

NUCLEAR REGULATORY COMMISSION

Regulatory Docket File

IN THE MATTER OF:



Place - Washington, D.C.

Date - February 9, 1977

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

CONSUMERS POWER COMPANY

(Midland Units 1 and 2)

Docket Nos. 50-323
50-333

Room 2311
Everett A. Dickson Building
319 South Dearborn Street
Chicago, Illinois

Thursday, 3 February 1977

Hearing in the above-entitled matter was convened
pursuant to notice at 10:00 a.m.,

BEFORE:

FREDERIC J. COUFAR, Esq., Chairman

DR. EMILIE WIEBE, Member

DR. J. VENN LEEDS, Member

APPEARANCES:

(As heretofore noted.)

mm

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>	<u>CROSS</u> <u>ON B</u>
Stephen H. Howell (Respond)	--	--	2836	--	2790 2924	2811 2927
Roy A. Wells, Jr.	2843	2847	2881	2904	--	2904

EXHIBITS:IDENTIFYINGRECEIVED

Midland Intervenor's No. 28

(Document, Gray to Youngdahl,
4/24/74 - Registration)

2825

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Midland Intervenor's No. 29

(Memo to file, 9/14/75 re:
Meeting Between Parties)

2850

2859

Licensee's No. 30

(Job 7220, Forecast III; 12/75)

2917

2918

Dow Ex. 2

(Transcript corrections,
Temple Testimony)

2939

2939

P R O C E E D I N G S

CHAIRMAN COUFAL: Are we ready to go? Are we ready to proceed?

MR. WENTROW: I think so, Mr. Chairman.

We have had difficulty getting our people down here, plus the changes that we told the parties about.

Let's see if I can briefly describe to the Board where we are and what we think we can do and how we can work it out.

I have got the documents and copies of documents that we are not going to argue about, copies for all the parties, in my box, as well as the copies of the indexes which Dr. Loads requested.

I have some difficulty with one set which I can't relate to anything else. But all the ones that are listed in the transcript I have taken care of, so I can give those to the parties.

Now with regard to witnesses, we have Mr. Wells here on the environmental material. We have Mr. Howell here to finish him up.

After that we then have this problem; the fuel cost information as of about the middle of this month, we told the Board, changed. We are running a new computer run which should be completed.--it started yesterday -- the should be completed this afternoon some time.

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Once that run is made, that output then has to be plugged into the other runs. The output would affect both Mr. Kealey's testimony and Mr. Deane's testimony. We do not expect the changes to be large but they will, because of the new information, change the numbers somewhat.

We are preparing copies of the runs as they come off so that we can give them to Mr. Cherry and Dr. Egan. It would be the same runs that we had before and instead, I think we can just tell them which input numbers changed on it.

With that in mind, we are going to try to do -- and I am not sure we can do it, Mr. Chairman -- I am trying to find and get Mr. Noble to see if he can come down tomorrow and testify on the Palladius steam generators and the basis for that, and see if we can break loose any other witnesses whose material would not be changed by the new computer runs.

I don't think it makes much sense to put on a witness today that the numbers may have to change somewhat.

I do believe by Monday that everything will be done. We have asked the people to come down here over the weekend so that we can go over the changes and have them ready to go on Monday.

We have the interrogatories trying to be answered, pursuant to Mr. Cherry's request. We believe that some of them

can be answered prior to Monday, but it would be Monday for the other ones. And as they are put in final form, we will call him up and give them to him and if the Staff is going to be in town, we will give them to them.

Now that is basically the situation that we find ourselves in. We are trying to track down all of our witnesses who are not in Jackson, find how where they are, find out when they can get here. We quite frankly have a problem with the change as of yesterday afternoon.

CHAIRMAN COOPER: Do you propose to put Mr. Howell back on, right now?

MR. FENNEROW: I would propose, since Mr. Howell didn't get in until 9:30 this morning; I have not had a chance to talk to him. I would propose to put Mr. Wells on. That would give me a chance to sit down for 10 or 15 minutes with Mr. Howell and then we could finish him after we got through with Mr. Wells.

In addition, perhaps I could take care of the documents and get them released so that we know where we are on them.

I have talked to the Staff just a little bit about what their situation is on witnesses. And perhaps you want to talk to them before we decide what you want to do with -- for the rest of the week and how we want to proceed.

MR. BOEFLING: Mr. Chairman, we have Mr. Echols

here. We could put him on today to testify. Our remaining witnesses are Mr. Feld, Mr. Hains and Mr. Crocker. In view of the fact that Mr. Hains is generating some new information, some new cost information with regard to the-- will affect Hains' testimony and Kaseley's testimony, I don't want to put Mr. Feld on until Mr. Hains and Mr. Kaseley have gone on and Mr. Feld has had an opportunity to look at the new information that is being generated, obviously.

I do have Mr. Crocker, and I believe we could put him on. I don't have him here but I believe I can get him here tomorrow, and the same with Mr. Nichols and Hovus.

CHAIRMAN JOYNER: We can fill up the week easily enough between Consumers' witnesses and Staff witnesses. We can fill up today and tomorrow, it would seem to me.

DR. LEEDS: Does Mr. Feld also address the question of need for power?

MR. ROYBING: Yes, he does. But I believe Mr. Hains, and I believe the Applicant has indicated that they are not finished with Mr. Hains on need for power. And I don't want to put Mr. Feld on until the Applicant has finished what ever they are going to do with Mr. Hains on need for power.

DR. LEEDS: I thought I understood that Mr. Hains' testimony was complete on need for power, but it was not complete on cost numbers that are going to be cranked into that.

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That is not true?

MR. SCHNELOW: It was my understanding that Heins had not been released yet and that he was due back. He was in the middle of Mr. Dickel and Mr. Gliner had been asked for during Mr. Heins.

Part of the difficulty is -- yes, Dr. Leads; for example, the load forecasting portion of Mr. Heins' testimony probably has not been changed. The interrelationship of that with the production existing will change somewhat.

To the best of my knowledge, they are not going to be big changes, but that is the difficulty.

MR. CHERRY: Could I address this state of events for a moment?

CHAIRMAN COOPER: Yes.

MR. CHERRY: We are here at a suspension hearing and we are not here either by the Board's order or by any of the parties' arguments finally to resolve the issues of this case.

It seems to me highly irregular after I have begun to prepare direct testimony and have worked at significant expense out of my own personal pocket to gather experts and have information, to have any changes in the testimony.

This is not the kind of a case where Consumers Power Company is not going to have a second chance. And it does not seem to me that the price of the fuel cost, of fuel,

is that significant that it is going to make any difference in the Board's suspension decision.

After all, the very fact that the price of nuclear fuel has changed since September only emphasizes the arguments that we have made earlier, that the only way that you can have a fair hearing is to have a remanded hearing without spending more money.

Now if we continue a suspension hearing whereby we update it transaction every week, we are never going to get done.

It is exceedingly unfair to my case and it seems to me, to the public interest. The suggestion by the Regulatory Staff that they cannot put on a case until they see Consumers' new numbers is the most outrageous admission of intellectual dishonesty that I have ever heard, because the Regulatory Staff is supposed to do an independent study.

And it seems to me that the Regulatory Staff, if nothing else, can find its way through the maze of fuel costs and know what the fuel costs are.

And I don't think now that the Regulatory Staff should be permitted to say: Well, now that my good friend the utility wants to make a change, I want to be in concert with them and make sure that there are no steps unturned. So I am going to have the information before I put my man on.

Those aren't the issues which we are here to decide. We are here to decide simply one thing: Has the Applicant

made out a sufficient case that there are no critical issues which need a sufficient looking at to necessitate a more elongated hearing.

For example, last night I am sure that all of you heard President Carter talk on television. The New York Times has printed his speech. I want to read two sentences from it. And this is national energy policy today by the President of the United States who ran on a campaign of conservation and to slow down the nuclear power program. And he said:

"Our program will emphasize conservation.

The amount of energy now being wasted which can be saved is greater than the total energy we are importing from foreign countries."

Is that issue addressed in any of the testimony? No. There is the ludicrous suggestion that it is "implicit" in the load forecasting.

So it is clear we have got to get into that issue.

The next thing President Carter said was:

"We will also stress development of our rich coal reserves in an environmentally sound way."

Has that been addressed in any way at all in this proceeding? Obviously not. And we intend to in the remanded hearing.

"We will emphasize research in solar energy."

Has anybody indicated what the impact of that is

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Has anybody indicated what the impact of that is going to be five, seven, 10 years from now?

Finally:

"We will maintain strict safeguards on necessary atomic energy production."

That is the first time that a President of the United States has ever put nuclear power, not only last in an energy program, but with an emphasis on only that which is necessary, at all.

We are at the crossroads of making a very, very significant and important decision, both with respect to this particular plant and national energy policy. We cannot rush to this judgment. We have already learned from Dow Chemical how heated and tenacious the dispute is with Consumers, that they are willing to wait until the end of 1964 to buy steam and electricity from the Midland nuclear power plant.

Other external elements that might cause the parties to sue each other will happen or not happen as Mr Orridge told us, without regard to whether or not this particular plant is suspended or not because he said if the cost data stay the same and they can have it on line by 1964 at the end, he will still buy power.

But construction continues and the costs skyrocket, then he may not buy it.

So the question of suspension as far as the Dow

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Chemical issue, clearly is not the pivotal issue. Clearly what is pivotal is the fact that the parties may sue each other tomorrow; there may be no need at all.

So we have got to explore the contrast issues in more detail at the remanded hearing.

Consumers Power Company has dragged its feet on cost information issues with respect to the Bechtel forecast. If I was told that what they were going to do was rush around and tell us whether the \$1.67 billion was a hard figure, you know, maybe that is the kind of information we ought to wait for, although I am not really sure.

But it seems to me that we cannot get ourselves in the kind of position where we are going to update the suspension hearing. Consumers Power Company has put information in as of November and December. That information seems to me was put in with a certain purpose in mind. It is going to be now analyzed by us. We have cross-examined it. The Board has sat here through the implications we have made.

I think the Regulatory Staff testimony isn't worth three cents, whenever it goes in, because it is quite clear that all of the information we have right now was not factored into their analysis.

And now we are told right now that the Staff wants more time to factor in this.

We cannot continue this state of events. And this

is just the same kind of a situation where Mr. Fosse said yesterday: Tell me, how many witnesses do you want me to put on in order for me to get my license. Do you want me to fly 10 guys out here? I will do that. It is the same kind of a tactic and the same kind of a ploy.

I say that this suspension hearing should have been terminated a long time ago because it is now clear that we need to have a remanded hearing on the issues.

If the Board doesn't believe on the basis of the evidence thus far -- and we haven't even put in our direct case yet -- that there doesn't have to be a remanded hearing so far, tell me and I will go away and won't waste my time.

But it seems to me now that the Board must adjourn for as long as it takes; 15 minutes or a half hour or the entire morning and focus on exactly what it is they face and the legal requirements of the suspension hearing and then come back and say: I want everything updated. I want the fuel costs and we will give Mr. Cherry two days to go get his experts and revitalize this. And then when the Staff comes in and looks at Consumers information and it wants redacted; we are going to that and et cetera.

Or you are going to say that the Licensing Board has a certain responsibility to end the suspension hearing, that these are the kinds of things we want to look at, or we don't have anything further we want to look at and we are

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not going to take any time in connection with revised testimony. We are going to move forward from witness to witness. And if when your man is ready you want to ask him some questions on direct testimony go ahead and do it. But we are not going to stop the proceeding and wait with the understanding that that is going to be analyzed in this hearing, and then we are going to move forward.

And it seems to me that that is what has got to be done.

MR. REMFORD: I would like to address that, Mr. Chairman, for a moment.

There is no question, first of all, whether you are going to have to have a remanded hearing. We are going to have to have a remanded hearing. Okay.

Second, we are going to have to have a remanded hearing but that is not the issue.

Second of all, to decide the suspension question, you have to decide on the facts.

Third of all, Mr. Chairman, I am at the point where I really don't understand. We started October 5th. We have delayed it until December because of Mr. Cherry's requests.

We have told the Board. We have told the parties, that as time goes on it is going to change. If we had had this hearing when it was first scheduled, we wouldn't have

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had any changes because the testimony then was appropriate.

Now to go from October 5 when it was first -- when the suspension hearing was first scheduled to some time where we are now based on requests for continuance by the Interveners, to now have him come in and say that the two days that we need to give you the accurate information -- and you shouldn't give them to us -- is ludicrous; absolutely ludicrous.

What he has done is he has sat down, played his time, got all of his time. Numbers have changed and now he says: Well, now I am already to go, even though all this back here I asked for. And then he says:

So what you ought to do is to go back and decide what you are going to do and then let's go do something else.

That's not fair to the licensee nor is it fair to the other parties.

We talked to the Board about setting a date to cut off the time and we could go with that. And board has moved the hearing along and we can try to fill in the two days, that we have for this week.

I do not think that that is going to be prejudicial to anybody. I do not think that the time required to finish this is going to be that long.

I do know that when Mr. Cherry puts on his case, I am going to need time to look at his documents and

testimony so that we can analyze it. I am not going to ask for the amount of time that he did and hopefully, by the time that the witnesses are put on, by the time he gives us the testimony, we will be able to cross-examine.

But to suggest that this Board ought to do anything other than allow us the opportunity to come in and give you the up to date information based on the past record in this proceeding, especially when we are telling you that it will only take two days to update that which needs to be updated and we can go forward with what we can in the interim, it is just ludicrous, Mr. Chairman.

MR. CHERRY: Mr. Chairman, could I ask just for a moment, those parties that were exempted when we discussed the in camera session to leave the room for a moment, because I want to deal with something that touches on that that I think the Board ought to know. And I don't want to be accused of violating that in camera order again.

And what I would ask is that the press and everybody else, except the lawyers, be removed for a moment, because I think this is important for the Board to know, within the scope of what is really going on.

CHAIRMAN COUFAL: Dr. Luebke?

DR. LUEBKNE: Were your references to prices, were to fuel prices --

MR. RENFROW: Nuclear fuel and coal both.

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DR. LUEBKE: I thought I heard the word coal. And what impact does this have on the cost of suspensions; three months, nine months? How does it roughly relate.

MR. REMFROW: The best I can tell from our preliminary runs on the coal prices, it would not be much change. Some of them have gone up. Some have gone down, depending on the time the orders are placed.

Some of the nuclear costs have gone up somewhat so that is going to take that up, and we don't know what the differential is.

DR. LUEBKE: It rounds to me like something in the third significant figure.

MR. REMFROW: I don't believe so, because if you put it in there -- let me tell you why it matters: If you put it in it goes into your production costing run.

Your production costing run is then used for your differential energy and purchase power cost.

So it affects it there on what your effect of the delay would be on the basis of stretching the unit out.

The second place it affects is in your alternatives. You have your cost of nuclear unit and then you have your cost of your alternative.

DR. LUEBKE: You are talking about the third figure out or about the first figure?

MR. REMFROW: First figures are what your costs are

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going to be.

(Whereupon, at 10:30 a.m., the public record
recessed to reconvene following the in camera session.)

(Return to public session.)

MR. RENNERTON: I would just like to respond to one item, Mr. Chairman.

We asked this Board to freeze everything. We were told to continue: continue with depositions, continue with updates, and that's what we're doing. We went ahead and did that and supplied documents. There's been cross-examination on documents that have been brought in in the interim. All right, that's the Board's ruling.

Now, I come in and say, "Now I'm complying with the Board's ruling," and we go up in arms.

I want this proceeding over with as much as anybody else. It's in my client's interest to have it decided.

MR. CHERRY: The updating was to continue discovery so we wouldn't have a big lag between the suspension and the remanded hearing.

MR. RENNERTON: But we got to cross-examine on that. I don't get to just take my direct case and update it. I just get to have the numbers brought out.

CHAIRMAN COOPER: Wait a minute.

What are you contending is the difference to make to the suspension hearing that those dual cost changes are?

MR. RENNERTON: My contention, unlike Mr. Cherry's, Mr. Chairman, is what this Board has to do is balance all of the factors set out in that Commission statement of September 9, that this Board has to balance all of them in reaching the

decision.

DR. LUEDKE: What's the general policy statement?

MR. RENDROW: That's correct, sir. Not just one item, not just two items. I don't know what weight you're going to put on them, but you have to balance all of them so you will have a record. You have to have a record on all of them.

Now, the question as to what will the actual changes do to the bottom-line numbers. They will affect the first-line numbers, Dr. Eubank, on costs. They will affect it on the production runs.

I do not know what the extent of that would be. I do know that I'm in a position where, if I put a witness on the stand and say, "He told your testimony and is it true and accurate," the answer to that question is, "Well, it was true and accurate three or four days ago but it's not now," and yet information would be out.

DR. LUEDKE: Are you trying to tell us, Mr. Rendrow, that a small increment -- I suppose it's a small increment -- in uranium cost is going to make a large difference in operating costs that now is estimated at \$1.67 billion?

MR. RENDROW: Dr. Eubank. I'm telling you that I don't know what the final result is. What I told you is I do not believe that it will increase it or decrease it

very much, but I don't know.

DR. LUEBKE: Is it a fair process to go ahead with your original testimony and then some days later look at the supplement and indeed see if we're affecting something by 10 percent, 50 percent or 100 percent?

MR. REMFROW: Is it a fair process? I don't know.

MR. ROSSO: Could we just have a second?

DR. LEEDS: While you discuss this, could I ask a question? You might want to discuss it, also.

MR. REMFROW: Sure.

DR. LEEDS: If I remember correctly -- you may need to correct me on . . . dates -- but around December I got a letter from you that indicated Bel . . . had made a new forecast.

MR. REMFROW: Yes, sir.

DR. LEEDS: And that Consumers would not be able to finish its analysis of that new forecast of total cost until around March.

MR. ROSSO: Total capital cost.

DR. LEEDS: Total capital cost?

MR. REMFROW: Yes, sir.

DR. LEEDS: I've sat here in the hearing, and I've heard rumors going around about how big that might be, how large that estimate might be. I don't know if we have in the record data that indicates how big that is.

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My question is to you, how much of a change does that forecast represent? And, if that's a large, major change, then why is it taking us until March 1st to get that when all of a sudden we're getting quick update of fuel costs?

MR. REMPROW: The answer to your -- I'll answer your question two ways, Mr. Leeds.

To do the capital cost -- well, let me do the fuel cost.

To do the fuel cost, they've got the computer code, which will be referred to by the fuel people. That computer code is set up to run so that you can change your inputs to it as your inputs change, and in the process of 24 to 36 hours the computer will do all the work for you, all right? So that is pretty quick turn-around time.

You go to the Bechtel forecast. That is not on a computer code. You have to go down item by item by item and look at that. As I told you in that letter, this is a process which is ongoing at Consumers, and it occurs about twice a year. Each time those numbers come in it takes approximately three months to review them.

Now, we are trying to get that done by March 1. One of our problems, of course, is that the people who testify in this proceeding on costs are the same ones that review the Bechtel figures, so they're doing double work.

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But you have to individually go through that, see what Bechtel has done, find out what their basis is. Then Consumers goes back, as you shall hear when Mr. Masloy gets on the stand, or Mr. Howell, whichever one you want to talk to about it. They don't take those Bechtel numbers. They take what they believe, based on their experience, using Bechtel's expertise, and project a budget from all the numbers; and to do that they have to go through each and every number. That's why it makes the difference in the time.

DR. LEEDS: Okay, but could I not get an estimate of the effect of that change by taking the Bechtel forecast that I had earlier, which I think has been referred to as Forecast 1 --

MR. PHIPSON: No. It's Forecast 1.

DR. LEEDS: The first one we were working with, the 1.87, which is the dollar figure in the record. Take the Bechtel forecast, that's the bottom line and add it all up. Somewhere they must have added it up. If they didn't, I can do it on my calculator. Add it all up; then take the Bechtel forecast that you refer to in your December letter and say, "Add up all those numbers and take the difference."

Then, if you want to cut it in half or something like that, whatever you think is a businessman's judgment put that factor to it; and then tell me how much it would increase the cost of the plant. Couldn't you do that rather

quickly?

It doesn't seem -- I don't see that as being as complicated a problem as you tell me about computing fuel costs in two days.

MR. RENFROW: Let me give you an example of why that's difficult.

The total cost increase projected by Bechtel is \$90 million.

DR. LEEDS: \$90 million?

MR. RENFROW: Yes.

DR. LEEDS: That's the second forecast?

MR. RENFROW: Yes.

DR. LEEDS: I've heard rumors thrown out in this room bigger than that.

MR. RENFROW: I believe it's \$90 million. But, Dr. Leeds, part of that \$90 million is \$30 million if Consumers chooses to spend it, which would increase the probability of getting the schedule as to 3/82. And \$14 million of it is cost that would be expended if they don't meet the schedule, okay?

So now you're going to have to subtract one or the other of those out.

DR. LEEDS: But are you telling me that the only forecast that Consumers Power has in their hand is a \$90 million increase in this plant, so that the outer bound

therefore is no more than 16 -- 1.67 plus the 90 million plus an add-on for consumers? You won't double it, will you?

MR. RENFROW: No.

DR. LEEDS: So at the most it's 130.

MR. CHERRY: That's not quite true.

DR. LEEDS: Why does it take you until March to do that? I don't understand that?

MR. CHERRY: That's not quite true, Dr. Leeds. That \$90 million is the outside increase.

MR. ROSSO: Dr. Leeds, if you want us to put Forecast 2 in the record we'll put it in. If you want to ask questions about it, you can ask questions about it.

MR. RENFROW: I'll tell you what: Mr. Howell is here. He's the one who does it. I'll put him back on the stand and he can explain it all to you on the record so you'll have it.

DR. LEEDS: Is Forecast 2 the 90?

MR. ROSSO: That's right.

CHAIRMAN COUTAL: Let me address this a moment, just one question.

You're talking about Forecast 2 not being ready until March. It's obviously not going to have -- we're not going to be able to consider it in the suspension hearing.

It seems to me that it so far outshadows -- if I have any grasp of this thing at all, Forecast 2 would so

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far outshadow the fuel cost problem that it makes the fuel cost change rather insignificant.

MR. BENEVOLO: Just a minute. We are considering Forecast 2. What you don't have are Consumer Power numbers.

There have been tremendous references to Forecast 2: What's it going to do? It's been gone into on cross-examination of the witness: Will it increase \$90 million?

What you don't have, other than what Mr. Howell can tell you when he takes the stand, is the last item that Dr. Leeds asked: What will Consumers do with that and what will they add to it?

I can put Mr. Howell on the stand. He's here, and he can explain to you how you get from Forecast 2 to the Consumers number.

We intended to do that, Dr. Leeds.

DR. LEEDS: But why do we have to wait until March 1st, then, to get the numbers?

MR. ROSSO: We said you needed to wait until March 1st to get the final definitive estimate, which comes out of the application of Forecast 2 plus the Consumers input on that.

But there has been testimony on Forecast 2, as you yourself have said. Mr. Howell is familiar with Forecast 2 -- and Mr. Keeley, too, for that matter -- with regard to

what it says. He can testify to what it says and with regard to what Consumers has to do about it.

MR. RENFROW: And how long it's going to take them and what they'll do.

DR. LUEBKE: Point of clarification, if I may. I'm looking ahead at maybe some testimony by Mr. Keelay, which hasn't been put in yet and may not be put in, but the cost numbers here on delay are given out to six significant figures, which is what you get by using computers.

MR. RENFROW: Yes, sir.

DR. LUEBKE: It says -- I won't say what the cost is -- it says one number is \$363,309,000. My mind is inclined to round that off to \$400 million, sort of.

I guess that was my question earlier. Are you talking about something that's going to change \$400 million to \$500 million?

MR. RENFROW: I don't think so.

MR. ROSSO: I don't believe so.

DR. LUEBKE: I don't think so, either. I just don't go with six significant figures. It's just uninteresting.

MR. ROSSO: I don't think that there's going to be a change of that magnitude.

DR. LUEBKE: So then, if we can go ahead and talk about \$400-, \$500-, \$600 million, some ballpark figures,

maybe that's all we need to be decisive.

DR. LEEDS: Has the Staff seen Bechtel Forecast 2?

MR. HOEFLING: We have a copy of it. We'll check on that.

DR. LEEDS: Well, let me amend my question. Not only have you seen it; have you analysed it and evaluated it independently?

MR. HOEFLING: Let me have a moment, please.

(Pause.)

MR. HOEFLING: In answer to your question, the Staff has looked at Forecast 3. We have not looked at the analysis of Forecast 2 wherein the \$90 million figure was generated.

What we have done is examine the impact of that number on the Staff's analysis of alternatives and determined what effect it would have on the Staff's analysis.

So we have not examined the number itself; we have taken the number and examined the impact that that number would have on our analysis.

MR. CHERRY: Incredible. It just continues to be incredible.

MR. RENNIFROW: Mr. Chairman, maybe we're wasting our time. Why don't we put Mr. Howell on the stand? We can go into Forecast 1 and 2 with him; put Mr. Walls on the stand; and when and if we get to the problem the Board can

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decide whether it wants to recess for a couple of hours, or whatever it wants to do.

We've got Mr. Howell here. We've got Mr. Walls here.

MR. WESSEL: I share that, but I urge the Board to have Mr. Howell on and finish him, not break it up with bits and pieces.

MR. RENTROW: Yes, I do want to finish him.

DR. LEEDS: Let's get Dr. Howell on.

MR. RENTROW: I'm sorry. When do you want to take care of all these documents?

CHAIRMAN COUPAL: All I want you to do is hand us the documents with a piece of paper that says, "We disagree with you because with regard to this document, this document, this document." That's all we need.

Over the noon hour we'll look at it. We'll consider your remarks, and we'll either release them or not.

MR. RENTROW: I'll give that to you.

What I'd like to do is to give the documents to the other parties. I have tried to keep my objections to a minimum so I can get them all out of here.

DR. LEEDS: Just hand them to them, then.

MR. RENTROW: Let me ask one question:

You asked me to provide the indexes back to you. I have made copies of the indexes for the parties. Do you

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want the parties to have them, too, or do you only want them turned back to you?

DR. LEEDS: I don't care. I just want ours back that we marked.

You mentioned earlier there was some question about the indexes, too.

MR. RENFROW: These are done on the list that you've made. The only item I have left is the documents that you've referred to that Ms. Bartleman hasn't been able to find.

Mr. Cherry, you had asked yesterday for one copy of all the documents to be put with the Board and sealed?

MR. CHERRY: Of the ones that they were not releasing.

(Documents distributed.)

MR. CHERRY: Mr. Chairman, can we have Mr. Renfrow just give the Board whatever it needs and go on?

DR. LEEDS: Please, let's get the indexes out. They're not going to take that long, because there are only about three more, aren't there?

MR. RENFROW: Yes, sir.

DR. LEEDS: Mr. Cherry, what these are are the copies of the indexes that were provided to the Board, which the Board then used and looked at.

MR. CHERRY: But how do I relate that to what's

released and not released? What does an "N" mean, for example?

DR. NEEDS: It's in the transcript.

MR. CHERRY: Okay, fine.

CHAIRMAN COOPER: I don't think these things really mean a lot to you except that you get some idea of what the document was about, who wrote it, who it went to.

DR. NEEDS: I've got those indexes already. What I was trying to do here was make sure that the Applicant, the Licensee, did not have anything that you had, or anybody else.

They provided them to us to evaluate the documents as we had requested them.

CHAIRMAN COOPER: Mr. Wessel? Please don't stand, unless it's more comfortable.

MR. WESSEL: It's a habit.

CHAIRMAN COOPER: We have in Dr. Needs' file a copy of the order that we issued with regard to the comment that you wanted to include in the transcript. It differed somewhat.

MR. WESSEL: There are four or five typographical errors. Mr. Rosso is looking at it. I note the fact that his name comes out as 'Mr. Ranfrow.'

I have the corrected one that I have read twice, and Mr. Fribble approved it. I would like to hand that out

as what I regard to be the accurate reproduction. I hand it to the Board.

(Document handed to the Board.)

CHAIRMAN CUNNING: Is there general agreement that it is accurate?

MR. WESSEL: They haven't seen this.

I hand to the Staff and to Mr. Chewy the one with the typographical errors in my hand.

MR. ROSE: I have reviewed it Mr. Chairman. I would agree that that is substantially what occurred at that point in the transcript.

Without making any representation that that was exactly what was said, that was substantially what was said.

MR. CUNNING: Mr. Chairman, I'd like to have this man removed. He is Consumers Power Company's Public Relations man. He has been walking down here throwing stuff on my desk.

He came by here just now. I said, "Will you please walk around this way. I have my chair and materials set up here. I don't want you disturbing them." And he just shoved me.

I want this man removed. I'm going to have him arrested this afternoon. He has been bothering me. He wants to fight me. I may give him that opportunity, but at the moment I would just as soon move this hearing along.

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But I do not believe that that kind of conduct ought to be supported in this situation. There are two people right there who saw him shove me, and I want him out and permanently barred from this room.

CHIEFMAN COURTNEY: Stay back in the audience section, will you please, sir?

MR. CHERRY: You haven't heard the last of this yet. I will instruct Consumers Power's lawyers that he is an agent for Consumers Power Company. He has indicated to me numerous times that he doesn't like me because of what I am doing, he thinks, to his company. Unless I get an apology and that man is lifted here, I am going to initiate litigation against Consumers Power Company for this assault directed by that idiot.

If you think I'm joking, you're wrong. If you want to play rough, I will play rough, too.

MR. ROSSO: Mr. Cherry, don't say I'm going to play rough. I didn't send anybody over there to push you. I didn't see him push you. I don't know what happened.

MR. CHERRY: Get him out of here.

MR. ROSSO: I cannot tender any apology for anything I don't know that happened.

Certainly I'm opposed to pushing or anything like that, for heaven's sakes.

MR. CHERRY: you have my comments. If I don't

get an apology from Consumers I'm going to initiate litigation.

Don't you come near this desk again.

(Reading document.)

I have no problem with this.

MR. WOLFLING: Nor does the Staff, Mr. Chairman.

CHAIRMAN CONVAL: How much longer is this going to take, Mr. Renfrow?

MR. RENFROW: This is the big stack, Mr. Chairman. I don't think it's going to take much longer.

MR. CHERRY: It's impossible for me to read any of the handwritten notes on the reproduced documents. Mr. Renfrow says that if I can't read them to let him know. The obvious result of that is to implement the Falaher strategy: delay, delay, delay.

DR. LEEDS: Mr. Cherry, if you'll look at the back of the transcript for the 31st of January -- the pages in the back are not numbered, so I can't refer you to a specific page -- but Item 18 says, "Released in part. Delete last notes starting with 'MPG.'"

MR. CHERRY: Okay. Thanks.

DR. LEEDS: So that should solve that problem.

MR. CHERRY: I take it everything I'm receiving now is not covered by anything?

MR. RENFROW: That's right. These are the ones that the Board has ruled on, and we're not continuing to assert

our privilege.

MR. REMFORD: That, Dr. Leeds, is the large stack. Maybe what I want to do is let me sit here, put them back in six piles on the bench, if the parties don't mind. You guys can start now. I'll put them back here. When we get to the appropriate point, I'll put them in.

CHAIRMAN COOPER: Let's do that.

MR. CHERRY: Can I just ask why they're in separate stacks?

MR. REMFORD: They're separate documents. You have to keep the documents that go with the indexes. That's why I'm passing them out that way.

MR. CHERRY: If I mess up the documents, I assume that if I use the index I can find out where they go.

MR. REMFORD: Sure. If you keep the documents with the indexes as I'm giving them to you, you won't have to do that.

MR. CHERRY: You gave me three indexes first, and then you gave me a bunch of loose documents.

MR. REMFORD: Those three indexes go with those three documents. They will be at the same place in the transcript.

MR. CHERRY: I see.

MR. ROSSO: Mr. Chairman, is the exclusion order with regard to other witnesses in effect with Mr. Howell?

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We've got Mr. Wells here, who has come down this morning as another witness. His testimony is not connected with Mr. Howell's in any way.

There's a question of whether we keep him here in case we get through with Mr. Howell so we can go on with him or whether we send him back.

MR. CHERRY: I've finished with Howell.

MR. ROSSO: You're finished with him?

MR. CHERRY: Yes.

CHAIRMAN COUFAL: We have no interest in maintaining the exclusion order. Do the parties have any different view? Does anybody object?

MR. CHERRY: Oh, yes, I'd like to maintain the exclusion order.

CHAIRMAN COUFAL: Pardon me?

MR. CHERRY: I would like to maintain the exclusion order throughout the remainder of this hearing, because I just don't know what they plan to do on rebuttal. I think it's important to do so. I continue to make my motion.

CHAIRMAN COUFAL: All right.

If you'd like, Mr. Rosso, there is a jury room back of the courtroom that we've been using. If somebody wants to go and sit in there while we're in session, that's all right.

