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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

CONSUMERS POWER COMPANY

(Midland Plant, Units 1 and 2)

Renfro

Place - Atlanta, Georgia

Date - Wednesday, 23 May 1979

Pages 1-220

7907110652

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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In the Matter of: :
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CONSUMERS POWER COMPANY : Docket Nos. 50-329
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50-330
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(Midland Plant, Units 1 and 2) :
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DEPOSITION OF REX RENFROW

Atlanta, Georgia
Wednesday, May 23, 1979

Deposition of REX RENFROW, called for examination by agreement of counsel, at Nuclear Regulator Commission Atlanta Regional Office, Atlanta, Georgia, at 8:55 a.m., before Elisabeth R. Craft, a notary public in and for the District of Columbia, when were present on behalf of the respective parties:

GERALD CHARNOFF, ESQ., and WM. BRADFORD REYNOLDS, ESQ.,
Shaw, Pittman, Potts & Trowbridge, 1800 M. Street, N. W.,
Washington, D. C., 20036; on behalf of Consumers Power
Company; and
RONALD ZAMARIN, ESQ., Isham, Lincoln & Beale, One First
National Plaza, Chicago, Illinois, 60603; on behalf of
Consumers Power Company.

WILLIAM C. POTTER, JR., ESQ., Fischer, Franklin, Ford,
Simon & Hogg, 1700 Guardian Building, Detroit,
Michigan, 48226; on behalf of Dow Chemical; and
R. L. (RON) DAVIS, ESQ., and LEE NUTE, ESQ., Michigan
Division, Legal Department, Dow Chemical USA, 47 Build-
ing, Midland, Michigan, 48640; on behalf f Dow Chemical.

WILLIAM J. OLMSTEAD, ESQ., and DENNIS C. DAMBLY, ESQ.,
Office of the Executive Legal Director, Nuclear
Regulatory Commission, Washington, D. C.; on behalf
of the NRC.

C A N T E N T SWITNESS:DIRECTCROSS

Rex Renfrow

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P R O C E E D I N G S

1
2 MR. DAMBLY: Will you stipulate the reporter who
3 is a Notary Public in the District of Columbia can swear the
4 witness?

5 MR. POTTER: I will stipulate the reporter can swear
6 the witness.

7 Whereupon,

8 REX RENFROW

9 was called as a witness by agreement of counsel and, having
10 been first duly sworn, was examined and testified as follows:

11 MR. OLMSTEAD: I am William Olmstead, counsel for
12 the NRC staff. And with me is Dennis Dambly, counsel for
13 the NRC staff, who will conduct the testimony this morning.

14 And before we start, I would like to note that Mr.
15 Lee Nute is in the room. And because of the agreement we
16 had previously, I am not objecting, but for the Board's
17 information, I thought it ought to be noted on the record.

18 MR. POTTER: Okay.

19 DIRECT EXAMINATION

20 BY MR. DAMBLY:

21 Q Mr. Renfrow, as you are no doubt aware, due to
22 some alleged irregularities in the Midland Suspension Hearing
23 back in December of '76 through February of '77, there has
24 been an order by the Atomic Safety and Licensing Board that
25 a hearing be held to look into that.

1 And as a result of a Prehearing Conference held
2 May 1 of this year, the Board has set forth the following
3 five issues which should be inquired into at this hearing.
4 For the record, those issues are:

5 1. Whether there was an attempt by parties or
6 attorneys to prevent full disclosure of or to withhold relevant
7 factual information from the Licensing Board in the suspension
8 hearings.

9 Issue No. 2. Whether there was a failure to make
10 affirmative, full disclosure on the record of the material
11 facts relating to Dow's intentions concerning performance of
12 its contract with Consumers.

13 Issue No. 3. Whether there was an attempt to
14 present misleading testimony to the Licensing Board concern-
15 ing Dow's intentions.

16 Issue No. 4. Whether any of the parties or
17 attorneys attempted to mislead the Licensing Board concerning
18 the preparation of the Temple testimony.

19 Issue No. 5. What sanctions, if any, should be
20 imposed as a result of affirmative finds on any of the above
21 issues.

22 Would you please state your name and address for
23 the record?

24 A My name is Rex Renfrow. I live at 5675 Roswell
25 Road in Atlanta.

1 Q What is your present employment?

2 A I am a Center Manager for est, Education Corporation.

3 Q Are you represented by counsel for the purpose of
4 this deposition and/or the Remand Proceeding?

5 A Yes.

6 Q Would you state who that is for the record?

7 A Yes. That would be the firm of Shaw, Pittman,
8 Potts and Trowbridge, Jerry Charnoff and Brad Reynolds.

9 Q In general terms, what was your relationship to
10 the Consumers Power Company in regard to the Midland Nuclear
11 Facility?

12 MR. REYNOLDS: Let's get a time frame just to start
13 things off. Because maybe that would be quicker.

14 BY MR. DAMBLY:

15 Q That's what I am looking for, the whole history
16 in general. When did you first, if you did, become involved
17 with Consumers Power?

18 A I think the year was 1974. I worked as an asso-
19 ciate with Isham, Lincoln and Beale on two matters for Con-
20 sumers -- one concerning the Palisades Plant, and the other
21 matter I worked on was the Midland Quality Assurance Hearing.

22 Q This was back in 1974?

23 A Um-hum.

24 Q How long did that continue? Through what period?

25 A I don't remember. About a year. Nine months to

1 a year.

2 Q In preparation for this deposition, have you
3 reviewed any documents?

4 A I have seen the filing that was made; that's all.

5 Q By "the filing that was made," what do you mean?

6 A Filing of Shaw Pittman on behalf of Consumers.

7 Q You have not had an opportunity to look back over
8 Mr. Nute's notes or Mr. Duran's notes?

9 A Some of those notes were attached to the filing
10 itself.

11 Q Have you had any discussions with any of the
12 parties or principles or witnesses to this Remand Proceeding?
13 And the witnesses would be --

14 A No.

15 Q You haven't? That might be easier.

16 A I have had a discussion with Mr. Charnoff and Mr.
17 Reynolds.

18 Did you hear that?

19 Q No.

20 A I have had a discussion with Mr. Charnoff and Mr.
21 Reynolds.

22 Q Would you be willing to state on the record that
23 you will not discuss your deposition with other than your
24 counsel any of the parties or witnesses to the proceedings?
25 And I guess the people that I have in mind by that would be

1 Mr. Bacon, Mr. Rosso, Mr. Miller, Mr. Falahee, Mr. Aymond,
2 Mr. Youngdahl, Mr. Wessel. I would say Mr. Nute, but he
3 is here so obviously, he is going to hear your deposition.
4 And Mr. Duran.

5 A Sure.

6 Q When did you first become involved in the Remand
7 Proceeding that resulted from the Aeschliman Court of Appeals
8 Decision in July of '76?

9 A To the best of my recollection, it was either late
10 August or early September of that year. That year would be
11 1976.

12 Q Were you ever involved in any of the contract
13 negotiations between Consumers Power and Dow?

14 A No.

15 Q Prior to your involvement, which I guess would be
16 early August or late August, early September, of '76, were
17 you ever aware that Dow contemplated suing Consumers Power
18 for breach of contract?

19 A No.

20 Q Did you ever learn that Dow was considering suing
21 Consumers Power for breach of contract?

22 MR. POTTER: On the record, I object to the
23 characterization of that and, obviously, the former one, too,
24 but go ahead.

25 THE WITNESS: Yes.

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1 BY MR. DAMBLY:

2 Q When did you become aware of that?

3 A I don't recall the exact date. It was either in a
4 conversation with Mr. Bacon or in a conversation with Mr.
5 Wessel. That would have been fall of '76.

6 Q You don't remember which of the two?

7 A No.

8 Q Do you remember what was said?

9 A No.

10 Q Do you recall in at least putting a time frame,
11 did you learn about this prior to the start of the Remand
12 Proceeding? I guess it was November 30 of '76.

13 A You mean the hearing itself?

14 Q The hearing itself.

15 A Yes.

16 Q Between July, '76, and September 1 of 1976, did
17 you have any contacts with Dow Chemical concerning the upcom-
18 ing Remand Proceeding?

19 A Will you give me the dates again?

20 Q July, '76, which is July 21, I guess it was, the
21 Court of Appeals Decision, and September 21, 1976.

22 A No.

23 Q Between those same dates, did you have any con-
24 tact with Consumers Power personnel?

25 A Yes.

1 Q Do you remember who and when?

2 A Probably not all of them. The contacts that I
3 had?

4 Q The ones you do remember.

5 MR. REYNOLDS: Met me just ask, are you interested
6 in knowing the individuals in Consumers during the period
7 from July to September, '76, that he had contact with? Is
8 that really what you are asking for?

9 MR. DAMBLY: Yes.

10 MR. REYNOLDS: Fine.

11 THE WITNESS: Anything I told you, I would make
12 up before about the middle of September. I had an ongoing
13 relationship with Mr. Keeley, Mr. Howell, Mr. Bacon, personal
14 relationships. So I may have talked to them during that period.
15 And I don't remember.

16 If you have a calendar of '76, I can probably
17 give you some dates better than trying to take it off the top
18 of my head.

19 MR. DAMBLY: Does anyone have one?

20 MR. REYNOLDS: Let the record show we found a '76
21 calendar thanks to Mr. Olmstead.

22 THE WITNESS: During the week of September 13,
23 I went up to Jackson to Consumers and began to look into the
24 history of the case, what had gone on in the actual Midland
25 Licensing Proceeding, and to begin to get documents together

1 concerning --

2 BY MR. DAMBLY:

3 Q Which week was that again?

4 A September 13.

5 I met with Mr. Bacon, Mr. Falahee, Mr. Howell, Mr.
6 Keeley, perhaps some others, but that's all I remember.

7 Q At the time of these initial meetings with Keeley,
8 Howell, Bacon and Falahee, did you get a feeling for the
9 relationship at that time between Dow and Consumers Power
10 Company?

11 A As time went on during that week, I did.

12 Q What feeling did you get or what impression?

13 A Perhaps on Wednesday or Thursday of that week, I
14 learned that at a meeting on September 13 that the Michigan
15 Division of Dow, basically represented by Joe Temple, had told
16 Consumers people that the Michigan Division's position was
17 in essence that they didn't think that the nuclear project
18 was any longer in Dow's best interest and that they had
19 recommended to the Corporate Review Board, which, as I under-
20 stand it, is actually Dow USA, that they review Dow's parti-
21 cipation in the contract.

22 At that time, Consumers had been told that Dow
23 did not want them to have any input in that corporate review.

24 Around the middle to the end of that week, the
25 activity at Consumers concerned obtaining from Dow the ability

1 to have some input into whatever decision the corporate
2 decisionmakers were going to make. That was obtained sometime
3 during that week in a meeting set up for September 21.

4 I was asked -- I don't remember the exact topic
5 of the meeting, but I was asked by Mr. Falahee and Mr. Bacon
6 to prepare a presentation on the issues involved in both the
7 suspension hearing and the full hearing, time schedules, time
8 frames, what was expected to be gone into, in answer to some
9 of Dow's questions.

10 I did that, I believe, over the weekend that week,
11 and then flew with Mr. Howell, Mr. Bacon, Mr. Falahee and Mr.
12 Keeley into Midland the morning of the 21st.

13 Q You first learned the Michigan Division position
14 during or shortly after, I guess, the September 13 meeting?

15 A Yes, a couple or three days.

16 Q Who did you hear that from or how did you learn of
17 that Michigan Division position?

18 A To the best of my recollection, it was from Mr.
19 Falahee and Mr. Bacon.

20 Q How did they characterize it?

21 A I don't remember. If you want to know if they were
22 concerned, they were concerned.

23 Q You said originally that at the September 13 meeting
24 Dow did not want Consumers to have input into the corporate
25 review. Do you know how Consumers changed Dow's mind to get

1 input into the corporate review?

2 A It is not quite what I said, and you have to be
3 careful when you talk about that. What I said was that Joe
4 Temple had told them at that time there would not be any
5 input by Consumers.

6 And when the Corporate Review Board -- and I don't
7 know the internal machinations or what went on -- when the
8 Corporate Review Board which was, I believe, called Dow USA,
9 actually started their review, they did ask for some Consumers
10 input on a select number of issues and not on others.

11 I don't know exactly what went on in the internal
12 machinations that caused that.

13 Q To the best of your recollection, Dow either
14 changed Mr. Temple's mind or --

15 A As I understand it -- you really have to ask Dow
16 -- that was a Dow corporate review, and Mr. Temple was not or
17 did not take part in that review. I believe he was asked
18 some input into one of the committees, but that was an
19 independent review done by Dow USA as I understand it.

20 Q To the best of your knowledge, Consumers didn't take
21 any action which resulted in them having an input into that?

22 MR. REYNOLDS: Let me have that back again. Do
23 you want to restate it? I'm not sure I understand it.

24 MR. DAMBLY: As I understand what Mr. Renfrow
25 has now said, Mr. Temple took a position that he wanted no

1 Consumers input in the Dow corporate review. The Dow Task
2 Force or the Dow Board decided when they set the framework
3 for the review that there would be some Consumers input on
4 some issues.

