products -- and this
15 is what I am asking if the study is looking at -- would you
16 then bring in other products which were not as energy-intensive,
17 to take their place in the Midland Division?

18 A Each one of those capital decisions would be made on
19 its own merits.

20 I have to say I just can't answer that. In fact,
21 our criteria for the kinds of products that should be made in
22 Midland right now because of the energy situation, are that
23 they are low-energy intensive products.

24 So we would continue to, with that basic premise,
25 I think. But that doesn't mean we put all the low-energy-consuming

mm19

1 products in the Midland location. We might put them anywhere.
2 But we would probably -- if energy costs are way out of line in
3 comparison to other locations, we certainly would not put the
4 high-energy users in Midland.

5 Q But you are talking basically about looking at a
6 shift, looking at which ones you can shift in view of the
7 energy supply and demand situation in Michigan.

8 Is that correct?

9 A That's correct.

10 Q All right.

11 Let's go to interrogatory number 10 please, on
12 alternatives.

13 A Is there a particular part of this, Mr. Renfrow?

14 Q Yes, I would like you to first go to the coal
15 gassification.

16 A Okay.

17 Q How many --

18 A Can I read it first?

19 Q Oh, sure. I'm sorry. I thought you were ready.

20 A Okay.

21 Q How many coal gassification plants does Dow -- not
22 just Midland, but Dow have in operation now?

23 A To the best of my knowledge we don't have any
24 in operation now.

25 Q Do you have any under construction?

mm20

1 A We have a prototype plant in Louisiana, which is --
2 I am not sure if it is under construction, but I am sure
3 the engineering and planning work for that are fairly far
4 advanced. But I am not sure what the status is.

5 Q Is Dow involved in prototype work in combination
6 with the government or some other entity as to coal gassifica-
7 tion?

8 A I don't believe so, Mr. REnfrow.

9 With some other entity -- no, I don't think so,
10 although we have had discussions with people who have
11 technology to license -- but other than that we are not
12 involved with anybody in any kind of a joint project that I am
13 aware of.

14 Q Okay.

15 These people that you are in contact with
16 technology, do they have coal gassification units in operation?

17 A Yes, I think they do.

18 I am not very sure on this. It is new technology
19 and we admit that. If that is a pertinent comment along the
20 lines you are going.

21 Q I guess, besides this being new technolgy, what
22 I am interested in is the fuel costs.

23 Have you looked at the Btu's that you will be able
24 to get in gas, that you will take from Btu's out of coal?

25 A You mean the Btu content of the gas?

mm21

Q Nodding affirmatively.

A Yes.

Q Okay.

Can you give me a -- what is the ratio of that?

A I'm not an expert in that. I just know that is one of the things, yes, they've looked at.

MR. WESSEL: If the Board please, this is supposed to be redirect, although maybe it is recross or something like it. It is not initial examination.

This is a suspension hearing, it is not the remand hearing.

I think the Board might consider issuing an order that Mr. Renfrow complete whatever he is doing by no later than 3:15. It is now ten minutes to 3. That is enough time.

MR. RENFROW. Mr. Chairman, I want to respond to that.

We have a difficult situation here. I went from that to responses to interrogatories here, which are different, because while Mr. Temple was originally sponsored as our witness, and testimony was presented by, as you will remember, by Mr. Rosson, we did not participate in the responses. We do not know the bases for them, and that is what I am getting at.

I am going to try to finish my cross-examination. These questions are important to this Board's decision. We

mm22

1 have got to look at foreclosing alternatives in the suspension
2 hearing.

3 CHAIRMAN COUFAL: Do you want to suggest, Mr. Wessel,
4 that at 3:15 we take Mr. Orrefice?

5 MR. WESSEL: No, I think this witness should be
6 finished.

7 Mr. Renfrow said, quote, I am going to try to
8 finish my cross-examination, end quote. He didn't say by when.
9 He just said he was going to try to complete his cross-
10 examination.

11 Now I think enough is enough, if the Board please.
12 There is really no reason for this. It is not proper redirect,
13 it is not proper recross, it is not anything. And I think it
14 ought to stop.

15 I think 25 minutes more of this, whatever it is he
16 wants to do, ought to be sufficient to complete whatever he
17 wants to complete.

18 Now if he wants to do discovery by way of response
19 to interrogatory, relative document, relative information, he
20 will get it. But this is not proper examination of this
21 witness.

22 MR. CHERRY: I agree 100 percent with Mr. Wessel.
23 I think the Board has got to recognize that it does not have
24 to let Mr. Renfrow run on if he is doing something that isn't
25 proper. He can get this information some other way. He can
end 8 even call Mr. Temple as his own witness.

BARB/9
barbl

1 MR. RENFROW: What am I doing improper?

2 CHAIRMAN COUFAL: What is your target, Mr. Renfrow,
3 for getting finished?

4 MR. ROSSO: Our target, sir, is to complete --

5 CHAIRMAN COUFAL: Can you give us a time?

6 MR. RENFROW: If I go -- I want to talk about the
7 alternatives. If the answer is he doesn't know about coal
8 gasification, I am going to leave it and go to something else.

9 CHAIRMAN COUFAL: Can you tell us how much further
10 you have got to go, Mr. Renfrow?

11 MR. RENFROW: I have got the rest of the interro-
12 gatories I would like to ask him about, which are about
13 three pages. And then I have about two and a half pages to
14 ask him on the others.

15 CHAIRMAN COUFAL: Probably a couple of hours?

16 MR. RENFROW: Well --

17 MR. WESSEL: It is going to be so that it is going
18 to be overnight, if you please. I think it ought to stop.

19 CHAIRMAN COUFAL: Mr. Wessel, I don't have the
20 slightest idea whether the question he is going to ask are
21 improper, proper or somewhere in between. And I know that
22 you are upset that Mr. Orrefice is held over. I know that
23 you are upset that Mr. Temple is held over. I don't know
24 what to do about that. We went for two days on the same
25 kind of thing, and I don't think that it is proper to cut

barb2

1 the Licensee off in the middle of his examination.

2 MR. WESSEL: The Board has heard the redirect and
3 they have heard all of the examination up to this point. It
4 can well judge what is pertinent and what has been asked be-
5 fore.

6 This is entirely new material. They have a burden.
7 If they want some information from us, they will get it and
8 they know it.

9 They do not need to get this witness to be respond-
10 ing to what interrogatories -- I could go indefinitely. I
11 could go for the rest of my life on examination. And so could
12 anybody else. It ought to stop. There is a limit. If
13 the Board, please.

14 CHAIRMAN COUFAL: I agree with you.

15 MR. CHERRY: Mr. Chairman, may I suggest that what
16 ever the resolution is, we just agree to stay this evening
17 until we finish Mr. Orrefice so that -- and in that connec-
18 tion, because I don't want anybody else from Dow and I don't
19 know that anybody else does -- at the first available mom-
20 ent we decide where we are going to go from here. I think
21 maybe we could put the Staff people on.

22 MR. RENFROW: Mr. Chairman, Mr. Temple signed the
23 interrogatories. I understand that Mr. Orrefice -- if any-
24 body understands how the witnesses sit around, that's me.

25 Now I didn't hear any objections to my witnesses

barb3

sitting there.

But what I would do -- and I think this Board needs some information on cost and schedules as to Dow's alternatives.

If Mr. Temple will represent -- cannot respond to those areas as to cost and schedules, then I am perfectly happy if he will bring somebody else up and he can send Mr. Temple home. He says he can get the information --

MR. WESSEL: That's shocking.

MR. RENFROW: Excuse me Mr. Wessel.

Right now -- we presented Mr. Temple as our witness. He is no longer our witness. And in view of the information that has been brought out, we have gone forward -- and the answers to the interrogatories; we do have some questions.

I would like to talk to somebody on cost of alternatives and schedules. If Mr. Temple can't answer then I would be happy to delete that and go with who ever Mr. Wessel, or he can provide him and we can go that way.

I don't care.

MR. WESSEL: If the Board please, I will stop my objections right now. I will stop right now because it has now become, I think, abundantly clear that this is a deliberate stalling tactic.

Consumers Power has the burden of proof before

arb4
1 this Board. They know how to get evidence and put it in.
2 They know exactly how to proceed. What they are doing now
3 is deliberately stalling with this witness and the next one,
4 for what ever purpose.

5 Now I will stop.

6 MR. RENFROW: Mr. Chairman, that is not correct.
7 Certainly we have the burden of proof, and as Mr. Cherry
8 pointed out, his interrogatories can be put into the record.

9 What I would like to is before they are put in,
10 and I waive my chance to find out what they are, I would just
11 like to know what they are. It is not going to be that long.

12 MR. WESSEL: Ask your questions.

13 CHAIRMAN COUFAL: I don't want you to stop making
14 objections on the basis of improper or proper direct, Mr.
15 Wessel, because I need help there.

16 MR. WESSEL: No; I will just stall the proceeding
17 if I do. The Board will make its own mind up. I will object
18 on privilege -- that's all.

19 CHAIRMAN COUFAL: Go ahead and ask them as quickly
20 as you can, Mr. Renfrow.

21 BY MR. RENFROW:

22 Q Mr. Temple, as to the last question on coal gasi-
23 fication plants, it is my understanding that Dow's
24 Louisiana or Texas branch -- I am not sure I have that right --
25 has done a lot of work with coal gasification; is that

rb5

1 correct?

2 A Most of the work done within Dow has been done
3 there.

4 Q Can you tell me what stage they are in in their
5 development of coal gasification for their use?

6 A I think I told you they are considering a prototype
7 unit.

8 Q But they haven't started construction of them?

9 A No, sir; I don't believe they have.

10 Q All right. Thank you.

11 I would like for you to now look at answer B to
12 number 10.

13 A Okay. I am looking at B.

14 (Pause.)

15 Q Okay?

16 A Yes.

17 Q The \$300 million; I assume that is for both the
18 conventional coal and the coal gasification system?

19 A Yes, it is. But I would certainly say that the
20 number is much less accurate for the coal gasification system.

21 Q Now will you give me the size and units of that
22 \$300 million, what it is applicable to?

23 A It is the 2.4 million pounds per hour at 157
24 megawatts, as far as I know.

25 Q Okay.

rb6
1 (Pause.)

2 Now have you calculated what it would cost if you
3 made assumptions on what it would cost to put you in an al-
4 ternative which would be capable of generating 2.4 million
5 pounds of steam now?

6 A No; not to my knowledge.

7 Q Probably based on your experience, the construction
8 of it, would you expect it would be more than \$300 million?

9 A Yes, I would but we don't have any interest in a
10 4 million pound facility that we might construct.

11 Q What is Dow's projections for its need for steam
12 for the next 10 years; is it the 2.4 million?

13 A I can't tell you what it is for the 10 -- next
14 10 years. We have said for 1982 our best estimate is 2.4
15 million pounds.

16 Q If you had to use or needed more steam, then
17 you would have to add to those facilities; is that correct?
18 If you built the 2.4 million pound capable unit and if you
19 need above that, you would have to add to those units? Is
20 that correct?

21 A Yes. I don't know any other way we would do it.

22 Q Now on your answers to C on your schedules, Mr.
23 Temple.

24 A I am sorry; what page are you on, Mr. Renfrow?
25 C by -- right below B on that same page?

cb7
1 Q Yes.

2 A Yes.

3 Q I am interesting in whether or not you factored
4 into that schedule your environmental permits and certifica-
5 tions that you would have to obtain prior to first of all
6 building the facility on that schedule?

7 A I think it says these are based on approval of
8 the Michigan Air Pollution Control Commission.

9 Q Well, that's not my question, though.

10 Have you looked at the other environmental permits,
11 aside from the Michigan Air Pollution Control Commission that
12 you are going to obtain, that you factored into that sche-
13 dule?

