

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GENERAL PUBLIC UTILITIES CORPORATION, :
JERSEY CENTRAL POWER & LIGHT COMPANY, :
METROPOLITAN EDISON COMPANY and :
PENNSYLVANIA ELECTRIC COMPANY, :

Plaintiffs,

80 CIV. 1683
(R.O.)

-against-

THE BABCOCK & WILCOX COMPANY and :
J. PAY McDERMOTT & CO., INC., :

Defendants. :

-----x

Deposition of THE BABCOCK & WILCOX

COMPANY by LOUIS M. FAVRET, taken by Plaintiffs
pursuant to notice at the offices of Kaye,
Scholer, Fierman, Hays & Handler, Esqs., 425
Park Avenue, New York, New York, on Monday,
May 11, 1981 at 9:45 o'clock in the forenoon,
before Charles Shapiro, a Certified Shorthand
Reporter and Notary Public within and for the
State of New York.



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PDR ADOCK 05000289
T PDR

WALTER SHAPIRO, C.S.R.
CHARLES SHAPIRO, C.S.R.

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A p p e a r a n c e s :

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-and-
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BY: ROBERT F. WISE, JR., ESQ.
-and-
RICHARD PU, ESQ.

of Counsel

-oOo-

2

IT IS HEREBY STIPULATED AND AGREED

3

by and between the attorneys for the

4

respective parties hereto that the sealing,

5

filing and certification of the within

6

deposition be, and the same hereby are,

7

waived; and that the transcript may be

8

signed before any Notary Public with the

9

same force and effect as if signed before

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the Court.

11

IT IS FURTHER STIPULATED AND AGREED

12

that all objections, except as to the form

13

of the question, are reserved to the time

14

of trial.

15

-oOo-

16

17

MR. KLINGSBERG: Do you want to mark

18

this as Favret Exhibit 1?

19

(Resume was marked Favret Exhibit 1

20

for identification, as of this date.)

21

22

-oOo-

23

24

25

2

LOUIS M. FAVRET, having

3

been first duly sworn by the Notary Public

4

(Charles Shapiro), was examined and

5

testified as follows:

6

EXAMINATION BY MR. KLINGSBERG:

7

Q Mr. Favret, I show you a document

8

we have marked as GPU (Favret) Exhibit 1 for

9

identification. Is that an accurate statement of

10

your education and employment history?

11

A That's a fair representation. I would say

12

most of them are correct. I can't say each one

13

of them are exactly or precisely it as to the

14

dates, but that is a good chronology.

15

Q In your current position as Executive

16

Vice President of the Business Integration Group,

17

where are you located?

18

A In New Orleans, Louisiana, 1010 Common

19

Street.

20

Q Is that a separate office of Babcock

21

& Wilcox or is that combined with J. Ray

22

McDermott?

23

MR. WISE: What do you mean,

24

combined with?

25

Q Is it in the same building as J. Ray

2

McDermott?

3

A It's in the same building and our offices

4

-- it's a B&W building and our offices are on

5

the 20th floor.

6

Q Is the entire 20th floor Babcock &

7

Wilcox?

8

A Yes.

9

Q Is J. Ray McDermott located in the

10

same building?

11

A Yes.

12

Q What is the Business Integration

13

Group?

14

A The Business Integration Group is an

15

operation that has reporting to it a subsidiary

16

in Canada, Babcock & Wilcox Canada Limited, the

17

Utility Sales and Marketing Division for the

18

United States, the International Operating

19

Division, Research and Development and Operational

20

Planning.

21

Q How long has the Business Integration

22

Group been in existence?

23

A Thirteen months, approximately.

24

Q Were you in it from its inception?

25

A Yes.

2

Q What was the purpose of its

3

formation?

4

A The purpose of its formation was as to be

5

able to consolidate our sales and marketing

6

efforts and also to operate across various

7

division lines to integrate the operations for

8

Mr. Vannoy.

9

Q Did you say Mr. Vannoy?

10

A Vannoy, yes.

11

Q What is his full name?

12

A It's Walter M. Vannoy.

13

Q What is his title?

14

A He is the President and Chief Operating

15

Officer of Babcock & Wilcox.

16

Q How long has he held that position?

17

A A little over a year.

18

Q What position was Mr. Vannoy in before

19

he became President?

20

A He was the Chief Administrative Officer for

21

J. Ray McDermott.

22

Q Is there any corporate suborganization

23

within the Business Integration Group that has

24

responsibilities for contracts or contract

25

drafting or negotiation?

2

A No.

3

Q Is there another group that would

4

supervise that aspect of the company's operations?

5

A Each one of the operating groups has their

6

own Contracts Legal.

7

Q What are the operating groups?

8

A The operating groups are the Fossil Power

9

Generation Division and Construction Company,

10

the Tubular Products Group, the Industrial

11

Products Group and -- who am I leaving out?

12

Q Nuclear?

13

A Nuclear Group.

14

Q Is there currently a Power Generation

15

Group?

16

A No.

17

Q Could you describe for us briefly

18

your duties and responsibilities as Executive

19

Vice President of the Business Integration Group?

20

A My duties are as to coordinate the sales

21

and marketing activities to our utility customers

22

both domestically and internationally in behalf

23

of the other operating groups, to coordinate the

24

company's R&D efforts, and to help resolve

25

intergroup activities.

1
2 Q In 1979 you were a Group Vice President
3 of the Power Generation Group.

4 What was the Power Generation Group?

5 A The Power Generation Group was a
6 consolidation of divisions whose activities were
7 primarily associated with power equipment boilers
8 for utilities and for industrial applications.

9 Q What were the groups or the divisions
10 that came under the Power Generation Group?

11 A Let me think now.

12 There was a Fossil Power Generation
13 Division, Construction Company, Nuclear Power
14 Generation Division, Nuclear Equipment Division,
15 Nuclear Materials and Manufacturing Division,
16 Industrial and Marine Division.

17 I believe that's it.

18 Q And is it correct that in 1979 and
19 previously under the Power Generation Group that
20 the contracts -- there was a separate Contracts
21 Legal Department for each one of those groups?

22 A Yes.

23 Q Was there anyone in the Power
24 Generation Group who had particular supervisory
25 power over the contracting area or subject?

1
2 A At that time each one of the divisions
3 still had their own Contracts Legal Department
4 within their division, but there was a central
5 staff of Contracts Legal personnel work where a
6 coordination function took place and that was
7 called a Commercial Department.

8 Q Who was in charge of the Commercial
9 Department?

10 A Prior to his retirement, it was Mr. D. R.
11 Wilson.

12 Q Is there a Commercial Department today?

13 A No.

14 Q Was Mr. Wilson the last head of that
15 Commercial Department?

16 A I don't recall whether he was -- after his
17 retirement whether we filled that position or not.

18 Q Was the function of the Commercial
19 Department transferred to some other department
20 subsequently?

21 A Not within -- not within the B&W Company,
22 no. Each group had their own Contracts Legal
23 operation.

24 Q Was there anyone within the J. Ray
25 McDermott Company who has taken over the previous

2

function of the Commercial Department of B&W?

3

A J. Ray McDermott Company does have a legal

4

staff where various individuals are assigned a

5

coordinating function for -- to assist the

6

operating companies within the parent company.

7

Q Who in J. Ray McDermott is in charge

8

of or has responsibility for coordinating

9

functions in regard to contracting relating to

10

nuclear power plants or related services?

11

A The specific per se would be the

12

Nuclear Group.

13

Q Right.

14

A If they had questions, they would approach

15

Mr. Jim Jones.

16

MR. WISE: Let's make it clear that

17

you are not answering the question as to

18

someone within McDermott.

19

THE WITNESS: No.

20

MR. WISE: I just wanted to make sure

21

you understood that. Mr. Favret was not

22

talking about Mr. Jones as an employee of the

23

McDermott Company.

24

Q Mr. Jones is not an employee of

25

McDermott?

2

A I don't know what his reporting is right now. I would have --

3

4

THE WITNESS: We would have to check

5

that.

6

A Whether he is an employee of B&W or

7

McDermott.

8

Q What were your duties and

9

responsibilities as Group Vice President of the

10

Power Generation Group?

11

A As the Group Vice President for the Power

12

Generation Group, I had responsibility of

13

coordinating the efforts of the various divisions

14

reporting to me and to assure that the

15

performance was in the best interest of the

16

company and that we met our overall objectives

17

of the company.

18

Q Is it fair to say, then, that whereas

19

now your primary responsibility is in the sales

20

and marketing area, your responsibilities as

21

Group Vice President of Power Generation were

22

more of a managerial function?

23

A Yes.

24

Q From 1973 to 1976 you were Vice

25

President of the Nuclear Division in Barberton,

2

Ohio.

3

What were your duties and

4

responsibilities at that time?

5

A At that time I reported to the Group Vice

6

President for the Power Generation Group and I

7

had reporting to me the Nuclear Power Generation

8

Division, the Nuclear Equipment Division, and the

9

Nuclear Materials and Manufacturing Division.

10

Q Who was the Group Vice President of

11

Power Generation during that period of time?

12

A Mr. Vannoy, Walter M. Vannoy.

13

Q Was this again a managerial function?

14

A Yes.

15

Q From 1973 to '78?

16

A Right.

17

Q Did you engage in sales activities

18

during that period of time?

19

A Directly or indirectly. I mean at times

20

you would always be acting in contact with the

21

customers.

22

Q Yes.

23

A But not necessarily directly.

24

Q During the period 1973 to 1978 can you

25

tell us who was in charge of the Contracts Legal

2

Section of your Nuclear Division?

3

MR. WISE: Well, he has mentioned

4

more than -- well, go ahead.

5

A Per se I did not have a Contracts Legal man reporting to me.

6

7

Q Yes?

8

A The Contracts Legal people were part of the operating divisions and I did not have a staff.

9

10

Q What operating divisions would the

11

Contracts Legal people have been a part of during the 1973 to '78 period insofar as it related to nuclear equipment or services?

12

13

14

A That's the same divisions that I listed previously.

15

16

Q Can you tell us the names of the

17

Contracts Legal people in each of those nuclear areas?

18

19

MR. WISE: For the entire period?

20

Q To the extent you recall, yes.

21

A Nuclear Equipment Division, the principal head of the Legal staff was Mr. Michael Murray.

22

23

The Nuclear Power Generation Division,

24

a Mr. John Moutz in the early years, and Mr. Jim

25

Jones in the latter years.

1
2 For the Nuclear Materials and
3 Manufacturing Division, I will have to get you
4 his name. I don't recall. I know the...

5 Q Can you tell us briefly the different
6 area of responsibility of each of these three
7 nuclear divisions?

8 A The Nuclear Equipment Division is a designer
9 and fabricator of equipment for application for
10 the U. S. Navy and other products that may be
11 sold for -- to other customers, such as reactor
12 vessels for Westinghouse.

13 Q Is it fair to say that the Nuclear
14 Equipment Division does not deal directly with
15 investor-owned electric utilities?

16 A Except for one product, and that would be
17 the electromagnetic filter.

18 Q Nuclear Power Generation?

19 A The Nuclear Power Generation Division's
20 activities were primarily with the utilities and
21 some government contracting activities.

22 The Nuclear Materials and
23 Manufacturing Division at one time during this
24 time period was a supplier of classified material
25 for the United States Navy and also for commercial

1
2 fuel fabrication for NPGD, for the Nuclear Power
3 Generation Division.

4 Q Is it fair to say then that insofar as
5 dealings with utilities if it came to a nuclear
6 steam supply system and related equipment, that
7 would be under the responsibility of the Nuclear
8 Power Generation Division, is that correct?

9 A Correct.

10 Q And in regard to fuel for the nuclear
11 plants that would be under the Nuclear Materials
12 and Manufacturing Division, and they would deal
13 with utilities in that regard?

14 A Not correct.

15 Q Not correct?

16 A Not correct.

17 Q Which division would deal with
18 utilities in regard to the sale of fuel for use
19 in nuclear plants?

20 A The Nuclear Power Generation Division.

21 Q I see.

22 Do you recall anyone else from the
23 Nuclear Power Generation Division during the
24 period 1973 to 1978 other than Mr. Moutz and Mr.
25 Jones who dealt with the Contracts Legal area?

2 A We are talking 1978 and prior.

3 I believe that Mr. Byron Nelson
4 joined that -- the Nuclear Power Generation
5 Division during that time period and I can't
6 recall the names of the other individuals.

7 Q After 1978 do you recall the names
8 of any other Contracts Legal personnel dealing
9 with the Nuclear Power Generation Division or in
10 the Nuclear Power Generation Division?

11 A I am sorry, I can't get the names connected
12 with the faces.

13 Q Do you know the relative
14 responsibilities of Mr. Moutz, Mr. Jones and Mr.
15 Nelson in regard to contract matters pertaining
16 to nuclear power generation?

17 MR. WISE: I don't know what you mean
18 by "relative," but if the witness does, he
19 can go ahead and answer.

20 A Relative; do you mean reporting
21 responsibility or --

22 Q Let's take it that way to begin with.

23 A Well, those gentlemen, that is, Mr. Jones
24 was the senior member and head of the department.

25 Q Yes?

2

A Mr. Moutz was in the earlier years.

3

Q And Mr. Nelson?

4

A And Mr. Nelson was reporting to Mr. Jones.

5

Q Can you identify Mr. McDaniel?

6

A Yes.

7

Q What is his position today?

8

A Is that Mr. -- what's his first name, Mr.

9

George, is it?

10

Q Yes.

11

A I believe he -- no, that would be -- I don't

12

have personal contact with him right now, and I

13

would -- shouldn't venture a guess as to what his

14

position is.

15

Q During what period of time are you

16

familiar with his position or responsibility?

17

A My recollection is that he was a member of

18

the staff on contract matters in the Contracts

19

Legal Department.

20

Q How about Mr. Mullins? Was he also a

21

member of the staff of the Contracts Legal

22

Department?

23

A Yes. Mr. John Mullins?

24

Q Yes.

25

A He joined the -- I don't know the

2 precise time that he joined the firm.

3 Q Would matters pertaining to the
4 training of utility employees for the operation
5 of nuclear power plants come under the
6 responsibility of the Nuclear Power Generation
7 Division?

8 A The Nuclear Power Generation Division did
9 not have full responsibility for training of
10 customers' operators. It was usually the utility
11 that assumed that role and requested that we
12 furnish a part of those services.

13 Q But to the extent that you furnished
14 those services, it would have been done by the
15 Nuclear Power Generation Division, is that correct?

16 A Yes.

17 Q Are you familiar with the fact also
18 that from time to time you enter into with
19 customers in relation to nuclear plants so-called
20 master services contracts?

21 A Correct.

22 Q And would the responsibilities for
23 providing those services again be under the
24 Nuclear Power Generation Division?

25 A As it pertains to nuclear matters?

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Q Yes.

A They would primarily contract with the Nuclear Power Generation Division.

Q Now, during 1973 to 1978 when you were Vice President of the Nuclear Division in Barberton, how did that interrelate, if at all, to the nuclear operations which your company had in Lynchburg, Virginia?

A The operations in Lynchburg, Virginia which you referred to are comprised of the Nuclear Power Generation Division and the Nuclear Materials and Manufacturing Division, but in addition to that, there were other divisions also in Lynchburg.

Q So you had the executive offices in Barberton and some of the actual division were in Lynchburg?

A Correct.

Q Who was the head of the Nuclear Power Generation Division during the period 1973 to 1978?

A Mr. John H. MacMillan.

Q And who succeeded Mr. MacMillan?