5 My question is --

6 MR. POTTER: Let's find out first if that is
7 what the witness is testifying to. Is that what you are
8 testifying to?

9 THE WITNESS: I am lost. I don't have any idea.
10 If you are asking me whether or not I know of Consumers
11 called Dow and talked to them about input, I don't know. I
12 do know that Rus Youngdahl talked to Joe Temple after the
13 meeting on the 13th.

14 BY MR. DAMBLY:

15 Q How do you know that?

16 A Because I was told that. I don't know if anybody
17 else from Consumers talked to anybody else at Dow.

18 Q Who informed you of the conversation between Mr.
19 Youngdahl and Mr. Temple?

20 A Either Mr. Bacon or Mr. Falahee.

21 Q Did they indicate what was said during the con-
22 versation?

23 A Just that Mr. Youngdahl had again requested to Joe
24 that they be allowed to have some input into it.

25 Q After the Court of Appeals Decision in Aeschliman,

1 which would have been July, I believe, 21 of '76, between that
2 time frame and your involvement, let's say, in the week of
3 September 13, what planning took place at Isham, Lincoln
4 and Beale concerning the Remand Proceeding to your knowledge?

5 A I believe it was in late August that Judd called
6 and talked to Mike Miller about whether or not we would handle
7 the case for them. Mike told him yes. He then talked to me
8 about it.

9 I read the decisions, went back and read the
10 decisions, that had been issued by Licensing Boards on the
11 Midland Proceeding, and then went to Jackson. I probably
12 had some conversations with Judd during that period of time.

13 Q During, let's put it, September 13 through the
14 actual hearing itself, how independently did you function in
15 the representation of Consumers Power?

16 MR. REYNOLDS: How independently?

17 BY MR. DAMBLY:

18 Q Independently from Isham, Lincoln and Beale.

19 A I didn't.

20 Q Let me see if I can put this differently. The
21 decisions you made, courses that were pursued, lines of ques-
22 tioning, whatever, how much independent authority as opposed
23 to having that cleared with Mr. Rosso or Mr. Miller did you
24 have during that time frame?

25 A I was an associate with the firm them. The

1 managing partner that I reported to was Mike Miller. I
2 generally talked to Mike every day, let him know what I was
3 doing, where I planned on going, sought his advice.

4 Mr. Rosso at that time was tied up on a water case.
5 I actually did not begin to be able to work with him until
6 probably the end of the week of the 20th. The rest of the
7 time, I was talking to Mr. Miller.

8 MR. CHARNOFF: Twentieth of what?

9 THE WITNESS: September.

10 BY MR. DAMBLY:

11 Q It occurs to me that I didn't really get an answer
12 a while back when I asked you about your impression of the
13 relationship between Dow and Consumers prior to September 21.
14 You indicated that you had some feel that you got during the
15 week of the 13th after learning about Mr. Temple and up through
16 the end of that week.

17 But I don't recall that you ever said what your
18 impression of that relationship was.

19 A During the week of the 13th, it became real clear
20 that there were some corporate problems between the two
21 companies. But at that point, that is about all that I knew.

22 Q When did you first learn that there was going to
23 be a September 21, 1976, meeting between Dow and Consumers
24 Power?

25 A To the best of my recollection, it would have been

1 sometime after the 15th of September.

2 Q And what was your understanding of the purpose of
3 the September 21 meeting?

4 A The purpose of the 21st meeting? Well, there were
5 two meetings that occurred on the 21st. One was a meeting of
6 the technical people, Mr. Howell, Mr. Keeley, and some of
7 Dow's technical people. And then, there was a meeting with
8 Mr. Hares who was, as I remember, General Counsel of Dow
9 USA, Mr. Klomparens, Mr. Nute, Mr. Falahee, Mr. Bacon and
10 myself.

11 What that meeting concerned was basically the issues
12 that would have to be addressed in the hearings and what the
13 time frame was, what it looked like to us as the time frame
14 of reaching a decision on these matters would be.

15 Q Prior to that meeting, when you first learned
16 about the Michigan Division position, did you have any
17 conversations that you can recall with Mr. Bacon on his
18 opinion of the Michigan Division position?

19 A Prior to the time I learned of the position, no.

20 Q No, prior to the September 21 meeting, but after
21 you learned about it, did you have any conversations with Mr.
22 Bacon wherein he would have expressed his opinion of the
23 Michigan Division position and/or Mr. Temple's.

24 MR. REYNOLDS: Wait a minute now. Maybe we ought
25 to take it one at a time. I am just not sure what your

1 question is. Why don't we ask him first about the opinion
2 of the Michigan Division, and then you can expand.

3 THE WITNESS: I am sure that I did. And I don't
4 remember any specific conversations. Mr. Bacon and Consumers
5 were very concerned about the Dow position.

6 From my own personal point of view, we had a
7 brief to file with the Commission on the 28th. And at the
8 time I learned of the Dow review, we were told that they would
9 not reach a decision on what they were going to do until after
10 the 28th.

11 What I wanted, what I was concerned about, at that
12 time was that Dow reach its position, whatever it was going
13 to be, prior to the 28th so that we could notify the Com-
14 mission in that brief of what Dow's position was.

15 What we were told was that the Michigan Division
16 position was nothing but a recommendation. It was not a
17 Dow corporate position and that it should not be represented
18 as such.

19 BY MR. DAMBLY:

20 Q You were told that by whom?

21 A By Consumers personnel. I had no direct contact
22 with Dow at that time. At the meeting on the 21st, I believe
23 that was also stated. It was real clear that was not a Dow
24 corporate position; that was merely a recommendation from the
25 Michigan Division. And my concern was Dow completing its

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1 review and making its decision so that we could file a brief
2 with the Commission, letting them know what Dow's corporate
3 position was. That is mainly what I was concerned about that
4 week.

5 Q During that week, did anyone make any represen-
6 tations to you or --

7 MR. POTTER: Excuse me.

8 MR. DAMBLY: The week of September 13th.

9 MR. POTTER: No. If you finished that last set
10 of questions with Mr. Renfrow, I would just interject one
11 question.

12 Do I understand that you learned or were advised
13 that the Michigan Division Decision was merely a recommendation
14 before the September 21, 1976, meeting?

15 THE WITNESS: Yes. As I got it, when Mr. Temple
16 told Mr. Youngdahl that at September 13, he made it clear
17 that was the Michigan Division position and not a corporate
18 position and that what he had recommended was that the
19 Corporate Board who had signed the contract and made those
20 decisions review what Dow's position was going to be with
21 regard to the nuclear project.

22 And that was reiterated during that week and at
23 that meeting.

24 What I was concerned about was getting whatever
25 the ultimate Dow position was in time for us to inform the

1 Commission what that was.

2 MR. POTTER: Got you. Thank you.

3 BY MR. DAMBLY:

4 Q During that same week that we have been talking
5 about, did you have any indication or did anyone tell you or
6 did you draw a conclusion as to how the Michigan Division
7 position had been reached?

8 MR. REYNOLDS: This was during the week of September
9 13 to the 21st?

10 BY MR. DAMBLY:

11 Q Through the 21st.

12 A No.

13 Q Did anyone make any representations concerning, say,
14 Mr. Bacon or Mr. Falahee, who I guess would have been probably
15 the primary contacts, but anyone make any statements as to
16 their view of Mr. Temple and his role in the Michigan Division
17 position?

18 MR. REYNOLDS: Again, is this during that same
19 week?

20 BY MR. DAMBLY:

21 Q Same week.

22 A Let me have the question again.

23 MR. DAMBLY: Could you read that back?

24 (The Pending question was read by the reporter.)

25 THE WITNESS: I think basically what I learned

1 that week was that insofar as Consumers were concerned, Mr.
2 Temple was the Michigan Division.

3 BY MR. DAMBLY:

4 Q As a result of the September 13 meeting, was
5 Isham, Lincoln and Beale asked to look at the steam contract
6 between Dow and Consumers?

7 A No. Isham, Lincoln and Beale never looked at the
8 contracts between Dow and Consumers other than preparing
9 testimony on what the contract said to present to the Com-
10 mission. We were never asked.

11 In fact, during that time period, it became real
12 clear that even if we had been asked, we wouldn't have looked
13 at the contract between the parties.

14 Q Why?

15 A We were never asked.

16 Q Why would you not have looked at them?

17 A Well, within the first couple or three weeks, it
18 became real clear that due to the position the parties were
19 in and our position as counsel in the hearing, that it would
20 have been a basic breach of ethics for us to say the least
21 to be asking Dow for internal documents, negotiating docu-
22 ments, and then end up representing Consumers in some contract
23 negotiations between Dow and Consumers. So it was very clear
24 very early that we would never do that.

25 But that was so stated by the way to Consumers

1 and to Dow.

2 MR. POTTER: When?

3 THE WITNESS: I don't remember. With Dow, I do
4 remember the conversation that Mr. Wessel and I had, and Mr.
5 Wessel expressed that concern. And I told him we were wil-
6 ling to sign whatever would make him comfortable. I think that
7 we signed a document somewhat to that effect after that
8 conversation that we wouldn't use any of the knowledge or
9 ever represent Consumers in any contract.

10 MR. POTTER: I am sorry to interrupt, but do you
11 recall when that conversation took place with Mr. Wessel?

12 THE WITNESS: I don't. And I believe the first
13 time I met with Mr. Wessel -- and I am not real clear about
14 this -- the documents would show it accurately -- was at the
15 first meeting that we had which was, I believe, September 29.
16 And I would have to look at the documents to be real sure
17 about that.

18 BY MR. DAMBLY:

19 Q During this same week again, September 13 through
20 the 21st, did Mr. Bacon or Mr. Falahee express to you what
21 Consumers Power's position was on the steam contract between
22 Dow and Consumers?

23 A You are going to have to tell me what do you mean
24 by "the position" on it?

25 Q Did anybody make any statements to you to the

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1 effect that they thought the contract was still good or valid
2 or that there was a good chance that they may not have lived
3 up to the contract or there were some doubts as to it,
4 Consumers?

5 A No. Consumers position, point of view, was always
6 expressed to me that that contract was valid and binding.

7 Q Now, going to the September 21 meeting, what was it
8 that was to be accomplished at the September 21 meeting
9 again?

10 A The purpose of the meeting was to set forth for
11 Dow the issues involved in the Remand Proceeding, both the
12 suspension proceeding and what I called the large hearing,
13 which to the best of my recollection got combined into one
14 and never took place, and to give them some kind of time
15 frame.

16 At that time, we had a hearing, I believe, scheduled
17 for October 6. I believe that is accurate. We needed to
18 prepare and do oral testimony at that hearing. That was the
19 time reference that we were using, then, as I recall.

20 Q Did you have discussions with the Consumers Power
21 people prior to September 21 meeting wherein this was agreed
22 to this would be the purpose?

23 A No. I actually believe if you go back and look
24 at Dow itself, it set up seven different areas it was going to
25 review and assigned somebody to be in charge of all those

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1 areas. One of them was the legal area. So actually, it is
2 set forth by Dow.

3 The second thing that happened was that out of
4 either discussions with Dow or out of past relationships with
5 Dow, Mr. Bacon had told me that there were two things that
6 concerned Dow. One was the uncertainty of knowing when they
7 would have steam. And the other was the possibility that Mr.
8 Temple would have to testify in the matter.

9 So probably the biggest issue for Dow was the
10 uncertainty.

11 Q You said --

12 MR. POTTER: I'm sorry, you may have done this
13 already but have we fixed the date on that conversation?

14 THE WITNESS: Sometime during that week. It would
15 be after, to the best of my recollection, the 15th.

16 MR. POTTER: But the week of September 13, but
17 after the 15th, is what you are saying?

18 THE WITNESS: Yeah.

19 BY MR. DAMBLY:

20 Q And the two things you just said, those were
21 concerns of Dow and not concerns of Consumers?

22 A I don't want to place them like that. I didn't
23 have any conversations with Dow so I can't speak directly of
24 what Dow's concerns were. Those were the concerns that Mr.
25 Bacon expressed to me then, I was aware that Dow had.

1 Q Mr. Bacon indicated to you that Dow was concerned
2 with the possibility that Mr. Temple might be called to
3 testify?

4 A Um-hum.

5 MR. REYNOLDS: Say "yes."

6 THE WITNESS: Yes. I'm sorry.

7 BY MR. DAMBLY:

8 Q Did Mr. Bacon express to you any concerns Consumers
9 Power had in regard to the upcoming Remand Proceeding along
10 those same lines he expressed Dow had two things they were
11 concerned about? Did he say Consumers had similar concerns
12 about whatever?

13 A I don't think that you could really put the two
14 together, at least what we were operating from. Consumers
15 as a utility was concerned about the Aeschliman decision and
16 the remand and what would come out of their licensing pro-
17 ceeding.

18 At the time that we were looking at it, when we
19 looked at Consumers Power projections and what they were
20 required, it looked as if they needed to get Midland on line
21 as soon as possible. And that is what they were focusing on
22 doing.

23 Any delay that would have occurred in having
24 Midland built would have done two things. It would have
25 seriously disrupted their power distribution in the early

1 eighties and would have added to the cost of the plant. So
2 Consumers was concerned about both of those things plus any
3 time you are required to go into a Nuclear Regulatory Com-
4 mission hearing, they are ongoing for ever. And they cost
5 a lot of money.

