

THE BABCOCK & WILCOX COMPANY
POWER GENERATION GROUP

CONTRACTS-LEGAL

To: S. L. Smith - Philadelphia Sales
From: (Ext. 3660) [Signature]
L. F. Taynton - SP&S Marketing - Contract Services

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Cust. Met Ed.

File No. or Ref. A4-83

Subj. Proposal for Master Services Contract

Date May 18, 1977

This letter is cover one customer and one subject only.

Background

Existing Master Services Contract Expired on October 1, 1974

Amendment one for extending time of performance was submitted on December 8, 1975. Customer rejected.

Meeting with Jack Guerin on March 17, 1976 to discuss contract upgrade. (See memo to Moutz dated March 29).

Draft contract incorporating 75% of their requirements forwarded unofficially in April 1976. No customer response.

Task 64 was submitted with draft contract attached. These terms were accepted for work proposed.

Action

Attached for your use are copies of revised contract (almost identical to April 1976 draft) for your official transmittal to customer. We will need your assistance in following up with the customer.

LFT:lt

Enclosures

cc: J. T. Janis
G. T. McDaniel ←
Gooden Gray

CONFIDENTIAL
UNSEL ONLY

GPO
Deft. Exh. For ID. 278
PH. Exh. in Ev
Charles Shapiro CSR 5/27/81

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MASTER SERVICES CONTRACT

Between

THE METROPOLITAN EDISON COMPANY

And

THE BABCOCK & WILCOX COMPANY
NUCLEAR POWER GENERATION DIVISION
LYNCHBURG, VIRGINIA

Proposal No.: A4-83

Date: May 17, 1977

Babcock & Wilcox

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MASTER SERVICES CONTRACT

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Proposal no. A4-83

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Babcock & Wilcox

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MASTER SERVICES CONTRACT

(a contract for engineering services,
repair work, equipment and parts)

THIS CONTRACT, made and entered into as of June 1, 1977,
by and between The Babcock & Wilcox Company (hereinafter called the
COMPANY), and The Metropolitan Edison Company
(hereinafter called the PURCHASER),

WHEREAS, PURCHASER, from time to time, will require various engineering
and technical services, maintenance and repair work, equipment, and
spare or replacement parts;

WHEREAS, COMPANY is willing and able to provide such services, labor,
equipment and parts, within the limitations of resources available
within COMPANY, under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and of other good and
valuable consideration, the parties hereto agree as follows:

1.0 SCOPE OF SUPPLY

1.1 By COMPANY

During the term of this Contract PURCHASER may request
from COMPANY and COMPANY shall, subject to availability
to COMPANY of the necessary manpower, facilities,
equipment, and other resources, submit a task proposal
to perform work within the following scope in connection
with or in support of PURCHASER's Nuclear Steam Supply
System known as Three Mile Island Nuclear Station - Unit 1

and the fuel thereof:

1. Technical or engineering advice and consultation.
2. Computer usage as required to furnish such advice
and consultation.
3. Training services, including simulator training.
4. Labor and supervision for maintenance and repair work.
5. Spare or replacement parts, hereinafter collectively
"Parts", incidental or required by 1.1(1) or 1.1(4)
above or as otherwise agreed.

6. Materials or equipment, hereinafter collectively "Equipment", incidental or required by 1.1(1) or 1.1(4) above, or as otherwise agreed.
7. Refueling services.

All of the above COMPANY Scope of Supply hereinafter called "Work".

1.2 By PURCHASER

1. PURCHASER shall assist COMPANY to the maximum extent practicable in accomplishing any Task Order.
2. PURCHASER shall approve procedures, as necessary, for the performance of each Task Order prior to the undertaking of such task by COMPANY.
3. PURCHASER shall be responsible for required decontamination of contaminated areas and for all health physics effort including provision of anti-contamination clothing, decontamination facilities and radiation monitoring equipment and personnel.
4. PURCHASER shall provide licensed operators as may be required.
5. PURCHASER shall make available to COMPANY special tools procured by PURCHASER, plant facilities (including desk and storage space for COMPANY personnel and equipment) and such other services (i.e., cranes, their operators and supervision, power, light, compressed air, water, slings, shackles and other consumables) as may be required by COMPANY in performance of any Task Order.
6. PURCHASER shall furnish such other personnel, facilities or services as may be specified in any Task Order.

