

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

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. RAY McDERMOTT & CO., INC., :

Defendants. :

-----x

Continued deposition of THE BABCOCK &  
WILCOX COMPANY, by LOUIS M. FAVRET, taken  
by plaintiffs, pursuant to adjournment, at  
the offices of Kaye, Scholer, Fierman, Hays  
& Handler, Esqs., 425 Park Avenue, New York,  
New York, on Tuesday, May 12, 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.

\* \* \*



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

DOYLE REPORTING, INC.  
CERTIFIED STENOGRAPHIC REPORTERS  
369 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017  
TELEPHONE 212 - 867-8220

8306290750 810512  
PDR ADOCK 05000289  
T PDR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, ESQS.  
Attorneys for Plaintiffs  
425 Park Avenue  
New York, New York

By: DAVID KLINGSBERG, ESQ.  
-and-  
JOEL KATCOFF, ESQ.,

of Counsel

DAVIS POLK & WARDWELL, ESQS.  
Attorneys for Defendants  
One Chase Manhattan Plaza  
New York, New York

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

of Counsel

Also Present:

DAVID TAYLOR (P.M. only)

\* \* \*

2           L O U I S           M.           F A V R E T,           having been  
3                           previously duly sworn, was examined and  
4                           testified further as follows:

5           EXAMINATION (continued)

6           BY MR. KLINGSBERG:

7                   Q           Mr. Favret, you are still under oath  
8                   and in view of the fact that Mr. Katcoff is  
9                   integrating some of the documents on the  
10                   negotiations that we got last night, we will shift  
11                   temporarily to a different topic and then come  
12                   back to our chronology.

13                           When was The Babcock & Wilcox Company  
14                   acquired by J. Ray McDermott & Company?

15           A           I don't have that specific recollection of  
16           the date. It was sometime in '78, '79.

17                   Q           Were you involved at all in the merger?

18           A           Not in the merger with J. Ray McDermott.

19                   Q           Did you participate in any committees  
20                   or task forces within Babcock & Wilcox to make  
21                   recommendations in regard to the acquisition?

22           A           No.

23                   Q           Were you consulted by executives within  
24                   Babcock & Wilcox as to the pros and cons of  
25                   entering into the merger?

2 A No.

3 Q Do you know which persons at Babcock  
4 & Wilcox were involved in negotiating the  
5 acquisition?

6 A Mr. Zipf, of course.

7 Q What was his position?

8 A He was the President and Chief Executive  
9 Officer.

10 I believe Mr. Cantwell, and beyond that  
11 I am not familiar.

12 Q Was Mr. Vannoy involved?

13 A I suppose he was. I don't know that for a  
14 fact.

15 Q Either before or after the acquisition  
16 occurred, did you make any presentations oral or  
17 written regarding the nuclear operations of  
18 Babcock & Wilcox?

19 MR. WISE: Presentations to whom?

20 MR. KLINGSBERG: J. Ray McDermott  
21 people.

22 A Concerning the nuclear operations?

23 Q Yes.

24 A No.

25 Q Did you make any presentation

2 concerning any aspect of Babcock's business to  
3 J. Ray McDermott?

4 A Yes, there was one -- one series of meetings  
5 to the Board of Directors which introduced the  
6 company to the management and Board of Directors  
7 of the company.

8 Q Did you make a presentation at that  
9 meeting?

10 A Yes.

11 Q Was it oral or written or both?

12 A Oral.

13 Q Did you speak from a written text?

14 A Not from a written text, that I recall.

15 Q What was the subject?

16 A Most of it was view graphs or slides showing  
17 the various operations and products of the company.

18 Q Either in this presentation or  
19 otherwise, are you aware of any review by J. Ray  
20 McDermott or presentation to J. Ray McDermott of  
21 Babcock & Wilcox contracts for nuclear equipment  
22 or services?

23 MR. WISE: This would be prior to the  
24 accident?

25 Q Let's start with that.

1  
2 THE WITNESS: Read the question back  
3 again, please.

4 (The reporter read back the pending  
5 question.)

6 A I am not aware of any.

7 Q Are you aware of any such report,  
8 presentation to or review by J. Ray McDermott  
9 concerning B&W contracts for nuclear equipment or  
10 services following the Three Mile Island accident?

11 MR. WISE: I will object insofar as  
12 there may have been review in connection  
13 with counsel's work in defense of this  
14 lawsuit or any other litigations that  
15 were instituted immediately after the  
16 accident.

17 You may answer with respect to any  
18 knowledge you have of a presentation that  
19 did not involve or was not in connection  
20 with the litigation that was commenced,  
21 and I believe the day after the accident,  
22 in Pennsylvania.

23 Q Is that too complicated now?

24 Let me rephrase it to see if we can  
25 take account of the objection.

2

3

4

5

6

Apart from any work with counsel in connection with the defense of this litigation, are you aware, after the accident, of any presentation to or review by J. Ray McDermott personnel of B&W nuclear equipment or service contracts?

7

8

9

10

11

12

13

14

15

16

MR. WISE: I still have to place the objection on the record. I think that the way you phrased the question after the commencement of this litigation leaves open the area of work that was done to defend the personal injury lawsuits and property damage lawsuits that were commenced immediately after the accident as well as any work that was done in anticipation of this litigation.

17

18

19

20

21

22

23

24

25

What I would permit is the witness to answer with respect to any presentations that were not done in connection with legal work growing out of the accident, if you are looking for some sort of a business review I think that's perfectly all right, if you are looking for a legal review following the accident, that is what my objection is directed to.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. KLINGSBERG: Well, why don't we take it this way:

Q Can you tell us, just with a yes or no answer, whether or not there was any review of any kind for any purpose by J. Ray McDermott of B&W nuclear contracts following the accident?

MR. WISE: You are asking just for his knowledge at this point?

MR. KLINGSBERG: Just a yes or no, yes.

A There was not a review by J. Ray McDermott personnel.

Q Was there any presentation to J. Ray McDermott personnel of which you were aware after the accident concerning B&W contracts for nuclear equipment or services?

A What do you mean by "presentation"?

Q Any report, discussion, submission, orally or in writing, to J. Ray McDermott personnel concerning B&W nuclear contracts of which you are aware.

A Information may have been provided from B&W personnel through the management chain which I am not aware of.

2 Q But you were not aware of any such  
3 presentation of your own personal knowledge?

4 A I did not make one.

5 Q Yes.

6 A It could have been done through the legal  
7 chain.

8 Q But you have no personal knowledge?

9 A No.

10 Q Following the merger between B&W  
11 and J. Ray McDermott, were there any reporting  
12 procedures instituted from B&W to McDermott  
13 relating to any aspects of B&W's business in  
14 which you were involved?

15 A The reports, the financial reports for  
16 the B&W Company are directed to the attention  
17 of the President and then that information is  
18 made available to the financial people and  
19 then made available for the consolidation then  
20 to McDermott.

21 Q Are there any other reports or  
22 written material of which you are aware that  
23 are submitted to McDermott personnel?

24 A In the course of normal business, there is  
25 correspondence that is exchanged between the

2 B&W operating company and the McDermott Company.

3 Q What sort of correspondence?

4 A Correspondence that deals with financial  
5 matters, performance of the operating units,  
6 whatever would take place in the normal course of  
7 business between a parent company and a subsidiary.

8 Q Have you written such correspondence?

9 A Pertaining to what?

10 Q Pertaining to aspects of B&W's business  
11 in which you were involved.

12 A There may be some information that would  
13 flow through the financial people and some that  
14 would flow through to the planning, strategic  
15 planning unit or into the legal group. Most of  
16 the business information would flow through to  
17 Mr. Vannoy's office and then for consolidation.

18 Q Have you ever had consultation or  
19 conversation with anybody at J. Ray McDermott  
20 concerning aspects of B&W's business that you  
21 manage or supervise?

22 A Yes.

23 Q With whom?

24 A We normally would have business meetings  
25 for the review of operations in the B&W operating

2 unit between the group executives including  
3 Mr. Vannoy, our President, with the staff people  
4 and Mr. Cunningham of the parent company.

5 Q How often are those meetings held?

6 A Quarterly.

7 Q What subjects are discussed?

8 A Financial performance.

9 Q Who are the people at B&W and the  
10 people at McDermott who usually attend those  
11 meetings?

12 A It would be the group executives and the  
13 President of B&W, the Controller of B&W, the Chief  
14 Executive Officer, Chief Administrative Officer,  
15 Chief Financial Officer, legal counsel at times.

16 Q Could you just tick off the names of  
17 those people?

18 A The Chief Executive Officer is listed in  
19 the Annual Report as Mr. Cunningham, the Chief  
20 Administrative Officer is Mr. Bailey, the Chief  
21 Financial Officer is Mr. Lynott, and the Chief  
22 Legal Counsel is Mr. Gilly.

23 Q And on the B&W side?

24 A It would be Mr. Vannoy, President, Mr. Krebs,  
25 who is currently Group Executive for the Tubular

2 Products Group, Mr. MacMillan, Group Executive  
3 for Nuclear, Mr. Heyburn, Group Executive  
4 for Industrial Products, and Mr. Griffin, Group  
5 Executive for the Fossil Power and Construction  
6 Company, and in addition there would be our  
7 Controller, Mr. Ford, and Mr. Gordon from  
8 Mr. Lynott's staff.

9 Q At those meetings, are minutes kept?

10 A No. Not that I know of.

11 Q Does anyone take notes?

12 MR. WISE: You mean in a formal sense  
13 or does anyone ever sit down and write  
14 something down on a piece of paper?

15 MR. KLINGSBERG: Let's take it this  
16 way:

17 Q Have you ever seen a memorandum or  
18 summary of what occurred at one of those meetings?

19 A No.

20 Q Was anyone, as your counsel says,  
21 formally charged with the duty to keep notes of  
22 the meeting?

23 A No.

24 Q Do you ever make personal notes of  
25 the meetings?

2 A Very seldom.

3 Q Do you keep them?

4 A No.

5 Sometimes I do, sometimes they would be  
6 discarded.

7 Q At any of these meetings was there ever  
8 any discussion of the Three Mile Island accident?

9 A I'm sure there probably was.

10 Q Was there anything written as a result  
11 of that discussion?

12 A As a result of that discussion.

13 That would not have been in my area of  
14 responsibility.

15 Let's see, wait a minute, correct that,  
16 that's not right.

17 I don't recall any letters being written as  
18 a result of discussions that took place in those  
19 meetings.

20 Q Not necessarily limiting it to letters,  
21 have you ever seen a memorandum, a report which  
22 summarized or set forth conclusions or  
23 recommendations resulting from a meeting of this  
24 group that you have described of B&W and McDermott  
25 personnel?

2 A The only information I think that may have  
3 been made available, and this is -- I'm not sure,  
4 that would be information that may have been  
5 developed in conjunction with some of the review  
6 processes, such as the Kemeny report.

7 MR. KLINGSBERG: Can I have that  
8 answer back, please.

9 (The reporter read back the last  
10 answer.)

11 MR. WISE: I am not sure the witness  
12 understood your question.

13 Mr. Favret, what Mr. Klingsberg is  
14 asking you is whether somebody within B&W  
15 or McDermott, as a result of one of these  
16 meetings, went out and wrote something  
17 that grew out of some discussion at one of  
18 those meetings.

19 MR. KLINGSBERG: Relating to the  
20 Three Mile Island accident.

21 A I do not have a specific recollection of  
22 somebody preparing a report in response to a  
23 request during those meetings.

24 Q Do you have a general recollection  
25 of something being written?

2 A No.

3 Q At any of these meetings, have any  
4 suggestions been made by McDermott personnel of  
5 changes in aspects of B&W's business or how it  
6 is run?

7 THE WITNESS: Will you please  
8 repeat the question.

9 (The reporter read back the last  
10 question.)

11 MR. WISE: That is a pretty broad  
12 question. I will let him attempt to  
13 answer but I think it is objectionable in  
14 form.

15 MR. KLINGSBERG: Are you objecting?

16 MR. WISE: I am objecting to the form  
17 of the question.

18 I will permit him to answer it if  
19 he can.

20 MR. KLINGSBERG: All right, I will  
21 reframe it.

22 BY MR. KLINGSBERG:

23 Q At any of these meetings, have  
24 McDermott personnel advised B&W personnel  
25 regarding suggested changes in the operation of

2 any aspect of B&W's business?

3 A Not to my knowledge.

4 Q Apart from these meetings, have any  
5 persons at J. Ray McDermott ever made suggestions  
6 or recommendations to you regarding the aspects  
7 of B&W's business for which you are responsible?

8 A For which I am responsible.

9 No, most of my directions would come from  
10 Mr. Vannoy.

11 Q Have you ever had any recommendations  
12 or suggestions from McDermott either directly or  
13 through Mr. Vannoy?

14 MR. WISE: Well, he may not know  
15 where Mr. Vannoy may have gotten the  
16 idea, but I will let him answer to the  
17 extent that someone has identified to him  
18 that a particular suggestion or piece of  
19 advice came from McDermott.

20 MR. KLINGSBERG: Right.

21 A The only advice would have been in the  
22 normal course of review of the business situation  
23 as to the -- whether business was on the upturn or  
24 downturn or the direction that we should be going,  
25 possibly, or thinking but not a specific direction

2 to do something.

3 Q What directions have you had from  
4 McDermott directly or indirectly as to the  
5 direction that they thought you should be going?

6 MR. WISE: First of all, that is not  
7 what he said specifically, and secondly,  
8 that is an extremely broad question and  
9 I think at this point I would like to know  
10 what the relevance of this line of  
11 questioning is.

12 I have permitted a fair amount of  
13 latitude on this under the theory that  
14 this is --

15 MR. KLINGSBERG: It is relevant with  
16 regard to the responsibility of McDermott  
17 for the damages in this case.

18 MR. WISE: Well, I certainly would  
19 permit any questions with respect to any  
20 involvement of McDermott, involvement of  
21 McDermott in the Three Mile Island related  
22 activities prior to the accident. With  
23 respect to activities post the accident,  
24 unless you are now looking to establish a  
25 case of piercing the corporate veil

2

because B&W might not be financially responsible for a judgment, which I think is a matter for proceedings after judgment, I don't see what the relevance of this line of testimony would be. Certainly, in the plaintiffs' complaint you have claimed that McDermott was involved and was responsible for the accident as was B&W and I would permit questioning going to McDermott's involvement prior to the accident, but it seems to me post the accident the only relevance of this would be in the event that B&W were unable to pay a judgment if one were awarded to your client and you then sought enforcement proceedings against its parent. But that is a long way down the road and I don't know if that is appropriate in this lawsuit, at least at this stage.

21

MR. KLINGSBERG: This is a preliminary question. Are you directing the witness not to answer?

24

MR. WISE: Well, I don't direct him not to answer but I think you should make

25

1  
2 your question a little bit more specific  
3 than any suggestion or advice he may have  
4 gotten from anybody in McDermott over a  
5 period of time.

6 MR. KLINGSBERG: Could you repeat the  
7 question, please.

8 (The reporter read back the pending  
9 question.)