6 Q Now, at the September 21 meeting, I believe you
7 have stated that Messrs. Hanes, Klomparens, Nute, Falahee,
8 Bacon and yourself --

9 A I believe that's accurate.

10 Q During the September 21 meeting, to your knowledge,
11 did anyone on the Consumers Power team -- and by that, I would
12 mean either Consumers Power personnel or Isham personnel who
13 were present -- take any notes of the meeting?

14 A I didn't. I talked probably 80 percent of the
15 meeting answering questions. I did not take any notes.

16 I believe Mr. Bacon took some short notes, and Mr.
17 Falahee was not sitting where I could see him.

18 Q Are you aware of any memos to file that the same
19 Consumers or Isham people may have written afterwards?

20 A I have never seen any. You mean notes of that
21 meeting?

22 Q Yes. Maybe not notes taken directly at the meeting,
23 but maybe somebody afterwards went back to the office and
24 wrote a note to files of what took place.

25 A Yeah, I wrote a memoranda to file sometime in

1 December of '77. I think that date is accurate. I'm not --
2 it may have been September.

3 MR. DAMBLY: Excuse me, does anyone know, do we
4 have that memorandum to files? I don't think I have ever
5 seen it.

6 MR. POTTER: Is it still in existence, do you know?

7 THE WITNESS: Yeah, as far as I know.

8 MR. POTTER: Do you have a copy of it?

9 MR. REYNOLDS: I don't know if I have a copy here.

10 MR. POTTER: Does he have a copy here?

11 THE WITNESS: No.

12 MR. POTTER: Why don't you take a minute and
13 check. We would like to see it.

14 MR. DAMBLY: I was going to make a request for
15 that.

16 MR. CHARNOFF: We don't have it.

17 MR. DAMBLY: On the record, I would like to make a
18 request for that.

19 MR. POTTER: At this point in the deposition, I
20 want to make it clear we want to leave this deposition as a
21 continuing deposition until we get the notes.

22 BY MR. DAMBLY:

23 Q And you wrote that, I believe you said?

24 A I believe I wrote it right before I left Isham,
25 Lincoln and Beale.

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1 Q In September, '77?

2 A September, December, sometime in that time frame.
3 And actually, it is not notes of that meeting. It is notes
4 of my recollection of my involvement in the thing from day
5 one.

6 Q Were you aware --

7 MR. POTTER: Let me just clarify something.

8 Do I understand you don't have a copy of that
9 today with you, Mr. Renfrow?

10 THE WITNESS: Yeah, I don't.

11 BY MR. DAMBLY:

12 Q To your knowledge, did anyone else or have you
13 heard that anyone else from Consumers wrote any notes to
14 files or memorandums as a result of that meeting?

15 A I have never seen any nor have I heard anybody
16 who said they did.

17 Q Were you aware during that meeting that Dow per-
18 sonnel were taking notes at the meeting?

19 A I have got no independent recollection of that,
20 whether I did or didn't.

21 Q Okay. At this meeting, as a result of the September
22 21 meeting, what was your opinion, your perception, of the Dow-
23 Consumers relationship?

24 A I don't know if my perception of it had changed
25 much. It was real clear that Consumers was concerned about

1 what Dow's ultimate position was going to be. They felt they
2 had a valid contract.

3 MR. POTTER: Off the record.

4 (Discussion off the record.)

5 MR. POTTER: Could we go back on the record now?

6 Could I ask you at the same time, because I don't
7 think Mr. Dambly did, do you have copies of any notes taken
8 by Mr. Bacon, counsel, here?

9 MR. CHARNOFF: I don't.

10 MR. DAMBLY: We will get to ask Mr. Bacon that
11 later, of course.

12 MR. REYNOLDS: If you want, we can undertake to
13 see if there are such notes and provide them.

14 MR. POTTER: I wish you would.

15 MR. DAMBLY: Anything Mr. Bacon, Mr. Falahee, any
16 of those Consumers people took.

17 MR. REYNOLDS: Right.

18 THE WITNESS: So do you want to go back and ask
19 me the question again since I was in the middle of it, and I
20 have now forgotten what you wanted to know?

21 BY MR. DAMBLY:

22 Q I guess my question was what was your view of the
23 Consumers Power-Dow relationship going into the meeting, and
24 did it change as a result of the meeting?

25 A No, it didn't change as a result of the meeting.

1 See, actually where I was at that point in time was that Dow
2 was doing exactly what Dow ought to do, which is they were
3 reviewing a corporate decision that they had made based on
4 new information that they had received. And if I had been in
5 Dow's place, I would have done the same thing.

6 And Consumers had a position that they had
7 a valid contract. So it appeared to me as that what you had
8 was two corporations under a contract with a set of circum-
9 stances that both of them needed to look at. And that's
10 what they were doing.

11 Q Did you have any impression at that time that there
12 was a hostile or adversary relationship between the two com-
13 panies?

14 A It depended on what level you talked about. For
15 sure, the people that had been working on that contract since
16 1962 or whatever it was were getting tired of having to deal
17 with it and not getting any electricity and steam out of the
18 plant.

19 Q You are talking about from the Dow side?

20 A No, from both sides. I think for sure in that kind
21 of relationship, it became apparent to me that there were some
22 underlying personal feelings between the parties. But that
23 was about -- at that particular meeting, that was about it.
24 That was about where I was with it.

25 Q You said you were aware or it became apparent there

1 were some underlying personal feelings. I thought that is
2 what you said anyway.

3 A Yeah. It was -- I'm trying to relate it in time.
4 One of the problems that I have is that as far as I was con-
5 cerned, the Dow issue was the easiest issue in the whole
6 proceedings. The rest of them were complex. Dow was in or
7 out. If they were in it, all you had to do was say they were
8 in. If they were out, all you had to do was say they were
9 out.

10 The rest of them were real complex. So it is
11 difficult for me to go back and separate the Dow issue out
12 totally.

13 The other thing I guess that I need to tell you is
14 that at that particular point in time, I wasn't listening
15 much to either side of them. I wanted the position of the
16 parties out on the board. And I didn't want to get involved
17 in anything that had been going on in the past between the two
18 companies or the contract negotiations itself.

19 It is also hard for me to separate out all the
20 meetings that we had in that three or four-week period when we
21 were having hearing dates set and then postponed, and we kept
22 getting ready and reready to go.

23 Q Maybe I will come back to that question because
24 we will go through the meetings. And there are notes of the
25 meetings which I hope we can refresh your recollection of

1 what took place when.

2 A Good. But at that point, it was for sure clear
3 that Dow was reviewing its position and Consumers didn't like
4 it. I was -- you know, it became pretty apparent with the
5 questions that I was asked at the meeting that there was
6 concern about Joe Temple testifying. For at that point, I
7 didn't know, you know, what the reasons were or what Joe's
8 opinions were or any of that. But it became apparent that
9 that was there.

10 Q Did you have the feeling at the September 21
11 meeting it was any personal animosity between any of the Dow
12 people that were there any any of the Consumers people that
13 were there?

14 A The only way that I can answer your question is
15 no more so than with anybody else that had a continuing
16 business relationship with no results produced out of it over
17 a ten-year period.

18 Q To the best of your recollection, you described
19 what took place at the September 21 meeting?

20 A Basically, we had a long discussion of each and
21 every issue that appeared to us that we were going to have
22 to address at the hearing. What part of it that we expected
23 from Dow -- and again, this was general -- what it looked
24 like, one of the things that Dow wanted to know, what it
25 looked like the result of that hearing would be, what we

1 thought, our best judgment on what we thought, the outcome
2 of the hearing would be, the time frame for the hearing, both
3 the suspension hearing and the big hearing, the time schedule.
4 That's basically it.

5 MR. DAMBLY: Mr. Reynolds, could you provide Mr.
6 Renfrow with a copy of Mr. Nute's notes of that meeting?

7 THE WITNESS: I have those in front of me.

8 BY MR. DAMBLY:

9 Q Would you like to take a minute to look them over?

10 A Okay.

11 Q I have some specific questions on the second and
12 third page of those notes, but do you have any disagreements
13 with what was stated on the first page as you just read it?

14 MR. CHARNOFF: Mr. Renfrow, you ought to read
15 line by line before you answer a question like that. You
16 ought to be sure you are reflecting accurately on every sen-
17 tence that is in there.

18 THE WITNESS: No, I don't think I have any dis-
19 agreement up through the end of No. 3 on page 2.

20 BY MR. DAMBLY:

21 Q The first question I was interested in concerns
22 the paragraph numbered (B) on page 2. And I suppose it will
23 take all day if I asked you to do 3, 4 and 5. So let me just
24 go to my question. I won't ask you to vouch for the accuracy
25 of these notes except as I am going to ask questions on it.

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1 A Fine.

2 Q But in that paragraph (B), it says: Factors
3 concurred in suspension hearing (5) Consumers assumes Cherry
4 will not appear because of lack of funds. Consumers says
5 suspension hearing most critical, they believe. Since there is
6 no discovery and probab / no intervenor cross examination,
7 we will be able to finesse the Dow-Consumers continuing
8 di

9 One, who was speaking or who would have been saying
10 that for Consumers?

11 A Probably me.

12 Q Do you recall that being said?

13 MR. CHARNOFF: That whole substance of that
14 paragraph?

15 BY MR. DAMBLY:

16 Q The substance of that paragraphy, specifically
17 "finesse the Dow-Consumers."

18 A I don't remember saying about finesse. And I
19 may have done that. We certainly had a discussion about
20 that. What the discussion was, that in regards to the time
21 of the thing, if Cherry did not appear, it would be a much
22 shorter proceeding because we could get to the guts of it
23 very quick. If he did not appear, then we would appear before
24 the Board. The Board could ask its questions, and we would
25 be able to do it much quicker.

1 That was the guts of what was said.

2 Q Do you recall anything being said to the effect
3 that in the absence of an intervenor, you wouldn't have to
4 get into the guts of any dispute between Dow and Consumers;
5 you could just --

6 A No, you need to -- No, it is not my position; it
7 is never my position. If you go look at the notes, and what
8 I wanted as far as I was concerned, the entire thing would go
9 in.

10 My difficulty with it was that -- or my reason
11 that I say that is that -- in any proceeding in which Mr.
12 Cherry is involved, he is allowed to ask any question that he
13 wants. As far as I knew at that time, one of Dow's concerns
14 was Joe Temple's testimony and his own personal opinions
15 as opposed to whatever Dow's corporate position would be.

16 Second of all, you have to remember when we had
17 this meeting, we didn't know what Dow's corporate position
18 was. So the guts of this was that if there is an intervenor,
19 it is going to take a longer time; you are going to get into
20 a lot of information, personal opinions, and things like
21 that.

22 If you don't have an intervenor, you are going to
23 have to put it out, but you are not going to get into all
24 of that.

25 Q To the best of your recollection, from what you did

1 say concerning those subjects, do you think someone could have
2 concluded that you intended to hopefully finesse any dispute
3 between the two parties?

4 MR. CHARNOFF: What do you mean by "finesse" as
5 you use the term?

6 MR. DAMBLY: Whatever is meant by the notes.

7 MR. ZAMARIN: Those aren't his notes.

8 MR. DAMBLY: I understand.

9 Do you think someone could have concluded from the
10 remarks you made that in the absence of intervenors, you
11 would be able to be less than candid in any testimony con-
12 cerning the Dow-Consumers relationship?

13 THE WITNESS: No.

14 MR. REYNOLDS: Just for the record, you are not
15 suggesting, are you, that the notes reflect that?

16 MR. DAMBLY: The notes reflect which?

17 MR. REYNOLDS: Well, your question, as I understand
18 it, was the second attempt to define finesse. Are you
19 suggesting that reference to "finesse" in the notes is an
20 indication of somebody saying "be less than candid"?

21 MR. DAMBLY: I would think that someone could
22 read it to mean that.

23 MR. REYNOLDS: All right.

24 BY MR. DAMBLY:

25 Q Let me redefine that and see if we get a different

1 answer.

2 Do you believe someone in hearing the remarks you
3 made could have drawn the conclusion that in the absence of
4 intervenors, Consumers would be able to put on less than the
5 entire picture of any Consumers-Dow disputes?

6 A No. I don't think that was ever an issue.

7 Q Okay. At the time of this September 21 meeting,
8 did you consider the Dow-Consumers relationship between the
9 two in any disputes between the two to be relevant and material
10 to the upcoming suspension hearing?

11 A Any Dow disputes?

12 Q Dow-Consumers disputes over the steam contract.

13 MR. CHARNOFF: You are not talking about Dow the
14 ultimate or whatever might be the Dow position with regard to
15 that?

16 THE WITNESS: Let me answer that question.

17 MR. CHARNOFF: You are talking about details of
18 contract negotiation? What do you have in mind?

19 BY MR. DAMBLY:

20 Q I am talking about any disputes over the contracts
21 that you are aware of at that time, did you consider those
22 to be relevant?

23 A At that point in time, nobody was concerned about
24 any specifics about anything. We didn't even know what Dow's
25 position was. The question was: what are the issues going

1 to be? What are we going to be required to do? And how long
2 is it going to take?