14 A I have no firsthand knowledge of whether the
15 people who made these studies did or didn't. I suspect that
16 they did, but I can't really testify to that.

17 CHAIRMAN COUFAL: Mr. Renfrow, this is going to
18 be gibberish in the record. Are you going to offer these
19 interrogatories? Or what are you going to do?

20 MR. RENFROW: Certain, Mr. Chairman, I am going
21 to put them in, as we talked about yesterday. Mr. Cherry
22 offered them yesterday and then withdrew them.

23 MR. CHERRY: I never offered anything yesterday.

24 MR. RENFROW: Excuse me. He identified them.

25 MR. CHERRY: I never identified them.

1 CHAIRMAN COUFAL: Proceed.

2 BY MR. RENFROW:

3 Q Can you tell me who made up that schedule, Mr.
4 Temple?

5 A I believe -- I hate to bring up the word again
6 but I believe that we had some input from Black and Veatch
7 with regard to their estimates. Our own operations people
8 would be in charge of such a project and I think the timing
9 was partially based on the judgments of Black and Veatch and
10 our own people.

11 Q Who at Dow in the Michigan Division would be in
12 charge of doing that?

13 A Mr. Gask is the manager who reports to the general
14 manager who has among other things the operation of the power
15 houses.

16 Q I want to get clear:

17 When you judge an alternative that is available
18 to you, I believe you stated you don't look at the capital
19 cost; you look at the fuel cost spread out over the years
20 it is going to run, when you compare one alternative to the
21 other.

22 A We try to look at the reasonable life of the pro-
23 ject.

24 Q Do you have the \$300 million figure, Interrogatory
25 10, for capital cost?

rb 9

1 A Yes.

2 Q And can you tell me if for that particular capital
3 cost figure -- and let's limit it to the conventional coal
4 facilities -- you have looked at the operating and mainte-
5 nance expense that it would cost to run that facility?

6 A The new facility?

7 Q Yes.

8 A Yes.

9 Q Do you have a copy of Midland Intervenor's Number
10 26?

11 A Yes.

12 Q Does Case C -- is that the same as the one referred
13 to in the interrogatory?

14 A Yes, I believe it is.

15 Q Okay.

16 I believe you stated that these costs were only
17 first year costs -- I am sorry; attachment 1 is only first
18 year costs -- is that correct?

19 A Yes; that's right. I had an earlier copy and that
20 is what that said. I notice it is not on here, but I believe
21 that is correct. The numbers are the same as were identified
22 on the original.

23 So I would say yes; that that is first year cost.

24 Q A, figure -- a figure under A; you testify
25 that those costs come from, for Case A, from Consumers?

rb10

A Yes, sir.

Q Are you looking at the 2.4 million pounds per hour steam from Midland, or are you just using the Midland numbers for a different nuclear plant?

A No; these are the numbers from Consumers for the Midland nuclear plant, the current applicant and so forth and using the formula, what ever it is, to determine what the steam costs are. I think Consumers had estimated at 31 mills that year. So it is all data that came from Consumers.

It may have been updated if it not current. But if it was updated, I am sure Mr. Burroughs talked with the -- check with the appropriate people at Consumers.

Q We go down to the 15 percent ROI. These are Dow alternatives, so you added in the 15 percent, ROI; is that correct?

A On the total capital invested in the line above, on the Dow capital invested.

On Consumers, if you are getting into Case A and you are looking at the 35, there is \$35 million that Dow would have to invest. And I think it is mostly in steam lines to get the steam from where Consumers leaves off and we start in and to get the condensate back to the nuclear plant. Dow has a \$35 million investment to make in order to be able to take the steam from Consumers Power Company. And

1 we expect to earn a return on that investment, too in order
2 to make all the cases equal. If we invest a dollar in that,
3 it ought to return us the same profit that a dollar in our
4 own facility returns.

5 (Pause.)

6 Q When you look at the numbers -- let's say you take
7 the 15 percent number of the \$35, would you just explain to
8 me how you get the bottom line 15 percent ROI (m dollars per
9 year, 143, 155) starting -- because I am confused. If you
10 only take 15 percent of the 35 number, how do you get down
11 to 143. I am confused about how you do that.

12 A There is a certain cost of steam and electricity
13 out of all of these units. That is so many millions of
14 dollars. And in the Case A there, it is the cost of steam
15 and electricity from Consumers.

16 We took that cost in millions of dollars per year
17 and then took 15 percent of the \$35 million we invested to
18 get the steam and added that to the cost of buying the steam
19 from Consumers Power Company.

20 And if the arithmetic is right, that is \$103
21 million a year for the first year of operation.

22 Q Okay.

23 (Pause.)

24 The Case C, this was based on, as I gather from
25 your discussions with Mr. Cherry, the Black and Veatch

arbl2

1 data; is that right?

2 MR. CHERRY: Asked and answered. Objection.

3 CHAIRMAN COUFAL: Overruled.

4 THE WITNESS: Yes.

5 BY MR. RENFROW:

6 Q And can you tell me which Black and Veatch data
7 that is?

8 A It is the one that Mr. Nute described.

9 Q Okay; thank you.

10 If you were to take, for Case A, and wanted to
11 increase your steam needs under the contracts that you now
12 have, Mr. Temple, you would increase the total cost -- and let
13 us take the plus 15 percent number -- is that correct?

14 A That's right.

15 Q Now if you wanted to add to Case C above the
16 2.4 pounds -- million pounds, you have -- would have to put
17 more capital into build something else, as I take your
18 answer to me before?

19 A I believe that is correct.

20 Q Unless you would increase the 142 number?

21 A That is correct.

22 Q Would you expect it to be more economical if you
23 increased the -- to take it out of the nuclear plant which has
24 the capability of the 4,050,000, or to add new units to your
25 alternative?

rb13

1 A Assuming that you built the plant for \$1.6
2 billion and that the costs are unchanged from what they are
3 here I think it is quite possible that taking -- that if we
4 needed 3 million or 3.5 or 4 million pounds per hour of
5 steam, that that steam would be available to Dow from -- for
6 less money than we could build additional capacity onto that
7 unit.

8 We have not, to my knowledge, calculated that
9 case, but that is the way I suspect it would come out.

10 May I add one other thing?

11 Q Sure.

12 A That's assuming that we don't have flat or in-
13 verted rates for electric power which we also purchased off
14 the grid and it is also assuming that the Public Service
15 Commission doesn't change the formula for pricing the steam
16 for something above the cost of service basis.

17 Q And assuming that your alternative doesn't go up.

18 A That's fair; I agree.

19 Q Now when ever you answer any of those questions,
20 what you really have to look at is that particular point in
21 time; is that right?

22 A I think that is a fair statement.

23 Q All factors?

24 A All factors; yes, sir.

25 (Pause.)

rb14

MR. RENFROW: Mr. Chairman, would you give me five minutes. On the basis of his answers, I can delete a lot of these questions. I think I can get through with him close to the time that Mr. Wessel asked about.

CHAIRMAN COUFAL: All right.

MR. CHERRY: Do we have a recess for five minutes?

CHAIRMAN COUFAL: Five minutes to give counsel some time.

(Recess.)

End #9
blt fols.:

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DRPE/
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Begin 10

CHAIRMAN COUFAL: Are you ready, Mr. Renfrow?

MR. RENFROW: I'd like to mark these two pages
as Exhibit 27. We can do that while he's gone. It's
the ones that Mr. Nute provided me pursuant to their state-
ment.

DR. LEEDS: We have a 27 already.

MR. RENFROW: I'm sorry. I'll mark that as 28.
I'll have to show it to the other parties and provide you
with a copy.

(The document referred to was
marked Licensee's Exhibit No.
28 for identification.)

CHAIRMAN COUFAL: Go ahead, Mr. Renfrow.

BY MR. RENFROW:

Q The exhibit marked No. 28, which you have a copy
of, at the bottom of that page the statement as to CHICO,
\$2.41 MM per Btu, it states levellized values starting with
\$1.62 in 1982, escalated at 6 percent per year and assuming
a discount rate of 11.5 percent.

Do you see where I'm speaking from?

A Yes.

Q Now, you have testified earlier about the esca-
lation rates used by Dow in their coal prices.

A Yes, I did.

Q I'm really looking for information, so I'm going

blt 2
1 to ask you a question really generally.

2 You stated that it was three different numbers
3 over a period of years. I cannot relate those three numbers
4 to the value that you've got stated in your table, which
5 you utilized in reaching your costs.

6 Can you explain to me the footnote to that table?

7 A Yes, I can.

8 Q Fine. That's all I would like done.

9 A The \$1.62 in 1982 is what you get if you take our
10 current purchase price of coal and escalate it by 8 percent
11 per year over this 5-year period, which is what I said was
12 the escalation factor that the DOWCO people feel is appropriate
13 between the 1976 coal price and 1982.

14 From 1982 it shows an escalation of 6 percent
15 per year, which is the same escalation factor that I gave
16 yesterday in testimony.

17 Q Okay. So we could find the starting price for
18 coal by working back from those numbers?

19 A Yes, you can figure that out.

20 Q Just so it's clear on the record, were these the
21 costs that were used--the capital costs that were listed on
22 here, power costs steam costs-- in the Michigan Division
23 review and the Dow corporate review?

24 A Yes, they are.

25 Q Thank you.

bit 3

1 MR. RENFROW: I will provide copies of this as
2 soon as I can.

3 BY MR. RENFROW:

4 Q Mr. Temple, we provided you with a copy of the
5 transcript for the day Wednesday, December 1st.

6 A Yes, sir.

7 Q Would you look at page 460 of that transcript?
8 I'm particularly interested in lines 4, 5 and 6, but you
9 need to go back and look at the previous page to put it in
10 perspective.

11 (Witness reading.)

12 A I've read it.

13 Q Now, you state in your answer there at line 5 that
14 no one in the Dow U.S.A. has disagreed for the reasons set
15 forth in your position vis-a-vis the Consumers-Dow relation-
16 ship.

17 Has anybody on the Dow U.S.A. Operating Board
18 that made the Dow decision stated that they agreed with your
19 decision?

20 A I'm not sure you asked the question you meant.

21 Q I'll restate it for you.

22 A Would you, please?

23 Q Would you state that no one on the Dow U.S.A.
24 has disagreed with the reasons -- these were the reasons I
25 asked you to go back and look at in the transcript -- I'm

blt 5
1 asking you now, has anybody on the Dow U.S.A. Operating
2 Board, to which I believe you're referring here, has agreed
3 with those reasons?

4 A And the reasons are the bases for the Division
5 conclusion that the project would be disadvantageous?

6 Q That's correct.

7 A Are any of these people come out and specifically
8 said yes, they do agree with each of the significant reasons?

9 No, I can't say that they have done that.

10 Q They did disagree, though, with your ultimate
11 decision, is that right? The ultimate decision was it was
12 no longer good for the project, and they said that the Dow
13 corporate position is there has not been -- that circumstances
14 have not changed sufficiently to modify their position, is
15 that correct?

16 MR. CHERRY: Just a moment. There's a duplicative
17 question, Mr. Chairman.

18 MR. RENFROW: Mr. Chairman, I'll withdraw it and
19 go back.

20 CHAIRMAN COUFAL: He withdrew the question, Mr.
21 Cherry.

22 BY MR. RENFROW:

23 Q The Michigan Division position as you stated it
24 was that it would not be advantageous for Dow to go forward,
25 is that correct?

blt 6

1 A It would be disadvantageous to the Midland plant.

2 Q And the Dow corporate position was that circum-
3 stances had not changed sufficiently for them to change
4 their commitment to the nuclear plant, is that correct?

5 A To alter their support for the nuclear project,
6 yes.

7 Q Now, I'd like for you to go to page 432. At the
8 bottom of that page and the top of page 433, you have talked
9 about a meeting on September 21st, 1976.

10 A On page 432?

11 Q Yes, right at the bottom of the page. Your
12 answer starts on line 23 and goes over to 433.

13 (Witness reading.)