10 A Let me say this in general: That the  
11 direction of the B&W Company is left to the  
12 management of B&W through Mr. Vannoy. He will  
13 have contacts with Mr. Cunningham, they will  
14 discuss things, but I do not necessarily know  
15 whence all those come. I have been privileged at  
16 some conversations where we have had exchanges of  
17 ideas but really nothing to do with the -- bearing  
18 on our discussions on Three Mile Island.

19 Q Following the acquisition, was there  
20 any person or committee or group within J. Ray  
21 McDermott who is particularly interested in or  
22 responsible for the aspects of B&W's business  
23 with which you are involved?

24 A Rephrase the question -- restate the  
25 question.

1

2

(The reporter read back the last

3

question.)

4

A No. The only involvement would be by

5

assistance from the legal.

6

Q Prior to the accident, are you aware

7

of any conversations with J. Ray McDermott

8

legal personnel regarding liabilities for

9

nuclear accidents or any aspect of B&W's nuclear

10

contracts?

11

MR. WISE: You should answer that

12

just yes or no.

13

THE WITNESS: May I have the question

14

back again, please.

15

(The reporter read back the last

16

question.)

17

A No.

18

Q Yesterday you mentioned a number of

19

contracts relating to nuclear equipment in which

20

you were involved, the proposals and negotiation,

21

and we came up to TMI-1, TMI-2 and Davis-Besse for

22

Toledo Edison.

23

Do you recall that?

24

A Yes.

25

Q Subsequent to that, were you involved

2 in either the negotiation or drafting of any  
3 other contracts relating to nuclear steam supply  
4 systems, services or other similar contracts  
5 with utilities?

6 A The only involvement that I had with  
7 drafting -- not drafting, in the sales and  
8 marketing activities, was with the Power Authority  
9 of the State of New York.

10 Q What involvement was that?

11 A Visiting the customer and decisions on  
12 pricing during the final negotiations.

13 Q What unit was that?

14 A Greene County, I think is the title of the  
15 project. It has since been canceled.

16 Q But you were awarded that contract at  
17 one point?

18 A Yes.

19 Q Were you involved in the drafting or  
20 negotiation of terms and conditions of sale for  
21 that?

22 A No.

23 Q Have you ever been involved in the  
24 drafting or negotiation of a contract for training  
25 operators of a nuclear facility?

2

A No.

3

4

5

6

Q Have you ever been involved in the negotiation or drafting of what has come to be called the Master Services Contract relating to nuclear facilities?

7

8

A I don't recall specifically being involved in those.

9

Q Do you recall generally?

10

11

12

A I knew that those contracts were being negotiated but I did not become involved with the actual negotiations or drafting of those.

13

14

Q Did you review or approve any such contract?

15

16

A Probably in general during the time period of '73 to '78. But not specifically.

17

Q What do you mean "in general"?

18

19

20

21

22

A That I would have the advice of the legal staff and the technical staff and that everything would be in order and they were acceptable to proceed, so it would be a management overview rather than a specific review.

23

24

25

Q In the course of your management overview, did you actually look at the specific contracts?

1

2

A Not in detail.

3

4

5

Q Did you exercise management overview in connection with any of the Three Mile Island training or Master Services Contracts?

6

7

8

A I think that most of those were negotiated when I was not involved with the Nuclear Power Generation Division.

9

10

11

12

Q Have you ever been involved in the negotiation, drafting or management overview of any spare parts contracts relating to nuclear facilities?

13

14

THE WITNESS: Would you restate the question, please.

15

16

(The reporter read back the last question.)

17

18

19

20

A I am sure that during the course of our negotiation for some of the NSS's in the earlier time period, and possibly in the '73-78 time period, I would have been involved in the -- some phases of the negotiations if those contracts included spare parts.

21

22

23

24

25

Q Were you involved in connection with any contracts that just dealt with spare parts, not as part of an overall NSS --

1

2

A Not to my recollection.

3

4

5

6

Q Were you involved in any of the post Three Mile Island accident contracts which were negotiated or entered into with any of the GPU companies?

7

8

9

10

A Other than that I was aware that we were providing services to them under a Master Services arrangement, I did not become involved with the specifics.

11

12

13

14

15

MR. KLINGSBERG: I would like to have marked now as GPU Exhibit 184, a letter from Mr. Neidig to Mr. Favret dated January 12, 1967, which comes from the Shaw, Pittman files.

16

17

18

19

20

(Letter from Mr. Neidig to Mr. Favret, letterhead of Metropolitan Edison Company, dated January 12, 1967, was marked as GPU Exhibit No. 184 for identification, as of this date.)

21

22

A O. K.

23

24

A I do not recall.

25

Q Will you look at Exhibit 183, which

1  
2 we marked the last time, and that was a letter  
3 from Mr. Neidig to you enclosing Mr. Trowbridge's  
4 memorandum of the November 16th meeting, and  
5 you identified some of your interlineations and  
6 some by, I believe, Mr. Wilson.

7 Do you recall that?

8 A Yes.

9 Q Do you remember writing a letter on or  
10 about December 30, 1966 to Mr. Neidig enclosing  
11 your proposed changes to Mr. Trowbridge's  
12 memorandum of November 16, 1966, as Exhibit 184  
13 seems to indicate you did?

14 A I don't recall the referenced memorandum or  
15 letter.

16 Q Would you have kept a copy of your  
17 letter and the memorandum in your file?

18 A Probably, yes.

19 Q Do you have any idea what might have  
20 become of that?

21 A As we discussed earlier, most of our files  
22 were discarded in accordance with the procedures  
23 of the company.

24 Q Do you remember attending a meeting  
25 on January 17, 1967 to discuss the November 14th

2 draft letter?

3 A My recollection is not that good.

4 MR. KLINGSBERG: I would like to have  
5 marked as GPU Exhibit 185 for identification  
6 a document from the Shaw Pittman files  
7 which appears to be a list of those attending  
8 a conference on January 17, 1967 concerning  
9 the Met Ed nuclear project.

10 (Document headed "Conference, Met-Ed  
11 Nuclear Project, January 17, 1967,"  
12 containing a list of attendees, was marked  
13 as GPU Exhibit No. 185 for identification,  
14 as of this date.)

15 (Document handed to the witness.)

16 A It looks like I was there.

17 Q We have on this document some names  
18 we haven't encountered before.

19 Can you identify Mr. R. F. Ryan?

20 A Mr. Ryan is an engineer working in the  
21 Lynchburg Division.

22 Q Can you identify C. E. Thomas?

23 A Mr. Carl Thomas is an engineer employed by  
24 NPGD but on assignment -- on a foreign assignment.

25 Q What was his position in January

2 of 1967?

3 A I think he was a Design Engineer.

4 Q Do you know the reason that Ryan and  
5 Thomas were brought into these conferences in or  
6 about January of 1967?

7 A It may have been related to licensing  
8 aspects.

9 Q Does this refresh --

10 A And design.

11 Q Does this document refresh your  
12 recollection in any respect of having attended a  
13 meeting on or about January 17, 1967?

14 A I do recall attending a meeting which was  
15 attended by representatives of the customer,  
16 Gilbert Associates, as indicated here, and the  
17 other gentlemen referenced.

18 Q Do you recall the substance of the  
19 discussion at this meeting?

20 A The substance of the meeting was to review  
21 the design criteria associated with the NSS  
22 and to try to finalize those design criteria.

23 Q Do you have any recollection of what  
24 was said at this meeting by representatives of  
25 B&W?

2 A Not specifically.

3 Q Do you have any recollection of what  
4 was said at this meeting by representatives  
5 from Met Ed?

6 A Not the specifics.

7 Q When you say you don't recall the  
8 specifics, do you recall something general that  
9 was said?

10 A In general, the discussions involved the  
11 design criteria, the resolution of those and  
12 certain aspects of the design of the balance of the  
13 plant which involved Gilbert Associates primarily,  
14 and the customer's desires pertaining to the  
15 operability of the plant.

16 Q What do you mean when you say  
17 "operability"?

18 A These were the operating characteristics  
19 that they wanted to have considered by the  
20 engineers.

21 Q Was there any discussion of plant  
22 reliability or availability?

23 A The discussions on operability with regard  
24 to the redundant features may have been discussed  
25 at this meeting.

2 Q What were the redundant features?

3 A This is in the engineer safeguard systems.

4 Q What was the substance of that  
5 discussion?

6 A Specifics I don't recall.

7 Q What was the general nature of that  
8 discussion?

9 A That they wanted to be able to operate the  
10 plant without having to shut down to test in  
11 accordance with the regulations that were going  
12 to be imposed.

13 Q What was B&W's response?

14 A I think that response is contained in our  
15 design criteria as part of the contract.

16 Q Was anything said at the meeting in  
17 terms of a response on this subject?

18 A I don't recall.

19 Q Did B&W make any particular offerings  
20 or sales pitch regarding its plant's potential  
21 availability or reliability in this respect?

22 A Most of the presentation material was  
23 contained as part of the proposal.

24 Q Was it discussed or explained orally?

25 A It may have been but I don't recall

2 specifically.

3 Q Do you recall generally?

4 A No. Other than what I have already stated.

5 MR. KLINGSBERG: I would like to mark  
6 a letter from Mr. Favret to Metropolitan  
7 Edison, to Mr. Neidig, dated November 14,  
8 1966, from the Babcock & Wilcox production.

9 (Letter dated November 14, 1966, from  
10 Mr. Favret to Mr. Neidig, Metropolitan  
11 Edison Company, with attachments, was marked  
12 as GPU Exhibit No. 186 for identification, as  
13 of this date.)

14 (Document handed to the witness.)

15 A O. K.

16 Q Do you recall having written Exhibit  
17 186 on or about November 14, 1966 to Mr. Neidig?

18 A Yes.

19 Q Can you identify the handwriting in the  
20 upper right-hand corner of the exhibit?

21 A The note appears to be from DRW, D. R.  
22 Wilson, to R. V. Kazar, indicating "Hold for your  
23 file."

24 Q The first paragraph states, "In  
25 accordance with your request of October 27, 1966

2 and November 7, 1966 --"

3 Do you know what requests you are  
4 referring to there?

5 A Not specifically.

6 Q And then it says, " -- we submit the  
7 Company response to the discussions held during  
8 these meetings concerning the Company's Terms and  
9 Conditions and previous correspondence on this  
10 subject."

11 Now, I have previously asked you  
12 questions concerning a meeting on October 27,  
13 1966. Does this memorandum refresh your  
14 recollection as to the substance of any  
15 discussions at a meeting either on October 27,  
16 1966 or November 7, 1966?

17 A Not specifically other than that I know that  
18 these subjects were discussed during the course  
19 of the negotiations.

20 Q On page 3 of the letter you refer to  
21 the company's "revised Warranty clause dated  
22 October 31, 1966."

23 Who revised the warranty clause?

24 A That would have been done in conjunction  
25 with Mr. Wilson.

1

2 Q Were you consulted?

2

3

A Probably.

4

Q Do you recall any of the discussions

5

with Metropolitan Edison personnel which led to

6

revisions in the warranty clause?

7

A The only recollection that I have pertains

8

to the re-warranty provision on parts that have

9

been replaced for the time period.

10

Q Have you finished your answer?

11

A Yes.

12

MR. KLINGSBERG: May I have the

13

answer back, please.

14

(The reporter read back the last

15

answer.)

16

Q What recollection do you have in

17

regard to that provision, if any?

18

A My recollection is that they desired a

19

re-warranty of replaced parts ad inifnitum, which

20

we were unwilling to give a continuing re-warranty

21

on.

22

Q Would you look, please, at Exhibit 178

23

at the warranty provision, which is at page 00904,

24

near the back.

25

MR. WISE: I will get it for you.

2

(Document handed to the witness.)

3

Q Does a comparison of the warranty

4

provision on that page with the warranty provision

5

contained in the attachment to Exhibit 186 on the

6

last page refresh your recollection concerning any

7

discussions regarding the revision of the warranty

8

clause which you placed with representatives of

9

Metropolitan Edison?

10

MR. WISE: I don't have any objection

11

to your question, I just want the record

12

to be clear that the page that Mr. Klingsberg

13

has asked the witness to look at is nearly

14

a full page of single spaced type and

15

obviously we do not have time now to have a

16

secretary come in and proofread one against

17

the other.

18

To the extent there is anything obvious

19

from the momentary view that the witness

20

has, he may answer but I don't want the

21

record to reflect that he had a full

22

opportunity to compare word for word the two

23

provisions unless you want to stop and we

24

will get a secretary in here and we can

25

proofread one against the other to find

2 if there are any punctuation or wording  
3 changes.

4 MR. KLINGSBERG: Obviously, if it is  
5 a minor punctuation change it will not be  
6 of major significance.

7 It is obvious that there are a couple  
8 of changes.

9 MR. WISE: Why don't you point out the  
10 changes for the witness rather than having  
11 him engage in a proofreading exercise  
12 which is difficult for him to do by himself.

13 MR. KLINGSBERG: First let's have the  
14 witness look at it and then he can answer  
15 the question and get down to anything he  
16 missed that appears to be of significance.

17 A The clause as redrafted, of course, has an  
18 addition of a sentence in it and there is a  
19 change in the paragraphical structure of the first  
20 and second paragraph.

21 Q What additional sentence are you  
22 talking about?

23 A "Any repair or replacement under this  
24 warranty shall be rewarranted for a twelve month  
25 period from the date of the initial repair or

2 replacement."

3 Q And that is the discussion which you  
4 have already told us about?

5 A Right.

6 Q So that do I understand that having  
7 compared the proposal with the revision, you have  
8 no further recollection of any discussions or  
9 revisions apart from the re-warranty discussion  
10 that you have already testified to?

11 A I haven't reviewed in detail Section 15.24.2,  
12 "Conditions," of the warranty. If you would like  
13 to, I could take the time to do that.

14 Q I think that's the same --

15 MR. WISE: I have roughly proofread it.  
16 They appear to be identical.

17 MR. KLINGSBERG: Yes.

18 We can go on.

19 MR. WISE: Do you want him to look  
20 at Exhibit 178 any further or shall we put  
21 that away?

22 MR. KLINGSBERG: We can put that  
23 aside.

24 We are now going to mark as Exhibit  
25 187, a document from the Babcock & Wilcox

2

files dated January 27, 1967 in the form  
of a letter from Mr. Charnoff to Mr. Favret,  
with an attached draft dated January 27,  
1967.

3

4

5

6

7

8

9

10

11

(Letter from Gerald Charnoff to  
Lou Favret, The Babcock & Wilcox Company,  
dated January 27, 1967, with attached  
draft dated January 27, 1967, was marked  
as GPU Exhibit No. 187 for identification,  
as of this date.)

12

(Document handed to the witness.)

13

MR. WISE: Off the record.

14

(Discussion off the record.)

15

BY MR. KLINGSBERG:

16

Q Do you recall having received

17

GPU Exhibit 187 from Mr. Charnoff?

18

A Yes.

19

Q Did you request Mr. Charnoff to send

20

copies to Mr. Mestres and Mr. Victor?

21

A Yes.

22

Q For what reason did you request

23

Mr. Charnoff to send copies to Mr. Mestres and

24

Mr. Victor?

25

A To expedite the delivery and review process.