There's a table there and chairs, and the amenities,

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if they want to use that.

MR. ROSSO: I guess he's gone. I assume he's gone back to our office.

CHAIRMAN COUFAL: Did you finish with Mr. Howell, Mr. Hoefling?

MR. HOEFLING: Yes, I'm finished with Mr. Howell.

CHAIRMAN COUFAL: Did you, Mr. Wessel?

MR. WESSEL: Yes.

MR. ROSSO: So none of the parties have any questions of Mr. Howell?

Does the Board have any questions of Mr. Howell?

DR. LEEDS: We got into the thing earlier about the different forecasts. We've got to straighten that out. I think the record is totally confused at this point. If not the record, I'm confused about what the Bechtel studies are.

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MEMBER
Whereupon,

STEPHEN H. HOWELL

resumed the stand as a witness on behalf of the Licensee,
and having been previously duly sworn, was further examined
and testified as follows:

CHAIRMAN COUFAL: Mr. Howell, you have been previously
sworn in this hearing.

THE WITNESS: Yes, sir.

MR. ROSSO: Mr. Chairman, I believe that the other
parties have indicated that they have no questions of
Mr. Howell, so I tender him to the Board for any questions the
Board might have at this point.

EXAMINATION BY THE BOARD

BY MR. LEEDS:

Q Mr. Howell, were you in the room when we were
discussing the question --

A Yes, I was.

Q Would you straighten me out on what Forecast I and
Forecast II are, the amounts of money involved, and so forth.
I think you have heard enough about it to see where I am
confused.

A Yes, sir, I will try.

On this project we start with a definitive
estimate. Definitive estimate, by definition, is an
estimate made after 40 percent plus of the engineering is

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done on this project, so we might have some definitive information in terms of quantities and so on, and so forth, to be able to get an estimate to use as a base.

Now, as a matter of our procedures, we have our architect-engineer, who prepares the base numbers, do what we call forecast studies, and we have them set up semi-annually on this basis. And they, at the time of the forecast will go through and any things that have changed -- for instance, if they have more definitive engineering -- engineering and drawings of piping and such, then they can do some better takeoffs of quantities. And so they update it with the latest information.

They also look at any factors which might have changed and they factor that in. And they also look at the schedules.

MR. CHERRY: Mr. Chairman --

MR. ROEFLING: Excuse me, Mr. Chairman, I hate to interrupt, but I think this gentleman is a Consumers' lawyer. I am not sure of that.

MR. CHERRY: Yes, he is.

MR. ROSSO: Yes, he is and he should not be in the room. I'm sorry, I was not aware that he was here.

MR. CHERRY: That is all right. It is a subcutaneous break.

MR. ROSSO: Wait a minute, he is not a witness.

END

MR. CHERRY: Mr. Chairman, he is a public relations man.

CHAIRMAN COUFAL: We lifted that order with regard to 17 people.

MR. CHERRY: Only for both of them. Dow doesn't have one here.

CHAIRMAN COUFAL: Well, that is presumably their option.

THE WITNESS: I believe I was describing Forecast 1. All right. When we get the forecast, first of all, it only contains the costs within Bechtel's responsibility. It excludes, for instance, our supervisory costs for monitoring and reviewing. It excludes the capitalization of funds used during construction and other overheads which Consumers would have to apply.

So, we start with the Bechtel forecast. And what we do as a matter of our practice, is we have a review team. And a review team starts first -- they receive a presentation on the forecast, they ask questions to make sure that there are no omissions, they ask questions to probe assumptions and that sort of thing.

And after that round, they get the finished forecast from Bechtel.

Then our team goes to work and our team has got people who have experience in the field, expertise in schedule,

expertise in all parts of it. And they go through in great detail to analyze the parts of the forecast.

And they then, this team, makes a judgment of whether that number is in their estimation, the Bechtel number, is too high or too low, or Bechtel hasn't considered something or put too much money. And they have an independent adjustment for each one of these details.

They also, in addition to looking at the detail parts of it, look at what provisions Bechtel has made, for instance, for contingencies. And they give an independent opinion on that.

They also look at what provisions are in the Bechtel estimate for -- we call them allowances, where things cannot be defined. But we suspect or anticipate something for which we make a provision. We don't know enough about it to cost it out in detail, but there is a provision and allowance, in our jargon.

And my review team gives their opinions on those allowances in the Bechtel estimate.

All right. Now that is the review of the estimate, per se.

Then what we do, is we put our overheads on the Bechtel portion, we put our costs in in addition, and then also we make a judgment whether or not there are any other allowances for potential things coming up that we want to add

ms5 on to that, and we put in allowances in an owner's contingency.

Then we come up with -- our review team comes up with their bottom line figure of what the project should cost.

All right.

Now, to go through the whole process, then they come to me and they give me a presentation -- here is what we have done, here is why we did it what we based it on, and the judgment factors.

At that point I make my adjustments from the standpoint of judgment and so on and so forth and come up with a number that I take to the Board of Directors and say, here is the number, our projected project cost, and get approval.

Now really I have gone through this sequence with Forecast I. And the turnaround time for Forecast I was in the neighborhood of three months. And the problem is you have got lots of inputs from a lot of people, you have got several cycles to go through.

Now, come to Forecast II. The presentation of Forecast II to our review team was made, if I remember correctly, December 13th, 1976. And the review team has got it, there is a schedule of the review team -- of the review team in terms of assignments, in terms of what they have got to do, and I don't believe I have that schedule with me. But the

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end date is, I believe, March 11th.

Now one of the problems, as pointed out here before, I believe, by one of our attorneys, is that the people that are involved in that review, a lot of them, are involved in other calculations and such in support of information to this hearing, especially updating and so on and other things. And so the time period is not inconsistent with what we did before, but we have got an additional problem because of an additional workload.

Now, that is the process.

Now, what would you -- would you like some discussion of the numbers?

BY DR. LEEDS:

Q What was the actual number for the -- I guess it was the June forecast? If I back off six months from December, you must have gotten -- Forecast I came in June?

A Well, I think the base point, rather than to get into too many of these, the number after that whole process on Forecast I and the number I took to the Board was 1.67 billion.

All right.

Now I can describe what I know about Forecast II, if you would like me to go into that.

Q Now, let me go back to Forecast I and understand that.

What was the Bechtel forecast of their cost?

A I would have to refer to Forecast I to tell you that number.

Q You don't have it?

A Yes, I have it here.

(Witness checking for document.)

MR. ROSSO: Perhaps, Mr. Chairman, we ought to mark it as an exhibit.

DR. LEEDS: Well, I am not sure I am interested that much. It is up to you.

THE WITNESS: Just give me a minute.

(Pause.)

Please give me a few minutes, because I am going back to something that I haven't touched for six months.

(Witness reviewing documents.)

MR. CHERRY: I know what the figures are. Do you want them?

THE WITNESS: Well, I am having trouble --

MR. ROSSO: May we have a few more moments.

DR. LEEDS: Well, let me indicate to you also the other questions I would like to have, and when you look through there you can probably get those at the same time.

BY DR. LEEDS:

Q I am interested in the bottom line on the Bechtel, the total Bechtel cost number for Forecast I, which is, I guess,

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a June forecast?

A Yes.

Forecast I, the Bechtel total, right?

Q Right.

I am interested in the Bechtel total in the December forecast, whatever that may be.

A Okay.

Q And then I would like to know, are there any other forecast numbers? In other words, other than the two that you have there.

In other words, is there a Forecast III or something like that?

A No.

Those are the only two forecasts as I have described.

Q Well then, my words are not communicating.

Do you have an estimate, forecast, indication or any other kinds of information whatsoever that might indicate numbers different than those two?

Now I have to ask such a broad question because I have a problem -- maybe forecast is not the right word.

MR. ROSSO: I understand what you are getting at, Mr. Leeds. Let me talk to the witness.

BY DR. LEEDS:

Q And then the last thing I would like to have is -- I gather you do this every six months, go through this process?

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A Yes. You can see by Forecast IX that we are only into the second.

Q Yes, but you have done it twice last year.

A No.

Q In '74?

A No.

Those are numbered continuously, so number one is the first forecast, number two is the second.

Q Okay.

Then what I would like you to do is estimate for me, realizing it would be an estimate, of how much this -- what this additional cost will come out, realizing, of course, it is not approved by the Board of Directors. You are a vice president, you have reviewed this stuff before, so you must have some feeling for how much this is going to be.

A Increase in our bottom line?

Q Total bottom line, yes.

Then, of course, the question is, is that number like the kind of number we are going to get on fuel costs, or is it significant, or where is it?

Of course, I don't know what it is, so I have no idea. Okay?

MR. CHERNY: Dr. Leeds, perhaps the witness has forgotten; Bechtel provides Consumers Power Company with monthly trend sheets. It is not a forecast, so when you asked

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him the forecast in that narrowly, he didn't feel obligated to answer you.

But these are working draft sheets which are supplied to Consumers Power Company by Bechtel on the cost of the project on a continual basis, and Consumers deals with that.

Point number two, I think it would be very significant if you asked the witness to give to you, and I am not so sure -- you may have asked this, but I couldn't hear where your voice was turned, the amount of the Bechtel Forecast I, and how much in addition Consumers added to that forecast when they reviewed it, because that figure is, in my recollection, over \$200 million.

I don't know if you asked the witness to take the Bechtel Forecast No. I as it is now, with No. II, before any input by Consumers and give you that number. And then what, if anything, did Consumers add or subtract to the Bechtel Forecast I.

Have you asked them for that number?

DR. LEEDS: What I asked for was the Bechtel bottom line numbers on I and II.

Okay? Their total numbers of Bechtel.

And I think I can go to ER or other data in his records and find out what the total number was as approved by the Board of Directors resulting from Forecast I. I take that

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to be the \$1.67 billion.

And then I have asked him to estimate how much would be more -- would be, I guess in a sense, added -- I don't like that term added -- that would result after Consumers Power has done their cost.

MR. CHERRY: Right.

For your information, I had produced for me January 1, 1977, the Board of Directors analysis of the Bechtel I Forecast. So those documents are presumably right here, available in Chicago.

BY DR. LEEDS:

Q And the last thing I asked was, you know, if there were other estimates, forecasts, trends and so forth. Mr. Resco was going to discuss it with him, so I assume that would take care of whatever these things are called, trends, or whatever.

MR. CHERRY: Are we in recess now?

CHAIRMAN COUFAL: I guess we can be, for five or six minutes.

(Recess.)

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CHAIRMAN COUFAL: During the recess, counsel for the Staff said they would like to switch experts because the expert they have that is out of the room is the one that would know about the Bechtel Forecast and the expert that is in the room doesn't know anything about that.

I propose to do that unless anyone gets exercised.

(No response.)

All right.

Go ahead.

MR. REMFROW: I will pass these documents out to the parties to complete everything. Once again, the documents are underneath the index so you can relate them to the indexes and to the transcript.

DR. LEEDS: And you are not yet passing out the proprietary?

MR. REMFROW: No, sir.

CHAIRMAN COUFAL: All right.

Mr. Howell, are you prepared to answer the question?

THE WITNESS: Yes, sir.

The point -- the figure that I couldn't put my fingers on was the Bechtel total for Forecast 1, and that number is \$1.123,000. It is Bechtel Forecast 1, which after all this process I described before ended up in a bottom line project authorization of \$1.67 billion.

BY DR. LEECH:

1. What was something like in June?

2. What was approved by the Board on the first Wednesday of August, August 4th, 1975.

Now you asked me for comparable numbers on the Forecast 2. The Bechtel portion Forecast 2 increased by \$90 million. So that would be \$1,213,000.

Now if I say, I would like to explain very generally what made up that \$90 million because it is pertinent to my answering the question: What do I think the Government's new bottom line would be.

Roughly, the \$90 million is made up of three factors. The first factor is \$80 million which is an allowance put into this estimate by Bechtel for possible need to maintain schedule. It would be highly related to trades, abstracting the quantities of workmen at the proper time.

But the purpose of it would be to maintain schedule.

There is \$15 million approximately in that \$90 for the possibility of a five-month schedule slip.

And there is \$45 million for change in scope and the quantities and the labors related to that.

Now there appears at this stage to me to be some incompatibility between spending \$80 million to keep schedule and \$15 million to extend schedule. So this is one of

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those sort of things that we are looking into the logic of that.

The \$45 million scope is largely attributable to electrical items and for two reasons: The electrical design comes last in the change of things and there are now beginning to be more definitive quantities on electrical cable and so on, and so forth.

But there is also money in there for seismic treatment of electrical and cable trays and conduits. Now that latter item has not been designed in detail and the cost figures are preliminary.

Now if I understood what you would like me to do, it is to give some sort of an estimate or bounds of what our bottom line change might be. Well, let me go to the -- what I think is probably the worst extreme first.

If we took that \$90 million of Bechtel additional cost and just assumed it and didn't question it and put on our overheads, just arithmetic -- and cost -- and this is a number I don't have written down, but I think we did that calculation and I think it increases the total about \$160 million. The \$90 becomes \$160.

On the other hand, as I discussed before, there seems to me to be some discrepancy with the \$30 million to hold schedule and the \$15 to slip. The validity of the \$30 million hasn't been probed. For instance, some of that would

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be expended for training workmen and we have rather significant training programs underway. And I am not sure that cost is right.

On the change of scope work, especially in the seismic area, we have already had indications that that number may be too high. We have had an estimated decrease in that already, since the forecast of some \$8 million.

So to ask me what the bottom line number will be after the forecast review in my mind, it is certainly not a certainty that it will go up at all, depending on what our review does.

It would be my best judgment at this point that it is going to go up less than that \$160 million which I put the bounds on.

Now in addition to the Bechtel things, we are looking at some of the other allowances that they have just carried along. And remember now, we are six months later. We know some other things. There may be some adjustments in those allowances, conceivably because -- conceivably there would be some down, because as you get closer to the point in time when the job is done, there are less unknowns in terms of quantities and so on and so forth.

Does that answer it?

Q That covers those.

Now, let me ask the question because I think I

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have heard flipped out the \$2 billion estimate.

Could you sort of clarify that one?

A Yes.

There are two things. When you said are there any other estimates, there are two things that I would like to discuss.

Mr. Cherry, for instance, that -- said that we have monthly trend reports. That is a correct statement. Now the monthly trends are very much less indepth and -- than the forecast; as a matter of fact the monthly trends would -- are what go in to make up the forecast which is a semi-annual basis.

Now there is one distinction and it is an important one, is that the monthly trend reports look at any additional costs increases or decreases of a direct nature. In other words, they say it is going to cost this much less or this much more. So they are direct items.

During the monthly trends, we do not look at the balancing in the allowance section.

CHAIRMAN COUFAL: Excuse me, Mr. Howell.

Mr. Renfrow, before you leave, where are the documents that fit the numbers on this yellow sheet so that during the noon hour we can look at that.

MR. RENFROW: The documents that are not --

CHAIRMAN COUFAL: That are on the yellow sheet.

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MR. RENFROW: Okay.

I was getting ready to go take this to a commercial guy to have him do it. I will have to leave it with you, but what I have done is I have put those in the order, the documents in here follow immediately behind the index to that so that you can go right to the index and see what your position was, pick up the document and look at my position.

I will leave this here for you instead of going to take it out.

CHAIRMAN COUFAL: All right.

Thank you.

MR. WESSEL: May I just inquire. If Mr. Renfrow is leaving for a period of time, I think it is significant that he be here. I will be glad to state the reason, but I think if he is not leaving, then there is no problem.

CHAIRMAN COUFAL: Are you leaving, Mr. Renfrow?

MR. RENFROW: Yes. I was planning on going back and trying to get some -- see where our witnesses were.

MR. WESSEL: If I may, I have no questions of Mr. Howell at this point.

At the end of Mr. Howell's testimony, I have a comment to make and since both Mr. Renfrow and Mr. Rosso have been here on alternate occasions, that it may refer to their knowledge, I would like to request that Mr. Renfrow stay here, unless Mr. Howell will be on after lunch and in which

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case it is not a problem.

MR. REMFROW: He will be on after lunch.

THE WITNESS: I lost a little bit of the train, but I think I was explaining about the monthly trends where they look there at direct costs changes, possible trend changes.

What they do not do in the monthly trends are look at the allowances to see if indeed we have made some sort of a provision for this eventuality.

At the forecast time, they take the trends and they look to see if there are allowances and indeed boil out the whole picture.

So I guess one point I want to leave with you is you can see increases in the trends which may not necessarily result in an increase in the forecast.

BY DR. LEEDS:

Q Because they might be included in the allowance?

A Because it might be included in the allowance, that that might happen.

All right. Now one other thing I mentioned when I was explaining this \$90 million and the \$5 million on the seismic -- and you remember that I said that already we have indications that that seismic, electric seismic provision may be too high -- by \$8 million. And that -- where that came from is the first monthly trend after forecast 2. It actually decreased.

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Now your \$2 billion figure, I believe this came out -- I was here with Mr. Cherry's discussion with Mr. Kesley. To clarify it, there never was nor is there a \$2 billion estimate.

Let me tell you what we did. At the time of Forecast 1, Bechtel came in, remember, with this \$1.123 billion and we said at that time: All right; Bechtel, that is your best judgment. But we would like you to go back and do some blue skying and -- in terms of what if your escalation rates are wrong? What if your allowances are too low? And come back with a bounding type numbers; how far can this thing go?

They did that. I don't happen to have that report. It is in the documents. It is a single sheet -- two sheets of papers.

And they came back with \$1.5 figure compared to \$1.123 billion. We did not take that figure any further in terms of going through the rest of our process because it gets very difficult because they are adding extra allowances for escalation, additional allowances for regulatory agency trends and things which we have in our owner's contingency under the original.

So all we did was, we looked at the \$1.5 billion and we said if we added our overheads on that \$1.5 billion and had some sort of a balancing and not double counting the

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things, both our allowances and Bechtel's that that bound probably puts -- that it could be above \$2 billion.

And that was not done formally. And that was a figure and an explanation that I used with our board of directors and indeed, with Dow Chemical in I believe the September meeting.

Q So you would add your overhead, office and administrative expense, your allowances and funds during construction, interest actually paid during construction on top of that and that would get you up --

A And -- yes, and just where this gets you I don't know because there are some offsetting assumptions.

Q Plus some things you might be buying yourself for the plant, if there are any?

A Yes. There are the major pieces of equipment that we are buying for the plant such as the NSSS and turbine generators which are in Bechtel's numbers, but there are other things, substations or transmission lines, that do not appear in this.

Q Thank you, sir.

BY DR. LUEBKE:

Q If this has been an ongoing continuous process, how do you adjust that number; that two? I would think it might be in larger numbers?

A I'm sorry; Dr. Luebke, I couldn't hear you.

arbl0
Q This periodic analyses, if they have been ongoing and continuous, we would expect you to be at number 13 or 14?

A Let me explain that.

The forecast numbers date from the different -- remember when I talked earlier I described that when you get to a point where you have some information, that is the definitive estimate.

Q The process wasn't going on before that date?

A Well, they weren't called forecasts. It was not a regular basis. It was as the circumstances changed, or as I thought it ought to be done, it was done.

Q Thank you.

(Board conferring.)

CHAIRMAN COUFAL: That's all the Board has.

DR. LEEDS: Thank you.

MR. CHERRY: Do you have some redirect?

MR. ROSSO: Yes, I do.

MR. CHERRY: The Board's questions prompt some
by me.

I want to know if the Staff has any questions.

MR. TOURTELLOTTÉ: We have no questions.

MR. CHERRY: You have no questions?

MR. TOURTELLOTTÉ: No.

MR. CHERRY: I didn't think so.

rb11

CROSS EXAMINATION ON BOARD EXAMINATION

BY MR. CHERRY:

Q If the \$1.5 billion figure by Bechtel is a correct figure and does not duplicate in any substantial portion what you have considered in owner's allowances, would you expect Consumers Power figure, overhead figure, to increase above the \$500 million, approximately that was added to the \$1.123 billion because of the increase by Bechtel from \$1.1 to \$1.5?

A Well, my difficulty there, Mr. Cherry, is that there are some -- there would be some duplications there, so I can't tell you exactly what the number --

Q You don't know?

A No.

Q But isn't it at least consistent with the fact that an increase by Bechtel increases, all other things being equal, Consumers Power's overhead figure; you will agree with that?

A Yes, sir; that is correct.

Q That is the \$1.5 figure of Bechtel does not duplicate any substantial part of the \$500 approximately million that was added by Consumers Power Company to the forecast 1; do you follow me so far?

A Yes. Except that if the number is \$500, that we added, that includes some other things.

rb12
Q I know that -- well, maybe we better go about it the long way.

The Bechtel forecast figure was, prior to your figure; their forecast 1 was what?

A \$1.123.

Q Billion?

A \$1.123 billion.

Q That was an estimate of all costs including Consumers' costs?

A No, that was not.

Q That was just an estimate of --

A That is the Bechtel portion of the \$1.67 billion.

Q What does that exclude? What categories of costs does the Bechtel forecast exclude?

A It excludes allowance for funds used during construction. It excludes Consumers directs. It excludes Consumers miscellaneous work orders, transmission, licensing and such and it is -- excludes Consumers contingency.

Q So it excludes the allowance for funds and construction, Consumers miscellaneous, Consumers overhead and Consumers -- what was the last one? Direct cost?

A It was directs, allowance for funds, Consumers directs, Consumers miscellaneous, work orders and owners contingency?

Q Now the amount added by Consumers Power Company

rb13
has a direct relationship to the amount forecasted by Bechtel; isn't that correct?

A Direct, in the sense of constant or direct as in the sense of direction?

Q Well, let me ask the question this way:

All other things being equal an increase in Bechtel's forecast will generate increase in Consumers Power's forecast?

A That is correct.

Q So then my question is:

All other things being equal, if Bechtel's forecast goes from \$1.123 to \$1.5 billion, that is an increase of approximately \$477 million; isn't that right?

A I believe it is \$377.

Q \$377 million.

Now if you added \$553 million to Bechtel's \$1.123, which is what you did to arrive at the \$1.67 figure -- correct?

A If I added \$457, yes.

Q \$553 to \$1.23, we come out to the \$1.67 billion, Bechtel forecast 1 plus Consumers' charges; is that correct?

A I wasn't --

Q Do you want to start all over again?

A No; I would like the number increase. I didn't think it was correct.

Carble

Q \$533, if my addition is wrong --

A I think it is \$547, if I have done it here correctly. That was my problem.

Q Okay. \$547.

Now the \$547 million added by Consumers Power Company to the Bechtel 1 forecast was based upon the \$1.123 billion Bechtel forecast being a realistic estimate by Bechtel; correct?

A Yes; that's correct.

Q Now I am saying --

A As adjusted by our allowances.

Q Right.

Now I am saying, if the Bechtel 1.5 figure; i.e., what you refer to the bounding figure is a correct increase by Bechtel, all other things equal wouldn't you assume that Consumers charges would increase by more than the \$543 million?

MR. ROSSO: May I have the question reread, please.

CHAIRMAN COUFAL: Read the question.

MR. CHERRY: I will state it again.

BY MR. CHERRY:

Q If the \$1.5 billion figure by Bechtel which represents the \$377 million increase over the \$1.123 figure if the \$1.5 billion is a correct figure and does not -- is

arbl5

not inconsistent with anything in the Consumers' \$543 million, wouldn't you expect that Consumers Power Company would add on to the \$1.5 to arrive at a final project cost of more than \$547 million?

A I can't -- I have got to check some figures because I can't make that flat statement because in the \$547 may be some items which are duplicated in the \$377.

Q I solved that problem for you by assuming that there's no duplication between the \$543 you added in June and the \$377 that Bechtel would add to get up to the \$1.5 billion. That is an assumption in my question.

A All right, but it may be an incorrect assumption. IN fact --

Q But you can't tell me whether it is or it isn't. All I want to do is point out the fact that we don't know, but I want to get at one point that assuming there isn't any overlap between the \$377 added by Bechtel at its most recent bounding estimate and the \$543 that you added in June, to come up with the \$1.67 figure, assuming that there are no inconsistencies between that \$377 and the \$547, wouldn't you expect that Consumers allowances, discounts, contingencies and miscellaneous would be more than the \$147 million?

MR. TOURTELLOTT: Mr. Chairman, I would like to object to the question because it is a hypothetical that

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assumes facts that are not in evidence and there is no -- worse than assuming things that are not in evidence, it is also making further assumptions which we don't know whether they are true or not.

Consequently, the answer of the witness will not do anything to improve the record. And in association with this, I would invite the Board's attention to the ALAS decision in Diablo which discusses very specifically hypothetical questions and how they should be posed at these proceedings in order to make them meaningful.

MR. CHERRY: Mr. Chairman, as Mr. Tourtelotte should know, the only limitation on hypothetical questions is with your direct witness. You cannot ask your own direct witness a hypothetical question unless you have all of the facts in evidence.

But on cross-examination, a hypothetical question is the tool of a good lawyer.

MR. TOURTELLOTTE: Mr. Chairman, in response to that, I do know what the law on hypothetical questions is and the hypothetical question must in some way relate to the case or it is not relevant.

Any question, hypothetical or otherwise, is not relevant and if it is not relevant it should not be asked during the course of a proceeding. And if we are assuming facts that we don't know whether they exist or not, we can

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assume that for a moment that if Consumers built this plant on the moon, what will be the cost. That won't add anything to these proceedings.

And this kind of a question is not adding anything to the proceedings, either.

CHAIRMAN COUFAL: You do have something you are going to tie up, Mr. Cherry?

MR. CHERRY: Yes.

I want the admission that since he doesn't know at this particular point whether the \$543 and the \$377 are inconsistent, it is as likely as not at this point that that overhead figure will go up.

No one is going to tell me that costs are irrelevant to this proceeding.

Can we have a ruling, sir?

CHAIRMAN COUFAL: Answer the question, sir.

It is getting down on the thin edge of the ice, though, Mr. Cherry.

MR. CHERRY: I don't agree with you at all and I suggest that you look at the transcript and realize that it is not --

CHAIRMAN COUFAL: I do -- I told him he could answer, Mr. Cherry.

BY MR. CHERRY:

Q So ahead, Mr. How 31. Do you want it again or do

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you understand it?

A To make sure that there is no confusion, I think I better have the question.

Q The \$377 million parameter estimate that Sechtal gave you raised to \$1.5 billion is not inconsistent with the \$547 million Consumers earlier added to their \$1.123 billion; that is, they don't overlap.

Would you agree with me that Consumers, if it took the \$1.5 as a real figure, would add a figure for Consumers charges more than \$547 million?

A With the assumptions that you have stated which I don't agree are necessarily correct or even can be correct, the answer to that hypothetical question is yes.

Q Now you cannot tell me right now that you have done a review to determine whether the \$377 million and the \$547 million overlap at all; isn't that correct?

A That is not entirely correct. We have not done a formal review, but the examination of some of the factors in that led me, as I stated in response to Dr. Leeds' earlier question, that you just can't do the ratiocing up on the basis of the increase.

Q Based on your rough examination what portion of the \$547 million duplicates what portion of the \$377 million; can you give me some kind of a figure? I don't want a guess. I want to know what you arrived at from your informal

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study.

If you didn't arrive at a figure, tell me that, too.

MR. ROSSO: Mr. Chairman, I think at this point we have gone -- we started with that hypothetical and now we have gone beyond that hypothetical and it is still all based on that hypothetical question and I think we have really gone beyond the pale now.

CHAIRMAN COUFAL: He is trying to make it less hypothetical. If the witness has made the study and can answer, then it is getting less hypothetical rather than more.

Mr. Howell, have you made such a study and can you answer?

THE WITNESS: We have, as I say, done it informally, to the extent that we know there is some overlap. I cannot tell you the amount of the overlap, if that was your question. I cannot at this point tell you.

BY MR. CHERRY:

Q In fact, you can't even tell me for sure that a dollar is an overlap. All you have is a feeling at the moment that there is an overlap; is that correct?

MR. ROSSO: I think that is objectionable; it is argumentative.

CHAIRMAN COUFAL: You may answer, Mr. Howell.

Barb 20

THE WITNESS: I think it is more than a feeling, Mr. Cherry, because there were certain categories of dollars provided in the \$1.5 billion that overlapped our portion of the \$1.67.

BY MR. CHERRY:

Q But if you can't give me a figure, what you are telling me now is that you have made some kind of a subjective judgment that the two won't overlap; isn't that correct?

MR. ROSSO: May I have that question --

BY MR. CHERRY:

Q You have made some kind of subjective judgment based on an eyeball look at the figures that they may overlap; isn't that a fair statement of where we are?

A No; I don't think it is entirely fair, because there are some dollar categories which is, I think, more than just subjective.

Q Tell me what they are?

A As I remember, there were different assumptions in escalation, there were different --

Q Let's be specific as to each one. What was the Bechtel assumption and what was your assumption? Do you want to tell me why you think that is an overlap.

A I guess I would have to get that Bechtel study to see the categories and dollars.

Q Maybe you can do that over the noon hour.

Let me ask you another question:

How much did Federal 1 construction increase when ever was the operating floor was just prior to that Federal decrease of \$1.1919?

A \$187 million.

Q And what was the increase just prior to that one; in other words, the major increase before the Federal 1 decrease?

A I can't tell you from memory.

Q Was that in the number of millions of dollars; or was it a minor increase, a major increase?

A It was a minor -- it was in the millions of dollars; correct.

Q And how about the one before that; was that also a major increase?

A Yes.

Q And the one before that was also a major increase?

A I haven't kept track -- yes; that is correct.

Q So that how much construction is done; do you know? Approximately.

A Yes, sir.

Q How much?

A About 20 percent.

Q 20 percent.

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So with one-fifth construction completed, the cost of the plant has gone up by a factor of 3000 percent from its original cost?

A. No; I don't know where you get 3000 from?

Q. Well, would you tell me what percentage it has gone up from its original cost?

A. I don't remember the exact numbers, but I think they are close enough for this purpose: 300 percent.

Q. 300 percent.

Now that -- if that relationship continues through the construction of this plant, the cost of the Midland facility will be astronomical, will it not?

MR. ROSSO: Objection. There is nothing in the record -- this question doesn't add anything: If that projection, if that estimate continues -- on what basis does he have to assume that it will.

MR. CHERRY: Mr. Chairman, this is cross-examination. I am entitled to --

MR. ROSSO: It doesn't add anything to the record, sir; it is totally irrelevant.

CHAIRMAN COWLEY: We are getting pretty far out, Mr. Cherry. I will sustain that.

MR. CHERRY: I think that is incredible. Would you certify that question?

CHAIRMAN COWLEY: No sir.

BY MR. CHERRY :

Q Have you analyzed the kinds of things that have caused the 500 percent increase to determine whether or not those kinds of things will occur again between now and the projected completion date?

A Yes; I think we have in general.

Q And what is your opinion?

A And -- that they will not occur to the extent that they have in the past and to the extent that they will -- there will be changes in the future, that they are provided for in our judgment in allowances.

Q Are you so firm that is, Consumers, so firm on the \$1.67 plus, let's say \$160 million, that is outside dimension, that you would give a guarantee that Dow -- to Dow Chemical that these steam costs would be based on that figure no matter what the costs of the plant?

MR. ROSSO: Objection. Irrelevant.

MR. CHERRY: It goes to test the credibility of the figure, Mr. Chairman.

MR. ROSSO: There is a big difference between having faith in your number and giving somebody a guarantee that it won't be exceeded, sir. I mean, that is just totally irrelevant. He has asked the witness the degree of his faith in the number and the witness has responded.

CHAIRMAN COUFAL: I think you can ask him if they

have arrived at a firm price on --

MR. CHERRY: I want to ask him whether or not his degree of confidence in the \$1.67 and the \$160 million is such that he would recommend that it is so confident that they would make that the cap figure; that is, no more costs in connection Dow Chemical Company.

CHAIRMAN COUFAL: All right.

You can answer that, Mr. Howall.

BY MR. CHERRY:

Q Would you so recommend, Mr. Howall?

A I can see no reason in the world why I would.

Q If we just looked at it --

Explain your answer, please. You say that you can see no reason why in the world. Can you please explain that answer?

A I guess I don't see why I would on my own volition volunteer a recommendation to make a commitment that we have no obligation, as I understand it, to make or nothing to gain from.

Q I appreciate that. I am not talking really in terms of contract law.

What I am trying to say is: Would you feel comfortable in terms of that \$1.67 plus \$160 million, so comfortable that as a gesture to prove that you were so secure with that number you will be willing to guarantee that

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figure for purposes of Dow's steam costs?

MR. ROSSO: Objection. I think the question has been asked and answered. I also think it is irrelevant.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: I think it would be a foolish gesture.

MR. CHERRY: I would like this marked Midland Intervenor's 23 for identification.

(Whereupon, the above-mentioned document was marked Midland Intervenor's Exhibit 23 for identification.)