14 A How far do you want me to go, Mr. Renfrow?

15 Q Just through that answer on that meeting. I
16 want to bring that back to you.

17 A Okay.

18 Q Now, my question to you, after you've looked at
19 that, is you were not at that meeting, is that correct?

20 A That is correct, the meeting of the 21st.

21 Q I'd like you to turn to page 435, the continuation
22 of an answer that starts on page 434, line 22.

23 (Witness reading.)

24 A Through line 9?

25 Q Yes, sir. I want to talk to you about the

t 7
1 bankruptcy statement.

2 Mr. Aymond -- did Mr. Aymond say that this would
3 bankrupt Consumers? Did he use the word "bankrupt"?

4 MR. CHERRY: Excuse me. What page are you on?

5 MR. RENFROW: 432 -- I'm sorry, 434, 435, line 9
6 on 435.

7 MR. CHERRY: Thank you.

8 THE WITNESS: It's my recollection in talking
9 about the extent to which damages could conceivably go in
10 the event that the license was pulled and the job was stopped,
11 Mr. Aymond went through a number of costs that this would
12 cause Consumers to incur and went on and talked about their
13 ability to finance that could be affected and a number of
14 other things.

15 I believe -- it's my recollection that I believe
16 he either said or implied that that could end up in being
17 such a financially disastrous situation for Consumers that
18 it could lead to bankruptcy.

19 MR. RENFROW: I'm going to ask that the Reporter
20 mark these as Licensee's Exhibit 29.

21 (The document referred to was
22 marked Licensee's Exhibit No. 29
23 for identification.)

24 BY MR. RENFROW:

25 Q Can you identify this document, Mr. Temple?

8
1 (Document handed to the witness.)

2 A These look like my handwritten notes.

3 Q Would you review them and tell me whether they are
4 or not?

5 A Yes, that's my writing. It refers to that meeting.

6 Q Taken at that meeting?

7 A Yes.

8 Q Will you review that document and see if it
9 refreshes your recollection as to whether or not Mr. Aymond
10 said that revocation or suspension of a license would bankrupt
11 Consumers?

12 (Witness reading.)

13 A I don't see that particular word in my notes, but
14 I'd have to say that from the Dow side I was the main person
15 speaking. I don't think I would represent these notes as
16 being complete, but I didn't find the word "bankruptcy" in
17 here in the time that I've looked through these.

18 Q On the front page of that, that being your
19 notes -- I'm sorry -- under No. 1 is a reference to Aymond.
20 Would you tell me what that says?

21 A It says Mr. Aymond made a long speech about tell-
22 ing the truth and that that's what the Dow witness should
23 do.

24 Q There's another line right below that.

25 A "Tell conclusions as they really are."

9
1 I can't recollect right at this time what that
2 means. I was not the one who was going to write up the
3 minutes or the notes of that meeting. I haven't looked at
4 these since the meeting took place.

5 Q Do you remember him saying that?

6 A To tell the truth? Yes, I certainly do.

7 Q I'd like for you to go to page 2280 of the other
8 transcript that we provided you, that your attorneys provided
9 for you.

10 MR. CHERRY: What page, Mr. Renfrow?

11 MR. RENFROW: 2280.

12 THE WITNESS: Where do you want me to be, Mr.
13 Renfrow?

14 BY MR. RENFROW:

15 Q I'd like for you to look at 2280. There's a dis-
16 cussion there. I don't want to confuse you. And then 2281.

17 A Do you want me to read those two pages?

18 Q Right, especially lines 14 through 13 on 2281.

19 (Witness reading.)

20 A I've read through line 18.

21 Q Okay.

22 Prior to the time that testimony was filed, do
23 you remember a meeting on November 1, 1976, with Mr. Rosso
24 and Mr. Wessel, Mr. Nute and you, concerning the testimony
25 that was to be filed in this proceeding?

b1 0

A I don't recall a specific date. I remember I met Mr. Posso for the first time under circumstances, as I recall, where you were going to come in and begin to process or prepare the witness. That's my recollection.

Okay, there was an introductory -- I'll call it that -- when you were up to see the lawyers, and I think on your way out you stopped in the office.

Q I think you testified that the first meeting that took place, the meeting I'm trying to refresh your recollection of, is the meeting which took place on November 1, prior to filing your testimony on November 5, with Mr. Rosso and Mr. Wessel, in which the testimony which has been redrafted was given to you for your approval.

A Which was done already in the form of the questions and answers?

Q Yes, sir.

A I guess I remember a meeting that took place, and this was not to prepare the witness. Yes, I think there was such a meeting.

Q Okay.

Would you turn to 2301 of the transcript?

(Witness reading.)

Are you there?

A Yes.

Q Okay. Let's start at the top.

11 1 Has anybody on the Dow Corporate Review Board
2 told you specifically that they don't have confidence in
3 the 1981-82 schedule?

4 A I'm sorry. Page 2301?

5 Q 2301, line 2.

6 A I believe that there have been -- let me back up.
7 After the negotiating session that took place on January 12
8 and my call to Mr. Youngdahl, I updated Mr. Rooke and Mr.
9 Orrefice and we talked about what took place at those meet-
10 ings.

11 I would say from that disc ssion neither one of
12 those people really believed that 1981 and 1982 are dates
13 that are realistic for us to rely upon.

14 Q Did they volunteer that?

15 A No, that's my judgment from recollection of the
16 conversation that took place.

17 Q Did they say that to you, though? That's my
18 question.

19 A If I asked them, "Do you have confidence in that
20 date," I think they would say no, they do not.

21 Q But that's your opinion. They never said that
22 to you. That's my question, Mr. Temple. That's all.

23 A I can't recall asking them directly, "Do you
24 agree with me with regard to the startup dates?"

25 Q Did they volunteer it? I don't care how they

t12

1 said it. I just want to know if they said it.

2 A I can't recall their directly saying they don't
3 believe that they're realistic.

4 Q How about the next one, the \$1.67 billion. Do
5 you remember the Dow Corporate Board telling you that they
6 don't have confidence the plant would cost no more than \$1.67
7 billion?

8 A I think the question says do I have confidence
9 that the plant would cost no more than \$1.67 billion.

10 Q That's right. And I'm asking you whether or not
11 anybody at Dow Corporate Board has told you that they don't
12 have confidence in that.

13 If I've confused you, just read down a couple
14 more lines.

15 (Witness reading.)

16 A I believe Mr. Orrefice has told me that he
17 doesn't believe that \$1.67 billion is a reasonable number.

18 Q Fine. He said that to you, though?

19 A I think he said that to me.

20 Q I'd like you to look at page 2322 now.

21 A Which part, Mr. Renfrow?

22 Q Starting with line 5 down to line 17.

23 (Witness reading.)

24 MR. CHERRY: I'm sorry. What page are you on?

25 MR. RENFROW: 2322, Mr. Cherry.

blt13

1 THE WITNESS: I've read it.

2 BY MR. RENFROW:

3 Q Would that be the Dow corporate position, or
4 is that your position?

5 A That is my position.

6 Q I'd like you to go to page 2384 of that transcript,
7 please, lines 11 through 15, where you talk about the
8 electric contract.

9 (Witness reading.)

10 A Yes.

11 Q Is that electric contract an auxiliary and standby
12 contract?

13 A I think so.

14 Q And, as I understand it, that contract requires
15 you to take electricity off the grid, is that correct?

16 A Yes.

17 Q You're not taking electricity directly from
18 Midland?

19 A From the nuclear plant, do you mean?

20 Q Yes.

21 A That's correct.

22 Q I'm sorry, Mr. Temple, could you repeat that so
23 we can have it correct?

24 A We are taking electricity off of the grid out
25 of Consumers' system. That's what the contract calls for.

t 14

1 Q Let's go to the steam contract while we're there.

2 On the steam contract and the rates which Dow
3 will pay, is it your understanding that within the 20-year
4 period of the contract that Consumers will cover their costs,
5 their capital costs for construction of the portion of the
6 Midland Unit 1 which is allocable to steam delivery to Dow
7 within that 20-year period?

8 A I'm not familiar with the details of the formula
9 for pricing steam in the contract.

10 We have people who are, and it's my understanding
11 that there is a profit in the steam price that Dow will be
12 charged by Consumers Power, if that was the question.

13 Q I'm sorry. I really wasn't going to ask you
14 to go into it. All I want to know is whether it's your
15 understanding that capital costs for Unit 1 that are
16 associated with steam delivery to Dow will be recovered by
17 Consumers within the 20-year term of that contract.

18 A I think the answer to that is no.

19 MR. RENFROW: We don't have any further questions,
20 Mr. Chairman.

21 MR. WESSEL: No questions, if the Board please.

22 CHAIRMAN COUFAL: Dr. Leeds has two questions.

23 EXAMINATION BY THE BOARD

24 BY DR. LEEDS:

25 Q Mr. Temple, I want to ask you a couple of

hit 15
1 questions. I don't want to try to trap you on these things,
2 so I'll just sort of tell you where I want to go.

3 A Okay.

4 Q I want you to assume arguendo that you have a
5 valid contract.

6 A Assume that I have a valid contract?

7 Q Yes. I don't want the validity of the contract
8 to be in dispute with these questions or for that to condition
9 your answers.

10 I'm going to ask you about Dow's genuine need for
11 steam and electricity, just in general, and then from a
12 nuclear plant, and then from Dow-Consumers Power Midland
13 Nuclear Plant.

14 So I'm going to ask you to start off. If you
15 need to separate steam and electricity from those two, I'll
16 ask you six questions. Otherwise I'll ask you three.

17 A Let's try it with three.

18 (Laughter.)

19 Q Okay, fine.
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DR. LEEDS: Does Dow have a genuine need for steam and electricity in the current period, after 1982?

THE WITNESS: Yes.

DR. LEEDS: Does Dow have a genuine need for steam and electricity from a nuclear plant after -- in the time period after 1982?

THE WITNESS: Well, Dow has a genuine need for steam. I don't think it has to come from a nuclear plant.

You know, a molecule of steam and a kilowatt of electricity, when they work in a chemical process, don't really know where they came from.

I am not necessarily trying to duck the question, but we have a need for steam and electricity.

DR. LEEDS: Okay.

Then the third question is, do you have a genuine need for steam and electricity from the Midland plant, Consumers Power Midland plant, after 1982?

THE WITNESS: With no alternative to that?

DR. LEEDS: Well, what I am trying to get at is whether there is a genuine need for the power either in the form of steam or electricity for Dow from this plant, or for Dow, period, after 1982?

THE WITNESS: There is a genuine need for steam and power by Dow Chemical in Midland after 1982.

I think -- if I can assume we did not have a nuclear

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1 plant contract, then there would be ways for Dow to go ahead
2 and generate the electric power and produce the steam ourselves.

3 We do have a contract with Consumers Power which
4 we said we are treating as in effect, and we are taking steps
5 to upgrade our current facilities so we can operate in
6 compliance with the Michigan Air Pollution Control
7 regulations beyond -- up to 1982 when the nuclear plant is
8 coming on stream.

9 If they are, it is our intention, all other
10 circumstances being the same -- to buy nuclear steam from the
11 Consumers' plant.

12 DR. LEEDS: Okay.

13 Is it correct to say you do not have a genuine
14 need for the steam and power from the Consumers Power
15 nuclear plant, you just have a genuine need for steam and power?

16 DR. LEEDS: Thank you, sir.

17 MR. WESSEL: Dr. Leeds, I think something ought to
18 be added, and perhaps you know it.

19 I don't know if Mr. Temple will adopt it or not.

20 It doesn't make any difference where steam or
21 electricity come from, clearly. As far as electricity, it
22 can come from Canada or the West Coast or wherever else you
23 can get it.