2 Q Can you identify any of the  
3 handwriting on the Charnoff letter?

4 A No, I cannot.

5 MR. KLINGSBERG: Mr. Wise, do you  
6 happen to have a copy of this exhibit from  
7 which the writing in the lower right-hand  
8 corner could be made out?

9 MR. WISE: I don't have a copy with  
10 me nor have I seen such a copy. I presume  
11 that if you went back to the original of  
12 this, which was apparently in B&W's  
13 possession, it may be possible to see what  
14 is on it.

15 MR. KLINGSBERG: All right.

16 MR. WISE: I have not seen the original.  
17 The copy that has been marked is as good a  
18 copy as I have ever seen.

19 BY MR. KLINGSBERG:

20 Q Did you review this document in  
21 preparation for your deposition?

22 A Yes.

23 Q Will you turn to page 23 of the  
24 attached draft.

25 Can you make out any of the handwriting

1

2 on that page sufficient to identify whose it is?

3 A No, I cannot.

4 Q Do you recall at all marking up a  
5 copy that you received?

6 A I don't recall. Too long ago.

7 Q Would you turn to page 31.

8 Do you recognize any of the  
9 handwriting on that page?

10 A No, I don't recognize the handwriting.

11 Q Will you turn to page 40.

12 Do you recognize any of the  
13 handwriting on that page?

14 A No, I do not.

15 Q Are there any portions of this  
16 revised draft which Mr. Mestres or Mr. Victor, to  
17 your recollection, had the principal responsibility  
18 for functioning on?

19 THE WITNESS: Restate the question,  
20 please.

21 (The reporter read back the last  
22 question.)

23 A Not that I recall.

24 Q Are there any portions of the revised  
25 draft which you principally functioned on?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. WISE: Could I ask what is the meaning of "to function on"?

MR. KLINGSBERG: Revised, approved, rejected.

A I would have been responsible to assure that the technical items in the draft contract were accurate and have made a review that -- to assure that a review took place of the overall document.

Q Did you receive advice from Mr. Mestres or Mr. Victor concerning the rejection, revision or acceptance of any of the provisions of the revised draft?

MR. WISE: You should answer that only yes or no.

THE WITNESS: Read it back, please.

(The reporter read back the last question.)

A Yes.

Q Was that advice in writing?

A I don't recall.

Q Do you recall the substance of the advice?

MR. WISE: Well, I will object to that

1

question and direct him not to answer.

2

3

MR. KLINGSBERG: On the ground of  
privilege?

4

5

MR. WISE: On the ground of privilege.

6

MR. KLINGSBERG: O. K.

7

I will ask to have marked as GPU

8

Exhibit 188, a document from the Shaw,

9

Pittman files appearing to list persons

10

attending a meeting on February 15, 1967.

11

(Document headed "B&W Contract

12

Conference, February 15, 1967," containing

13

a list of attendees, was marked as GPU

14

Exhibit No. 188 for identification, as of

15

this date.)

16

(Document handed to the witness.)

17

A O. K.

18

Q Do you recall having attended a B&W

19

contract conference with Met Ed representatives

20

and counsel on or about February 15, 1967 with

21

the persons listed on Exhibit 188?

22

A Yes.

23

Q Do you recall the substance of

24

discussion at that meeting?

25

A It was -- the purpose of the meeting was to

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

review a draft contract.

Q Was it the review of Mr. Charnoff's January 27th draft, which was marked Exhibit 187, or was there a review of a further revision of that made by Babcock & Wilcox representatives, or something else?

A It is my recollection that we made modifications to the Charnoff draft that is shown in 187 (indicating).

MR. WISE: Do you mean to say at the meeting or was that something before the meeting? I think that's what the question was.

THE WITNESS: We took them to the meeting.

Q Were those modifications interlineated in Exhibit 187 or was there a retyped version prepared?

A It is my recollection that we took the retyped version for discussion.

Q And that was submitted to the Metropolitan Edison personnel at the meeting?

A They were discussed at the meeting.

Q Do you have any recollection of what

1  
2 representatives of Babcock & Wilcox said at this  
3 meeting?

4 A I don't recall the specifics.

5 Q Do you have any recollection of what  
6 representatives of Metropolitan Edison said at  
7 this meeting?

8 A Not in -- no.

9 Q You say you don't recall the specifics.  
10 Do you have a general recollection, a  
11 recollection in substance of what was said by  
12 either of the representatives?

13 A It was to resolve it and arrive at a final  
14 draft of contract.

15 Q Apart from that, can you be any more  
16 specific?

17 A No.

18 MR. KLINGSBERG: I will ask to have  
19 marked as GPU Exhibit 189 a document from  
20 the Shaw, Pittman files dated March 14, 1967  
21 entitled "Contract Meeting, Reading, Pa."

22 (Document entitled "Contract Meeting,  
23 Reading, Pa., March 14, 1967," was marked as  
24 GPU Exhibit No. 189 for identification, as  
25 of this date.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Document handed to the witness.)

Q Do you recall attending a meeting in Reading, Pennsylvania on or about March 14, 1967 with the persons listed in Exhibit 189?

A I can say in general that I recall that there was a series of meetings of which this must have been one.

Q Do you recall the substance of discussion at this meeting?

A Again, it was to try to finalize the drafted contract.

Q Do you recall what representatives of Metropolitan Edison said at this meeting, in words or substance?

A Not specifically, no.

Q How about generally?

A No.

Q Do you recall in words or substance what representatives of Babcock & Wilcox said at this meeting?

A No; without trying to compare differences in the drafts.

Q In the course of your preparation for this deposition, have you made any effort to

1  
2 compare differences in drafts in order to attempt  
3 to refresh your recollection on --

4 A No.

5 Q -- on any discussion?

6 A Pardon me.

7 No.

8 MR. KLINGSBERG: I would like to have  
9 marked as GPU Exhibit 190 for identification  
10 a handwritten document produced to us from  
11 Babcock & Wilcox dated April 12, 1967  
12 entitled "Metropolitan Edison Co., NSS-5,"  
13 File Correspondence.

14 Document entitled "Metropolitan  
15 Edison Co., NSS-5," and stating "File  
16 Correspondence," dated April 12, 1967, was  
17 marked as GPU Exhibit No. 190 for  
18 identification, as of this date.)

19 (Document handed to the witness.)

20 Q Have you ever seen Exhibit 190 before?

21 A I don't recall.

22 Q Do you recognize the handwriting?

23 A No, I don't.

24 Q Do you know if it is Mr. Gray's  
25 handwriting?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I wouldn't recognize Mr. Gray's handwriting.

Q O. K.

Do you recall having attended a meeting relating to Met Ed NSS-5 in Reading, Pennsylvania on or about April 12, 1967 with the persons listed on this document, Exhibit 190 marked for identification?

A As I stated previously, there was a series of meetings in which I participated.

I am sure this must have been one of them.

Q Keep 190 in front of you, if you will.

MR. KLINGSBERG: I would like to mark as GPU Exhibit 191 a document from the Shaw, Pittman files, being a copy of a letter from Mr. Trowbridge to Mr. Neidig with a copy, among other people, to Mestres, Victor and Wilson, dated March 24, 1967, and as Exhibit 192 a draft of a contract dated 3/24/67 for nuclear equipment for the Three Mile Island nuclear station.

(Copy of a letter from Mr. Trowbridge to Mr. Neidig with a copy, among other people, to Mestres, Victor and Wilson, dated March 24, 1967, was marked as GPU Exhibit 191

1  
2 for identification, as of this date.)

3 (Document marked "Draft, 3/24/67"

4 and entitled "Contract for Nuclear Equipment  
5 for The Three Mile Island Nuclear Station,  
6 Between Metropolitan Edison Company and The  
7 Babcock & Wilcox Company" was marked as GPU  
8 Exhibit No. 192 for identification, as of  
9 this date.)

10 (Documents handed to the witness.)

11 BY MR. KLINGSBERG:

12 Q Have you seen Exhibit 191 before?

13 A I believe I have.

14 Q Under what circumstances?

15 A Probably at the initial receipt, I probably  
16 got a copy from Wilson.

17 Q Have you seen Exhibit 192 before?

18 A It is a draft contract. I don't know if  
19 this is specifically the one but it appears  
20 familiar.

21 Q If you turn back to Exhibit 190, you  
22 will see that whoever wrote this memoranda  
23 regarding the meeting of April 12th said "Final  
24 agreement was reached on 'general conditions' which  
25 will be per draft attached to Fox Trowbridge's

2 3/24/67 letter to Ralph Neidig except for changes  
3 on pages 13, 14, 15, 21, 46 and 52 per attached  
4 copy. Section will now become part of official  
5 contract."

6 Does this refresh your recollection  
7 or do you have any independent recollection of  
8 the substance of any of the discussion at this  
9 meeting on April 12, 1967?

10 A Should I read this (indicating) or --

11 Q First just let's see if you can answer  
12 based on what you have reviewed so far and then if  
13 you want to look at anything specific you are free  
14 to do so.

15 A In general, there was a discourse of the  
16 contract negotiations on a variety of subjects  
17 that took place in these meetings, and I can't  
18 specifically recall what is on pages 13, 14, 15,  
19 21, 46 and 52.

20 Q Will you turn to each of those pages  
21 and see if you have any recollection of any of  
22 the discussion of the April 12th meeting which  
23 comes to mind having looked at the appropriate  
24 pages of Exhibit 192.

25 A I am familiar with Item C, "Changes in the

1  
2 Plant Equipment or Structures" discussions that  
3 took place.

4 Q Do you recall now the substance of  
5 the discussion?

6 A Not in particular, no.

7 I can state that on page 14 there was  
8 considerable discussion on the subject of control  
9 of energy releases and their removal.

10 Q What was the nature of that discussion,  
11 the substance of that discussion?

12 A The selection of the design criteria for  
13 the building pressure.

14 Q What position was taken by B&W and  
15 what position was taken by Met Ed, if you recall?

16 A The position that we had taken was that we  
17 had included as part of our design criteria  
18 technical specifications, certain energy releases  
19 from the system and that the building had to have  
20 a capability of a -- the building design should  
21 have a capability of heat removal of a certain  
22 amount.

23 Q What position, if any, do you recall  
24 that Met Ed representatives took?

25 A I think it was more coming to an

2 understanding of the language than it was the  
3 differences of opinion.

4 Q Will you turn to the next item and  
5 see if that refreshes your recollection of any  
6 discussion.

7 A There was considerable discussion on the  
8 subject of the design criteria, Item (c) at page  
9 14 which continues onto page 15, regarding  
10 responsibility for protection against missiles,  
11 that B&W would not be responsible for such  
12 requirements if imposed by the AEC. There had  
13 been discussions on the design criteria for  
14 single rod ejection accident. And that's all I  
15 recall that was being discussed at that time.

16 Q Was there anything on any of the  
17 other items?

18 A There had been some discussions during the  
19 course of the negotiations as to the -- not so  
20 much on price but on the terms of payment.

21 Q Do you recall anything in any of the  
22 other items?

23 MR. WISE: The witness in his last  
24 answer was referring to material at page  
25 21 of the March 24th draft.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. KLINGSBERG: Right.

THE WITNESS: Thank you.

MR. WISE: And is now flipping to the next item listed in Exhibit 192, which appears at page 46.

A Page 46 has to do with the assignment and subcontracting.

There was a concern on Met Ed's part that they would not have a say in the -- who we selected as subcontractors and how would we conduct our affairs and the discussions took place as to how the parties would execute the subcontracting.

Q Is there anything else on the final item or anything else?

A Turning to page 52, that page contains provisions on contract changes and extra work and the discussions revolved around who would be authorized to add extras in scope of work, et cetera, to the contract and we designated a B&W representative, Met Ed elected to have an officer of their company.

MR. KLINGSBERG: I would now like to mark as GPU Exhibit 193 a copy of a document from the Babcock & Wilcox files entitled

2 "Contract for Nuclear Equipment for The  
3 Three Mile Island Nuclear Station between  
4 Metropolitan Edison Company and The Babcock  
5 & Wilcox Company," which appears to be the  
6 executed version of the contract.

7 (Document entitled "Contract for  
8 Nuclear Equipment for The Three Mile Island  
9 Nuclear Station Between Metropolitan Edison  
10 Company and The Babcock & Wilcox Company"  
11 was marked as GPU Exhibit No. 193 for  
12 identification, as of this date.)

13 (Document handed to the witness.)

14 BY MR. KLINGSBERG:

15 Q Can you identify Exhibit 193?

16 A Yes.

17 Q What is it?

18 A It is the executed draft -- the executed  
19 contract signed by a Mr. Rowand on behalf of the  
20 company and I cannot make out the signature for  
21 Met Ed.

22 Q It looks like Mr. Neidig.

23 A Yes.

24 Q I note that on the page marked 2129  
25 that the contract is effective as of November 15,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1966.

It is apparent, is it not, that it was backdated in that respect?

A It probably was backdated because of the escalation provisions of the contract.

Q Do you happen to know the date on which the contract was executed?

A Not specifically.

Q It would have been sometime, though, after --

A In the spring of 1967.

Q Sometime after the April 12, 1967 meeting?

A Right.

MR. KLINGSBERG: Why don't we take our morning break.

MR. WISE: Sure.

(Whereupon, a recess was taken.)

MR. KLINGSBERG: I have placed before the witness Exhibit 178, which is the proposal, Exhibit 192, which is a March 24, 1967 draft, and Exhibit 193, which is the final contract, all of these relating to Three Mile Island No. 1.

2 Q Is that correct, Mr. Favret?

3 A Yes.

4 Q Will you turn first to the proposal,  
5 which is Exhibit 178, and look at page U00897,  
6 which is also page No. 15-3 of the document.

7 Would you at the same time look at  
8 Exhibit 193, which is the final contract, and turn  
9 to page 45, and will you turn to page 40 of  
10 Exhibit 187.

11 MR. WISE: 192, you mean?

12 MR. KLINGSBERG: No.

13 Oh, 192.

14 MR. WISE: You have three exhibits  
15 before the witness, 192, 193 and the original  
16 proposal which is 178. If you wish him to  
17 look at something else, he may do so.

18 MR. KLINGSBERG: Off the record.

19 (Discussion off the record.)

20 Q And Exhibit 192, page 45, and I am  
21 also going to show you Exhibit 187, which is the  
22 revised draft of January 27th, and direct your  
23 attention to page 40 (handing documents to the  
24 witness).

25 According to my reading, the changes or

2 the change that was made from the original  
3 proposal to the final contract was that where it  
4 says "The Company" in the proposal, that was  
5 changed to "B&W," and then the word "general" was  
6 taken out and the last phrase was changed from  
7 "arising from any cause whatsoever" to "arising  
8 out of the construction or operation of the  
9 Three Mile Island Nuclear Station."

10 Now, having reviewed these changes,  
11 does that refresh your recollection in any respect  
12 of any of the substance or words or any of the  
13 discussion which was had at this series of meetings  
14 which we have just completed review of?

15 I am asking now for your recollection,  
16 if you have any, of any discussions.

17 A There was a discussion about the changing  
18 of the language between our original proposal,  
19 Exhibit 178, "arising from any cause whatsoever,"  
20 to the Exhibit 187 which included the language  
21 "out of the performance of this contract," which was  
22 objected to and in later discussions was changed  
23 to include "out of the construction or operation  
24 of the Three Mile Island Nuclear Station."