3 We were not there to discuss witnesses, testimony
4 or anything else. We didn't discuss them that day.

5 MR. POTTER: Is the "we" Consumers Power or a
6 collective including Dow?

7 THE WITNESS: Collective we, yes.

8 MR. POTTER: Including Dow.

9 (The witness nodded affirmatively.)

10 Your answer is yes?

11 THE WITNESS: Yes. I'm sorry.

12 At that point, the Dow position hadn't been taken.
13 Nobody knew what it was. We were talking about what it was,
14 input they needed, time frames, issues, what was going to be
15 required.

16 BY MR. DAMBLY:

17 Q At the time of the September 21 meeting, you were
18 aware of the Michigan Division position?

19 A Yes.

20 Q At that time, did you consider the Michigan Division
21 position to be relevant and material to the upcoming suspension
22 hearings?

23 A I never considered it to be material. I think it
24 was always relevant.

25 Now, if the Michigan Division had become the Dow

1 corporate position, then certainly it was material.

2 Q If you could turn to page 3 of the Nute notes,
3 the paragraph at the top numbered 4, which is an underlying
4 effective delay, steam and cost/benefit analysis as the title,
5 then there is a statement: "Dow becomes very important
6 because here are two issues (printed above) can come together.
7 Rex suggested Dow witness might be someone from Dow Chemical
8 USA or corporate area who is unaware of Midland Division
9 recommendations to Orefice. This person would testify as to
10 the effects of further delay upon Dow."

11 Did you make such a statement?

12 A No. Never.

13 Q You never made a statement to that effect?

14 A No.

15 Q To the best of your recommendation, did you say
16 any kind of words --

17 A Yes, but I told --

18 Q -- which would have led someone to, obviously led
19 Mr. Nute to, the conclusion that you wanted a witness or
20 thought a witness desirable who would not know the Midland
21 Division position?

22 A Not from my point of view, but obviously from
23 Lee Nute's, I did.

24 Q Do you recall the conversation that this note
25 apparently reflects?

1 A Yes. What I recall about that is that in Judd's
2 and my conversation earlier about Dow's concern about Joe
3 testifying, I told Judd that since the Dow Corporate Board
4 was reviewing the decision would actually make it that we
5 could probably use either the head of that corporate review
6 which would have been Mr. Klomparens or Orefice himself to
7 testify as to Dow's position so that Dow wouldn't have to put
8 Temple on the stand, especially since it was going to be a
9 corporate position.

10 And at the meeting on the 21st, the issue did
11 come up. In fact, I believe Mr. Nute raised the issue about
12 Joe having to testify. And at that time, I told Dow that if
13 they were uncomfortable with that, they might consider
14 providing us with another witness other than Joe Temple.

15 At no time did I suggest that it be somebody who
16 was unaware of the Midland Division recommendation.

17 Q Okay. Now, you mentioned the conversation with
18 Judd and you. That was the one we talked about a little while
19 ago that happened prior to the September 21 meeting.

20 A That's right.

21 Q At the September 21 meeting, as I understand what
22 you just said, Mr. Nute raised the issue there specifically
23 that Dow was concerned with Mr. Temple having to testify.

24 A I don't want to phrase it like that. To the best
25 of my memory, what it was was they were concerned about

1 Mr. Temple's personal opinions coming out on the stand. I
2 don't want to leave you with the impression that I got that
3 they were afraid of Joe Temple testifying. That was not so.
4 It was Joe Temple's personal opinions coming out on the stand.

5 Q And you made a response?

6 MR. POTTER: Excuse me, but could we get on the
7 record what he is calling the personal opinions of Joe
8 Temple?

9 THE WITNESS: At that point, I had no idea. That's
10 what they were referred to all the time.

11 MR. POTTER: Okay.

12 BY MR. DAMBLY:

13 Q In response --

14 A Oh, excuse me. I did know at that time that there
15 had been a news release that had been put out or response to
16 a question by Joe Temple about his personal opinion regarding
17 the nuclear facility and its benefit to Dow. I did know that
18 he put that press release out.

19 MR. POTTER: This is at the time of the September
20 21, 1976, meeting?

21 THE WITNESS: Yeah. That's all I knew.

22 BY MR. DAMBLY:

23 Q In response to Mr. Nute's concern that Mr. Temple
24 might have to go into his personal opinions or however you
25 just phrased that, did you make a response to Mr. Nute?

1 A Yes. That is when I told him that if Dow was really
2 worried about that, they might consider providing us with
3 another witness other than Mr. Temple. I did not at that time
4 specify Mr. Klomprens and Mr. Orefice because that wasn't
5 the issue at the meeting.

6 The issue at the meeting was input into Dow so
7 Dow could decide what it was going to do.

8 Q At the time of the September 21 meeting, did you
9 consider Dow to be a party to the upcoming suspension pro-
10 ceedings?

11 A Yes.

12 Q In light of the fact that you considered Dow a
13 party at that time, was there any discussion about Dow putting
14 on its own case?

15 A Not at that time. We weren't concerned with any-
16 thing at all about the case. At that time, it wasn't the
17 issue on the table. The issue on the table was Dow's corporate
18 review.

19 If Dow had decided to accept the Michigan Division
20 recommendations, we didn't have to worry about any of that.
21 All we had to do was report to the Board that Dow had decided
22 not to go forward with the contract.

23 That meeting was only to provide input to that
24 corporate decision, period.

25 Q At the time that Mr. Nute raised the issue of

1 Mr. Temple and his personal feelings, did you have any problem
2 with Mr. Temple not testifying?

3 MR. REYNOLDS: May we have that again?

4 BY MR. DAMBLY:

5 Q Would it have concerned you to have a witness
6 other than Mr. Temple?

7 A No, I would have -- if the Dow corporate
8 position had turned out to be they were going to go forward
9 with the project, I would have been satisfied with Mr.
10 Klomparens who headed that review and thus had all of the
11 input from the Michigan Division and knew about the recom-
12 mendation as well as all the input from the seven committees
13 that Dow had set up to discuss it. I would have been satis-
14 fied to put him on the stand to present Dow's corporate
15 position.

16 Q Back on page 3 of the Nute notes, right below where
17 we were just reading, there is a statement that Consumers said
18 that as long as construction continues, Consumers has a
19 lever and will drag its feet in the hearing on the merits.
20 If construction stopped, intervenors may have lever and will
21 drag feet in hearing on the merits.

22 MR. CHARNOFF: The word "may" doesn't appear.

23 MR. DAMBLY: Which "may" did I put in?

24 MR. CHARNOFF: Just after "intervenors."

25 MR. DAMBLY: Okay, it reads: "If construction

1 stopped, intervenors have lever and will drag feet in hearing
2 on the merits."

3 I did not wish to give intervenors some discretion
4 in dragging their feet. I misread that.

5 At any rate, do you recall making that statement?

6 THE WITNESS: I never made that statement.

7 BY MR. DAMBLY:

8 Q Did anyone from Consumers, Mr. Falahee or Mr.
9 Bacon, to your knowledge, make statements to that effect?

10 A No. The statement that I made -- and if you go
11 back and look at the notes -- it is clear that this is an
12 error. At that time, it was --

13 Q Excuse me. What notes are we talking about
14 going back and looking at?

15 A Any of the other notes of that meeting, Mr. Hanes
16 or Mr. Klomparens, which actually has the schedule which I
17 put up on the board.

18 What I said was, at that time was, that if the
19 suspension hearing was lost and construction was suspended, we
20 would never get Mr. Cherry to a hearing on the merits; that
21 he would drag his feet. And that if we could win the
22 suspension proceeding, we would then have a lever to get the
23 hearings over with quickly.

24 Our whole purpose at that meeting was --

25 MR. CHARNOFF: Which hearings?

1 THE WITNESS: The big hearing.

2 Our whole purpose at that meeting, if you go back
3 and look, was to provide Dow with some certainty they were not
4 stuck in another three-year proceeding, and it could be handled
5 very quickly.

6 Part of Dow's big concern was the uncertainty of
7 them knowing when it was that they were going to get the
8 steam from the Midland nuclear units. What we did was tell
9 them what the schedule was.

10 And it makes absolutely no sense for me to have
11 made the statement when what I am doing is providing them
12 with some certainty that we could get the thing done within
13 a short period of time for me to say we can drag our feet.

14 If you go back and look at the other notes, that
15 is readily apparent.

16 BY MR. DAMBLY:

17 Q You will make a categorical statement you never
18 made any such statement that Consumers would drag its feet
19 in the hearing?

20 A That's accurate. If you go back and look at the
21 other notes, my position for that was to get it over as soon
22 as possible.

23 Q On that point, are you aware of or was it ever
24 suggested to you by anyone that Consumers in fact dragged
25 its feet in the hearings?

1 A No. In fact, I was pushed exactly the other way.

2 Q Are you aware of anyone else that was a party to
3 the hearings?

4 A No.

5 Excuse me; I didn't let you finish the question.

6 Q Well, was there anyone else? I guess that is about
7 as far as I could have gotten.

8 MR. CHARNOFF: I would like that clarified. Are
9 you aware of anyone else who was dragging feet? Is that
10 your question?

11 MR. DAMBLY: Yes. Who was taking any steps to
12 drag their feet or delay the hearings.

13 THE WITNESS: Sure.

14 BY MR. DAMBLY:

15 Q Any other parties or counsel or --

16 A Okay. I got it. So you ask me the question again.
17 I want the exact question you want the answer to.

18 MR. DAMBLY: Could you read it back?

19 MR. CHARNOFF: Why don't you restate it?

20 BY MR. DAMBLY:

21 Q Are you aware, is the question -- because the
22 question of delay has been mentioned on several occasions
23 and briefs and things dealing with this issue, and I think
24 the Board is concerned -- to your own personal knowledge
25 of anyone, anyone in the suspension hearing or in preparation

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1 for the suspension hearing, any person, party, attorney,
2 taking actions to drag their feet so to speak, intentionally
3 trying to delay the proceedings?

4 A Now, I got the question.

5 The answer to your question is that everybody at
6 Dow and Consumers busted their gut to get the thing prepared
7 and got to the Licensing Board. I don't mean that they did
8 normal work hours; I mean they worked 18 and 20 hours a day
9 to prepare this case. The Nuclear Regulatory Commission
10 consistently phoned up Consumers to get data from them, reams
11 of data, in order to prepare for this.

12 We were consistently faced with requests for
13 delay from Mr. Cherry. Mr. Cherry never stated to me he was
14 going to drag the hearing out. I think the record speaks
15 for itself in who it was that kept asking for the delays.

16 We had continuous legal harangues that had nothing
17 to do with anything from Mr. Cherry. And nobody stated to me
18 that they wanted to delay the proceeding ever.

19 MR. REYNOLDS: Let me, if I can, just clarify it.

20 As I understand your question, that was only half
21 stated before you had asked him whether he had heard of anyone
22 else suggesting that Consumers had dragged its feet. I
23 believe that is the way your question originally was asked,
24 and he said his answer was yes. And then we went back for
25 a clarification.

1 MR. ZAMARIN: His answer was no.

2 MR. REYNOLDS: And we went back for a clarification.
3 And all I want for the record without having to go back is
4 whether we can make it clear whether his no answer was based
5 on that understanding of your question initially or some
6 other understanding.

7 MR. DAMBLY: I didn't understand that to have been
8 my initial question.

9 MR. REYNOLDS: Let's ask him. When you asked him
10 before, anyone else, without fully stating the question.

11 MR. DAMBLY: The intent of that question was the
12 second question.

13 Now, I don't know how he interpreted the question
14 or his answer. But if you want to clarify that, it is fine.

15 MR. REYNOLDS: Let me just ask you whether you
16 heard of anyone else other than yourself or somebody at
17 Consumers ever state or accuse Consumers of dragging its feet
18 at the hearing.

19 THE WITNESS: Yeah, Mr. Cherry accused us of drag-
20 ging our feet at the hearing.

21 MR. DAMBLY: At the time --

22 MR. CHARNOFF: Excuse me.

23 Was that his reference as to long lunch hours?

24 Is that what you mean by Mr. Cherry's allegations Consumers
25 was dragging its feet when he was referring to the long lunch

1 breaks that I always wanted?

2 THE WITNESS: No, it was that there was a time when
3 the Board ruled we were required to turn over a mass of docu-
4 ments in four days. I told the Board I didn't think we could
5 get them all copied; we had personnel at Consumers working
6 round the clock on three different shifts to get them done,
7 and the Board required we do that. He accused us of dragging
8 our feet then.

9 It was so consistently true throughout the hearing,
10 it didn't seem to make much difference what we did. He
11 always said that is what we were doing.

12 MR. REYNOLDS: Did anyone at Dow ever suggest to
13 you that Consumers was dragging its feet?

14 THE WITNESS: No. In fact, Dow and Consumers
15 was very concerned that the hearings get over with as
16 promptly as possible and the decision be issued. Dow could
17 not stand the uncertainty, and neither could Consumers.
18 So what both of their positions were were to provide the
19 Board with data necessary to reach a decision. And everybody
20 worked in that frame of reference.

21 They had disagreements about how to go about it,
22 but it was real clear we were all in alignment on getting
23 that done.

24 BY MR. DAMBLY:

25 Q At the time of the September 21 meeting, did you

1 as the attorney for Consumers intend to put on a Dow witness
2 in the upcoming suspension?

3 A Yes.

4 I have to say I need to go back and remind you
5 again, provided Dow said they were going to continue with the
6 contract.