24 Steam, however, as I think was established in the
25 last hearing, has got to be close by. There is a tremendous

mm3 1 power loss if you transfer steam over great distances.
2 And therefore, wherever the plant is, it must be located
3 reasonably close to the Midland plant of the Dow Chemical
4 Company.

5 Is that correct as a statement?

6 THE WITNESS: Well, if we build our own facilities,
7 they would be inside the complex. I don't think we contemplate
8 going out and contracting with somebody to come in and build
9 a different electric generating facility to take steam from
10 that. That, we would absolutely not consider.

11 DR. LEEDS: Thank you, sir.

12 MR. ROSSO: Can I hear that last answer back again?

13 Oh, never mind.

14 MR. CHERRY: Mr. Chairman, may I pose just one
15 question to Mr. Temple, based on Dr. Leeds' last question?

16 CHAIRMAN COUFAL: Yes.

17 BY MR. CHERRY:

18 Q Mr. Temple, did you understand Dr. Leeds' last
19 question as requesting -- and therefore you are answering --
20 that after 1982 it is your present contention that if the plant
21 is not on line by that date, not to buy steam and electricity
22 from the nuclear power plant, all other things being equal?

23 A No.

24 I understood him to ask if we needed steam and
25 electricity, which I said we did. And told him in our view,

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1 you know, if we didn't have a contract with Consumers, we
2 would build a facility, or we could take it from a nuclear
3 plant.

4 Q But in your answers to Dr. Leeds you weren't, I
5 take it, contradicting your earlier testimony that Dow's current
6 position, although it is a tenuous situation and all that, is
7 that even if there is a two and a half year delay from the
8 current Midland Nuclear Power Plant steam on line, you
9 still would take that steam?

10 That is from March 1982 to the end of '84?

11 A We are continuing to treat the contract as though
12 it is in effect.

13 Q Through 1984?

14 A We can run our plants through the end of 1984.

15 Q But a two and a half year delay in steam coming on
16 line in accordance with your present position, you would still
17 take steam from a nuclear power plant?

18 A Our current facilities can operate that long.

19 I think I have also said that if any change of
20 significance came along, we would reassess our situation.

21 Q Well that would be true whatever happened. I
22 appreciate that.

23 Thank you.

24 CHAIRMAN COUFAL: Thank you, Mr. Temple.

25 THE WITNESS: Am I through, sir?

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1 CHAIRMAN COUFAL: Mr. Wessel sincerely hopes so.
2 I bet you hope so too.

3 THE WITNESS: Yes, sir, I do.

4 CHAIRMAN COUFAL: Yes, sir, you are excused.

5 (Witness excused.)

6 MR. WESSEL: It will take perhaps ten minutes for
7 the witness to come.

8 There are some minor things, once the witness
9 leaves the room, because I don't want to open the door to
10 any more questions.

11 MR. CHERRY: Mr. Chairman, have you issued a
12 ruling on when Consumers has to answer interrogatories, or
13 when they have to turn over the documents?

14 CHAIRMAN COUFAL: I will do that during this delay.

15 Mr. Wessel has some things, and I want to rule
16 on the Staff's interrogatories, clean up all those arguments.

17 MR. CHERRY: I think we all should, at some point
18 before it gets too late, talk about the schedule for tomorrow
19 on the assumption that MR. Crefice may be finished tonight,
20 or at the very latest tomorrow morning. Although I think
21 maybe we could finish him tonight.

22 CHAIRMAN COUFAL: I am agreeable to that sort of
23 conversation.

24 MR. WESSEL: Now that the witness is gone and not
25 subject to recall, I have corrections to his testimony which

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1 were handed out to the parties sometime ago, and which were
2 mailed to all parties and the Board on the 24th.

3 I have received no response of any kind. I think
4 it is fair to assume that those corrections are the ones
5 which the parties will accept as corrections to the transcript.
6 They are essentially, in my judgment in any event, of a
7 ministerial, typographical or grammatical character. I was
8 not going to hold the witness and ask him about them, although
9 that would be the normal way to proceed.

10 If the parties don't want to correct the transcript,
11 I guess that is their affair; but I suggest that these be
12 stipulated as corrections to the transcript of Mr. Temple's
13 testimony on the first two days last December.

14 MR. CHERRY: They are not substantive, Mr. Wessel?

15 MR. WESSEL: I don't regard them as such. There
16 obviously can be a substantial difference between the parties,
17 one never knows.

18 They were mailed out on January 24th and were given
19 out a week or ten days before.

20 MR. ROSSO: Mr. Chairman, we did receive those.
21 Unfortunately, with the press of other matters we haven't
22 had a chance to review them.

23 MR. WESSEL: Well, you should have.

24 MR. ROSSO: Well, maybe we should have, Mr. Wessel --

25 MR. WESSEL: Yes, you should have.

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1 MR. ROSSO: We have been working 17-hour days, sir.

2 MR. WESSEL: I'm sorry, work more.

3 MR. HOEFLING: We have looked at those. We don't
4 have any problem.

5 MR. CHERRY: I don't either, Mr. Chairman.

6 MR. ROSSO: If I might finish, Mr. Chairman, if
7 Mr. Wessel represents them as ministerial and they are not
8 substantive, we don't have any problems.

9 MR. WESSEL: I cannot make representations of that
10 character. I consider them such. I don't know whether others
11 do or not.

12 MR. ROSSO: We will look at them as soon as we can.

13 MR. WESSEL: Secondly, the Board ordered that page
14 939-A of the transcript be inserted. It was a result of
15 something that had been omitted by switching reporters.

16 The reporter has just handed me my dictated version
17 of what I think the Board ordered, and I would like to hand
18 it to the Parties and the Board, and ask whether anybody has
19 any objection to this being the page in conformity with the
20 Board's order.

21 And I think if we don't have a response by tomorrow
22 morning, it should be directed that this is the substitute
23 page.

24 CHAIRMAN COUFAL: We have an order out. I don't
25 know why it didn't get distributed, Mr. Wessel, that quotes

mmS 1 or cites the precise words that you offered.

2 MR. WESSEL: Well, there was an additional change
3 by the Staff. I have included it.

4 And there has been so many arguments here that I
5 think doing it ex parte might have created some problems. But
6 now the parties have the page as I believe the
7 Board directed it. It seems to me it should be physically
8 included in the transcript unless by tomorrow morning someone
9 says that is wrong.

10 MR. CHERRY: Mr. Chairman, I have no objection to
11 either of Mr. Wessel's offers, and I will stipulate to both
12 of them.

13 CHAIRMAN COUFAL: All right.

14 I didn't think there was an ex parte arrangement.
15 You presented it in the form of a motion, and some responded
16 and some didn't.

17 MR. WESSEL: I'm sorry.

18 The Staff did have an additional sentence to add.

19 CHAIRMAN COUFAL: Yes. That was --

20 MR. WESSEL: And the Board didn't do it in haec
21 verbae. It issued an order, and one can interpret an order in
22 a lot of different ways, as we quoted earlier.

23 CHAIRMAN COUFAL: Not mine. Mine are models
24 of clarity.

25 (Laughter.)

1 All right. Mr. Cherry spoke of scheduling.

2 We are going to start with Mr. Orrefice this
3 afternoon, and then I guess we get to Mr. Youngdahl and Mr. Aymond

4 MR. CHERRY: I have no questions of Mr. Youngdahl
5 or Mr. Aymond.

6 CHAIRMAN COUFAL: All right.

7 Then what is the parties' pleasure with regard to
8 after Mr. Orrefice?

9 MR. CHERRY: Mr. Chairman, let me announce that I
10 have, based on the record thus far, and of course if someone
11 else brings another witness, I will change it, concluded my
12 cross-examination of all Consumers Power witnesses. And except
13 for a few questions which I may have as a result of Mr. Orrefice's
14 examination by the Staff, although I may not have any, I am
15 through with my examination of all Dow witnesses.

16 And I would like to move tomorrow morning through
17 the presentation of the Regulatory Staff testimony. I have a
18 few questions about that. I am prepared to serve my written
19 testimony at the latest for Dr. Timm on Monday and have him
20 available that day for the rest of the week for cross-
21 examination.

22 And I would like to move forward.

23 And Consumers Power Company has outstanding, to put
24 in the testimony of Mr. Wells and an environmental man and
25 somebody else and Parts II, III and IV of Mr. Keeley's testimony.

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1 I will stipulate that all of that can go in as if
2 read without the necessity of bringing any of those witnesses
3 here, unless, of course, the Board has some questions for them,
4 but I have none, and I don't want to waste time going through
5 the procedural falderol, just bringing someone out here.

6 Insofar as the Staff is concerned, I will stipulate
7 into the record that all of their testimony is as if read.

8 I have a couple of questions, I believe of the gentleman who
9 did the Need for Power Section, Mr. Sidney Feld, and the
10 gentleman who is sitting to the right of Mr. Hoefling, but
11 that should not take more than seven or eight minutes.

12 And I would even forego that if they didn't want to
13 bring him out here, if no one else wanted to do any questioning.
14 So, I would like to move forward.

15 MR. TOURTELLOTTE: Mr. Chairman, in association with
16 the schedule, Mr. Cherry mentioned that he would have Dr. Timm
17 next week.

18 He has also indicated to both me and Mr. Hoefling,
19 that he has a witness he intends to call from the NRC Staff,
20 and we would like to have him designate who that person is at
21 this time.

22 MR. CHERRY: Has Mr. Tourtellotte filed an appearance
23 in this case?

24 CHAIRMAN COUFAL: Yes he has, Mr. Cherry.

25 MR. CHERRY: As long as he is bound by the rules.

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1 I told Mr. Tourtellotte, as I told some of the other
2 Staff members, that I have received information from someone
3 who is presently working at the NRC Staff, that the NRC Staff
4 is making a political decision in connection with this case
5 and will not fairly reevaluate the information.

6 I told that to Mr. Tourtellotte because I thought
7 because of the brush-in we earlier had, that I would explain
8 to him that one of the reasons I had difficulty with Regulatory
9 Staff lawyers is that I have been lied to so many times, and I
10 offered to list him the names, persons and events; that I have
11 been treated rather shabbily by the Regulatory Staff on many
12 occasions.

13 And I said, if you are sincerely interested in why
14 I am angry about the Regulatory Staff performance, I will
15 tell you.

16 He didn't answer me, so I said, forewarned is fore-
17 armed.

18 I have been informed by a source that there is a
19 lot of hanky panky going around by the NRC in connection with
20 this reevaluation. And if when your witnesses get up they
21 do not tell the truth, then I am going to put someone on
22 the stand who will, at that point, risk his job. I am not
23 prepared to give you his name, I will not do so, I do not
24 presently intend to put him on the stand, if the Regulatory
25 Staff is honest in its response.

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1 MR. TOURTELLOTTEE: That isn't the way he explained
2 it to me, Mr. Chairman. Those aren't the words he used at
3 all.

4 He indicated to me quite emphatically that there
5 was this witness, that he had something to offer about the
6 propriety of the way the NRC Staff was handling this matter,
7 and that he was going to produce him. And that that person
8 was simultaneously going to submit his resignation.

9 Now, I want to know who the person is. If indeed
10 he has a witness, he has the ongoing responsibility to inform
11 this Board and the Staff who that witness is.

12 CHAIRMAN COUFAL: He just informed the Board he
13 is not going to call a witness, Mr. Tourtellotte.

14 MR. CHERRY: I think my position was clear,
15 Mr. Chairman. Dr. Timm is my witness, that is my present
16 intention.

17 CHAIRMAN COUFAL: Do you have some comment on the
18 schedule, Mr. Rosso or Mr. Renfrow?

19 MR. ROSSO: Yes, Mr. Chairman, I think I do.

20 First of all, there is some redirect of Mr. Keeley
21 that would have to be done.

22 We are perfectly willing to stipulate in,
23 pursuant to Mr. Cherry's suggestion, without cross-examination,
24 the rest of Mr. Keeley's testimony, Parts III and IV, and
25 Mr. Wells' testimony.