2.0 ORDERING METHOD

PURCHASER will use the following method for ordering Work under this Contract:

- 2.1 PURCHASER will deliver to COMPANY a Purchase Order or Letter Order (herein collectively Task Order) for each separate task stating:

1. work ordered under each task.
2. Limitations, financial or otherwise.
3. Desired schedule.
4. That COMPANY's proposal for such task (if any) is incorporated into the Task Order by reference.
5. Reference to this Contract with the statement: "This Task Order is subject to the terms and conditions of the Master Services Contract between PURCHASER (by name) and The Babcock & Wilcox Company entered into as of (date appearing in first paragraph of Page 1 of this Contract); all other terms and conditions appearing on this order are null and void."
6. Such special provisions as may be specifically agreed for that Task Order.

2.2 COMPANY shall, within ten working days after receipt of any such Task Order, accept it, or reject it because of lack of availability within COMPANY's resources of manpower, equipment, or facilities, or as beyond the scope of this Contract or containing an unreasonable or unacceptable request.

Task Orders shall be effective only after they have been accepted in writing by an authorized representative of COMPANY.

3.0 PRICE

PURCHASER shall pay COMPANY for Work hereunder at the prices indicated in Attachment A hereto or at the price as may be mutually agreed in advance for a specific Task Order.

COMPANY shall not be reimbursed for overtime unless authorized by PURCHASER. COMPANY reserves the right to modify Attachment A from time to time except that PURCHASER shall receive thirty (30) days' notice of such modifications prior to their effective date.

4.0 TERMS OF PAYMENT

Invoices shall be issued monthly by COMPANY based on the Work performed the previous month. Equipment and Parts will be invoiced by COMPANY as shipment thereof is made. All payments shall be due, net thirty (30) days from receipt of invoice.

COMPANY shall keep accurate records and books of account showing all manhours expended and disbursements or expenses made or incurred by COMPANY in the performance of the Work. Upon the written request of and at the expense of PURCHASER, COMPANY will have an independent auditor, employed in COMPANY's normal course of business, certify invoices and/or accounting records. Such certifications shall be performed not more frequently than once each year during the performance of the work. In addition, PURCHASER may require that such an audit be performed at any time within one year following expiration or termination of this contract.

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5.0 BACKCHARGES

COMPANY shall not be called upon to make any payments or allowances for material, labor, repair, or alterations unless specifically authorized by it in writing.

6.0 TAXES

The prices provided for herein or to be provided hereunder are exclusive of any present or future Federal, State, Municipal, or other sales or use tax with respect to the Work covered hereby, or any other present or future excise tax upon or measured by the gross receipts from this transaction or any allocated portion thereof or by the gross value of the Work covered hereby, and of any present or future property tax or similar charge with respect to the Work covered hereby. If COMPANY is required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction or the Work covered hereby, then such amount of tax shall be paid by PURCHASER in addition to the prices provided for herein.

7.0 PERMITS

Where the laws, rules or regulations, federal, state, or local, or any agency thereof, require permits, licenses or approval of plans and specifications for the Work, or permits or licenses for the installation or use thereof; PURCHASER assumes the responsibility for securing such permits, licenses and approvals from the proper authorities and for paying any required fees.

8.0 TITLE AND RISK OF LOSS OR DAMAGE

All risk of loss or damage and title to any Equipment and Parts furnished under this Contract shall pass to PURCHASER upon delivery thereof f.o.b. carrier at point of shipment.

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9.0 TERM OF PERFORMANCE AND TERMINATION

This Contract shall be effective as of the date stated in the opening paragraph hereof and shall continue in effect until terminated by thirty (30) days' written notice by either party to the other party. Task Orders, accepted by COMPANY but not completed upon termination of the Contract, will at PURCHASER'S option be completed by the parties pursuant to all terms and conditions of this Contract.

PURCHASER may elect to terminate any Task Order which is not complete by providing prior written notice. In such event, PURCHASER shall pay COMPANY, upon invoicing, at the rates specified in Attachment A, for that portion of work performed under the uncompleted Task Order as of the date of termination; plus all costs and expenses incurred by COMPANY as a result of such termination. COMPANY shall use its best efforts to negotiate releases from any contracts for material and/or labor if so requested by PURCHASER; and provided, further, that all work and equipment paid for by PURCHASER shall become the property of PURCHASER and shall be delivered, at PURCHASER'S option, to it.