A At the time that the Power Generation Group

2 was dissolved, the nuclear divisions were made
3 a group and at that time he was succeeded by Mr.
4 Doug Guilbert.

5 Q What time was that?

6 A That would have been 1979.

7 Q All right.

8 A No, wait a minute. Correct that. That
9 would have been April 1980.

10 Q Were you involved in the decision to
11 make these organizational changes?

12 A Partially.

13 Q Who else was involved?

14 A Mr. Vannoy.

15 Q Were there any task force or committee
16 reports written or consultants' reports written
17 or presented in regard to these organizational
18 changes?

19 A No. None.

20 Q Were there any memoranda written
21 recommending particular changes with reasons?

22 A There were memoranda written making the
23 announcement of the changes and I don't have
24 direct knowledge of any other memorandums that
25 Mr. Vannoy may have written.

2

Q Was there any committee or task force which dealt with these changes?

3

4

A We had one or two review meetings with the various members of the executive group, but those were organizational meetings.

5

6

7

Q Were minutes kept of those meetings?

8

A I don't recall.

9

10

Q Did you present any reasons in support of any recommendations that you made relating to these reorganization matters?

11

12

A Did I -- what was the question again?

13

MR. KLINGSBERG: Do you want to repeat

14

the question, please.

15

(Question read.)

16

A There were no written reports that were submitted.

17

18

Q Did you make oral recommendations to

19

Mr. Vannoy?

20

A He asked for my advice and counsel as to whether we should consider a restructuring of the company.

21

22

23

Q And did you provide that advice and

24

counsel?

25

A Yes.

2 Q What was the substance of your
3 advice and counsel to Mr. Vannoy in regard to the
4 restructuring?

5 A That we could have a restructuring of the
6 organization and maybe clarify some of the
7 organizational aspects of the company by the
8 reorganization that we went through.

9 Q What aspects required clarification
10 in your view?

11 A Well, it was the consolidation of the
12 nuclear divisions as a group, was number one,
13 which I had previously been in charge of. That
14 would clarify that role.

15 The structuring of the Fossil Power
16 Generation Division and the Construction Company
17 so that their activities were better defined
18 between themselves and with the utility customers.

19 The other one is to consolidate some
20 of our sales and marketing activities for the
21 utilities, both domestically and internationally.

22 Q What factors led you to conclude that
23 there should be a clarification, a restructuring
24 in relation to the nuclear operations?

25 A Well, one aspect was that the size of our

1
2 group and its projected growth indicated that it
3 would be timely to makeshift a change and
4 restructuring at that point in time because
5 the projected growth of the Power Generation Group
6 would be very large.

7 Q Are there any other factors taken into
8 account?

9 A None that I recall.

10 Q Did you believe that the restructuring
11 clarification would make your nuclear operations
12 more efficient?

13 A Make it more cohesive.

14 Q From 1971 to 1973 you were Vice
15 President of the Nuclear Equipment Division.

16 Am I correct from your previous
17 testimony that you dealt in that period
18 principally with Navy matters and did not have
19 direct contacts with utility customers?

20 A Primary contacts and products were for the
21 Navy, but did have contacts with the utilities in
22 support of the Nuclear Power Generation Division
23 where we were manufacturing products or equipment
24 for them.

25 Q And that was only what products?

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25

A That would be some of the principal equipment.

Q Such as?

A The pressurizers, piping, steam generators, reactor vessels.

Q What was the nature of your contacts with utilities during this period, '71 to '73?

A The only contact would be if they came in to pay a visit to the manufacturing facilities to see their equipment.

Q Is it fair to say that the nature of the contacts was of a technical variety?

A It would have been on a supportive role for the Nuclear Power Generation Division.

Q Supportive in what respect?

A Schedule, expected delivery times, but not necessarily on technical issues.

Q Yes?

A Unless it dealt with manufacturing.

Q During that period, '71 to '73, who was in charge of the Nuclear Power Generation Division?

A Mr. Paul Reinker.

Q From 1970 to 1972 you were General

2

Manager of the Nuclear Equipment Division.

3

What were your duties and

4

responsibilities in that period of time?

5

A Essentially the same as for the subsequent

6

time period. It was just change in detail.

7

Q From 1969 to 1970 you were Manager,

8

Planning and Commercial, Lynchburg and Barberton.

9

What were your duties and

10

responsibilities in that period?

11

A Responsibilities were preparing commercial

12

offerings or proposals to the utilities.

13

Q For --

14

A For the nuclear steam systems and nuclear

15

fuel, with offices in Lynchburg and an office in

16

Barberton.

17

Q To whom did you report?

18

A Mr. W. H. Rowand.

19

Q Will you spell that, please?

20

A R-o-w-a-n-d. It's not William, it's Will.

21

Q In that period of time was there a

22

Nuclear Power Generation Division?

23

A Yes.

24

Q And were you a part of that division?

25

A Yes.

1

2

Q Did you report to anybody else besides
Mr. Rowand?

3

4

A No.

5

Q I am sorry, but did you state what
Mr. Rowand's position was at that time?

6

7

A He was Vice President.

8

Q Of?

9

A Nuclear Power Generation Division.

10

Q Who was the head of the Power
Generation Group at that time, if there was one?

11

12

A There wasn't one.

13

Q There wasn't one.

14

To whom did Mr. Rowand report?

15

A After 1970 or the beginning of 1970, I
should say, he reported to a Mr. Ellis Cox.

16

17

Q What was his position?

18

A He was the -- I am not sure of the exact
title, but he was the head of the Boiler Division
at that time and Nuclear Power Generation Division.

19

20

21

Q And prior to 1970?

22

A Mr. J. P. Craven was the head of the Boiler
Division at that time.

23

24

Q Was the Nuclear Power Generation part
of the Boiler Division in that period of time?

25

2 A My recollection is getting fuzzy as to the
3 exact reporting relationships that existed. It's
4 been a while ago.

5 Q Was there a time when nuclear
6 equipment manufacture and management was a part
7 of the Boiler Division?

8 A Yes.

9 Q Approximately what period of time was
10 that?

11 A The Nuclear Equipment Division, prior to
12 late 1969, was known as Nuclear and Special
13 Products Department.

14 Q Yes?

15 A Which was part of the Boiler Division. They
16 had responsibility for the manufacturing of
17 nuclear hardware.

18 Q Would that include the nuclear steam
19 supply systems?

20 A As well as equipment for the Navy.

21 Q And that was part of the Boiler
22 Division in that period?

23 A Yes.

24 Q And then sometime in the 1969-70
25 period the nuclear was broken out?

2 A Yes.

3 Q Did you have any subordinates as
4 Manager of Planning and Commercial in 1969 to '70?

5 A '69 to '70. The gentlemen reporting to me
6 were Mr. Nelson; N. S. Embry; Mr. D. R. Brown;
7 a Mr. John Mum, who was in the planning function;
8 a Mr. J. B. Olmstead.

9 Q Who was in the Contract Legal
10 Department at this time doing work on nuclear-
11 related contracts for utilities?

12 A I think Mr. George McDaniel was in that
13 function in Lynchburg and we obtained legal
14 services from Mr. Wilson's department in
15 Barberton.

16 Q What department was that?

17 A I shouldn't say legal services. Contract
18 services.

19 Q What department was that?

20 A The Commercial Department.

21 Q Is Mr. Wilson still with the company?

22 A No, he is retired.

23 Q Let's go back to the period 1965 to
24 1969 when you were a Proposal Manager, Nuclear
25 Power Plants, Lynchburg and Barberton.

1
2 Did your responsibilities differ from
3 when you became Manager of Planning and
4 Commercial?

5 A The difference would be the addition of
6 some commercial activity in Lynchburg and the
7 addition of the planning operation for Lynchburg
8 for Nuclear Power Generation.

9 Q In 1969?

10 A Yes.

11 Q What do you mean when you say
12 "commercial activity"?

13 A The contracts. Preparation of the terms
14 and conditions that might associate a technical
15 offering.

16 Q From 1965 to 1969 did you do any of
17 what you would call commercial work?

18 A To some extent, yes, but most of that was
19 services that we obtained from others.

20 Q From whom?

21 A Primarily Mr. Wilson.

22 Q Can you tell us what your principal
23 duties were as Proposal Manager during the '65-69
24 period?

25 A A utility would give an indication that

1
2 they would be interested in purchasing a nuclear
3 steam system or some scope of supply for a
4 nuclear plant. They would request meetings with
5 the suppliers. We would provide technical
6 information to the customer, assist at times in
7 preparation of or inclusion of certain aspects of
8 our technical offerings. We would await the
9 issuance of an invitation to bid, review the
10 invitation and the associated specifications,
11 and then prepare a proposal in response to that
12 invitation.

13 Then the proposal would include the
14 scope of supply, description of the offering,
15 price, schedule, terms and conditions.

16 Q To whom did you report during the
17 '65-69 period?

18 A Part of that time I reported to Mr. D. E.
19 Heyburn, who was Manager of all of the
20 proposition activity, and later to Mr. Rowand.

21 Q Did Mr. Heyburn's responsibility
22 extend beyond nuclear propositions?

23 A Yes, **it** included also the fossil boiler
24 proposal activity.

25 Q During this '65-69 period who, if

2

anyone, in the Contracts Legal area was

3

functioning on nuclear contracts or proposals?

4

A There was another gentleman who was also

5

in Contracts Legal in Lynchburg at the time and

6

his name was Mr. Minner, who we would also get

7

some advice, but primarily we would take our

8

commercial preparation of commercial terms and

9

conditions to a large extent from our boiler

10

business and they would in turn be added as part

11

of our offering, and at times we would also seek

12

approval through the normal management chain with

13

our New York office to Mr. Martin Victor, who was

14

the secretary and --

15

THE WITNESS: I have to look up his

16

title.

17

A You can get that out of the records.

18

Q Sure.

19

Was Mr. Wilson in place in the

20

Commercial Department during the '65-69 period?

21

A Yes.

22

Q During the period 1965 to 1970 was

23

there anybody else in Mr. Wilson's department who

24

functioned on contracts or proposals relating to

25

nuclear equipment?

1

2

A Mr. Kazar and Mr. Plunkett.

3

Q Are they still with the company?

4

A Mr. Kazar is still with the company. Mr. Plunkett is retired.

6

Q What is Mr. Kazar's position?

7

A I believe he is part of the LTL Babcock subsidiary.

8

9

Q What is that?

10

A That's a fan company.

11

Q You mentioned the New York office.

12

What was the nature of the office in

13

New York? Was that an executive office?

14

A Those were the executive offices for the company.

15

16

Q For Babcock & Wilcox?

17

A Yes.

18

Q Prior to 1965 did you have anything

19

to do with nuclear power plants or nuclear steam supply equipment?

20

21

A What do you mean by, did I have anything to do with?

22

23

Q Did you have any duties or

24

responsibilities relating to such types of equipment?

25

2 A No.

3 Q Was Babcock & Wilcox in the business
4 of providing any such equipment prior to 1965?

5 A Prior to 1965 the company had been involved
6 with the two commercial nuclear power projects,
7 one of them for the NSS Savannah and the other one
8 for Consolidated Edison Indian Point No. 1.

9 Q But I take it you had no responsibility
10 for either of those?

11 A For either of those, nor did I have any
12 responsibility for Navy hardware.

13 Q Who negotiated the Indian Point one,
14 do you know?

15 A I don't recall. I don't know, I should say.

16 Q Prior to 1965 in any of your
17 positions did you have any responsibilities for
18 proposals or contract matters?

19 A No. On -- in what regard?

20 Q In any regard.

21 A In any regard.

22 During my sales activities that I would
23 have been involved with negotiating contracts with
24 utilities for fossil power plants, but not
25 nuclear.

2

Q Yes?

3

A Except for maybe Wright Patterson Air

4

Force Base.

5

Q What sort of equipment were you

6

involved in contracting for when you were

7

involved in sales?

8

A Utility boilers, industrial boilers,

9

construction work, service work, replacement

10

parts, the normal scope of supply that would be

11

purchased by a customer buying boiler equipment.

12

Q Apart from your degrees at Ohio State

13

University, have you had any particular studies

14

relating to nuclear matters?

15

A No.

16

Q Where did you obtain your knowledge,

17

technical knowledge necessary to function in the

18

nuclear area?

19

A By reading material that was available

20

and working with the engineers in Lynchburg. But

21

I do not have a great depth of nuclear technology

22

know-how.

23

MR. KLINGSBERG: Can we take a short

24

break?

25

MR. WISE: Sure.

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(Recess taken.)

BY MR. KLINGSBERG:

Q You mentioned Mr. Moutz before.

Is he still with Babcock & Wilcox?

A He is now operating as part of the
McDermott operating unit -- not operating unit,
but part of the McDermott Company.

Q In what capacity?

A In Contracts Legal. And I am not familiar
with his activities at the current time.

Q Is he a lawyer?

A Yes.

Q Is Mr. Wilson a lawyer?

A No.

Q Was there anyone in Mr. Wilson's
department to whom you looked for legal advice
concerning contracting matters?

A Restate it again?

Q Was there anyone in Mr. Wilson's
Commercial Department to whom you looked for
legal advice concerning contracting matters?

A I looked to Mr. -- to Mr. Wilson. He was
my point of contact.

Q Did he in turn contact attorneys in

2

or out of the company, do you know?

3

A He would have been in contact with Mr.

4

Martin Victor's office in New York and the staff

5

that was there and also in our outside counsel,

6

Sullivan & Cromwell.

7

Q Were there any attorneys in Barberton

8

working for the company during the 1965 to 1970

9

period with whom you had any contact relating to

10

contracting matters?

11

A In Barberton?

12

Q Yes.

13

A I don't know precisely what individuals may

14

have had a legal, formal legal degree.

15

Q In the Commercial Department?

16

A In the Commercial Department.

17

Q Were there any attorneys in the New

18

York office working for the company with whom

19

you had any dealings concerning contracting

20

matters during the 1965 to 1970 period?

21

A That I had dealings with.

22

Most of those were handled by Mr.

23

Victor himself or outside counsel.

24

Q Yes?

25

A There may have been occasions that somebody

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else was involved, but I don't recall.

Q Did you have any contacts with any Sullivan & Cromwell attorneys during the 1965-1970 period relating to contract matters?

A Yes. That would be Mr. George Kern and Mr. Richard Mestres.

Q Was Mr. Kern Mr. Mestres' superior?

A I beg your pardon?

Q Was Mr. Kern Mr. Mestres' superior?

A Yes.

Q Was there an operation or a department or a section in Barberton during the 1965-1970 period known as Contracts Review?

A The name is familiar, but the recollection is not that good as to the exact titles of those departments.

Q Did contract proposals have to be approved by anybody before they were submitted to nuclear customers during this period of time?

A Yes, by Mr. Wilson.

Q Did he indicate his approval in writing?

A Not by a formal written document. It may be only by a note.

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Q Was there any form for either the submission or approval of proposals to or by Mr. Wilson?

A Early in the development of the business we adopted what we referred to as standard terms and conditions for proposals and those became what we use as our -- as part of every offering or proposal.

Q Can you put a date or the time when you arrived at standard terms and conditions?

A Not precisely, but it was early, I would say early in that time period.

Q Who developed the standard terms and conditions?

A The development of the terms and conditions were an offshoot of our terms and conditions for our boiler offerings as modified for -- or as necessary for the nuclear proposal.

Q Was there a document called "Standard Terms and Conditions" for boiler contracts or proposals in existence in the mid-sixties?

A Yes.

Q Do you know if that document still exists today?