MR. WESSEL: Is there more of your examination before the luncheon break?

MR. CHERRY: Yes; I have about 10 or 15 minutes. Go ahead, if you want to.

MR. WESSEL: No.

I think it is appropriate to make a statement which I think probably ought to be considered by Consumers during the luncheon recess. It may take some time. I would just like to --

MR. CHERRY: We have a stipulation as to authenticity on all documents that have been produced. This is a document from H.B. Gray to R.C. Youngdahl dated April 24, 1975, the subject; registration statement, reference to

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Dow Chemical Company.

MR. ROSSO: I am wondering how far we are going to go --

MR. CHERRY: I am just going to identify it.

DR. LEEDS: Was that produced today?

MR. CHERRY: Yes.

DR. LEEDS: Just give us the number off of it.

MR. CHERRY: 17, and it has two pages in it.

(Pause.)

BY MR. CHERRY:

Q This is a document, Mr. Howell, that talks about a prospectus filed with the SEC and it has within it a notification that Dow Chemical has informed Consumers Power Company that it give adequate assurance as to a final date and if not, Dow Chemical may sue Consumers Power Company.

I just want to know if you have ever seen that exhibit, or have ever had any discussion with anyone about that subject matter?

(Handing document to witness.)

MR. ROSSO: I guess I don't understand how this relates to the cost items that were gone into by Dr. Leeds.

MR. CHERRY: Pretty simple. I want to know --

MR. ROSSO: Excuse me --

MR. CHERRY: I was going to answer your question.

MR. ROSSO: I thought he had completed his

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cross-examination except for questions that had been raised by matters that Dr. Leeds had gone into. And now I fail to see where this relates to any of that.

MR. CHERRY: If you will stand back a minute, I will tell you.

MR. ROSSO: All right.

MR. CHERRY: Any rational company has got to have a reserve for a lawsuit. And what I want to know is in this project cost, have they made any reserve at all for the potential lawsuit by Dow Chemical and what is the size of the reserve, and if not, is that going to be added to the \$2 billion and will they be able to raise it?

I think it is significantly relevant. For example, if we look at the fact that Dow Chemical was concerned enough about the \$600 million threat of a lawsuit to do what ever they did that has been explained -- and I don't want to go into that -- I want to know if the reverse is true and whether or not there is in their filings with the SEC or any place internally -- he is the vice president in charge of, we were told by Mr. Keeley, financial matters on this project -- whether or not there is a reserve for this potential Dow Chemical lawsuit.

That is the purpose of my question.

MR. ROSSO: First of all, I think the Board sees now how silly that is and that it doesn't have anything to

with the construction costs of this project which is the question the Board is interested in now.

And second of all, Mr. Keeley never said that Mr. Howell was the vice president in charge of financial affairs. He is the vice president in charge of construction and the budgeting for construction but not of financial affairs.

But I think to ask a question about whether there is a contingency with regard to a lawsuit, if the parties went to a lawsuit and were trying to get to the question of how much it would cost to build this plant so that it can go on-line and service the other party is just well beyond the scope of the kind of cross-examination that ought to be permitted here and is totally irrelevant.

(Board conferring.)

CHAIRMAN SCUFAL: Overruled.

Go ahead and answer, Mr. Howell.

THE WITNESS: What was the --

BY MR. CHERRY:

Q Are you familiar with the subject matter that is contained in the two pages of Midland Intervenor's Exhibit 28?

A Generally, yes.

Q What about, if any, has Consumers Power discussed might be the claimed liability against Consumers Power Company

if such a lawsuit by -- of such a lawsuit by Dow Chemical Company.

MR. ROSSO: I am going to call the witness to remember that any such conversations in which my attorneys may have advised him with regard to liability on this litigation are protected by the attorney client privilege and he should not respond with regard to advice that is given by counsel.

MR. CHERRY: I don't want advice from any of your attorneys. I want to know if you have ever discussed the number with anybody else in the company?

CHAIRMAN COSTAS: Mr. Cherry, wait a minute. The way we permitted the question is that we permitted you to ask if there were any contingency money to pay for any liability to --

MR. CHERRY: I want to know what the number is so -- if he tells me yes, that could be a dollar or \$10.

CHAIRMAN COSTAS: Then you can ask him the number. And go ahead and ask him if there is one.

MR. ROSSO: Objection.

CHAIRMAN COSTAS: He objected to the question. I am sustaining the objection and permitting you to question the witness in the way in which I have outlined.

BY MR. CHERRY:

1 Does Consumers Power Company have within that

Q \$1.57 figure any amount which relates to the contingency for liability from a Dow lawsuit such as is described in Midland Intervenor's Exhibit 28?

A I can't answer that yes or no. I have got to explain, if I may.

Q Go ahead.

A You have handed me a piece of paper which is -- has got an extract from -- at least a preliminary draft -- of an extract from the prospectus filed with the SEC. And there are really two parts to it. And I think if I may, just let me read from the language and then that will --

It says:

"If the company were found in default of its obligations it would result to the timely completion with respect"--

Excuse me.

"to the timely completion of the Midland plant. If Dow were successful to litigate the matter it is possible that the company could be found liable for Dow for damages in an amount which the company is unable to determine at this time."

And there is no contingency for that in the estimate. However, it says in addition:

"The amount heretofore invested by the company in equipment allocable to the service of

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process steam to Dow which amount would be not salvaged in such an event, is presently estimated to amount to approximately \$22,500,000."

And of course, that amount is in the estimate, in addition to the amount of money which would be required to complete the Dow part.

Q Mr. Howell, have you completed your answer?

A Yes.

Q Now will you agree with me that if Dow Chemical successfully placed liability on Consumers Power Company for failure to have the plant on-line by 1979 - 1980, which is the reference date, to the dates in the contract --

A It doesnt --

Q But the contract right now has 1979-80; isn't that correct?

A That's correct.

Q Now if Dow Chemical were successful in imposing liability on Consumers Power Company for not having the plant on line by those contract dates, would you agree with me that the amount of liability against Consumers could include the following items:

Number one, the amount that Dow Chemical has to spend past 1979-1980 in order to comply with air pollution requirements?

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MR. ROSSO: Objection.

I think, first of all, the question is irrelevant. Second of all, he's asking this man a legal opinion as to what any possible liability could be to Dow and what might be included in those liabilities. They're all matters for proof in a lawsuit. We're really way beyond the scope of relevancy.

CHAIRMAN COUFAL: I think that's right. You're asking for a legal conclusion from this witness.

MR. CHERRY: Very well.

At this point I have approximately 15 or 20 minutes left with Mr. Howell, but I don't mind waiting until after lunch to do it.

DR. LESDS: On costs, Mr. Cherry?

MR. CHERRY: Yes, just on costs. What I want to go into is some of the monthly trends to see if they've been up or down. That's all.

MR. WESSEL: I think I should make a comment to which I referred before. I saw Mr. Mansrow leaving the courtroom. I did not know whether Mr. Howell would finish before lunch. I think it is proper to state the following at this time so that there will be no surprise and there will be an opportunity for Consumers to consider what, if anything, it chooses to do.

We have looked through the documents, incidentally,

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that were produced this morning, and I'm including the documents produced this morning, everything up to this minute, in my statement.

First of all, it is my understanding that Mr. Youngdahl and Mr. Raymond are not going to be called by any party in the suspension hearing. They will not testify.

Second of all, the Board issued an order on January 7, which this morning by agreement of all parties was entered into the record and the Reporter is typing up the corrected page. It makes reference to the fact that a failure to respond to something which one knows to be inaccurate under the circumstances present here constitutes an admission by silence, or may.

Third of all, the Board has made very clear to all of the parties that all the parties, and I include Dow, are under an obligation to correct whatever it is they consider to be inaccurate in this record if it's of substance, if it's significant.

Fourth of all, Mr. Howell, I assume, has not had a chance, has not been permitted to read the current testimony of Mr. Temple or Mr. Orrside. I don't know the extent to which, if at all, he's seen the documents which have been produced by Dow Chemical Company regarding the negotiations and the discussions that took place beginning in September. However, Mr. Rosco and Mr. Bamfrow, not always at the same

time, are fully informed with regard to those matters, or should be.

I think to the extent that there is no further testimony from Mr. How. . ., who is the only remaining witness in this proceeding that will be dealing with the issues to which Mr. Temple and Mr. Oxrefice testified and which are covered in the documents that the Board directed be produced from Dow, to the extent that there is no testimony it is fair to infer that Consumers Power regards there to be nothing significant to be corrected in the testimony at this point, or the documents produced, subject to the stipulation of authenticity.

When I say that, I would include whatever comes in after luncheon regarding the subject matter, if any, from Mr. Howell. I have no examination at this time of Mr. Howell.

MR. ROSSO: I'm not sure what that statement is intended to import, sir. I have the following problem with it.

There are, as I understand it, two separable questions before this Board. The first is the merits with regard to suspension on this matter.

The second is the question with regard to any possible misconduct by attorneys in this matter. We do not propose and did not propose to ask questions of Mr. Temple,

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or of anyone else, which went to that second issue.

MR. WESSEL: I do not regard there to be any misconduct by attorneys in this matter, Mr. Rosso. I was not addressing that.

MR. ROSSO: Now do I, sir, but in case this Board should decide that it wants to inquire further into this, then I think that certainly on that point we would wish to --

MR. WESSEL: Each of us must make up his own mind on that issue. I can only say that as far as I'm concerned that matter has been sufficiently dealt with in this record, and you must make your decision on that.

MR. ROSSO: What I'm saying, sir, is that we believe it was sufficiently dealt with, too, in the briefs, not in this record but in the briefs and the material that was submitted to the Board.

However, if this Board wants to hear further on it, we want to reserve all our rights to call any Dow counsel that may have been involved in discussion with Mr. Temple, who may have been involved in discussions, or any other party or person with regard to those matters.

MR. WESSEL: I join Mr. Cherry in the request that the Board not be put in the position of issuing advisory opinions. It is the responsibility of counsel to do whatever counsel thinks is proper, that this record be whatever the counsel thinks the record should be.

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If counsel feels that the record at the conclusion of Mr. Howell's testimony is satisfactory, what's fine.

MR. ROSSO: Sir, this Board, I thought, indicated it was not going to consider these matters in this proceeding and that it really didn't want to get into these matters in any evidentiary fashion in this proceeding.

Now, if this Board decides it wants to hear further evidence on that, then there will have to be another hearing specifically on that matter.

I don't think there's any need for it. I agree with Mr. Wessel. But if there's any need for it we're going to have to call witnesses.

MR. WESSEL: There's a great deal of testimony -- I don't want there to be any confusion about it -- about the discussions between Dow and Courtman regarding the contract, regarding the ongoing negotiations, regarding the relationship, regarding what's going to happen, whether it's serious, in Mr. Cherry's words, strained in someone else's words. That's very material to the issues before this Board.

I'm satisfied with this record clearly, but I want to be clear that if in fact at some later time these same issues are before this Board, or anybody else, what's done now is in the opinion of all those involved what should be done and nothing more, that there's no inadvertence, that there's no problem because someone wasn't permitted to read

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a transcript or to look at a document, that in the opinion of counsel for Consumers and in the opinion of counsel for Dow, the only parties here who have full knowledge of what their clients did, it is satisfactory. That's a fair statement.

MR. ROSSO: With regard to the merits on the substantive issues here?

MR. WISSEL: With regard to whatever counsel regards to be appropriate. I do not consider the issue of lawyers' conduct in this case to be one that's material. You have your own opinion on that.

MR. ROSSO: I don't consider it material, either. I don't think it ever happened.

MR. CHERRY: Mr. Chairman, I feel a little uptight here, because I like to get involved in the resolution of factual inquiry and I cannot.

I've been trying to sit here and figure out what Mr. Wassel means by a full and complete record. I'm going to drop this if I understand that after lunch, if Mr. Howell goes off the stand without making completions that may be considered significant by a party having an obligation to come forward with information, that party will come forward with whatever information there is.

I want to know, is Mr. Wassel's comment, which he says he wants Consumers to consider over the noon hour, a prelude to his obligation to tell us whatever it is he has

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in mind?

MR. WESSEL: I have nothing of an evidentiary character in mind -- I'm addressing Mr. Cherry through the Board -- and I think it's abundantly clear what I'm talking about, but I will spell it out.

Mr. Orrefice has testified at some length, certainly to whatever length the parties wished; Mr. Temple has testified at great length, certainly to whatever extent the parties wished; there have been an enormous number of documents produced by Dow relating to the relationships between Dow and Consumers. Some of those are documents as to which work product privilege have been claimed, some documents as to which other forms of privilege have been claimed, and the Board has made its ruling.

The record is now whatever it is, and I don't intend to characterize it. However, there have been conclusions drawn by, I'm sure, many of the parties, and I think it's fair to say that if Consumers is satisfied that that record correctly reflects what they think it should reflect, that's all they need to do.

If, on the other hand, considering the matter during luncheon and coming back at this hearing in the afternoon they regard that there is something that ought to be added with regard to the discussions, for example, on September 21st or on September 24th, or any other discussions

between Dow and Consumers, including January 12 or 13, then they'd better do it now or hold their peace.

MR. ROFSC: I think I see now -- I'm beginning to see what Mr. Wessel was getting at. I sometimes have a little difficulty understanding him.

I think what he's saying is that I now have an obligation, if I want to put anything further in with regard to these conversations between the parties, to put it in.

I guess I can make a decision that I don't have to put it on on the basis that I don't think there anything that happened at those meetings is very material or relevant to what this Board has to decide, if that's what you're getting at. And, you know, fine -- maybe I make that decision. That doesn't necessarily admit that anything that happened was relevant or that anything that Mr. Orrifice or Mr. Temple interpreted to have happened in fact did happen.

It's not an admission of the accuracy of Mr. Temple's or Mr. Orrifice's -- not testimony, but understanding of what was happening if I don't go forward. It is simply a position that that is what they read into the situation. Fine, that's on the record, and we don't think it's particularly relevant and material so we can leave it alone.

MR. WESSEL: If evidence adduced by and from the Dow Chemical Company with regard to a meeting and the statements that the Dow Chemical Company said took place at that

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meeting, either in oral testimony or in documents, are considered to be inaccurate but Consumers regards that there's no obligation for them to correct them, then that's their conclusion and that's fine. But that's not an inadvertent conclusion; that's an advertent conclusion, and it's their judgment of their obligation, the materiality of this proceeding, the decision to proceed so there will be no delay, or whatever else they may conclude.

But there may come a time at which the failure to respond will be argued to be (a) an admission by silence, and/or (b) a failure to have conformed to the Board's directions with regard to the parties' obligations to see that this record is as correct as the parties can make it.

MR. ROSSO: Well, I'll just have to quarrel with both of those. I mean, there's a certain point where you get material into the transcript and into the record and you make a judgment as to whether going any further is going to help this Board in coming to a determination or whether it's just going to pile more meaningless material on; and then you make your determination, and that's it.

MR. CHEBRY: Mr. Chairman, I think we should break for lunch. I think Mr. Wessel has made his comment. Mr. Rosso is entitled to make his judgment. I think we should break for lunch, because I've got to go down and see the U. S. Attorney about a bench warrant for the Consumers Public

Relations man, who seems to have flown the jurisdiction.

Can we break, sir?

CHAIRMAN COTFAL: I want to say something before we do, and I want Mr. Rosso to hear it. Can you break off there a minute, Mr. Rosso?

MR. ROSSO: Pardon me?

CHAIRMAN COTFAL: Mr. Wessel spoke about documents in the record, which brings up a very interesting point, and that is there ain't very many of those.

There are tons of records that are marked as exhibits, but nobody has offered anything, and it's going to be a problem if somebody doesn't do something.

MR. CHERRY: Well, the hearing is not over yet. I'm going to offer mine.

DR. LEEDS: Some of the Dow documents that you referred to just then, I think, are not even marked as exhibits.

MR. WESSEL: I understand that. I understand the formality of the proceeding. When I use the word "record," I include in the word "record" what the parties have been furnished.

I have no problem with that. I can even deal with it on appeal if it's only been marked for identification or if it's only been produced on discovery. That can be dealt with if it has to be.

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I'm concerned that the "record" will be referred to at some subsequent time as the exchanges that took place before this Board and between the parties.

MR. ROSSO: I do want to say one last thing. That is, I'm not trying any lawsuit between Consumers and Dow. If there is any such lawsuit, I'm not trying it here. If I decide not to put on any evidence with regard to a conversation between the Dow and Consumers people because I don't think it's material or relevant here, that certainly doesn't foreclose Consumers from putting it on at some later lawsuit when they have other counsel, if any such lawsuit should arise.

CHAIRMAN COUFAL: Okay.

All I want to do is to get the parties to get ready to offer whatever documents they want in, or we're going to receive everything that's been marked as an exhibit and you can fight to get it out.

MR. CHERRY: I don't care about that. My only problem, Mr. Chairman -- maybe the parties should consider this over the noon hour, too. -- I think it's a burden, for example, on my clients, who have little funds, to make multiple copies of documents for exhibits.

I would like the Board to consider, in light of the financial problems that I continually have alluded to, that I can be relieved of the obligation of making multiple

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copies in connection with any exhibits I make.

Let me say this won't create a big problem, because Dow Chemical has copies of them or will make them from my copies if they want them. I'm certain the Regulatory Staff can do the same thing, and Consumers already has them.

I'll make an effort to get one copy for the Board. That will permit me to put a lot more documents in. I'd just like you to reflect on that over the noon hour. That's all.

CHAIRMAN COUPAL: We'll be adjourned until 2:00 o'clock.

(Whereupon, at 12:50 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 2:00 p.m., this same day.)

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AFTERNOON SESSION

2:05 p.m.

Whereupon,

STEPHEN H. HOWELL

resumed the stand as a witness, and having been previously duly sworn, was further examined and testified as follows:

CHAIRMAN COUFAL: Go ahead, Mr. Cherry.

MR. CHERRY: I have read a few documents that have been produced this morning, and I will probably expand my questioning of Mr. Howell a bit, but I don't think probably more than 15 or 20 minutes, at this stage.

CROSS-EXAMINATION (Continued)

BY MR. CHERRY:

Q Mr. Howell, isn't it a fact if you cannot make your arrangements with the cooperatives, you will not be able to finance this project, and that that has been a decision made by Mr. Youngdahl as of September 1976?

A You asked two questions.

The first part, no, that is not my understanding, so I guess the second question is no.

Q Tell me what your understanding is of the relationship between the sales to cooperatives, and Consumers' ability to finance the project.

A I think we talked about this the other day, that the sale of a portion of this plant to the cooperatives will provide

funds which can be used in our construction program within Consumers'.

And as to the ability, I go back to my previous answer. I don't think in advance the ability to raise funds.

Q Would you agree with the statement that if the Chemical does not revise the contract to permit sale to the cooperatives, and if that sale is not made, it will impair Consumers' ability to finance the Midland project?

Would you agree with that?

A Inquire the ability.

Well, the sale is a source of funds and if we get those funds, it will make financing easier in the sense that there would be less money to raise.

I am not sure I agree with the interpretation of the word 'ability.'

Q Well, then say you don't agree with me.

I want a clear answer to my question. I will state it again.

If you are unable to stand to a contract to permit the sale to the cooperatives, and you in fact don't make this cooperative sale, would you agree with me that it is Consumers Power's position that the absence of those two events will impair the company's ability to finance the Midland project?

MR. ROSS: Objection.

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Asked and answered.

CHAIRMAN COURAGE: Overruled.

BY MR. CHERRE:

Q You say not?

A If I heard you correctly, it is the same question you asked me before, and my answer would be the same as my answer before.

Q Would you agree with me that if you don't make the sale to the cooperatives, it would impair your ability?

I want to get an answer, yes or no, you either do agree with me or don't.

MR. ROSSO: Objection.

Asked and answered twice.

MR. CHERRE: Mr. Chairman, what the witness has done is tell me that the sale would make it easier for him and he can raise funds.

He hasn't dealt with the specific conduct as to whether or not the absence of an agreement with the cooperatives will, in fact, impair the ability of Consumers to finance the project.

I am entitled to an answer to that specific question.

MR. ROSSO: Mr. Chairman, let's not play with words. The witness has answered the question, the substantive question of what the effect of not selling this portion to the

and corps would be in his opinion.

He has answered that question. That is the only possible substantive question that can be at stake here. Now we are playing word games, "I want him to answer with my words," and I submit that is improper cross-examination and I object.

The question has been asked and answered twice.

CHAIRMAN COURTEL: Sustained.

BY MR. CHERRY:

Q Would you agree with this statement, Mr. Howell:

That the absence of an agreement with the cooperatives is of such a serious nature, that it will impair the ability of Consumers Power to finance the project?

MR.ROSSO: Objection.

That is the same question. Asked and answered. Still playing word games.

MR. CHERRY: Mr. Chairman, I am entitled to ask some tough questions in cross-examination.

MR.ROSSO: We are not -- really, we are not here to play word games, sir. We are here to get to the substance of the matter. The witness has answered the substance of the question twice. He has answered it exactly the same way twice; he answered it that way when he was last on the stand a few days ago.

We are just simply trying to go through this process

of trying to get the witness to say these particular words, you know, as Mr. Cherry has defined them in his own mind and as he intends to define them later in the brief, which may not agree with the definition that the witness would place on the words. And it is just silly to play word games like that.

Let's get to the substance of the matter.

MR. CHERRY: Mr. Chairman, I don't care whether he adopts my words or not but he has answered all of these questions on the grounds that the absence of a contract, that the cooperatives' contract will make it easier to finance. He has not dealt with the question as to whether or not that event is so important that it will prevent the project from being built or seriously raise questions about it. That is what I am dealing with.

CHAIRMAN COUFAL: All right.

I think that is a good question, which you last stated, Mr. Cherry.

MR. ROSSO: Let's answer that question.

BY MR. CHERRY:

Q Would you agree with me that the absence of a contract with the cooperatives is of such a serious nature that it will impair the ability of Consumers to finish the project --

MR. ROSSO: Objection.

That isn't the question, sir. Let him answer the question that he posed.

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CHAIRMAN COUFAL: The question you were discussing, which would prevent Consumers from building the plant, or seriously impair their ability.

MR. CHERRY: That's right. That is the question I want to ask.

CHAIRMAN COUFAL: Stated that way, right. Go ahead.

THE WITNESS: I think there are two different questions. If I can answer the question as the Chairman stated.

BY MR. CHERRY:

Q No, no, no. If there are two different questions I will ask them one at a time.

Will the absence of a cooperative contract put you in a financial position that will prevent you from finishing the Midland project?

A To the best of my understanding it will not.

Q All right.

Now let me ask the second question.

Will the absence of a cooperative contract put you in such a financial position that it will impair Consumers' ability to finish the project.

MR. ROSSO: Now, Mr. Chairman, that is the same question for about the sixth time.

You have sustained my objection to it twice, and I

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hope you will sustain it again for the third time.

CHAIRMAN COUTAL: My problem, Mr. Cherry, is "impair" is kind of a loose word.

MR. CHERRY: I will follow up on it.

Will it hinder his ability? He can use any word at all. Will it put any restrictions on his ability?

MR. ROSSO: But he has already answered that, sir.

CHAIRMAN COUTAL: Let him answer it again, then.

BY MR. CHERRY:

Q Will it put any restrictions whatsoever on your ability to finance the Midland project?

A will it put any restrictions.

Q Financial restrictions.

A It is my understanding that it will not.

Q It will not.

MR. CHERRY: May I have this marked, please, as Midland Intervenor's Exhibit 29?

(Whereupon, the document referred to was marked Midland Intervenor's Exhibit No. 29 for identification.)

MR. ROSSO: May I see it, Mr. Cherry? I am at a little disadvantage, we gave all our copies to the Board.

MR. CHERRY: Sure, I will show it to you before I use it, before I identify it. I want to ask Mr. Howell a couple of questions.

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BY MR. CHERRY:

Q Mr. Howell, what is the basis of your understanding that the absence of an agreement with the cooperatives will not impair or hinder Consumers' ability to finish the project from a financial standpoint?

A The basis of my understanding is some comments made by Mr. Aymond to that effect.

Q Mr. Aymond.

Have you ever discussed the matter with Mr. Youngdahl?

A I have to answer it this way:

I don't remember any specific discussions with Mr. Youngdahl, but I was -- I have been present when the subject came up for instance in the negotiations on the Dow contract, for instance.

Q Do you know what Mr. Youngdahl's view is on whether the cooperatives' arrangement is a very crucial or pivotal point to financing the project?

A I do not know what his current position is. I am generally aware that he has made statements in some of these negotiations that we would like to have that money for financing.

Q In those negotiations, did he ever indicate that it was a serious impairment of Consumers' ability to finance the project if they could not get the contract amendment and then the agreement with the cooperatives?

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Did he ever say that?

MR. ROSSO: If you know.

BY MR. CHERRY:

Q Yes, if you don't know, don't tell me.

A I don't remember it in those specific terms.

Q Well, how about not in those specific terms.

Was the sense of that ever imparted to Dow Chemical at a meeting while you were in attendance, in negotiations.

MR. ROSSO: Sense of what?

BY MR. CHERRY:

Q What I just said, that it would impair the ability to continue the project financially if you don't get the cooperatives.

Now you said he didn't say it exactly like that. I want to know if the sense of that was ever imparted.

MR. ROSSO: Objection, again.

I mean for the same reason that I have objected all along.

What is "impair the ability"?

He is asking whether someone said something which in the sense of things would generally impair the ability. What does that mean, "impair the ability"? Where is the definition of that term?

CHAIRMAN COUFAL: Overruled.

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BY MR. CHERRY:

Q Mr. Howell?

A One problem I have here is the timeframe that you are talking about, Mr. Cherry, as I still have thinking about it, because there was at one time some financing difficulties in the past, and certainly in that time we might have expressed more urgency.

My answers that I gave you a few minutes ago were in the sense of current, what I know currently.

Q Do you consider January 1977 current in your answer? That is, last month?

A Yes.

Q Do you consider December '76 current?

A Relatively so.

Q I mean the way you have used the word current would the period December '76 be included in that period?

A December -- I would prefer to limit it to January.

Q So that it is possible that in December 1976 Mr. Youngdahl held the opinion that the absence of a cooperative no, you are not saying that?

A No, I am not saying that.

Q Let's take the period from September 1, 1976 to the present.

During that period of time, were you ever at a negotiating meeting with Mr. Youngdahl, where he said to

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Dow Chemical in those exact words, or the sense of this, that Mr. Joe Tempie doesn't realize the seriousness of not amending the contract in order to make a deal with the cooperatives, because if we can't make that deal it will impair our ability to finance the project.

Did Mr. Youngdahl ever say that between the period September '76 and today at a meeting with Dow?

MR. ROSSO: If you know.

THE WITNESS: You have painted some fairly specific words.

I guess I don't know.

BY MR. CHERRY:

Q You don't know.

Very well.

Were you at a Dow-Consumers Power meeting September 13, 1976?

MR. ROSSO: Excuse me, Mr. Chairman, may I see that document?

MR. CHERRY: I will.

BY MR. CHERRY:

Q The answer is yes, that you were at a meeting on September 13, 1976 with Consumers Power Company and Dow?

MR. ROSSO: Mr. Chairman --

MR. CHERRY: I am not using the memorandum, Mr. Rosso.

MR. ROSSO: You are obviously using it by referring

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to it or seeming so.

CHAIRMAN COUFAL: Just a minute.

When he asks him a question with reference to the document, before he answers you may see the document.

BY MR. CHERRY:

Q You were at such a meeting?

A Yes, sir.

Q Was Mr. Youngdahl at the meeting?

A Yes, sir.

Q Was Mr. Temple at the meeting?

A Yes, sir.

Q What, at that meeting, did Mr. Youngdahl say about the relationship between the cooperatives contract and the ability of Consumers Power Company to finance the Midland project.

MR. ROSSO: Excuse me. I just want to interject one thing. ja

I hope the Chair realizes that I am at a disadvantage because we gave our documents to the Chair.

CHAIRMAN COUFAL: All right. Here they are.

MR. ROSSO: Now, if I can have a moment I can try to look through them and see if I can find those documents myself. In that way I won't have to keep interrupting

BY MR. CHERRY:

Q Mr. Howell --

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CHAIRMAN COUFAL: Just give counsel a moment.

MR. CHERRY: He is going to look for what? I haven't even told him what the document is. I am not so sure I am going to use it.

I want to get an answer to my question.

If you want some time, Mr. Rosso, go ahead.

MR. ROSSO: What was the question?

MR. CHERRY: The question was, what did Mr. Youngdahl say at the meeting of September 13, 1976, if anything, concerning the ability of Consumers to finance the Midland project in relationship to the sale of part of the plant, the proposed plant, to the cooperatives?

THE WITNESS: The September 13th meeting was, as you remember, a negotiating meeting for possible changes to the contract.

From my earlier testimony, indeed my direct testimony, I listed some of the points we wanted and in Mr. Temple's direct testimony, he listed some of the points they wanted.

So I am sure that at that meeting they would have, or Mr. Youngdahl would have said that we want the ability to sell to the coops. I mean, that was one of the points of our negotiation.

BY MR. CHERRY:

Q Did Mr. Youngdahl tell Dow, or representatives of

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Dow at that meeting that the contract amendment was necessary because Consumers' financial position was so serious that if they couldn't sell to the cooperatives it would impair their ability to finish the project?

Did he say that at the meeting?

A I don't remember him making that statement.

Q You don't remember him making that statement.

Is it your position that between the period September 1976 and today, Mr. Youngdahl has never held the belief that the absence of a sale to the cooperatives would not impair -- that the absence would impair the financial ability of Consumers to finish the project?

MR. ROSSO: Objection.

Asking this witness for the state of mind of another witness, or another person.

BY MR. CHERRY:

Q Has he ever held the position, communicated, that is, to you?

If you don't know, tell me.

In other words, has he ever held that position, to your understanding, based on your communications with him in your negotiating meetings? Has he ever held the position between September '76 and today, that if you can't get the deal with the cooperatives, there will be a serious impairment of Consumers' ability to finance the project?

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MR. ROSSO: Objection.

A proper question would be, did he ever tell you that, or did you ever hear him say that. But not what was his state of mind, and that is what this question is getting to, I suggest.

CHAIRMAN COUFAL: The early part of the question was, did he ever communicate it to the witness, or did he ever say it at a negotiating meeting.

MR. ROSSO: May I have the question read?

MR. CHERRY: I will end the suspense, I will tell you what, Mr. Howell, you are going to say it anyway.

Here is my Exhibit 29.

(Mr. Cherry handing document to Mr. Rosso.)

(Mr. Rosso reading document.)

CHAIRMAN COUFAL: I might note for the record, you have probably noticed that Dr. Luebke is not here. He has not been here since we began this afternoon. He is fighting some kind of bug, and we will have to operate on the quorum rule until he recovers. Or, until we adjourn. Or, until we also get the same bug.

MR. ROSSO: Just so it doesn't come down here, too.

MR. CHERRY: Mr. Rosso, will you confirm that this document which was held by Consumers out of claim of privilege and then ultimately released by the Board is one of the ones that I got this morning?

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MR. ROSSO: If that is your representation, I will accept it on the record.

MR. CHERRY: It is, in fact, one of the documents that was withheld on some kind of a privilege, and I think I would just like the record to note that whoever reads this document will understand that it contains such damaging information that it was held under the claim of phony privilege.

MR. ROSSO: Move to strike.

MR. CHERRY: I don't want to move to strike.

MR. ROSSO: I know you don't, but I do.

CHAIRMAN COUFAL: Sustained.

MR. CHERRY: Mr. Chairman, I want to point out for the record that Midland Intervenor's Exhibit 29 was withheld by Consumers Power Company on a claim of privilege.

It was one of the documents released today pursuant to Board order. I am doing that now identification.

CHAIRMAN COUFAL: That stays.

DR. LEEDS: Is there a number on that, Mr. Cherry?

MR. CHERRY: It comes off of a pile of documents which had the following numbers attached to it: It is the last three pages of a group of documents that were stapled together that had G3-024.

DR. LEEDS: Thank you, sir.

(Mr. Cherry handing document to Mr. Hoefling.)

MR. CHERRY: I don't necessarily want the witness

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to be provided with that document, Mr. Rosso.

MR. ROSSO: I haven't provided him with the document, sir. I am looking for it in the file of documents that I have here.

MR. CHERRY: Has the Staff found the document, Mr. Hoefling?

MR. HOEFLING: Yes, Mr. Cherry.

MR. CHERRY: May I have it back, please.

(Mr. Hoefling handing document to Mr. Cherry.)

MR. CHERRY: Mr. Chairman, since there is a stipulation on authenticity, I would like to offer Exhibit 29 in evidence.

CHAIRMAN COUFAL: Is there objection?

MR. ROSSO: No.

MR. WESSEL: No objection.