7 Q Okay.

8 A My position was if Dow said they were not going to
9 continue with the contract, probably there wouldn't be a
10 hearing.

11 MR. ZAMARIN: Would not?

12 THE WITNESS: Yes, would not. Probably would not
13 be a hearing.

14 BY MR. DAMBLY:

15 Q Mr. Klomparens' notes, I believe also Mr. Hanes
16 and Mr. Nute, at least those I can find quickly, indicate,
17 I believe, that you presented three options to Dow at the
18 September 21 meeting based on possible Dow postures in the
19 suspension hearing. Do you recall?

20 A We were asked to present what the effect would be
21 of different Dow positions on the proceeding. And I believe
22 that I did that.

23 Q Do you recall what --

24 MR. POTTER: Excuse me.

25 To clarify, you said "we were asked." Who asked

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1 you to do that?

2 THE WITNESS: As I understand it, Dow asked us to
3 do that as part of our presentation, what effect Dow's
4 position would have on the proceeding.

5 BY MR. DAMBLY:

6 Q Do you recall what you stated in regard to that or
7 what alternatives you gave them?

8 A I don't remember the middle one. The first one
9 was that if Dow went along with the contract, it looked to
10 us like we had a dead winner.

11 MR. CHARNOFF: A live winner?

12 THE WITNESS: Yes, a live winner.

13 The third one was if Dow got out of the contract
14 that the construction permit would be suspended.

15 I don't remember the content of the second option.
16 I would have to look at the notes to refresh my recollection.

17 MR. CHARNOFF: Mr. Klomprens' notes are in front
18 of you. Do you want to check those?

19 THE WITNESS: You didn't tell me I could yet.

20 BY MR. DAMBLY:

21 Q You may check Mr. Klomprens' notes. And I don't
22 know what page. I guess it is page 3 at the bottom which
23 says: "If Dow said they want out of the contract because
24 it is" -- and I don't know what it is.

25 A Yes.

1 Q "-- then, there may be a 50-50 chance that the
2 construction would be suspended."

3 A Yes, I remember now. There was a question at that
4 time. Nobody knew -- I don't want to say that. At that time,
5 I didn't know nor to the best of my recollection did Mr.
6 Falahee or Mr. Bacon what the ultimate Dow position would be.
7 One of the things that became apparent, it could be, would be,
8 because of the contract Dow was going to continue in the pro-
9 ject, but it was uneconomical for them to do that. It would
10 have been an alternative to Dow which would have been more
11 economical.

12 And the question we talked about would be if Dow
13 reached a decision they would go ahead based on the contract
14 and it was more financially feasible in the long run to do
15 something else, what would be the result?

16 And my answer to that was it was 50-50 whether or
17 not we would win or lose at that position.

18 Q Okay, so, as I understand, the three alternatives
19 were if Dow supported fully, you had a winner. If Dow
20 repudiated the contract, you had a loser. And if Dow said
21 it wasn't the most economically advantageous, but they were
22 going along because of the contract, you had a 50-50 shot.

23 A That's accurate.

24 Q How did you arrive at those conclusions? Was there
25 any discussion between you and Consumers personnel?

1 A I think basically, those discussions between Mike
2 Miller and I about ultimately what would happen at the hearing
3 were based upon our legal judgment at the time.

4 Q So that was the collective best legal guess of
5 yourself and Mr. Miller?

6 A Yes, as counsel to Consumers. Also what we told
7 Consumers.

8 Q In the presentation of these alternatives, did you
9 intend or could you -- Well, let's just ask first, did you
10 intend at all to use these alternatives as a threat to
11 coerce Dow into adopting a most favorable position to
12 Consumers?

13 A No.

14 Q And the way you presented them, do you think Dow
15 could have reached that result or that conclusion?

16 A The way that I presented them at that meeting, no.

17 Q The next issue I would like to discuss on the Sept-
18 September 21 meeting, I guess we can go back to Mr. Nute's
19 notes again on page 3 --it is also Mr. Klomparens' and
20 Mr. Hanes' notes --is the allegation that Mr. Falahee made a
21 threat to sue Dow if they didn't support Consumers Power in
22 the hearing.

23 Do you recall how that came about or what was said?
24 Let's put it that way.

25 A My recollection is that that exchange took place

1 -- when we began to talk about the positions of the outcome
2 of the hearing, Mr. Falahee stated that he wanted to be clear
3 that I was not addressing the legal implications that would
4 arise between Dow and Consumers if Dow breached the contract.

5 I believe those were the words that were used.
6 And that Dow should not take anything I was saying as to have
7 anything to do with results that would come out of that
8 action.

9 Q This was after you presented the alternatives?

10 A I think it was someplace in the middle that a
11 question was asked or something. I believe that is accurate.
12 And I couldn't tell you for sure whether it was. It was
13 either -- yeah, I can't go any further than that.

14 I remember the exchange, and Mr. Hanes at that
15 time said that they did not want to discuss that either;
16 that that was not the subject that was up for conversation.

17 Q Were you aware prior to the meeting that Mr.
18 Falahee intended to make that statement?

19 A Yes. Jim told me on the way up there that he
20 needed to make it clear to Dow that I was talking to him
21 about the suspension hearing only and was not representing
22 to Dow the Consumers corporate position on anything that
23 might result out of a decision that came out on the contract;
24 that that was not what we were there to discuss, and I was
25 not representing Consumers in any way in that matter.

1 Q Do you think that the combined effect of Mr.
2 Falahee's statements and your three alternatives could have
3 been taken by Dow or by a reasonable person to be a threat
4 that they had better come out to a corporate decision to
5 support Consumers?

6 MR. CHARNOFF: Hold it. Combined effect of Mr.
7 Falahee's statement and Mr. Renfrow's presentation -- the
8 Falahee statement that was referenced in prior discussions was
9 the Falahee statement as to Mr. Renfrow's involvement in the
10 Dow-Consumers -- Mr. Renfrow's presentation relating to any
11 Dow-Consumers problem. Are you referring to that statement of
12 Mr. Falahee or are you referring to some other statement?

13 BY MR. DAMBLY:

14 Q Let's put it this way. Let me back up and just
15 strike that question and go about it another way.

16 On page 3 of the Nute notes, right in the middle
17 of paragraph 4, underlined, it says, "Consumers' threats,"
18 following which it says, "Falahee brought up the point that
19 Dow has an obligation (Bacon interject Section 3) under the
20 general agreement to support Consumers in the licensing
21 proceeding. Falahee said, 'If Dow takes this posture, Con-
22 sumers and Dow will have a helluva legal problem.'"

23 Did Mr. Falahee say that to the best of your
24 recollection?

25 A To the best of my knowledge, he didn't say that.

1 I do remember Judd talking about Section 3 of the contract.
2 My recollection is that this discussion took place in dif-
3 ferent parts.

4 For example, I remember Mr. Hanes saying that the
5 Dow witness would tell the truth. And Mr. Hanes and I had
6 that conversation. And I told him that is all I wanted from
7 Dow was a witness that told the truth. And I don't think
8 it had anything to do with this discussion. It is a dif-
9 ferent part of it. I think we were talking about what witness
10 would be provided.

11 Q You don't recall Mr. Falahee ever saying that if
12 Dow takes a posture that the contract was no good, I assume
13 is what that posture was --

14 A No, I believe what Mr. Falahee -- my recollection
15 of what Mr. Falahee said was that he wanted it clear what I
16 was addressing was not the contract issues and what would
17 result if Dow breached the contract. And he may have used
18 the phrase "a helluva legal problem" that would face all of
19 us if that came about.

20 He may have used that phrase, but it was in the
21 context that I wasn't addressing the issue.

22 Q No, combining what Mr. Falahee said that there
23 potentially could be a helluva legal problem between the
24 two with your presentation of the outcomes of the suspension
25 hearing based on alternatives, do you believe that someone

1 listening to that -- namely, Dow -- could have drawn the
2 conclusion that the purpose was to threaten Dow or coerce
3 Dow into fully supporting the project as part of this in the
4 suspension hearing?

5 A See, obviously, they did.

6 Now, from my point of view is they shouldn't have,
7 but I don't get it.

8 MR. CHARNOFF: Should not have?

9 THE WITNESS: Should not have.

10 You have two companies with a contract, and one of
11 them saying they are thinking about -- I don't want to use
12 the word "breach." They are looking at discontinuing their
13 obligations under the contract. And in the business sense,
14 if somebody says that to you, It is implied, you know, that
15 if that happens, you are going to have a legal hassle between
16 the two companies.

17 To me, it was -- you know, I mean, you use the word
18 "threat." I don't take it as a threat. I take it as an
19 implied matter of fact that if somebody takes a contract I
20 have with them and says they don't believe it is in force
21 any more, we are going to have to resolve that issue. I don't
22 consider it a threat.

23 BY MR. DAMBLY:

24 Q You mean the combined effect of your statements
25 and Mr. Falahee's statements, or statements alone, you do not

1 consider them to be a threat?

2 A Nor was there an intent as far as I know on any-
3 body's part to have it appear that way.

4 Q I have just got about two more questions on
5 September 21. I'll wrap that up.

6 As a matter of fact, I only have one more.

7 Do you think or to the best of your recollection
8 is there anything about the September 21, 1976, meeting that
9 stands out in your mind that we haven't discussed that you
10 think is important?

11 A I think the only thing that probably hasn't been
12 discussed is that we spent a lot of time on that time schedule
13 that appears in Klomprens' notes that I drew up on the board.
14 It has 1976, '77, '78.

15 I believe it is page 3 of those notes.

16 One of Dow's big concerns then was when we were
17 going to be able to get this thing on hearing. And we spent
18 a lot of time discussing what was going to have to be handled,
19 how we would do it, whether or not it was realistic that we
20 could do it within the time frame that we have here which is
21 to have a decision in what we call the big hearing for a
22 better word in early 1977. We spent a lot of time discussing
23 that.

24 It was one of the things Dow was real concerned
25 about.

1 Q Did you prepare an outline for that meeting or was
2 there any paper you were speaking from?

3 A I don't remember. I believe I had a combination of
4 things -- the Aeschliman decision with parts of it marked,
5 the Coalition for Nuclear Power Cause which set forth the
6 four issues to be discussed. And I am not sure whether I
7 had any handwritten notes or not. If I did, I don't have
8 them now.

9 MR. DAMBLY: Okay. Maybe I should ask you on
10 the record, are you aware of any, have you guys seen any?

11 MR. REYNOLDS: No.

12 MR. POTTER: Let me ask you, you say if you did
13 have notes you used at that meeting, you don't have them now.
14 Would you have left them in the files of Isham, Lincoln and
15 Beale if you had them or would you have taken them with you?

16 THE WITNESS: Mr. Potter, I could have. My recol-
17 lection is they never showed up in the files. I don't want
18 to tell you that they are not there because I haven't gone
19 through every file in the office. I don't think any exist.

20 MR. POTTER: Okay.

21 I wonder if we could put a request in to have the
22 Isham, Lincoln and Beale files searched to see if there is an
23 outline of notes.

24 MR. CHARNOFF: Certainly.

25 MR. DAMBLY: I guess we will take about a ten-minute

1 break.

2 (Whereupon, a recess was taken.)

3 BY MR. DAMBLY:

4 Q Do you recall having any discussions with Con-
5 sumers Power personnel following the September 21 meeting about
6 what had taken place at that meeting?

7 A Yes.

8 Q With whom and what was the substance?

9 A Actually, I had two conversations. One was a
10 conversation with Judd and Falahee on the way back on how the
11 presentation went, how it was received, where we thought Dow
12 was.

13 I had another conversation with Howell and Keeley
14 after their meeting, how that went, what that was about.

15 Q Howell and Keeley went to another meeting on the
16 21st, a separate meeting?

17 A Yes.

18 Q How did Mr. Bacon and Mr. Falahee perceive the
19 presentation to have gone, and then how did they perceive the
20 Dow reception of the presentation?

21 MR. CHARNOFF: I think he can testify as to how he
22 perceived it had gone and what they told him, but I don't think
23 he can quite put himself in their shoes.

24 BY MR. DAMBLY:

25 Q From your conversations with them, what was your

1 opinion of their perceptions? And I will ask you for your
2 own perception.

3 A My opinion of their perception?

4 Q Yes; from the conversation you had with them on
5 the way back, what did they relate to you?

6 A I don't know if I can answer that question
7 specifically. Let me answer it this way and see if it
8 satisfies you. My recollection from those discussions was
9 we thought the conversation had gone pretty good; that Dow
10 had gotten the information that they wanted, and that they
11 now had some data upon which they could base a decision that
12 was accurate and up to date. The meeting itself went real
13 well.

14 Q And how did you feel, the three of you together
15 or your perception from the conversation among the three of
16 you, Dow had received what you had said to them?

17 A How did we feel they had received it?

18 Q You said that was one of the things that you
19 discussed.

20 A I don't know if I can answer that question as
21 how. We thought they had gotten the information. They had
22 had all their questions answered that they had done. If
23 you are asking me what did we talk about we thought Dow
24 was going to do, we didn't have any idea what Dow was going
25 to do.