2 A No, I don't know.

3 Q Where was that document maintained?

4 A It was maintained as part of the standard
5 manuals for the company.

6 Q What are standard manuals?

7 A Standard manuals were broken down into
8 various disciplines, one of which was the sales
9 manual which contained those standards.

10 Q Was there one sales manual for the
11 whole company or was there a separate manual for
12 different product areas?

13 A There were different sales manuals or
14 different standards for different divisions and
15 this is referring to the Boiler Division.

16 Q Was there a separate book called the
17 Sales Manual for the Boiler Division?

18 A Yes.

19 Q Did there come a time when there was
20 a sales manual for the Nuclear Power Generation
21 Division?

22 A No. Not to my recollection.

23 Q Coming back to the question of
24 standard terms and conditions relating to nuclear
25 equipment contracts--when I say "nuclear equipment"

1
2 I don't mean the Navy equipment that you were
3 talking about.

4 A O.K.

5 Q We can just understand we are talking
6 about the kind of equipment you sell to --

7 A NSS.

8 Q -- electric investor-owned utilities,
9 right.

10 You stated that standard terms were
11 developed from the terms for boiler offerings,
12 and my question is: can you name the personnel
13 who were involved in that development back in
14 the sixties?

15 A To the best of my recollection, it would
16 have been Mr. Wilson, myself, Mr. Minner.

17 Q Is Mr. Minner a lawyer?

18 A I don't know.

19 Q Did he work for Mr. Wilson?

20 A Not in this time period. Later on he did.

21 Q Did he work for you?

22 A He was -- no, he did not work for me. He
23 was a part of the then Atomic Energy Division
24 during the '65 time period, and I don't recall --
25 at one time he did transfer over and became part

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of Mr. Wilson's staff.

Q Was he primarily responsible for fuel matters, Mr. Minner?

MR. WISE: What time are we talking about now?

MR. KLINGSBERG: In the sixties, late sixties.

A No. Not necessarily just fuel. He would have been operating with Mr. Wilson, who handled both the boiler business and the nuclear business.

Q What was Mr. Minner's position?

A He was on Mr. Wilson's staff, reporting to him.

Q What was the Atomic Energy Division?

A Atomic Energy Division existed in the early years and then was incorporated part of the Nuclear Power Generation Division, and I don't recall the exact date that that consolidation took place.

Q Were you ever in the Atomic Energy Division?

A No.

Q Were these standard terms and conditions relating to nuclear equipment in any

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kind of a manual or booklet, '65-70 period?

A They were not published as a standard or manual. They existed in their standard form.

Q In other words, they weren't labeled "Standard Terms and Conditions"?

A Not that I recall.

Q Were changes made from time to time in those standard terms and conditions?

A In order to maybe be responsive to a customer's objections or desires, we would consider modifications to the language.

Q Did you also ever decide on your own, either you or your colleagues, that changes should be made in order to improve the terms and conditions from your company's point of view?

A I am sure that as a normal course of doing business, if we found areas that needed improvement, we would have modified them.

Q When you got back into this aspect of the business, that is, the nuclear steam supply matters in or about 1973 to 1978, were you aware of whether the company also had certain standard terms and conditions for such contracts?

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A Rephrase the question again.

Q Let's take it back.

After 1970, you were away for a few years from the utility end of the nuclear steam supply business, is that correct?

A Correct.

Q You then came back into that aspect of the business during the '73-78 period when you became Vice President of the Nuclear Division in Barberton, is that correct?

A Correct.

Q Were you aware, during that period of time, of whether or not there were any standard terms and conditions for nuclear steam supply contracts or related services?

A In detail, I would -- I did not have that knowledge. I would have checked to see that they did have approved terms and conditions consistent with the procedures and policies of the company.

Q Was there a sales manual in the '73-78 period relating to nuclear steam supply or related matters?

A No. Not a sales manual.

Q Was there any manual in which terms

1

2

and conditions were included during that period?

3

A There would have been an approved set of terms and conditions for various offerings or proposals.

4

5

6

Q Do you know in what format those approved terms and conditions were during the '73-78 period?

7

8

9

A They would have been part of the records of the Contracts Legal Department.

10

11

Q In Barberton?

12

A During that time period, it would have been in Lynchburg.

13

14

Q In Lynchburg.

15

A And probably a copy in Barberton, but I ...

16

17

Q Under whose principal control would such a document have been during the '73-78 period?

18

19

A The principal control would have been with the Nuclear Power Generation Division operating under an approval procedure through Mr. Wilson to New York.

20

21

22

23

Q Who would have been principally responsible during that period for changes in the standard terms and conditions?

24

25

2 A The individual?

3 Q Yes.

4 A It would have been the hierarchy of
5 Wilson, Moutz and/or Jones, whoever was
6 responsible at that period of time.

7 Q Am I correct that during the '73-78
8 period that you did not function in regard to
9 changes in the standard terms and conditions?

10 A Correct, except in an overall executive
11 capacity.

12 Q Do you recall having actually
13 functioned on any changes in the standard terms
14 and conditions in your executive capacity during
15 that period of time?

16 A No.

17 Q Was there anyone else besides Moutz,
18 Wilson and -- who was the third you mentioned?

19 MR. WISE: Mr. Jones.

20 THE WITNESS: Mr. Jones.

21 Q -- Mr. Jones, who would have had
22 ultimate authority or responsibility for approving
23 changes in the standard terms and conditions?

24 A It would have also involved Mr. Victor's
25 office in New York.

2 Q Was Mr. Victor in place in the same
3 position during the '73-78 period?

4 A Yes.

5 Q Was he --

6 A Until his retirement.

7 Q When did he retire?

8 A I don't recall.

9 Q Was he an attorney?

10 A Yes.

11 Q Was he the in-house general counsel?

12 A Yes.

13 Q Did you testify before any of the
14 commissions that investigated the Three Mile
15 Island accident?

16 A At one of the Senate reviews I testified
17 briefly and introduced the company to the
18 committee as the -- as an executive officer in
19 the company. The primary testimony was given
20 by Mr. MacMillan.

21 Q Did you work on the preparation of
22 Mr. MacMillan's testimony?

23 A Yes.

24 Q Did you testify before the President's
25 or Kemeny Commission or the NRC or Rogovin

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2

Commission?

3

A No.

4

Q Were you interviewed by anyone from the NRC Special Inquiry or the Kemeny Commission?

5

6

A No.

7

Q Did you turn over any files or documents to either of those commissions?

8

9

A In response to any inquiries that they may have made to my office, that would have been handled by my secretary, but I have no direct knowledge of any.

10

11

12

13

Q Have you searched your files in response to request for production in this lawsuit?

14

15

16

A Yes. I personally have not. The counsel has requested a review of my files and that review has been made and any documents have been made available to them.

17

18

19

20

Q Do you maintain a chronological or blue or pink correspondence file?

21

22

A Yes.

23

Q For how long have you maintained such a file?

24

25

A Probably since about 1970.

2

Q Did you maintain such a file during the '65-70 period?

3

4

A No, I did not.

5

Q When your files were made available for a search by counsel, how far back did your chronological file go?

6

7

8

A I don't know. It would have been consistent with what the company's procedures would have been or are for retention of documents.

9

10

11

Q What were the procedures at the time of the search?

12

13

A I think that they called for retention of up to five years.

14

15

Q And you normally throw away your chronological file when it is more than five years old?

16

17

18

A Right. They would be discarded.

19

Q What sort of files did you maintain during the 1965-70 period of a personal nature? When I say "personal," I don't mean your private affairs, but other than things which you sent to company files but relating to your work on proposals and contracts and the like.

20

21

22

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25

A The records would have been retained by

2

proposal activity and not by a chronological file.

3

Q Did you keep records of each proposal that you worked on for your own use?

4

5

A No.

6

Q You sent everything to some central file?

7

8

A Correct.

9

Q Do you know how long those proposal records were maintained?

10

11

A It would have been consistent with the company's policy, which there is a separate portion of it that deals with contract matters on contract documents.

12

13

14

15

Q Can you tell us what that policy is in relation to contract matters?

16

17

A No, I haven't reviewed it recently.

18

Q Do you remember what your practice was, going back to the '65-70 period?

19

20

MR. WISE: The practice was as to

21

what?

22

MR. KLINGSBERG: As to maintaining

23

files relating to contract and proposal

24

matters.

25

A There was a similar procedure in effect,

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but beginning in 1970 there was an enforcement of it. We found that there had been some laxity and there was an extensive review made in 1970 for that time period to discard document files that were not necessary to retain.

Q Was the laxity in regard to too much destruction of documents or too much keeping of documents?

A There was too much keeping of documents.

Q And what change was made in 1970 in that regard?

A We enforced the procedure.

Q Do you remember what the procedure was?

A Review your files and discard documents that were unnecessary.

Q In terms of contracts and proposals under the procedures as you understood them at the time, what sort of contract and proposal documents could be thrown out and what kind were maintained?

THE WITNESS: That's a faint recollection on my part.

A I don't recall what the specific procedures were at the time. But I do recall that we did

1

2

have a review of retention.

3

4

5

Q Do you recall in response to that review throwing away any particular batches of documents or files?

6

7

A I personally do not. My secretary would have performed that function.

8

9

10

11

Q Following that review in 1970, do you know whether any of your contract or proposal files were still maintained and escaped your secretary's destruction efforts?

12

13

A No, I am sure that she adhered to the instructions.

14

15

16

Q When you went to your new job in 1970, did you take with you any contract or proposal files?

17

18

A None. Those would have left -- stayed with the previous division.

19

20

21

Q Were you a part of any task forces or committees relating to the Three Mile Island accident?

22

23

24

25

Q Were you interviewed by any task forces or committees or consultants investigating on behalf of the company the Three Mile Island

1

2 accident?

2

3

A No.

4

Q Have you ever given testimony in a
5 trial in any litigation --

5

6

A No.

7

Q -- relating to company business?

8

A No.

9

Q Have you ever testified in a
10 deposition before relating to company matters?

10

11

A No.

12

Q Did you prepare any memoranda or
13 other written documents relating in any way to
14 the Three Mile Island accident?

15

A No.

16

Q Have you prepared any memoranda or
17 any other written document relating to the
18 company's financial exposure relating to the Three
19 Mile Island accident?

20

A Not that I recall.

21

Q It's possible that you may have
22 prepared such documents and forgotten about them?

22

23

MR. WISE: I suppose that's always
24 possible.

24

25

Q Do you know if a negotiation file was

2

maintained in regard to each of the nuclear steam supply system contract matters that you functioned on in the '65 to '70 period?

3

4

5

A Yes. There would have been a complete file starting with the customer's specifications for inquiry through to the completion of negotiations.

6

7

8

Q What sort of documents would be included in that file?

9

10

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A There would be a -- if there was a prebid meeting, there would be information such as that, there would be the customer's specifications, any correspondence from the customer, any minutes that we may have made over the course of the negotiations would have been put into the files, a copy of the proposal, et cetera. It just goes on.

18

19

20

21

22

Q When was the last time you saw such a file relating to the Three Mile Island No. 1 unit?

A Three Mile Island No. 1, it would have been the documents that have been provided to me by counsel.

23

24

25

Q And in connection with preparation for this deposition?

A Right.

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2

Q And would the same be true of the
Three Mile Island No. 2?

3

4

A Correct.

5

6

Q Were there things missing from that
file that you recall having been there when you
were involved in those negotiations?

7

8

A They provided selected documents which I
reviewed and I can't recall at the time. I am
sure there were other documents.

10

11

Q You didn't see a file --

12

A No.

13

Q -- as such in its original form?

14

A No.

15

16

Q Prior to your preparation for your
deposition in this case, when was the last time you
had seen such a negotiation file for the Three
Mile Island units?

17

18

19

A It would have been probably at the
completion of negotiations and entering into a
contract.

20

21

22

Q Do you know whether any portions of
those files have been destroyed either in the
course of your document retention program or
otherwise?

23

24

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A I have no knowledge of that.

3

4

Q Do you know who would be familiar with that fact in the company?

5

6

A That would -- that would be supposition on my part, but they would be the individuals

7

executing and responsible for the contracts.

8

Q And who are those people?

9

10

A It would be Mr. Ward, Mr. Grant Ward, and Mr. Beisel.

11

12

13

Q What was Mr. Ward's position when he was functioning on the Three Mile Island No. 1 matter, or 2?

14

A What was his position?

15

Q Yes.

16

A He was a Project Manager.

17

18

Q Was he the Babcock & Wilcox Project Manager on Three Mile Island No. 1?

19

20

A I am not familiar with which contract. I know he was involved with those jobs.

21

Q Was he stationed in Lynchburg?

22

A Yes.

23

24

Q What was Mr. Beisel's position when he was functioning on the Three Mile Island units?

25

A He was I think Senior Project Manager.

2 Q Is that higher than the Project
3 Manager?

4 A Yes.

5 Q Was it the responsibility of the
6 Project Manager to maintain the contract
7 negotiation file?

8 A Yes.

9 Q Is Mr. Ward still with the company?

10 A Yes.

11 Q In what position?

12 A Project Manager.

13 Q Is Mr. Beisel still with the company?

14 A No.

15 Q Is he retired?

16 A Yes.

17 Q What was the first nuclear steam
18 supply contract on which you functioned on behalf
19 of Babcock & Wilcox?

20 A When you say -- which was the contract?

21 Q Or proposal?

22 A Or proposal.

23 Probably it was Consumers Power.

24 Q Do you know the name of the unit?

25 A It's the last one to Combustion Engineering.

I can't think of the name of the station now.

2

Q With whom did you deal at Consumers?

3

A Mr. Russ Youngdahl.

4

Q What was the next nuclear steam

5

supply proposal that you functioned on?

6

A There was a whole series of proposals made

7

and I am not sure which one was -- goes in what

8

chronology.

9

Q Yes?

10

A But it could have been Florida Power &

11

Light.

12

Q Do you want to tick off the series?

13

A That was for Turkey Point Station. The

14

other would have been Carolina Power & Light,

15

Robinson Station, and then followed by probably

16

Duke Power.

17

Q Did you get the Florida job?

18

A No.

19

Q Did you get the Carolina job?

20

A No.

21

Q You did get the Duke Power job.

22

A Yes.

23

Q What plant was that?

24

A Oconee.

25

Q Do you want to spell that?

2

A O-c-o-n-e-e.

3

Q With whom did you negotiate on the Duke Power facility?

4

5

A Mr. Lee, and I would have to get out a list of their officers to refresh my memory.

6

7

Q Who participated with you from Babcock & Wilcox in the Duke Power negotiation?

8

9

A Mr. Rowand, Mr. Heyburn and possibly Mr. Wilson.

10

11

Q What was Mr. Heyburn's position at the time?

12

13

A He was head of the Project Management for the Nuclear Power Generation Division.

14

15

Q What was the next proposal or contract on which you functioned?

16

17

A I believe the sequence probably was Met Ed.

18

Q Yes?

19

A And there was one other in there and I think it may have been Florida Power Corporation, but the job did not go ahead at that time. It was postponed.

20

21

22

23

Q What came next?

24

A It would have been -- I didn't review the contract numbers.

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The contracts are booked sequentially
as to number.

Q Yes?

A I think that the published list of the
contracts would be more accurate than my
recollection.

Q Just tell us the ones you recall. If
you don't get them in quite the right order, we
will --

A It would have been Jersey Central, Arkansas
Power & Light.

Q Did you get that job?

A Yes.

Q What plant was that?

A I would have to go to published data.

Q Right.

A There was one bid to American Electric
Power.

Q You didn't get that?

A We did not get that.
Florida Power Corporation.

Q Did you get that?