CHAIRMAN COUFAL: All right, 29 is received.

(Whereupon, the document heretofore marked Midland Intervenor's No. 29 for identification, was received in evidence.)

MR. CHERRY: I would like at this point to call the Board's attention in Exhibit 29, to page 2, paragraph 3, is a memorandum from Mr. Youngdahl to the file dated September 14, 1976, "Office Memo Regarding Dow's CPCO Meetings of September 13, 1976."

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CHAIRMAN COUFAL: I'm sorry, I am not following you, Mr. Cherry.

MR. CHERRY: I have just described the document. It is a Memo to the File dated September 14, 1976, with respect to an office memorandum regarding a meeting on September 13, between the parties.

And in connection with Mr. Howell's questioning, at a meeting in which he was in attendance, Mr. Youngdahl reports as follows:

"Following Temple's position announcement we asked several questions. First, did Dow want us to suspend expenditures to their account during the next 30-day period. Joe's answer was that 'It was entirely up to us.'

"Next, although I heard what he was saying, I did not understand how he intends to implement the conclusion. For example, did they intend to break our contract. Temple indicated he recognized that we had a valid, signed contract, but in their opinion provisions of that contract had been violated.

"I pointed out to Temple the seriousness of this position as it related to the hearings and to our ability to finance the project by sales to the cooperatives unless the contract was revised.

"Temple indicated a willingness to consider a

contract change allowing sale to third parties.

"I suggested that we should make no changes in the existing contract at this time until we had an opportunity to consider their new position."

BY MR. CHERRY:

Q Now, Mr. Howell, under the contemplated arrangement with the cooperatives, will they become co-owners of the Midland facility?

Or at least part of it?

A I am not familiar with the details, but it is my understanding that they will have an undivided -- or an undivided interest in a portion of the plant, yes, sir.

Q Do you have an understanding based upon your experience with the Regulatory Staff as to whether that arrangement will require a redo of the application in order to make it a joint application, for example? Like the Wisconsin utility in the Meskoneong project?

A I have not discussed it with the Staff. To my knowledge, Consumers has not.

Q Has that subject ever been raised in your presence at any time?

A Raised in my presence.

Q Yes.

A I raised the question, one time. Not at a meeting, but on a note.

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Q With whom, or to whom?

A If I remember, it was to Mr. Bacon.

Q Why did you raise it?

A Because I saw a document come through applying to some other plant. I am not sure whether it was Georgia or not, where apparently there was some discussion and disagreement on this area and --

Q Do you know what the current Regulatory Staff position is on whether or not a sale of an undivided interest to someone else requires those parties being treated as applicants or co-owners?

A No, I do not.

At the time it was still in issue.

Q Let me ask you this, Mr. Howell. I want to posit two assumptions in my question. Okay, I want you to take these as given. Okay?

First, that an inability to make a contract with the cooperatives is so serious that it will impair the ability to finance the Midland project.

I want you to take that as a given, okay?

A Would you repeat it again?

An inability to make --

Q To make a deal with the coops is so serious that it will impair Consumers' ability to complete the Midland project. Got that?

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A Yes.

Q The next assumption I want you to make, is that an arrangement with the cooperatives contemplated by Consumers, which will solve the financial problem, will require new hearings on the application for a construction permit of some nature.

A All right.

Q Help me out on the puzzle.

Given those two assumptions, how can you make your 1981-82 schedule, since you told me earlier, I believe, that you had -- well, let me back up and ask you a couple of questions first.

In your plan for 1981-82, do you have a contingency for a new licensing proceeding of some sort whereby the cooperatives being co-applicants will take place?

Is that contingency figured in your schedule?

MR. ROSSO: I'm sorry. Could I have the question reread?

MR. CHERRY: Yes. It is a little busted up. I will ask it again.

BY MR. CHERRY:

Q In the schedule between now and 1981 and '82 -- remember I asked you in an interrogatory as to what went into that, and you answered it. I didn't ask you this particular matter.

What I want to know is, in that schedule, is there

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any time in that schedule for a new or any kind of amended law, or whatever hearing, concerning the sale to the cooperatives by the Nuclear Regulatory Commission?

A Well, that sort of hearing is not necessarily -- or time for that hearing is not necessarily precluded by the schedule.

Q Is it specifically provided for?

A No, it is not specifically provided for. But, if it does not affect the critical path of building that project, then it has no effect on the schedule.

Q Yes. But what makes you think that the Nuclear Regulatory Commission -- and I am putting this in the form of a question -- as upholder of the public trust, will permit you to go ahead and build that plant before you have the hearing, since they might not permit the coops to get in and they have to assume that that might be occurring. And then they might be giving you money that you will have to give back, and then you will be in a financial bind again.

MR. ROSSO: Objection.

I think that question is rather argumentative.

BY MR. CHERRY:

Q But Mr. Howell, what I want to know is this:

Have you made any contingency in your schedule for a serious impairment of your ability to finance the project in the event that you can't make the cooperative deal?

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Is that a specific express contingency in your schedule of operation by 1981-82?

MR. ROSSO: Objection.

The question again assumes the fact contrary to what the witness has said. The witness has said that it would not seriously impair their ability to finance the project.

MR. CHERRY: I didn't ask him.

I asked him if it was in the contingency plan, a contingency for that fact. That's all. If there is that.

MR. ROSSO: May I have a ruling on my objection?

CHAIRMAN COUFAL: I take it the reference to the serious impairment is from the note that you read in Exhibit 29?

MR. CHERRY: Yes.

MR. ROSSO: But which do not say that failure to sell to the coops would seriously impair the financing of the project. That is not what they say.

I read them and they don't say that at all, and that is why I object.

MR. CHERRY: What do they say, Mr. Rosso?

MR. ROSSO: Read it.

MR. CHERRY: Can I have a ruling on my question, sir?

CHAIRMAN COUFAL: Well, let me read it.

MR. CHERRY: Yes, I would like you to focus on it under the light of his making the argument.

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MR. ROSSO: The word seriously refers to the Temple position --

MR. CHERRY: Of not wanting to amend the contract, and that creates a serious --

MR. ROSSO: That's not so.

MR. CHERRY: Well, we can argue about that.

I want to know if there is a contingency in the schedule that accommodates the fact whether true or not, that there might be an impairment if they can't make a deal with the cooperatives.

CHAIRMAN COUFAL: I think that is a good question.

You may answer it.

MR. ROSSO: May I have it reread, I'm sorry.

BY MR. CHERRY:

Q Is there in your schedule of 1981-1982, an expressed contingency for the fact or for the possibility that if you don't make a deal with the cooperatives, you won't have money to finance the project?

Is there an expressed contingency in your schedule for that?

A Well, I think you are tying two things together.

If you phrase the question, is that a contingency for an inability to finance, I can answer it.

Q You are telling me you can't answer my question?

A Yes, I cannot the way it is worded.

mm25

Q Okay.

Do you contemplate any problems in raising capital between now and 1982 to finance the schedule?

A Any problems.

Q In getting money.

A Well that is a very broad statement. Any problems --

Q Any problem.

MR. ROSSO: Perhaps we can have a definition of "any problems" that has some restrictions on it so that the witness can answer the problem.

MR. CHERRY: I just want him to start from above. He may say no, there are no problems whatsoever concerning money. Then I go on to something else.

CHAIRMAN COUFAL: I think he can answer the question and explain what range of problems he is considering.

THE WITNESS: When you say any problems I have to read that -- you know, that it is a problem that our financial officer might have to cancel an appointment to go to New York to sign some problems -- that is within the realm of "any problems." So that is my difficulty.

BY MR. CHERRY:

Q Okay.

I don't mean a problem where your financial officer might have to cancel an appointment.

A Well, you could take this here from the whole

mm26

continuum of those sort of problems up to the real issue of, do I think that there is an inability to raise the money. And there is a big difference.

There is problems in getting anything.

Q Okay.

I want to show you Exhibit 29, and particularly Mr. Youngdahl's statement beginning, "I pointed out to Temple the seriousness," and end with the words, "unless the contract was revised."

And then, ask you if you were there when Mr. Youngdahl said that, or words to that effect to Mr. Temple.

A I was present at this meeting and --

Q Did Mr. Youngdahl say that?

A I think Mr. Youngdahl said things related to the two points here, that this position, which was the new position that came out of the blue, the Joe Temple position, not the corporate position, sure, that struck us as serious.

Also, we were looking for the ability to sell to the cooperatives.

Q Right.

A So in that of the negotiation because this new issue had come up, the question was raised, what does that do to getting this contract changed?

And it would impair that negotiation with the cooperatives.

wa27

Q But it doesn't say that.

It says that it is serious as it relates to our ability to finance the project.

A No.

Q It doesn't say that?

A No, it does not.

Q Okay, fine.

A That is not what the words say, because you look out about half a sentence there.

Q Okay.

A And serious modifies the other part of the sentence, the way I read that.

Q Okay.

Did you review this memorandum after Mr. Youngdahl prepared it?

A He sent me a copy.

Q Did you ever write to him and say there might be some problem about what he said here?

A No, I don't send him memos on any problems that might be in the phrasing of the English of a memo.

Q If it becomes a problem we'll get a grammarian to tell us what Mr. Youngdahl meant.

Now I want to go back to my question, Mr. Howell, and to take those two given assumptions: Number one, that the absence of an arrangement with the cooperatives will

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create a serious impairment of your ability to finance the project.

And assumption number two, that if you make the deal with the cooperatives, some new licensing has to take place, licensing hearing about the co-applicants.

And I want to ask you, given those two assumptions, do you see any problems with Consumers Power Company meeting the 1981-82 schedule?

MR. ROSSO: Now, Mr. Chairman, again this objection was raised earlier in this proceeding by Mr. Tourtelotte, and I think it is a very valid objection. We are getting nowhere in this record with hypotheticals which are already disproven by the facts in the record.

This makes no sense. They are irrelevant to the proceedings, to the issues before this Board. It makes no sense to spend hour after hour allowing Mr. Cherry to postulate whether the roof is going to fall on the Midland plant tomorrow, and whether that will hurt our schedule; or whether a war is going to break out between Canada and the United States and we won't be able to buy a certain kind of bulb, and that will hurt our schedule.

The witness has already testified with regard to this point, his testimony is contrary to the assumptions contained in the hypothetical, and the question should be -- my objection to the question should be sustained.

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CHAIRMAN COUFAL: Overruled.

THE WITNESS: Well, what you have done, Mr. Cherry, you have postulated a condition which says that seriously impairs Consumers' ability to complete the Midland project.

That is one of your postulated conditions.

Then you come back and ask me, if I make that assumption, will the Midland project be delayed.

Now that is circular reasoning as far as I am concerned.

BY MR. CHERRY:

Q No, no.

I asked you to make two assumptions:

Number one --

A I just took one of them.

Q I want them both in the same context.

A Take both, they are additive, rather than exclusive.

Q All right.

Would you agree with me that if either one of those two assumptions prevail you will not be able to meet the '81-82 schedule?

MR. ROSSO: Objection.

THE WITNESS: The answer is no.

BY MR. CHERRY:

Q You will be able to meet it?

mm30

A That's not what I said.

Q That you will not be able to meet it?

A That's not what I said.

Q What is it.

A You spelled out two positions.

MR. ROSSO: Could I have a ruling on my objection,
I renew it again.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: I noted this down so I can keep
track of the train here, and you have given me two conditions.
The first condition is an ability to make a deal with the
coop is so serious as to impair Consumers' ability to complete
the Midland project.

That is your assumption.

BY MR. CHERRY:

Q Mr. Youngdahl's memo, but go ahead.

MR. ROSSO: That is not so, sir.

I object to that characterization.

CHAIRMAN COUFAL: It is Mr. Cherry's assumption.

MR. ROSSO: All right.

THE WITNESS: All right. And I have read it to you.
Now you have asked me, assuming that, will it delay
the completion of the Midland plant by 1982?

Well, you know, how can I answer a thing like that.

You say, assume it will be delayed, and with that

mm31 assumption, will it be delayed.

BY MR. CHERRY:

Q No, I said, assuming that you will have a serious impairment of your ability to raise funds, will you agree with me that that assumption makes it ineluctably true that the schedule of '81-82 will be delayed?

A If we cannot raise the money to build the plant, the plant will not be built.

Q Okay.

Now will you agree with me that if there is a hearing concerning a deal with the cooperatives, that that could very well pose a problem for completing it on the '81-82 schedule?

A I don't know if it will present a problem or not. I explained before the question, if it is not affecting the critical path of the construction of the project, we may very well go through that hearing with no delay whatsoever.

Q But you don't know, because you haven't inquired, correct?

A Well, we haven't done it.

Q But you haven't inquired as to whether or not in fact it will affect the critical path, correct?

A No, I haven't inquired. No.

Q And you don't know anyone at Consumers who has, who has reported to you?

mm32

A Not at this point in time. That is correct.

Q Okay.

I am just trying to set up the hearings for the remanded hearings once we suspend. That's all.

Now, let me ask you, Mr. Howell, do you think that Mr. Youngdahl went to that meeting of September 13th and said to Dow Chemical whatever he said in a negotiating posture to try to get Dow to agree to something, or do you think Mr. Youngdahl was open, honest and candid with Dow at that meeting?

Just your judgment.

MR. ROSSO: Objection.

Irrelevant.

THE WITNESS: You are giving me an interesting either/or.

BY MR. CHERRY:

Q What is your impression what Mr. Youngdahl's --

CHAIRMAN COUTAL: Wait a minute, Mr. Cherry.

I think there is a sustainable objection here.

I don't have any problem with you asking if this was a negotiating position if you wanted to do that.

MR. ROSSO: First of all, Mr. Chairman --

MR. CHERRY: I will withdraw the question and ask it this way:

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BY MR. CHERRY:

Q In connection with the matters that Mr. Youngdahl wrote in his memorandum of Exhibit 29, which reflects what he told the Dow people, was he open and honest with the Dow people in connection with Consumers' real positions on those matters?

MR. ROSSO: I would object, now.

This clearly asks for this witness' impression of what another witness was thinking.

CHAIRMAN HOWELL: I think that is right.

BY MR. CHERRY:

Q Well, does that represent -- do you know anything in Exhibit 29, that does not represent your position as a member of the negotiating team?

Is there anything Mr. Youngdahl wrote in here that does not represent Consumers' position as you understand it?

(Handing document to witness.)

(Witness reading document.)

A As far as it relates to our position I have no general problem.

Some of the wording I might have done different.

Q What wording would you have done differently, Mr. Howell?

A Well, for instance, he is quoting or referring to Mr. Temple here. He says Temple indicated he recognized that

mm34

we had a valid, signed contract, which I agree, but in their opinion provisions in that contract had been violated.

I don't remember that coming out quite that way. I remember him acknowledging that we had a valid contract, so there is some differences.

Q You don't remember Mr. Temple telling Mr. Youngdahl that there was a breach of contract?

A No, I do not.

Q Then why did you put it in your prospectus, where was a possible claim of breach of contract.

MR. ROSSO: Just a minute, just a minute, just a minute. If he claims that it is in the prospectus, let him bring it out and show it to the witness so that the witness sees the precise wording in the prospectus.

Let's not just go characterizing the prospectus and then asking the witness a general question about it. Let the witness refer specifically to the document.

MR. CHERRY: Exhibit 28 that we had this morning.

MR. ROSSO: I know where it is.

(Mr. Cherry handing document to the witness.)

BY MR. CHERRY:

Q And that was in the year before the meeting.

MR. ROSSO: That may be a very relevant point.

THE WITNESS: Yes, it is.

mm35

BY MR. CHERRY:

Q So you have been on notification a long time about the claim by Dow.

That is interesting.

MR. ROSSO: You know, I really dislike attorneys giving evidence in a hearing, or trying to in these little byplays here.

And I ask the Chairman to put a stop to it, because you know there is always another interpretation to these points and there certainly is one here.

For example, that claim may have been dropped by Dow, but I am not going to say it was or it wasn't. Let's just keep the record straight, and let's keep these characterizations out.

And I wish the Chairman would rule on that.

I will shut up if he will shut up.

MR. CHERRY: If you say the claim was dropped, you might get hopped by Mr. Wessel.

CHAIRMAN COUFAL: I think Mr. Rosso is right, Mr. Cherry. Let's keep the editorial comments down, keep it out.

MR. CHERRY: Okay.

THE WITNESS: If I remember the question -- well, could I have the question where you asked about breach, and why did we put it in the SEC?

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MR. ROSSO: Can we have the question reread?

MR. CHERRY: You don't remember the question?

THE WITNESS: I would like to have it restated.

MR. CHERRY: Okay, I will withdraw. I don't want to go on. You can cover it on direct by your witness. If you can remember it, fine.

THE WITNESS: I think it leaves the wrong impression here.

MR. CHERRY: Well then you cover it with your witness on direct. I have certain things I want to do. If you can remember it, fine.

I will withdraw the question.

May I have the exhibit.

THE WITNESS: All right, I will do it generally from memory.

BY MR. CHERRY:

Q I thought you knew the questions, but you wanted them reread for reasons.

A No, I want the details.

But you talked about why didn't we put the breach in our SEC. And there was no breach and I read the pertinent language this morning from the SEC report. And all it says is:

"Dow has demanded that the company give adequate assurance that Dow can expect due performance

mm37

of the company's obligation to deliver steam from the Midland units on the schedule contemplated in the contract. In reply, the company has asserted that it is not in default of the contract obligation."

And then he goes on to say, that:

"If the company were found in default of its obligations. . ."

And I think that is what you have to do in SEC documents, is point out any possibility.

Q Mr. Howell, were you ever told by anyone that in your testimony at this hearing you should make an effort to have things read back so as to delay the hearing?

A No, sir.

Q Mr. Falahee ever tell you that?

A No, sir.

Q Did Mr. FALAHEE, to your knowledge, ever tell Consumers Power Company or Dow Chemical Company, anybody there that one of the advantages that Consumers had while construction was going on, was because they could drag their feet on the merits?

A Not to my knowledge.

Q Is Mr. Falahee the kind of man that would make those statements, to your knowledge?

A You are asking me what another individual would do.

Q Do you know who Mr. FALAHEE is?

mm38

A Yes, sir. I know Mr. Falahee, and I think he is a good man, whom I respect.

MR. ROSSO: Mr. Chairman, I don't know where this line of questioning is going. Is there something here to tie it up or anything?

It is totally irrelevant to any issue in this proceeding.

Objection to the whole line of questioning.

CHAIRMAN COUFAL: Overruled.

BY MR. CHERRY:

Q Mr. Howell, based upon the current contracts as you understand them, is the problem with unused nuclear power plant capacity that has been the subject of negotiations?

A Unused nuclear power plant capacity.

Q Yes.

A I guess I would like a little more clarification. Are you talking electrical capacity?

MR. ROSSO: I guess I belatedly thought of an objection here.

During what period of time?

BY MR. CHERRY:

Q During operations as presently proposed under the contract as presently executed.

MR. ROSSO: The question is -- I just want to be sure I have the question. The question is whether there

mm39

was any -- I'm sorry.

BY MR. CHERRY:

Q Discussion between Dow and Consumers about unused nuclear plant capacity that would result from the way the arrangement is presently structured.

MR. ROSSO: Is presently structured.

THE WITNESS: Yes.

BY MR. CHERRY:

Q Explain it to me.

A If I remember correctly, this was one of the number of factors that entered into the calculation of the steam rate.

Remember I said the other day there were a group of different items that we discussed, and some were pluses for Consumers and some were pluses for Dow.

I think what you are referring to is that we found that if steam to Dow was below a certain level, that even though we could get the full electrical capacity out, that there would be some unused nuclear steam supply system capacity. And it is restricted to a certain range.

end 6

BARB/ 7
harbl

1 Q Do you want to be a little more specific, Mr.
2 Howell?

3 A I will do the best I can.

4 The contract minimum for supplying steam to Dow
5 is 2 million pounds per hour and that was set because once
6 we get below 2 million pounds of steam per hour to Dow,
7 then it adversely affects the ability to generate electricity,
8 and that's why that figure was chosen.

9 Now as we get into some more of these calculations
10 we discovered rather recently that there is a range of both
11 2 million to something in the order, if I remember, 2.6 mil-
12 lion, where although you are penalized from the standpoint of
13 electrical production, you don't get the maximum efficiency
14 out of the NSS nuclear reactor.

15 Q Can you fix that problem?

16 A Yes, we can fix that problem by -- if Dow takes
17 above that amount of steam.

18 Q How much below that amount is Dow presently com-
19 mitted to take?

20 A They are committed right now for 2.4 million of
21 low pressure steam and 400,000 of high pressure steam. And
22 I believe the point I used was 2.6. That relates to the
23 low pressure steam, so the answer to your question would be
24 200,000 pounds per hour.

25 Q Have you asked Dow to increase their minimum?

barb2

1 A We have asked them to make an adjustment for
2 that in this given and take on the steam rates; yes.

3 Q Have they executed an agreement to that effect?

4 A No, they have not. That was part of the neg-
5 otiations which --

6 Q By the way, is the \$400 million, the \$100 million
7 down and the \$300 million as you go, part of your package
8 proposal right now?

9 A That was our last position, yes.

10 Q So it is part of your package now?

11 A Yes. That is correct.

12 Q Now what happens if Dow doesn't take any more than
13 2 million pounds of the low pressure steam? What will you
14 do with the rest of the steam that you are capable of gen-
15 erating?

16 A We won't generate it.

17 Q You won't generate it?

18 A No -- that's not -- you said if Dow didn't take
19 any more than the minimum?

20 Q Yes.

21 There is that possibility isn't there, Mr. Howell?

22 A Yes, sir.

23 Q I want to know why you would build such a big
24 plant if they wcn't come up on their minimum capacity. Who
25 are you going to sell it to? What are you going to do with it?

barb3

1 A We are talking about, I think, two different
2 things here. We came down to 2 million pounds, as I say,
3 use all that steam in electricity, generating electricity.
4 So that the full electrical generating capacity of that
5 plant will be utilized.

6 Q Now you are telling me that in Unit 1 which is
7 capable of generating the steam contemplated, that that plant
8 is so designed that you can use all of the steam above 2
9 million pounds, low pressure steam, to generate electricity
10 with the turbines and everything else, are large enough to
11 generate electricity?

12 A Yes; that's --

13 Q What would then be the total megawatts of elec-
14 tricity that you would get out of Unit 1 if you used -- if
15 Dow didn't buy any more than 2 million pounds of steam?

16 A Well, I can't tell you off the top of my head.
17 There is a whole bunch of different numbers for different
18 ranges. I believe it's about 564 megawatts.

19 Q Does Dow have an absolute commitment right now
20 on all of the steam that could be generated from Unit 1?

21 A Have they made a commitment?

22 Q No; no; are you contractually obligated to hold
23 all that steam, to your understanding, for Dow?

24 MR. ROSSO: Excuse me. I object to the question
25 as vague. I don't understand "all what steam."

p. 204

1 BY MR. CHERRY:

2 Q What Unit 1 is capable of generating.

3 MR. ROSSO: Total?

4 Mr. CHERRY: Yes.

5 THE WITNESS: I want to make sure I have it the
6 right way around; does Dow have the contractual right --
7 assuming proper notice periods, to buy the whole steam out-
8 put of the plant?

9 BY MR. CHERRY:

10 Q Do they have a hold on it, without a notice per-
11 iod.

12 A Without notice periods.

13 Q What?

14 A No -- here again, I want to be careful. I don't
15 understand the question.

16 Q Well, what I mean is, that if you wanted to sell
17 the steam above 2 million pounds to someone other than Dow;
18 you could?

19 MR. ROSSO: I guess I don't understand the ques-
20 tion either. I wonder if I could --

21 MR. CHERRY: What do you mean, "Either," are
22 you reading the witness' mind?

23 MR. ROSSO: Well, he looks a little puzzled, I
24 must say.

25 MR. CHERRY: No, he is just in trouble. But I

barb5

1 will unpuzzle him.

2 BY MR. CHERRY:

3 Q Mr. Howell, let me ask the question this way:

4 If Consumers Power Company does not give you any
5 more notifications than they have presently have, under
6 your understanding of the contract, -- I beg your pardon --
7 if Dow Chemical doesn't give you any notifications other
8 than the ones they presently have under the present arrange-
9 ments, if you decide to sell steam or generate electricity
10 with it, do you have to get permission first from Dow Chemical
11 Company?

12 A No.

13 Q You do not.

14 So you could theoretically sell the difference be-
15 tween 2 million pounds of steam and 4 million, which is
16 bought the capacity at low pressure rates, to someone other
17 than Dow under the arrangement.

18 A That doesn't necessarily follow from your pre-
19 vious question. You said sell or generate electricity.

20 Q Let's take steam first. Could you sell steam
21 without clearing it with Dow? Under all conditions?

22 A No.

23 Q You could not.

24 In other words, any time it is your understanding
25 that Consumers wants to sell steam from Unit 1 above 2 million

barb6

1 pounds, they first have to clear that with Dow?

2 A Yes, because Dow is indeed paying for that privi-
3 lege of having gotten that steam.

4 Q Is there a problem currently ongoing in negotia-
5 tions as to Dow wanting a hold on a certain amount of steam?

6 A I don't recognize the problem. I am not sure that
7 you have said enough so that I know what you mean.

8 Q Has Dow asked for some guarantee of performance of
9 the reliability of the plants with a monetary penalty payment
10 if the plants don't perform?

11 A You asked me: Is that currently their --

12 Q Have they ever asked for that?

13 A During some of the negotiations in the past,
14 there have been discussions on those as many other ideas
15 that have come and gone. It is not presently, as I remember,
16 part of -- well, it is not presently a part of what they are
17 seeking in negotiations.

18 Q Has Dow ever indicated to you that they wanted
19 a penalty for nonperformance of the steam supply system?

20 A I believe that that was the question I just an-
21 swered. Yes; in the past there have been discussions of
22 that.

23 Q How far past was it?

24 A I don't remember exactly. It could have been a
25 year ago.

barb7

1 Q Has Consumers Power Company ever indicated either
2 internally or to Dow Chemical that they hoped the negotiations
3 with Dow Chemical would be finally completed before these
4 hearings started?

5 A Yes; I believe we said that.

6 Q And what was the reason that you had for that
7 position?

8 A The reason for that position was that we wouldn't
9 have to get into all of the stuff that we have gotten into
10 here.

11 Q I would -- I appreciate you wouldn't have to get
12 into it, but was Consumers generally concerned that the
13 situation as presently exists between Dow and Consumers, such
14 as it is without characterizing it, would impair Consumers
15 ability to continue the construction permit?

16 A You mean vis-a vis the negotiations?

17 Q Vis-a-vis the situation presently existing between
18 Dow and Consumers? Did Consumers ever indicate that one
19 of the reasons they wanted that situation repaired was be-
20 cause the way it exists now, it could impair your ability to
21 continue the construction permit?

22 A I don't remember it in that light. The point was
23 that we were in negotiations when the Court of Appeals order
24 came down and their question of Dow's relationship in terms
25 of steam and so on and so forth, and it seemed logical and

parb3 1 sensible that if we would conclude those negotiations then
2 there would not be the sort of question open as to what the
3 negotiations would eventually come out.

4 I wasn't being entirely facetious. You have asked
5 a lot of bits and pieces of which negotiating position --
6 it was our opinion that if we could have wrapped that up,
7 it would have made things -- this would have been it and
8 there wouldn't have been any question about where the parties
9 stood.

10 Q Do you agree that in the absence of wrapping it
11 up, there is a major uncertainty hanging over the future
12 of this project?

13 A No, sir; I do not.

14 Q You do not.

15 A Because as I have stated before, there is a con-
16 tract in existence. This is not a matter of negotiating the
17 contract.

18 Q You don't think there are any major uncertainties
19 at all?

20 A We are talking about points of negotiations which
21 either party can say: I don't want to negotiate any fur-
22 ther, or you can agree to negotiate. But there is a basic
23 contract.

24 Q What if Dow Chemical pulls out and sues you? Do
25 you consider that an uncertainty today?

Barb9

1 A Do I think it is within the realm of possibility
2 that Dow could pull out and sue us?

3 Q Yes.

4 A I suppose if you make the range of possibilities
5 broad enough, yes; that's --

6 Q Do you consider that a reasonable possibility?

7 A In my opinion, no.

8 Q Would you be interested to know that Mr. Czrefica,
9 President of Dow U.S.A., disagreed with you.

10 MR. ROSSO: I object. I think that is charac-
11 terizing Mr. Czrefica's testimony, number one.

12 And number two, it is an argumentative question.
13 I mean, if this witness was not allowed to know anything that
14 Mr. Czrefica said and if Mr. Cherry now wants to characterize
15 it, it just doesn't get us anywhere, Mr. Chairman.

16 Mr. Cherry is now characterizing what Mr.
17 Czrefica said and asking the witness would it interest him?
18 Now where does that get us in the proceeding?

19 CHAIRMAN COUFAL: I guess during your argument
20 you can point out the inconsistencies, Mr. Cherry.

21 THE WITNESS: You did ask my opinion as to whether
22 I thought it was reasonable -- whether I thought it was
23 feasible?

24 BY MR. CHERRY:

25 Q Sure.

barb10

1 Was there ever a question discussed at Consumers
2 Power Company that the Nuclear Regulatory Commission might
3 not permit the plant to operate at the design levels it is
4 currently designed as, you know, assume you build it and
5 ev anything else, that the Nuclear Regulatory Commission
6 might not permit you to operate it at the levels currently
7 contemplated?

8 A Not that I know of. I don't know what you mean.

9 Q Is it true that that the Nuclear Regulatory
10 Commission might not license the Midland plant to operate at
11 2568 megawatts until a year or two after operation at levels
12 of 2468 megawatts? Is that a true statement?

13 A I don't know.

14 Q You don't know.

15 A You are reading some numbers, and I just --

16 Q I will read them slower.

17 A No, I don't know what the numbers relate to, so --

18 Q Operation of the Midland plants, combined opera-
19 tion.

20 MR. ROSSO: Mr. Chairman, I suggest if Mr. Cherry
21 wants to question this witness about something that's
22 contained a document he should ask if he has seen the docu-
23 ment and ask him if he knows the subject matter of the
24 document. That is the way to do it and not just stand there
25 without any reference to the document.

barb11

1 BY MR. CHERRY:

2 Q Do you want to write down the numbers so that you
3 at least have them in mind? The numbers are 2368 megawatts
4 and 2468 megawatts. And they refer to full operation, both
5 Midland units.

6 And the question is: Do you know if the Nuclear
7 Regulatory Commission and Consumers, or Consumers itself,
8 has considered the possibility that the Nuclear Regulatory
9 Commission might not let the Midland units operate at that
10 higher figure until some operation at the lower figure.

11 MR. ROSSO: I will object to the question as
12 irrelevant.

13 CHAIRMAN COUFAL: What is the relevance, Mr.
14 Cherry?

15 MR. CHERRY: Well, it goes to the cost of the
16 plant. I mean, if there is an outstanding discussion right
17 now between the Nuclear Regulatory Commission and Consumers
18 as to whether or not the plant can operate at its design
19 capacity, it seriously impairs the cost-benefit analysis.

20 Let's say that they want to build it at 2500
21 but they can only operate it at 1400. You don't think that
22 is relevant?

23 CHAIRMAN COUFAL: I don't know. I am trying to
24 find out. I am asking you to state it.

25 MR. CHERRY: That just about doubles the cost of

barb12

1 those figures of building the plant. You can build it at
2 \$4 billion.

3 Let's say, for example, that want to build a plant
4 for \$1 billion and it is supposed to operate at 100 percent
5 capacity; okay?

6 And then it only operates for some restriction,
7 at 50 percent capacity. What is real cost of that plant?
8 \$2 billion? Or something close to \$2 billion, because it
9 is costing twice as much in capital cost to generate half
10 of what it was originally designed.

11 If you go out and pay for a Cadillac but get
12 a Cheverolet, are you not paying more for that Cheverolet?

13 MR. ROSSO: Mr. Chairman, it is standard operating
14 procedure to take these plants up gradually, as I understand
15 it, and I am certainly no expert on it.

16 MR. CHERRY: Then don't give evidence. Now
17 here he was accusing a lawyer of giving evidence. Now don't
18 tell us what standard operating procedure is after a con-
19 versation with Fourtellotte.

20 CHAIRMAN COUFAL: Mr. Rosso.

21 MR. ROSSO: I am not doing anything; I don't
22 know why you yelled at me. He was the one that interrupted
23 me. I was just explaining what my objection to the question
24 was and why I didn't think it was relevant to the cost-bene-
25 fit analysis.

barb13 1 MR. CHERRY: Don't tell me what standard operating
2 procedure is.

3 CHAIRMAN COUFAL: I have lost track of the question
4 whether they are going to be licensed at lower levels than
5 its design capacity?