1 Q I am more interested in following that meeting
2 whether you and Mr. Bacon and Mr. Falahee thought that Dow
3 was happy with the presentation that --

4 A Yeah, we thought we had answered all their questions.

5 Q And you didn't have any feeling at that time that
6 Dow had taken the things you had said as a threat?

7 A No. Let me say this to you: No. The one thing
8 that bothers me about all of this is that when I went back
9 and read these notes, which was sometime in January --

10 MR. CHARNOFF: These notes?

11 THE WITNESS: The Nute notes.

12 MR. CHARNOFF: Which he didn't see until January
13 '77.

14 THE WITNESS: Right.

15 If I had been a lawyer and was talking to another
16 lawyer, and it seemed to me that he suggested that I present a
17 witness who didn't know anything, I would have found out about
18 that and asked him about it point blank. If that was his
19 suggestion, I would have taken him to the Bar Association
20 right then.

21 The thing that bothered me about that was that this
22 stuff was in and nobody said anything to me about it. And
23 it was for sure never my idea. And if somebody had said
24 something to me, we could have cleared it up real quickly.

1 BY MR. DAMBLY:

2 Q My question was --

3 A I had no idea that was going on until I saw these
4 notes.

5 Q -- and maybe you have answered it: following
6 that meeting, did you have any inkling that Dow had the
7 impression that, one, you wanted an unknowledgeable witness,
8 and, two, you were intending to drag your feet, and, three,
9 you had gotten to Consumers via Falahee and possibly yourself
10 with making threats to sue Dow?

11 A On the first two --

12 MR. POTTER: Do you want to separate them out?
13 I'm sure the witness can.

14 THE WITNESS: I can.

15 On the first two, absolutely not. I had no idea
16 any of that was going on.

17 On the third one, I have to go back to my answer.
18 You used the word "threat." I have a real problem with the
19 word "threat." Nobody threatened Dow.

20 On the other hand, you have got to remember that
21 you have got two parties with a large, large contract at
22 stake and one of them saying, "Look, we are looking at getting
23 out of the contract."

24 Permeating throughout the entire thing has got
25 to be if you have got any sense at all that you are going to

1 have a legal problem with that, if one of the parties takes
2 that position.

3 Was it a threat? Not in my opinion. It was a
4 stated matter of fact.

5 BY MR. DAMBLY:

6 Q To the best of your recollection in this con-
7 versation that took place on the way back, I assume that is
8 back from wherever this -- Where did that meeting take place?
9 Midland?

10 A Yes, and I don't remember what the building was,
11 but it was one of the Dow buildings at Midland.

12 Q On the way back is back to Jackson or --

13 A Actually, the conversation that I remember occurred
14 with Judd and Falahee, occurred in the airport while we were
15 waiting for Howell and Keeley. The conversation with Keeley
16 and Howell occurred On the airplane on the way back.

17 Q To the best of your recollection, what exactly
18 did Mr. Bacon say?

19 A I don't have any independent recollection. He was
20 satisfied with the presentation of the way things had gone
21 that day.

22 Q Did he say anything that would lead you to believe
23 there was any personal animosity between himself and any of
24 the people that were representing Dow at that meeting?

25 A I don't remember him saying anything about any --

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1 I don't have a specific recollection of him saying that. I
2 do know that at that -- and I don't know that. I do know that
3 in that period, you know, there had been -- I had begun to
4 learn a little bit about the personalities involved, about the
5 conflicts between Mr. Nute and Mr. Bacon, each representing
6 different sides in a large thing and, you know, about the
7 views and everything.

8 But I don't have an independent recollection of --

9 Q Do you have, for the record, any independent recol-
10 lection of anything Mr. Falahee said during this conversation
11 in the airport about the September 21 meeting?

12 A No. I think that Mr. Falahee -- I think the only
13 thing he said was that, you know, that it was -- the thing
14 that Mr. Falahee was afraid that Dow would think was that I
15 was talking to Dow on behalf of Consumers with regard to any
16 position they might take as a result of Dow's action on the
17 contract.

18 And I do remember Mr. Falahee thinking that he and
19 Mr. Hanes had handled that together that Dow was clear that
20 I wasn't doing that.

21 Q Did Mr. Falahee state anything at that time which
22 would lead you to believe there was personal animosity between
23 himself and anyone on the Dow side that was at that meeting?

24 A No.

25 Q Did you have discussions following the September

1 21 meeting with anyone at Isham, Lincoln and Beale concerning
2 the September 21 meeting?

3 A Yes, I talked to Mike that night.

4 Q As a result of the September 21 meeting and your
5 discussions with Mr. Miller, did you make any changes in
6 plans or strategy for the upcoming suspension hearing?

7 A I got to go back and tell you again, we didn't know
8 if there was going to be a suspension hearing. Dow had not
9 taken a position yet. So where we were was basically in a
10 holding pattern, waiting for Dow to decide what it was going
11 to do.

12 And I was running around trying to get prepared to
13 file that brief and do everything else there was to do to get
14 that ready to go and leaving Dow alone.

15 Q To be perfectly clear, it was your opinion that if
16 Dow came out with a corporate position so that they no longer
17 supported the Midland project and they wanted out of the
18 contract or they were repudiating the contract, there would
19 not have been a suspension hearing?

20 A I think the Commission would have suspended the
21 license immediately. I don't think you would have needed
22 a hearing. The whole license was predicated upon that being
23 a dual purpose program with Dow getting the steam.

24 One of the issues was changed circumstances. The
25 largest changed circumstance I can see of is the guy needing

1 the steam saying they weren't going to take it. It would have
2 made it real simply for us as far as I was concerned. We
3 would have filed a piece of paper with the Commission. The
4 Commission would have said, "Great, you no longer have a
5 license," and we would have had something else to do.

6 Q As you are no doubt aware, I assume you are no
7 doubt aware, at any rate, a meeting took place between Dow
8 and Consumers on September 24 of 1976 at which Consumers
9 Power was to make its input into the Dow corporate review of
10 the Michigan Division Decision.

11 A One of its inputs.

12 Q When did it make others?

13 A The 21st meeting I had and the 21st meeting that
14 Howell and Keeley had are two others that I remember
15 specifically. You would have to go back and look at the list
16 of the seven areas and find out from somebody other than me
17 what other areas they had input into.

18 Q Were you at the September 24 meeting?

19 A No, I wasn't.

20 MR. POTTER: Excuse me. Since you have apparently
21 passed on, let me get something straight on the record.

22 Do I understand you to say you also had a conver-
23 sation with Messrs. Howell and Keeley? You had conversations
24 with Mr. Howell and Mr. Keeley about meetings?

25 THE WITNESS: Yes.

1 MR. POTTER: At Dow on September 21? I just want
2 to be sure.

3 THE WITNESS: Yes.

4 BY MR. DAMBLY:

5 Q Did you participate in any strategy sessions with
6 Consumers Power about the presentation they would make at
7 the September 24th meeting?

8 A Not to the best of my recollection.

9 Q Then, did you have any input whatsoever into the
10 September 24th meeting from the Consumers side?

11 A Not that I remember.

12 Q There was an outline prepared by Consumers Power
13 Company for that meeting. Did you have any participation in
14 the preparation of that outline to the best of your recol-
15 lection?

16 A I would have to see it.

17 MR. OLMSTEAD: For the record, It is Midland
18 Intervenor Exhibit No. 9.

19 BY MR. DAMBLY:

20 Q To make sure we are all discussing the same thing,
21 I am talking about a 4-page document with 3 exhibits attached
22 to it. Is that what we are talking about?

23 A Yeah, I got it.

24 I am not sure I had any direct input on it, but in
25 terms of what is set forth at 3a, b and c, while it is not

1 exactly what I talked to Dow about -- you know, it is close
2 to the three positions that we talked about that day. I
3 don't remember having anything to do with the effects of a
4 four-months suspension, although at the time, where these
5 numbers came from, I was working on about the same thing to
6 get ready to file it in brief; they came from the same place.

7 The proposed schedule for a remand hearing is the
8 schedule that I prepared, the schedule that I had prepared
9 myself. And I believe we attached that proposed schedule
10 to our brief that we filed on the 28th or 29th.

11 Exhibit 1, once again, I didn't have anything to do
12 with that. And I was working on the same thing. The same
13 for Exhibit 2 and Exhibit 3. I don't know who prepared
14 this. And to the best of my recollection, I had no discus-
15 sions with whoever prepared this.

16 Q Do you have any knowledge of where the figures that
17 are in here came from?

18 A Which figures now?

19 Q I guess in the exhibits and in the document itself.
20 There are projections of the cost involved in shutdowns.

21 A Yes. Those came out of a study done by Consumers
22 in-house personnel maybe with some input from Bechtel, if
23 there was a direct input from Bechtel. There was indirect
24 input from Bechtel because some of this material has to come
25 from their documents. And it was prepared with a study done

1 in order to determine the effects of delay and what it would
2 be.

3 The same on page 3.

4 Page 4, cost of power came out from a different
5 section of Consumers Power Company. But again, that was in-
6 house. I believe that the basis of that came out of some
7 rate cases that they were doing.

8 Exhibit 1 comes from the project cost due to four-
9 month construction suspension was again the in-house study
10 done with Bechtel.

11 The same on Exhibit 2.

12 Exhibit 3 came out of a different section of
13 Consumers on the operating costs. But basically, those were
14 all in-house studies that were done at that time. We used
15 basically the same data in our filing before the Commission.

16 As time went on, these numbers got more and more
17 and more refined.

18 Q Okay. If I could back up just a bit, at some point,
19 Dow became convinced, and I am not sure of where, and that's
20 what I am trying to see if I can find out, that the Consumers
21 alleged threat made by Mr. Falahee to Dow for breach of
22 contract involved a \$600 million figure.

23 First of all, do you remember Mr. Falahee making
24 any dollar statements at that September 21 meeting?

25 A No, he didn't make any to the best of my knowledge.

1 Q Do you know where the \$600 million figure came
2 from?

3 A No. I don't see a \$600 million figure in here.

4 MR. POTTER: The witness is now referring to the
5 Aymond outline; is that correct?

6 MR. DAMBLY: For the record, I don't know that this
7 has been identified as the Aymond outline. I am not sure
8 whose outline.

9 MR. REYNOLDS: To the 4-page document that has
10 been identified as Midland Intervenor Exhibit No. 9.

11 THE WITNESS: I don't see a \$600 million figure
12 in here.

13 BY MR. DAMBLY:

14 Q Do you have any idea at all where that figure would
15 have come from?

16 MR. POTTER: The witness has testified he didn't
17 attend the 24th meeting, didn't he?

18 MR. DAMBLY: I didn't ask him that question. I
19 asked him did he have any knowledge as to where, or any idea
20 where, the \$600 million figure came from.

21 THE WITNESS: No. I don't. The reason that I
22 hesitated a little bit is because I have heard that somewhere
23 along the line since then, but I don't have any idea where
24 that number came from, at least independently right now.

1 BY MR. DAMBLY:

2 Q Okay, following the September 24 meeting, did you
3 have discussions with Consumers people about the September 24
4 meeting?

5 A I'm sure that I did. I seem to recall talking to
6 Judd or Falahee about what went on at the meeting.

7 Q Do you have any recollection of what those con-
8 versations involved?

9 A The thing that I remember them telling me is that
10 Mr. Aymond did most of the talking, and he talked to them
11 about the impact on Consumers and what would happen to Con-
12 sumers and I believe what Consumers position was in all of
13 it.

14 Q By "what Consumers position was," I am not clear
15 as to what you mean.

16 A What Consumers position was that Dow corporate
17 review -- where Consumers stood with the Dow corporate review
18 and the results of that review.

19 Q Do you remember what it was they said or they
20 conveyed to you that Mr. Aymond said where they were with --

21 A I really don't have any independent recollection
22 of exactly what was said. I do remember them telling me that
23 Mr. Aymond had just told them exactly where it was for
24 Consumers and what a suspension would do and what a delay
25 would do and what a cancellation would do and what the impact

1 on Consumers that would be. And he had just laid that out
2 real straightforward.

3 And that is about the only thing that I remember.

4 Q Do you remember that being tied into again a
5 potential suit from Consumers against Dow for breach?

6 A I have a real difficulty with that question. See,
7 I don't know how you can ask that question without setting
8 there knowing that in a business world, when you have a
9 contract with somebody and somebody else says they are think-
10 ing about breaking it, it is not unknown for the world, if
11 they do, they are going to get sued.

12 I have real difficulty relating to that question.
13 So I don't see how it could not have come up in any context
14 about anything.

15 Q Well, would you agree there is a difference between
16 someone stating these are possible financial outcomes of
17 different positions you might take and leaving it at that and
18 stating these are the possible financial outcomes, and if you
19 come out with certain things, we are going to sue you for
20 \$600 million?

21 A No. If you tell me you are going to break a con-
22 tract, I tell you da, da, da. I am not going to tell you you
23 break it, I am going to sue for \$600 million. That, you have
24 stated to me.

25 Now, by the way, I don't think that would surprise

1 anybody either.

2 Q What wouldn't surprise?

3 A If I told you I was going to break a contract and
4 you told me, if you then told me, "Great, you break the con-
5 tract, it is going to cost me \$600 million and I am going to
6 sue." I wouldn't be surprised if I told you I was thinking
7 about breaking.