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10.0 WARRANTY

10.1 Spare or Replacement Parts

Any part furnished to PURCHASER which fails to conform with the dimensions and/or materials specified in the Task Order will, at COMPANY's option, be repaired or replaced FOB point of shipment, or credit will be allowed for the price paid COMPANY by PURCHASER for such defective Part, provided written claim is made by PURCHASER within thirty (30) days after delivery thereof; use of such Part is promptly discontinued and such Part is returned at COMPANY's request with reasonable promptness after delivery. COMPANY will, when exercising its option to repair or replace such non-conforming Part, furnish instructions for disposition of the non-conforming Part.

10.2 Repair Work

COMPANY warrants repair work performed under this Contract to be free from defects in workmanship. This Warranty shall be effective for a period as specified in each individual Task Order or, in event no such period is specified in a Task Order, for a period of ninety (90) days from the date of performance of any individual repair. COMPANY shall reperform any repair work which proves defective in workmanship within the warranty period, if such defect was caused solely by negligence of COMPANY, provided that written notice of any claimed defect be given to COMPANY within thirty (30) calendar days from the date the defect is detected by PURCHASER.

10.3 Equipment

COMPANY warrants that any Equipment delivered hereunder will be free from defects in workmanship and material for ninety (90) days from date of delivery. Any part of the Equipment furnished PURCHASER which fails to conform to this warranty will at COMPANY's option be repaired or replaced FOB point of shipment, or credit will be allowed for the price paid COMPANY by PURCHASER for such defective Equipment, provided written claim is made by PURCHASER within thirty (30) days from the date the failure is detected by PURCHASER.

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10.4 Engineering and Technical Advice and Consultation (Services)

COMPANY warrants that the Advice and Consultation Services performed under this contract will be performed by competent personnel in accordance with the applicable industry standards and practices current at the time of COMPANY'S quotation for each particular service involved. COMPANY'S obligations under this services warranty will expire ninety (90) days after the services are performed. In the event that such services are not performed in accordance with this warranty and are thus deemed unsatisfactory, and provided that written notice of any claimed defect is given COMPANY within said ninety days, COMPANY shall reperform such services promptly and at its own expense.

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10.5 Conditions of Warranty

The warranty is effective only if the following conditions are met:

- A. The Equipment, Parts and Work shall be unloaded, stored, maintained, installed, and protected from damaging agents by PURCHASER and shall not be operated beyond any ratings and shall be operated in a normal and proper manner.
- B. If COMPANY elects to repair and/or replace any defective Equipment or Part or to reperform any Work, PURCHASER shall be obligated at its own expense to provide access to and to decontaminate any such Equipment, Parts or area of Work which may be contaminated so that radiation from such parts or area shall be reduced to permissible levels, and until this has been done COMPANY shall be under no obligation to correct the defects. Permissible levels of radiation are defined as those prescribed as acceptable to the Nuclear Regulatory Commission at the time such repairs are made. If any Federal, State, or local regulatory agency having jurisdiction determines that more stringent levels of radiation are necessary or desirable for protection against radiation hazards, the most stringent of such levels then in effect shall forthwith be held applicable to this Contract.
- C. PURCHASER shall at no expense to COMPANY, provide plant personnel and facilities to assist in any activity which may be required of COMPANY by this warranty. Charges for removal of defective Equipment or Parts, installation of replacement Equipment or Parts, required decontamination and transportation for disposition of Equipment or Parts shall be for PURCHASER's account.
- D. No claim for breach of warranty shall be made unless notice thereof is given COMPANY in accordance with the applicable provisions of this Article during the tenure of the applicable warranty period.

10.6 Warranty Disclaimer

Anything in this Contract to the contrary notwithstanding, COMPANY shall not be responsible for suitability or performance of equipment or parts furnished, or repairs made or work done by others, or for loss or expenses arising from same unless same is specifically ordered by COMPANY.