25 With regard to the omission of the word

1  
2 "general" in the consequential damages clause, I  
3 don't recall -- I don't have the recollection of  
4 having discussed that.

5 Q Apart from what you have already stated,  
6 do you recall in words or substance what any  
7 representatives of Metropolitan Edison said or  
8 what any representatives of B&W said at any of the  
9 meetings concerning this provision?

10 A We presented this clause as part of our  
11 offering as a consequential damages disclaimer  
12 which at that time was more or less the norm of  
13 the industry and I believe to the best of my  
14 knowledge was accepted by the customer.

15 MR. KLINGSBERG: I am going to move  
16 to strike that answer as not responsive, for  
17 the record.

18 Q I will ask you, in particular, what you  
19 recall, if anything, was said by Metropolitan  
20 Edison or B&W personnel at any of the meetings  
21 concerning this clause.

22 Now, you said you recall that the clause  
23 was presented; is that correct?

24 A Yes.

25 Q Do you recall that the clause in its

2 ultimate form was accepted?

3 MR. WISE: Are you asking him whether  
4 or not the language that appears on the page  
5 appears on the page in the final contract?

6 MR. KLINGSBERG: No. He gave an answer  
7 in response to my initial question and I am  
8 trying to determine what of that answer  
9 was something that he recalls was said or  
10 what he is just kind of describing in general.

11 MR. WISE: I object to the last  
12 question as unintelligible in the form that  
13 you put it.

14 If you want to ask him what was said,  
15 I have no objection to that.

16 MR. KLINGSBERG: I will repeat the  
17 question.

18 BY MR. KLINGSBERG:

19 Q What was said, if anything, that you  
20 recall regarding this provision or the changes  
21 therein at the meetings that you attended? I am  
22 asking you for your actual recollection, if you  
23 have any, of what was said at the meetings by  
24 either Met Ed representatives or by B&W  
25 representatives.

2           A       Does Met Ed representatives include  
3           Trowbridge and Charnoff?

4           Q       Yes, and B&W representatives includes  
5           Mestres or anybody else who was appearing on their  
6           behalf.

7           A       There was a discussion of this clause and  
8           the changes that are apparent between the various  
9           drafts, and to the best of my recollection, it was  
10          accepted as a consequential damages disclaimer.

11          Q       And that is all you recall about the  
12          discussion?

13                   MR. WISE: He is asking you now,  
14           Mr. Favret, as to whether you remember  
15           specific words that Mr. Charnoff used or  
16           specific words that you used aside from  
17           your recollection of the general position  
18           that each side took.

19                   THE WITNESS: No.

20          Q       You said in a previous answer which  
21           I moved to strike, which was "more or less the  
22           norm of the industry."

23                   Am I correct that that is something  
24           you interlineated in your answer without necessarily  
25           testifying that that was something that you recall

2 now as specifically stated at the meetings?

3 MR. WISE: I object to the form of the  
4 question and the way you put it.

5 I will allow the witness to answer.  
6 If you want to ask him whether or not the  
7 norm of the trade was discussed during the  
8 meeting as to this particular clause, I  
9 think that might be a more proper way to  
10 put the question, but I leave it to you.

11 MR. KLINGSBERG: No, I want my  
12 question.

13 Will you please repeat the question  
14 for the witness.

15 (The reporter read back the question  
16 as requested.)

17 A I don't recall that that was specifically  
18 discussed.

19 Q I would like to move to page 15.5 of  
20 Exhibit 178 and in Exhibit 187, page 30 --

21 MR. KLINGSBERG: Off the record.

22 (Discussion off the record.)

23 Q (continuing) and in Exhibit 193  
24 Article VII and the particular portion which  
25 appears on page 34.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. WISE: The official exhibit does not have page 34 for some reason.

MR. KLINGSBERG: It doesn't?

MR. WISE: We have a blank page.

MR. KATCOFF: Off the record.

(Discussion off the record.)

BY MR. KLINGSBERG:

Q Apart from the change from "purchaser" to "Met Ed," that clause appears to have been incorporated in the final contract, the same language that was in the proposal?

MR. WISE: Are you testifying now or --

MR. KLINGSBERG: No, I am not testifying. I am asking a question.

Do you have a problem?

MR. WISE: Yes, I don't know that I necessarily accept that. If you want to state that as a representation, I don't know what value it has, but as a preamble to a question, I would object to that.

MR. KLINGSBERG: All right. I will withdraw it then.

Q Would you look at the provisions to which I have referred you and tell me whether you

2 have a recollection of a discussion at any of  
3 the meetings which you attended with Metropolitan  
4 Edison representatives or their counsel or  
5 advisors concerning that provision?

6 A Yes, there were discussions on the insurance  
7 by the purchaser, which in subsequent drafts  
8 prepared by Trowbridge and Charnoff there were  
9 some modifications in the insurance clauses, which  
10 are apparent in the various drafts.

11 Q O. K. Do you have a recollection  
12 today of what in words or substance any  
13 representatives or advisors of Metropolitan Edison  
14 said or what any representatives or advisors of  
15 B&W said at any of the meetings in regard to this  
16 provision that is before you now?

17 THE WITNESS: Could I have the question  
18 back again, please.

19 (The reporter read back the last  
20 question.)

21 MR. WISE: Which provisions are you  
22 talking about specifically?

23 MR. KLINGSBERG: I am talking about  
24 the provision which is the portion of 15.13  
25 beginning "The Purchaser agrees,"

2

on page 15-5 and paragraph (3) on page 34  
of the final contract, Exhibit 193.

3

4

MR. WISE: Does that have an analogue  
in Exhibit 187?

5

6

MR. KLINGSBERG: Yes, it does. It is  
on page 30 and it is paragraph (3).

7

8

THE WITNESS: I had the wrong page.

9

A I recall that the representatives of Med Ed  
discussed that they would like to have the insurance  
by purchaser clauses in 15.13 of our proposal  
be separated into two distinct headings in the  
final draft.

10

11

12

13

14

MR. WISE: I think Mr. Klingsberg's  
question was directed at only the first  
paragraph that appears on 15.13 of the  
proposal and he has directed you to  
paragraph (3) on page 30 of Exhibit 187  
and paragraph (3) on page 34 of Exhibit 193,  
which appear to pick up the language of the  
first paragraph of 15.13.

15

16

17

18

19

20

21

22

Now, if I have misinterpreted  
Mr. Klingsberg's question, he can direct you  
otherwise but I think he was just asking  
about this particular language which appears

23

24

25

2 in the later exhibits that he has shown  
3 you (indicating).

4 A Is that correct?

5 Q Yes.

6 A My only recollection -- no, I don't have any  
7 specific recollection of any detailed discussion  
8 between -- on that.

9 Q O. K.

10 Now, on the proposal, would you turn  
11 back, if you will, to page 15-4 and there is a  
12 section 15.13 which I would like you to compare  
13 to the final copy, Exhibit 193, at page 33,  
14 Article VII, A(1), and also in the January 1967  
15 draft at page 29, Article VII, A(1).

16 My question is, do you have a  
17 recollection today of any discussions at the  
18 meetings in 1966 and '67 about which you have  
19 already testified in regard to this section?

20 A Yes, I do recall.

21 Q Do you recall what was said in words  
22 or substance by Metropolitan Edison representatives  
23 in regard to this section?

24 A Not specifically.

25 Q Do you recall what was said by B&W

2 representatives in regard to this section?

3 A That we required that the purchaser provide  
4 insurance to cover the risk of loss or damage  
5 from the time that it arrives at the site,  
6 and there were discussions as to how this would  
7 take place with regard to the previous paragraph  
8 on title transfer.

9 Q Who did the talking for B&W on this  
10 subject?

11 A Probably me. Or if Mr. Wilson was there,  
12 he would have.

13 Q Can you tell us anything else that  
14 you said in words or substance in regard to this  
15 provision?

16 A I don't recall.

17 Q Can you tell us anything else that  
18 Mr. Wilson said in regard to this provision?

19 A I don't recall.

20 Q Would you turn back to page 15-5,  
21 please, on Exhibit 178, the second paragraph, the  
22 provision starting "Purchaser will further secure,"  
23 and in the final contract, Exhibit 193, page 33,  
24 Article VII, paragraph A(2), "Met Ed, prior to the  
25 date of receipt of fuel assemblies at the job site

2 will secure..." and at page 29 of Exhibit 187,  
3 Article VII, A(2).

4 My question is do you have a  
5 recollection of any discussion of that provision  
6 at the meetings about which you have been  
7 testifying?

8 A Yes.

9 Q Can you tell us in words or substance  
10 what any representative of Metropolitan Edison  
11 said, if anything, according to your recollection,  
12 in regard to this provision?

13 A The customers, Mr. Trowbridge, requested  
14 that this paragraph, which initially was included  
15 as part of our insurance by purchaser, be included  
16 as a separate provision in the drafted contract  
17 because he considered it a separate insurance to  
18 be secured by the purchaser and different than  
19 that provided by the Atomic Energy Act.

20 Q Do you recall in words or substance  
21 what, if anything, any representatives of B&W  
22 said in regard to this provision at any of these  
23 meetings?

24 A There was a discussion between the Med Ed  
25 representatives and our representatives on the

2 NEPIA and MAERP insurance pools which were being  
3 formed at approximately this time as to when or  
4 as to how these pools were being formed, and I  
5 think it was just about at this time that the  
6 subscription to the NEPIA and MAERP pools had been  
7 subscribed and those discussions did take place  
8 between, I believe, Mr. Wilson and also members  
9 of Met Ed.

10 Q Have you told us all you recall about  
11 what each one of those parties to those discussions  
12 stated?

13 A Yes, to the best of my recollection.

14 Q At the bottom of Article VII of  
15 Exhibit 193 there is some handwriting.

16 Do you recognize whose that is?

17 A No, I do not.

18 Q Would you turn now to the next page  
19 of Exhibit 178, provision 15.14, page 35 of  
20 Exhibit 193, paragraph B(1), and page 31 of  
21 Exhibit 187, also paragraph B(1).

22 A What was the question again?

23 Q The question is: Do you have a  
24 recollection today of any discussion at the  
25 meetings in 1966 and 1967 between representatives

2 of Met Ed and B&W in regard to this provision?

3 A Again recollection that the subject was  
4 discussed and that's all.

5 Q You don't recollect in words or  
6 substance what either of the parties said?

7 A No.

8 Q Would you look now on page 15-14 of  
9 the proposal, the same section that you have before  
10 you, look at the second paragraph, which starts  
11 "The Purchaser indemnifies..." and then on  
12 Exhibit 193 turn one page back to the bottom of  
13 page 34, subsection (4), and on Exhibit 187 look  
14 up at the top of page 31, section (4).

15 My question is again, do you have any  
16 recollection of any discussions regarding that  
17 provision at the meetings?

18 A I believe that there was some discussion of  
19 this provision but I can't recall who it involved  
20 but it was...

21 Q Do you remember in words or substance  
22 what was said in this discussion by representatives  
23 of any of the parties?

24 A The words of substance?

25 Q In words or substance.

2 A The wording of the paragraph was reviewed  
3 in general to -- and that it was an indemnification  
4 for the company by the purchaser, and beyond that,  
5 my recollection is not that good.

6 Q Would you turn to page 15-10, section  
7 15.24 of Exhibit 178, and page 27 of Exhibit 193,  
8 paragraph B(1), and page 23 of Exhibit 187,  
9 paragraph B(1).

10 Apart from what you have already  
11 testified, and we have had some testimony about  
12 these provisions, do you have any recollection,  
13 looking at these three drafts together, of any  
14 discussion at any of the meetings regarding this  
15 provision?

16 A I specifically recall discussions on, as  
17 I have testified previously, on the re-warranty --

18 Q Right.

19 A -- and the discussions pertaining to the  
20 initial repair or replacement and not a continuing  
21 repair or replacement ad infinitum.

22 Q Let me call your attention to the  
23 second paragraph of 15.24.1 of the proposal, which  
24 says "No warranty, express or implied, not contained  
25 in either this Article or in the section of this

2 Proposal titled "Performance" shall be applicable,"  
3 and you will note that in the final version of  
4 the contract that paragraph does not appear.

5 Do you recall any discussion in any  
6 of the meetings regarding the omission or  
7 elimination of that paragraph?

8 A I don't recall.

9 Q Will you now turn to page 15-11 of  
10 the proposal, Exhibit 178, section 15.24.3, and  
11 in Exhibit 193, paragraph (3) on page 29, and in  
12 Exhibit 187, page 25, paragraph 3(a) at the bottom  
13 and (b) up on the top of page 26.

14 My question is, do you recall any  
15 discussion of those provisions at the meetings  
16 which you attended with representatives of Med Ed?

17 A To what part are we referring to, part (a)?

18 Q If you want to take it one at a time.  
19 Let's take it one paragraph at a time. Let's  
20 take what is part (1) on the proposal and part  
21 (a) on the subsequent draft and the final agreement.

22 A There were discussions on this but they  
23 were -- I don't recall them being extensive on  
24 part (1).

25 Q Do you recall --

2 A On part 2 --

3 Q Go ahead.

4 A -- 15.24.3, "Obligations," there were  
5 extensive discussions on decontamination, 15.24.4.

6 Q Let's go to part (1) and part (a).

7 Do you recall in words or substance  
8 what anyone said, if anything, about that paragraph  
9 at any of the meetings?

10 A The only thing that I recall specifically  
11 is the re-warranty discussions.

12 Q In regard to paragraph (b), which is  
13 similar to paragraph (2), can you state in words  
14 or substance what, if anything, based on your  
15 recollection anybody said concerning this provision?

16 A There was a general discussion by the Met Ed  
17 people that they were interested in being able to  
18 perform the repair or replacement as outlined and  
19 that subsequently there was also a discussion on  
20 the charges for decontamination and -- period.

21 Q O. K.

22 Do you recall anything else or in more  
23 detail or more specifically what was said by any  
24 of the persons at the meetings in regard?

25 A Met Ed indicated that they were to &W to

2 perform the decontamination, we objected and  
3 refused to accept it, that we could not perform  
4 decontamination on their property in their plant  
5 and that we would not accept the charges for  
6 decontamination.

7 Q Who at Met Ed did the speaking in  
8 this regard?

9 A I think this involved Messrs. Miller,  
10 Pickard and probably alternately Trowbridge and  
11 Charnoff, depending on who was there at that  
12 time.

13 Q And who did the talking for B&W?

14 A I did. And Mr. Wilson would also have been  
15 if he was present.

16 Q Was the decontamination that was the  
17 subject of discussion in this particular discussion  
18 that you are testifying about in connection with  
19 repair or replacement of parts under the warranty  
20 clause?

21 THE WITNESS: Repeat the question,  
22 please.

23 (The reporter read back the last  
24 question.)