6 MR. CHERRY: That's right.

7 CHAIRMAN COUFAL: And you say that is relevant
8 because it goes to the cost --

9 MR. CHERRY: Cost-benefit analysis.

10 CHAIRMAN COUFAL: Are you talking about the re-
11 lationship between Dow and Consumers or are you saying that
12 there is going to be a reduced amount of capacity of either
13 electrical energy or steam?

14 MR. CHERRY: Both. It goes to the need for power
15 as well as the cost-benefit.

16 I am talking about the total generation at Midland
17 in both units.

18 MR. FOURTELLOTT: Mr. Chairman, I can understand,
19 I think the relevance of the thrust of what Mr. Cherry is
20 after. The only problem I have with his question is so far
21 we don't have indication of what time he is talking about
22 or what circumstances he is talking about. And it makes it
23 very difficult, it seems to me, to have any kind of meaningful
24 answer with that kind of a question.

25 If we had the question perhaps defined in terms of

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1 some particular point in time or some span of time when the
2 plant is operating and the conditions that perhaps Consumers
3 is postulating it is going to operate, that may be some-
4 thing different from what there is good reason to believe
5 actually will happen.

6 That is a different thing, but stated in broad
7 terms, I personally have a lot of difficulty with saying
8 that we are going to get any kind of a material or competent
9 answer.

10 MR. BOSSO: Which was the point of my objection
11 sir, at the initial stages it is natural to be at a lower
12 capacity.

13 DR. LEEDS: I thought the question -- and I am
14 trying to remember back that far -- was does this witness
15 know of any --

16 MR. CHERRY: That's right; that was the question.

17 DR. LEEDS: -- and "any" means from the beginning
18 to the end of the plant.

19 MR. CHERRY: That's right.

20 DR. LEEDS: And it is a question of whether the
21 witness does or doesn't know.

22 Why couldn't he answer.

23 CHAIRMAN COUFAL: All right.

24 Dr. Leeds has persuaded me. Go ahead and answer
25 if you can.

1 THE WITNESS: My problem was on the numbers. He
2 was reading some numbers which I have written down here, but
3 I am not sure what they relate to. I think probably I do.
4 Let me -- this plant has got a design rating which I will --
5 I will have to check it but I believe it is the lower of
6 these two numbers.

7 And to my knowledge, that is the rating for which
8 the plant is designed and will be built. And I am not aware
9 of any problems with the HRC in operating at that level.

10 Now there is common in these plants the so-called
11 stretch where after the plants have operated and you have
12 got some basis that there is some capacity, to go higher.
13 And that is probably the higher number. And of course, that
14 comes -- you get into licensing situation with that.

15 But to my knowledge, the design capacity and the
16 design capacity that is assumed in the cost-benefit report,
17 there are no problems in that.

18 BY MR. CHERRY:

19 Q Mr. Howell, that \$2 billion figure which was
20 constructed earlier for Dr. Lewis which is roughly the
21 \$1.5 plus \$500 million; do you recall that discussion this
22 morning?

23 A I recall the discussion; yes.

24 Q Do you know whether Dow Chemical has ever treated
25 that figure seriously enough to analyze its in alternate

1 energy capacity, given \$2 billion for the nuclear plant?

2 A As I stated this morning, we told that number to
3 Dow. And I am not aware personally that -- you better re-
4 state that question again.

5 Q Do you know whether Dow has considered what \$2
6 billion figure seriously enough so as to have included it in
7 an analysis of what that would mean if invested in an alterna-
8 tive for them; in other words, their share of the \$2 billion
9 plant, if invested in a coal plant, would give them X return;
10 do you know if that analysis has -- was ever made by Dow?

11 A I am not aware of an analysis by that path of
12 events. I know that they have done some analysis on nuclear
13 plants as well as other plants. But I am not aware that it
14 was triggered by the \$2 billion or related to it.

15 Q Do you know whether Dow considers the \$2 billion
16 a reasonable estimate in the sense that it is as likely as
17 not that that will occur?

18 A I don't know.

19 Q You don't know.

20 Mr. Howell, there was a \$1.4 billion figure float-
21 ing around. Can you identify that for us, what it had to
22 do with the Bechtel 1 forecast? I know that the \$1.123
23 figure was Bechtel's and then it went up to \$1.67
24 based on Consumers input. What was the \$1.4 billion figure?

25 A The \$1.4 billion figure was Consumers total cost

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1 prior to the revision of the \$1.67.

2 Q Prior to the \$1.67.

3 What was Bechtel's cost prior to the \$1.4 figure?
4 In other words, what did you add to it to get the \$1.4?

5 A I can't tell you that from memory.

6 Q Is there anything else that you could look at
7 and tell me; anything here you could look at and tell me?

8 A Not that I can go right to. There may be some-
9 thing in my files, but it would take me awhile and I am not
10 sure that it is there.

11 Q I think I got something here.

12 A Okay.

13 (Handing document to witness.)

14 End 7
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Does that help, Mr. Howell?

A That doesn't help answer your question, because you asked for the Bechtel portion.

I guess I could back into it, yes.

Q It does help or it doesn't?

A Just a moment.

(Witness reading document.)

It doesn't give the number you're asking for.

Q But you can compute it?

A I think so.

Q Would you like a calculator?

A No. I can use a pen and paper.

(Witness performing calculation.)

I'm ready to answer your question.

Q What is it?

A I've computed \$25 million was the Bechtel portion of the 1.4. Somehow that doesn't ring quite right, but it's close.

Q So to the last two increases by Bechtel Consumers has added approximately half a billion dollars each?

A Half a billion what?

Q Half a billion dollars. After each of the two increases by Bechtel, Consumers has added on half a billion dollars.

A Approximately. This time it would be a little

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less -- 400, 475, if my 925 is correct.

Q. What was the total price of the plant before the 1.4 billion, immediately prior, the last hard estimate?

A. 1.4 billion.

I believe it was \$940 million.

Q. How much of that was Consumers' money?

A. I've got the same problem. I don't remember.

Q. Is it in the figures I gave you?

A. I don't believe it's here, Mr. Cherry.

Q. You told me that of the \$90 million increase -- that's Consumers Power Company's suggested increase by Bechtel?

A. Yes.

Q. How much of that money is to maintain the existing schedule of '81-'82?

A. \$30 million.

Q. Has the Board of Directors approved the expenditure of the \$30 million yet?

A. No, sir, they have not, nor have I recommended that they do.

Q. So that at the moment you have a Bechtel estimate that says in order to meet the 1981-82 schedule you have to spend another \$30 million, you haven't analyzed whether or not that's correct, and the Board of Directors has not authorized the expenditure of that additional \$30 million,

Is that correct?

A. That is correct.

Q. Would a good deal of that \$30 million be spent, or a portion of it have to be spent, over the next nine or ten months?

A. No, it would not. It would be later, if we had manpower problems.

Q. If Consumers Power Company agrees with the Bachtel figure, will they authorize the \$30 million?

A. If we agree and I recommend it and the Board approves it, that would make authorization.

Q. That wasn't what I asked you. I said given the fact that Consumers has no dispute that it will take an additional \$30 million to maintain the schedule without more, are you certain that the Board of Directors will approve it?

MR. ROSSO: I object, Mr. Chairman. I don't think that's a proper question. It calls for speculation on the part of the witness.

CHAIRMAN COUFAL: You can ask him if he has any information, Mr. Cherry.

MR. CHERRY: I'm asking him if in his judgment that fact will guarantee approval by the Board of Directors.

MR. ROSSO: Objection.

CHAIRMAN COUFAL: And that's the question that I find objectionable.

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MR. CHERRY: Why? I want to find what the input is to the Board of Directors decision on that particular issue.

CHAIRMAN COOPER: Well, why don't you ask him that?

BY MR. CHERRY:

Q Is there any other input that you can think of to immediate Board approval of that \$30 million, other than the fact that you agree it's necessary to maintain the schedule?

MR. ROSSO: I'm sorry?

BY MR. CHERRY:

Q Is there any other consideration you can think of that the Board would consider before approving the \$30 million increase?

MR. ROSSO: I have to object to the question. It's vague. I'm sitting here trying to figure out what it means, and I don't understand it.

MR. CHERRY: All right. Let me back up again, Mr. Rosso.

BY MR. CHERRY:

Q \$30 million, Bechtel says, to maintain the schedule.

A Yes.

Q Consumers agrees that it will take \$30 million to

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maintain the schedule.

MR. ROSSO: That's an assumption.

MR. CHERRY: Yes, Mr. Rosso.

MR. ROSSO: Thank you.

BY MR. CHERRY:

Q Okay, given that assumption, what other considerations, if any, in your judgment will the Board of Directors consider before approving or disapproving that expenditure of \$30 million?

A Given that it's a correct number, given that we agree it's a correct number and near zero?

Q No, no --not necessary. Just that you think it's a correct number in order to do what Bechtel says it's going to do. I don't know what this "and necessary" means.

MR. ROSSO: Do you understand the question?

THE WITNESS: Not fully, no, sir.

MR. CHERRY: Let me try again.

BY MR. CHERRY:

Q Bechtel has stated it will cost \$30 million to maintain the present schedule, okay? I want you to assume that Bechtel's statement is correct and there is no overlap in any of your \$477 million.

Would that assumption automatically mean that Consumers' Board of Directors will authorize the increase?

A No.

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Q No.

MR. CHERRY: I hope you got the relevance of that, Mr. Rosso.

MR. ROSSO: I don't think it means a damn thing, if you want my opinion.

BY MR. CHERRY:

Q How about these monthly trends? Have September 1976, have the monthly trend sheets been going up or down? That's these financial monthly trends from Bechtel.

MR. ROSSO: Mr. Chairman, I guess I have to object to that.

You've got a forecast which is dated after September 1976.

MR. CHERRY: That's not my question. My question is as of September --

CHAIRMAN CONYER: Let him finish his objection, Mr. Cherry.

MR. ROSSO: No, it's not, Mr. Cherry. That's what I'm objecting to.

You've got a forecast. The question is now, it seems to me, what's happened since the forecast rather than going back into the inputs into that forecast.

You've come down to a forecast, which the witness has fully testified to in response to Dr. Leeds' questions. The prior ones are irrelevant at this point.

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CHAIRMAN COUFAL: What trends are you talking about, Mr. Cherry? I've lost track of the question.

MR. CHERRY: The witness has testified earlier in connection with a conversation with Dr. Leeds, and I'm aware that Bechtel provides to Consumers Power Company monthly trend sheets.

He's discussed them, about their going up and down and what they entail. It is those monthly trend sheets I'm talking about.

I want to know whether the trend has been up or down beginning in September 1976. That's all I want to know.

MR. ROSSO: What I'm saying, sir, is it isn't relevant what the trend was prior to December, because all of those have been incorporated into the December forecast. They have been factored into the December forecast.

The question that is relevant is whether there has been anything that happened after that.

MR. CHERRY: Mr. Chairman, Mr. Rosso is telling you something that's not of record. The Bechtel forecast number was given in August 1976, and it was formalized in December. You can read it: it says "of August '76."

DR. LEEDS: Let's find out, if you will, Mr. Cherry, from the witness.

Ask him, if you will, for me when the forecast -- what was the last trend sheet that was incorporated in the

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forecast? If it's dated in August, it may have even been earlier than that; so I think it's important to find out what time frame you're talking about here.

BY MR. CHERRY:

Q Mr. Howell, do you want to answer Dr. Leeds' question? Maybe he'll get a straight answer.

A To the best of my understanding, all the trend reports were incorporated into Forecast 2 save the one which has come out since Forecast 2.

DR. LEEDS: But I don't know what is "since Forecast 2."

THE WITNESS: There has been one out since Forecast 2. Forecast 2 was received by us December 13, and there has been one, I believe, trend report since then. All the ones prior to that were incorporated.

DR. LEEDS: Thank you.

BY MR. CHERRY:

Q Mr. Howell, does that one monthly trend sheet after Forecast 2 show an up or down trend?

A It shows down.

Q A down trend.

Would you go to the Bechtel forecast and tell me what date it's dated as of, because I don't believe they included trend sheets past May of 1975 -- '76, I beg your pardon.

(Witness reviewing document.)

CHAIRMAN COUTAL: How much more do you have, Mr. Cherry?

MR. CHERRY: Not much more.

CHAIRMAN COUTAL: Mr. Rosso, do you have quite a lot?

MR. ROSSO: I don't think we'll have very much at all. I'd like to have just a few minutes with the witness after he is through to talk about whether we will have anything.

CHAIRMAN COUTAL: Do you have someone who can dig through that box of documents that you handed us this noon and cull out the ones that are listed on the yellow sheet?

MR. ROSSO: I'm the only one here.

CHAIRMAN COUTAL: Can you get somebody?

DR. LEEDS: We looked at that, and it looked like what you gave us was all of them.

MR. ROSSO: I guess that's what Mr. Raffrow told you today.

DR. LEEDS: I didn't really understand it. I thought he gave us all of the ones that he was arguing with.

MR. ROSSO: I think what he said was he gave you back -- and I'm not sure, because I haven't gotten involved with this -- but the designations, he put them back in

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exactly the same order they were in before so you could go to the designation, go to the index sheet with the designation on it, and pick the document right out. He kept them in the same order.

Is that not satisfactory? I'll tell you what I can do if that isn't. I can take them back to the office with me, make Xerox copies with the yellow sheet -- I take it you already have the indices, right?

DR. LEEDS: The original indices are in there. I'd sort of like those back for our purposes.

He gave us copies. I'll be glad to give you the copies back.

MR. ROSSO: Okay. You want the original index, you want the yellow sheet, you want copies of all of the documents that are still in question.

If I could do that after the hearing adjourns -- if we don't go too late -- and have somebody deliver it to you wherever you're staying, would that be satisfactory?

CHAIRMAN COUFAL: Yes. We want to get it out; we want to get rid of it. We've had it forever.

DR. LEEDS: We're at the Palmer House.

BY MR. CHERRY:

Q Is it going to take you a while?

A I'm ready. Whose question was I answering?

Q Mine.

11

Where are you reading from?

A. I'm reading from Forecast No. 2, Bechtel's Forecast No. 2, page 1-1.

"The engineering scope reflected in this forecast is based on information as of August 1976."

And later, on the same page, it says:

"Since Forecast 1, the total increase was reported to Consumers via the trend program."

Q That hardly states that all the trend sheets through December 1976 were included. It just says that the increase has been previously reported to you via trend sheets but that the Bechtel forecast as it now speaks is of August 1976, correct, and not any later?

A. That is correct. And all known trends save the last one have been included in that Forecast 2.

Q Where does it say that, the language you just said, "all known trends"?

A. That was my own language.

Q I don't want your language. I want to know where it's in the report.

MR. ROSSO: Just a minute.

MR. CHERRY: Which sentence are you pointing to?

MR. ROSSO: Excuse me.

Mr. Chairman, the witness has been put up here. He's the vice president in charge of reviewing the forecast.

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He has stated that the forecast includes all trend reports except the last one, which came out after the forecast; and I submit that that's as far as he has to go on this.

The record is clear. The man is testifying from his own knowledge.

BY MR. CHERRY:

Q I want to ask you a question, Mr. Vice President:

When you get a forecast which says, "The engineering scope reflected in this forecast is based on information as of August 1973," would you consider that that would include a September 1973 trend sheet?

A If the September date --

Q No, no. On the basis of that statement, just that statement.

We'll go on to the next one.

MR. ROSSO: Objection. Argumentative.

CHAIRMAN COUFAL: Answer the question, and then explain your answer if you have to, Mr. Howell.

THE WITNESS: Yes, I would, because I know some of the background.

BY MR. CHERRY:

Q Based on that statement, you would.

A Based on that statement and my knowledge.

Q I didn't ask you your knowledge. I asked you just the statement. We'll get into your knowledge in a

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minute.

CHAIRMAN COUFAL: He's answered the question now, Mr. Cherry.

MR. CHERRY: No, he didn't. He said based on his knowledge and that statement, and I want to know if based on that statement he would believe that it covered a trend sheet in September.

CHAIRMAN COUFAL: I'm going to sustain the objection to asking that question within those limits. I think he's answered the question as well as he can. I don't know what we're accomplishing by beating that to death.

MR. CHERRY: Okay.

BY MR. CHERRY:

Q Now, it starts out by saying, "The engineering scope reflected in this forecast is based on information as of August 1976," right?

A Right.

Q You would agree with me that that is a statement of a bounding parameter as to engineering scope?

A Yes.

Q All right.

Then it says, "Synopsis: Since Forecast 1"
What was the date of Forecast 1?

(Witness reviewing document.)

A May 1976.

Q Okay.

A Which was based on --

Q '77?

A Yes.

Q Okay.

A Which was based on information as of February 1976, as this is the December date on the forecast based on information as of August.

Q Yes, it says right on his report "December 1976 (August 1 cutoff)."

A Yes, sir.

Q And you're saying that, even though the report says August 1 cutoff, it nonetheless includes material, trend sheets, through December 1976? Is that your testimony?

A It includes trend sheets which would be dated through September.

Q All right.

MR. WESSER: Did you say September or December? I thought he said September. I don't know if it was December or September.

CHAIRMAN CUFAL: I agree with Mr. Wessel. I thought he said September.

Did you say September?

THE WITNESS: Yes.

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BY MR. CHERRY:

Q So it does not cover October, November, and December trend sheets?

A It includes those others, as I said before.

Q So it covers trend sheets of September, October, November and December?

A I'm not sure about December. It would be the ones that were before the issuance of Forecast 2, which was issued in December.

Q Can you show us any reference in here, other than that page 1, to a trend sheet or any information past August 1976 in the Forecast?

MR. ROSSO: Mr. Chairman, the witness has stated that to his knowledge it does include the trends through December, the date that the forecast was issued. We're beating a dead horse, sir.

The record is clear on this. I submit we ought to get on with something else.

MR. CHERRY: But the forecast was not issued in December. It was dated December. It was issued as of August 1976.

THE WITNESS: No, that is not correct.

MR. CHERRY: It isn't?

THE WITNESS: No, sir.

CHAIRMAN COUFAL: We're getting a lot of gibberish

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here because that thing is not in evidence.

Is it ever going to go in? Is anybody going to offer it? It isn't going to mean much to anybody?

MR. CHERRY: I'm going to offer the first page of it.

MR. ROSSO: We'll offer the whole thing in evidence. We'll offer Forecast 2.

BY MR. CHERRY:

Q Does the cover page say August 1, 1974, cutoff?

MR. ROSSO: Mr. Chairman, this question has been asked. It's clear he's arguing with the witness.

The witness' testimony is clear that that forecast includes the trend sheets up to and including those which would have appeared before the December 13th date. He's stated that at least eight or nine times in this record. He's just arguing with him.

CHAIRMAN COUFAL: Lou's mark it and get it in.

DR. LEEDS: The whole thing, right?

CHAIRMAN COUFAL: Yes, the whole forecast, not just the first page.

We know what the testimony of the witness has been. Whether the document bears that out or not is something that we can speculate on.

THE WITNESS: Can I attempt maybe to clarify?

CHAIRMAN COUFAL: Yes, sir, I wish you would.

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THE WITNESS: Remember when I talked about our review of the forecast and the review of all these line items; it took some time.

Now, what they have to do to put together this forecast, or any estimate, is you can't instantaneously say, "I'm going to take today's data and today issue the report." You've got to have someplace to cut off the information; you've got to freeze it at some point in time -- what the design status is and so on and so forth -- and then do your calculations to come up with your estimate.

The confusion that's introduced here for these two dates is that August is the cutoff date. That's when we froze the information, when Bechtel froze the information, and did their review and preparation of this forecast, which is dated December.

Now, we've confused the issue by these trends, but there's a lag time on them, too. So it's my understanding that this forecast includes the known trends up to the time it was issued.

BY MR. CHERRY:

Q Mr. Howell, let me ask this: Is it possible that the December trend also is based on August information?

A The December trend -- yes, I imagine it may be possible.

Q Is it true? In other words, are you telling me

it is

that if they freeze it as of August it takes them six months or so to get together information, including trend information, but it all speaks as of August 1976, is that correct, even though the trend sheets themselves might have a December, October, September dating?

A I'm not sure. I don't think that's necessarily true, because the trend would be on things that were currently known about, changes.

DR. LEEDS: Mr. Rosell, excuse me, Mr. Cherry, for interrupting.

MR. CHERRY: Sure.

DR. LEEDS: Do the trend sheets include -- if I looked at a trend sheet -- I've never seen one. I don't know what it looks like. Would it include this month's, this last month's expenditures in labor, stuff that came in that I paid invoices on?

THE WITNESS: No, it would not.

MR. CHERRY: Could we see a trend sheet if you have one?

THE WITNESS: I don't have one with me.

CHAIRMAN COUFAL: Mr. Rosse, you said you were going to offer the document. Let's get it marked so we'll know what document we're talking about.

MR. CHERRY: Would you mind asking for the last six or seven months trend sheets? You'll get them a lot

quicker than I will. I'll promise to look at them.

DR. WESSER: I thought you said you had seen them.

MR. CHERRY: I've seen reference to trend sheets. I have not seen the trend sheets themselves.

MR. ROSSO: Mr. Chairman, we haven't gone through to make sure this is a clean copy -- in fact, I see that it isn't.

CHAIRMAN COOPER: Let's identify it and give it a number, and you can substitute a clean copy.

MR. ROSSO: All right.

This is a document entitled "Job 7220, Midland Units 1 and 2, 1-506 megawatt electric and 1-335 megawatt electric (nominal), PWR Nuclear Units for Consumers Power Company, Jackson, Michigan, Project Costs and Schedule Forecast No. 2, December 1976."

I would ask that this document be marked as Licensee's Exhibit No. 30.

MR. CHERRY: You owe me a 30. You owe everybody a 30 from yesterday.

(The document referred to was marked Licensee's Exhibit No. 30 for identification.)

CHAIRMAN COOPER: Is there objection to receipt of that document in evidence?

MR. WESSER: No objection.

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MR. HOEFLING: No objection by the Staff.

CHAIRMAN COUFAL: It will be received.

(The document previously marked Licensee's Exhibit No. 30 for identification was received in evidence.)

CHAIRMAN COUFAL: You will supply us with a clean copy, right, Mr. Rosso?

MR. ROSSO: Yes, I will.

MR. CHERRY: Mr. Rosso, will you produce today or tomorrow the last trend that go back to 1976, and this year if there are any?

MR. ROSSO: Can I confer with the witness for a moment?

MR. CHERRY: Sure.

(Confering.)

MR. ROSSO: Mr. Chairman, we don't have any objection to providing some trend sheets. I wonder if Mr. Cherry could be more specific exactly as to what he wants?

MR. CHERRY: How big are they? A couple of pages?

MR. ROSSO: A couple of pages.

MR. CHERRY: I'd like them for '74, '75, '76 -- the beginning of '74 to the present.

MR. ROSSO: Mr. Chairman --

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THE WITNESS: I can solve that problem.

The Chairman asked about the forecasts. They only started leading up to the forecasts, so there are less than --

MR. CHERRY: Give all of them. What are there -- about a dozen?

THE WITNESS: I guess about a dozen.

MR. CHERRY: Two pages each? I'd like to see them all.

MR. ROSSO: They're in Jackson, sir, which means that we'll have to get somebody to call up there, get them copied, and bring them down.

It will certainly not be the first thing tomorrow morning that will happen. We'll get them here as soon as we can.

CHAIRMAN COUFAL: Thank you.

It's a quarter of 4:00. Do you want to take a break?

MR. CHERRY: I have one other question.

BY MR. CHERRY:

Q Mr. Howell, when the Board of Directors -- I take it you presented financial matters to the Consumers Board of Directors on these various approvals?

A I presented the budget for major projects, yes, sir.

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Q What considerations does Consumers Power Board of Directors consider in approving budgets for the Midland project, for example, or for any project -- but let's just take the Midland project as an example?

A What I was looking for is I believe there is a copy of the extract of the minutes of the Board of Directors in which I presented the Forecast 2 in August 1976. It lists those things that I explained to them and showed them.

MR. ROSSO: I'm sorry. I believe the witness misspoke. Could we have his answer read back?

(Whereupon the Reporter read from the record as requested.)

THE WITNESS: Mr. Rosso. I said Forecast 2 in August of 1976. It should have been Forecast 1. I have not yet presented Forecast 2.

BY MR. CHERRY:

Q Mr. Howell, does Consumers Power Company have construction projects which are ongoing along with the Midland project?

A Yes, sir, they do.

Q When the Board of Directors determines whether or not to authorize funds for one project, does it consider priority of funds and whether or not they will allocate it all for one project or divide it among the several projects? Is that a consideration?

Q Yes, I think it's probably implicit in their decision.

Q How many projects do you have right now besides the Midland?

A There are -- It's hard to say because there are a number of projects that I'm responsible for. I think you're relating to the major ones, generating plant projects. Is that correct?

Q Or major transmission line projects.

A Major generating plants, we've got two others besides Midland currently.

Q Which ones are they?

A They're the Kern project and the Campbell 3 project.

Q What's the cost of each of those as of today, projected cost?

A The projected total estimated cost of those two projects -- Campbell 3 is \$310 million, and the Kern project, which is Kern 3 and 4, is, I believe, \$240 million.

Q Now, of that approximately \$550 million, has all of that been spent, or would you say only a small portion of it has been spent?

A A large portion has been spent on the Kern project, in excess of 90 percent. A small portion of the Campbell project -- I would say less than 10 percent.

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Q Would the Campbell project be competing for funds at the same time with the Midland project?

A In the sense that they will be built and financed during the same time frame, the answer is yes.

Q So when the Board of Directors is considering authorization of the budget, they will consider these competing construction projects, along with other considerations?

A That's correct, and there are numerous other things that go to make up the capital budget of the company.

Q But when they consider the priorities of whether they'll spend money here, here or here, they have to consider the demands from all places or projects within the company and set a priority for those?

A They have to consider all projects. Implicitly I guess there is a priority set.

Q And wasn't there a time when the Midland project was given second priority to other construction projects?

A Second priority?

Q In the sense that all funds, some funds, were diverted from Midland into other projects.

A No, I don't think that's a correct characterization.

Q When the Midland project was slowed down because of financing problems, you could have continued the Midland project if you'd pulled money off the Marysville Plant or

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the Warn Plant or the Campbell Plant.

A. No, I could not.

Q. You were in such bad shape that you couldn't stop all other construction and still continue Midland, is that correct?

A. The dollars available from those other projects were not sufficient to restore Midland to the full projected cashflow for that year.

Q. Mr. Howell, do you remember the question I asked you that in the \$30 million necessary to maintain the schedule, was believed by Consumers to be necessary to maintain the schedule? Do you remember that question?

A. I remember the \$30 million. As I remember, you said did we make the assumption that we agreed that the \$30 million was the correct figure to maintain schedule. That's my memory of what you said.

Q. Right. And I said, if you made that assumption, would the Board automatically approve the expenditure. You said no.

A. That's correct.

Q. What other considerations would the Board consider besides that, the correctness of that assumption?

A. What I was thinking of when I said no was that all the considerations have to be looked at. My recommendation presumably would be one of the considerations that

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they would incorporate in their decision, whether or not I recommended it.

Q And you don't know whether you're going to yet because you haven't made the analysis?

A That's correct.

MR. CHERRY: I have no further questions.

CHAIRMAN COUFAL: All right. Let's take 15 minutes -- wait a minute. Dr. Leeds has a question.

EXAMINATION BY THE BOARD

Q Mr. Howell, before we take the break I'd like to ask you a quick question.

A Yes.

Q I think Mr. Cherry asked you roughly how complete the plant was. I think you responded roughly 20 percent, the Midland Plant.

A He asked, if I remember, what percentage of construction was done.

Q Okay. Is that different from completion?

A Yes, sir, because when we speak of percentage completion of the plant it's usually some weighting of engineering, procurement and construction.

The engineering -- don't hold me to the exact number -- is in the high 60s, 65 percent complete. The construction, bricks and mortar, is in the neighborhood of 20.

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Q And presently the schedule is, if I remember correctly, something like in '82, March of '82 or something like that, for both plants?

A No. The first unit, which is the all-electric unit, is scheduled for March of 1981. The second unit, which is Unit 1 and the steam unit, is scheduled for March 1982.

Q Okay. So the plant would be complete in '82, then- March of '82?

A That's right, the plant.

Q That's roughly five years.

A Yes, sir.

Q Five years and three months. So that's like 30 percent in five years, which is like 16 percent per year on the average construction.

Is that a typical construction schedule to complete a plant that's 20 percent finished now, to take 16 percent per year?

A Well, that is what is a realistic schedule in this case. In other words, it's not slower or not faster than what you would look at in constructing a plant.

Now, there are differences. Plants have been built faster in the past under different conditions. This plant does have different conditions from the standpoint of, for instance, a lot of the material, because the plant has

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dragged on so long due to the delays and such by hearings and permits, that a lot of the material is available, a lot more of the equipment is available earlier than it might have been in a normal construction project.

Q. So this is faster than a normal construction project?

A. No. I don't know what you mean by "normal."

MR. ROSSO: Mr. Leeds, can I ask a clarifying question?

THE WITNESS: This March of '83 date, is that the commercial operation date or the date on which the construction ends?

THE WITNESS: That's the commercial operation date.

MR. ROSSO: What's the date on which construction ends?

THE WITNESS: It would be -- the fuel loading date is the previous fall, November of '80, so essentially the plant would have to be complete in some time well prior to that, because you have to go through your pre-operational testing.

So that's a good clarification, that the actual construction time will be something less than that.

DR. LEEDS: Okay. If you can find out, I think the record would be more complete if we could get the date

29 at which you might say construction of both plants is finished.

THE WITNESS: Yes, that information is in schedules which we provided. I don't have one here, but I will get it.

DR. LEEDS: If you could reference something that we already have, that would be okay.

THE WITNESS: It will be the EPC schedule for the plant, and I don't know whether there's a doc. no. number on it or not.

MR. ROSSO: It's in the Environmental Report supplement, sir.

CROSS-EXAMINATION ON BOARD QUESTIONS

BY MR. CHERRY:

Q Mr. Howell, when you said that this is kind of an average construction -- you said not any faster or slower under the circumstances. Do those circumstances include the circumstance concerning the ability to raise capital?

MR. ROSSO: I don't know, Mr. Chairman. I guess we've gone around and around on that one. I think the witness has testified fully on that. I object to the question.

CHAIRMAN COOPER: Overruled.

THE WITNESS: Do the circumstances -- would you

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rephrase that for me?

Do the circumstances I referred to in my statement have any tie to financing? Is that what you meant?

BY MR. CHERRY:

Q You told Dr. Leeds that under the circumstances this was . . . and then you characterized the construction schedule. I assume you meant the circumstances of this particular plant.

A Yes.

Q Okay.

Was the construction schedule at all related to your ability to raise capital, in your judgment, in the future?

A Related to our ability? No.

Q It wasn't? So then it's being built as fast as is possible considering what a company would want to do under the circumstances of getting it on line as quickly as possible without regard to financial problems at all?

A The schedule is optimized from the standpoint of the sequence of putting things together, the availability of material, the manning ability -- those are the circumstances that I was talking about.

Q Mr. Howell, you said something that really offended me. You said, when you were talking to Dr. Leeds, that one of the reasons there is this long delay is because

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of hearings and permits.

You bloody well know the reason this plant isn't built is because you ran out of money in '74-'76, isn't that true?

MR. NOSSO: Objection. Argumentative.

THE WITNESS: No, it's not.

MR. CHERRY: I don't have anything else.

CHAIRMAN CONWAY: We'll take 15 minutes.

End 2

(Recess.)

CHAIRMAN COUFAL: Okay, Mr. Rosso.

REDIRECT EXAMINATION

BY MR. ROSSO:

Q I have only two questions.

First, Mr. Howell, during the break were you able to check further into the relationship of the trends to Forecast II?

A Yes, sir, I was.

Q And would you tell us what you have found out?

A Okay.

To clarify it, I believe it is essentially what I said before, that Forecast II does include all the information for trend reports up to the time Forecast II was issued. Therefore, the most current information today would be the Forecast II plus any trend report issued since Forecast II, of which there was one.

On the question of the date of information, Forecast II does contain the statement, cutoff date, and August, and that was the cutoff date of which they took drawings to take quantities and to go through this process I described before.

There is information in Forecast II on factors known to us and known to Bechtel up to the date of December 1st.

Q And the one trend that you have received since the issuance of Forecast II was the January trend, is that correct?

A That's correct.

Q And do you know as of what date that is current?

A I believe that is as of January 1st, and that showed an adjustment to trend downward of approximately \$8 million.

Q And that is as of January 1st, 1977?

A That is correct.

Q Okay.

Also, earlier Dr. Leeds had asked you if you could provide us with the date upon which construction of each of the plants is anticipated to be finished in the current schedule.

Could you provide those dates for us now?