8 MR. REYNOLDS: That last colloquy, just so we are
9 clear, had reference to your own views on the matter, not
10 something that you were relating had been reported to you
11 with respect to it?

12 THE WITNESS: That's correct.

13 MR. REYNOLDS: The September 24 meeting; is that
14 right?

15 THE WITNESS: Yeah.

16 BY MR. DAMBLY:

17 Q To your knowledge, did any meetings between Dow
18 and Consumers take place between September 24 and September
19 29?

20 MR. POTTER: Can I clarify one thing to make sure?
21 I am not sure the question that I understood was asked and
22 answered.

23 Did you hear anything back from the meeting as
24 to whether Mr. Aymond did say anything to the Dow repre-
25 sentatives regarding the possibility of a lawsuit by Consumers

1 against Dow?

2 THE WITNESS: To the best of my recollection what
3 I remember out of the meeting was that -- what I remember
4 being discussed was Mr. Aymond had been asked about where
5 the contract was and if the contract was -- Dow decided not
6 to continue with the contract, the best of my recollection
7 is that I was told Mr. Aymond said Consumers would then
8 pursue all of its legal remedies against Dow.

9 But that is the best of my recollection of what I
10 knew was said.

11 MR. POTTER: And this was related to you either by
12 Mr. Bacon or Mr. Falahee?

13 THE WITNESS: I believe that is so, Mr. Potter.
14 I could not tell you for sure that that was exactly accurate.

15 MR. POTTER: Thank you.

16 BY MR. DAMBLY:

17 Q Between September 24 and September 29 of 1976,
18 to the best of your recollection, did any meetings between
19 Dow and Consumers take place?

20 MR. CHARNOFF: You are talking about meetings
21 other than telephone calls? You are not talking about
22 telephone contacts?

23 BY MR. DAMBLY:

24 Q Meetings.

25 A I don't remember the day that I first met with Mr.

1 Nute and Mr. Wessel. If that was September 29, then I believe
2 that is accurate, we worked on filing the brief. I don't
3 think I had any meetings with anybody -- in fact, I'm sure I
4 had no meetings with anybody from Dow until my first meeting
5 with Mr. Nute, Mr. Wessel and Mr. Duran.

6 MR. CHARNEY: Excuse me. Did you file the brief
7 in that case on the 28th? You said you worked on filing the
8 brief. Did you and your firm file that brief?

9 THE WITNESS: No. Harold Reis actually filed that
10 brief, but we were getting the data together for the material
11 that went in it, facts.

12 BY MR. DAMBLY:

13 Q Did you have any discussions, telephone conversations,
14 with any Dow personnel between the 24th and the 29th?

15 A I don't believe that I did. I don't believe I
16 talked to anyone on the telephone. And it is possible that
17 I may have talked to Mr. Nute and set up a meeting, but I
18 think Mr. Bacon did that.

19 Q Did any discussions between yourself and Consumers
20 Power personnel take place between the 24th and the 29th?

21 A Absolutely. Every day.

22 Q What did those relate to?

23 A The case.

24 Q Brief on --

25 A What we were going to do. During that period,

1 Mr. Bacon and I were like Siamese twins.

2 Q How or when did you learn of the Dow corporate
3 decision?

4 A To the best of my recollection, it was on the 27th
5 of September.

6 Q And how?

7 A I believe it was a phone conversation between Mr.
8 Wessel and Mr. Bacon. And I am not positive that that is so.

9 Q How did you learn? Were you a party to that
10 telephone conversation?

11 A No. Mr. Bacon told me. I believe it was Mr. Bacon
12 who told me that Dow had phoned them with their position and
13 that Dow was going to go ahead.

14 Q When Mr. Bacon notified you of the decision,
15 do you remember that conversation?

16 By that "decision," I mean Dow corporate position.

17 A To the best of my recollection, Judd told me he
18 had a conversation with Mr. Wessel, and Mr. Wessel and he had
19 -- Mr. Wessel had told him what the Dow corporate position was,
20 and Judd had told him we would put that in the brief. I
21 believe something was set up so that we would call Dow and let
22 Dow know exactly what we said -- and I'm not real clear about
23 that -- plus I think that there was then a conversation about
24 the meeting to be set up to prepare Dow's witness.

25 I'm a little unclear about what happened, when it

1 exactly happened. But as far as Mr. Bacon and I were con-
2 cerned, when we arrived on the 29th, out of the conversation
3 with Mr. Wessel, Mr. Temple was going to be the witness.
4 I believe that all occurred in the same telephone conversation.

5 Q To the best of your recollection, who attended the
6 September 29, 1976, meeting?

7 A That is the first meeting that we had with Dow.
8 I don't have any documents in front of me, and I think it is
9 accurate. It is Mr. Nute, Mr. Wessell, Mr. Duran, Judd Bacon
10 and myself were at the first part of the meeting. Later in
11 the meeting, we moved to another room. We were in the library,
12 I think, or small conference room with a lot of law books
13 in it. We moved into a bigger room with Mr. Temple.

14 Q And what was the purpose of that meeting?

15 MR. CHARNOFF: The meeting with Mr. Temple or the
16 earlier?

17 BY MR. DAMBLY:

18 Q Going into the September 29 meeting, what was the
19 purpose of the meeting?

20 A At that time, we were scheduled to go to hearing
21 on October 6, I believe, 6, 7 and 8.

22 The purpose of the meeting was to prepare for that
23 hearing, both in terms of witnesses and documents. I
24 believe by that time, we had received a request from Mr.
25 Cherry for documents. It is not a formal request; it was a

1 letter, I believe, to Dow, as a matter of fact, asking that
2 Mr. Temple be provided--a number of documents be provided
3 to him. I believe we had gotten that letter then.

4 The purpose of that meeting was to prepare for that
5 hearing.

6 Q Okay. During the meeting, did you take any notes
7 of the meeting?

8 A I had a list of things that people wanted of me,
9 and I had an outline of the testimony. The best of my
10 recollection, I took care of those, and I don't remember ever
11 seeing those notes again.

12 MR. CHARNOFF: I think his question was did you
13 take any notes at the meeting rather than notes preparatory
14 to the meeting.

15 THE WITNESS: I think I did. I think I wrote down
16 things people wanted from me that I had to handle later.

17 BY MR. DAMBLY:

18 Q Do you have those?

19 A No.

20 Q Or do you know if they are still in existence?

21 A I have not seen them.

22 Q As a result of the meeting, did you write any
23 memos to files or notes to files on the meeting and what had
24 taken place?

25 A Not that I remember.

1 Q To your knowledge, did Mr. Bacon take any notes?

2 A I don't remember any.

3 Q Were you aware that all three Dow people were keeping
4 notes of the meeting?

5 A Actually, I think I was aware that they were
6 writing things that we were discussing. We were talking about
7 a lot of things we would need. I remember them putting them
8 down, writing down things that we need. I did not know at
9 that time that Mr. Duran was taking shorthand notes of what
10 we were talking about, no.

11 Q Do you recall making any remarks to Mr. Duran
12 about the amount of notes he was taking at this meeting?

13 A I remember a conversation that I had with Mr. Duran,
14 but I could have -- it was like later. It was another meeting
15 later when I talked to him, that I remember talking to him,
16 about the amount of notes that he was taking.

17 There was a time somewhere in there when I dis-
18 covered what Mr. Duran was doing was taking shorthand notes.

19 Q When you discovered that, did that have any effect
20 on you or your presentation?

21 A No.

22 Q Going into it?

23 A It pissed me off.

24 Q I guess then it had an effect on your.

25 A It did not have an effect on my presentation; it

1 pissed me off.

2 Q Did it indicate anything to you about the relation-
3 ship between Dow and Consumers?

4 A No. By the time I discovered that, it had become
5 pretty clear about the relationship between Dow and Consumers
6 in terms of the trust that was between the parties. That
7 became readily clear after we set down and talked with Mr.
8 Wessel and Mr. Wessel explained some of the things Mr.
9 Temple had based his opinion on.

10 Q Do you recall when that meeting was? Was this the
11 first meeting or a later meeting?

12 A I don't know. I would have to look at the notes.
13 It was the first time we excused Judd.

14 Q Going into the September 29 meeting, what was
15 your view at that time of the Dow-Consumers relationship?

16 A I guess my view of it was a couple of different
17 things. I was clear that Joe Temple had some personal opinions
18 that neither Consumers nor Dow was exactly excited to have
19 Joe express on the stand. I was aware that there was some
20 animosity between members of the negotiating teams. I didn't
21 know what those things were.

22 That was one of the purposes of the meetings was
23 for me to find out so I would know what was going on. I
24 didn't know the basis for the Dow corporate, either the Dow
25 corporate position or the Dow Michigan Division recommendation.

1 I can get to where I am going.

2 Going into the September 29 meeting, did you view
3 Consumers and Dow as having a hostile adversary relationship?

4 A No. Dow corporate position had been to go ahead
5 with the contract. So insofar as I was concerned, that was
6 Dow's corporate position. That is what we would present.

7 Insofar as the contract was concerned, I knew that
8 there were some open items on the contract -- I was not real
9 clear what they were yet -- that were going to cause me a
10 problem in the hearing.

11 By "a problem," I mean that we were going to have
12 to present them. It was not as if there was a contract now
13 between two parties who were in absolute agreement on what
14 the contract meant. So that, therefore, that was going to
15 probably, as far as I was concerned, have to come out at least
16 for the FES so that we would have to present what the ultimate
17 position was, interim positions were.

18 So I knew that was there as a part of what I wanted
19 to have the meeting to find out.

20 Q Did you feel, going into that meeting or during
21 that meeting, or did you have the perception that the Dow
22 representatives at that meeting viewed yourself and the Con-
23 sumers representative, I guess, in an adversarial relationship?

24 A Not when I went into the meeting.

25 Q When you came out of the meeting?

1 A No. Not absolutely.

2 Q Did you ever get that feeling later on during the
3 preparation, any of the later meetings during the preparation,
4 of the Temple testimony?

5 A I don't think that the word "adversary" accurately
6 describes what I began to feel was going on. I don't know
7 what the word is. The thing that happened with Dow-Consumers
8 was that it was always real clear to everybody involved in
9 the matter from Dow and Consumers that the material issue
10 before the Board was what was Dow's position. And that was
11 Dow's corporate position.

12 There was never any disagreement with any of us
13 about that. That had to be presented. The way in which we
14 were going to present that and how it was that we were going
15 to go about doing it caused some friction between us.

16 Now, so the word "adversary" doesn't describe
17 that to me.

18 Q If you had been aware there was an adversarial
19 relationship, would your actions in the September 29 meeting
20 have been any different?

21 A Yeah. See, the thing that I do want you to know
22 that in hindsight of all this that I am real clear about was
23 the thing I didn't do, was be responsible for who it was I
24 was communicating to. The only thing I wanted to do was get
25 the facts out and get them before the Board. That's where I

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1 came from.

2 There was a lot of other intrigue going on around
3 me I let pass rather than enter into. I probably should not
4 have done that in hindsight.

5 Q Would you in hindsight say that the reason you
6 weren't involved in all this other stuff was -- I will give
7 you choices which may not be what you would care to hear
8 about. If you have a different answer, go ahead, but --

9 MR. CHARNOFF: As long as the choice, the last
10 choice, is called "none of the above."

11 BY MR. DAMBLY:

12 Q Well, a third one.

13 In hindsight, would you have viewed yourself as
14 not getting involved in all the rest of this because of either
15 naivete or because you just weren't concerned with anything
16 but the Dow corporate position and getting the testimony
17 ready?

18 A Give me the first part again.

19 Q I don't know if I can.

20 In hindsight, looking abck at the September 29
21 meeting, and your statement that you didn't get involved in
22 a lot of the other intrigues, and that may have been a mistake,
23 why do you think that mistake was made? That is the best I
24 can say. Was it because you were naive about what was going
25 on or you just didn't consider the rest of it important?

1 A I want to go back and --

2 MR. REYNOLDS: Let me just say my impression of
3 what he said was it was not fully sensitive to all the other
4 intrigue that was going on during that time fram that was
5 larger than just the 9/29 meeting, but through the period of
6 preparing for this meeting.

7 I believe your question just focused on the 9/29
8 meeting. I think his answer is probably more meaningful if
9 it is in the context of whatever his unawareness was during
10 the time frame that he mentioned which was during the
11 preparation.

12 THE WITNESS: That was the first correction I was
13 going to make. It was not the 9/29 meeting. Actually, it
14 was my involvement the entire time with Dow. It wasn't
15 either that I would have gotten involved with the intrigue.

16 You see, the truth was that insofar as the contracts
17 were concerned, my only concern was that whatever it was be
18 presented. Truthfully, to me, it didn't look like the parties
19 were that far apart on the contract that they could have resolved
20 the thing and gotten it down. It would have made it much
21 simpler to present to the Board.

22 I presented that issue with both my client and with
23 the Dow lawyers.

24 Let me answer the rest of your question if I can.
25 See, it was real clear to me that I had nothing to do with

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1 the other stuff that was going on with the contract. It was
2 also real clear to me Dow was going to present its point of
3 view. My position in any NRC licensing proceeding is you
4 can forget the legal niceties. Everything that is in the
5 record of any company anywhere of anything anybody wants to
6 ask about, whether it has anything to do with anything, is
7 going to come out. There is no rules of evidence. And my
8 position is, so what you do when you are in that position is
9 you put it all in, turn over all your documents and set back
10 and see what happens.