25 A I think my recollection is that the

2 decontamination issue was discussed under several  
3 provisions of the contract. The level of  
4 decontamination was discussed and to what criteria,  
5 whether it would be to Federal or state requirements  
6 and I believe that Exhibit 187 indicates by the  
7 underlining of the text, "Med Ed shall perform  
8 the decontamination" and indicates that this was  
9 an addition to this draft compared to a previous  
10 draft.

11 Q What page are you reading from?

12 A Page 25.

13 Q What you are saying is that there are  
14 some other provisions in the contract dealing with  
15 some of the technical aspects of the decontamination,  
16 the level and criteria --

17 A Yes.

18 Q -- which were also discussed in  
19 addition to the provision in the warranty clause  
20 which is before us --

21 A Yes.

22 Q -- is that correct?

23 A Yes. I believe so.

24 Q In regard to the discussion about which  
25 you testified in the warranty clause, or in

2

paragraph 15 of the proposal and on page 29 of  
3 the final draft and page 25 of the January 1967  
4 draft, was that discussion in relation to  
5 decontamination prior to the repair of parts  
6 under the warranty arrangement?

7

MR. WISE: Could I have that question  
8 repeated, please.

9

(The reporter read back the last  
10 question.)

10

11

MR. KLINGSBERG: I will recast that  
12 because it is a little lengthy.

12

13

Q Let's look at page 15-12 of the  
14 proposal, paragraph 15.24.4, and page 28, paragraph  
15 (e) of the final contract, Exhibit 193, and  
16 paragraph (e) of page 25 of Exhibit 187, this  
17 clause also pertains to decontamination.

15

16

17

18

Apart from what you have already  
19 testified to, do you have a recollection of  
20 anything that was said at any of the meetings  
21 pertaining to these provisions?

19

20

21

22

THE WITNESS: Repeat the question,  
23 please.

23

24

(The reporter read back the last  
25 question.)

25

2           A       There was a discussion by Met Ed and their  
3 attorneys that attempted to have B&W share in the  
4 decontamination cost, and these are as described  
5 in Exhibit 187, page 25(e), "Met. Ed. shall share  
6 equally with B&W the cost," and they attempted to  
7 delete "at its own expense." This was in conflict  
8 with our original submittals, to which we objected  
9 and as I pointed out, I guess, by the final draft  
10 contract.

11           Q       And that is what you recall of the  
12 discussion?

13           A       Right. That those provisions were discussed.

14           Q       Do you recall anything else of the  
15 words or substance stated by anyone at the meetings  
16 in regard to that provision?

17           A       No.

18           Q       Did the discussion of the  
19 decontamination arise in the context of  
20 decontamination to be performed by Met Ed and paid  
21 for by Met Ed where Babcock & Wilcox was called  
22 upon to repair or replace a defective part under  
23 the warranty provision?

24                   MR. WISE: Could I have that question  
25 repeated, please.

2

(The reporter read back the last

3

question.)

4

MR. WISE: I will object to the form.

5

If the witness can understand the

6

question, he is free to answer it.

7

A The subject was discussed if B&W would perform

8

the decontamination and our advice was no.

9

Q The provision in the final contract,

10

page 28, paragraph (e), states "Met Ed shall

11

decontaminate at its own expense all the defective

12

parts to be repaired or replaced as well as the

13

surrounding area if necessary to facilitate such

14

repair or replacement." And then the paragraph

15

goes on.

16

In the proposal, paragraph 15.24.4

17

states, "If the Company elects to repair and/or

18

replace any defective part, the Purchaser shall

19

be obligated at its own expense, to decontaminate

20

any such parts so that radiation from such parts

21

shall be reduced to permissible levels, and until

22

this has been done, the Company shall be under no

23

obligation to correct the defects."

24

Do you recall any discussion of any

25

of the changes in wording from the proposal to the

2 final contract?

3 A The only recollection that I have is that  
4 there was some discussion about gaining access to  
5 the part.

6 Q When say "to the part," you mean to  
7 the part that B&W was going to repair under the  
8 warranty clause?

9 A Yes.

10 Q What was the substance of that  
11 discussion?

12 A That the decontamination of the surrounding  
13 area was the responsibility of the purchaser.

14 Q In other words, the purchaser had to  
15 decontaminate the area around the part that was to  
16 be replaced or repaired under the warranty  
17 provision?

18 A To the best of my recollection, yes.

19 MR. KLINGSBERG: I think we can break  
20 for lunch.

21 MR. WISE: Sure.

22 (Whereupon, at 12:51 p.m., a luncheon  
23 recess was taken.)  
24  
25

2

## AFTERNOON SESSION

3

2:09 p.m.

4

L O U I S M. F A V R E T, resumed.

5

EXAMINATION (continued)

6

BY MR. KLINGSBERG:

7

Q Do you have any recollection during

8

the negotiations for the Three Mile Island No. 1

9

or 2 Unit talking about an objective or goal of

10

availability to be achieved?

11

A During one of the technical discussions

12

there was a review of that subject as it pertained

13

to reactor vessel head removal, number of stud

14

tensioners and refueling time.

15

Q Was that in the negotiations on TMI-1

16

or 2?

17

A I am not so sure it was a matter of

18

negotiations. It was a matter of discussion

19

between the parties as what could be achieved if

20

the refueling outage became a limiting factor.

21

Q Was that discussion in connection

22

with TMI-1 or 2 or both?

23

A I believe it was on No. 1.

24

Q Can you tell us the substance of the

25

discussion?

2 A The discussion centered around how many days  
3 would be involved for fuel shuffle, how many days  
4 would be required for head removal, how many stud  
5 tensioners could be supplied so that the head  
6 could be removed quicker and the provisions for  
7 decoupling the control rod drives, and that would  
8 determine then the number of days for an outage  
9 which would set the theoretical limit that the  
10 reactor could operate in a given year.

11 Q Do you recall any discussion of  
12 availability goals or objectives in terms of  
13 percentage that was discussed?

14 A It was discussed as to if you take the number  
15 of days for an outage, subtracted from the number  
16 of days available and run the ratio, the  
17 percentage that was discussed was a 90 percent  
18 factor, if I recall correctly.

19 Q What, if anything, did the B&W  
20 representatives say concerning the 90 percent  
21 availability factor?

22 A They thought that with good planning that  
23 that could be a theoretical limit that could be  
24 achieved.

25 Q Who on behalf of B&W made that

2 statement?

3 A I don't recall specifically.

4 Q Did you make any statements regarding  
5 the percent availability question?

6 A The only thing that I can remember  
7 specifically was that there was not an availability  
8 warranty per se and that this was a topic for  
9 general discussion only.

10 Q Did you or anyone else on behalf of  
11 B&W discuss or mention any aspects of the design  
12 of the plant which would contribute to achieving  
13 the theoretical 90 percent availability goal?

14 THE WITNESS: Restate the question,  
15 please.

16 (The reporter read back the last  
17 question.)

18 MR. WISE: I am unclear. Are you  
19 asking for his opinion as to whether or not  
20 some piece of equipment was in the plant?

21 MR. KLINGSBERG: No, I am not asking  
22 his opinion. I am asking if there was  
23 anything said at any of the meetings as to  
24 whether any aspects of the design would  
25 help to achieve that goal.

2

MR. WISE: That clarifies it.

3

A The discussion from the customer's standpoint involved a question of why they could not shorten the outage time and our explanation involved why we did not think it would be practical to achieve anything more than what we had calibrated even if they added extra stud tensioners.

4

5

6

7

8

9

Q Was there any discussion in this context of the availability goal of the once-through concept in the B&W design?

10

11

12

A No.

13

14

15

16

17

18

19

20

21

22

23

24

25

Q I would like you to look back at an exhibit we have marked as GPU 179, which is a memorandum from the B&W files of a meeting on September 30, 1966 at the offices of Metropolitan Edison, and I direct your attention particularly to page 5, the second paragraph, which states "Several questions were raised as to the once-through boiler test program and whether or not we would accept a substitution boiler. We advised that there was no thought of changing from the once-through to a conventional unit, and then went through the test program now being conducted at Alliance."

2 Do you recall discussion of that  
3 subject?

4 A Yes.

5 Q Who raised questions as to the once-  
6 through boiler test program?

7 A I don't recall specifically who in the  
8 customer's organization raised the question as to  
9 the testing program for the once-through boiler.

10 Q What do you recall were the questions  
11 raised as to the once-through boiler test program?

12 A The customer in general was interested in  
13 what verification testing we would be conducting  
14 for this piece of equipment and we explained to  
15 them that we had both performance testing under  
16 way which would verify the ability of the steam  
17 generator to deliver the warranted pounds of steam  
18 but were also planning to conduct life testing as  
19 to the ability of the unit to withstand buildup  
20 of deposits in the unit.

21 There was concern at that stage of the  
22 industry about the accumulation of sludge in steam  
23 generators, that some people were recommending  
24 that it would not be necessary to include full flow  
25 demineralizers in the units and it was our

2 contention that we would not sell a plant without  
3 that equipment and that if a unit was equipped  
4 with it you could expect good performance from  
5 the steam generators, and our discussions  
6 revolved around those issues.

7 Q Was the once-through concept unique  
8 to B&W nuclear steam supply systems?

9 A At that time, yes.

10 Q Was the once-through concept offered  
11 to Metropolitan Edison as a factor which would  
12 contribute to availability of the unit?

13 THE WITNESS: Read the question back  
14 again, please.

15 (The reporter read back the last  
16 question.)

17 A Not to my recollection.

18 Q Was there any mention of availability  
19 in connection with your discussion on proposals  
20 concerning the once-through design concept?

21 THE WITNESS: Restate the question,  
22 please, the first part especially.

23 (The reporter read back the last  
24 question.)

25 A No.

2           Q       What advantage, if any, was the once-  
3 through design concept supposed to contribute to  
4 the unit?

5           A       The once-through steam generator design was  
6 a derivation of our fossil units that operated  
7 very successfully on a once-through basis and had  
8 performed very well for the utility industry.

9                   The uniqueness of the once-through steam  
10 generator in a nuclear application is that it  
11 permitted the unit to use the full temperature  
12 differential available from the reactor to deliver  
13 slightly higher steam pressure at superheat  
14 conditions to the turbine and hence increase the  
15 output of the plant in megawatts and also improve  
16 the thermal efficiency of the plant, providing  
17 an economic benefit to the customer not only in  
18 kilowatts to be produced but also in kilowatt hours  
19 available from a fuel cycle.

20           Q       Were these points transmitted to  
21 Metropolitan Edison during the discussions?

22           A       They were understood by the customer and the  
23 customer did discuss with their turbine suppliers  
24 the improvement in heat rate.

25           Q       Am I correct that as of the time of

2 these discussions there had been no full-size,  
3 once-through steam generator that had been built  
4 or operated in a nuclear unit?

5 A The company had built a full-length steam  
6 generator which demonstrated the capability of  
7 the unit to perform but it was not a full-size  
8 unit as referenced in your question.

9 Q Was that on the small scale test unit?

10 A Yes.

11 Q So in effect, there was no operating  
12 reliability data on the once-through steam  
13 generator as of the time of these negotiations; is  
14 that correct?

15 A No.

16 Q What operating reliability data was  
17 there?

18 A The operating reliability data was based  
19 upon the history of information available on  
20 once-through boiler designs which had been used in  
21 Europe extensively and had been used in the United  
22 States for some period of years on utility  
23 application in a once-through mode.

24 Q But not in nuclear plants?

25 A But not in nuclear plants.

2

In fact, at that point in time I don't think there was any steam generator of that size operating in anybody's plant.

3

4

5

Q At this time, the Oconee unit had not been in operation, was it?

6

7

A No.

8

9

10

11

Q I would like you to look at Exhibit 168, which is a memorandum from the B&W files dated February 16, 1966 concerning the meetings with Metropolitan Edison.

12

13

14

15

16

I direct your attention to page 3 paragraph d. and ask if the reference in that paragraph refreshes your recollection of an discussions concerning the 90 percent availability objective.

17

18

19

20

21

22

23

A Referring to paragraph d. of the referenced document, I think on further examination you will find that that statement is a design objective set forth by Metropolitan Edison in their invitation to all bidders as a design objective that if we were to be responsive to we had to explain what we were going to accomplish.

24

25

Q What response did B&W make to that design objective?

2 A As I provided previously, there was a  
3 discussion to the extent that based upon head  
4 removal, unbolting, cool down and fuel cycle  
5 shuffle, that it might be possible to achieve  
6 that design objective.

7 Q If the 90 percent theoretical maximum  
8 was obtained only by allowing for refueling  
9 downtime, am I correct then that it would  
10 otherwise assume perfect operation?

11 A I don't know what assumption Med Ed had  
12 when they wrote that design objection.

13 Q What assumption did you have when you  
14 discussed it with them?

15 A I don't know if we thought past the subject  
16 that if the unit was able to operate continuously  
17 between refuelings that they might be able to  
18 achieve their design objective that they had set  
19 forth.

20 It might be well to add that there was a  
21 certain amount of general industry discussion at  
22 that point as to what might be the comparison  
23 between availability of plants between fossil  
24 and nuclear.

25 Q Was the discussion which you had with

2 Metroplitan Edison the percent of the availability  
3 objective in the context of whether it was  
4 economical to build a nuclear plant as distinguished  
5 from a fossil plant on the part of the utility?

6 THE WITNESS: Read the question back  
7 again, please.

8 (The reporter read back the last  
9 question.)

10 A Not that I recall.

11 Q Didn't you understand that the  
12 utilities' interest in the percent availability  
13 related in substantial part to the economics of  
14 building a fossil plant as compared to a nuclear  
15 plant?

16 MR. WISE: The question now, Mr.  
17 Favret, is only whether you had such an  
18 understanding or not.

19 MR. KLINGSBERG: Don't interrupt my  
20 questions. If you have an objection, you  
21 can make the objection.

22 MR. WISE: Well, I will object to the  
23 form of the question.

24 MR. KLINGSBERG: Fine.

25 Q Can you answer the question.

2

MR. WISE: I will permit him to

3

answer.

4

THE WITNESS: Read the question back,

5

please.

6

(The reporter read back the pending

7

question.)

8

THE WITNESS: Read it back again.

9

(The reporter again read back the

10

pending question.)

11

MR. KLINGSBERG: I will reframe the

12

question.

13

BY MR. KLINGSBERG:

14

Q You testified just a few moments ago

15

that there had been industry discussion of percent

16

availability in terms of the comparison between

17

fossil plants and nuclear plants; isn't that true?

18

A Yes.

19

Q How did that discussion come to your

20

attention?

21

A I don't recall.

22

Q You knew from that discussion that the

23

utilities were interested in percent availability

24

in order to make a decision whether to buy a nuclear

25

plant or a fossil plant; is that correct?

2 A It is implicit with the operation of the  
3 plant and the economics of any plant.

4 Q You were trying to sell a nuclear plant  
5 on this occasion, were you not?

6 A We were offering both nuclear and fossil,  
7 what the customer's interest was.

8 Q Did you or did you not try to convince  
9 Met Ed that the B&W nuclear steam supply system  
10 would be able to meet their desires concerning  
11 availability and therefore they should buy the B&W  
12 NSSS as compared to somebody else's NSSS or as  
13 compared with building a fossil plant?