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1 But we do have some redirect of Mr. Keeley with
2 regard to Part II.

3 Moreover, there would be some redirect of Mr. Heins
4 and Mr. Bickel with regard to the matters that they have been
5 cross-examined on up to now.

6 And I ask the Board to give us some guidance as
7 to whether they want to have any further specific questions
8 answered with regard to the load forecasting of the company.
9 I know that Dr. Leeds had suggested at one point that he
10 wanted to hear more about the probability encoding analysis.

11 We do have a witness we can bring to explain the
12 techniques of the company in doing load forecasting,
13 what a load forecast is, basically starting from that, how it
14 is done, what the state of the art is, how it is done in
15 1976, et cetera.

16 We are willing to put those witnesses on.

17 MR. RENFROW: There is also a question from
18 Dr. Luebke, which said he would like to know on Palisades
19 steam generators, and I committed at that time to bring a
20 witness down who could speak to Dr. Luebke on the Palisades
21 steam generators, and the basis for the conclusions that went
22 into Mr. Heins' testimony.

23 The witness that Mr. Rosso referred to can also
24 speak directly to that encoding question. He is the one
25 who did the encoding, he can explain that to Dr. Leeds,

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1 who asked about it.

2 MR. CHERRY: Mr. Chairman, I would like to suggest
3 before you respond to either Mr. Rosso or Mr. Renfrow, this
4 is a very hotly contested proceeding and I think that
5 Consumers Power Company should make a choice based on their
6 judgment as to who they want to bring before the Board. And
7 this should not be the traditional kind of case where, how
8 much sugar do you want before you will give me my license.
9 If you want ten more witnesses, I will bring you ten more
10 witnesses; do you want me to scurry up over here, I will do that.

11 Let them make their own decisions, the babies are
12 big boys, and let them make their own judgments.

13 It seems to me that the Board has said what it
14 said and I want to move forward on this case, and I don't
15 think that the Board ought to make a determination of who
16 the parties' witnesses are. Consumers Power Company has got
17 to make that particular judgment. And they ought to be big
18 enough to make it and stand on it.

19 MR. HOEFLING: Mr. Chairman, Staff will have some
20 very brief questions of Mr. Keeley and Mr. Heins, Licensee's
21 witnesses.

22 At that point we have with us Mr. Echols, who
23 has some prepared testimony and he could be made available for
24 cross-examination.

25 Staff has two other witnesses. We can endeavor to

mm15 1 determine their availability and get that information to the
2 Board tomorrow morning. I am confident we could get another
3 witness out here by Friday.

4 MR. CHERRY: Mr. Chairman, the Staff has completed
5 its examination of Mr. Heins. They went before I did.

6 MR. HOEFLING: Excuse me, you are correct,
7 Mr. Cherry. I meant to refer to Mr. Wells.

8 CHAIRMAN COUFAL: What do you want to do?

9 Do you want to go with Staff people after Mr. Orrefice
10 testifies, or do you want to go with the balance of the Consumers'
11 people?

12 MR. CHERRY: My suggestion would be to finish
13 Consumers' case this week, let all their redirect people come
14 on in, and then we can probably finish that quite easily by
15 Thursday or Friday noon, put on all the Staff testimony on
16 Friday and get started. My testimony will be served on Monday.

17 We probably will finish with Staff no later than
18 Monday or Tuesday with everybody, and Dr. Timm is available
19 for the duration of the week for cross-examination by everybody.

20 As I indicated, everything Dr. Timm is putting in
21 is based upon documents that have already been produced by all
22 of the parties with the exception of six studies on coal prices
23 which Dr. Timm tells me would be available to anyone who did
24 more than five minutes worth of work.

25 There are some surprises, obviously, but we will

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1 bring that stuff with us.

2 DR. LEEDS: Mr. Cherry, are you through with
3 Mr. Howell?

4 MR. CHERRY: Yes.

5 CHAIRMAN COUFAL: Okay.

6 The suggestion now is to go with the remaining
7 Consumers' witnesses. That is Wells and whoever you want
8 to bring back on redirect, and who else?

9 Who does that leave?

10 MR. ROSSO: Any redirect that we may have of Howell,
11 if any; redirect with regard to Keeley with regard to Section
12 II of his testimony; Mr. Wells; any redirect of Mr. Heins;
13 any redirect of Mr. Bickel; any further witnesses on load
14 forecasting.

15 We could do some of this in rebuttal, but we don't
16 want to be foreclosed from going forward because we don't
17 want them to be faced with the idea of, we have already
18 challenged that.

19 CHAIRMAN COUFAL: Mr. Wessel, do you have a
20 suggestion to make with regard to this?

21 MR. CHERRY: Before you do, Mr. Wessel --

22 MR. WESSEL: No.

23 MR. CHERRY: -- Mr. Keeley informed Dr. Timm today
24 that Consumers Power is working on revised testimony.
25 Mr. Keeley told Dr. Timm that part of it had to do with

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1 Consumers Power Company's fuel costs were computed inaccurately
2 in the alternatives.

3 What I would like to know is whether or not there
4 is any other revised testimony being prepared?

5 If so, when will it be available, whose it is,
6 etcetera, because as long as you suggest rebuttal, Mr. Rosso,
7 I don't know how you play the game, but if you don't tell me
8 today and you know today and I find out, then I am going to
9 make a position that you ought not to put it in.

10 I know you are sorry Mr. Keeley told Dr. Timm
11 that.

12 MR. ROSSO: I'm not sorry at all. I wrote a
13 letter to the Board about it. I gave you a copy.

14 CHAIRMAN COUFAL: All right.

15 MR. CHERRY: Is there any other testimony besides
16 the fuel cost revision that you contemplate?

17 MR. RENFROW: Yes.

18 I have to find a copy of that letter, Mr. Cherry,
19 cost numbers.

20 MR. CHERRY: I never received it, cost numbers of
21 what? I don't recall receiving the letter.

22 MR. RENFROW: It was hand delivered to you and to
23 the Board and the Parties the night before the hearing, which
24 resumed -- I will have to find the letter.

25 MR. ROSSO: I think the letter was dated the

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1 17th of January.

2 MR. RENFROW: It was hand delivered to you. We
3 raised that with the Board the next day and were told to
4 go forward.

5 We are going forward and --

6 CHAIRMAN COUFAL: All right, we will go forward with
7 Consumers' people tomorrow, at the conclusion of Mr. Orrefice's
8 testimony.

9 MR. RENFROW: With the Board's permission, because
10 I will have to go make some telephone calls and get some
11 people down here, does the Board have any questions for
12 Mr. Howell?

13 MR. WESSEL: May I advise the Board that Mr. Orrefice
14 is now here.

15 CHAIRMAN COUFAL: Thank you, Mr. Wessel.

16 Mr. Orrefice, I am sorry, would you come forward,
17 please?

18 You can go make a phonecall, Mr. Rosso can --

19 MR. RENFROW: I am going to do that, but make my
20 decision easier since I have to make it, about how to
21 direct --

22 CHAIRMAN COUFAL: Leave us a number where you
23 can be contacted tonight, and we can call you tonight and tell
24 you whether we want Mr. Howell.

25 MR. RENFROW: I have to call Mr. Howell and tell him

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1 to get on an airplane and get down here in the morning.

2 CHAIRMAN COUFAL: Well, we can start with somebody
3 else in the morning.

4 MR. CHERRY: Mr. Chairman, I understand that the
5 protective order issued in connection with Mr. Howell and
6 Mr. Youngdahl and Mr. Aymond is still applicable in the
7 event that Aymond and Youngdahl are rebuttal witnesses.

8 I just want to make that clear.

9 CHAIRMAN COUFAL: We haven't revoked any protective
10 order.

11 Whereupon,

12 PAUL F. ORREFICE

13 was called as a witness on behalf of Dow Chemical Company,
14 and having been first duly sworn, was examined and testified
15 as follows:

16 MR. WESSEL: Mr. Orrefice is the Dow witness,
17 we have no questions of Mr. Orrefice.

18 CHAIRMAN COUFAL: It has been an easy day so far,
19 hasn't it, Mr. Orrefice?

20 Mr. Hoefling?

21 MR. CHERRY: May I ask if Consumer's Power Company
22 has any -- well, I guess Mr. Hoefling is next.

23 CROSS-EXAMINATION

24 BY MR. HOEFLING:

25 Q Mr. Orrefice, have you read Mr. Temple's testimony

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1 that has been filed in this proceeding?

2 CHAIRMAN COUFAL: Excuse me, Mr. Hoefling.

3 I know this is an unusual situation, but you better
4 identify on the record who Mr. Orrefice is, who his employer
5 is.

6 MR. WESSEL: Does the Board wish me to?

7 Mr. Orrefice, would you please state your position
8 with the Dow Chemical Company, and your background with them?

9 THE WITNESS: My name is Paul F. Orrefice, I am
10 President of Dow Chemical USA; Member of the Board of Directors
11 of the Dow Chemical Company; also a Member of its Executive
12 Committee, Finance Committee and Public Interest Committee.

13 CHAIRMAN COUFAL: Thank you, Mr. Orrefice.

14 THE WITNESS: Is that sufficient?

15 BY MR. HOEFLING:

16 Q Now, Mr. Orrefice, have you read Mr. Temple's
17 testimony that has been filed in this proceeding?

18 A You mean the testimony in Midland?

19 Q Yes.

20 A Yes.

21 Q Yes, the testimony of Mr. Temple presented before
22 this Board in Midland in November?

23 A I believe I read a synopsis of it, not word-by-word.

24 Q You have not read that testimony word-by word?

25 A I have read the testimony, but I do not know if that

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1 is a complete testimony.

2 MR. ROSSO: Excuse me, Mr. Chairman, could I ask
3 whether the Staff is referring to the direct testimony or
4 cross in his question?

5 MR. HOEFLING: I am referring to the testimony that
6 was filed in this proceeding, which would be the direct
7 testimony prepared for presentation in Midland.

8 THE WITNESS: You mean the one that was presented
9 in writing as opposed to his verbal testimony?

10 BY MR. HOEFLING:

11 Q Yes.

12 A Yes, I believe I read that in its entirety.

13 Q Does it accurately reflect the Dow corporate
14 position?

15 A Yes, I have not seen anything where it does not.

16 Q Does it accurately reflect the Dow corporate
17 position as of today?

18 A It accurately reflects the Dow corporate position
19 as of today, given the facts that exist when the decision
20 was made.

21 Q Could you summarize that position, please?

22 A Yes.

23 The Michigan Division came to certain conclusions
24 of the long-term desirability of nuclear steam for the Michigan
25 Division.

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1 They so informed me.

2 I ordered a review.

3 And the result of that review was to say that
4 given a startup of early 1982 and given a cost of the nuclear
5 power plant of a billion 270 million dollars, it was still
6 a desirable alternative to the Dow Chemical Company to obtain
7 that steam from a nuclear power plant.

8 Q Can you say if the corporate review were conducted
9 today that the same conclusion would be reached?

10 A I can't -- I would be speculating.

11 I know of no specific hard facts which say that that
12 startup date is changed, or that that dollar amount has
13 changed.

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1 Q Are you aware of a notice of violation received
2 by Dow from EPA?

3 A Yes.

4 Q Are you aware of a December 1976 preliminary
5 Bechtel forecast for the cost of the Midland facility?

6 A I am not aware that there has been any kind of
7 major change. I heard about a \$90 million in cost.

8 Q You would not consider that insignificant to the
9 extent that it would modify the Dow Corporate position?

10 A Well, obviously, I am not expert on the subject.
11 I am not an expert on the subject of power and steam. I have
12 to rely on my people. I don't know if they would consider it
13 significant. Nobody on the team that reviewed it for me has
14 told me that they would.