THE WARRANTIES AND REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND NO OTHER WARRANTY OR REMEDY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

11.0 LIMITATION OF LIABILITY

11.1 Neither COMPANY nor its suppliers shall be liable, whether arising under contract, tort (including negligence), or otherwise, for loss of anticipated profits, loss by reason of plant shutdown, nonoperation or increased expense of operation, service interruptions, cost of purchased or replacement power, claims of customers, loss of use of capital or revenue, cost of money, or for any special, direct, incidental, or consequential loss or damage of any nature arising at any time from any cause whatsoever.

11.2 In any event, the total liability of COMPANY and its suppliers, whether in contract, tort (including negligence), or otherwise, shall not exceed the price of the Task Order under which liability is incurred. In applying this limitation any damages paid or payable to PURCHASER by COMPANY as well as any expense incurred by COMPANY under Article 10.0 WARRANTY and Article 21.0 PATENT INDEMNITY, shall be credited against COMPANY's total liability.

11.3 The provisions of this Article shall apply notwithstanding any other provision of this Contract or of any other agreement.

12.0 INDEMNIFICATION

12.1 Loss or Damage to Property and Injury to Persons

For Work performed hereunder by COMPANY at PURCHASER's Plant Site, COMPANY indemnifies and holds harmless PURCHASER - except to the extent PURCHASER is or

would be compensated by insurance - against all losses, claims, damages, or liabilities arising out of or based upon bodily injury (including death at any time resulting therefrom) occurring prior to completion of the Work under any individual Task Order, when due to the negligence of COMPANY or its suppliers provided such bodily injury (including death at any time resulting therefrom) does not result from or is not caused in whole or in part directly or indirectly by a "nuclear incident" as defined in the Atomic Energy Act of 1954, as amended.

PURCHASER waives any and all rights and remedies against COMPANY and its suppliers, whether in contract or tort (including negligence) or otherwise for loss of, damage to, or loss of use of, any property at PURCHASER's Plant Site no matter how caused and regardless of fault.

PURCHASER indemnifies and holds harmless COMPANY and its suppliers against all losses, claims, damages or liabilities arising out of or based upon bodily injury (including death at any time resulting therefrom) when due to other than the negligence of COMPANY or its supplier or, regardless of negligence, losses, claims, damages or liabilities arising out of or based upon bodily injury (including death at any time resulting therefrom) and loss of or damage to any property located on or off the PURCHASER's Plant Site whenever or wherever occurring, when resulting in whole or in part directly or indirectly from a "nuclear incident" as defined in the Atomic Energy Act of 1954, as amended.

12.2 Indemnity - Trainees

- A. COMPANY may provide training as specified in any individual Task Order for a number of PURCHASER's personnel. COMPANY, at the conclusion of the training program, will furnish to PURCHASER, and to each individual trainee, if applicable, and if so requested by PURCHASER, a certificate to the effect that the named individual has completed the training program offered by COMPANY. Such certificates, however, shall not be claimed by any person or persons (including without limitation PURCHASER or any of the named individual(s)) as being a certification by COMPANY with respect to the qualifications or competence of the named individual(s), either jointly or severally.

B. COMPANY shall not, in any manner, be held liable for, and shall be indemnified and held harmless by PURCHASER from, and against any and all liability for claims, suits, judgments and expenses (including expenses of litigation and/or settlement connected therewith) with respect to damage to or loss of property and bodily injuries (including death), occurring at any time and from whatever cause sustained by any person or persons (including without limitation the trainees hereunder, and any and all of their respective heirs, successors, and assigns) and arising out of or connected in any manner with any acts, omissions or failure to act on the part of any of the said individuals, jointly or severally, in the course of the training program, in the course of seeking licenses as may be applied for, or in the course of the operation of any nuclear reactor.

13.0 INSURANCE

13.1 BY COMPANY: COMPANY shall provide and maintain minimum insurance coverage as follows:

a. Workman's Compensation: Statutory Limits
Employer's Liability: \$100,000

b. General Liability:

Bodily Injury \$ 500,000 each person
\$1,000,000 each occurrence

Property Damage \$ 500,000 each occurrence

c. Automobile: Bodily Injury:

\$100,000 each person
\$300,000 each occurrence

Property Damage:

\$100,000 each occurrence

Upon request, COMPANY shall provide PURCHASER with a suitable certificate of such insurance providing that such insurance shall not be terminated unless PURCHASER is first given thirty (30) days' written notice to such effect.