14 A It was more in the context that we were  
15 trying to be responsive to their inquiry.

16 Q Did it ever come to your attention in  
17 the late 1970's that B&W plants' availability was  
18 the worst in the industry?

19 A Yes.

20 Q Was any inquiry undertaken to ascertain  
21 the reason for this?

22 A Yes, and I think the record should show that  
23 the Three Mile Island No. 1 Unit at a prolonged  
24 period of operation did achieve the highest  
25 availability during that recorded time period

2 and upon our examination we identified those units  
3 that had caused the overall average to slip, as you  
4 have referenced in the publications, and tried to  
5 get the customers to take steps to improve the  
6 availability of those units.

7 Q To what did you attribute the difference  
8 in availability between Three Mile Island No. 1  
9 and the other units?

10 A I think the record would have to speak for  
11 itself for the various plants of why, what caused  
12 the outages, and I don't think it would be well  
13 for me to conjecture as to each plant.

14 Q Did Babcock & Wilcox ever ascertain  
15 any general reason or principal reason as to the  
16 superior availability of TMI-1 to the other B&W  
17 plants?

18 A Yes, some of the other plants, the reason  
19 for their lower availability was not due to the  
20 NSS but due to turbine performance.

21 MR. KLINGSBERG: I would like to have  
22 marked as GPU Exhibit 194 for identification  
23 a memo from Mr. Vannoy to Mr. Favret dated  
24 October 5, 1978.

25 MR. WISE: Off the record.

1  
2 (Discussion off the record.)

3 (Document referred to was previously  
4 marked as GPU Exhibit 139 for identification.)

5 BY MR. KLINGSBERG:

6 Q I show you Exhibit 139 which has been  
7 previously marked and consists of a memo from  
8 Mr. Vannoy to Mr. Favret dated October 5, 1978.

9 Have you seen that document before  
10 (handing)?

11 A Yes.

12 Q Do you recall receiving it from Mr.  
13 Vannoy?

14 A I don't understand the context. I mean,  
15 I have received the document from Mr. Vannoy and  
16 I have seen it.

17 Q Do you recall receiving the document  
18 from Mr. Vannoy at about the time it was written?

19 A Not specifically.

20 Q Before receiving this memo from Mr.  
21 Vannoy, did you receive any other kind of reports  
22 on the performance of Babcock & Wilcox nuclear  
23 steam supply systems which led you to conclude  
24 that the availability was the worst in the industry?

25 A There are other availability reports

2 published that had probably come to my attention  
3 prior to this document.

4 Q Can you identify them or describe  
5 them?

6 A The attached report that lists the  
7 availability of the B&W units, and there are other  
8 reports in the trade press that are also available  
9 to the general public.

10 MR. KLINGSBERG: Off the record.

11 (Discussion off the record.)

12 BY MR. KLINGSBERG:

13 Q What was the problem with the reactor  
14 coolant pumps that was referred to in this  
15 memorandum?

16 A The problem with the reactor coolant pumps,  
17 which are furnished by others, was usually due to  
18 the seals.

19 Q What was the problem with the seals?

20 A Seal leakage. We had pumps that were  
21 furnished by the three principal suppliers and  
22 programs were under way with each to improve their  
23 reliability.

24 Q When you say "furnished," you mean  
25 furnished to Babcock & Wilcox and Babcock

2 incorporated them in their NSS --

3 A Yes.

4 Q -- sold to the utility?

5 A Right.

6 Q What was the problem with the CRDM's  
7 referred to, control rod drive mechanisms?

8 A The CRDM's have a position indicator which  
9 is operated as a magnetic read switch and some of  
10 those switches were experiencing premature failures.

11 Q What, if anything, was done or being  
12 done to deal with that problem?

13 A Life tests were conducted on the position  
14 indicator read switches and selected switches  
15 would achieve expected life but it was found that  
16 a screening operation would have to be done to  
17 improve their performance. This came after,  
18 at a later date -- no, maybe during this time  
19 period, that a preconditioning of the switches  
20 would be necessary.

21 Q What other problems caused the lack  
22 of availability which might be encompassed in the  
23 "et cetera" referred to in Mr. Vannoy's memorandum?

24 A The "et cetera" would mean miscellaneous  
25 items that could have been responsible for

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

sporadic shutdowns of units.

Q Can you tell us what those were?

A One of the problems was on the Rancho Seco site; there was a prolonged turbine outage which was not in our control, there were other pieces of miscellaneous equipment that could have been in the plant that could have caused forced outages.

Q As of October 1978, was there any problem which you discovered at the Davis-Besse Toledo Edison plant which led to lack of availability?

A I am not familiar with the specifics pertaining to the Davis-Besse site and their problems during startup. The only thing that I was aware of was that they took a very cautious approach in the initial operation of the unit.

Q Isn't it a fact that the more reliable the nuclear steam sypply system, the easier it is to operate safely without frequent outages?

THE WITNESS: Do you want to read the question back, please.

(The reporter read back the last question.)

2 A There are two parts to the question. One  
3 of them has to do with safety and the other one  
4 has to do with reliability of the plant?

5 Q Well, let's break it up if we can.

6 The more reliability the higher the  
7 percentage of availability, the less frequency of  
8 outages; is that correct?

9 A Correct.

10 Q And isn't it a fact that the less  
11 frequent the outages, the more likely it is that  
12 the plant will operate safely?

13 A Not so.

14 Q Not so.

15 A One of the safety features would be a  
16 shutdown of the plant.

17 Q Is an outage forced by a turbine  
18 generator problem counted against nuclear supply  
19 system availability for purposes of the kinds  
20 of analyses you have in Exhibit 139?

21 A There are two columns, or several columns  
22 where it makes reference to the NSS availability  
23 that pertains to the NSS; the unit capacity over  
24 the last three months would involve the total  
25 plant, I would assume.

2 Q Now, Mr. Vannoy says "We talk of 90  
3 percent availability for NSS by 1980."

4 In what context did B&W talk of 90  
5 percent availability for a nuclear steam supply  
6 system?

7 A In the design of any piece of hardware, you  
8 try to establish design objectives that may involve  
9 various factors in the unit, one of which would be  
10 availability.

11 We had set as an internal objective a goal of  
12 achieving that level.

13 Q When was that set?

14 A There were several times during the course  
15 of the industry that that design goal was set, as  
16 we discussed earlier, Met Ed had it as one of their  
17 design objectives and we later also instituted it as  
18 part of an internal goal for the Nuclear Power  
19 Generation Division.

20 Q How much later?

21 A I don't recall the specific date.

22 Q Did you respond to Mr. Vannoy's  
23 memorandum?

24 A I don't recall sitting here that we prepared  
25 a formal report.

2 Q Did you respond informally?

3 A I believe I discussed with him the steps  
4 that were being taken to identify the problem areas  
5 and what steps we were taking to improve the  
6 performance of those selected items.

7 Q I direct your attention to the  
8 typewritten note in the middle of the first page.

9 Did you pass on the memorandum to  
10 Mr. MacMillan?

11 A Yes.

12 Q Who was REK? Was that Mr. Kosiba?

13 MR. WISE: Mr. Klingsberg, I have no  
14 objection to your asking some questions about  
15 the notes and so on, if you want to test  
16 this witness' memory or his ability to  
17 recognize them.

18 If you are looking for purely discovery  
19 purposes, I will say that we have been over  
20 this at some length with Mr. Kosiba as to who  
21 wrote these notes and what they say.

22 Q Can you answer the question?

23 A It would be supposition on my part.

24 Q Did you discuss with Mr. Kosiba or  
25 Mr. MacMillan the response to this memorandum?

2 A I would have discussed it most probably.  
3 with Mr. MacMillan.

4 Q Do you recall the substance of that  
5 discussion?

6 A No.

7 Q Isn't it a fact that the more frequently  
8 a nuclear plant experiences reactor trips and  
9 nuclear steam supply outages, the greater chance  
10 there is of having a nuclear incident?

11 MR. WISE: I am going to object to  
12 that question first as to form. It contains  
13 several questions as well as being so  
14 ambiguous as to be meaningless.

15 Q Will you answer the question.

16 A I can't answer it.

17 Q You can't answer it?

18 I would like to show you Exhibit 142  
19 previously marked, which is a memorandum from  
20 Mr. MacMillan to Mr. Favret dated October 30, 1978  
21 (handing).

22 MR. WISE: Off the record.

23 (Discussion off the record.)

24 Q Do you recall having received Exhibit  
25 142 from Mr. MacMillan --

2 A Yes.

3 Q -- on or about October 30, 1978?

4 A I remember this document.

5 Q Did you request Mr. MacMillan to  
6 prepare this document in response to Mr. Vannoy's  
7 memorandum, Exhibit 139?

8 A Yes.

9 Q Is it a fact that the problem of the  
10 unacceptable record of availability of B&W  
11 nuclear steam supply systems was identified as a  
12 key issue for your division or for Mr. MacMillan's  
13 division?

14 A Yes.

15 Q What is meant by identification as a  
16 key issue? Was there a list of key issues, for  
17 example?

18 A As a key issue, it is meant that it should  
19 be given high priority.

20 Q Were there other key issues at this  
21 particular time?

22 A I don't recall that there was a formal list  
23 of key issues.

24 Q Did you ever hear that unavailability  
25 was key issue No. 4?

2 A I can't recall specifically that designation.

3 Q Now --

4 A Is there a document here that --

5 Q No, that is something that has come out  
6 in previous testimony.

7 There is a statement in the third  
8 paragraph, the first page, "NSS availability is  
9 impacted by the reliable performance of B&W-  
10 supplied equipment and the maintenance and operating  
11 care provided by the utility."

12 Did you agree with that statement?

13 THE WITNESS: Restate the question  
14 again, please.

15 (The reporter read back the last  
16 question.)

17 A Yes, I would have to say so.

18 Q Would you turn to enclosure No. 2,  
19 page 1504 of this exhibit, 142.

20 A Yes.

21 Q All of those plants are B&W plants;  
22 is that correct?

23 A Correct.

24 Q And are they similar in design?

25 A Yes.

2 Q The TMI-1 plant had the highest  
3 availability of all those plants during the period  
4 under consideration, 1977 to '78; is that correct?

5 A That is correct.

6 Q And is it fair to say, then, that the  
7 difference between TMI-1 and the other plants is  
8 accounted for largely by differences in maintenance  
9 and operating care?

10 A I would have to examine the record in detail  
11 to be able to answer that question.

12 Q Coming back to the text of this  
13 document, turning to page 2 in the bottom -- I'm  
14 sorry, page 1, Item No. 1, it says "Determine  
15 design fixes for known problems - test these  
16 fixes and feed them back into operating plants and  
17 forward into plants in construction."

18 What were the known problems to which  
19 this referred?

20 MR. WISE: I object to that question  
21 on the grounds of form.

22 Q Will you answer the question.

23 A The letter speaks for itself because  
24 Mr. MacMillan lists two current examples in the  
25 following sentence.

1  
2 Q Were there any other known problems  
3 besides those two examples?

4 MR. WISE: Know to whom?

5 MR. KLINGSBERG: Known to Babcock &  
6 Wilcox.

7 A The only one that came to my mind, as I  
8 testified previously, was on the read switches  
9 on the position indicators.

10 Q Was there any known problem known to  
11 B&W at this time based on an incident at Davis-  
12 Besse?

13 THE WITNESS: Read the question back  
14 again, please.

15 (The reporter read back the last  
16 question.)

17 A It had not come to my attention.

18 Q Can you describe the problem relating  
19 to the WKM valve switches referred to in Item  
20 No. 3?

21 A I am not familiar with the WKM valves.

22 Q Wasn't it part of your responsibility  
23 as Vice President of the Nuclear Division in  
24 October of 1978 to become familiar with a problem  
25 which created lack of availability in B&W nuclear

2 plants?

3 A It was my responsibility as a Manager of the  
4 Nuclear Divisions to assure that the Nuclear Power  
5 Generation Division fulfilled its obligations.

6 Q And in the course of those duties, you  
7 did not become familiar with the WKM valve problem?

8 A I may have at that time but I am not familiar  
9 with that right now.

10 Q Turning to page 2 of Exhibit 142 --  
11 just turning back for a moment to page 1, Item  
12 No. 3 at the bottom states, "Anticipate problems  
13 before they show up in operation - for example-  
14 a concerted effort to shape up the WKM valves  
15 which are currently being shipped to meet contract  
16 commitments, but with significant engineering  
17 concerns."

18 When you received this memorandum,  
19 did you make inquiry into the reason why Babcock  
20 & Wilcox was shipping valves to utilities as to  
21 which it had significant engineering concerns?

22 MR. WISE: I think that your question  
23 contains an assumption which is not a fact  
24 in the record.

25 I object to it as to form for that

2

reason.

3

Q Will you answer the question.

4

THE WITNESS: Read the question back,  
please.

5

6

(The reporter read back the pending  
question.)

7

8

A I can't answer the question. Sorry.

9

Q Do you remember making any inquiry at  
all to Mr. MacMillan or anybody else as to the  
nature of these significant engineering concerns  
on the WKM valves?

10

11

12

13

A I am sure at the time that I did discuss  
this subject with him as a matter of good business  
practice.

14

15

16

Q But you don't recall?

17

A I don't recall it specifically.

18

19

20

Q Are you aware of the fact that some  
WKM valves developed cracks or flaws up to six  
inches long?

21

A No, I'm not.

22

23

24

25

Q Are you aware that Babcock & Wilcox  
eventually decided that the defects in the WKM  
valves were so significant that they had to be  
reported under 10 CFR Section 21?

2 A No, I don't recall.

3 Q Do you know what 10 CFR Section 21 is?

4 A Yes.

5 Q What is that?

6 A That is an AEC regulation, I believe on  
7 reporting requirements of significant items.

8 Q Relating to safety?

9 A Relating to safety.

10 Q Will you turn to page 2. There is  
11 reference in paragraph No. 1 to a resident engineer  
12 at each operating site which was going to be  
13 authorized.

14 Had there previously been resident  
15 engineers at operating sites, B&W resident  
16 engineers?

17 A During the course of the initial operation  
18 of the unit, B&W would have had as part of their  
19 startup services an engineer at the site.

20 On some sites, it was believed by the  
21 customers that it was no longer necessary to keep  
22 the engineers in residency and at this time I  
23 authorized Mr. MacMillan to go ahead and assign  
24 them to the field at our expense.

25 Q Was the function of the engineers who

2 had been at the startup sites to provide rapid  
3 feedback on operating problems and intelligence  
4 on the character of equipment problems in  
5 operation?

6 A As part of Mr. MacMillan's examination, he  
7 found out that the customers were not necessarily  
8 feeding back to us or reporting their operating  
9 problems and this was an effort to correct that  
10 or improve, I should say, that communications link.

11 Q Did you find that your resident  
12 engineers were better at feeding back the problems?

13 MR. WISE: Better than who?

14 MR. KLINGSBERG: The customers.

15 A That was part of their responsibility, to  
16 try to do that. Some customers were very  
17 conscientious.

18 Q Was it the responsibility of the  
19 resident engineers which you previously had at  
20 plants during startup periods to provide rapid  
21 feedback on problems?