A Yes.

Q What unit was that?

2 A Crystal River No. -- something or other.

3 Q Right.

4 Any others?

5 A And Toledo Edison.

6 Q That's Davis-Besse?

7 A Yes.

8 And that was the last one that I
9 was directly involved with until the more recent
10 contracting for the Power Authority of the State
11 of New York.

12 Q When was that?

13 A That was after the '75 time period.

14 Q Approximately when was that?

15 A I don't recall.

16 Q Were the Florida Power & Light, the
17 Crystal River, Toledo Edison, Davis-Besse, the
18 Jersey Central and Met Ed, which would have
19 ultimately become Three Mile Island 1 and 2, and
20 the Duke Power, Oconee similar type units or
21 systems?

22 A Yes.

23 Q How would you describe them?

24 A Similar -- similar type units with certain
25 modifications to possibly meet the customer's

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desires.

The Toledo Edison unit did incorporate a modification with the elevation of the steam generators relative to the reactor vessel.

Q Have you ever had any involvement in proposals or contracts for units outside the United States?

A Yes. Briefly on an offering for -- it was an offering for Spain and that was just very, very briefly, was involved with that in a minor role, and proposals for -- in the post-'73 time period for Korea.

Q Did B&W get the job for Spain?

A No.

Q What was your involvement in the offering?

A It was so minimal that I don't even recall.

Q Yes?

A I just know it was going on about the time that I took over, which was moving into a new job and I think it was just the mere knowledge of than an involvement in.

Q What division or part of the company functioned on international sales or overseas

2 sales of nuclear steam supply systems?

3 A The same organizations as we discussed
4 previously.

5 Q What was your involvement in the
6 Korea proposal?

7 A As the -- in charge of the Nuclear Divisions,
8 is that I had visited the utilities in the Far
9 East and had established relationships with the
10 Far East utilities and built up associations in
11 Japan and in Korea. We never did make a
12 proposal into Japan.

13 Q Did you get the job in Korea?

14 A No.

15 Q Approximately how many nuclear steam
16 supply systems, if any, has B&W sold outside the
17 United States?

18 A B&W in consortium with BBC is involved with
19 one project--that's with BBR, on the
20 Muelheim-Kaerlich project.

21 Q BBR is who?

22 A Babcock -- it is no longer Babcock. It is
23 Brown Boveri Reaktor GmbH.

24 Q Were you involved at all in the
25 formation of that joint venture?

2 A No.

3 Q Have you had anything to do with the
4 negotiation efforts of BBR?

5 A Negotiation efforts with whom?

6 Q With customers.

7 A No, other than in a -- being courteous to a
8 customer in accommodating his visits, no direct
9 involvement with negotiations.

10 Q Who in the company is responsible
11 for the terms and conditions that go into the BBR
12 proposals or contract?

13 A That was under the responsibility of a
14 gentleman by the name of Mr. B. D. Davies, who
15 reported directly to Mr. Vannoy.

16 Q What was his position?

17 A He was the President of the then BBR,
18 which at that time was called Babcock Brown
19 Boveri Reaktor GmbH.

20 Q Is he still with the company?

21 A Yes.

22 Q In what position?

23 A He is now Vice President of our
24 International Operating Division and reports to me.

25 Q Who in Babcock & Wilcox worked out the

2 division of responsibilities as between Babcock
3 & Wilcox and Brown Boveri in regard to
4 negotiating contracting matters?

5 A I was not involved with that. I had no
6 direct knowledge.

7 Q During the period 1965 to 1970 did you
8 ever see any proposals or contracts of your
9 competitors, Combustion, GE or Westinghouse?

10 A During the early years, and you will have to
11 excuse my recollection, but during the early years
12 of the nuclear business, General Electric and
13 Westinghouse sold turnkey plants and associated
14 with those were a definition of their offerings
15 and also including terms and conditions.

16 Q Did Babcock & Wilcox sell turnkey
17 plants?

18 A No. Not directly.

19 Q Were the terms and conditions of GE
20 and Westinghouse different from yours because
21 they were selling turnkey plants?

22 A That would take supposition on my part on
23 behalf of GE and Westinghouse.

24 Q Did you ever have any discussions with
25 any GE or Westinghouse representatives concerning

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terms and conditions?

A No.

Q The same would be true of Combustion?
The answer would be no?

A The answer is no.

Q Did you ever see any GE,
Westinghouse or Combustion terms and conditions,
proposals or contracts in the '65-70 period?

A Not that I recall.

MR. KLINGSBERG: For the purposes
of continuing our chronological number
system, the document which was originally
marked as GPU (Favret) Exhibit No. 1 for
identification will now become No. 164
following an audit.

Can we agree that the reporter can
make appropriate changes in the earlier
part of the transcript?

MR. WISE: Sure, if Mr. Shapiro
would like to do that. Otherwise, I would
think it would be enough if he just changes
the exhibit number on the original and also
makes a note at the back of the transcript
that Favret 1 is the same as GPU 164.

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(Document previously marked Favret Exhibit 1 for identification was re-marked GPU Exhibit 164 for identification, as of this date.)

MR. KLINGSBERG: I would now like to mark as GPU Exhibit 165 for identification a memorandum from F. C. Heller to Nuclear Contract Engineering, Barberton, dated December 7, 1976.

MR. WISE: My copy says December 7, 1966.

MR. KLINGSBERG: '66, I am sorry; did I say '76?

(Memorandum from F. C. Heller to Nuclear Contract Engineering, Barberton, dated December 7, 1966, was marked GPU Exhibit 165 for identification, as of this date.)

(Document handed to witness)

A Oh, I can't even read it.

MR. WISE: Off the record.

(Discussion off the record.)

BY MR. KLINGSBERG:

Q Have you ever seen Exhibit 165 before,

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Mr. Favret?

A Specifically, I can't say that I specifically recall this one document, but 15 years ago is a long time.

Q You don't have a recollection, sitting here today, of having seen this in 1966?

A No.

Q There is a reference on the third page of the document in the bottom paragraph to Jerry White.

Can you identify Mr. White?

A Mr. White is over here (indicating)?

Q Yes.

A Jerry White was the District Sales Manager operating out of the Philadelphia office and Mr. Heller reported to him.

Q Did Mr. White and Mr. Heller participate in the negotiations with Metropolitan Edison?

A It would be more accurate to state that they attended the negotiations and assisted in the discussions, but did not necessarily participate in the actual negotiations themselves.

Q What was generally the role of the

2 sales office, the local or regional sales office
3 as compared with the Barberton Division in regard
4 to negotiations or proposals?

5 A The local sales offices were familiar and
6 knew the individuals within the customers'
7 organizations and acted as a front line of
8 communication between the customer and the company.

9 MR. KLINGSBERG: Off the record.

10 (Discussion off the record.)

11 Q Will you turn to the last page of
12 this exhibit. There is reference to, under the
13 cc, to "Contract Review Barberton."

14 I asked you earlier about contract
15 review. Does this reference refresh your
16 recollection in any respect as to whether there
17 was a Contract Review Section or operation?

18 A At one time there was a Contract Review
19 Section that reported to Mr. Wilson as Commercial
20 Manager.

21 Q What period of time was that?

22 A I don't recall.

23 Q Was it during the '65-70 period?

24 A Evidently it must have been.

25 Q Did there come a time in that '65 to

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'70 period when the Contract Review Section was abolished?

A I don't recall.

Q Who was in the Contract Review Section in or about December of 1966?

A That probably would have been Mr. Kazar.

Q Was he an attorney?

A No.

Q Was the Contract Review Section part of the Commercial Department of Mr. Wilson?

A Yes.

Q Was it the practice to submit proposals or contracts to the Contract Review Section for review?

A The normal practice would have been that somebody in Contract Review and in the Proposal Section would review the specifications in our proposal prior to submittal of our proposal.

Q Did they make changes?

A And/or exceptions to the customer's offer.

Q There is reference also on the last page to "the valiant efforts of Don Wilson and Lou Favret and their able assistants."

Who were the able assistants?

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A That would have been Mr. Embry, Mr. Brown, Mr. D. W. Montgomery.

Q What was Mr. Brown's position at the time?

A He was the Proposal Engineer reporting to Mr. Olmstead and he would have reported to me.

Q And Mr. Montgomery?

A Was a -- I can't recall the exact title, but he was a technical engineer in the Proposition Department in Lynchburg.

Q Is it fair to say that Embry, Brown and Montgomery were all technically oriented people and advised on those aspects of the contracts and proposals?

A Yes.

Q Can you identify J. G. Martin, who is listed on the last page of this document?

A Mr. Martin was the Northeast Regional Manager with his office in New York as part of the Sales Department.

Q He in a sense supervised the Philadelphia Sales Office?

A Yes.

Q And the reference to Commercial

2 Manager, Barberton would have been to Mr. Wilson?

3 A Correct.

4 Q There is reference here to "trying
5 negotiations on this job, particularly those in
6 connection with licensing."

7 Do you know what the reference is to
8 the negotiations relating to the licensing?

9 A There was a difference in opinion, a
10 difference in requirements desired by the customer
11 and what we were prepared to accept responsibility
12 for.

13 Q In regard to licensing?

14 A Yes.

15 Q In other words, to securing the
16 necessary approvals --

17 A Right.

18 Q -- which was I guess then the Atomic
19 Energy Commission?

20 A The licensing procedures were not well
21 defined and we would not take responsibility for
22 acts of government.

23 Q Did you participate in the negotiations
24 on licensing?

25 A Yes.

2

Q Were you the lead negotiator on that subject?

3

4

A Yes.

5

Q And with whom did you have discussions on the subject of licensing on behalf of Met Ed?

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7

A The people representing Metropolitan Edison for Med Ed No. 1 were Mr. Neidig, Mr. Miller, Mr. Trowbridge, Mr. Pickard, Mr. Lowe and Mr. George Bierman.

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Q Do you recall discussions with any of those gentlemen in regard to the licensing matters?

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A The principal spokesmen for the customer was Mr. Miller, Mr. Pickard and Mr. Trowbridge.

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Q Are you limiting yourself now to licensing matters when you say "the principal spokesman" or are you talking about everything?

18

19

A I thought you were asking me who represented the customer.

20

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Q Limiting yourself to the negotiations or discussions relating to licensing matters, with whom, if you recall, did you have discussions at Met Ed or on behalf of Met Ed?

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A With those gentlemen.

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Q All three?

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A All three.

5

Q Approximately how many meetings did

6

you attend prior to December 1966 relating to the

7

negotiations with Met Ed?

8

A Refresh my memory. What is the December

9

1966 --

10

Q That's the document you have in front

11

of you.

12

A This one here.

13

There was a series of meetings that

14

took place probably at two-week intervals where

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after we submitted our proposal and we entered

16

into serious negotiations.

17

Q Where did those meetings take place?

18

A Usually at Met Ed's offices.

19

Q In connection with this matter of who

20

had what responsibility in regard to licensing,

21

do you have any recollection of any specific

22

discussions with Messrs. Miller, Pickard or

23

Trowbridge?

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A The specific discussions revolved around

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the issue of who would obtain the license and who

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had prime responsibility.

Q Do you recall what, if anything, you said in that regard at the meeting?

A That the manufacturer was not in a position to secure a license and that the only one that could secure a license from the government would be the customer.

Q Do you recall what Mr. Miller or Pickard or Trowbridge said, if anything, on the subject of licensing?

A They requested that we accept to some degree financial responsibility for changes that might be brought about by the licensing action.

Q And how was that matter finally resolved, the licensing?

A The differences were finally resolved, if I recall correctly, that we accepted limited shared responsibility for changes up to a certain limit for things that we had not specified as being the responsibility of the customer.

Q Incidentally, was it the practice of Babcock & Wilcox in this period of time, '65 to '70, after a negotiation was concluded or at any stage of the negotiation, to prepare any written

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summaries of the negotiation?

A No.

Q Do you know whether, in fact, any such written summaries were prepared in relation to the Three Mile Island 1 or 2 negotiations?

A Not that I -- not that I recall.

Q Do you know whether any such summaries of negotiations were prepared in regard to Duke Power or Toledo Edison or Florida Power & Light negotiations?

A No.

Q You say no. You don't recall or --

A No, I don't recall.

MR. KLINGSBERG: I will now ask to have marked as Exhibit 166 a memorandum from Mr. Kazar to Mr. White dated May 31, 1967.

(Memorandum from Mr. Kazar to Mr. White dated May 31, 1967 was marked GPU Exhibit 166 for identification, as of this date.)

Q Have you ever seen this document before?

A I don't recall.

Q Can you identify T. F. Lammers?

A Mr. Lammers was an engineer who worked in

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Barberton and reported to Mr. Olmstead.

Q Was he involved in the negotiations with Metropolitan Edison?

A He could have been. I don't remember.

Q Can you identify Mr. Duffy?

A Mr. Duffy was Pricing Manager and reported to Mr. Wilson.

Q Was he involved in the negotiations with Metropolitan Edison?

A No.

Q Did he function on the pricing of the unit?

A I beg your pardon?

Q Did he function on the pricing of the unit?

A To a limited extent.

Q I am not sure if I asked you whether Mr. Kazar is still with the company.

A You did ask that.

MR. KLINGSBERG: I would like to have marked as Exhibit 167 for identification a memorandum from C. T. Smith to various persons dated February 14, 1966.

(Memorandum from C. T. Smith to

1
2 various persons dated February 14, 1966
3 was marked GPU Exhibit 167 for
4 identification, as of this date.)

5 MR. KLINGSBERG: The record should
6 indicate that it appears from the wording
7 of the document that there is more to it,
8 but it is my understanding that in the
9 original production, there was nothing
10 attached.

11 BY MR. KLINGSBERG:

12 Q Have you ever seen this document
13 before?

14 A I think I have. I recall that I have seen
15 this one.

16 Q Was that in your preparation for this
17 deposition --

18 A No.

19 Q -- or before that?

20 A No.

21 Q Do you recall seeing this back in '66?

22 A Yes.

23 Q Can you identify Mr. Smith?

24 A Mr. Smith -- oh. C. T. Smith? He was a
25 Sales Manager or Sales Engineer I think at that

1

2 time operating out of the Philadelphia office.

2

3

Q Can you identify Mr. Behr?

4

A Mr. Behr was in -- probably in Boston.

5

Q A salesperson?

6

A Yes.

7

Q Mr. Coughlin?

8

A Mr. Coughlin was a sales specialist, part of

9

the Atomic Energy Division.

10

Q It is not clear to me from the

11

questions and answers so far what the role was

12

of the Atomic Energy Division in either the

13

manufacture or marketing of nuclear steam supply

14

systems.

15

Can you explain that?

16

A Rephrase that --

17

THE WITNESS: Repeat the question,

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please.

19

MR. KLINGSBERG: I will rephrase it.

20

Q Can you explain what the responsibility

21

of the Atomic Energy Division of Babcock & Wilcox

22

was in regard to the marketing or manufacture of

23

nuclear steam supply systems?

24

A At one time the Atomic Energy Division had

25

sole responsibility for the design and sale of

1
2 their products. They were not familiar with the
3 utilities, customers and requested assistance
4 from the Boiler Division to take the lead in sales
5 and marketing activities.

6 At this point in time they had
7 technical expertise and the nuclear fuel expertise
8 and we joined efforts to assist them in the sale
9 of products to the utilities.