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13.2 By PURCHASER: PURCHASER agrees that the Work to be furnished hereunder shall not be used or operated in connection with, or in any manner associated with a nuclear or atomic energy activity or facility unless and until (a) PURCHASER shall have entered into an agreement of indemnification with the Nuclear Regulatory Commission, or successor agency, as provided under Section 170 of the Atomic Energy Act of 1954, as amended, and (b) PURCHASER shall have obtained such policy or policies of insurance, or shall have provided financial protection of such type and in such amounts as the Nuclear Regulatory Commission, or successor agency, shall require as a condition of its entering into the indemnity agreement referred to in (a) above. PURCHASER agrees that COMPANY and its suppliers shall be included among the persons indemnified under (a) above, and among the named insureds or persons protected under (b) above. PURCHASER further agrees, with respect to the insurance secured from the nuclear-energy insurance pools, to secure and maintain any and all of the amendatory endorsements available at any time which extend the insurance in terms of its coverage and/or its limits of liability. PURCHASER agrees to maintain such indemnification agreement, and insurance or other financial protection in full force and effect so long as the Work furnished hereunder shall be used.

For its own protection and the protection of COMPANY and its suppliers, PURCHASER shall secure and maintain in force property damage insurance in the form of a policy from the Nuclear Energy Liability Property Insurance Association (NEL-PIA) and/or the Mutual Atomic Energy Reinsurance Pool (MAERP), or equivalent, under which COMPANY and its suppliers will be named insureds, covering all property at PURCHASER's Plant Site; and to the extent possible in the exercise of its best efforts will obtain such property damage insurance for the full value. Said property damage insurance shall be maintained in effect from the time nuclear fuel first arrives at PURCHASER's Plant Site.

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14.0 DELAY IN PERFORMANCE

COMPANY shall not be liable for any expense, loss or damage resulting from delay or prevention of performance caused by fires, floods, Acts of God, strikes, labor disputes, labor shortages, inability to secure materials or equipment, fuel or other energy shortages, riots, thefts, accidents, transportation delays, acts or failure to act of Government or PURCHASER, delay in obtaining licenses, major equipment breakdown, or any other cause whatsoever, whether similar or dissimilar to those enumerated above, beyond the reasonable control of COMPANY. In the event of any delay arising by reason of any of the foregoing, the time for performance shall be extended by a period of time equal to the time lost by reason of such delay. When COMPANY is providing engineering, technical, maintenance, or repair services under this Contract at a site other than that owned or controlled by COMPANY, PURCHASER shall pay COMPANY at the rates specified in this Contract for delays due to the unavailability of the plant or unavailability of PURCHASER'S equipment required to perform particular task order or due to delays at the request of PURCHASER or as a result of PURCHASER'S actions or inactions.

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15.0 QUALITY ASSURANCE, CONTROL, RECORDS AND INSPECTION

15.1 Quality Assurance Program

COMPANY's Nuclear Power Generation Division maintains a Quality Assurance Program, as described in Topical Report BAW-10096A, which meets published NRC requirements related to quality assurance and quality control as of the effective date of this Contract. Changes to the Quality Assurance Program may only be made in accordance with the applicable provisions of Article 16.0, CHANGES. COMPANY's Nuclear Power Generation Division shall, in accordance with its Quality Assurance Program, administer the program.

15.2 Quality Assurance Procedures

During the course of the Work, COMPANY will make its quality assurance procedures and those of its supplier (suppliers as used in this Article is as defined in the Quality Assurance Program) available for review by PURCHASER at COMPANY's facilities which such procedures are normally located.

15.3 Inspections

PURCHASER's designated quality assurance representatives shall have reasonable access to those parts of COMPANY's and its suppliers' premises which are used for the manufacture, inspection, or testing of the Equipment or Parts for the purpose of inspecting the work and witnessing shop tests. PURCHASER's representatives will, at COMPANY option, be accompanied by a COMPANY representative at all times. COMPANY shall notify PURCHASER in advance of scheduled principal stages of fabrication and tests so that PURCHASER's designated representative may be present, if desired.

16.0 CHANGES

16.1 By PURCHASER

PURCHASER may initiate changes in the Work to be furnished hereunder provided that the price, performance schedule, warranty, and other affected provisions of the Contract are equitably adjusted by mutual agreement prior to implementation of the change.