22 A It was part of their responsibility.

23 Q The conclusion in the last paragraph  
24 of this memo states: "We need to put our act  
25 together better since Engineering, Nuclear Service,

1  
2 Marketing, Purchasing, Nuclear Parts Center, B&W  
3 Construction Company, R&D Division - and the  
4 utility - all are needed to get availability up.  
5 The 85 percent persistent performance of TMI-1  
6 makes for credibility of the goal."

7 In what respects did B&W need to put  
8 its act together?

9 A The terminology, "put our act together,"  
10 should be interpreted in this context as, I think,  
11 coordination and acceptance.

12 Q What steps, if any, were taken to  
13 achieve better coordination among B&W's nuclear  
14 departments?

15 A Steps were taken by Mr. MacMillan to  
16 assure that and high-level contacts were also  
17 made with the utilities to try to bring to their  
18 attention the need for improved communications  
19 and coordination.

20 Q What specific steps did Mr. MacMillan  
21 take?

22 A I don't recall in detail just sitting here.

23 Let me change that. We did make high-level  
24 contacts or make contacts with higher-level people  
25 in the utilities. I do recall that as a specific.

1  
2 Q What steps were taken, if any, to  
3 achieve better coordination among the B&W nuclear  
4 departments internally?

5 A I'm sorry, I cannot recite the specifics.

6 MR. KLINGSBERG: I would like to mark  
7 as Exhibit --

8 MR. WISE: Before you go on, we have  
9 been going for a little over an hour. I  
10 wonder if this is a good time for an  
11 afternoon break.

12 MR. KLINGSBERG: Sure.

13 (Whereupon, a recess was taken.)

14 MR. WISE: Off the record.

15 (Discussion off the record.)

16 BY MR. KLINGSBERG:

17 Q I show you Exhibit 141, which is a  
18 memorandum from Mr. MacMillan to Mr. Vannoy dated  
19 October 27, 1978, a copy to Mr. Favret, among  
20 others.

21 Do you recall having received a copy  
22 of that memorandum?

23 A I don't specifically recall the document.

24 Q You will note that there is a reference  
25 to Enclosure 2 about five lines up from the bottom,

1  
2 which appears to be the Enclosure 2 which is  
3 attached to the previous exhibit, Exhibit 142.

4 MR. WISE: On Exhibit 141, what are  
5 you referring to now?

6 MR. KLINGSBERG: I am referring to  
7 the reference in the last full paragraph  
8 on the first page to "Enclosure 2, which  
9 shows availability achieved at each  
10 operating plant."

11 MR. WISE: Our Exhibit 141 has no  
12 Enclosure 2.

13 MR. KLINGSBERG: It does not have an  
14 Enclosure 2 attached to it but there is an  
15 Enclosure 2 attached to Exhibit 142.

16 MR. WISE: That is correct.

17 Now, what is the question?

18 Q The question is: The Enclosure 2  
19 referred to in Exhibit 141 appears to be the same  
20 as the document entitled "Enclosure 2" attached  
21 to Exhibit 142; is that correct?

22 MR. WISE: I am going to have to  
23 object to that, Mr. Klingsberg. If you  
24 are asking this witness to look, as we can  
25 all look and as the judge and the jury

2 presumably can look and make a determination,  
3 that's one thing. If you are asking him  
4 does he have a specific recollection of  
5 seeing the exhibit with whatever enclosures  
6 were with it and recollect actually what it  
7 was, that is perfectly permissible, but to  
8 ask him to do what anyone else could do,  
9 why don't you just state your assumption  
10 and proceed from there.

11 MR. KLINGSBERG: Well, I will ask him  
12 whether or not he recollects having received  
13 Exhibit 142, whether that is the same  
14 Enclosure 2 as is referred to in Exhibit 141  
15 which the witness also received.

16 MR. WISE: I don't believe we have  
17 established that the witness received  
18 Exhibit 141.

19 MR. KLINGSBERG: He is copied on it.

20 MR. WISE: That doesn't mean anything,  
21 Mr. Klingsberg.

22 MR. KLINGSBERG: We differ as to  
23 whether that means something.

24 Let's go on with the examination.

25 MR. WISE: Well, I will tell you,

2

Mr. Klingsberg, we went through this previously and you may be making some assumptions which, quite frankly, during earlier testimony would indicate that there are greater problems with your questions than you recognize.

3

4

5

6

7

8

MR. KATCOFF: 141 --

9

MR. WISE: We can go off the record.

10

(Discussion off the record.)

11

BY MR. KLINGSBERG:

12

Q I had asked you previously, Mr. Favret,

13

whether or not in regard to Enclosure 2 attached

14

to Exhibit 142 you believe that the differences

15

in availability could be largely due to operating

16

and maintenance superiority on the part of TMI-1

17

and you said you would have to go back and look

18

at the record of each particular plant.

19

Do you recall that question and answer?

20

A Correct.

21

Q Mr. MacMillan says in Exhibit 141,

22

"That the engineering effort has limited potential

23

for achieving our availability goal can be seen

24

from the attached curve, Enclosure 2, which shows

25

availability achieved at each operating plant.

2 The operation and maintenance effort accounts for  
3 a substantial portion of the spread shown since  
4 the delivered hardware/systems are very similar."

5 MR. WISE: I object to that question.

6 MR. KLINGSBERG: I haven't even asked  
7 a question.

8 MR. WISE: I object to the preamble  
9 and I will have an objection to the question  
10 insofar as you have already stated it. You  
11 are making a false assumption and it is not  
12 factual based upon the current record.

13 You have not established the  
14 authenticity of Exhibit 141, who wrote it,  
15 when it was written, for whom it was written  
16 and what happened to it and whether or not  
17 it was a final document, and even who saw it.

18 MR. KLINGSBERG: We have hundreds of  
19 documents in this case as to which we have  
20 not established who wrote it, except  
21 for the fact that it says on it who wrote it,  
22 and what happened to it except for the fact  
23 that it says it went to somebody.

24 MR. WISE: Mr. Klingsberg, I would not  
25 make that objection on a frivolous basis.

2

I have very good grounds for making that objection in this particular case.

3

4

MR. KLINGSBERG: If you want to make a representation on the record of facts which you know about in connection with this document, we will take that into account but let's not have a lot of secret, mysterious objections.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

As to whether or not the Exhibit 141 was something that Mr. MacMillan agreed with, whether those are his conclusions, is something that has not been established on the record and, in fact, given the record, Mr. Kosiba's testimony and the fact that Exhibit 142 went out in a slightly different

1  
2 form, the indication would be that Mr.  
3 MacMillan did not adopt in its entirety the  
4 draft that Mr. Kosiba had prepared as  
5 Exhibit 141, and in particular the language  
6 which you just quoted and put into Mr.  
7 MacMillan's mouth does not appear in the  
8 language of the exhibit that Mr. MacMillan  
9 eventually sent on to Mr. Favret.

10 BY MR. KLINGSBERG:

11 Q. Now I am going to ask you, Mr. Favret,  
12 whether you agree with the statement in Exhibit 141  
13 which says "The operation and maintenance effort  
14 accounts for a substantial portion of the spread  
15 shown since the delivered hardware/systems are  
16 very similar."

17 A I don't agree.

18 MR. KLINGSBERG: I would like now to  
19 mark as GPU Exhibit 194 a copy of the  
20 "Proposal to Jersey Central Power & Light  
21 Company" by Babcock & Wilcox.

22 (Multi-page document entitled  
23 "Proposal to Jersey Central Power & Light  
24 Company" by Babcock & Wilcox was marked as  
25 GPU Exhibit No. 194 for identification, as

2

of this date.)

3

Q I will show you Exhibit 194 and ask

4

you if you can identify it as a proposal by Babcock

5

& Wilcox to Jersey Central Power & Light Company

6

for what eventually became the Three Mile Island

7

No. 2 plant (handing).

8

A It appears familiar.

9

Q Does it also appear to be what I said

10

it was?

11

A Yes. Right.

12

Q Would you turn to Section 15.

13

Do you recall any consideration or

14

discussion within Babcock & Wilcox in regard to

15

using the same general conditions in this proposal

16

as were contained in the then existing draft of

17

the Three Mile Island No. 1 plant?

18

A It was discussed that there would be some

19

differences in the changes clause.

20

Q Yes.

21

A And the amount of responsibility that the

22

company would take for this offering.

23

Q Apart from that, were the same general

24

conditions going to be used?

25

A I believe in general that was probably true,

2           yes.

3                       MR. KLINGSBERG: I want to also note  
4                       for the record that there is a date on page 2  
5                       of Exhibit 194 of January 31, 1967.

6           Q        Would that have bear about the date  
7           that that was submitted?

8           A        Yes. Or prepared.

9                       MR. KLINGSBERG: Will you mark as  
10                      Exhibit 195 a memorandum of a meeting held  
11                      on February 1, 1967 at Jersey Central, which  
12                      appears to be written by Mr. Pickard and  
13                      comes out of the Shaw, Pittman files.

14                      (Memorandum of meeting held on  
15                      February 1, 1967 at Jersey Central, by Mr.  
16                      Pickard, was marked as GPU Exhibit No. 195  
17                      for identification, as of this date.)

18                      (Document handed to the witness.)

19           Q        Do you recall having attended a meeting  
20           on February 1, 1967 with the persons listed in  
21           this memorandum concerning a Jersey Central proposed  
22           nuclear plant?

23           A        Yes, there was a series of meetings with  
24           Jersey Central.

25           Q        Turning to page 2 under the heading

2 "Discussion of B&W Offer," the first paragraph,  
3 does that refresh your recollection that the  
4 proposal which we have marked as Exhibit 194 was  
5 submitted sometime after January 31, 1967, which  
6 is the date of the proposal?

7 A Where are you referring on that page?

8 Q I am referring to the fact that it  
9 says "B&W agreed to submit this," meaning a  
10 detailed proposal, "on either February 17 or 20."

11 A I don't remember that specifically but --  
12 and whether they were referring here to the  
13 proposal itself or to more detailed descriptions.

14 Q Do you recall discussion to the  
15 effect that you agreed to offer Jersey Central  
16 the same terms and conditions as had been accepted  
17 by Met Ed and that as future terms were negotiated  
18 and settled they would apply to Jersey Central  
19 as well as Med Ed?

20 A We did discuss terms and conditions and the  
21 discussion evolved around whether -- in my  
22 recollection, if those terms and conditions would  
23 be available. I also recall that Jersey Central  
24 reserved the right to also negotiate modifications  
25 in those if they so desired and that they did have

2 at one of their meetings in that series, I believe  
3 it was a legal representative available for Jersey  
4 Central.

5 Q Who was that?

6 A I can't recall his name.

7 Q At this meeting, was there any  
8 discussion that you recall of general conditions  
9 including limitation on liability, warranty,  
10 decontamination, indemnification or insurance  
11 clauses?

12 A Not specifically.

13 MR. KLINGSBERG: I would like to mark  
14 as Exhibit 196 a copy of a memorandum dated  
15 February 13, 1967 from the B&W files.

16 (Copy of handwritten memorandum  
17 dated February 13, 1967, from the B&W files,  
18 was marked as GPU Exhibit No. 196 for  
19 identification, as of this date.)

20 (Document handed to the witness.)

21 THE WITNESS: Can you read all of this?

22 MR. WISE: I am not sure if I can or not.  
23 Off the record.

24 (Discussion off the record.)

25 A O. K.

2 Q Do you know who wrote Exhibit 196?

3 A No, I don't.

4 Q Do you know whom you called at B&W in  
5 connection with the matters referred to therein?

6 A No, I don't recall the...

7 MR. KLINGSBERG: I would now like to  
8 mark as GPU Exhibit 197 for identification  
9 a document from the B&W files dated March 30,  
10 1967 re meeting in JCP&L Company's offices  
11 on March 30, 1967.

12 (Copy of handwritten document dated  
13 March 30, 1967 re meeting in JCP&L Company's  
14 offices on said date was marked as GPU  
15 Exhibit No. 197 for identification, as of  
16 this date.)

17 A O. K.

18 Q Do you know who wrote Exhibit 197?

19 A I'm sorry, I cannot identify that.

20 MR. KLINGSBERG: I would like to mark  
21 as GPU Exhibit 198 a memo from the Shaw,  
22 Pittman files dated April 11, 1967 also  
23 regarding the March 30, 1967 meeting.

24 You can keep both documents in front  
25 of you if you want.

1  
2 (Memo dated April 11, 1967 re meeting  
3 of March 30, 1967 showing attendees from  
4 Babcock & Wilcox and Jersey Central Power  
5 & Light Company was marked as GPU Exhibit  
6 No. 198 for identification, as of this  
7 date.)

8 (Document handed to the witness.)

9 A O. K.

10 Q Do you recall having attended a meeting  
11 on or about March 30, 1967 at Jersey Central with  
12 the persons indicated in the two memoranda?

13 A Yes.

14 Q Do you recall any discussion at that  
15 meeting?

16 A Yes.

17 Q Do you recall any discussion other than  
18 what is set forth in the memorandum itself?

19 A In addition to what is set forth in the  
20 memorandum, Mr. Rowand thanked Mr. McElwain, I  
21 believe at the time who was President of Jersey  
22 Central, for the order and Mr. McElwain thanked  
23 Mr. Rowand for the good price.

24 Q Do you recall any discussion at this  
25 meeting about the general conditions of sale

1  
2 including limitation of liability, warranty,  
3 decontamination, indemnification, insurance or  
4 others?

5 A I don't recall that the terms and conditions  
6 as you stated were discussed at this meeting.

7 MR. KLINGSBERG: Will you please  
8 mark as Exhibit 199 a memorandum from the  
9 files of Babcock & Wilcox referring to a  
10 June 8th meeting at Morristown, New Jersey  
11 re Jersey Central Power & Light.

12 (Memorandum referring to a June 8th  
13 meeting at Morristown, New Jersey re  
14 Jersey Central Power & Light showing  
15 attendees was marked as GPU Exhibit No. 199  
16 for identification, as of this date.)

17 (Document handed to the witness.)

18 MR. KLINGSBERG: I would also like to  
19 mark as GPU Exhibit 200 for identification  
20 a memorandum to the file from Gooden Gray  
21 dated June 8, 1967 regarding a meeting at  
22 Jersey Central Power & Light, apparently also  
23 on June 8th, and as Exhibit 201 a memorandum  
24 from Mr. Favret to various persons regarding  
25 a meeting on June 8th regarding Jersey Central

2

Power & Light.

3

(Memorandum to the file from Gooden Gray

4

dated June 8, 1967 regarding meeting at

5

Jersey Central Power & Light was marked as

6

GPU Exhibit No. 200 for identification, as of

7

this date.)

8

(Memorandum from Mr. Favret to various

9

persons regarding meeting on June 8th

10

regarding Jersey Central Power & Light was

11

marked as GPU Exhibit No. 201 for

12

identification, as of this date.)

13

(Documents handed to the witness.)

14

A O. K.

15

Q Have you seen Exhibit 199 before?

16

A Not that I recall.

17

Q Have you seen Exhibit 200 before?

18

A I don't specifically recall it.

19

Q Did you write Exhibit 201?

20

A Yes.