15 Q I want to read a sentence from Mr. Temple's
16 testimony. I am on page two of his testimony. The sentence
17 reads, and it refers to the Corporate Review:

18 "This last review which was concluded in
19 September of 1976 resulted in a conclusion that the
20 present time, circumstances have not changed suf-
21 ficiently to call for a modification of Dow's commit-
22 ment to nuclear produced steam to be supplied by
23 Consumers Power in March of 1982."

24 What circumstances are being referred to in that
25 sentence?

harb2 1 A Well, you ask me to speculate on the testimony of
2 Mr. Temple, but I would like to say this: I was given a set
3 of facts; the fact that existed at the time when we made,
4 when we had this Corporate Review was where the plant would
5 cost \$1.67 billion and of course, this has changed several
6 times, but this was a figure we had available at that time.
7 And we were looking at a startup of March 1982. Again, this
8 startup, as you know, as slipped several times.

9 So I assume that by circumstances you mean these
10 two facts plus other circumstances which surrounded our de-
11 cision which were the threats of litigation and so forth.

12 Q Were there threats of litigation prior to the --
13 September 1976?

14 A Not to my knowledge.

15 Q Now the conclusion that you reached as a result of
16 the Corporate Review, did it include the finding that Dow
17 was to keep all of its options open?

18 A I don't understand the question.

19 Q I want to go back to Mr. Temple's testimony where
20 he states what the finding of the Corporate Review was. I
21 have review was. I have read one sentence summarizing that
22 finding. Mr. Temple goes on to summarize that finding with
23 the words, "The matter will be kept under continuous review
24 and Dow will keep all of its options open."

25 Was that part of the conclusion reached as a result

arb3

1 of a Corporate Review?

2 A The conclusion of the Corporate Review was that
3 given the set of facts we had at that time, we reached a
4 certain conclusion. But if facts changed, we may reach a
5 different conclusion, and that we keep our options open to
6 review it again.

7 Q Isn't this position you take, one that you take
8 when you make any business judgment?

9 A I would think so.

10 Q Is there any unique element to the conclusion that
11 was reached?

12 A I don't think there is any unique element or any
13 hidden value in that statement.

14 Q In keeping your options open, aren't you simply
15 following ordinary, prudent, business practice?

16 A Correct.

17 Q When did Mr. Temple first suggest to you that a
18 Corporate Review would be in order?

19 A I don't remember the exact date. I believe you
20 have the documents I guess it was early September. I
21 don't remember the exact date in my mind. A letter that he
22 wrote to me, when he talked to me, he presented me with this
23 letter which he indicated what the conclusions of the Michigan
24 Division were and what his suggestion right at that time,
25 to have a review, to see if the conclusions of the Michigan

arb4
1 Division were correct or not.

2 And so I almost immediately ordered the review.
3 If I am not mistaken, it was all done in the month of Dec-
4 ember -- September 1976.

5 Q Basically, you accepted Mr. Temple's suggestion
6 and ordered that the review be conducted?

7 A Correct.

8 Q Now in leading up to the final review, did you
9 attend a meeting on September 24th with members of Consumers
10 Power Company?

11 A Yes, I did. Mr. Aymond and several other members
12 of Consumers Power Company were there.

13 Q Did Mr. Aymond speak for Consumers Power Company?

14 A As I recall the meeting, he did most of the --
15 he did most of the speaking; yes, although the other members
16 of the group from Consumers did participate in the meeting,
17 but Mr. Aymond was the principle speaker.

18 MR. CHERRY: What meeting are you referring to,
19 sir? What date?

20 MR. HOEFLING: The 24th.

21 BY MR. HOEFLING:

22 Q What do you recall of Mr. Aymond's presentation?

23 A What do I recall?

24 Q Yes.

25 A The principal things Mr. Aymond laid out, the

rb6
1 one of the lawyers for Consumers Power jumped up and said:
2 You can't do that. The reason I remember that so clearly
3 is because after the meeting I asked our people to follow up
4 on this, because I didn't understand what he meant. And I
5 under stand that you can't do that was said because we --
6 they could lose their license if they put such a final date.

7 I asked our people to investigate that and to con-
8 tinue talking to Consumers Power about this final date.

9 Q Did you take Mr. Aymond's lawsuit discussion ser-
10 iously?

11 A I sure did.

12 Q Why?

13 A Why? I have to take the chairman of the board,
14 chief executive of the company who tells me we are going to
15 sue if you do this, extremely seriously.

16 And I asked our lawyers how do they --

17 MR. WESSEL: I am sorry to interrupt, but if you
18 communicate the advice of your lawyers, the principle of
19 waiver we discussed in the past might make us produce every-
20 thing. So please consider carefully your response in con-
21 nection with any advice from counsel.

22 MR. ROSSO: Could I have that answer reread, prior
23 to Mr. Wessel's interjection?

24 (Whereupon, the reporter read the answer as re-
25 quested.)

arb7
4 THE WITNESS: I repeat what I said to begin.

5 When the chairman of the board of a company says we are going
6 to sue you; these are the amounts, over \$600 million, I
7 have to take it very, very seriously.

8 That is a lot of money for any company.

9 BY MR. HOEFLING:

10 Q Now the Corporate Review occurred on September
11 27th?

12 A That sounds like the right date. I can check the
13 exact date.

14 Yes, correct.

15 Q I want to show you Staff Exhibits 6 through 8 and
16 ask you if you recognize those.

17 (Handing document to witness.)

18 A This is number 8, I believe. And I recognize it
19 as the written -- I believe this is a copy of the slides
20 of Al Klomprens who was head of the group, that he used.

21 Q That is number 8?

22 A Number 8; yes. I think they are all the ones that
23 Al Komprens used. I think they are all slides that were
24 used at that session.

25 Q And Exhibit 6; can you tell us what that is?

A This again looks like the copies of some slides
that were probably used at that same session. You have given
me something which contains a whole number of figures dated

rb8

1 the 26th of September.

2 I have no reason to doubt that they were used at
3 that session, but I would have to study them more carefully
4 to tell you if they were all used.

5 Q Take Exhibit 6, the second page of that exhibit:
6 Midland nuclear plant trends; was that sheet used at the
7 corporate review; do you recall?

8 A I am sorry I don't -- I don't remember if it was
9 used at that particular review. I would suspect that it
10 was, but I am not sure.

11 Q Sheet number 6, labeled, "uncertainties not built
12 into base economic comparison." Do you recall that sheet
13 being used at the corporate review?

14 MR. ROSSO: Can I have a reidentification of that.

15 MR. HOEFLING: Sheet 6 of Staff Exhibit 6, "un-
16 certainties not built into base economic comparison."

17 MR. ROSSO: The copy we have does not contain that
18 page. May I just look at yours?

19 (Handing document to counsel.)

20 THE WITNESS: Again, I believe it was, but I
21 can't be sure. Several of the items that are mentioned in
22 this sheet, which is a very long one, were definitely dis-
23 cussed. So I assumed this was either used as a talking sheet
24 or was actually shown by one of our people.

25

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1 BY MR. HOEFLING:

2 Q Can you give me your impressions of that corp-
3 orate review session? What factors did you consider signi-
4 ficant in reaching your conclusion?

5 A Well, we were given all the facts by these var-
6 ious people, and the most significant factors in reaching
7 our conclusion -- I may say we had this review and then the
8 Dow U.S.A. Operating Board left the room and we went to a
9 separate room to make our decision.

10 The factors that were the most important were,
11 one, the economic factors which showed that again at this
12 date of March of 1982 and cost of \$1.67 billion, the nuclear
13 power steam -- plant was still a viable economic alternative
14 for the Dow Chemical Company.

15 And very important was the threat of litigation
16 of \$600 million which obviously had to way very heavily on
17 my mind, also. I can't tell you -- I can't divorce the two
18 things.

19 When you make a decision you get certain inputs
20 and you meld them all together. But it did show that it was
21 still a viable alternative economically but marginally so.

22 Without the threat of litigation, I don't know
23 what our conclusion would have been.

24 MR. HOEFLING: We don't have any more questions,
25 Mr. Chairman.

arb10

CHAIRMAN COUFAL: Mr. Rosso?

MR. ROSSO: It is Mr. Cherry's turn.

MR. CHERRY: I think it is your turn. I think under the schedule I am the anchor man, Mr. Rosso.

MR. ROSSO: I didn't understand that to be the case.

MR. CHERRY: Go ahead.

BY MR. ROSSO:

Q Mr. Correfice, was the position that the Michigan Division of Dow Chemical Company reported to you a position which would necessarily require a repudiation of the contract between Consumers Power and Dow?

A Let me understand your question. Could you restate the question?

MR. ROSSO: Perhaps it could be reread.

(Whereupon, the reporter read the pending question as requested.)

THE WITNESS: I don't know the answer. I assume it would require at least a modification.

BY MR. ROSSO:

Q Well, what did you understand the recommendation or the position of the Midland Division to be, sir?

A The position of the Michigan Division was that they did not think the nuclear steam was going to be a viable and economic alternative for the Michigan Division. If we had

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1 to march on in some other direction; that's why we ordered
2 the review.

3 Q Now if you had to march off in some other direc-
4 tion, would that not necessarily have meant that you would
5 not longer live under the terms and obligations of the contract
6 with Consumers Power Company?

7 MR.WESSEL: He is calling for a legal conclusion.
8
9 Objection.

10 CHAIRMAN COUFAL: Sustained.

11 BY MR. ROSSO:

12 Q You had a business deal with Consumers; is that
13 right?

14 A Yes.

15 Q Was the Michigan Division's conclusion or recommen-
16 dation or position one which caused you to believe that the
17 Michigan Division felt that the business relationship should
18 be terminated?

19 A It led me to believe that our business deal did
20 not look so good any more.

21 Q And that it should be terminated?

22 A Such a statement was never made to me.

23 Q So then the Michigan Division never took the
24 position that the contract should be terminated; is that cor-
25 rect?

A They never -- well, I repeat: They came to the

barb12
1 conclusion that economically it was not a good deal. They
2 never told me we must terminate this contract.

3 Q And the Dow Corporate Review then concluded that
4 economically this was still a good deal; is that correct?

5 A Given the assumptions of completion by March 1982
6 at \$1.67 billion, yes.

7 Q Now one question about this meeting of September
8 24th, sir, with Consumers Power Representatives, do you re-
9 call whether Mr. Aymond spoke at the meeting regarding the
10 question of telling the truth with regard to the ultimate
11 decision which Dow made at this hearing?

12 MR. CHERRY: Could I have that question read back,
13 please?

14 (Whereupon, the reporter read the pending ques-
15 tion as requested.)

16 THE WITNESS: I don't recall his using the par-
17 ticular words of telling the truth. But he did not say any-
18 thing to the contrary, that I recall, at that meeting.

19 BY MR. ROSSO:

20 Q Mr. Orrefice, I show you a copy of a document
21 which has been marked as -- well, which has been identified
22 at rate as the notes of Mr. Temple at this meeting of 9/24/76
23 and I ask you specifically to refer to this portion of the
24 notes here and see if that refreshes your recollection as
25 to whether Mr. Aymond spoke with regard the need to tell the

rb13

1 truth to this hearing board, with regard to Dow's ultimate
2 decision?

3 A Without looking at these notes, I am sure that we
4 talked about -- I repeat that whether the words "I must speak
5 the truth," were used, I don't know, but the conversation
6 with Aymond was whether we should state our true position, so
7 he probably did use those words. I just don't remember the
8 exact words.

9 Q There was never any --

10 A What part did you want me to read?

11 Q I was referring specifically to this notation
12 here (indicating).

13 A It doesn't disagree with my recollection.

14 Q All right.

15 So there was never any question at the meeting,
16 at this meeting, that Dow should represent a witness at this
17 hearing who would fabricate a position?