If PURCHASER proposes a change which requires analytical or investigative work to determine the feasibility or method of making the change, PURCHASER shall pay COMPANY its then standard commercial rates for such analytical or investigative work.

16.2 By COMPANY

COMPANY may initiate changes in the Work to be furnished hereunder without change in price if such changes will not adversely affect its warranties, the technical soundness of the work, or the time of performance. COMPANY shall inform PURCHASER and obtain approval of any proposed significant change, which change is defined as one which would adversely affect COMPANY's warranty, technical soundness of the work, the operability of the Equipment, or time of performance.

16.3 In no event shall COMPANY be obligated to make, or to bear the expense of, any changes (including modifications or additions) in any equipment, material, service or other part of PURCHASER's Plant, whether or not such changes are required as a result of changes in the Work which are the obligation of COMPANY to perform under the provisions of this Article.

17.0 COMPANY - TRAINEE RELATIONS

17.1 Training of PURCHASER's trainees by COMPANY shall in no way be construed as constituting an employer/employee relationship between COMPANY and PURCHASER's trainees.

17.2 Trainees shall remain employees of PURCHASER who shall be fully and solely responsible for payment of its trainees' travel, lodging, subsistence, employee benefits and any and all other expenses of whatever description, in accordance with personnel policies of PURCHASER and the provisions of applicable laws including, but not limited to, obligations under Workman's Compensation Acts and Occupational Diseases Acts.

18.0 OPERATION OF EQUIPMENT - INTERPRETATION OF DATA

18.1 COMPANY's personnel are authorized only to consult with PURCHASER and are not authorized to operate PURCHASER's equipment. All operation of such equipment shall be performed by and under the control of PURCHASER. Personnel of COMPANY may, if permitted under the terms of a Task Order, operate PURCHASER's equipment which is intended solely for use as test or repair or maintenance equipment.

18.2 Where applicable, COMPANY'S personnel shall advise and consult with PURCHASER concerning data generated or obtained in connection with the performances of any task under this Contract, however, PURCHASER accepts total responsibility for the analysis or interpretation of such data and for judging what actions are required as the result of the data generated or obtained or any analysis or interpretation thereof.

19.0 PROPRIETARY INFORMATION

19.1 Any proprietary information concerning COMPANY'S or its suppliers' products or manufacturing process which is so designated by COMPANY or its suppliers and disclosed to PURCHASER incident to the performance of this Contract shall remain the property of COMPANY or its suppliers and is disclosed in confidence, and PURCHASER shall not publish or otherwise disclose it to others without the written approval of COMPANY, and no rights implied or otherwise are granted to produce or have produced any such products or to practice or cause to be practiced any such manufacturing processes or other processes.

19.2 Notwithstanding the above, PURCHASER may provide the NRC or any other regulatory agency with any such proprietary information as the NRC or such other agency may require; provided, however, that PURCHASER shall first give COMPANY written notice of such proposed disclosure and COMPANY shall have the right to amend such proprietary information so as to make it nonproprietary. In the event that COMPANY cannot amend such proprietary information, PURCHASER shall, prior to disclosing such information use its best effort to obtain a commitment from NRC or such other agency to have such information withheld from public inspection. COMPANY shall be given the right to participate in pursuit of such confidential treatment.

19.3 Notwithstanding the foregoing, PURCHASER may disclose to the other owners of TMI - Unit 1 or to the GPU Service Corporation, for their own internal use only, information furnished under this contract; provided, however, that such other owners and GPU Service Corporation shall be bound by the limitations of sub-articles 19.1 and 19.2.

20.0 DATA

COMPANY shall have and retain the right to publish, use, have used, and permit others so to do any information or data used, developed, or acquired by COMPANY in the course of performance of the Work hereunder unless otherwise specifically agreed for an individual Task Order.