21

Q Did you attend a meeting on June 8,

22

1967 with the persons listed on the various

23

memoranda that you have before you, 199 through

24

201?

25

A Yes.

2 Q Is there any particular reason that  
3 you decided to write minutes of the meeting as  
4 reflected in Exhibit 201?

5 A It was addressed as an action item on the  
6 part of B&W of items that we should initiate  
7 and that I wanted to get started promptly, if  
8 remember correctly.

9 Q Do you recall having written minutes  
10 of any other meetings with either Met Ed or Jersey  
11 Central in the course of the Three Mile Island  
12 negotiations?

13 A No.

14 Q Do you recall any discussion at this  
15 meeting other than what is set forth in these  
16 documents?

17 A No.

18 Q Do you recall any discussion at this  
19 meeting concerning conditions of sale including  
20 limitations of liability, warranties,  
21 decontamination, indemnification or insurance  
22 provisions?

23 A This may have been the meeting at which,  
24 as indicated in Exhibit 199, Mr. Rochester,  
25 indicated as General Counsel, may have introduced

1  
2 the subject on the review of some of the terms and  
3 conditions as I testified previously.

4 Q Apart from whether this may have been  
5 such a meeting, do you have any recollection of  
6 any actual discussion at this meeting on conditions  
7 of sale?

8 A No.

9 Q Do you have a recollection of anything  
10 that Mr. Rochester said concerning the terms and  
11 conditions of sale at any of the Jersey Central  
12 meetings?

13 A The only recollection I have on his statement  
14 was that he reserved the right to review the terms  
15 and conditions.

16 MR. KLINGSBERG: I would like to have  
17 marked a memorandum from Mr. Gray to Mr.  
18 Favret dated March 27, 1968 from the B&W  
19 files as Exhibit 202.

20 (Memorandum from Mr. Gray to Mr. Favret  
21 dated March 27, 1968 was marked as GPU  
22 Exhibit No. 202 for identification, as of  
23 this date.)

24 (Document handed to the witness.)

25 A O. K.

1  
2 Q Do you recall receiving Exhibit 202  
3 from Mr. Gray?

4 A I remember the contents of the memorandum,  
5 of the letter.

6 Q Do you know what the reference to the  
7 "preference set forth in your letter of February 22,  
8 1968" refers to?

9 A No, I don't recall what that expression  
10 refers to.

11 MR. KLINGSBERG: I would like to mark  
12 as Exhibit 203 a draft contract for nuclear  
13 equipment and services for the Oyster Creek  
14 nuclear power plant Unit No. 2 between Jersey  
15 Central Power & Light Company and the  
16 Babcock & Wilcox Company dated February 21,  
17 1968.

18 (Draft contract entitled "Contract for  
19 Nuclear Equipment and Services for the  
20 Oyster Creek Nuclear Power Plant Unit No. 2  
21 between Jersey Central Power & Light Company  
22 and The Babcock & Wilcox Company," dated  
23 February 21, 1968, was marked as GPU Exhibit  
24 No. 203 for identification, as of this date.)

25 MR. KLINGSBERG: This comes from the

2 Babcock & Wilcox files (handing to the  
3 witness).

4 Q Have you seen Exhibit 203 before?

5 A I have seen drafts of the contract between  
6 B&W and Jersey Central. I don't know if I have  
7 seen this specific document.

8 Q Can you identify any of the handwriting  
9 on this document?

10 A On page 1 it appears -- the note refers to  
11 Mr. Kazar, "a copy." I can't identify whose writing  
12 it is, though.

13 Q If you can just flip through and tell  
14 us if you recognize any of the handwriting as  
15 your own or whether you recognize whose it is.

16 A Do you want me to give you the pages where  
17 I recognize somebody?

18 Q If you want to, yes.

19 A On page 1 there are two references,  
20 "O. K. DRW." I am pretty sure that is Mr. Wilson's  
21 writing. I do not recognize the others.

22 MR. WISE: Off the record.

23 (Discussion off the record.)

24 A Page 7, there is another notation, "O. K.  
25 as is, DRW."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Off the record?

MR. KLINGSBERG: Yes. Off the record.

(Discussion off the record.)

BY MR. KLINGSBERG:

Q I take it just having flipped through it that this does not appear to be a copy of a contract that contains your mark-ups?

A No.

Q Will you flip to page 28.

There is a note in the margin next to subsection (b), which deals with decontamination, and I don't know if you can make it out, but it looks to be "Same as the (2)(c) of" something "Met Ed," and in point of fact, if you compare, there was a shift in the location of that provision as between the Met Ed contract and the Jersey Central contract, and in the Med Ed contract the same provision appears under the heading "Conditions" whereas here it is under the heading "Remedy."

Do you recall any discussions with any representatives or advisors to Jersey Central concerning the placement of this provision under one heading or another?

A No, I do not.

1  
2 Q Do you recall any discussion with  
3 Jersey Central representatives or advisors of the  
4 provisions on page 28?

5 A No, I do not recall.

6 Q Would you flip to page 34, which  
7 pertains to indemnity and insurance, and has  
8 notations "Same," "Same," in the margin.

9 Do you recall any discussions of those  
10 provisions with Jersey Central representatives or  
11 negotiators or advisors?

12 A No, I don't recall.

13 Q Would you turn the page where there is  
14 another indemnification provision and a note in  
15 the margin "Same except as noted."

16 Do you recall any discussion of that  
17 provision with Jersey Central negotiators or  
18 advisors?

19 A I don't recall that.

20 Q Do you recall who wrote "Same except  
21 as noted"?

22 A I can't identify it.

23 Q Would you turn the page and tell me if  
24 you recall any discussion of any of those  
25 provisions with Jersey Central or its advisors?

1  
2 MR. WISE: You are talking about the  
3 provisions on page 37?

4 MR. KLINGSBERG: 36.

5 THE WITNESS: 36.

6 MR. WISE: 36.

7 MR. KLINGSBERG: Well, 36 and 37, both.

8 A No, I don't recall discussions with Jersey  
9 Central personnel.

10 Q Will you flip to --

11 You know, when I say Jersey Central  
12 advisors, I mean including the lawyers.

13 A Yes.

14 Q Would you flip to page 46, "Article  
15 XII - Consequential Damages."

16 Do you recall any discussion of that  
17 provision with Jersey Central or its advisors?

18 A I don't recall discussing it.

19 Q And I take it you can't identify the  
20 handwriting in the margin?

21 A No.

22 MR. KLINGSBERG: I will ask to have  
23 marked as Exhibit 204 a document dated  
24 April 26, 1968 from Mr. Ward to Mr. Favret  
25 regarding "Contract Draft - Oyster Creek

1  
2 Unit No. 2."

3 (Document dated April 26, 1968 from  
4 Mr. E. G. Ward to Mr. Favret regarding  
5 "Contract Draft - Oyster Creek Unit No. 2,"  
6 was marked as GPU Exhibit No. 204 for  
7 identification, as of this date.)

8 (Document handed to the witness.)

9 A I remember some of the contents, the  
10 specific contents of the letter.

11 Q Incidentally, this exhibit and the  
12 previous exhibit refer to Oyster Creek Unit No. 2,  
13 that is the unit that eventually became Three Mile  
14 Island No. 2; is that correct?

15 A Correct.

16 Q Now --

17 A And I think the record should show they did  
18 consider another site in between those.

19 Q Can you identify Mr. Ward?

20 A Mr. Ward is an Assistant Project Manager  
21 located in Lynchburg, Virginia and worked for the  
22 Nuclear Power Generation Division and reported at  
23 that time I believe to Mr. Heyburn, who was in  
24 charge of it.

25 MR. KLINGSBERG: I will ask to have

2

marked as Exhibit 205 a memorandum,

3

handwritten, from the files of Babcock &

4

Wilcox, dated June 27, 1968 regarding a

5

meeting at the offices of Pickard Lowe

6

Associates.

7

(Handwritten memorandum dated June 27,

8

1968 regarding a meeting at the offices of

9

Pickard Lowe Associates was marked as GPU

10

Exhibit No. 205 for identification, as of

11

this date.)

12

(Document handed to the witness.)

13

Q Have you ever seen Exhibit 205 before?

14

A No.

15

Q Do you recognize who wrote it?

16

A No.

17

Q Did you attend a meeting on or about

18

June 27, 1968 with the persons indicated therein

19

relating to the Jersey Central nuclear steam

20

supply systems being contracted for with Babcock &

21

Wilcox?

22

A One portion of this memorandum indicates --

23

I recall this one statement by Mr. Trowbridge on

24

page 2.

25

Q Which statement is that?

2 A "Fox says it's only a matter of time before  
3 AEC will demand to see contracts." That triggers  
4 a recollection in my mind.

5 Q Did you attend this meeting?

6 A Yes.

7 Q Do you recollect any discussion at the  
8 meeting other than what is set forth in the  
9 memorandum?

10 A I really can't understand everything that is  
11 set forth in the memorandum.

12 Q O. K.

13 Do you recollect any discussion at the  
14 meeting other than what is set forth in the  
15 memorandum which you can understand?

16 A No.

17 Q In Exhibit 202 Mr. Gray writes to you  
18 in the last sentence, on March 27th, "Please advise  
19 promptly when we can expect to sit down with JCP&L  
20 on this matter."

21 Do you know whether there were any  
22 meetings between March 27th and June 27th, 1968?

23 A My recollection is not that good.

24 Q Do you recollect any discussions at  
25 the June 27th meeting of conditions of sale

2 including limitations on liability, warranty,  
3 decontamination, indemnification and insurance  
4 provisions?

5 A I don't recall.

6 Q Do you remember any such discussions  
7 at any meetings subsequent to June 27, 1968  
8 concerning the Oyster Creek or what came to be  
9 the Three Mile Island No. 2 nuclear plant contract,  
10 discussions with Jersey Central personnel or  
11 advisors?

12 A Not in detail, I don't recall.

13 MR. KLINGSBERG: I will has to have  
14 marked as Exhibit 206 the contract for  
15 nuclear equipment and services for the  
16 Oyster Creek nuclear plant Unit No. 2  
17 between Jersey Central Power & Light Company  
18 and the Babcock & Wilcox Company.

19 (Document entitled "Contract for  
20 Nuclear Equipment and Services for the Oyster  
21 Creek Nuclear Power Plant Unit No. 2 between  
22 Jersey Central Power & Light Company and  
23 The Babcock & Wilcox Company" was marked as  
24 GPU Exhibit No. 206 for identification, as  
25 of this date.)

1  
2 (Document handed to the witness.)

3 Q Can you identify Exhibit 206 as the  
4 contract for nuclear equipment and services for  
5 the Oyster Creek nuclear power plant Unit No. 2  
6 which came to be subsequently the Three Mile Island  
7 No. 2 plant?

8 A I cannot specifically identify this document  
9 as being the one.

10 Q Is there any particular thing that  
11 raises any doubts or is this just that you don't  
12 specifically recall?

13 A Because of the date on the contract documents  
14 of November 25, 1970 and October 30, 1970 by Mr.  
15 Reinker and Mr. Sims and at that point in time I  
16 was no longer involved with the negotiations with  
17 Jersey Central Power & Light and did not participate  
18 in those negotiations (indicating).

19 MR. WISE: Yes.

20 Q Did there come a time in or about 1968  
21 when the basic terms and conditions which you have  
22 been discussing were brought to their final form?

23 A My recollection, Mr. Klingsberg, was that there  
24 was a long drawn-out procedure on those negotiations  
25 with long periods in between exchanges of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

information.

Q Yes?

A And I -- we tried at times to expedite the transmittal of information but without success.

MR. KLINGSBERG: We will pick up tomorrow.

MR. WISE: O. K.

(Time noted: 4:40 p.m.)

Louis M. Favret

Subscribed and sworn to before me  
this day of 1981.



## I N D E X

WITNESS	PAGE
Louis M. Favret (resumed)	167

## E X H I B I T S

GPU FOR  
IDENTIFICATION

184	Letter from Mr. Neidig to Mr. Favret, letterhead of Metropolitan Edison Company, dated January 12, 1967	188
185	Document headed "Conference, Met-Ed Nuclear Project, January 17, 1967," containing list of attendees	190
186	Letter dated November 14, 1966, from Mr. Favret to Mr. Neidig, Metropolitan Edison Company, with attachments	194
187	Letter from Gerald Charnoff to Lou Favret, The Babcock & Wilcox Company, dated January 27, 1967	200
188	Document headed "B&W Contract Conference, February 15, 1967," containing list of attendees	204
189	Document entitled "Contract Meeting, Reading, Pa., March 14, 1967"	206

## INDEX TO EXHIBITS (continued)

GPU FOR IDENTIFICATION		PAGE
190	Document entitled "Metropolitan Edison Co., NSS-5," and stating "File Correspondence," dated April 12, 1967	208
191	Copy of letter from Mr. Trowbridge to Mr. Neidig with copy, among others, to Mestres, Victor and Wilson, dated March 24, 1967	209
192	Document marked "Draft, 3/24/67" and entitled "Contract for Nuclear Equipment for The Three Mile Island Nuclear Station, Between Metropolitan Edison Company and The Babcock & Wilcox Company"	210
193	Document entitled "Contract for Nuclear Equipment for The Three Mile Island Nuclear Station Between Metropolitan Edison Company and The Babcock & Wilcox Company"	215
194	Multi-page document entitled "Proposal to Jersey Central Power & Light Company" by Babcock & Wilcox	277
195	Memorandum of meeting held on February 1, 1967 at Jersey Central, by Mr. Pickard	279
196	Copy of handwritten memorandum dated February 13, 1967, from B&W files	281

## INDEX TO EXHIBITS (continued)

GPU FOR IDENTIFICATION		PAGE
197	Copy of handwritten document dated March 30, 1967 re meeting in JCP&L Company's offices on said date	282
198	Memo dated April 11, 1967 re meeting of March 30, 1967 showing attendees from Babcock & Wilcox and Jersey Central Power & Light Company	283
199	Memorandum referring to a June 8th meeting at Morristown, New Jersey re Jersey Central Power & Light showing attendees	284
200	Memorandum to the file from Gooden Gray, dated June 8, 1967 regarding meeting at Jersey Central Power & Light	285
201	Memorandum from Mr. Favret to various persons regarding meeting on June 8th re Jersey Central Power & Light	285
202	Memorandum from Mr. Gray to Mr. Favret dated March 27, 1968	287
203	Draft contract entitled "Contract for Nuclear Equipment and Services for the Oyster Creek Nuclear Power Plant Unit No. 2 between Jersey Central Power & Light Company and The Babcock & Wilcox Company," dated February 21, 1968	288

## INDEX TO EXHIBITS (continued)

GPU FOR IDENTIFICATION	PAGE
204 Document dated April 26, 1968 from Mr. E. G. Ward to Mr. Favret regarding "Contract Draft - Oyster Creek Unit No. 2"	293
205 Handwritten memorandum dated June 27, 1968 regarding a meeting at the offices of Pickard Lowe Associates	294
206 Document entitled "Contract for Nuclear Equipment and Services for the Oyster Creek Nuclear Power Plant Unit No. 2 between Jersey Central Power & Light Company and The Babcock & Wilcox Company"	296

\* \* \*