A Yes.

For Unit No. 2, which is the first unit, construction is complete May 1st, 1980. That is the time that we have scheduled to start hot function.

Fuel load would be November 1st, 1980, and commercial operation, March 1st, 1981.

For Unit 2, the comparable dates would be in the construction hot functional, May 1st, 1981; for Unit 1, fuel load November 1, 1981 for Unit 1, and commercial operation March 1st of 1981 for Unit 1.

MR. ROSSO: I have no further questions.

DR. LEEDS: Thank you for getting that for me.

CHAIRMAN COUFAL: Does anyone have anything?

MR. WESSEL: No question, if the Board please?

CHAIRMAN COUFAL: Mr. Tourtellotte?

MR. TOURTELLOTTE: No questions.

CHAIRMAN COUFAL: All right, we are finished.

Witness excused.

(Witness excused.)

MR. WESSEL: If the Board please, I have one comment and I have a motion with regard to the Temple corrections, and then I would like to furnish some privileged documents that were requested by Mr. Cherry, to the Board, if I may do that now.

First of all, with regard to the testimony, may I inquire of the Board if anyone intends now to call either Mr. Youngdahl or Mr. Raymond?

CHAIRMAN COUFAL: Does anyone desire to hear either of those gentlemen as witnesses?

MR. ROSSO: We do not at this point intend to call either of them. But we do not want to be foreclosed from calling either of them to complete our case.

MR. WESSEL: If the Board please, I am here, this was the week during which these witnesses were scheduled. I do not consider my personal convenience of any major significance at all, I have intended to be here all week, I can be here all week. However, if those witnesses are not

going to testify, I intend to catch, if I may, a 6:45 flight, and I think I am entitled to a response as to whether anyone intends to call them at this time based on this record.

I don't know what is going to happen after this, but I know what the present intention should be, and I think it is fair to ask for an answer to that.

MR. CHERRY: And, Mr. Chairman, I would support that in spades because this week was set aside for those witnesses. And I think that I am entitled also to know at this time, based on what Mr. Rosso knows, as to whether he intends to call Mr. Aymond and Mr. Youngdahl, because if he intends to do it at some later point, I want to be able to ask Mr. Rosso what occurred after 4:27 on February 3, 1977 to change your mind. This is the week that was supposed to be done, we have got a limited schedule and I think we are entitled to know and I think the Board should demand to know.

It was Mr. Rosso who insisted that they all be handled at the same time to permit the negotiations to take place, because if they are not intended to be called, we can remove the protective order, et cetera.

MR. WESSEL: It was the reason for my comment just before lunch. I think we are entitled to an answer, if the Board please, from the Staff as well as Consumers.

CHAIRMAN COUFAL: Staff, have you objections to calling Mr. Youngdahl and Mr. Aymond?

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MR. HOEFLING: No, Mr. Chairman.

It was our understanding that Mr. Cherry had the initial intention.

CHAIRMAN COUNSEL: All right, we have an answer from Staff. Mr. Rosso

MR. ROSSO: As I said, it is not our present intention to call them.

I don't know, Mr. Wessel seems to be trying another case in this courtroom. I am just not sure exactly what it is he is trying to do.

If he thinks that anything that I am going to do here is going to have any effect on any possible future litigation between Consumers and Dow, I disagree with him.

I don't think that I can make any admissions by either putting a witness on or not putting a witness on. Any evidence in any such future case, if it occurs, will be evidence de novo. And the fact that I don't put somebody on here will not be an admission against interest. I never heard of such a theory. It is perhaps a new one. But, I do not intend to call Mr. Aymond at this point in time.

However, I have not completed putting on my case, and it is possible that we could change our minds. And we are willing to live with the sequestration order until that point in time.

If we put him on, it will not be later than Monday

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or Tuesday of next week.

MR. WESSEL: If there is a change I request that I be informed and I would like to come out here and will be here, of course, at that time.

CHAIRMAN COUFAL: Well, Mr. Rosso, give us plenty of notice on it then.

MR. ROSSO: Of course. Sure, I will call the parties as soon as I know.

MR. WESSEL: I will object if it is Monday. I have no objection if ---

MR. CHERRY: I am going to object if it is at any point beyond today.

MR. WESSEL: It has got to be based on new evidence, Mr. Cherry. It is clear that at the present time they have no such intention. They have all their chances to discuss it. It has got to be based on something that has happened afterwards.

6 MR. ROSSO: I'm sorry, I disagree.

MR. WESSEL: Well, that is the position of the Dow Chemical Company as now expressed to the Board.

If the time comes for a ruling to be made, the Board will rule on it.

Now I would like, in view of what Mr. Rosso just said, to add one other thing. I sat here and counted, at 3:55 p.m., approximately 23 questions of Mr. Cherry, 8 questions

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of Dr. Leeds, and 2 questions of Mr. Rosso before we reached the recess we just took.

Mr. Rosso interrupted Mr. Howell in the middle of a question to correct the record with regard to a statement Mr. Howell had made as to whether it was Forecast I or Forecast II. It was an August of 1976 Board meeting.

That is exactly what the obligation of counsel is with regard to this record. He did exactly what he should do and I assumed he would do that all the way through this case.

Now I have a motion with regard to the transcript of the Temple testimony. Pursuant to Section 2.750(b) of the rules, I have had marked as Dow Exhibit 2, the proposed corrections to the transcript of Joseph G. Temple, previously taken in Midland, that was referred to in the transcript on page 2675-6 -- excuse me, 2673 yesterday, and was handed up to the parties at page 1245 of the transcript and it was mailed out to the parties and the Board on January 24, 1977.

I have heard not a word. I don't know whether anybody else cares about this transcript, but I do. I want the testimony accurate. I ask that the Board admit those corrections and that if anybody has an objection to them they can move to do something or another. I don't know what it is.

But I think it is a proper motion under Section 2.750(b) and I ask that Dow Exhibit 2 be received in evidence.

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MR. HOEFLING: Mr. Chairman, as Staff indicated yesterday, we have looked at these and we have no objection.

MR. CHERRY: I have no objection either.

There was one you missed, though -- extortion for reasonable --

MR. WESSEL: That is later, we will get corrections if there are any, to the Temple and the Office testimony this week.

This is the testimony in Midland, Michigan. And I think it is the obligation of counsel to correct the record if they regard the record to be incorrect.

MR. CHERRY: Yes.

I have continually done that as well with things that I think are material.

MR. ROSSO: Mr. Chairman, I do want to make my position on this clear, because I can see where Mr. Wessel is going.

It hasn't got anything to do with this proceeding, but I want to make my position clear.

That if I feel that some baloney was put in the record, that is to say something which I don't feel bears directly on the issues, it is not material to the determinations that this Board should make, and that that version of events that occurred which I believe to be immaterial, was different than the version of some other persons who were at the same

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meeting, that I do not have an obligation to put those persons on to testify that that did not occur at the meeting or to contradict that testimony that was given here, or any documents that may have been produced if I believe it is immaterial to this proceeding.

It is silly to try to argue another potential litigation in this litigation, and I do not propose to do so.

All right? That is my position on this matter.

And I will tell Mr. Wessel categorically at this time, on the record, that there are disagreements between Consumers Power persons and Dow persons as to what occurred at some of those meetings. I make that statement categorically. I do not believe that those differences are relevant to what this Board has to decide, or material to what this Board has to decide, and therefore I do not at this time propose to put them on and contradict that. That is my position, sir.

MR. WESSEL: I would like to hand out --
excuse me, Mr. Rosso.

MR. ROSSO: I do not believe this Board ordered me to correct everything that went into this record, or to put in another view, let me put it that way, of what went into this record, if I don't believe that it is material to the decisions that this Board must make.

MR. WESSEL: Each party will make its own decisions and the Board will decide in accordance with the Board's

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judgment.

Dow Exhibit 1 is a list of the --

CHAIRMAN COUFAL: Wait just a second. We haven't done anything with your transcript corrections.

No one has objected. Is there any objection at all to the receipt of Mr. Wessel -- of Dow's Exhibit 2 which are transcript corrections?

(No response.)

All right, there being no objection, the exhibit will be received.

(The document referred to, Transcript Corrections of Temple Testimony, was marked Dow Exhibit No. 2 for identification and received in evidence.)

MR. WESSEL: Dow Exhibit 1, if the Board please, is a copy of some 12 documents for which privilege has been claimed by the Dow Chemical Company, all work products requested by Mr. Cherry on page 2263 of the transcript.

I would like to hand up to the Board three copies of the Exhibit to which the documents are attached, for the Board to review, noting that on one of the documents, which is a letter from Mr. Temple to Mr. Leathers dated October 25, 1976, all of the document was produced except one sentence, and I wrote on the Board's copy, "This line was deleted from

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the copy produced December 22, 1976," so it would be clear what it was that the Board was being asked to rule on.

And I hand three copies to the Board.

(Mr. Wessel handing documents to the Board.)

CHAIRMAN COUFAL: Would you identify -- I don't recognize all of these names, Mr. Wessel, and I may get to reading these exhibits and not know whether these people are lawyers or who they are. So would you identify Mr. Barker.

MR. WESSEL: Mr. Barker is associate general counsel of the Dow Chemical Company.

Mr. Friedman is a partner in the firm of Kaye, Scholer, Fierman, Hays and Handler, who are Dow's outside counsel in connection with the matters before this Board and the other matter to which there has been reference made.

CHAIRMAN COUFAL: Wait a minute. I can't find Mr. Friedman's name.

MR. WESSEL: Item No. 12.

CHAIRMAN COUFAL: Okay.

Now, if Mr. Klomprens is not --

MR. WESSEL: Not a lawyer, Snyder is not a lawyer, Mr. Gohrband is not a lawyer. They are all employees of the Dow Chemical Company. They were part of the corporate review group.

CHAIRMAN COUFAL: Mr. Leathers?

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MR. WESSEL: Leathers is -- was executive vice president of the Dow Chemical Company.

MR. CHERRY: Why did you delete the sentence in that letter?

MR. WESSEL: Attorney-client privilege, or claim of attorney-client privilege.

MR. CHERRY: But is Mr. Temple relating it to Mr. Leathers?

MR. WESSEL: He is communicating a comment by a lawyer.

DR. LEEDS: I think, Mr. Wessel, that when you make your statement there, I didn't understand what you said.

But the document we had does not have that sentence deleted.

MR. WESSEL: No, you have that sentence in it, but I put a handwritten note next to it. Otherwise it wouldn't make much sense to the Board.

DR. LEEDS: Yes.

MR. WESSEL: Thank you.

If the Board please?

MR. CHERRY: Mr. Wessel, items 9 and 10, does Mr. Pribila do other than a reporting function?

MR. WESSEL: These are the two handwritten documents which I referred to in the transcript Tuesday or Wednesday of this week. And Mr. Pribila's notes are in one part dealing

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with conversations with Mr. Temple without any outside lawyers present; and the second case, one while Consumers Power was present, but this was after the filing of the Temple testimony. And after that we did not produce it in connection with the issues regarding which the Board ruled about a large number of documents on Tuesday.

Do I make myself clear?

MR. PRIBILA: In answer to Mr. Cherry's question, these are notes by myself, they were not circulated or reported to anyone else.

CHAIRMAN COUFAL: Is there anything further, Mr. Wessel?

MR. WESSEL: No.

CHAIRMAN COUFAL: Do you have Mr. Wells here?

MR. ROSSO: Yes, sir.

MR. CHERRY: Of course, I want those documents.

CHAIRMAN COUFAL: I understand.

MR. CHERRY: Would I be able to look at them to make an argument that I can see them, Mr. Wessel?

MR. WESSEL: I have previously said that I regard that procedure to waive privilege.

MR. CHERRY: If I agree that it won't lose privilege.

MR. WESSEL: No, I don't think you can agree. You may be able to bind yourself, but not others.

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1 MR. CHERRY: I stipulated it in as if read.

2 MR. ROSSO: There are some other parties here,
3 Mr. Chairman. I don't know if they would agree to that.
4 Whereupon,

5 ROY A. WELLS, JR.

6 was called as a witness on behalf of Consumers Power Company
7 and, having been first previously sworn, was examined and
8 testified as follows:

9 MR. ROSSO: Mr. Cherry has offered to stipulate
10 the testimony in. Do any of the other parties have any
11 objection to this procedure?

12 MR. PRIBILA: No objection.

13 MR. HOEFLING: No objection.

14 DIRECTION EXAMINATION

15 BY MR. ROSSO:

16 Q Will you tell us your name, please?

17 A My name is Roy A. Wells, Jr.

18 Q What is your address?

19 A 3480 Northlands, Jackson, Michigan.

20 Q Where are you employed.

21 A I am employed by Consumers Power Company.

22 Q What is your position?

23 A I am the Executive Director of Environmental and
24 Project Services.

25 MR. ROSSO: We have a stipulation with regard to

1 putting the testimony into the record as if read. But there
2 is a correction to the testimony.

3 BY MR. ROSSO:

4 Q I wonder, Mr. Wells, if you could read into the
5 record the corrections to the testimony which you originally
6 prepared?

7 A The following corrections should be made in the
8 written testimony of Roy A. Wells, Jr., filed in this pro-
9 ceeding on November 5, 1976.

10 One, in the sentence beginning, in the second to
11 the last line on page 4, delete "and restricting of opera-
12 tions to normal daytime working hours." Change "reduced"
13 to "reduces," and insert at the end of the sentence in the
14 first line on page 5, the "normal scheduling of off-site
15 tracking and daylight hours also minimizes noise impact
16 from this source."

17 MR. CHERRY: Do you have a copy of these cor-
18 rections?

19 MR. ROSSO: Yes, sir; they were sent out to all
20 the parties. It doesn't have the date on it but it was
21 shortly after November 5th.

22 And now I take it with that correction,
23 that the stipulation still stands?

24 MR. CHERRY: Sure.

25 CHAIRMAN COUFAL: The testimony identified by

1 counsel, as corrected, is received and will be bound into
2 the record as though read.

3 BY MR. ROSSO:

4 Q Mr. Wells, did you prepare any exhibits in con-
5 nection with your testimony?

6 A I did.

7 Q And I hand you two documents, one marked Exhibit
8 9 and one marked Exhibit 10 and ask you if those are the
9 exhibits which you prepared or were prepared under your
10 supervision and direction?

11 A Exhibits 9 and 10 were prepared under my super-
12 vision and direction.

13 Q And are they true and correct to the best of
14 your knowledge and belief?

15 A Yes, they are.

16 MR. ROSSO: I move for this time for the admission
17 of Exhibits 9 and 10, Licensees' Exhibits 9 and 10, in
18 evidence.

19 CHAIRMAN COUFAL: Do you want them bound, too,
20 along with the testimony, Mr. Rosso?

21 MR. ROSSO: Yes, sir.

22 CHAIRMAN COUFAL: Is there an objection?

23 MR. CHERRY: No; put them all in.

24 CHAIRMAN COUFAL: Exhibits 9 and 10 attached to
25 Mr. Wells' testimony will be received and likewise bound

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into the transcript as though read.

(The documents follow.)

TESTIMONY OF ROY A. WELLS, JR.

My name is Roy A. Wells, Jr. and I reside at 3480 Northlands, Jackson, Michigan. I am currently the Executive Director of Environmental and Project Services for Consumers Power Company, Jackson, Michigan (Consumers Power) and have worked in this capacity since January 1976.

I was graduated from Case Institute of Technology with a bachelor of science degree in electrical engineering. I received a masters of business administration degree from Western Michigan University and a masters of science degree in management from Massachusetts Institute of Technology. I have also studied at MIT as a Sloan Fellow. I am a registered professional engineer in the State of Michigan.

I have been with Consumers Power continuously since 1960 and have served as a laboratory engineer, laboratory measurements supervisor and assistant manager of general services. In 1970, I was appointed the Executive Director of Environmental Activities for Consumers Power.

The purpose of this testimony is to review the environmental impacts anticipated to occur due to construction activity at the Midland Project between approximately December 1, 1976 and September 1, 1977, and to analyze their effects on the environment. These impacts and effects are reviewed based upon the alternatives of continuation or suspension of construction during the period specified. For the reasons to be discussed, it has been concluded that the impacts of construction activity and their anticipated effects on the environment will be minimal to nonexistent and that suspension of all construction activities may, in fact, expose the environment to a higher risk of adverse impact and effect than would continuation. I have examined the environmental impacts by considering the projected construction activities for this 9-month

period as set forth in the testimony of Gilbert S. Keeley, discussing construction practices and environmental impacts with on-site workers, considering the standard construction practices at the Project, and viewing the site and its environs.

The adverse environmental impacts of continued construction while the remand proceedings are in process should be assessed in light of the construction that has already occurred. The application for the Midland construction permits was filed on January 3, 1969. The construction permits were issued on December 1, 1972, but under the exemption procedures in effect at the time authority was extended to the Applicant to engage in certain preliminary construction activities prior to their issuance. Site activities were discontinued in November of 1970 because prolonged hearings regarding the issuance of construction permits appeared to be inevitable. However, even by November of 1970, much of the adverse environmental impact of construction had already occurred. Construction was resumed after issuance of the permits in 1972 and has been continuously in progress since that date although the level of activity has varied from double-shift to minimal construction.

Virtually all of the significant construction impacts identified in the FES have already taken place. General preparation of the site, including clearing, is essentially complete, with no remaining activity planned that will result in clearing of bushes, trees, or the like. Clearing of a small amount of sod and brush is still required within the dike area on the floor of the pond but this is considered to result in an insignificant environmental impact. Site excavation for major construction activities is also essentially complete and remaining excavation will require no further clearing or site preparation activity in previously undisturbed locations. The activities to be undertaken during the period from December 1, 1976 to September 1, 1977 will result in a

very small portion of the total environmental impacts of constructing the project.

ENVIRONMENTAL IMPACTS OF CONTINUED CONSTRUCTION

The significant construction activities projected for the period of December 1, 1976 to September 1, 1977 and their anticipated impacts are classified by site location and described below. They are also identified in detail by the matrix attached as Consumers Power proposed Exhibit 9.

Auxiliary Building

Concrete placement activities are scheduled in four areas during the relevant period: (1) Control Tower area walls and slabs; (2) Fuel Pool area walls, scheduled for completion in February 1977; (3) Radwaste Equipment area walls and slabs; and (4) Solid Radwaste Addition, scheduled to begin in May 1977. The principal environmental impacts arising from these activities relate to noise, fumes and dust associated with the transport of concrete.

Containment #1 Building

Concrete placement activities are scheduled in four areas during the period: (1) Interior Concrete Cover Slab, scheduled for January and February 1977; (2) Shield Walls against the Liner Plate, scheduled for April and May 1977; (3) Containment Exterior Concrete and Placement of the Dome Cover, scheduled to begin in July 1977; and (4) Primary Pedestal, Secondary Shield Walls and Letdown Cooler Walls, scheduled to begin in August 1977. The principal environmental impacts arising from these activities relate to noise, fumes and dust associated with the transport of concrete.

Containment #2 Building

Concrete placement activities are scheduled in three areas during this period: (1) Containment Exterior Concrete and Dome Cover Slab; (2) Primary Shield Walls, scheduled to be completed in May 1977; and (3) Letdown Cooler Walls,

scheduled only for the month of December 1976. The principal environmental impacts arising from these activities relate to noise, fumes and dust associated with the transport of concrete.

Turbine Building #1

Concrete placement activities are scheduled in two areas for this period: (1) Main and Auxiliary Bay, scheduled for December 1976 through March 1977; and (2) Exterior Wall to grade, scheduled for December 1976 through March 1977. The principal environmental impacts arising from this activity relate to noise, fumes and dust associated with the transport of concrete.

Turbine Building #2

Concrete placement activity is scheduled in one area for this period. Concrete will be placed for Elevated Slabs during the months May 1977 through July 1977. The principal environmental impacts arising from this activity relate to noise, fumes and dust associated with the transport of concrete.

The above concrete placement activities are normal in any construction project. These activities will require the transport of approximately 38,500 cu yds of concrete, necessitating approximately 5000 concrete truck trips. The impacts from these activities are minimized through the use of good construction practices. An efficient and clean concrete batch plant is operated on-site to reduce the truck traffic required offsite. With proper attention to maintenance and operating practices and the application of filters on the fly ash and cement silos, the batch plant operation is practically dust free and results in essentially no environmental impact. Washing of trucks involved in concrete transport activity is restricted to areas where the water is contained in holding ponds with sufficient holding time to allow settling of solids before releasing the water offsite. Proper maintenance of trucks and equipment and restriction of operations to normal daytime working hours reduce the impacts of noise and

fumes to a minimal level even on-site. Considering that the residential area closest to the concrete placement activity is approximately one mile away, it is concluded that the offsite impact of noise and fumes from the concrete transport operations will be nonexistent. Likewise, dust will result in no offsite impact, as the prevailing easterly winds will direct any unusual dust movement toward the industrial area centered approximately three-quarters of a mile from the center of construction activity. On-site dust resulting from movement of the trucks between the concrete batch plant and the placement area is controlled by watering trucks used as conditions require. Dust is also reduced because the portion of the site road near the batch plant is paved.

In conclusion, the principal environmental impacts associated with concrete placement activities scheduled during the period December 1, 1976 to September 1, 1977 are identified as noise, dust and fumes. Through proper operational planning, maintenance of equipment and trucks, and the use of good construction practices, these impacts have been reduced to an insignificant quantity offsite. Therefore, continuance of these activities during the period under review will not result in any significant adverse environmental impact.

Yard and Miscellaneous Structure Work

Eight major activities in this category are scheduled to occur during the period December 1, 1976 to September 1, 1977. These are: (1) Earthwork associated with Yard Service Water Piping and Electrical Duct Work during May through August 1977; (2) Earthwork, Concrete Placement and Dewatering for the Circulating Water and Service Water Building for the period December 1976 through August 1977; (3) Earthwork associated with the Site Sewer Lift Station scheduled for two months with completion in February 1977, and earthwork by The Dow Chemical Company for piping on its land to connect its sewer treatment system to the Midland Project; (4) Earthwork and Concrete placement for the

Process Steam Tunnel and Administration Building foundation, scheduled for January to August 1977; (5) Earthwork and Concrete placement for the Circulating Water Discharge Structures and Yard Circulating Water Piping, scheduled for April through August 1977; (6) Earthwork associated with the Evaporator, Auxiliary Boiler and Water Treatment Buildings scheduled for May through August 1977; (7) Earthwork and Dewatering for the Emergency Pond Service Water Return Piping, scheduled for five months with completion in August 1977; and (8) Earthwork for Plant backfilling to grade, scheduled for May through August 1977.

The concrete placement associated with the Yard and Miscellaneous Structure work will require approximately 20,000 cu yds of concrete and necessitate approximately 2,500 total truck trips. The environmental impacts associated with these activities will be essentially the same as those previously discussed with regard to activities at the Reactor Complex, and are likewise considered to be insignificant offsite.

The earthwork required by the activities discussed in this section is predominately excavation, backfilling and leveling. The principal impacts resulting from these activities are noise and dust and, to a lesser degree, vehicle fumes. For the same reasons discussed in the preceding section, these impacts are also considered to be insignificant offsite. As most of the earthwork activities are centered around the reactor complex and yard area, the nearest residential area is approximately one mile away, and therefore the offsite impact of noise, dust and fumes is negligible.

Other potential environmental impacts from earthwork operations are soil erosion and siltation. Soil erosion has been minimized by mulching, seeding and fertilizing appropriate areas as soon as the earthwork, which may include backfilling, grading, leveling and contouring, is completed. This preventative process is applied to sections of up to a thousand feet at a time depending upon the

activity and erosion risk involved. Grass catch has been excellent and this procedure has been generally very effective. In sections where the earth is continually exposed to water, such as around holding basins and flowing streams, rip-rap is used in sizes and amounts as necessary for further stabilization. Because of these practices, soil erosion due to construction activity on-site is for all practical purposes nonexistent. Continued construction activity in the period under review will be of the same nature as that which has already occurred and will be controlled in the same manner, and should therefore have negligible environmental impact.

Siltation into County drains, Bullock Creek and the Tittabawassee River is minimized by the use of holding basins installed at strategic locations on-site. The basins are located to collect all runoff from site construction areas where there is a risk of siltation. They are large enough to allow a sufficient holding time for suspended solids, largely in the form of soil, to settle out before the water flows out of the basin over elevated rock-type weirs. To ensure their continued effectiveness, the holding ponds are dredged to prevent their filling up with silt. There are approximately 10-15 such basins now in use, and they are relocated as construction activity moves. Under normal construction and precipitation conditions, the effluent from these holding ponds is noticeably clearer than the water flowing into the site area from natural water sources such as Bullock Creek. However, the siltation impact due to construction activity will continue to be insignificant.

As noted above, some of the construction activities associated with the Yard and Miscellaneous Structure work will require dewatering. The questions of construction impact on groundwater and water tables in the area of the site were discussed in the FES; there is no anticipated adverse impact on domestic water supplies. The presence of an impervious clay layer in the site area earth produces a perched water table in the sand above the clay. Water for domestic

wells in the vicinity is drawn from an artesian aquifer which exists in the sand and gravel underlying this clay layer. Since dewatering will draw only from the perched water table, there will be no impact on water supply. Dewatering from the Circulating Water and Service Water Buildings and for the Service Water Return Piping will cause a drawdown only in the immediate locale of these facilities. The only other potential impacts of dewatering would be erosion or siltation into the local water bodies caused by runoff of the resulting water discharged above ground. Erosion and siltation are effectively controlled by discharging any significant quantities of water from dewatering operations in the yard and building areas into the cooling pond. Most of the water then evaporates and a small amount percolates into the earth. A very small percentage makes its way to a holding basin which feeds into the discharge structure to the Tittabawassee River located at the eastern side of the pond. Since the pond area is now totally enclosed, there is no possibility of this water leaving the site at any other location.

Plant Area Backfilling and Completion of Cooling Pond Dike

Four months of activity are scheduled to begin in May 1977 related to general backfilling in the Plant area and continuation of seeding, mulching and rip-rapping of the cooling pond dike. These activities all involve general earthwork with the attendant potential for environmental impact from noise, dust, soil erosion and siltation. These activities are no different from those already discussed, and their impacts will be controlled and minimized in the same manner, resulting in essentially no environmental impact.

Pond Makeup Pumphouse and River Intake Structures

Backfill earthwork and dewatering activities associated with the Makeup Pumphouse and Intake Structures are scheduled for the entire period under consideration. A cofferdam of sheet piling has been constructed at the area of interface

of the intake structure with the River, and prevents disturbance to the River by the excavation. The excavation is essentially completed; the major activity remaining is backfilling. Through the same controls as previously described and generally for the same reasons previously discussed, the remaining excavation will create minimal environmental impact from the same potentials of noise, fumes, dust, erosion and siltation. When dewatering is required for this activity, clean water will be returned directly to the River, and, when necessary, the water will be pumped to a holding basin to prevent siltation impact.

Pond Area

The major construction activity required for the cooling pond, including basin excavation and development of the dike, has been completed. Seeding, mulching, and rip-rapping of the dike to prevent soil erosion are essentially complete except about 7% of the dike which is located in the vicinity of the intake and discharge structures. The only major activities still required for the cooling pond are sod and brush removal in the interior and leveling on the interior surface. The potential impacts are noise and dust. Noise impact will be minimized by restricting working hours to daytime, and dust impact will be alleviated by watering practices as previously described. A completed discharge structure located on the eastern boundary of the pond is presently used in conjunction with a holding basin to aid in controlling the minimal water runoff from the pond area and thus siltation.

Construction Activity Generally

Other environmental impacts which may result from ongoing construction at the site are described in the following paragraphs.

Construction Work Force

Traffic congestion and a certain amount of dust, noise and fumes occur when the workers travel to and from the site. During the period under review,

the Midland Station work force will gradually escalate from an average of approximately 1,200 to 2,250 workers. Although this will result in some further increases in traffic congestion, dust, noise and fumes, the incremental impact is minimized by the fact that industrial traffic is common to the area since The Dow Chemical and Dow Corning Companies employ over 14,000 employees. In addition, the previous widening of the peripheral Poseyville Road at the entrance to the construction area will continue to mitigate congestion, and the site-associated permanent, improved (blacktopped) access road will divert traffic away from residential areas on Miller Road.

Sanitary waste is presently stored on-site in State-approved holding tanks and trucked offsite by a State-licensed hauler. Connection with The Dow Chemical Company's sanitary waste treatment plant is underway, and its completion during the period in question will cause the offsite trucking of sanitary waste to cease.

Delivery and Use of Construction Materials

Vehicles arriving with construction materials and related supplies also result in some traffic congestion, noise, dust and fumes. The congestion impact is reduced by the measures noted in the previous subsection. Deliveries occur during normal working hours which helps to keep the adverse impact of noise low. Dust is controlled by water trucks as previously discussed, and the impact of fumes is also minimal offsite.

Construction wastes will be burned on-site or handled by receptacles. The contents of the receptacles are trucked offsite to a State-approved landfill.

Esthetic Impact

The principal esthetic impact of construction activity has already occurred with site clearing and preparation. Also, some structures have been erected on-site, building foundations installed, and components and materials

have arrived. View of ongoing construction activity is obstructed by the cooling pond dike, tree screens, and distance of residences from the site. Also, the Poseyville Laydown Area abutting Poseyville Road has been fenced. Considering the surrounding industrial area, continued construction during the period in question will not have any significant additional esthetic impact.

REDRESSABILITY AND FORECLOSURE OF ALTERNATIVES

Most of the potential environmental impacts of continued construction during the relevant period and their associated effects are transitory, such as noise, dust, fumes and esthetics, and thus, redressability need not be considered. The foreclosure of alternative uses of the land has already occurred to a certain extent. As more specifically analyzed in the table attached as Consumers Power proposed Exhibit 10, it is estimated that it would cost approximately \$59,000,000 to totally reverse all construction activities completed through December 1, 1976. Restoration would include removal of concrete and other structural components, backfilling and replanting. Given further concrete placement of 58,500 cu yds and additional backfill of 280,000 cu yds during the period under review, the overall cost of redressability will be increased by \$42,000,000. The estimated times required for site restoration activities are also set out in proposed Exhibit 10.

Pursuant to the requirement imposed by the AEC in the Midland FES, the intake structure has been designed to minimize impact on the fish population of the Tittabawassee River. The design of the intake opening will result in a normal intake water velocity of approximately 0.5 fps with a maximum velocity anticipated to be 1 fps. This design will provide for a "sweep velocity" across the face of the screens at the intake opening, caused by the normal water flow in the river, and will result in a minimum impact on fish from impingement. Construction of this structure began in August 1976 and will continue throughout

the period under review, with completion scheduled for November 1977. Because of the design requirements, the intake structure should not require modification. However, such modifications are never completely foreclosed. The environmental impact associated with a potential modification would be insignificant except for minor siltation impact on the River from a major rebuilding requiring installation of another cofferdam at the River interface.

The routing of the sanitary wastes from the Midland Plant to The Dow Chemical Company's treatment facility is planned for completion by April 1977. Installation of major yard sanitary systems is essentially complete. Installation of the sanitary system lift station, required to transport the wastes to Dow, is scheduled to occur during January and February 1977 with two additional months required for hook-up to Dow. Alternate approaches to handling of offsite wastes will not be foreclosed due to this activity.

ENVIRONMENTAL EFFECTS OF CONTINUED CONSTRUCTION

The following paragraphs summarize the effect on the environment of the impacts of continued construction discussed above. Since the offsite environmental impacts are essentially negligible, the effects are also insignificant.

Noise, Dust and Fumes

The amount of noise, dust and fumes is controlled as previously discussed. There are very few remaining flora or fauna on-site due to the advanced stage of construction. Nearly 100% of the required land clearing has been accomplished and only about 15% of the land within the site boundaries is undisturbed. The very small area that is undisturbed, which is in the southeast portion of the site, consists mainly of low grassy ground cover and shrubs around the extreme outer boundaries of the site and is suitable only for cover for small animals. Some wildlife is noticeable, but no unusual species are

evident and remaining construction activities will have little effect on what animals do remain. There are no unusual or unique flora to be considered since the only remaining types on-site are lowland second growth hardwoods and old field vegetation, both of which result from prior disturbance.

Offsite flora and fauna will be at most minimally affected by construction activity during this period. As described in the FES, the perimeter of the site is approximately 50% industrial area, 10% residential area and 40% residential/farming area. The prevailing winds carry the noise and dust toward the industrial area. Natural cleansing action of rainfall will tend to wash from the vegetation any small amount of dust that might be carried offsite. The fact that farming, with inherent noise and dust impact, is active in a large percent of the nonindustrial area bordering the site further supports the minimal incremental effect on offsite flora and fauna that may result from continued construction activity.