10 Q Can you identify Mr. Landis?

11 A Mr. Landis was the Vice President in charge
12 of the Atomic Energy Division.

13 Q Mr. Mackenzie?

14 A Was the Sales Vice President.

15 Q The Atomic Energy Division?

16 A No, the Boiler Division.

17 Q Mr. Wascher?

18 A Mr. Wascher was an engineer in Lynchburg.

19 Q Did these people make up what was
20 called the Nuclear Project Steering Committee?

21 A I believe the --

22 Q I am sorry, strike that. That was
23 Metropolitan Edison.

24 Who presented the sales plan in
25 Barberton?

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A I don't recall.

Q What was the sales plan?

A I don't recall.

Q Was it in writing?

A I don't recall.

Q Was the sales plan presented in
Barborton to Metropolitan Edison people or was
that an internal presentation?

A That was an internal presentation.

MR. KLINGSBERG: I would now like to
mark as Exhibit 168 a memorandum from Mr.
Smith to various persons dated February 16,
1966.

(Memorandum from C. T. Smith to
various persons dated February 16, 1966
was marked GPU Exhibit 168 for identification,
as of this date.)

Q Do you recall having seen Exhibit --

A No, I don't.

Q -- 168 before?

Do you know what the little box in the
lower left-hand corner represents?

A No, I do not.

Q Can you identify Mr. Harrison, R. H.

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Harrison?

A Mr. R. H. Harrison was -- I guess he was Vice President of the Atomic Energy Division.

And the record should show that I think Mr. Landis must have been then the -- his assistant.

Q Can you identify Mr. Montgomery?

A Mr. Montgomery was an engineer working in the Atomic Energy Division in Lynchburg.

Q As of this point in time, had you received a preliminary bid request document from Metropolitan Edison?

A I don't recall. The text would indicate that we may have.

Q But you don't recall now of your own recollection?

A No.

Q Do you have any recollection today of your having reviewed the Metropolitan Edison preliminary bid request in or about the early part of 1966 or before that?

A No, I don't recall.

Q Do you recall today meeting with Metropolitan Edison representatives on or about

2 February 25th, 1966 in Reading, Pennsylvania?

3 A Yes, I recall attending this presentation
4 and this meeting referenced in the exhibit.

5 Q Did you at that meeting discuss
6 Metropolitan Edison's preliminary bid request?

7 A I don't recall.

8 Q And I take it then you don't recall
9 what, if anything, you said in regard to that
10 request at the meeting?

11 A No.

12 Q Do you have any recollection today of
13 any of the matters that were discussed at that
14 meeting on February 25th?

15 A I am sorry, no.

16 MR. KLINGSBERG: I would like to mark
17 as GPU Exhibit 169 a memorandum dated
18 February 18, 1966, again from Mr. C. T.
19 Smith.

20 (Memorandum dated February 18, 1966
21 from C. T. Smith to various persons was
22 marked GPU Exhibit 169 for identification,
23 as of this date.)

24 Q Have you seen Exhibit 169 before?

25 A I don't recall it specifically.

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2 Q In paragraph No. 2 there is a
3 reference to a statement that "Mr. Miller felt
4 that we would be diluting their impact, if we
5 brought to the 25th meeting Messrs. Harrison,
6 Mackenzie and Rowand."

7 Do you have any recollection of the
8 reasons why it was felt that bringing these
9 gentlemen to the meeting would dilute the impact?

10 A That would be -- I have no specific knowledge
11 of why they -- Mr. Miller would have said that.

12 Q On page 2, the second full paragraph,
13 it says that "Messrs. Montgomery and Favret have
14 been contacted on February 18 and requested that
15 each paragraph of the bid request document be
16 assigned to a specific individual who will be
17 responsible for proper preparation to handle the
18 subject matter."

19 Is this talking about Metropolitan
20 Edison's bid request?

21 A I would assume so.

22 Q Were you assigned specific paragraphs
23 to handle?

24 A I don't recall.

25 Q Do you recall what, if any, subject

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matter paragraphs you were assigned to handle in
this period of time?

A No, I don't recall.

MR. KLINGSBERG: I think this is an
appropriate time to break for lunch.

(Lunch recess taken at 12:25 p.m.)

AFTERNOON SESSION

1:36 p.m.

LOUIS M. FAVRET resumed

and testified further as follows:

EXAMINATION (continued)

BY MR. KLINGSBERG:

Q You testified before the luncheon break that you had lost the Consumers Power bid to General Electric. Do you recall that?

MR. WISE: Are you asking him what he remembers about his testimony or whether they lost it to General Electric --

Q You remember you testified before that --

MR. WISE: He testified about losing the Consumers Power bid. I don't know whether he testified who had got the contract.

MR. KLINGSBERG: I have in my notes that he lost it to General Electric.

Q That is what you said?

A That's incorrect.

Q Incorrect. I see.

I had CE, Combustion Engineering.

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A Combustion Engineering.

Q To whom did you lose the Florida Power & Light job?

A To Westinghouse.

Q And to whom did you lose the Carolina Power & Light job?

A Westinghouse.

Q Up to that point in time, had your company been successful on any bids or proposals for nuclear steam supply systems?

A As I testified earlier, we had been successful with Consolidated Edison on Indian Point No. 1.

Q And that was the only one?

A And the Savannah.

Q What was Savannah?

A A ship.

Q A ship?

A Yes.

Q Was the Indian Point 1 a similar unit to the Three Mile Island and Crystal River and the Duke Oconee?

A No, it was not.

Q How did it differ in its major respect?

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A That there was considerable time lapse between the two contracts and I don't recall the time interval.

The Indian Point unit was much smaller, had a different fuel in the core, and I believe also had different steam generators.

Q As of 1965 and 1966, what kind of an investment in plant did Babcock & Wilcox have in order to manufacture nuclear steam supply systems, second and apart from what it already had for its boiler operation? In other words, did you have to build a new factory, for example?

A This was what, what was the time period again?

Q 1965 and 1966.

A Prior to 1965 we made the decision to build a heavy pressure vessel shop at Mount Vernon, Indiana and it was operating and producing reactor vessels for ourselves, Westinghouse and General Electric, and it was just about that time period that I think that the plant was commissioned and we had also made the investment in Lynchburg in our facilities down there for research and development.

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Q Where were the nuclear steam supply systems, for example, for the Duke Power plant to be manufactured?

A The reactor vessel was built at Mount Vernon, Indiana; the steam generators were built in the Barberton works, as well as the pressurizer and the piping.

Q Did you have to make extensive changes in the Barberton works in order to get into the nuclear steam supply system business?

A Not extensive. We had to add machine tools for machining and upgrading some of the cranes.

Q Did you have to bring into your company engineers who were knowledgeable in the nuclear aspects of the manufacture and design in order to go into the nuclear steam supply business in the mid-sixties?

A In the mid-sixties we were probably the leading manufacturer of nuclear hardware, producing reactor vessels, as I said, for Westinghouse, GE, and also the majority of the equipment for the United States Navy.

Q Were there any reports or memoranda or written materials of which you were aware

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generated by the company in the mid-sixties indicating what, if anything, you had to do in order to make your nuclear steam supply business a profitable one?

A A profitable one?

Q Yes.

A I don't recall any reports specifically outlining a program to become profitable.

Q Yes.

A I think that was the text of your question.

Q Were there any reports or written materials dealing with your establishing your company in the nuclear steam supply business in this period of time?

MR. WISE: Mr. Klingsberg, that's terribly broad.

I will let the witness answer it, but I do have an objection to the form.

If the witness can answer it, he may do so.

THE WITNESS: Read it back again, please.

(Question read.)

A Are there any reports, does it say?

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Q Reports or other written material.

A Or other written material.

I recall that there was one report that I prepared that was the basis for the evaluations of the nuclear business and whether we should build the Mount Vernon facility. That predates the 1965 time period.

Q Approximately when was that report written?

A Probably 1963 maybe.

Q Do you still have a copy of that report?

A No.

Q Do you know if there are any copies still in existence?

A No.

Q What factors were considered in this evaluation by you?

A The factors that were considered in the evaluation was that GE and Westinghouse had or were in the process of trying to establish themselves in the nuclear business and were making large claims as to the economics of nuclear power. They were also requesting that we provide

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fabricating facilities to build their vessels.

Q What else can you tell us about that report?

A That was -- that's the essence of it.

Q Did you make any recommendations?

A Yes, to go ahead and build the plant.

Q Did you recommend that you go beyond building vessels for GE and Westinghouse and go into the nuclear steam supply business yourself?

A I don't recall that report to that detail.

Q Did you assess at all the GE and Westinghouse claims regarding the economics of nuclear power?

A We reviewed the information that they published which was in the public documents at that time.

Q Did you or anyone else at B&W make your own analyses of the economics of nuclear power?

A Most of the economic evaluations were rather straightforward and to a large extent were based upon information also published by the government. So everybody was working with basically the same information.

2

Q In connection with this report, did you comment at all on the safety aspects of nuclear power?

3

4

5

A I wouldn't recall.

6

7

8

Q Do you recall any reports that you reviewed in the period 1963 through '66 concerning the safety aspects of nuclear power?

9

10

11

A I recall that the AEC I think had issued some criteria that must be considered in the design of commercial plants.

12

13

14

Q Did you assess the reasons why you lost the Consumers Power bid to Combustion Engineering?

15

16

A The customer evidently evaluated the CE offering more competitive than ours.

17

18

19

20

Q Do you know whether there were any particular technical, price or other aspects of the proposal of Combustion which made them more favorable to the customer than yours?

21

22

A I don't know. That would be in the customer's information.

23

24

Q But you never tried to assess what those reasons were from your point of view?

25

A The only thing that I can comment on is that

1
2 the customer reported that they would prefer to
3 see B&W's organization modified so that we had a
4 single responsibility for nuclear energy, and
5 at that time we had two divisions, the Boiler
6 Division and the Atomic Energy Division.

7 Q And was that influential, was that
8 comment influential in your decision to merge
9 those interests?

10 A It was influential at a later date in
11 consolidating and in forming the Nuclear Power
12 Generation Division.

13 Q Did you assess or ascertain any
14 reasons why you lost the Florida Power & Light
15 job?

16 A Did I assess?

17 Q You or anyone else at B&W, to your
18 knowledge.

19 A I think it was a straight price on
20 Westinghouse's part.

21 Q Did you or, to your knowledge, anyone
22 else at B&W assess the reasons why you lost the
23 Carolina Power & Light job to Westinghouse?

24 A Price.

25 Q Did you make adjustments in your price

1
2 to reflect those losses or to make up for
3 those losses when you came to bid on the Duke
4 Power?

5 MR. WISE: I will object to the form
6 of the question.

7 The witness may answer it if he can.

8 A Try it again, restate it?

9 Q I will restate the question in view
10 of the objection.

11 In your bids to Duke Power, did you
12 take account of the fact that you lost the Florida
13 and Carolina jobs to Westinghouse on the basis
14 of price?

15 A In the course of any normal business you
16 would be -- there would be a constant review of
17 your relative competitiveness to the other
18 offerings in the marketplace, and I am sure we
19 must have on that.

20 Q Have you ever been involved in any
21 litigation concerning claims for breach of
22 warranty or breach of contract or anything against
23 Babcock & Wilcox relating to sales of boilers?

24 A No, I have not.

25 Q Are you aware of any such litigation?

2 A I am aware of litigation, but it's been
3 such a long time that I don't remember the
4 specifics of what the suit was about.

5 Q What suit do you recall?

6 A I think there is one at St. Joe.

7 Q What did that involve?

8 A I think the customer operated the boiler
9 without water.

10 Q Are there any other litigations that
11 you recall relating to contract claims or
12 warranty claims?

13 A Litigation -- that's the only one that I
14 know of specifically.

15 Q Are you aware of any claims which may
16 not have resulted in litigation but which were
17 resolved concerning breach of warranty or
18 breach of contract or similar matters relating to
19 boilers?

20 A Yes.

21 Q What are those?

22 A Those are Sacramento Municipal Utility
23 District, Florida Power Corporation and Arkansas
24 Power & light.

25 Q What was the nature of the claim in

1

2

the Sacramento matter?

3

A There was a suit pending but not filed, I don't believe, against Westinghouse, Bechtel and ourselves.

4

5

6

Q For what?

7

A For claims on damages to the turbine.

8

Q Was that settled?

9

A It was settled, yes.

10

Q Did you pay any money?

11

A Yes.

12

Q How much?

13

A I don't recall. But it was not a significant amount.

14

15

Q Did Westinghouse pay?

16

A I believe so.

17

Q Do you know the approximate time

18

frame of this claim and the settlement?

19

A I don't recall the specifics on it. I am sorry.

20

21

Q Was the amount of money assigned to

22

any particular kind of factor or any particular

23

aspect of the claim?

24

A We considered that it was in lieu of legal expense.

25

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Q How about the Florida Power Corporation claim, what was that about?

3

4

A That is concerning a failure of a part of a control rod assembly.

5

6

Q Was that in reference to a nuclear plant?

7

8

A Yes.

9

Q When was that claim?

10

A I don't think it's a claim yet.

11

Q Does that relate to Crystal River?

12

A Yes.

13

Q Does that grow out of the recent incident at Crystal River?

14

15

A Recent incident. What incident?

16

Q That was subsequent to the Three Mile Island accident, an incident at Crystal River which received some publicity.

17

18

19

Are you aware of that?

20

A Yes. That's the same one, I think.

21

Q That's the same one?

22

A Yes.

23

Q What was the Arkansas --

24

MR. WISE: Excuse me, what is the

25

same one?

2

MR. KLINGSBERG: The one that they
are making a claim on the control rod
assembly.

3

4

5

MR. WISE: It's the same plant or
do you mean --

6

7

THE WITNESS: It's the same plant.

8

A But I don't know what publicity you are
thinking about or what I am thinking about, is
what I think Mr. Wise is trying to point out.

9

10

11

MR. WISE: I think the record is very
unclear now as to exactly what it is we have
established.

12

13

MR. KLINGSBERG: We will try to

14

clarify it.

15

BY MR. KLINGSBERG:

16

Q What was the control rod assembly

17

claim or discussion which Florida Power

18

Corporation has made, to what did that relate?

19

A That relates to a control rod assembly that
failed or found its way up through the reactor
and has caused some damage to the equipment which
has been repaired.

20

21

22

23

Q And is that finally resolved now?

24

A I don't believe so. Those discussions are

25

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2

still going on.

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Q When you said previously that this was the same plant, referring to Florida Power, as was involved in a recent incident, to what were you referring?

7

8

9

10

A I don't know how to interpret your statement of a recent incident and I don't know what you are referring to. I mean, you must be referring to a piece of publicity that I don't have.

11

MR. KLINGSBERG: Off the record.

12

(Discussion off the record.)

13

14

Q What was the Arkansas Power & Light claim to which you referred?

15

16

A That has to do with an issue of plutonium and a commercial aspect of the contract.

17

Q Has that been resolved yet?

18

A No. It's still being discussed.

19

20

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24

Q Are you aware of any other claims which involve litigation or otherwise relating to breach of warranty, breach of contract or similar matters and pertaining to nuclear plants, boilers or anything else or any other equipment with which you were involved at Babcock & Wilcox?

25

A The question is so broad that -- in the

1
2 course of any conducting of business, there are
3 -- will be times where items will either have
4 to be remedied or dealt with during the course
5 of the initial operation of the unit.

6 Q Yes.

7 A And those can be extensively discussed.

8 Q Have there ever been any occasions
9 in regard to such a claim where, in addition to
10 repairing the unit, B&W has paid money or dollars,
11 aside from the Sacramento claim that you mentioned
12 before?