18 A No, not fabricate a position, but the suggestion
19 was made that we should supply maybe a witness who wasn't the
20 most knowledgeable witness that Dow had, a suggestion which
21 led me to doing the review, led me to question this because
22 I said, as much as I am concerned, Joe Temple is the most
23 knowledgeable man we have on the subject. And I think he should
24 be Dow's witness because I want the most knowledgeable per-
25 son of the company. I am not that knowledgeable on the

arbl5

1 subject.

2 Q Well, I guess that comment is one which I would
3 like to question you about a little bit further.

4 Was the important point here that the Dow
5 Corporate Review concluded he was the witness thought to be
6 the most knowledgeable with regard to the Corporate Review
7 conclusions; is that correct?

8 A That he ought to be knowledgeable with that con-
9 clusion; yes; not only with that but with the whole nuclear
10 power, nuclear steam situation.

11 If I may add parenthetically, a difficult con-
12 clusion in one way: Mr. Temple has a new job and I wish to
13 heck he would get to it one of these days.

14 (Laughter.)

15 Q At any rate, Mr. Temple was presented as the
16 witness in this proceeding?

17 A Right.

18 Q Now if Dow were to do another Corporate Review
19 with regard to this project, what are the factors that it
20 would consider in making a determination as to whether to
21 proceed with the plant, the nuclear plant?

22 A The same factors that were considered the last
23 time.

24 Q Would those include the cost, economic costs,
25 of your alternatives?

arb16

1 A Yes.

2 Q Would it include the technological feasibility of
3 your alternatives?

4 A Obviously , any study like that you make has to
5 be technologically feasible. I don't know if I understand
6 your question.

7 Q I guess what I am referring to, sir, is that there
8 has been some testimony in this proceedings, and one of the
9 alternatives that Dow has considered is coal gasification
10 which has been described by Dow Witness Mr. Temple as a
11 rather new technology.

12 And I was asking whether in the course of such a
13 review when you looked at the coal gasification plant alter-
14 native, you would also consider whether or not you would re-
15 ly on the state of the technology in that area.

16 A Well, at this corporate review, we had in September,
17 coal gasification was mentioned as potentially a more eco-
18 nomical alternative.

19 But I would say -- but at that point, September,
20 the state of technology was not such that one could make a
21 statement, and I don't know that it is today, that it is
22 more economic.

23 Q At any rate, what you do is you look at the whole
24 ball of wax? You would look at all of your alternatives and
25 weigh those against the Midland nuclear plant and you would

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1 make a decision as to whether the Midland nuclear plant was
2 still an economically viable alternative for Dow; is that
3 correct?

4 A Yes; that is correct.

5 Q And I take it that that is what you did at the
6 corporate review the last time around?

7 A We did that. I have already testified to that,
8 I think, that that was quite obviously -- it was still
9 economically viable with those assumptions, a proper econ-
10 omical alternative.

11 MR. ROSSO: I have no further questions.

12 CHAIRMAN COUFAL: Mr. Cherry?

13 MR. CHERRY: Yes.

14 BY MR. CHERRY:

15 Q Mr. Orrefice, the suggestion of a lawsuit by
16 Consumers Power Company against Dow Chemical came just after
17 Consumers learned of the Division decision and before the
18 initiation of the corporate review; is that correct?

19 A I don't know if it was before the initiation. It
20 became between the day I said we must have a corporate
21 review and I would say it was during -- while the corporate
22 review was in process, while the data was being gathered.
23 It was certainly before we had our meeting where this group
24 met with the Dow U.S.A. Operating Board. Yes.

25 Q But the suggestion of a lawsuit by Consumers

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1 Power Company came after Consumers knew of the Michigan
2 Division position and of the ongoing Dow corporate review?

3 A That is correct.

4 Q Did you or anybody else on the Dow U.S.A. Board
5 regard the timing of the suggestion of a lawsuit as calcu-
6 lated to influence the Dow corporate review?

7 A I can't speak for anybody else but speaking for
8 myself, I don't know how the other members of the board might
9 have thought. I obviously came to that conclusion; yes,
10 that it was designed to influence.

11 Q Now, Mr. Orrefice, you are familiar generally with
12 the terms and conditions of the arrangement with Dow Chem-
13 ical and Consumers Power; are you not?

14 A Yes.

15 Q With the 1.6 billion costs, the schedule, 1981-
16 82, and the hardness or lack of hardness of those figures;
17 in other words, I want you to take exactly that situation
18 as it exists today with all of the uncertainties or certainties
19 and if there were no contract with Consumers Power at all
20 today, none at all, would Dow Chemical sign that contract
21 today?

22 A The contract, as today, would we sign it today?
23 This is an opinion, a speculation; no.

24 Q And reason you would not, Mr. Orrefice, in your
25 judgement?

arb19

1 A Well, there are several factors. Principally, the
2 tremendous uncertainty that all the delays have caused, that
3 all the increases in costs have caused. We have in Midland
4 some aging power plants. Power and steam is supplied by some
5 units in some cases at 30, 40 years old. I think it was
6 stated by Mr. Temple in Midland yet, that 1984 looks like the
7 outside -- the outside of when these facilities will give
8 out. And we don't like to have these facilities, not only
9 because of the possibility of noncompliance with the clean
10 air rules, but because there is a question in mind -- my
11 mind -- and I am an ex-chemical engineer. I am not really
12 a technical man, but there is a question in my mind as to the
13 safety of facilities when you are running beyond their limit
14 of endurance.

15 So there are these tremendous uncertainties. When
16 is it going to come on? We must do something else. We, of
17 course, have these standards where we have to meet by 1980
18 the standards. We are currently talking to the State and
19 have the review schedule of the EPA, I believe it is on the
20 14th of this month.

21 We don't know what we will be able to do in that
22 interim period of time.

23
24
25
End 12
blt fols.

PE/
Begin 13

1 Now, under the current arrangement, we don't
2 know when we will have nuclear power and nuclear steam; and,
3 frankly, this slippage that has occurred during the life of
4 this agreement makes one wonder whether the dates we have
5 now and the figures we have now will be firm or not.

6 Q Mr. Orrefice, would it be correct to say that
7 you do not presently have total confidence in the cost
8 estimates given to you most recently by Consumers Power
9 Company?

10 A That is correct.

11 Q Would it also be safe to say that you do not
12 have total confidence in the schedule, present schedule,
13 given to you by Consumers Power Company?

14 A That is correct.

15 Q Would it also be safe to say that you and other
16 members of management of Dow Chemical Company have a lack
17 of confidence in the management ability of Consumers Power
18 Company in connection with this plant and your relationship
19 with them?

20 A I would say that that is a correct statement, yes.

21 Q A correct statement?

22 A Yes, sir.

23 Q Have you had some conversations with Mr. Temple
24 after the January 12, 1977, meeting with Consumers Power
25 Company and Dow Chemical negotiating teams?

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1 A Yes, I have.

2 Q You, and I believe Mr. Rooke, were party to those
3 meetings?

4 A Yes.

5 Q At that point Mr. Temple advised you of the
6 Consumers Power Company trade-off for the final date. How
7 did you understand what Consumers demanded in return for
8 some commercial reality and objectivity in the arrangement?

9 MR. ROSSO: Objection, Mr. Chairman, to the
10 characterization in the question.

11 CHAIRMAN COUFAL: I don't understand the question,
12 Mr. Cherry.

13 BY MR. CHERRY:

14 Q Can you tell me what you understand to be Consumers'
15 present demand in order to retreat from their position that
16 there is no ending date to the contract?

17 A Well, I understand there are several things, but
18 the principal one -- by far the most important one -- is
19 they're demanding \$100 million in cash today as a -- well,
20 I'll call it a no-interest loan, because they say \$100 million
21 in cash today plus another \$300 million in cash between now
22 and the plant startup and more if the cost exceeds today's
23 estimated cost -- an open-ended amount, as a matter of fact,
24 which could be \$400 million or could be a lot more, this
25 money to be returned to us on what I consider a very

pl3 1 indefinite date, after the plant startup.

2 I don't think this has been specified either as
3 a deduction from our payments for steam and power or some
4 other way. And, of course, a no-interest -- even if it is
5 returned, a no-interest loan, the \$400 million at our
6 current cost of financing for Dow, for long-term financing
7 at let's call it 8 percent, would mean a \$32 million interest
8 loss per year. It's not like you're losing \$400 million.

9 Certainly it's a very heavy penalty to pay. I
10 did not take that very kindly.

11 Q Did you regard the request by Consumers Power
12 Company for the \$100 million interest-free loan which could
13 escalate up to \$400 million as a request for assistance in
14 financing the construction of the Midland Plant?

15 A Well, it is -- I'd call it more than assistance,
16 since the steam part is supposed to cost, from the figures
17 I have seen from Consumers, about \$400 million. It means
18 the total financing between now and end of construction by
19 Dow at no interest of the steam facility.

20 Q I believe my question was do you believe that
21 the reason Consumers in part is asking for this money is
22 that they may have financial difficulty in raising the total
23 amount of money for the plant?

24 A Yes, I believe that to be the case.

25 Q Would it be fair to say that based on all you

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1 know, Mr. Orrefice, that Dow does not presently have confi-
2 dence that Consumer Power Company will be able to finance
3 the completion of the Midland Project even at the \$1.67
4 billion price by '81-'82?

5
6 A I'll have to go back, if you'll permit me. I
7 think there's been some question in our mind. It's not a
8 new question in our mind. In 1974, when I was Financial
9 Vice President, I reviewed this. I have had some doubts as
10 to the ability of Consumers Power to finance this for quite
11 some time. It's not a new fact.

12 Q As I understand it, Mr. Orrefice, even if you paid
13 \$400 million to Consumers Power Company with this interest-
14 free loan and you got your 1985 cutoff date, Consumers still
15 requested a whole lot of exemptions, one of which was they
16 might not be able to get enough money to finish the plant.
17 Is that correct?

18 A That is correct. That's one of the force majeure.
19 That's one of the broadest force majeure clauses I've ever
20 seen.

21 Q This may be a difficult question, Mr. Orrefice,
22 but you've dealt with, obviously, some very sophisticated
23 decisions. You've been in an executive position analyzing
24 Consumers' position, at least insofar as Dow is concerned.

25 Do you think, leaving aside liability questions
26 and everything else, do you think this project is presently

1 t5
2 the way you understand Consumers, a good idea for the state
3 of Michigan?

4 A I really can't answer that, Mr. Cherry. I think
5 that would be really beyond my ability to answer.

6 Q Mr. Orrefice, would it be fair to state that, if
7 there had been no threat of a lawsuit, the corporate review
8 decision would in fact have supported Mr. Temple's conclusion
9 at the Division level?

10 A I'd be speculating if I answered that in the
11 affirmative, because, as I said before, I think in making
12 a decision you get certain data input and it's very difficult,
13 when you have that data available to you that day, to say,
14 "How would I have decided if I didn't have that particular
15 data available?"

16 Certainly the threat of a lawsuit was a very
17 major influence, a very major input of data in our decision.

18 MR. CHERRY: Could the witness be provided with
19 a transcript of yesterday's proceedings, of Mr. Temple's
20 testimony, Please?

21 (Document handed to the witness.)

22 THE WITNESS: Am I permitted to see this?

23 MR. WESSEL: Unless the Board says no.

24 CHAIRMAN COUFIL: There's an exclusion order out
25 that would prohibit him reading his testimony.

26 MR. CHERRY: Well, I'm entitled to use it in

blt6

1 cross-examination.

2 CHAIRMAN COUFAL: Are you waiving your request
3 for an exclusion with regard to what we're doing right now?

4 MR. CHERRY: Oh, of course.

5 CHAIRMAN COUFAL: All right.

6 BY MR. CHERRY:

7 Q Mr. Orrefice, would you please turn to page 2311?
8 And I represent to you, subject to correction by your counsel,
9 that this is the transcript of Joe Temple's oral testimony
10 on cross-examination by me yesterday.