Siltation

The construction control processes for minimizing the amount of silt and turbidity entering local water bodies from holding basin effluents effectively protect aquatic life from adverse effects. The natural characteristics of the Tittabawassee River and Bullock Creek indicate normally high levels of turbidity and siltation which restrict the number of species and the density of aquatic population. Any abnormal short-term increase in the turbidity or siltation of offsite effluents due to conditions such as unusual rainfall would cause an insignificant incremental effect on aquatic life. The normal effluents, as mentioned earlier, are less turbid than the river itself. There is no reason, therefore, to expect that additional construction activities scheduled to September 1, 1977 will result in significant effects to aquatic life.

ENVIRONMENTAL IMPACTS OF SUSPENDED CONSTRUCTION

The environmental impacts associated with suspension of construction activities include soil erosion, dust, siltation and esthetics. Suspension of construction activities could well increase the risk of environmental impact. A description of the impacts associated with suspension of specific construction activities follows.

Buildings

The primary impact associated with suspension of concrete placement is the prolongation of the period of esthetic impact which results from unfinished construction activity. This esthetic impact involves the appearance of concrete forms, visible rebar, open excavations, etc. As noted previously, concrete placement for a number of buildings is scheduled to begin prior to December 1, 1976 and continue during the period under review. Concrete placement or the preparation for it will have started prior to December 1, 1976 for the following buildings, and will be left unfinished if a suspension occurs:

I. Auxiliary Building

- A. Installation of Control Tower walls and slabs.
- B. Installation of Fuel Pool area walls (to be completed February 1977).
- C. Installation of Radwaste and Equipment area walls.

II. Containment Building #1

- A. Installation of Interior Concrete Cover Slab

III. Containment Building #2

- A. Installation of Containment Exterior and Dome Cover.
- B. Installation of Primary Shield Walls (to be completed May 1977).
- C. Installation of Letdown Cooler Walls.
- D. Installation of Secondary Shield Walls and Reactor Vessel Pedestal.

IV. Turbine Building #1

- A. Installation of Main and Auxiliary Bay.
- B. Installation of Turbine Generator Pedestal Base and Column.
- C. Installation of Exterior Wall to grade.
- D. Installation of Exterior Wall and Feedwater Pump Pedestal.

Earthwork Activities

Two impacts associated with suspension of earthwork activities are the increased risk of erosion and siltation resulting from extended exposure of excavations and mounds of earth to runoff from rain and melting snow. Erosion would also be more severe in areas improperly dressed, mulched, seeded or rip-rapped. The continued exposure of inactive excavations and other earthwork to the natural elements would create uncontrolled erosion runoff, bypassing the drainage ditches and holding basins with resultant siltation into water bodies. Likewise, without proper attention, the holding basins would soon fill from siltation and become ineffective, allowing silt to flow almost unimpeded from drainage areas into the River.

The potential for environmental impact from dust will increase if construction activity is suspended. Without proper dust control by watering operations the ground surface would be exposed to natural wind erosion and increased dust sources would result due to the freeze-thaw cycle of winter months. In addition to the impact from dust itself, dust blowing in an uncontrolled manner would have an esthetic impact.

Another adverse environmental impact resulting from suspension of construction activity would be the continued esthetic impact of uncompleted earthwork such as open excavations, mounds of earth, and the lack of backfill and leveling.

The earthwork activities that will result in the above adverse environmental impacts if a construction suspension occurred are set forth in the first column of Exhibit 9.

I. Yard and Miscellaneous Structures

- A. Installation of Yard Service Water Piping and Electrical Ductwork
- B. Installation of Circ Water Building and Service Water Building Base and Walls
- C. Installation of Yard Sanitary System
- D. Installation of Potable Water Piping
- E. Installation of Cooling Pond Piping

II. Plant Area Backfill and Completion of Cooling Pond Dike

III. Construction of Pond Makeup Pumphouse and River Intake Structures

WORK FORCE

As set forth in the testimony of Gilbert S. Keeley, if construction were suspended, a minimal work force including manual workers, engineering staff, and maintenance and security forces would be maintained at the site. Therefore, impacts associated with traffic congestion and disposal of sanitary waste would not be completely eliminated.

REDRESSABILITY

Some of the environmental impacts associated with suspending construction such as noise and dust are transitory and as such redressability need not be addressed. The increased levels of turbidity and suspended solids in natural water bodies caused by a suspension of construction could be eliminated by re-starting some construction activity. As noted earlier the construction site may currently be restored at a cost of \$59,000,000 and this amount would increase little, if at all, if construction were suspended.

ENVIRONMENTAL EFFECTS OF SUSPENDED CONSTRUCTION

The effects on the environment of normal construction activity were concluded to be insignificant. The insignificance was a direct result of planning and the use of construction practices directed at minimizing environmental impacts. To suspend construction and stop such practices would increase environmental effects by increasing dust, erosion, siltation and extending esthetic impact.

The effect of increased erosion would be to increase the silt loading on the River thus introducing increased levels of turbidity and suspended solids. It is very difficult to quantify this increased siltation since it will largely be the result of unpredictable quantities of rainfall and snow melt runoff during the suspension period. It is, however, a certainty that siltation will increase. Since it is difficult to predict the quantitative siltation increase, it is likewise difficult to predict its effect on aquatic life. The environmental effect of increased dust conditions is also difficult to quantify. Since the prevailing wind direction is from the west, most of the dust will be directed toward the industrial complex of the northeast and east boundary of the site. It is unlikely that offsite residential areas will be affected except during periods of extremely high winds. The flora at the site boundaries would receive an increased dust loading.

Although it is very difficult to quantify the increased environmental effect due to suspension of construction activity, all indications are that they would be more adverse than the adverse effect of continuing construction for the period under review.

MIDLAND STATION SUSPENSION HEARINGS

- n - noise, trucks & equipment
- f - fumes, trucks & equipment
- d - dust, trucks & equipment
- e - extended esthetic impact
- s - soil erosion
- c - siltation
- w - continued temporary sanitary waste disposal

POSSIBLE ENVIRONMENTAL EFFECTS OF CONTINUED OR SUSPENDED CONSTRUCTION

(DECEMBER 1, 1976 TO SEPTEMBER 1, 1977)

										FACILITIES
DEC 1976	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	ACTIVITIES	
nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Control Tower area walls and slabs (Concrete)	AUXILIARY BUILDING
nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Fuel Pool area walls (Concrete)	
nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Radwaste and Equipment area walls and slabs (Concrete)	
						nfd e	nfd e	nfd e	Installation of Solid Radwaste Addition (Concrete)	
	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Interior Concrete Cover Slab (Concrete)	CONTAINMENT BUILDING NO.1
				nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Shield Walls against the Liner Plate (Concrete)	
							nfd e	nfd e	Installation of Containment Exterior Concrete and the Dome Cover (Concrete)	
								nfd e	Installation of Primary Pedestal, Secondary Shield Walls and Letdown Cooler Walls (C)	CONTAINMENT BUILDING NO.2
nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Containment Exterior Concrete and the Dome Cover Slab (Concrete)	
nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Primary Shield Walls (Concrete)	
nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Letdown Cooler Walls (Concrete)	
									Installation of Secondary Shield Walls and R.V. Pedestal (Concrete)	TURBINE BUILDING NO.1
nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Main and Auxiliary Bay base mat. (Concrete)	
									Installation of T/G Pedestal base mat. and columns (Concrete)	
nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	nfd e	Installation of Exterior Wall to grade (Concrete)	
									Installation of Exterior Wall and Feedwater Pump pedestals (Concrete)	TURBINE BUILDING NO.2
						nfd e	nfd e	nfd e	Installation of Elevated Slabs (Concrete)	
									Installation of Yard Service Water piping and Electrical Ductwork (Earthwork)	YARD & MISCELLANEOUS STRUCTURES
nfd sc esc	nfd sc esc	nfd sc esc	nfd sc esc	nfd sc esc	nfd sc esc	nfd sc esc	nfd sc esc	nfd sc esc	Installation of Circ. Water Bldg & Service Water Bldg. base mats & walls (Concrete, Earthwork, Dewater)	
w c esw	w c esw	w c esw	w c esw	w c esw					Installation of Yard Sanitary System piping (Earthwork)	
									Installation of Potable Water piping (Earthwork)	
									Installation of Cooling Pond makeup and discharge piping (Earthwork)	
									Installation of Site Sewer Lift Station and sanitary system piping by Dow (Earthwork)	
									Installation of Process Steam tunnel and Admia. Building foundation (Earthwork, Concrete)	
									Constr. of Circ. Water disch. structures & Install. of Yard Circ. Water piping (Earthwork, Concrete)	
									Constr. of Evaporator / Aux. Boiler / Water Treatment Bldg foundations (Earthwork)	
									Installation of Emergency Pond Service Water return piping (Dewater, Earthwork)	
									Plant Backfill to grade (Earthwork)	SUB-CONTRACTS
									Pit. area Backfill & completion of Cooling Pond Dike incl. seeding, mulching, and rip-rap (Earthwork)	
									Constr. of the Pond Makeup Pumphouse & River Intake structures. (Earthwork, Dewater)	

MIDLAND PLANT PROJECT
SITE RESTORATION STUDY

Exhibit 10

ITEM NO.	ACTIVITY DESCRIPTION	ESTIMATED RESTORATION COSTS AT SPECIFIED RESTORATION DATES (\$ x 1,000)		TIME (Years)
		12-1-76	9-1-77	
1.	Remove Dikes & Fill. Place Pond @ Previous Existing Grade. 3,350,000 CY @ \$3/CY = \$10,050,000 (Plus \$3,000,000 Escalation)	\$13,500	\$13,500	2
2.	Dispose of Rip-Rap & Sand. Remove Pond Outlet Structure and Underground Utilities. (Included in Item No. 1)	0	0	2
3.	Restore Topsoil in All Areas (807,000 CY @ \$6/CY)	4,800	4,800	2
4.	Seed All Areas (1,000 Acres @ \$1,000/Acre)	1,000	1,000	2
5.	Restore Trees (\$50/Tree x 1,000 Acres x 10 Trees/Acre)	500	500	2
6.	Rebuild Roads (5.5 Miles x \$66,000/Mile)	363	363	1 *
7.	Restore 6.0 Miles of Drains (Leave Bullock Creek and Waite-Debolt Drains "As-is") (6.0 Miles x \$16,000/Mile)	96	96	2
8.	Remove Railroad Bridge	200	200	1
9.	Remove Access Road Bridge	40	40	1
10.	Fences & Temporary Buildings (Salvage Value = Removal Cost)	0	0	1
11.	Transmission Lines Will Remain	0	0	0
12.	Remove Meteorological Towers	(25)	(25)	1
13.	Remove Structural Concrete to Elevation 604', Assumes On-site Buried Disposal (Leaves 20,000 CY in place)	26,120	55,360	2-3
14.	Remove River Intake Structure	20	2,770	1
15.	Remove Power Block Backfill (Up to 280,000 CY which remains to be placed from 9-1-76 to 9-1-77)	276	1,104	2-3
16.	Total	46,890	79,708	3 **
17.	Distributables (1% of Item #16 to cover supervision and other support efforts)	7,033	11,956	
18.	Total of Items 16 & 17	53,923	91,664	
19.	Contingency (10% of Item 18)	5,392	9,166	
20.	Rounding	315	170	
21.	Total Estimated Cost of Restoration	59,000	101,000	

Additional Assumptions:

A. Redredging of Tittabawassee River not Required

B. Salvage Value = Removal Cost for Mechanical Equipment (Pumps, Pipe, Structural Steel, Liner Plates, Etc.)

* After other site restoration

** After contracts are let.

1 MR. ROSSO: Mr. Wells is available for cross-
2 examination.

3 CHAIRMAN COURNA: Mr. Kiefer.

4 CROSS-EXAMINATION

5 BY MR. KIEFER

6 Q Mr. Wells, will you turn, please to Exhibit 19?

7 A All right.

8 Q Is it my understanding -- let's get some termi-
9 nology straight.

10 Let's look at the first square in the first col-
11 umn of the first row, that would be installation of control
12 tower, areas walls and slabs.

13 Is it my understanding that the notation NWC
14 refers to the index at the top left-hand portion of
15 the page and it refers to the effect on the environment
16 during continued construction.

17 A That's correct.

18 Q And the little "a" below the slash would indicate
19 the effect on the environment during suspension?

20 A That's correct.

21 Q And if there were no notations in the square there
22 would be no effect whatsoever?

23 A Yes; that would mean that that particular item
24 had not commenced at this point.

25 Q You have listed here 30 items; do you not?

Barb5

1 A Approximately. I didn't count them.

2 Q If an we took a cut-off date of up to but not in-
3 cluding 1 April based on your table, there would be one,
4 two, three, four, five, six, seven, eight, nine items, or
5 approximately 30 percent of the items which would have no
6 effect if there were a suspension of the project; is that
7 not correct?

8 A If I understand what you are asking, those are
9 the number of the blanks, the completely blank areas?

10 MR. BOSSO: I would like to have the question re-
11 read back, because I didn't hear it very well.

12 (Whereupon, the reporter read the question as
13 requested.)

14 THE WITNESS: The indication would be with that
15 block complete blank: that since that activity has not started
16 there would be no impact on the environment if there were a
17 suspension.

18 MR. KIEPER:

19 Q And if we took the cut-off date one month later,
20 using the same procedure, you would have approximately 20
21 percent of the items which would not impact upon the environ-
22 ment?

23 A Well, there are six blanks.

24 Q Would you please turn to page 15 of your testi-
25 mony. Directing to -- your attention to the sentence;

barb6

1 "Erosion would also be more severe in
2 areas improperly dressed, mulched, seeded or
3 rip-rapped."

4 It is unclear to me in your testimony whether you
5 assumed in arriving at an impact on the environment under a
6 suspension condition, that you assumed that these areas would
7 in fact be improperly dressed, mulched, seeded or rip-rapped.

8 A The point of this comment is that if we suspended
9 activity per se, there will be land left in an excavated
10 manner, in a bounded manner, in an undressed manner. And
11 the point here is that if you suspend the activity at that
12 point, the erosion will be more severe than if land had been
13 restored to a completely recovered --

14 Q So the basis of your testimony is that a suspension
15 would in effect be absolute. The Board would not direct that
16 where possible, areas should be mulched, and seeded to
17 avoid further impact.

18 A I don't think I drew that conclusion. The point
19 that I was making in the testimony is that as the period is
20 elongated and this land is allowed to stand in an unrestored
21 manner, --

22 Q My question is --

23 MR. ROSSO: I think the witness ought to be
24 allowed to continue -- finish his answer.

25 MR. CHERRY: Don't bully the witness.

barb7

1 THE WITNESS: As the land stands in an unrestored
2 manner, the longer it stands the more risk you have of
3 erosion or sedimentation. It doesn't mean that even if you
4 had control mechanisms that you would minimize it. But
5 nevertheless, you have land in an unrestored manner. And
6 the best way to prevent erosion or sedimentation is to get
7 that land back to a restored condition.

8 BY MR. KIEFER:

9 Q What do you mean by a restored condition?

10 A Back to a condition where you either reseeded it
11 or it has been leveled and graded properly, perhaps covered
12 with stone, but back to an area where it is not an uncon-
13 trolled open type of excavation.

14 Q What is your basis for concluding that that would
15 not be part of any suspension order?

16 A Well, I think my conclusion was based on the fact
17 that it would not appear to be a logical order that all
18 land that has simply been excavated would have to be re-
19 stored to its original condition, as part of a suspension
20 order.

21 Q Well, let's look at the sentence further down
22 the page:

23 "Likewise, without proper attention,
24 holding basins would soon fill from siltation
25 and become ineffective, allowing silt to flow

barb8

1 almost unimpeded from drainage areas into the river."

2 In your opinion, would -- what would be proper
3 attention to prevent this from occurring?

4 A. Well, the only thing to prevent siltation from
5 actually getting into the river would be to maintain the
6 holding basins.

7 Q. Would that be an unreasonable condition of a
8 suspension order?

9 A. I doubt that it would be.

10 Q. Then why did you assume that?

11 A. I don't really believe I made the assumption that
12 would be the order. It was a statement trying to draw an
13 element of degree that said if, likewise, without proper
14 attention, this could happen. So there is everything, in
15 a matter of degree, from doing nothing to total control.
16 And I was trying to draw that there is a range. I don't
17 think I made the assumption, I don't believe, that that is
18 how we would particularly --

19 Q. What assumption did you make?

20 A. I didn't make an assumption. I pointed out a
21 fact that if you didn't have proper attention, this would
22 be the condition.

23 Q. And if you had proper attention, these events
24 would not occur?

25 A. Right.

barb9

1 Q Your testimony in part is based upon a personal
2 visit to the site? Is that not correct?

3 A That's right.

4 Q When you visited the site, what did you look
5 at?

6 A Well, I looked to, to the best of my knowledge,
7 I looked at those areas that would have potential impact
8 on the environment and I looked at the manner in which
9 construction activity was taking place. I looked at the
10 manner in which the drains had been rip-rapped to prevent
11 erosion. I looked at the holding basins. I looked at the
12 manner in which the pond dike had been restored, those
13 natures of items is what I looked at.

14 Q Did you take a ride around the perimeter of
15 the site?

16 A I did, yes.

17 Q Did you form any conclusions from that ride?

18 A I basically formed the conclusions from my visit
19 that there was an excellent construction activity.

20 Q You indicate that there is vgoing to be certain
21 adverse esthetic effects should a suspension order be
22 issued? You are familiar with the fact that the site is
23 part of Dow's industrial park, or it was?

24 A Yes.

25 Q Is there any high density residential areas nearby?

barb10

1 A I am not sure what high density would mean. There
2 are residential areas within about a mile.

3 Q Where are they located?

4 A They are located generally on the western side
5 of the site and kind of around toward the south; in that
6 area.

7 Q Is there anything between the residential area
8 and the construction site?

9 A In a portion of it there is a buffer of trees.

10 Q Did you consider that in reaching your conclusion
11 about the esthetic effects?

12 A Yes, because I judge that what I was talking about
13 was a general look at the site and you do have visual access
14 to the site from a lot of places around the perimeter. I
15 was talking in general terms.

16 Q Does much of site at this time consist of holes
17 in the ground?

18 A I am not exactly sure what you mean by holes in
19 the ground. To a large degree most of the major structures
20 have been -- have had the basic foundations poured; walls
21 are being raised. There is still some backfilling to be
22 done. There is an opening in the intake structure area.
23 And the, of course, the pond has been diked; if that answers
24 your question.

25 Q Have you indicated in your testimony that on page

barbll

1 two, that the level of activity is varied from double
2 shift to minimal construction? Has the construction rate
3 been affected by the recent cold weather, limiting our
4 attention to the months of December and January?

5 A Well, some of the types of construction are limited
6 but as a matter of fact, the work force has continued to
7 grow during that period.

8 Q Have they been working at the rate they could
9 have worked without severe cold weather?

10 A Well, -- could you clarify would you mean by
11 rate? Are you talking about productivity rate? I am not
12 sure what you are trying to search for.

13 Q Define it any way you wish and then respond. I
14 guess it is more difficult for people to work in cold
15 weather than it is when it isn't cold.

16 However, you have to remember that in areas where
17 there is concrete placement to be done, those areas are
18 covered and heated because the concrete has to be at a
19 certain temperature to cure.

20 So the basic effect would be in the yard work
21 area and the earth activities. And basically we are at the
22 point where those come very close to suspension.

23 It is hard to make a general statement to say
24 that in general there isn't as much work done on the site.

25 Q Let's direct our attention to the areas you

barbl2

1 mentioned, you characterized. And if I am wrong, correct
2 me, that in effect it amounts to a suspension?

3 A No.

4 Q Wouldn't it be true that a suspension order with
5 respect to that activities would have minimal effect be-
6 cause they are not going on now?

7 A I think we have to start being a little bit more
8 precise as to any given activity, because there can be cer-
9 tain functions going on and I can't make a general statement
10 of that nature.

11 Q Would you please list specifically those items
12 you had in mind when you said because of the cold weather,
13 which perhaps amounts to a suspension status.

14 A Could you repeat your question, please? I
15 really didn't catch it.

16 Q You indicated that in some areas because of the
17 cold weather, the rate of activity has slowed to such --
18 the activity has slowed to such a rate that you used the
19 suspension in connection with the level of that activity.

20 Now you had something in mind when you said
21 that. What specifically did you have in mind.

22 A Well, I think you can get some indication by
23 referring to Exhibit 9 where you see the areas that -- where
24 there is no particular activity during a certain period. Some
25 of that would certainly relate to scheduling because of

barb12

1 cold weather.

2 Now, for example, the second line up from the
3 bottom, plant area backfill completion of -- some of the
4 backfill activity could be suspended because of weather.

5 I can't frankly be precise as to just what is
6 because of a schedule problem and just what is because of
7 the fact that the weather has gotten so cold, that it is
8 not efficient to perform that function.

9 Basically the whole thing is scheduled together
10 with that in mind when we make up the schedule.

11 Q Did you prepare your testimony or did you have
12 input from others and tie it together?

13 A I prepared most of it with input from others, but
14 most of it I prepared. There are some specific areas that
15 I had more help from than others.

16 Q What areas are those?

17 A Predominantly the preparation of the two exhibits.
18 The Exhibit 9 was a recap of the work activity schedule by
19 the project. So insofar as the particular scheduling it-
20 self, that was not my schedule. That was merely a restatement
21 of the project schedule.

22 And on Exhibit 10, I got a great deal of input
23 from the project and in a more general nature, throughout
24 the testimony where I discuss specific numbers related to,
25 say, concrete pour or something like that, I got that from

barbl4

1 the project.

2 Q With respect to Exhibit 9, again, is it reasonable
3 to conclude that some of the categories listed are of more
4 importance or have more significance with respect to an im-
5 pact on the environment than others listed in that?

6 A I am not sure that I can make the statement that
7 any of those activities have more impact than others. A
8 different activity might have a different type of impact.

9 But I don't think I could make that statement. I
10 would say that in general what we try to do is identify those
11 areas where there are impacts, and as a matter of fact, as I
12 indicated in my testimony the impact in general is so mini-
13 mal that I don't think that you can differentiate from one
14 to another and say this has more impact.

15 Q Then it would be safe to conclude that with
16 respect to those 9 items, that you won't have any effect
17 untill April, which amount to approximately about 30 per-
18 cent of the items you have got listed, that 30 percent figure
19 does not represent insignificant items.

20 A Well, what I tried to say was that I think very
21 frankly, as I said in my testimony, I think the impact on
22 all areas is insignificant. Now the 30 percent you are
23 talking about would not represent a more degree of impact --
24 insignificance than any other item, but I wouldn't want to
25 say that they did not represent significant items. I think

barb15

1 I can't pick out any one that I would say really stands out
2 as being the high level impact. So we really are talking
3 about very minimal impacts, even to begin with.

4 MR. KIEFER: No further questions.

5 CHAIRMAN COUFAL: Do you have any questions, Mr.
6 Cherry?

7 MR. CHERRY: Just a teaser or two.

8 BY MR. CHERRY:

9 Q Mr. Walls, you are vice-president in charge of
10 environmental affairs?

11 A No, not yet, anyway.

12 Q What are you?

13 A I said I was executive director.

14 Q How long have you been in the environmental affairs
15 department?

16 A I have been in that department since November of
17 1970.

18 Q Were you at the department of environmental affairs
19 when the Palisades radioactive spills went into Lake
20 Michigan.

21 MR. ROSSO: Objection; irrelevance.

22 CHAIRMAN COUFAL: I didn't hear it.

23 BY MR. CHERRY:

24 Q When the Palisades radioactive spills were made
25 into -- went into Lake Michigan?

barb15

1 MR. CHERRY: This goes to the credibility of the
2 witness.

3 MR. ROSSO: Oh, Mr. Chairman, I object.

4 CHAIRMAN COUFAL: What are you going to get at?

5 MR. CHERRY: That Consumers Power hid from the
6 public information of an environmental --

7 CHAIRMAN COUFAL: You are going to try to tie
8 into that? Go ahead.

9 Answer the question.

10 THE WITNESS: I took charge of -- I don't recall
11 the date.

12 MR. CHERRY:

13 Q There were spills into Lake Michigan that violated
14 environmental controls; did they not?

15 MR. ROSSO: Same objection.

16 CHAIRMAN COUFAL: Overruled.

17 MR. ROSSO: I will state a continuing objection,
18 then, Mr. Chairman. Then you cut it off when you decide it
19 has gone on a little too far and has not been tied up.

20 THE WITNESS: What we will have to establish, Mr.
21 Cherry, is that I -- my responsibility does not include
22 radiological issues.

23 BY MR. CHERRY:

24 Q Is it included within the environmental affairs
25 department?

barbl7

1 A No, sir.

2 Q It is not.

3 Can you remember any particular issue while you
4 were with the environmental affairs department that Consumers
5 has took, which has been in agreement with any environmental
6 group, a position that has been in agreement?

7 MR. ROSSO: Objection. Relevancy.

8 CHAIRMAN COUFAL: Overruled.

9 THE WYNESS: Could you restate it, please?

10 BY MR. CHERRY:

11 Q Let me state it another way:

12 On how many occasions since 1970 do you recall that
13 Consumers has opposed a position by an environmental group
14 in connection with Consumers' activities?

15 A An environmental group; you mean a regulatory
16 group or --

17 Q Any group that raises environmental concerns,
18 from a little old lady up to Ralph Nader -- in other words,
19 I want to know if in your judgment since 1970 any time
20 there was a question raised about environmental affairs,
21 Consumers responded immediately with alacrity or fought
22 until the last ditch effort and they had no other choice.
23 That's what I want to know.

24 MR. ROSSO: Objection. There have been several
25 questions asked. I want Mr. Cherry first of all to state

barb18

1 exactly what question he is asking here. He has got about
2 four in there.

3 BY MR. CHERRY:

4 Q My question is, can you list for me how many times
5 to your memory that Consumers since the time you got in that
6 organization opposed environmental concerns publicly.

7 MR. ROSSO: Objection as to relevance.

8 CHAIRMAN COUFAL: Are you limiting this to Con-
9 sumers' activities?

10 MR. CHERRY: Yes; Consumers Power Company. During
11 the time he was in the environmental affairs department, since
12 November 1970.

13 CHAIRMAN COUFAL: Overruled.

14 DP . LEEDS: He keeps using past tense. He still
15 is in that department.

16 THE WITNESS: I have got to begin to answer in
17 this manner: That our environmental affairs department
18 operates on the principle that we believe that the environ-
19 mental regulations ought to have a cost aspect to them. When
20 we feel that that cost benefit aspect is not in the interest
21 of the public, we will oppose it on that basis. And we have
22 done so.

23 We have, on the other hand, entered into a number
24 of voluntary performance contracts as an example, with the
25 state air pollution control people, under which we have

barb1) 1 obliged our company to considerable financial sums in order
2 to meet the environmental regulations.

3 I cannot come up with a number that says this
4 many times over six years.

5 BY MR. CHERRY:

6 Q Just tell me the ones you remember that Consumers
7 opposed for what ever a reason, and then you can give me the
8 reasons as to whether it was economic or what ever. Just
9 tell me the times you recall that Consumers opposed an
10 environmental concern in the State of Michigan for what
11 ever reasons?

12 MR. ROSSO: Mr. Chairman, I just want to register
13 my continuing objection on the basis of relevancy.

14 CHAIRMAN COSFAL: Go ahead.

15 THE WITNESS: Well I will cite one. I am not
16 sure I am not going to remember all of them. I will cite one.
17 This is a recent one at a fossil-fired plant in our system
18 referred to as the Campbell Unit 2. The state of Michigan
19 imposed on us a requirement to upgrade an electrostatic
20 precipitator at a cost of approximately \$25 million to
21 improve the efficiency of the unit from what it was before
22 performing, at about 95 percent to raise it to 99 percent.

23 In our judgment we felt that that was too severe
24 a penalty to impose on our ratepayers and we opposed it,
25 on the principle that we opposed on cost-benefit bases.

barb21

1 But if the state made the judgment we should do
2 it, we would do it. That was the outcome and we did it.

3 BY MR. CHERRY:

4 Q So that your environmental -- I wanted to get back
5 to some of the other listings, but let me just take off for
6 a minute.

7 Your environmental problems are sort of concerns
8 with the costs that the ratepayers might have to eventually
9 pay?

10 A That is certainly one of our concerns.

11 Q Is that a major concern?

12 A I think it is a major concern, sir.

13 Q Are you concerned that if you spend another \$100
14 million before the remanded hearing that -- and the license
15 is revoked -- that the ratepayers might have to spend \$100
16 million more?

17 MR. ROSSO: Objection, Mr. Chairman. This man
18 is here to testify about environmental effects of continued
19 construction or suspension. It has nothing to do that --

20 MR. CHERRY: He just me that his environmental
21 decisions are based on a cost-benefit economic basis and
22 that is a significant input to his decisions. He has
23 now testified that there are no environmental concerns and I
24 want to know if he has considered in his judgment, because
25 he says he considered cost-benefit, the fact that if they

barb22

1 move forward and spend another \$100 million and ultimate
2 at a remanded hearing, assuming there is no suspension, that
3 a construction permit is not awarded, if he has any concern
4 for the ratepayers picking up that \$100 million.

5 MR. ROSSO: Where is the environmental decision
6 in that, Mr. Chairman? The man said that he uses the cost
7 benefit analysis, or that the company does, when it determines
8 whether or -- to oppose or to support an environmental de-
9 cision.

10 He says we looked at the benefit from the environ-
11 mental decision and we costed against the economic costs to
12 achieve it. Now where does the environmental decision come
13 here in this question?

14 He is simply asking now whether he believes that
15 the company ought to continue to invest in the Midland
16 plant. It has nothing to do with what this man is here to
17 testify to. It is completely beyond the scope of his direct
18 testimony. The man has not been qualified on economic mat-
19 ters nor anything that has to do with that question.

20 CHAIRMAN COUFAL: Sustained.

21 BY MR. CHERRY:

22 Q Mr. Wells, are you in favor of the Midland nuclear
23 power project?

24 MR. ROSSO: Objection.

25 CHAIRMAN COUFAL: Sustained.

barb23

1 BY MR. CHERRY:

2 Q When you wrote this testimony, did you have in
3 mind the fact that if you did not take a position that there
4 were no adverse environmental effects, it might hurt your
5 company sustain its construction permit? Did you take that
6 into any factor at all?

7 A When I wrote this I can honestly tell you that I
8 wrote it to the best of my knowledge as being an accurate
9 description of the events.

10 Q The answer to my question is no; that your testi-
11 mony here is not in any way related to the fact that you
12 work for Consumers Power Company and would like to see the
13 construction permit continued; that is my question.

14 MR. ROSSO: I object.

15 What does related mean? Obviously the man does
16 work for Consumers.

17 MR. CHERRY: I want to know if his testimony
18 here today, if he will just tell me, that honestly he has
19 not entered --it has not entered into his mind at any time
20 that if he comes out with less than a positive decision, it
21 would adversely affect his company's interest. That's all
22 I want to know.

23 BY MR. CHERRY:

24 Q Has that played any part in your testimony?

25 MR. ROSSO: Mr. Chairman, I think first of all that

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1 the witness answered the question when he swore to his
2 testimony. And secondly he answered it just a few moments
3 ago when he said that this testimony was an honest effort
4 on his part to set out the facts as he understood them.

5 I think the question has been asked and answered.

6 CHAIRMAN COUPAL: Overruled.

7 Mr. Wells ?

8 THE WITNESS: Well, the specific answer is I did
9 not prepare my testimony on the basis that if I were to turn
10 up something adverse that it would have an impact.

11 BY MR. CHERRY:

12 Q Why did you limit the effects to September 1977?

13 A September 1977?

14 Q Well, you cover only a period of time in your
15 testimony; don't you?

16 What are the dates your testimony covers?

17 A It covers December '76 to September '77.

18 Q Why did you stop at September '77?

19 A As I understood it, that was the period to be
20 considered as a potential suspension period.

21 Q If a license were suspended -- were not suspended,
22 and Consumers Power Company dragged its feet in the hearing
23 on the merits and we did not get a final conclusion at the
24 remanded hearing until the end of 1978, do you have an
25 opinion on whether or not the construction between October '77

b arb25 1

December 1978 would be -- have an adverse environmental impact?

2

MR. ROSSO: I object to the characterization in the question?

3

4

CHAIRMAN COFFEE: Let's amend the question, if you will, to account for delay, if there is a delay.

5

6

MR. CHERRY: Okay.

7

BY MR. CHERRY:

8

Q With that amendment, will you answer the question, Mr. Wells?

9

10

A I did look beyond that in a general sense, beyond the period, and I determined that the type of construction activity that will continue is the same as what I have described and judge there would be no more severe impact from that occurring than I have described here?

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Q How about if the hearing lasts through '79?

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A IF you're talking about construction impact, that would be basically correct. The type of construction activity is not that unique beyond this period.