13 A That we have paid money before.

14 Not that I can recall.

15 Q Were you ever a member of the B&W
16 Board of Directors?

17 A No.

18 Q Or the J. Ray McDermott Board of
19 Directors?

20 A No.

21 Q Are you or were you ever a member of
22 the Executive Committee or similar committee of
23 B&W or J. Ray McDermott?

24 A Of the brief year that I was the Power
25 Generation Group Executive, you would consider

1
2 that as part of the Office of the President. But
3 not a member of the Board of Directors.

4 Q Following the accident at Three Mile
5 Island No. 2, were you involved in any way in
6 any of the inquiries into the causes of the
7 accident?

8 A Was I -- part of the inquiries to any cause
9 of the accident?

10 Q Yes, within your company.

11 A No. Those were handled by the technical
12 staff in Lynchburg.

13 Q Were you involved in any way in any
14 changes that were to be made in the structure of
15 the company or the operations of the company
16 which related in any way to the accident at Three
17 Mile Island No. 2?

18 A Changes -- changes in structure?

19 Q Yes. Organization.

20 A I don't recall that we made specific changes
21 in structure or organization as a result of the
22 incident at Three Mile Island.

23 Q Was it ever recommended or suggested
24 within the company that any changes in structure
25 or organization be made which had anything at all

2

to do with the Three Mile Island No. 2 accident?

3

MR. WISE: You are directing your

4

question to something that came to Mr.

5

Favret's attention?

6

MR. KLINGSBERG: Obviously.

7

THE WITNESS: Do you want to read it

8

back, please?

9

(Question read.)

10

A Not that I recall.

11

Q Were any changes recommended or

12

suggested pertaining to the company's operations

13

in any respect stemming in any way from the

14

Three Mile Island No. 2 accident?

15

MR. WISE: Again you are asking for

16

something that came to Mr. Favret's

17

attention?

18

A I did not personally, all right, make those

19

recommendations.

20

Q All right.

21

A If there were recommendations, they would

22

have come from the Nuclear Power Generation

23

Division.

24

Q Did any such recommendations come to

25

your attention?

2 A Not that I recall.

3 Q Who in the Nuclear Power Generation
4 Division was responsible for looking into such
5 matters?

6 A That was Mr. John M. MacMillan, Division
7 Vice President.

8 Q Did you have any conversations or
9 written communications with Mr. MacMillan on the
10 subject of changes within B&W resulting in any
11 way from the accident?

12 A No.

13 MR. KLINGSBERG: I would like to mark
14 as GPU Exhibit 170 a memorandum dated
15 May 23rd, 1966 from L. M. Favret to various
16 persons.

17 (Memorandum dated May 23, 1966 from
18 L. M. Favret to various persons was marked
19 GPU Exhibit 170 for identification, as of
20 this date.)

21 Q Have you seen Exhibit 170 before?

22 A I would say seeing -- since it has my name
23 on it and it was prepared by Mr. Olmstead, I
24 must have seen it before.

25 Q Do you have a recollection of it?

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A In some regards. I do know that we did hire United Engineers & Constructors and I did participate in meetings with them on the subject as outlined in the memorandum. Jackson & Moreland.

Q Apart from independently recollecting some of the events which are discussed in the memorandum, do you recall the memorandum itself?

A In this period of time, no.

Q Can you identify Mr. Olmstead?

A Mr. Olmstead is an engineer who worked for me in Barberton in the Proposal Department -- Proposition Department, I should say.

Q Do you recall having attended a meeting with United Engineers & Constructors in Philadelphia on or about May 20th, 1966 to review purchaser final specifications and their influence on engineering-estimating-bidding being done by UE&C and J&M?

A Yes.

Q What is J&M?

A J&M was an affiliated company or a subsidiary of United Engineers & Constructors located in Boston, known as Jackson & Moreland.

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Q Can you explain what the UE&C and the J&M role was in regard to this negotiation-bidding procedure that was going on at the time with Metropolitan Edison?

A Metropolitan Edison had made inquiries in their invitation for two distinct different scopes of supply, one of them being a nuclear steam system, the other a nuclear island. The nuclear island consisted of the nuclear steam system and other associated equipment, including the reactor building and the auxiliary building and the spent fuel building.

We had hired UE&C to assist us in the preparation of our nuclear island bid and also in the review of the specifications as issued by Met Ed.

Q Did Babcock & Wilcox submit a bid under each of these two alternatives?

A Yes.

Q Incidentally, against whom were you bidding on each of these alternatives?

A I recall that General Electric bid, Westinghouse, and I am not sure about Combustion Engineering.

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Q Calling your attention to page 3, did UE&C draft a set of exceptions and clarifications to the bidding document as indicated?

A I would assume that they did. As part of our preparation of our proposal, we would have requested them to do this.

Q Do you have a recollection of that?

A No, I do not.

Q Do you know what bidding document is referred to here?

A That would be our proposal.

Q Do you know what areas or subject matters the UE&C exceptions and clarifications --

A Pardon me.

Q All right.

A On the previous question, I would like to add to that. I think the bidding document they are referring to here on that paragraph on page 3, the second paragraph, refers to the customer specifications.

Q I see.

MR. KLINGSBERG: I would like to have marked as GPU Exhibit 171 a document entitled "Design Criteria, Nuclear Power

1
2 Plant for Metropolitan Edison Company,"
3 which has a Babcock & Wilcox stamp of
4 December 3rd, 1965.

5 (Document entitled "Design Criteria,
6 Nuclear Power Plant for Metropolitan
7 Edison Company," which has a Babcock &
8 Wilcox stamp of December 3, 1965, was marked
9 GPU Exhibit 171 for identification, as of
10 this date.)

11 MR. KLINGSBERG: I should note for the
12 record that this again seems to be what
13 came out of the production, even though
14 on its face the contents seem to be broader
15 than what follows.

16 MR. WISE: Perhaps, since this is a
17 document generated by your client, Mr.
18 Klingsberg, you have a more complete copy.

19 MR. KLINGSBERG: Yes, we can attempt
20 to ascertain that. No criticism is implied
21 by this document problem.

22 MR. WISE: I will note for the record
23 that the contents page, which is the second
24 page of the document, has a blank next to
25 the page numbers and that the first three

1
2 pages which are attached as the pages 3
3 through 5 of the exhibit are marked in the
4 upper right-hand corner, a draft of
5 November 26, 1965, so it's unclear from the
6 document itself as to whether or not it
7 ever did contain additional sections or
8 whether this was a portion of a draft that
9 may at some point have fallen into B&W's
10 hands.

11 MR. PU: We made an effort to produce
12 the complete document.

13 MR. KLINGSBERG: I am sure you did,
14 Richard.

15 We are going back a lot of years.

16 THE WITNESS: All right.

17 BY MR. KLINGSBERG:

18 Q Have you ever seen Exhibit 171 before?

19 A There is some recollection that this was --
20 could have been one of the early drafts of the
21 invitation issued by the customer, Metropolitan
22 Edison, for review prior to issuance of the final
23 specifications.

24 Q Was this the sort of document that,
25 so to speak, kicked off the dealings between B&W

1
2 and Metropolitan Edison which resulted in the
3 Three Mile Island No. 1 contract?

4 A Yes, this would have been one of the first
5 documents.

6 MR. KLINGSBERG: I would now like to
7 mark as GPU Exhibit 172 a memorandum from
8 Mr. Heller to Mr. Favret dated December 3rd,
9 1965.

10 (Memorandum from Mr. Heller to Mr.
11 Favret dated December 3, 1965 was marked
12 GPU Exhibit 172 for identification, as of
13 this date.)

14 Q Have you ever seen Exhibit 172 before?

15 A I would say that I probably have. I can't
16 specifically recall this exact document.

17 Q Do you recall having reviewed the
18 design criteria?

19 A Yes, I do recall having reviewed the
20 customer's design criteria.

21 Q Do you recall having given your
22 comments and suggestions?

23 A Our comments and suggestions probably would
24 have been given orally to the customer in one of
25 our meetings.

1

2

Q Can you identify Mr. Gray, who received a copy of this memo according to the --

3

4

A Mr. Gray is a Sales Engineer --

5

Q -- cc.

6

A -- located in our New York office.

7

Q What sort of a department did you have in Washington at which Mr. Landis was, according to this document?

8

9

10

A We had a government -- we had an office in Washington whose primary responsibility was interfacing with the different government agencies where we might have business being transacted, say for the Atomic Energy Division or in other contract matters.

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MR. KLINGSBERG: I would like to mark as Exhibit 173 a memorandum from Mr. Favret which appears to be written by Mr. Olmstead to Mr. Heller, dated December 30, 1965.

20

21

22

23

(Memorandum from Mr. Favret, written by Mr. Olmstead, to Mr. Heller, dated December 30, 1965, was marked GPU Exhibit 173 for identification, as of this date.)

24

A O.K.

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Q Do you have a recollection of having

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seen Exhibit 173 before?

A I recall seeing some portions of this letter.

Q At or about the time it was written?

A Yes.

Q When you say "some portions," you mean other than the handwritten parts?

A Yes.

Q Do you know whose handwriting that is?

A No, I don't.

Q Does this document, Exhibit 173, contain the comments on the portion of the "General Instructions and Approach" portion of Met Ed's design criteria which you and Stauffer reviewed?

A I think it would be better to say that this contains a portion of our comments based upon the information we did receive. I think the memorandum points that there were some sections that were not included and they must have been submitted later.

Q Just as an aside, perhaps that explains the reason why the previous exhibit, No. 171, does not appear to be a complete document,

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since this indicates that only a portion was submitted to begin with.

Was the modus operandi for you to submit your and your staff's comments to the Philadelphia office and then the Philadelphia sales office to discuss them with the customer?

A Yes.

Q So, so far you had not had any direct contacts with Metropolitan Edison, is that correct?

A I don't -- at this point in the end of 1965, I had not had direct contact.

MR. KLINGSBERG: Will you please mark as GPU Exhibit 174 a memo from Mr. Heller to Mr. Favret dated February 4, 1966.

(Memo from Mr. Heller to Mr. Favret dated February 4, 1966 was marked GPU Exhibit 174 for identification, as of this date.)

(Document handed to witness)

A O.K.

Q Have you seen Exhibit 174 previously?

A I can't specifically recall this document.

Q Do you recall meeting with Mr. Smith

2 and Mr. Heller in order to review design criteria
3 submitted by Metropolitan Edison?

4 A I don't recall specifically meeting with
5 Mr. Smith and Mr. Heiler. They may have met with
6 others in the office.

7 MR. KLINGSBERG: Will you please mark
8 as Exhibit 175 a memorandum from Mr. Heller
9 to Mr. Favret dated February 8th, 1966.

10 (Memorandum from Mr. Heller to Mr.
11 Favret dated February 8, 1966 was marked
12 GPU Exhibit 175 for identification, as of
13 this date.)

14 (Document handed to witness)

15 A O.K.

16 Q Have you seen Exhibit 175 before?

17 A Yes.

18 Q In what connection?

19 A In connection with my duties as -- back in
20 this time period. Some areas more specifically
21 than others.

22 Q Do you recall having been advised as
23 indicated on the third page, the second paragraph
24 from the bottom, that Westinghouse and General
25 Electric, as well as Babcock & Wilcox, were being

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considered as bidders on this project?

A What was the question? Is that a statement?

MR. KLINGSBERG: Do you want to read
back the question, please.

(Question read.)

A Yes, I think that's consistent with my
previous testimony.

Q All right.

Just so that this chronology of
documents makes sense some day to somebody who
is reading these transcripts, would you look at
Exhibit 167 (handing document to witness).

Chronologically, Exhibit 175, where
you received copies of the preliminary bid request,
then ties in, does it not, to Exhibit 167 dated
about a week later on February 14th when you
began to get ready for your first meeting with
the Metropolitan Edison negotiating group?

A Yes, I think the two documents are consistent.

Q Right.

MR. KLINGSBERG: We have been going
about an hour or so. I guess we can take
a short recess.

(Recess taken.)

1
2 MR. KLINGSBERG: Will you please mark
3 as GPU Exhibit 176 a memorandum from Mr.
4 Heller to Mr. Favret dated May 9, 1966.

5 (Memorandum from Mr. Heller to Mr.
6 Favret dated May 9, 1966 was marked GPU
7 Exhibit 176 for identification, as of this
8 date.)

9 (Document handed to witness)

10 A O.K.

11 BY MR. KLINGSBERG:

12 Q Have you seen Exhibit 176 before?

13 A I don't recall seeing this one specifically.

14 Q Do you remember having received copies
15 of firm specifications for the proposed Met Ed
16 nuclear installation in or about the spring of
17 1966?

18 A Yes, I do recall the essence of the content
19 of the letter where the specifications were
20 transmitted to us and also to the consultants
21 that we retained, Jackson & Moreland.

22 Q Do you know when was the last time
23 you had seen a copy of the firm specifications?

24 A Recently or at this time here, you mean?

25 Q At any time, including recently.

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A More recently in discussions with counsel.

Q Do you know from what file the firm specifications that you reviewed came?

A No, I don't.

Q Did Mr. Smith in this period shift over from Philadelphia Sales to Barberton?

A Yes.

Q What did the job of Manager of Electric Utilities entail?

A The job of Manager, Electric Utility Sales involved the coordination of the sales efforts from the regional offices and the district offices so that we had a coordinated effort where it involved more than one office, such as, in this case, Philadelphia and New York and maybe Boston.

MR. KLINGSBERG: Will you please mark as GPU Exhibit 177 a letter from Metropolitan Edison to Mr. Heller of Babcock & Wilcox dated May 11th, 1966.

(Letter from Metropolitan Edison to Mr. Heller of Babcock & Wilcox dated May 11, 1966, was marked GPU Exhibit 177 for identification, as of this date.)

(Document handed to witness)

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2

A O.K.

3

Q Have you seen Exhibit 177 before?

4

A I don't specifically recall it, no.

5

Q Do you recall that there came a time

6

on or about May 11th, 1966 or during the spring

7

of 1966 when you did receive a formal invitation

8

to bid from Metropolitan Edison on what came to

9

be the Three Mile Island No. 1 plant?

10

A Yes.

11

MR. KLINGSBERG: I would now like

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to have marked GPU Exhibit 178, which is a

13

copy of a proposal to Metropolitan Edison

14

Company, Reading, Pennsylvania.

15

(Copy of a proposal to Metropolitan

16

Edison Company, Reading, Pennsylvania, was

17

marked GPU Exhibit 178 for identification,

18

as of this date.)

19

MR. WISE: For the record, the copy

20

that has been marked appears to be

21

something that we as counsel to B&W produced

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to the plaintiffs. I believe the particular

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copy came from the files of Sullivan &

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Cromwell and the marking on the front of

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GPU Exhibit 178 may have been placed on

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there by someone at Sullivan & Cromwell.

BY MR. KLINGSBERG:

Q Obviously, Mr. Favret, this is a very thick document and it would take you a very long time to review it page by page.

What I would suggest is that you flip through it enough to satisfy yourself as to what it is and then if we have questions on particular portions, you are free to take as much time as you like to review those portions.

A I think the record should show that this is the proposal for the nuclear steam system and is designated A4-7B.

Q Is that as distinguished from the Island proposal?

A Yes, I was involved with the preparation of this document.

Q Can you identify Exhibit 178?

A Yes.

Q What is it?

A It is a proposal from the B&W Company to Metropolitan Edison for the nuclear steam system with a power rating of 2351 megawatts, and designated as A4-7B.

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Q Would you look at the page which is marked in the stampings we are using on documents in this case U00605.

A Right. That is Volume 2 of 3.

Q Yes.