21.0 PATENT INDEMNITY

COMPANY shall defend at its own expense any suit or action brought against PURCHASER based on a claim that the equipment furnished hereunder, or any part thereof, or the designed use of same, constitutes infringement of any patent of the United States, and COMPANY shall also pay all costs and damages awarded therein against PURCHASER. In case such equipment, or any part thereof, is in such suit held to constitute infringement and its use is enjoined, COMPANY shall, at its option and own expense either: procure for PURCHASER the right to continue to use such equipment, or any part thereof or replace it with substantially equivalent non-infringing equipment; or modify it so it becomes non-infringing. Where PURCHASER has given written instructions to COMPANY which direct (1) a specified manner of performance of the Contract or (2) a specific design or arrangement of equipment, or any part thereof, PURCHASER shall defend at its own expense any suit or action based on a claim that the equipment, or any part thereof, constitutes infringement of a United States patent, where such infringement results from such written instructions, and PURCHASER shall also pay all costs and damages awarded therein against COMPANY. The foregoing sets forth the entire liability of the parties with respect to patent infringement.

Neither PURCHASER nor COMPANY shall have the right to claim indemnity under this Article unless prompt notice of the assertion of any claim for which indemnity is sought is given in writing and unless the party seeking indemnity makes available to the other party all other needed information, assistance, and authority it possesses for the defense of any suit or proceeding in which such claim is asserted.

Neither party shall be responsible for any settlement of such suit, action or proceeding made without its consent.

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22.0 CONTROLLED RADIATION AREA

COMPANY, prior to permitting any of its employees to work in controlled radiation areas at TMI - Unit 1, shall certify to PURCHASER, based upon a reasonable investigation as to each employee, that such employee's general health and physical condition is such as to permit the performance of assigned duties and that such employee does not have any physical condition or corrective device that restricts the mobility of such employee or precludes the wearing of protective clothing and equipment. To the extent COMPANY obtains on its own or receives from its employees any records of physical examinations, it shall maintain complete records thereof for inspection and use by PURCHASER, or PURCHASER'S authorized representative.

Further, COMPANY shall require each such employee to submit to all of the following unless specifically waived in a particular instance by PURCHASER:

- a. Prior to working in a controlled radiation area - a urine sample and fully complying with PURCHASER'S "previous radiation exposure history inquiry".
- b. Prior to or simultaneously with such employee's termination of employment based on the radiation protection supervisor's judgment, a urine sample.
- c. Such other examinations and tests as PURCHASER may require from time to time.

PURCHASER shall bear the cost of performing the aforesaid urine sample and other examinations and tests performed under provision (c) of this article.

23.0 NON-DISCRIMINATION IN EMPLOYMENT

COMPANY shall, to the extent which it would be required to do so if this contract were a contract between COMPANY and the Government of the United States of America, comply with the provisions of Presidential Executive Order No. 11246 of September 24, 1965, and all other orders, regulations, and laws governing nondiscrimination in employment.

24.0 THIRD PARTY BENEFICIARY

No provisions of this Contract is intended or shall be construed to be for the benefit of any third party, except as provided herein with respect to COMPANY'S suppliers.

25.0 ASSIGNMENT

Any attempt to assign this Contract shall be void unless prior thereto the parties have mutually agreed to assignment by a duly executed agreement.

26.0 NOTIFICATION OF CLAIMS

PURCHASER shall notify COMPANY immediately by Registered Mail addressed to Vice President, NPGD, P.O. Box 1260, Lynchburg, Virginia, 24505, of all claims brought against the PURCHASER for which COMPANY may be liable, and COMPANY shall notify PURCHASER immediately by Registered Mail addressed to PURCHASER at P.O. Box 580, Hiddletown, PA., 17057, of all claims brought against COMPANY for which PURCHASER may be liable.

27.0 APPLICABLE LAW

This Contract shall be interpreted in accordance with the laws of the State of Pennsylvania.

28.0 INTEGRATION

There are no understandings between the parties hereto as to the subject matter of this Contract other than as set forth herein. All previous communications concerning the subject matter of this Contract, either verbal or written, are hereby abrogated and withdrawn and this Contract constitutes the whole agreement between the parties. Any provisions of a purchase order or specification which may be issued hereafter shall not be binding on the parties unless duly approved in writing by an authorized representative of each party.

This Contract may not be changed or modified except by a written amendment executed by a duly authorized representative of each party.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year hereinabove first written.

THE METROPOLITAN EDISON COMPANY
PURCHASER

By _____

Witness: _____

Title _____

THE BABCOCK & WILCOX COMPANY

By _____

Witness: _____

Title _____

Q 4417

2012 2 19 6