11 I asked Mr. Temple a question. I believe I've
12 also asked you the underlying elements to you, but I want
13 to know now -- if you will read, beginning with line 11,
14 page 2311, which is when I asked Mr. Temple, "Now, just
15 between you and me . . . ," and down through line 23 of the
16 following page.

17 (Witness reading.)

18 A Up to where, Mr. Cherry?

19 Q Line 23 of the following page, Mr. Orrefice.

20 A All right.

21 Q That was Mr. Temple's understanding of what he
22 believed to be the Dow corporate position after conversations
23 with you and others and after his review of the circumstances,
24 his understanding of the strategies and the pressures, et
25 cetera.

blt7

1 What I want to know is, do you essentially agree
2 with what Mr. Temple said at the transcript cite I gave you?

3 MR. ROSSO: Mr. Chairman, the witness has
4 answered that question twice already. He said that he dis-
5 agreed with it. I object to his being asked the third time.

6 CHAIRMAN COUFAL: He's pointing out a specific
7 spot in the transcript and asking the witness if he agrees
8 with what Mr. Temple said at that specific spot. He may
9 answer.

10 MR. CHERRY: I don't know that the witness has
11 said he disagreed.

12 CHAIRMAN COUFAL: He may answer it.

13 THE WITNESS: I don't think I said I disagreed.
14 What I have said is I was supplied with certain pieces of
15 data, and the decision was made based on those pieces of
16 data.

17 Now, Joe Temple had lived with this. I had one
18 recommendation he made and then a new piece of data which
19 came in to him, which was the lawsuit. In my mind in making
20 the decision these two things came together: the economic
21 conclusions and the threat of a lawsuit.

22 I cannot disagree with what he said, that it's a
23 probability this was how the decision was reached. But I
24 repeat what I said before: I have a very difficult time
25 saying, if I was given one piece of data and not another, would

blt8

1 I have come to that conclusion.

2 BY MR. CHERRY:

3 Q I understand. You want to use your own words,
4 but you don't disagree with how Mr. Temple put it as to
5 how the decision was reached?

6 A I do not.

7 Q Now, Mr. Orrefice, is it also my understanding
8 that the negative elements of Mr. Temple's conclusion, those
9 weren't rejected--it was just his conclusion to kind of go
10 some other way -- that that conclusion, for the reason you've
11 given us, was rejected but that the Dow Corporate Review
12 did not reject the underlying findings that Mr. Temple,
13 who was so close to the nuclear project, determined? Is
14 that correct?

15 MR. ROSSO: Objection, Mr. Chairman. Could I
16 have a definition of what underlying finding we're talking
17 about?

18 MR. CHERRY: Yes. We're talking about all of the
19 reasons why Mr. Temple believed that the nuclear project was
20 no longer going to be advantageous to Dow.

21 BY MR. CHERRY:

22 Q What I'm suggesting and asking you if you will
23 agree with me that the Corporate Review Committee did not
24 dispute any of those underlying factors but moved forward
25 with the project in the manner that has been described

blt 9

1 because of the combination of elements you have described
2 here, including the lawsuit and the economics as you currently
3 saw them, et cetera. Would you accept that, Mr. Orrefice?

4 A Yes, I would say that that is correct.

5 I want to repeat something I've said a couple
6 of times before. The assumption we made is that the data
7 that was given to us by Consumers of the time of startup and
8 the capital cost was correct. We took that as a given, if
9 you will, in the decision.

10 Q Okay.

11 Mr. Orrefice, I think I'm almost done, but I
12 want to ask a couple of hypothetical questions to you, if
13 I can.

14 The Dow corporate position essentially, as I
15 understand it, is trying to find some reasonable way to
16 find a certainty, because businessmen like certainty.

17 Would that be a fair way of characterizing?

18 A May I make a correction, Mr. Cherry?

19 We've talked of the Dow corporate position. I
20 want to make sure that I put a clarification in here.

21 When we say Dow corporate, I'm always afraid
22 we're talking about The Dow Chemical Company. This is Dow
23 U.S.A. that has jurisdiction over this and makes this
24 decision. It was the Dow U.S.A. Operating Board rather than
25 the Dow Chemical Company's Corporate Board.

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1 Q Very well. "Dow corporate position" has become
2 a term in this proceeding meaning the U.S.A. review.

3 A I just want to make sure that that was clear.

4 Would you restate the question?

5 Q What I have in mind, it's sort of been my under-
6 standing that what has been going on over the last several
7 months is an effort by sophisticated businessmen to find
8 certainty in a situation, because businessmen can live with
9 a lot of things but they cannot live with uncertainty. Would
10 you say that's a fair statement?

11 A That is absolutely correct and -- absolutely
12 correct.

13 Q Now, Mr. Orrefice, one of the things that you
14 asked of Consumers Power Company in your quest for certainty
15 was, "If you don't have the nuclear power plant on line
16 generating steam and electricity by the end of 1984, we
17 want out," is that correct?

18 A That is correct.

19 Q And that is part of your position here today?

20 A That is part of our position. It has been with
21 Consumers. And, as I said before, I felt that Mr. Aymond
22 considered it a reasonable position when we got together.

23 When we got their proposal, of course, it was
24 quite a shock that it was quite different.

25 Q I take it that your understanding of why

blt12

1 Can you tell me any other certainties that you
2 believe are applicable right now in connection with the
3 nuclear option?

4 A Yes.

5 Well, of course, one uncertainty that we still
6 have hanging is this review we're going on with the State
7 of Michigan and with the EPA as to the realm of possible
8 and not possible in our running these coal facilities which
9 we have; because, in addition to the uncertainty of whether
10 they would last -- and we've estimated they'd last until the
11 end of 1984 --there is a question of whether we can run
12 them or not or whether we have to take some very, very
13 expensive alternative for a very short period of time-- or,
14 worse, for an indefinite period of time.

15 Obviously, we don't like the thought of investing
16 some major chunks of capital maybe to run for two years.

17 Q Mr. Orrefice, would Dow ever consider any
18 arrangement by which it would invest in the nuclear power
19 construction of Midland of substantial sums of money?

20 A Well, I think we've been very consistent in this.
21 We've been asked for several years now to do so, and we
22 have said no.

23 Q What if I suggested to you that the only way
24 the nuclear power plant could get built was for you to put
25 up a substantial sum of money on behalf of Dow? Would you

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1 do it, based on what you know today?

2 A Based on the data I have, no.

3 Q Mr. Temple's people, Mr. Burroughs and Mr.
4 Schick -- I don't know quite if they're his people, but
5 he was in charge -- prepared an exhibit identified as
6 Midland Intervenor's Exhibit No. 26, which sets various
7 case alternatives.

8 I'd like you to take a look at that for just a
9 moment, and let me know if you've ever seen it before.

10 (Document handed to the witness.)

11 A I don't believe I have, no.

12 Q As I understand that exhibit, Mr. Orrefice,
13 Case A is the nuclear proposal of purchasing steam and
14 electricity. Case B is just purchasing steam, and Case C
15 is the coal alternative.

16 Now, Mr. Temple testified that based on \$1.67
17 billion cost of the nuclear project, that is, Case A, the
18 difference between Case A and Case C, excluding any value
19 for uncertainty, was about \$4 million a year levelized over
20 20 years.

21 He also testified that if the nuclear power
22 project went up to \$90 million, as has been talked about,
23 the difference between Case A and B would be in his judgment
24 a push. In other words, at that price nuclear would have
25 absolutely no advantage.

blt14

1 What I'm going to ask you, Mr. Orrefice, is the
2 following: Given an alternative between a nuclear option
3 and a coal option where it's a push in terms of cost to
4 Dow, given what Dow now knows about nuclear and Dow knows
5 about coal, would your judgment as a businessman be to take
6 the coal option or the nuclear option?

7 A Well, if we had the certainty of the completion
8 of the nuclear plant at a certain time with certain capital,
9 I think I'd still take the nuclear option.

10 Q But you'd need the certainty?

11 A We'd need the certainty.

12 Q If you did not have the certainty of the nuclear
13 option, i.e., that you were just as you are right now today,
14 with your belief about the schedule --

15 A Obviously, if you have a slippage, then you
16 don't have the same economics anymore.

17 Q Are you informed that Consumers Power is going
18 to have a slippage anymore?

19 A Am I informed that they're going to have one?
20 I have heard that they might have a 5-month slip in the
21 estimate, but I did not hear that that was a firm fact. In
22 conversations our people gather that there may be another
23 5-month slippage from the March 1982 date for steam.

24 Q Do you know whether the Bechtel forecast, which
25 is the underlying portion, a great portion of the underlying

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1 data for the 1981-82 date and the \$1.67 billion, do you know
2 what assumptions were made in connection with that forecast?

3 A What assumptions? Or what nature?

4 Q Do you know whether Bechtel assumed that there
5 wouldn't be any work stoppages, that there wouldn't be any
6 strikes, that there wouldn't be any delay getting money,
7 that there wouldn't be any delay in getting equipment.

8 A That is my understanding, that those assumptions
9 have been made, yes, that there would be no delays of the
10 nature you've described.

11 Q But there would be in effect a perfect world
12 between now and 1981-82?

13 A I don't know if I would call it perfect. I never
14 knew of a perfect world, but a good world, yes.

15 Q Okay. Is that the kind of world that Consumers
16 has experienced over the past years in building the Midland
17 Nuclear Project?

18 A Obviously, there wouldn't have been the slippages
19 if there hadn't been some factors involved.

20 Q What I'm trying to say is, as a businessman what
21 do you know, if anything, that would lead one to believe that
22 Bechtel can now make those assumptions when they haven't been
23 applicable historically?

24 A Nothing.

25 Q Mr. Temple had a meeting with you in January

blt16

1 after the meeting with Consumers Power Company in 1977. Did
2 you, he and Mr. Rooke discuss the ongoing negotiations
3 between Consumers Power Company and Dow Chemical?

4 A Yes.

5 Q Did the three of you, or any one of you, express
6 an opinion as to how they were going or how far apart the
7 parties were?

8 A I expressed an opinion of what I thought of the
9 proposal.

10 Q Of Consumers' proposal?

11 A Yes.

12 Q What opinion did you express, sir?

13 A I used the word that it sounded like extortion
14 to me.

15 Q Were you ever informed that Consumers Power
16 Company and Dow Chemical had agreed that, since there was
17 a switch in the unit which would produce steam and now the
18 electric unit was coming on first, that nonetheless Dow
19 didn't have to purchase electricity until the steam was also
20 on line?

21 A That's been my understanding from conversations
22 with our people, yes.

23 Q Do you understand that Consumers has now gone
24 back on that agreement in principle?

25 A As I understand it, there is a question that the

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1 various alternatives that -- on how Dow could testify at
2 these hearings, whether -- the first one was whether Dow was
3 in full support of Consumers Power. The modification of that
4 was for Dow to state its position, as I think we have stated,
5 that what our conclusion was, that under these circumstances
6 it is still a viable alternative, but if there are any changes
7 we may change.

8 And he said the third and other alternative, if
9 Dow took a position that it could not take steam, but it
10 must end this contract then, you are open to a rather large
11 liability.

12 He presented several numbers, too, that I recall;
13 particularly I think he called them sunken costs of \$350
14 million and down payments on equipment of \$123 million plus
15 some other liabilities we could accrue to Consumers Power
16 Company.

17 And when you add all those numbers, it jibed
18 with the \$600 million which had been mentioned in a previous
19 meeting, which I did not attend, by Consumers Power repre-
20 sentatives.

21 I also remember very clearly one part which was
22 extremely important to me where Mr. Aymond said that if by
23 1984 the plant was not ready to supply us; I will let you
24 off the hook, I think were his words -- I may not be quoting
25 correctly -- to which one of the other members, I believe