Q So what you're saying is, even if the hearing lasts until the plant were completely built, there would be in your judgment no adverse environmental impacts?

A From the construction activity.

Q I don't quite understand the meaningfulness of your testimony.

Let me ask you this question: In other words, it's your opinion there are never any adverse environmental impacts from construction once the project is started, correct, or very rarely?

A No, I think that's an oversimplification of the statement, "once it's started."

What I'm saying is this project has gotten to the point where the remaining construction activities that are to occur until the plant is operational will have minimal impact.

Q In other words, we've already gone beyond the point of making any sensible judgment about environmental impact, and so we ought to exclude that from any decision?

MR. ROSSCO: Objection to the characterization.

MR. CHERRY: It's a question of the witness.

CHAIRMAN COWLEY: It's a question that's hard

bit 2

for me to follow, Mr. Cherry.

BY MR. CHERRY:

Q Are we in your judgment, Mr. Wells, at a point in construction where it is no longer necessary to consider environmental implications because they will all be minimal?

MR. ROSSO: I'm sorry. I didn't hear that. Can I have it reread?

(Whereon, on the Reporter read from the record as requested.)

MR. ROSSO: I don't have any objection to that question. But, Mr. Chairman, I thought yesterday you had instructed Mr. Cherry that he was no longer to make gratuitous or insulting comments to other counsel during the course of this proceeding. Mr. Tourtellotte raised that point yesterday.

CHAIRMAN COUNSEL: I did. I so instructed him.

I admonish you, counsel, not to do that.

MR. CHERRY: I don't want to take your admonishment, Mr. Chairman.

How about admonishing lawyers not to lie before this Board? How about admonishing the company? We've put in evidence here indications of lies.

CHAIRMAN COUNSEL: Mr. Cherry, I'll just get on with asking questions.

MR. CHERRY: Okay. But don't make it a one-sided affair.

BY MR. CHERRY:

Q Mr. Wells, do you want to answer my question.

A Could you repeat it, please?

Q Are we at a point in construction, in your judgment, where environmental concerns no longer are meaningful to analyze because they will all be minimal, in your judgment?

A The construction activities remaining, if we handle them in the manner that we are with the construction controls that we have, will only have minimal impact on the remaining construction schedule for that plant.

Does that answer your question?

Q Do you consider within your definition of environment aesthetics?

A We have.

Q Okay.

Do you consider within your description of environment noise?

A I have.

Q Do you consider sociological questions within your definition of environment?

A I haven't defined environment. I've defined potential construction impacts. The first things you asked I did define as a construction impact. I didn't define sociological impacts other than construction.

Q You said if we moved forward there would be no adverse environmental consequences, so I assume you must have had a criteria or definition of environment.

A I said based on construction impact that's what it would be.

Q I see. You've limited your definition of the environment solely to construction impact, that is, those physical things of things that Mr. Wesley wants to be over the next few months. Is that correct?

A For the purpose of this testimony, I did.

Q You have not taken into account the definition of environment as it's used in the National Environmental Policy Act, is that correct? Is that correct, Mr. Wells?

A I think I have to answer that this way: that when we first prepared an Environmental Report it went through NEPA. All these things were considered. I was only asked to address the construction impact.

Q Okay. But your testimony that there will be no adverse environmental impact from these construction activities is not to be construed as your judgment that there will be no adverse environmental impact if you look at the definition of environment under the National Environmental Policy Act, is that correct?

MR. WISSO: Objection. I'm not sure for what period of time that question is being asked.

MR. CHERRY: Over the same period he's talking about.

THE WITNESS: I believe that over this period of time, in the best of my judgment, we've covered all the areas that had environmental impact.

I'm not familiar with the verbatim that you're referring to from the National Environmental Policy Act.

BY MR. CHERRY:

Q Did you attempt to have an understanding of the definition of environment under the National Environmental Policy Act before you prepared your testimony?

A I felt I had a general understanding because of our other activities.

Q Okay.

List for me the things --

A I said I couldn't quote it verbatim. I said a general understanding.

Q Well, don't quote it verbatim. Just tell me those things which you have an understanding of that you believe you factored into the definition of environment as used in your testimony.

MR. BOSCO: Objection. I really don't know where we're going with this line of questioning.

It's a little after 5:00. Mr. Cherry, I guess, figures it's a good way to finish the day off, but I don't

know that these questions are relevant.

MR. CHERRY: Make an objection and get a ruling.

MR. ROSSO: I am. I'm trying to.

MR. CHERRY: Can we have a ruling?

MR. ROSSO: The man has indicated what his testimony is for, what its purpose is, and the cross-examination is going far beyond the scope of what the testimony is and its intentions for being presented.

CHAIRMAN CORRAL: I take it your point is did he consider socioeconomic and so forth?

MR. CHERRY: It's not only that. What I want to know is, we have to make some kind of a judgment on the environment as defined by the National Environmental Policy Act. All I want to know is whether he considered that.

He said he thinks in a general way, so I want to know what he thinks that is so we'll know if he considered it, okay, unless he will agree with me that his testimony which says no adverse environmental impact is not to be construed as a statement of no adverse environmental impact as that term is used in the National Environmental Policy Act.

If he agrees with me on that, I'm done.

MR. ROSSO: I object to that, Mr. Chairman. I don't think that's proper at all.

The witness testified that he has looked at all adverse environmental impacts which would occur from continued

construction during this period of time. That's what he's testified to.

I don't know where Mr. Cherry is going on this, but the testimony is plain. This is just irrelevant. It's going way beyond where we ought to be in this proceeding.

CHAIRMAN WHEELER: I think there's an inquiry here that's fair to be made.

BY MR. CHERRY:

Q Will you agree with me that your testimony is not intended to be an opinion that there will be no adverse environmental impacts on all those waters that are within that term as used under the National Environmental Policy Act?

A No.

Q You will not?

All right, what is the definition of the environment as you understand it under the National Environmental Policy Act?

A I explained before that I can't quote the paragraphs, but I can tell you my interpretation. What I attempted to look at and what I've covered in here, in my judgment, I think it covers the general area.

Q Wait a minute. So you understand my question, Mr. Wells, I don't want to know what you have done in your testimony, because I can read it.

11-9
My question is very simple: Give me your understanding of the definition of the environment as used in the National Environmental Policy Act. That's all I want to know. I don't want to get into your testimony at all. I'll make the application of the criteria myself, okay?

A In general, my understanding is the National Environmental Policy Act regarding the environment states that we're to consider balancing the various natural needs with man's needs; and in that context we're supposed to look at the impact on the environment from as wide a range as I could.

Q Well, doesn't the National Environmental Policy Act have a listing of those things that are defined as environment, if you know?

A I am not certain.

Q When is the last time that you looked at the National Environmental Policy Act?

A Not very recently.

Q Did you look at it in connection with the preparation of your testimony?

A Again, no, I did not study it specifically. I felt I had the general knowledge based on what it was that we were attempting to prepare.

Q Did you look at the Council on Environment guidelines as to how the environment is supposed to be

considered by any federal agency?

A I have reviewed that. I did not look at it for this particular testimony, again, because we were preparing an Environmental Report supplement.

Q Mr. Wells, I'm talking about your testimony, okay? When the Environmental Report comes in we'll deal with that. I'm just talking about your testimony.

MR. ASHFROD: Can he finish his answer, Mr. Chairman? I do think it has some relevancy to what Mr. Cherry is asking.

CHAIRMAN COOPER: Did you finish, Mr. Wells?

THE WITNESS: I was just pointing out that the testimony I was directed to prepare related to, directly to the construction impact during construction and that I knew there would be a subsequent hearing at a later date when all the environmental impacts would be addressed in accordance with the National Environmental Policy Act requirements.

I just didn't feel it that specific to have to address each and every one of those cases here.

BY MR. CHERRY:

Q It's clear that all the environmental matters that you said will ultimately be addressed at this other hearing, that you're not covering all of those in your testimony. Is that correct?

A As they also include operational issues, that's

b1c10

correct.

Q No, aside from operational issues. Are you excluding any matter required to be analyzed, to your knowledge, by the National Environmental Policy Act during this 2-month period?

A I have not purposely excluded it.

Q But if you haven't checked with the National Environmental Policy Act in connection with your testimony, and you can't give me a listing of what it is, and you said you haven't looked at it recently, how do you know that your testimony is in accordance with the full purport of environment as defined by NEPA?

A The only answer I can give you is the one I gave before, that because of the fact that under my direction in our department we have prepared environmental reports and assessments before I have a general understanding of the types of issues to be considered.

Q But you can't list that for me?

A I can't list specifically all of the items in the National Environmental Policy Act environmental definition.

Q Can you list any one of them for me?

A I can't give you the wording or the correct quotation.

Q Just one. Can you give me one?

MR. ROSSO: Mr. Chairman, I do think this is

objectionable.

Q The man has already given the answer. He's told you what he's been asked to testify to. Is told you that his analysis of WSPA is in this case. He submitted the Environmental Report supplement. I don't think it's getting argumentative now.

GOVERNMENT COUNSEL: I think he's indicated he can't give you the items.

MR. CHERRY: He can't give me any one of the items.

GOVERNMENT COUNSEL: Which is what you were after.

MR. CHERRY: Okay.

BY MR. CHERRY:

Q I just have one other question, Mr. Wells.
 Turn to page 17 of your testimony, the last sentence on that page. It says:

"Although it's very difficult to quantify the increased environmental effects due to suspension of construction activities, all indications are that they would be more adverse than the adverse effect of continuing construction for the period under review."

Now, is that limited to that stuff you were talking about with Staff counsel about erosion, silt filtration and all of that?

A That's right.

b1a12

Q But you can't ensure those things, wouldn't you, during the suspension, if you wanted to; if you wanted to be good guys, you could ensure that?

A Not totally, because you can't defer the fact that you have an elongated schedule with what I consider to be a longer aesthetic impact. There's no way to cure that that I know of.

Q Aside from the aesthetics, you could curb the rest of the problems by some measures, wouldn't you?

A Yes, they could be minimized.

Q They could be cured completely.

A No, not totally, because you're talking about wind erosion as well as everything else. The longer period of uncovered ground is going to have some increased adverse impact.

Q If you throw mud on the floor and you don't clean it up, it's going to look bad, but who says you won't clean it up?

My last question, Mr. Wells, is simply this: When you use the term "environmental effect" on page 17, again, you're not relating that specifically to any understanding of the National Environmental Policy Act, correct?

A Again, I have to give you the same answer. I have a general understanding. I'm not relating to an understanding. I can't precisely state each one for you.

p14 13

Q It's clear you didn't review those requirements specifically when you prepared your testimony and went through the list of things you ought to consider. Is that correct?

A I did not use that as a checklist, is that's what you're asking.

MR. CHERBY: You can go back to Jackson as far as I'm concerned, Mr. Wells.

CHAIRMAN CONRAD: Does anyone else have any questions?

(No response.)

Dr. Leeds has some questions.

EXAMINATION BY THE BOARD

BY DR. LEEDS:

Q Mr. Wells, did I remember correctly that you were employed about the time the site activities were discontinued on Midland? Did you say November 1970?

A November '70 is when I was assigned to this particular position, yes.

Q And your testimony indicates that in November 1970 site activities were discontinued; so you came in at the same time site activities were discontinued, is that correct?

A Yes, coincidentally, but that's correct.

Q Sir?

A Coincidentally, but that's correct.

Q Tell me what kind of adverse environmental impacts occurred on the suspended activities in 1979?

A It would be to a large extent a... type that I have alluded to here, because it was the land clearing and that type of activity had been accomplished.

So, again, it would be the potential for erosion, wind erosion, dust, that type of thing.

Q Did the company do anything to minimize those effects? How bad were they?

A I'm sorry. That's two questions. Did you do anything to minimize it, and (2) how bad were the effects at that time?

A You can take them in either order. I think they're interrelated. That's why I asked them together.

A I'm not intimately familiar with exactly what steps were taken there, with the exception that I know in general the same types of precautions were taken right from the beginning of the project, that being control of sedimentation, where we had land that was very vulnerable to erosion: it was to be mulched, some type of control placed on it.

To the best of my judgment, those types of controls were in effect, but I'm not that intimately familiar with exactly what happened at that period.

Q So would it be fair to say that if the construction activities were suspended now that you could make it no

b1:15

worse than it was in 1970?

A. I think that's fair to say.

Q. Now, let me make sure. I think in the interchange between you and Mr. Cherry you indicated here that you talked about environmental effects of construction.

A. That's right.

Q. And that that was mainly on-site activities.

A. It was on-site. We did address a little bit of the traffic.

Q. And the aesthetics?

A. Yes.

Q. If the construction were suspended, I gather there would be a job dislocation with respect to the workers on site.

A. There certainly would be. This is something that I'm not involved myself with, but, yes, there certainly would be -- the workforce would be reduced.

Q. Is that an environmental effect?

A. It would be perhaps in the total environmental review, Environmental Report.

Again, whether it's right or wrong, I concentrated my efforts here on the on-site construction impact.

Q. I think Mr. Cherry asked you also about what would happen until the plant was in operation.

A. Yes.

b1:16

Q I think you replied it would be essentially the same.

A That's right.

Q Have the transmission lines that are to be constructed with respect to this plant been constructed?

MR. ROSSO: I'm sorry. I missed that question.

BY DR. LEEDS:

Q Have the transmission lines that are to be constructed with respect to or in conjunction with this plant constructed yet?

A No. There would be some transmission line construction which would be done.

Admittedly, I concentrated my discussion on on-site activities. There would be some impact from that.

Q Are there extensive transmission lines to be constructed?

A Not that relate directly to the project. There is essentially about 1.2 miles that are directly related to the project; and there is another leg of transmission network which is 36 miles long that ties in a major substation to our grid, but that isn't necessarily just for the Midland project. It eventually would have to be constructed at some time, anyway. It's being done sooner because of Midland.

So it would be that section -- those two pieces of transmission lines.

Q They have not been constructed yet?

A That's right.

Q Thank you, sir.

CHAIRMAN COUFAL: Are you going to have some redirect, Mr. Rosso?

MR. ROSSO: May I just take one minute?

(Pause.)

MR. ROSSO: I have only one question, sir.

CHAIRMAN COUFAL: One question, you say?

MR. ROSSO: Just one.

CHAIRMAN COUFAL: That probably means 101, but go ahead.

REDIRECT EXAMINATION

BY MR. ROSSO:

Q Mr. Wells, is there going to be any transmission line construction during the period through September 1977?

A No. The transmission networks that I described will be done after that period.

MR. ROSSO: No further questions.

RECROSS EXAMINATION

BY MR. CHERRY:

Q When will it start?

A I can't give you the starting date because it backs off from the in-service date. I simply don't have that, but I know it's after this period, considerably.

Q When there was a shutdown in 1970, there was a
 relocation of the workforce then, too, right?

A I presume that was. I simply am not that
 familiar with what the state of the workforce was.

Q What did contractors do for the people, the
 employees?

A I said I'm not that familiar.

Q Did they make them get relocated?

MR. HENNING: Objection, Mr. Chairman. He's
 already said he said he wasn't familiar with that area.

MR. ROSSO: Not only that, but that was a very
 early stage of the project, sir. The situation isn't
 comparable to this one.

CHAIRMAN COSTAL: He responded he didn't know.

MR. CHURCH: At least they didn't get some award
 for helping out these guys.

I don't have anything else.

CHAIRMAN COSTAL: I guess, Mr. Wells, you're
 through.

(Witness excused.)

CHAIRMAN COSTAL: What's the schedule for
 tomorrow?

MR. REEFMAN: Mr. Chairman, we have got, and I
 will pass out in a moment, testimony of Mr. Noble, who I
 told you this morning will be available to testify as to the

steam generators at Palisades. I will pass out some Q and A that I have from Mr. Noble. The parties can have it over the evening.

After that we'll have Mr. Mosley. Mr. Mosley was at that time -- he has since retired, but he can speak to the probability concerning, which was brought up by Mr. Leeds.

After that, if we still need to go on, we have another witness. We have Mr. Cline available, who is the individual to respond to Mr. Cherry's questions on concentrations and price elasticity.

We'll have all of those people available tomorrow.

MR. CHERRY: I have no questions of any of them.

Whenever there's some prepared written testimony -- you've got another guy that you're picking up with prepared written testimony besides Mosley?

MR. BEMPROW: You've got some stuff for Mr. Noble.

MR. CHERRY: Other than him, that's it?

MR. ROSSO: I'm sorry. I didn't understand your question.

MR. CHERRY: All of your prepared testimony from November with the exception of Mosley, 3 and 4, is all in the record?

MR. BEMPROW: I think that's right.

MR. CHERRY: I don't want those other guys -- Cline and all those -- so don't bring them for me.

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If you have some direct testimony, please serve it in advance.

(Documents distributed.)

I have Mr. Noble's, but if you have anything for Mr. Glitzer or some of these other guys I want to see it now.

Does the Board have questions of Glitzer and Mosley coming out of retirement and all of that? Because I don't.

CHAIRMAN JOYNER: I think the reason Mr. Mosley is coming is because of Dr. Leeds' inquiry about probability encoding.

DR. LEEDS: Mr. Mosley's coming for Dr. Bushke.

MR. ROSSO: Mr. Chairman, we do have some witnesses we want to put on. Now some of the questions that came up during the cross-examination the week before last.

We will not be able to prepare all of it in advance. We have been able to do it with regard to Mr. Noble, but we simply won't be able with regard to the others.

MR. JERRY: I don't think that makes a lot of sense in my judgment, but you can do what you want.

CHAIRMAN JOYNER: Let's talk about when we're going to quit tomorrow. Some of us who live out of town have airplane reservations to make.

MR. ROSSO: The Board's pleasure.

MR. CHERRY: Mr. Chairman, what I'd like to do is to finish the case tomorrow. So if

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these people come and we ask them questions, I would like Consumers Power Company to be in a position to rest its case. We'll get to the Staff first thing Monday morning and go right through.

MR. ROSSO: Mr. Chairman, I might like that, but I don't know if we can do that.

We have some witnesses who are coming in in order to testify on Monday.

MR. CHERRY: Who are they?

MR. ROSSO: Mr. Keeley is coming in. He will be here and available on Monday.

Is there anybody else, Rex?

MR. BENTROW: I'm sorry?

MR. ROSSO: With regard to Monday, who will be here Monday?

MR. BENTROW: I really haven't worked all of that out yet, but I thought perhaps Mr. Heins. He's not finished yet. We'll get through with Mr. Wells. We can have Mr. Heins, Mr. Lapinski, some questions for him on the LLP and the cost runs, which Dr. Timm said he wanted, so we'll plan on bringing him on Monday.

Then after that we'll go with Mr. Keeley. We've had questions about AGRS, and Mr. Keeley will be able to respond to those.

We'll have the people here from Bechtel, if you

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want to go into that as you requested.

MR. CHERRY: I don't have any questions of any of your witnesses. I have now said that, I think, a thousand times.

I may have a question of Mr. Noble after I read this, but I doubt it will be more than 10 or 15 minutes.

I don't want to spend four days next week on Consumers' witnesses. They don't have to bring anybody from Bechtel for me, anybody for loss of lead probability, they don't have to bring anybody out of retirement for me; I don't want them.

As far as I am concerned, Dr. Timm does not have to be here during any redirect of Mr. Hains or of Mr. Keeley. It can go in as soon as possible.

I want to make it very clear that this hearing must end at the conclusion of next week. I have now cut down substantially on my cross-examination. I will serve Dr. Timm's testimony at 9:00 o'clock Monday morning, and I expect his cross-examination will be done next week.

MR. ROSSO: I'm not sure I'm ready to agree to that. I haven't seen Dr. Timm's testimony, and I don't know how long it's going to take me to get my people to review it and give me the same kind of advice that Mr. Cherry apparently got from Dr. Timm when he was examining technical testimony.

MR. CHERRY: It deals with your documents 100 percent.

MR. SCHRO: I don't know what he does with those documents, but I reserve every right, as I'm sure the other parties will want to do, to take whatever time is necessary to review it.

We'll do it as quickly as we can, but I'm not going to court a verdict to speed-up until the time comes that before I've seen his affidavit.

MR. CHERRY: I'll tell you what, Mr. Chairman. I want to make this very clear.

If the imposition of Dr. Timm's testimony will make this case go beyond next week, I won't file it, okay?

CHAIRMAN COOPER: Mr. Cherry --

MR. CHERRY: I'm satisfied with the record as it is, as what I'm saying. If I have to make a choice between in my judgment avoiding a successful suspension because waiting in Dr. Timm's testimony and going to court next Friday, I have told you what my decision is. I cannot afford to do it; I'm not going to.

CHAIRMAN COOPER: I understand that, but we would like to hear Dr. Timm, frankly.

MR. CHERRY: We'd better do it next week.

CHAIRMAN COOPER: The Board would like to do that. We want to make an arrangement so that can be done.

Are you going to give us testimony on Monday?

MR. LEEDS: Yes, sir.

MR. ROSSO: I suggest that the time to talk about when the cross-examination will take place is after we get a chance to see it and see how much time we need, sir.

DR. LEEDS: Will your people be here Monday who could evaluate that?

MR. BENFROW: Yes, if we go -- as I understand what Mr. Cherry is going to put on, we will have the type of people here. We may have to get some more.

I had hoped to try to work it out so that the people that Dr. Winn had given me some indication that he might have some questions for -- now I understand he doesn't -- would be here on Monday, too.

It's possible that we can get through next week, depending on Mr. Cherry's cross. He said he only had one or two questions for Mr. Howell and then continued to run all day.

MR. DE ERBY: I didn't get those documents, you know.

DR. LEEDS: If he gives you that testimony at 9:00 o'clock in the morning and we don't start until 1:00 or so in the afternoon on Monday, you'll have time --

MR. BENFROW: I will not commit to that, Dr. Leeds.

It's just not possible until we get the questions from Dr. Tamm on Monday. I will commit to you that we'll work on it and we'll try to give you an idea of how long it will take us, and we'll try to do it next week.

DR. LEEDS: I haven't asked you to commit to anything yet. I was in the process of saying if your people were here Monday morning you and they would have time to at least take a quick look at that, and you could certainly give us a better answer at 1:00 o'clock in the afternoon on whether you could be prepared to cross-examine.

MR. ROSSO: We'll be able to give you a better answer, sir, but I'm not sure we'd be able to give you a definitive answer. It takes a little while to look at the testimony and see what depth it goes into. You have to look at what documents he may or may not use and what he's done with them.

MR. SENTROW: Mr. Rosso and I could go back and forth, but the answer to your question is yes, we'll look at it and yes, we'll give you the best answer we've got.

DR. LEEDS: Mr. Cherry, let me try to get some more information about Dr. Tamm's testimony.

Will it essentially be prepared so that maybe a telephone call to Dr. Tamm on Saturday or something like that --

MR. CHERRY: He is coming in here with his

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testimony midnight Friday, and we're going to type it in final form Saturday and Sunday because he didn't have typing, et cetera.

But I've gone over Dr. Timm's testimony. I've given him the following instructions: that every time he's asked something in his testimony it should not be anything other than supported by something that a Consumers Power witness said, a Consumers Power document, a Gov document, or a Gov witness. Because, as I said, I don't want to get into any arguments about the facts. We're going to put in our testimony based upon their documents and the information.

So we'll have a long appendix which will include a transcript reference, a document reference, et cetera, including those which I will mark on Monday and offer in evidence.

There are a couple of additional documents dealing with coal prices which they didn't see fit to give you and which we'll give you, but by and large the documents deal -- the testimony deals 100 percent with the documents that they have given us and particularly have given Dr. Timm.

It deals with the following subject matters: Mr. Keeley's testimony, Mr. Heins' testimony, and energy conservation primarily.

MR. HOEPLING: Mr. Chairman?

CHAIRMAN COFFAL: Yes.

MR. HOEFLING: The Staff has two concerns:

One, Dr. Timm's testimony will arrive on the scene on Monday. The Staff is a long way from home here. I don't know what the specifics of that testimony are going to be. I don't know how long it's going to take for us to do it, look at it.

We have a problem. You asked us to respond to interrogatories. The same people who are supposed to be responding to the interrogatories are probably going -- prudently should be out here on Monday to take a look at Dr. Timm's testimony. That makes it difficult for them to get the material together for these interrogatories.

MR. CHERRY: Why? They're due Monday. They're not due in the mail. They're due right here in this room.

MR. HOEFLING: The people that are supposed to respond to them are out here now. I have a physical problem in getting a response if the people are going to be out here through tomorrow and back out here Monday morning.

The second concern is the need for Staff witnesses tomorrow.

CHAIRMAN COUNAL: It doesn't sound like we're going to need Staff witnesses tomorrow from what Mr. Rosso and Mr. Ranfrow have said.

MR. ROSSO: However you want to go, sir, tomorrow.

MR. CHERRY: Will you take the whole day in your

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direct presentation?

MR. ROSSO: No.

MR. CHERRY: Will you take about an hour-and-a-half?

MR. ROSSO: We don't know.

MR. CHERRY: You see, that's the point. We're only going to have, with cross-examination and everything, at best the morning. I think that we ought to have Mr. Echols or a couple of the Staff people ready and keep this case moving.

MR. ROEFLING: I think Mr. Echols would be available. My problem is getting other people out here tomorrow morning in the hope that they might go on tomorrow afternoon and not be called.

CHAIRMAN COWLEY: Mr. Echols will likely be on for quite a while, won't he?

MR. ROEFLING: Pardon me?

CHAIRMAN COWLEY: Mr. Echols will probably be on for quite a while.

Do you have a lot for him, Mr. Cherry?

MR. CHERRY: Five or ten minutes. I don't have anything for any of the Staff. Mr. Crocker has said a couple of interesting things, but they're more amusing than they are substantive.

So I'd be satisfied to say no, I don't have

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anything for the Staff.

It's okay with me. Just get them on. My case isn't dependent upon new testimony.

Any questions.

If the Staff witnesses were not on tomorrow, then they could leave early tomorrow morning or tonight to go back to Washington.

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MR. HOEFLING: The problem with that is that the staff expert who is going to work on the interrogatories, also look at Mr. Timm's testimony, is the man we would like to have here when Mr. Heins and the other individual that Mr. Hanfrow pointed out are going to be here to give testimony.

MR. CHERRY: I don't understand that.

The interrogatories outstanding deal with ACBS matters and cost benefits, a listing of cost benefits and some financial matters.

What has that got to do with Mr. Heins' testimony?

MR. HOEFLING: Well the individual, that is our cost-benefit man developed the testimony in the area that Mr. Heins made his presentation.

MR. CHERRY: That is a problem that has just got to be solved.

MR. HOEFLING: I think, Mr. Cherry, that the individual that is making a review, is entitled to be here when a presentation is made, it is that simple. I don't see how we can solve that problem.

MR. CHERRY: I appreciate that.

But when the testimony is here at 9 o'clock, those guys are certainly back here on Tuesday --

MR. HOEFLING: I think, Mr. Chairman, I would like to have my man out here on Monday to work with Dr. Timm's

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testimony.

I think if we can push the interrogatory response to Tuesday or Wednesday, that would help us mechanically to get it developed and perhaps get it out here with one of our witnesses coming out.

I think you mentioned that Monday would be a "drop dead" date, and if we could get some relief on that it would help us.

MR. CHERRY: I wanted to see those before Kealey went on. If Consumers agrees to keep Kealey over until after they are done -- I don't want to slow up his testimony -- I mean agrees to keep him an additional day, I will agree to Tuesday morning.

If Kealey testifies Monday, you will keep him here to Tuesday, even --

MR. RENFROW: We will agree to that.

MR. CHERRY: Okay. Then I will agree to the interrogatories on Tuesday morning by the Staff, if that is agreeable to the Board.

MR. ROEFLING: I don't know if I can get them out here Tuesday morning.

MR. CHERRY: Then I won't agree.

Then they are here Monday.

MR. ROEFLING: We can't transmit them through thin air. We have to get them out here somehow, physically,

mn3 with an individual. I am not sure they can be here by Tuesday morning.

MR. CHERRY: Can he be here by Tuesday noon.

MR. HOEFLING: I think Tuesday.

MR. CHERRY: I mean, if we can't have a limit on it -- there is an 9 o'clock plane out of Washington Tuesday morning; I have taken it myself, and can be here at 9:30. I will agree to a noon deadline on Tuesday. If not I want him here Monday morning like the Board ordered, and let them worry about their cross-examination.

MR. HOEFLING: Mr. Chairman, Mr. Jesso indicates that a telecopier might be available on Tuesday.

We could try to get that material telecopied out Tuesday morning, if indeed we can't get it out here physically with some individual, before close of business on Tuesday.

CHAIRMAN COUFAL: All right.

So it is either coming out telecopied, or physically Tuesday morning.

MR. HOEFLING: (Nodding affirmatively.)

CHAIRMAN COUFAL: Okay.

MR. CHERRY: Mr. Chairman, I have just read the ten pages of Noble testimony. I have one question for him.

CHAIRMAN COUFAL: All right.

We still haven't resolved when we are going to quit tomorrow.

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MR. CHERRY: Well I would like to go unless the Board has some strong reservation, I would like to go a full day and get done as much as we can.

DR. LEEDS: Can we fill the day if you have one question of Mr. NOBLE?

Who are we having here?

Mr. Noble is coming tomorrow?

MR. RENFROW: Right.

And I am not sure how much Dr. Luebke has that he would like to find out about.

We have Mr. Mosely and I don't know how much you want to talk to Mr. Mosely about.

DR. LEEDS: Not very much. I would say 30 minutes at the most.

MR. RENFROW: And then we have Mr. Climer.

DR. LEEDS: And he is the --

MR. RENFROW: He does the conservation, energy conservation work at Consumers and can talk to that.

DR. LEEDS: Then we have Mr. Echols.

MR. RENFROW: Then we have Mr. Echols.

MR. CHERRY: How many Staff witnesses are there, three or four?

MR. KOEPLING: A total of four.

DR. LEEDS: Is Mr. Feld still here? I saw him earlier.

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MR. HOEFLING: Mr. Feld is here but I don't want to put Mr. Feld on until the Applicant's case in his area is complete.

MR. CHERRY: So where is Mr. Crocker?

MR. HOEFLING: Mr. Crocker is in Washington.

MR. CHERRY: Can he be here tomorrow?

MR. HOEFLING: He can be here tomorrow if it is reasonable that he is going to get on tomorrow.

MR. CHERRY: Yes, he will get on. Bring Mr. Crocker here, because he will have Monday to go back to do the interrogatories.

Who else? Crocker, Echols, Feld?

MR. HOEFLING: Mr. Meltz.

MR. CHERRY: What is Mr. Meltz testifying to?

MR. HOEFLING: I think he is testifying on financial costs associated with delay.

DR. LEEDS: Does it make sense to get Mr. Crocker out here on Friday afternoon, if we take an hour for lunch, and may even be running over on that, versus getting him here on Tuesday?

We need to have a little slop in the schedule. pardon me, a little movement possible in the schedule.

MR. CHERRY: I will do whatever the Board suggests.

I just want to know -- I just want to make clear that it is my strong desire to have this matter concluded by

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next Friday for an evidentiary presentation, or earlier if possible.

DR. LEEDS: It sounds like Dr. Timm's cross is a critical item.

MR. CHERRY: Well, I hope so.

I don't know what the time some of these other people have. But if we can finish all of -- I mean, can those people be out here Monday?

MR. HOEFLING: Who?

MR. CHERRY: All the rest of your witnesses?

MR. HOEFLING: Yes.

Mr. Chairman, I think we have to realize we do have a travel problem here. We had a travel problem last Friday, we didn't get back to Washington until Saturday morning.

We would like to be out here Monday morning and get a look at Dr. Timm's testimony first thing.

We would also like to have some time this weekend to work up these interrogatory responses; to get back to the office and to get the stuff out here that we are going to need next week.

To go tomorrow as far as we can with the Applicant people and then knock off in the early afternoon doesn't sound to me to be unreasonable.

CHAIRMAN COUFAL: All right. That is what we will

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do.

We will start what time? 9 o'clock tomorrow?

MR. ROSSO: Make it a little later.

9:30, how is that?

CHAIRMAN COUFAL: 9:30.

MR. CHERRY: We are not going to have Mr. Crocker tomorrow, is that right?

DR. LEEDS: That's right.

CHAIRMAN COUFAL: We might have some awful long days next week.

I think the Board is as anxious as Mr. Cherry to get this done.

MR. ROSSO: So are we.

MR. RENFROW: So are we, Mr. Chairman.

I will go back and see what we can do about shaking the bushes, you can be sure about that.

CHAIRMAN COUFAL: All right, 9:30 tomorrow morning.

(Whereupon, at 5:55 p.m., the hearing in the above-entitled matter was adjourned, to resume at 9:30 a.m., on Friday, 4 February 1977.)