As indicated on the face of this document, there is a date, August 15th, 1966. Was this proposal submitted to Metropolitan Edison on or about August 15, 1966?

A Yes.

Q You testified that you were involved in the preparation of this proposal?

A Correct.

Q Would you turn to the page marked U00607.

A What was the number?

Q U00607. It's just a couple of pages past the page we were at.

A Oh.

Q That's an index to the proposal sections in Volume 2.

Could you just run down that index and tell us first whether there are any of those subject matters in which you had the principal

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responsibility for preparation?

A Not specifically for the text of these.

Q Yes.

A But in more general, aware of what was going in and in the review of the final documents.

Q Are you able to tell us, running down that list, who had the principal responsibility for the preparation of the text in each of the subject matters?

A The summary text would have been prepared by Messrs. Embry and Olmstead.

The description of the nuclear steam supply equipment, Section 2, by Mr. Embry.

Section 3, Reactor Auxiliary Systems, by Mr. Embry and Mr. Montgomery.

Sections 4, 5 and 6 would have been a joint effort of Mr. Olmstead and Mr. Embry and the use of outside consultants.

Instrumentation and Protection Systems, I am not familiar with who may have had the lead position on that.

Operations would have been the engineers from Lynchburg, Mr. Embry and Mr. Olmstead.

2

Structures would have primarily been

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Mr. Olmstead.

4

Safety Analysis would have been

5

produced by the engineers in Lynchburg.

6

Project Services, by Messrs. Embry

7

and Olmstead.

8

Component Capability -- well, let me

9

refer to that one. Section 12. Probably Mr.

10

Embry, Section 12.

11

Performance would have been a product

12

of Mr. Olmstead and Mr. Embry with supporting

13

information from the Engineering Department in

14

Lynchburg.

15

Price Adjustment Clauses would have

16

been produced in Barberton by Mr. Wilson and

17

myself.

18

General Conditions, D. R. Wilson, as

19

we discussed, with some consultation by me.

20

Terms of Payment, Mr. Olmstead and

21

myself and Mr. Wilson.

22

Q Now, incidentally, and just so the

23

record is clear, the rest of this appears to be

24

the rest of Volume 2 and it's indicated on the

25

previous page Volume 3 pertains to nuclear fuel

1
2 supply, which is not a part of the document which
3 was supplied to us from the Sullivan & Cromwell
4 files.

5 Will you turn to page U00893, which
6 is near the back, please, that is Section 15,
7 General Conditions.

8 Do you know what sources Mr. Wilson
9 went to in order to prepare these General
10 Conditions? Do you actually have a knowledge or
11 recollection of that?

12 A Yes. The "Exceptions, Clarifications and
13 General Conditions," Section 15.1, would be an
14 incorporation of information provided by the
15 technical people or commercial review of the
16 customer's specifications to which we wanted to
17 clarify where there may be ambiguities,
18 inconsistencies or areas that we would not adhere
19 to and they would be included as part of this
20 first section of our general conditions.

21 The balance of the information,
22 "Proposal," would come out of a -- say, Shipping
23 Point and Destination," we would provide that
24 information to Mr. Wilson, he would review it
25 and it would be incorporated as part of the bid.

1
2 The balance of the terms and
3 conditions were evolved during a review process
4 of our previous Boiler Division terms and
5 conditions which had been used for years and as
6 modified and approved by our New York office for
7 offerings of this type.

8 Q Who conducted that review?

9 A It would be Mr. Wilson, myself, Martin
10 Victor and the use of outside counsel.

11 Q What outside counsel?

12 A Sullivan & Cromwell.

13 Q Well, a particular person?

14 A Mr. Kern and/or Mr. Mestres.

15 Q Do you actually have a recollection,
16 sitting here today, of conducting that review?

17 A Yes.

18 Q In regard to the conditions from the
19 boiler provisions, did you have any actual
20 boiler contracts which you utilized, in other
21 words, particular contracts with particular
22 customers?

23 A As I testified previously, for those terms
24 and conditions, we had evolved through the years
25 a set of terms and conditions which were then

1
2 our norms for conducting business, and as the
3 nuclear business came along, it introduced new
4 requirements and those were modified then for the
5 nuclear applications.

6 Q I am sorry, but I don't think you have
7 answered the question.

8 My question is: did you have before
9 you when you made this review that you talked
10 about any particular contracts relating to
11 boilers with particular customers?

12 MR. WISE: Other than the standard
13 conditions which he has testified about?

14 MR. KLINGSBERG: That's correct.

15 A No. Only other than the standard ones
16 that we used.

17 Q Did you make any changes in these
18 so-called standard conditions?

19 A The marketplace, the customers, were
20 requesting modifications to those and after a
21 due process of review internally and with the
22 advice of outside counsel, some modifications were
23 made so that we arrived at what we considered to
24 be a consistent set of terms and conditions
25 which would be suitable for commercial offerings.

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Q Did you receive any advice from outside counsel in connection with this review that was in writing?

A Not to my recollection.

Q Was any analysis made in writing by anyone in Mr. Wilson's department of the various terms and conditions which were under review in this process?

A I don't recall.

Q Did you make any writings in the course of this review?

A Yes, and those writings would have been incorporated into these terms and conditions.

Q You mean you did some drafting of provisions?

A Yes, right.

Q Apart from actually drafting provisions, did you write any written analyses, interpretations, suggestions, recommendations or anything of that sort in the course of this process?

A No.

Q Did anyone on your staff make any such writings?

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A The only writings that I can recall is that we attempted to draft our terms and conditions such that they were consistent and built one upon the other.

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A I don't know what you mean by "a written analysis."

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Q I asked you whether you know of any writings which contained analyses, interpretations, suggestions, recommendations in connection with this review in drafting procedure other than the actual drafting of the provisions themselves, and you said the only thing you could think of was something which had to do with making them consistent and building one upon another, and I am trying to find out what kind of writing you had in mind when you made that statement.

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23

MR. WISE: Do you understand where we are?

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THE WITNESS: No. I am lost.

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MR. WISE: All right. Maybe we ought

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to begin again and go through it piece by piece.

Q Apart from the actual drafts of the provisions themselves, are you aware of any written material by way of analysis, interpretation, recommendations or just generated by you or anyone else at B&W or any counsel in connection with this process which ended up in Section 15 of this proposal?

A No.

Q I take it from your previous testimony that there were certain provisions which were drafted explicitly for the nuclear aspects of the proposal and which had no analogue in your prior boiler standard terms, is that correct?

A Correct.

Q Who drafted those?

A Some of them I may have drafted, others by Mr. Wilson.

Q Do you remember which ones you drafted?

A The areas that dealt with shipping point and designations, the fact that most of the boiler products could be shipped by rail, the fact that nuclear equipment could not always be

2

delivered to a site and that we modified the language so that it took cognizance of those variances in the types of products involved.

3

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The risk of loss or damage on title transfer was made consistent with the shipping and destination clauses so that they tracked.

6

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8

Those are the two particular ones that I recall.

9

10

Q Were any of the clauses drafted by

11

Sullivan & Cromwell? If you know or recall.

12

A They were involved more with the review and finalization of those drafts.

13

14

Q You had previously had proposals

15

which were submitted to other utility companies

16

in connection with the nuclear power project and

17

the other projects which -- and the Indian Point

18

project and the two or three Consumers and Florida

19

and the North Carolina, is that correct?

20

A Yes.

21

Q To what extent did you draw on the

22

conditions which were used in those proposals in

23

order to arrive at the ones in these proposals, if

24

any, if you recall?

25

A Portions of those I am sure must have been

1
2 used as a part of these. The terms and
3 conditions for the industry were in a state of
4 evolution, as I mentioned previously.

5 Westinghouse and GE had issued in part of their
6 price list, terms and conditions which more or
7 less I guess were the norm of the trade.

8 Q For turnkey jobs or for just nuclear
9 steam supplies systems?

10 A My recollection is not that strong as to
11 how definitive they were between different scopes.

12 Q Do you actually recollect sitting
13 down with Wilson and with Sullivan & Cromwell
14 and drafting conditions fresh, so to speak, for
15 this proposal to Met Ed, bearing in mind that you
16 had previously had five or six other proposals
17 on nuclear plants?

18 A It is my recollection that these were an
19 evolution of the previous bids.

20 Q Were they different from the
21 previous bids?

22 A I would say not that much different. But
23 that's supposition.

24 Q But to some degree they were different?

25 A I don't recall.

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Q Were you involved at all in the drafting or the approval of the general conditions on the Indian Point plant?

A None. No involvement.

Q Do you know who was involved in that process?

A No, I do not.

Q Did there come a time when you saw the Indian Point conditions in the proposal?

A No.

Q You never saw them?

A No.

Q To this day you have never seen them?

A I have never seen them.

Q Did you look at those conditions or did you contemplate looking at those conditions in connection with the preparation of the Met Ed conditions in GPU Exhibit 178?

A No.

Q No.

Have you ever seen Consumers Power proposal conditions?

A Yes, I was assisted in the preparation of that offering, but I don't specifically recall

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the exact terms.

Q With whom did you participate in the drafting of those conditions?

A Mr. Wilson.

Q Was Sullivan & Cromwell involved in that?

A Yes.

Q In connection with the preparation of the general conditions for Met Ed, did you look at the Consumers Power conditions?

A I can't recall specifically.

Q Were you involved in the drafting of the Carolina Power & Light proposed conditions?

A Yes.

Q Did those differ from the Consumers Power conditions?

A I don't recall.

Q Was Mr. Wilson involved?

A Yes.

Q Was Sullivan & Cromwell involved?

A Probably.

Q You don't recall?

A I don't recall. I don't recall specifically on that one.

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Q Do you recall whether the Carolina Power & Light conditions differed from the Consumers Power conditions?

A Not, I don't think, markedly.

Q Did you look at the Carolina Power & Light conditions when you drafted the Met Ed proposal of conditions?

A As I testified earlier, the development of the terms and conditions was an evolutionary process.

Q Yes.

A And as to whether it was any specific one, I don't recall.

Q Were you involved in the preparation of the Duke Power terms and conditions?

A Yes.

Q What was the name of that, Oconee?

A Oconee.

Q Who else was involved in that?

A Mr. Wilson.

Q And --

A And also with the review of Sullivan & Cromwell.

Q Do you recall the review of Sullivan

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& Cromwell?

A More specifically, the review with Wilson.

Q Did the Duke Power conditions differ in any respect from the Carolina or Consumers conditions?

A I have not reviewed the Oconee terms and conditions recently and I hesitate to make a supposition.

Q Did you look at the Oconee proposal conditions or contract conditions in drafting the general conditions or approving the general conditions for the Metropolitan Edison proposal?

A Probably.

Q You don't actually recall?

A I don't actually recall.

Q Were you involved in the drafting of the Florida Power & Light conditions?

A Yes.

Q Did those differ from the previous ones that we have mentioned?

A The Florida Power & Light offering started out to be a nuclear island bid and we dropped out of contention very shortly after the bid submittals.

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Q Bearing in mind that you had had Indian Point, Consumers, Duke Power, Carolina, do you actually have a recollection of how much in the way of new drafting you had to do for the Metropolitan Edison proposal?

A I don't believe it required a lot of new draftsmanship. I think that most of our terms and conditions had been fairly well standardized by the time I think we probably got to -- I don't recall -- one of the earlier proposals, though.

Q But there was some new drafting?

A Not that I can specifically say there was.

There would be, in the "Exceptions, Clarifications and General Conditions," in that area.

Q Right.

A Specifically for this offering.

Q Do you know for a fact whether the provisions on company liability, insurance, risk of loss, warranty, indemnity were identical to those in the previous contracts or proposals?

A I don't know for a fact that they are identical.

1

2

Q Will you turn to the page marked

3

U00904, which contains Section 15.24, "Warranty."

4

Were you involved in the drafting of

5

that section?

6

A Not specifically; I don't recall.

7

Q Do you know who was involved in the

8

drafting of that section?

9

A I don't know, but it is similar to other --

10

other general clauses we would have of this

11

nature, workmanship and material.

12

Q Directing your attention to the

13

clause "No warranty, express or implied, not

14

contained in either this Article or in the

15

section of this Proposal titled 'Performance'

16

shall be applicable," do you see that?

17

A Yes.

18

Q Did you have any conversations

19

with Mr. Wilson on the purpose of that provision?

20

A Not in great detail, except that it was

21

part of most of our offerings and I guess all of

22

them.

23

Q Do you recall any discussions with

24

Mr. Wilson on the purpose of that provision?

25

A It was to protect the company's insurance

1

2 against implied warranties.

2

3

Q In what respect?

4

A In all respects.

5

Q Do you actually recall a conversation
6 with Mr. Wilson on that subject?

6

7

A I can't say that I specifically recall that
8 conversation.

8

9

Q Yes?

10

A It is just as a background.

11

Q Do you recall any conversations with
12 the gentlemen from Sullivan & Cromwell with
13 regard to that provision?

13

14

MR. WISE: You should answer that just

15

yes or no.

16

A No.

17

Q Did you ever discuss with Mr. Wilson
18 how, if the provision were not in the contract,
19 the rights of the parties would be different?

19

20

A I don't recall.

21

Q Did you have any discussions with Mr.
22 Wilson in regard to possible omission of this
23 provision or inclusion of this provision?

23

24

A I am not that familiar.

25

Q I will direct your attention to

1
2 pages U00898 and '899, Section 15.13.

3 Was there anybody in particular in
4 the company, apart from Mr. Wilson, who was
5 consulted in regard to insurance provisions?
6 Will you tell us the name of the person if there
7 was one.

8 A My contact would have been with Mr. Wilson.

9 Q Looking at page U00899, who, if anyone,
10 was principally responsible for matters
11 pertaining to the Atomic Energy Act of 1954 or
12 the Price-Anderson Act?

13 A I believe this was drafted by Mr. Wilson
14 and in conjunction with Sullivan & Cromwell.

15 Q Did you have any knowledge regarding
16 the provisions of the Price-Anderson Act?

17 A I was aware of them and knew that the
18 law existed and that it provided some measure of
19 protection to the parties.

20 Q Did you have any discussions with Mr.
21 Wilson concerning indemnity agreements under the
22 Price-Anderson Act?

23 A Yes, to gain the understanding that I did
24 achieve. He would explain it.

25 Q Did you have any conversations with

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counsel on that subject?

A In some of the broad review meetings where we were developing the terms and conditions, I am sure we must have discussed it.

Q Were there any written analyses or submissions or reports that you read concerning the indemnification provisions of the Price-Anderson Act?

THE WITNESS: Do you want to read that back, please?

(Question read.)

A I don't recall reading any analyses of the Price-Anderson Act.

Q Do you have a recollection of what Mr. Wilson told you about the Price-Anderson Act indemnity provision?

A Other than that as outlined in the text here, to that extent I did have an understanding of it, but that's the limit of it.

Q Yes?

A I was not an expert in the Price-Anderson Act.

Q Following the submission of the proposal to Metropolitan Edison, did there come

2 a time when you attended a series of meetings
3 with Metropolitan Edison personnel and
4 negotiators?

5 A What was the first part of the question?
6 Did there come a?

7 MR. KLINGSBERG: Mr. Reporter?

8 (Question read.)

9 A Yes. Yes, there came a time.

10 Q Do you have a recollection of the
11 first meeting?

12 A Yes.

13 Q Where did it take place?

14 A The first meeting, to my recollection, was
15 the one at Reading where we -- the -- I think it
16 was the meeting in February as described in one
17 of the texts.

18 MR. WISE: I think Mr. Klingsberg's
19 question is directed at the period after
20 the proposal was submitted.

21 THE WITNESS: Oh, after.

22 MR. KLINGSBERG: After the proposal,
23 that's correct.

24 MR. WISE: I believe the record shows,
25 Mr. Favret, that that was submitted

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August 15, 1966.

MR. KLINGSBERG: Dated August 15th.

A Let me say that my recollection is that there was an interim period following the submittal of the proposal in which the customer reviewed the submittals and that we probably had our first meetings with them probably sometime in September, maybe a little later.

MR. KLINGSBERG: I would like to show you a document which we will mark as Exhibit 179, being a memo from Mr. Heller to files dated October 6th, 1966.

(Memo to Files from F. C. Heller, dated October 6, 1966, was marked GPU Exhibit 179 for identification, as of this date.)

Q Do you recall having seen Exhibit 179 previously?

A Yes.

Q Other than in your preparation for testimony?

A Yes.

Q Do you recall having seen it at the time it was prepared?

2 A Yes.

3 Q Did you receive a copy in the regular
4 course of business?

5 A Yes.

6 Q Was it Mr. Heller's duty to take
7 notes at these meetings and submit memos to the
8 files and to those attending of the important
9 points that were discussed?

10 A Yes.

11 Q Did anyone else take notes?

12 A Mr. Olmstead, if he would have been there,
13 yes, would have.

14 Q Did you take notes?

15 A No.

16 Q Did Mr. Olmstead write memos based
17 on his notes?

18 A Sometimes.

19 Q Do you know if Mr. Olmstead wrote a
20 memorandum of this meeting?

21 A I don't recall.

22 Q Was there anybody else who wrote
23 memoranda concerning what was discussed at the
24 meeting from Babcock & Wilcox's point of view?

25 A I can only suppose that we had exchanges of

2 information between Barberton and Lynchburg
3 pertaining to the customers' desires.

4 Q Apart from your supposition, you don't
5 have an actual recollection of any memoranda?

6 A No.

7 Q Do you recall any discussion at this
8 September 30th meeting, as you sit here today, of
9 any subjects other than what Mr. Heller has
10 described in his memorandum which we have marked?

11 A The area with regard to the NSS and the
12 plant operating under changing load conditions
13 was of concern to the customer and that they were
14 desirous of some of the features as described
15 in the memorandum on the first page of the text,
16 page 2.

17 Q This memorandum also refers, does it
18 not, to discussion on the subject of liability or
19 responsibility for costs resulting from
20 licensing changes about which you testified this
21 morning?

22 A Yes.

23 Q Prior to your giving that testimony
24 this morning, had your memory as to that subject
25 been refreshed by having read this memorandum in

2 preparation for your testimony?

3 A I would say -- I can't recall whether I have
4 seen this document.

5 Can I ask a question?

6 MR. KLINBSBERG: Sure.

7 THE WITNESS: Did I have this document?

8 MR. WISE: Why don't you say it. If
9 you know, you can so testify. If you
10 don't --

11 A I remember seeing this document, and in
12 reviewing this and other documents, it did
13 refresh my memory, but most of the features of
14 the original agreement as finally negotiated, I
15 participated in.

16 Q Yes?

17 A So that they were still recallable.

18 Q Babcock & Wilcox had an interest, did
19 it not, in seeing that the plant which it agreed
20 to supply, or the nuclear steam system it
21 agreed to supply, was the recipient of appropriate
22 licenses from the Atomic Energy Commission, is
23 that not so?

24 A Yes.

25 Q And it was in Babcock's interest in

2 terms of future negotiations and future bids to
3 try to assure that its equipment was the
4 recipient of appropriate licenses, is that correct?

5 A Correct.

6 Q And indeed, Babcock had meetings
7 with the Atomic Energy Commission by itself without
8 the customer and not in regard to specific
9 customers, dealing with the question of
10 licensing, did it not?

11 A The then AEC did have provisions where
12 manufacturers could submit a description of a
13 nuclear plant which they would review and comment
14 on and undergo a, so to speak, mock review for
15 licensing.

16 Q And did your company take advantage
17 of those provisions?

18 A Yes, we did.

19 Q Is it fair to say, then, that the
20 manufacturer played a substantial role in
21 securing a license for the plant in which its
22 equipment was going to be installed?

23 MR. WISE: What is your definition
24 of "substantial"?

25 MR. KLINGSBERG: Significant role.

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MR. WISE: I will object to the form.

If the witness can answer it, he may.

A Let me say that the obtaining of a license was the primary responsibility of the customer. It was the role of the equipment supplier to submit information to the customer in a form in which he requested it for final submittal to the AEC.

We would participate with the customer and with his selected architect-engineer or engineering organization in the preparation of those documents and would participate with the customer to the extent that he called upon us to do so.

Q And you attempted in the course of those participations to do your best to see that the plants were licensed?

A We did our best to support the customer in his efforts.

Q You said, in words or substance, this morning that in the course of the negotiation with Mr. Pickard and Mr. Trowbridge and others from Metropolitan Edison that -- you said that the manufacturer could not secure a license, only the operator.

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Do you recall testimony to that effect this morning?

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A Yes.

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Q Did you actually say something to that effect according to your recollection?

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A To?

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Q To Messrs. Trowbridge, Pickard and others?

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A Yes.

11

Q You recall having said that?

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A Yes.

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14

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Q Wasn't that something that was quite obvious to Pickard and Trowbridge from their long experience in this subject?

16

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

17

18

The witness can answer it if he understands it.

19

20

THE WITNESS: Read it back again.

21

(Question read.)

22

A You could ask Mr. Trowbridge and Mr. Pickard.

23

24

Q Is there anything in particular that makes that particular sentence or phrasing stand

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1
2 out in your mind, 15 years after the fact?

3 A The items that make it relevant in my mind
4 is that they were -- they attempted to get the
5 company to take more extensive responsibility
6 than what we were prepared to offer in the way of
7 licensing.

8 Q Your company?

9 A Yes.

10 Q My question is, what makes those
11 particular words stand out at this time so many
12 years later in your mind, or do they stand out?

13 A They stand out because they wanted us to
14 take responsibility, as this text indicates, for
15 items beyond our scope of supply for which we
16 had no control, including site-related matters
17 which were -- we had no information on nor had
18 the site been selected.

19 Q Do you recall the next meeting with
20 the Metropolitan Edison negotiators?

21 A Not specifically.

22 MR. KLINGSBERG: I would like to mark
23 as GPU Exhibit 180 a copy of a letter from
24 Mr. Neidig to Mr. Heller dated October 12,
25 1966, with an enclosed memorandum of

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2 meetings of September 30th and October 12th
3 between Metropolitan Edison and Babcock &
4 Wilcox, and state for the record that this
5 comes out of the files of the Shaw, Pittman
6 firm.

7 (Copy of a letter from Mr. Neidig to
8 Mr. Heller dated October 12, 1966, with
9 an enclosed memorandum of meetings of
10 September 30 and October 12, 1966 between
11 Metropolitan Edison and Babcock & Wilcox,
12 was marked GPU Exhibit 180 for
13 identification, as of this date.)

14 (Document handed to witness)

15 A O.K.

16 BY MR. KLINGSBERG:

17 Q Do you recall having received or
18 seen a copy of the memorandum attached to
19 Exhibit 180?

20 A Not in its entirety, but some portions of
21 it read familiar.

22 Q Obviously I am not including the
23 handwritten --

24 A Right.

25 Q -- notations, which may not have been

2 on the copy sent to Mr. Heller, but apart from
3 that, you do have a recollection of having seen
4 the memo?

5 A Some portions of it I recall, yes.

6 Q Let me ask you this: do you have,
7 sitting here today, an independent recollection
8 of what was discussed at the October 12th meeting
9 between Metropolitan Edison and Babcock & Wilcox?

10 A Not in -- not totally.

11 Q Do you have any recollection of any
12 discussions other than those which are set forth
13 in the memorandum, either this memorandum or
14 the previous one that you reviewed, prepared
15 by Mr. Heller?

16 THE WITNESS: Will you restate the
17 question again?

18 (Question read.)

19 A The question is so broad, I really can't
20 offer an answer even.

21 Q All right.

22 Having read the memorandum, does it
23 accord with your recollection of what was
24 discussed at the September 30 and October 12,
25 1966 meeting?

1
2 A I think there are some areas where we had
3 differences of interpretation of the results of
4 our discussions and that we took exception to some
5 of the items as presented here.

6 Q Do you recall what those were?

7 A No, I do not.

8 Q Do you recall any additional subjects
9 that were discussed at the meetings, besides
10 those that are set forth in the memorandum, at
11 these particular meetings, September 30th and
12 October 12th?

13 A I don't recall specifically.

14 MR. KLINGSBERG: I would like to
15 now, to round out the record, to mark as
16 Exhibit 181 a memorandum dated October 13,
17 1966 from Mr. White to Mr. Rowand, which
18 states that it attaches a memorandum of the
19 September 30th and October 12th meeting by
20 Mr. Charnoff, with a copy of the memorandum
21 to Mr. Favret.

22 (Memorandum dated October 13, 1966
23 from Mr. White to Mr. Rowand, copy to Mr.
24 Favret, with attached memorandum of the
25 September 30 and October 12 meeting, was

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marked GPU Exhibit 181 for identification,
as of this date.)

(Document handed to witness)

A O.K.

Q Do you recall having received
Exhibit 181?

A Not specifically, but the subject of the
1200 kilowatt auxiliary power system I think
rings a bell.

Q In what respect?

A That it was one of the items that was
under review as part of the proposal as to how
much auxiliary power would be required for
emergency generator capacity.

Q Looking now at Exhibits 180 and 181,
can you identify the attachment to Exhibit 180 as
the memorandum which was sent to you as part of
Exhibit 181?

MR. WISE: Are you asking him
basically today to look at it and see if it
makes sense, if these two are connected, or
if he has any independent recollection
specifically that this Exhibit 180 was in fact
what was attached to 181?

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I think we can all read the memos and see what they appear to describe.

As to whether this witness has a specific recollection of that, I will be happy to let him answer that if he can.

MR. KLINGSBERG: Well, let's see if he can.

A I would say it is my observation that I do recall Exhibit 180.

Q Yes?

A The text of 181 by all indications of its text indicates that it transmitted Exhibit 180.

Q But you don't have an independent recollection?

A I don't recall specifically this document, but I do this one. (Indicating)

Q You mentioned earlier in your testimony some disagreement with the conclusions or some conclusions in Exhibit 180.

Does Exhibit 181 refresh your recollection as to any of those exceptions?

A I would have to study it in detail before I could answer that question.

Q Yes?

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A And even then I am not sure I can recall the nuances.

Q Does Exhibit 181 accurately reflect, to the best of your recollection, discussion at the September 30 or October 12 meeting?

A That's a little bit more detailed than my memory is serving me.

Q Having looked at Exhibit 179, 180 and 181, are you able to tell us anything that was discussed at the October 12 or September 30 meetings other than what we have seen set forth in the memoranda?

A I would say that my recollection indicates that there was more discussion on the licensing issues than what these documents would portray and there was more discussion on the items not in our scope of supply for which we would not take responsibility, and especially those as related to site conditions, and the customer had not selected a site.

MR. KLINGSBERG: Can we now go to the next exhibit --

Q Well, before that, let me ask you this.

2

Do you recall the next meeting with
Metropolitan Edison?

3

4

A Not specifically.

5

6

Q Do you recall any discussion on the
subject of fuel rod design?

7

A Fuel rod design.

8

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12

In the course of the several of the
meetings, there was discussions on fuel rod
design and the design of the total fuel to serve
the customer's load cycle for annual refueling
energy content.

13

14

Q Do you remember anything said on that
subject?

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A There was considerable discussion as to
who would bear the responsibility in the event
of mechanical fuel failure, premature fuel
failure, design or desire of the customer to
overburn the fuel or underburn it, and how we
would handle the warranty adjustment for
those -- for the fuel.

22

23

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MR. KLINGSBERG: I would now like to
mark as GPU Exhibit 182 a memorandum from
the Shaw, Pittman firm files dated
November 4, 1966 of a meeting between

1
2 Metropolitan Edison and Babcock & Wilcox
3 on October 27, 1966.

4 (Memorandum from the Shaw, Pittman
5 firm files dated November 4, 1966 of a
6 meeting between Metropolitan Edison and
7 Babcock & Wilcox on October 27, 1966
8 was marked GPU Exhibit 182 for
9 identification, as of this date.)

10 (Document handed to witness)

11 A May I ask where did this document come from?

12 Q This comes from the Shaw-Pittman
13 firm.

14 A O.K.

15 Q Have you ever seen Exhibit 182 before?

16 A Not that I recall.

17 Q Did you attend the meeting on
18 October 27, 1966?

19 A The memorandum says, part time.

20 Q What is your recollection?

21 A Some of the contents of the memorandum is,
22 as drafted, I do recall those discussions having
23 taken place.

24 Q Do you recall in regard to those
25 portions whether the memorandum accurately

2 reflects the discussions?

3 A In all details I couldn't answer to that
4 extent. Certain phases of it, yes, I do recall.

5 Q Do you have any recollection of
6 anything that occurred at the meeting that is
7 inconsistent with what it states in the memorandum?

8 A No.

9 Q Do you have any recollection of any
10 discussion at the meeting which is not summarized
11 in the memorandum?

12 A My recollection is not that good.

13 Q Did you participate in any of the
14 discussion of any of the subjects listed in
15 Exhibit 182?

16 A I was probably involved in the discussions
17 on items 5, 6.

18 Q What contribution, if any, did you
19 make to those discussions?

20 A Some of the features on the pressure vessel
21 design and head removal, the steam generator.
22 That's primarily it.

23 MR. KLINGSBERG: I will now ask to
24 have marked as GPU Exhibit 183 for
25 identification a letter from Mr. Neidig

1
2 to Mr. Favret dated November 22nd, 1966,
3 attaching a memorandum of a meeting dated
4 November 16, 1966.

5 (Letter from Mr. Neidig to Mr. Favret
6 dated November 22, 1966, attaching a
7 memorandum of a meeting dated November 16,
8 1966, was marked GPU Exhibit 183 for
9 identification, as of this date.)

10 A These are produced from whose files?

11 Q Babcock & Wilcox.

12 A O.K.

13 Q Have you seen Exhibit 183 before?

14 A Yes.

15 Q Do you have a recollection of
16 receiving it from Mr. Neidig?

17 A Yes.

18 Q Can you identify the handwriting on
19 this document?

20 A I think part of it might be mine and part
21 of it Mr. Wilson's.

22 Q Will you turn the pages and tell us
23 which is yours and which is Wilson's?

24 A The first page I think are Wilson's; the
25 second page I think are mine; page 3 looks like

2 mine. I am not sure on 4 -- no, well, let's see,
3 wait a minute. There is a page unnumbered. It's
4 item 3, "Missile Protection," page 3. I can't
5 tell.

6 I can't tell.

7 MR. WISE: Page 4 you can't tell?

8 THE WITNESS: Page 4, I can't tell.

9 A And 5, I can't tell.

10 Q Do you have a recollection of each
11 of the subjects of this memorandum having been
12 discussed at the November 16th meeting?

13 A By and large, yes.

14 Q Apart from the interlineations which
15 were made, does the memorandum basically set
16 forth the substance of what was discussed at the
17 meeting?

18 THE WITNESS: Read the question back,
19 please.

20 (Question read.)

21 A The substance of the meetings, as far as
22 we were concerned, was more akin to what was
23 included with the marked-up copy.

24 Q Were there any subjects discussed at
25 the meeting that you recollect today other than

I N D E X

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