11 And that is where I was coming from. What I ran
12 into was a wall. Not that from the other side there wasn't
13 a problem with what I wanted to do that wasn't genuine. But
14 that was always my position. And it was frustrating to deal
15 with what I had to deal with then.

16 And, in hindsight, what I would have done was
17 gotten out of it completely and allowed Dow to handle it
18 itself.

19 BY MR. DAMBLY:

20 Q I don't quite understand the last comment.

21 A Good.

22 Q How would you have gotten out of it and allowed
23 Dow to handle it itself?

24 A My position throughout the thing was that Dow was
25 a party. Mr. Wessel had some legal position I didn't think was

1 worth a damn that I was willing to go with in order to get
2 the thing to hearing and the facts presented the quickest
3 way possible.

4 If I had known that Dow was approaching it the way
5 it appeared to me later that they were, I would have advised
6 Consumers that the best thing would be to allow Dow to
7 proceed on its own.

8 Dow had some internal issues of its own that
9 appeared to me that in retrospect would have been better
10 handled by Dow itself.

11 You have got to understand, too, that Dow was not,
12 and Consumers -- you know, when Mr. Wessel spoke to me about
13 the internal negotiating contracts, it is real clear to me
14 that is a valid point. You don't want your internal negoti-
15 ating contracts given to the company you are negotiating with
16 before you negotiate them out.

17 Q It makes it a lot easier for the company that gets
18 them.

19 A That's right.

20 Q Before I move on, two things. I guess, one, I
21 should have followed up quite a while ago. But when you say
22 you found out that when Mr. Duran was taking these extensive
23 notes, your personal reaction was "it pissed you off." Why?

24 A Well, I guess for a couple reasons. I don't like
25 to have somebody taking shorthand notes without being told

1 that that is going on. If I am told, I don't care. I just
2 don't like people operating with me in that way. I like to
3 be told up front what is going on. And I wasn't told. And
4 that's what I got angry about.

5 It is like reporting a meeting and not telling the
6 person that is in the meeting they are being recorded.

7 Q You said there were a couple reasons. Was that
8 all that came to mind at the moment?

9 A I think the other reason is if that was so, I would
10 have asked for them.

11 Q Did the fact that you found out they were doing
12 that and hadn't told you change your impression of the
13 relationship between Dow and Consumers at that time?

14 A Oh, at the time that we got them, you know, at
15 the time that I discovered that, we were so far along and what
16 I was focusing on then was the hearing and getting Consumers'
17 case presented.

18 And ultimately what I decided to do probably very
19 quickly was just let that go which was one of the things that
20 I did as I went through this case was let a lot of the stuff
21 that came up just settle back down in order to get it to the
22 hearing.

23 Q At the time that you did discover this, did you
24 make it known to Dow that you considered that upsetting?

25 A I don't remember.

1 Any time Mr. Wessel is around, I was upset.

2 Q To wrap up the previous line of questioning which
3 I don't think I ever got anywhere on and probably we should
4 drop, but anyway, do you believe that your behavior during,
5 say, the September 29 and maybe the next few meetings after
6 that could have been adequately characterized as naive?

7 A I don't know. Maybe somebody could have had that.
8 I'm sure somebody could have come up with that opinion. But
9 it could have been. I don't know.

10 MR. DAMBLY: Off the record.

11 (Discussion off the record.)

12 MR. DAMBLY: We will break for lunch now and
13 return at 12:15.

14 (Whereupon, at 11:40 a.m., the deposition was
15 recessed, to reconvene at 12:15 p.m. the same day.

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AFTERNOON SESSION

12:40 p.m.

Whereupon,

REX RENFROW

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

DIRECT EXAMINATION (Continued)

BY MR. DAMBLY:

Q Let the record reflect the staff was here at 12:15.

I believe we left off about to discuss the September 29 meeting. Before I get into the specifics of the meeting, would you tell us to the best of your recollection -- I don't recall if I asked you so let's start with who was at the meeting.

MR. REYNOLDS: You asked that.

BY MR. DAMBLY:

Q Okay, skip it, then.

Can you tell me to the best of your recollection what took place at the September 29 meeting?

A We got there, and we set down, and we talked. The best of my recollection, it was Mr. Wessel gave me something he had prepared. I gave him an outline I wanted of what I wanted in the testimony. There was a break. We looked at the stuff.

Oh, we looked at the stuff Mr. Wessel had given

1 us. I came back and gave him the outline we wanted. We
2 talked about that. We talked a lot about some other things,
3 about documents.

4 We then went in and met in a different room with
5 Mr. Temple and talked with him for a while. We got through
6 talking with Mr. Temple. I believe there were some further
7 conversations with Mr. Nute and Mr. Wessell, Judd and myself.
8 And then we left.

9 Q Two things I wish you could be provided with here
10 -- your affidavit of, I believe, December 30, 1976, and Mr.
11 Duran's meeting notes of 9/29,76.

12 MR. REYNOLDS: Off the record just a minute.

13 (Discussion off the record.)

14 MR. REYNOLDS: All right, we will put on the record
15 that Mr. Renfrow has before him the two documents that Mr.
16 Dambly referenced.

17 BY MR. DAMBLY:

18 Q On page 3 of your affidavit, it indicates in para-
19 graph numbered 5 there that in view of the fact that Mr. Joseph
20 Temple was in charge of the Michigan Division and headed the
21 Dow team charged with renegotiating the Dow-Consumers Power
22 contract related to Midland and the fact that Mr. Cherry
23 had indicated in a letter dated September 21, 1976, he wished
24 to question Mr. Temple, we jointly determined Mr. Temple should
25 present Dow's position.

1 Is that to the best of your recollection the factors
2 that went into a determination as to why Mr. Temple would be
3 the witness?

4 A Actually, I think that it was kind of like the
5 ending fact out of the conversation that Mr. Wessel and Mr.
6 Bacon had already had. We were all pretty well, I think, all
7 of us, although not jointly, having discussed it, decided
8 Mr. Temple would be -- in fact, be the witness. This just
9 kind of got all of us together.

10 Q Do you know how the decision was arrived at that
11 Mr. Temple would be the witness?

12 A I don't know on Dow's part. I can't really speak
13 for Dow. I don't ever remember discussing that with them
14 except with regard to the fact that Mr. Cherry had asked for
15 him.

16 When we took a look at it, my position was Joe
17 knew about it, had been around for a long time with the contract.

18 Second of all, it seemed that since the consideration
19 was his own personal views and the fact that even if we didn't
20 call him, somebody else would, it seemed to me as a matter of
21 tactics to put him on the stand in the first place.

22 Q On page 3 of Mr. Duran's notes of the September
23 29 meeting, the third paragraph states that Rex observed to
24 Lee that he and Lee had talked on this. He said that the only
25 problem he had with Temple was that of the original position

1 taken on this, and he didn't want a witness to get up there
2 and tell other than the truth.

3 Could you explain for the record exactly what you
4 meant by the "only problem"?

5 First, maybe I should say, did you make such a
6 statement? These aren't your notes.

7 MR. POTTER: Excuse me. There are a couple of
8 statements in that paragraph. You asked him whether he made
9 the entire statement as it appears in that paragraph.

10 BY MR. DAMBLY:

11 Q Do you recall such a conversation?

12 A I don't have any recollection of having talked to
13 Lee before as in the first sentence. And I am sure that I
14 did. I don't remember saying, you know, that I said this,
15 and that it about correctly states my position. I wanted to
16 be sure Mr. Temple had indeed adopted the Dow corporate
17 position and was not still with the Midland Division position
18 before we put him on the stand.

19 MR. REYNOLDS: I am not sure I understood your
20 answer. You say the statement that was read from the notes
21 does reflect generally the discussion that you had?

22 THE WITNESS: Yes.

23 MR. REYNOLDS: Is that what your testimony was?

24 THE WITNESS: Yeah.

25

1 BY MR. DAMBLY:

2 Q On the same point, on page 14 of Mr. Duran's notes,
3 the second paragraph up from the bottom has the statement,
4 "Rex stated that he had been toying with the idea of not having
5 Joe as a witness, but someone will probably subpoena him
6 so we may as well just use him and go from there."

7 To the best of your recollection, did you make such
8 a statement?

9 A Yes, certainly. It is one of the factors we looked
10 at.

11 Q And again, why were you toying with the idea of
12 not having Mr. Temple?

13 A Well, because of the original conversation. We had
14 gone back all the way to the 21st; because of Joe's personal
15 opinions on the project; that Joe had his own personal view-
16 points about the project and where it was. And the thing we
17 were looking at was who could present Dow's corporate position.

18 When it became apparent that he was going to be
19 subpoenaed anyway and that in fact he did support the cor-
20 porate position, there was no reason not to use him.

21 Q Did you or do you feel that Mr. Temple's personal
22 feelings about the Dow-Consumers relationship in the contract
23 were relevant to the suspension hearing?

24 A Were they relevant?

25 Q Yes.

1 A In an NRC proceeding for sure. And in any other
2 court proceeding, I have my doubts.

3 MR. CHARNOFF: In asking whether they were relevant
4 as distinguished from material, is that what you meant?

5 THE WITNESS: Yes.

6 MR. DAMBLY: I think he has made the statement he
7 never considered anything other than the Dow corporate position
8 to be material.

9 Is that correct?

10 THE WITNESS: Yes.

11 BY MR. DAMBLY:

12 Q You said to an NRC proceeding, they were relevant,
13 but nowhere else?

14 A I said I had my doubts as to whether somebody
15 else's personal opinions would be relevant in a Federal Court
16 or a State Court.

17 MR. CHARNOFF: You said were they relevant in an
18 NRC proceeding. Were you saying that based upon the breadth
19 of testimony allowed in NRC proceedings or because there is
20 some determination in NRC proceedings that that type of
21 material is indeed relevant?

22 THE WITNESS: I'm sorry. That, you know, just
23 because the breadth of material from my own experience I
24 know that is allowed to be covered in an NRC proceeding, it
25 was real clear to me from day one they would be allowed to

1 ask Joe those questions, and he would be required to answer
2 them.

3 MR. REYNOLDS: You are then talking in terms of
4 objections on grounds of relevancy and whether they would be
5 successful in an NRC proceeding as opposed to being successful
6 in court; is that right?

7 THE WITNESS: Yes.

8 MR. POTTER: Can I inquire? I'm sorry to inter-
9 rupt. But are you talking now about Mr. Temple's personal
10 views as opposed to the Michigan Division Decision?

11 THE WITNESS: Yeah, his personal opinions, you
12 know.

13 BY MR. DAMBLY:

14 Q Back onto this same statement on page 14, there
15 is an indication someone will probably subpoena him.

16 A Um-hum.

17 Q Did you have any indication that somebody had an
18 intention to subpoena Mr. Temple to testify?

19 A Yeah. When we discussed it up here in the first
20 part, we had gotten that letter from Mr. Cherry and said
21 he wanted Dow to provide Mr. Temple as a witness.

22 MR. REYNOLDS: You say "we discussed it in the
23 first part," you had reference again to the notes by Mr.

24 Duran --

25 THE WITNESS: Right.

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1 MR. REYNOLDS: -- reporting on the meeting?

2 BY MR. DAMBLY:

3 Q Before I go forward on the September 29, as an
4 attorney in the case representing Consumers in the suspension
5 hearing, what is your recollection of discovery requests?
6 And to put it in better context, under the way you remember
7 the discovery requests that were made in that proceeding, and
8 as Mr. Reynolds indicated before when I referred to Mr. Duran's
9 notes, there are two sets of Mr. Duran's notes. There is a
10 19-page set and a 26-page set.

11 Would those have been subject to any of the dis-
12 covery requests that you are familiar with in this suspension
13 hearing?

14 MR. CHARNOFF: Did you ask two questions or one?

15 MR. DAMBLY: I think that is only one.

16 MR. CHARNOFF: I think the introductory part had
17 a question in it, but I'm not sure.

18 MR. REYNOLDS: Your question is whether he would
19 have at the time to the best of his recollection considered
20 the Duran notes as within the ambit of the discovery requests
21 that he received. Is that your question?

22 MR. DAMBLY: Yes.

23 THE WITNESS: No. The answer to your question is
24 no, but from the research that we had done at that time, it
25 appeared to us since Dow and Consumers interests were the

1 same, they would not have been discoverable; they would have
2 to be listed and attorney/client privilege. And under the
3 rules, as I remember, the Board notified that we had those
4 documents and were claiming privilege to them.

5 At the time, we didn't know that they existed. So
6 the question didn't come up.

7 MR. CHARNOFF: You said, "we didn't know." You
8 mean Consumers didn't know?

9 THE WITNESS: Consumers didn't know.

10 BY MR. DAMBLY:

11 Q Let me see if I can clarify that. They would have
12 been, to the best of your recollection, within the ambit of
13 the discovery request, but they would have been privileged?

14 A We would have claimed the privilege on them.

15 Q But you did not. Consumers was unaware that the
16 Duran notes existed?

17 A That's accurate, yes.

18 Q And is that for all of the Duran notes for all of
19 the meetings?

20 A Yes.

21 MR. REYNOLDS: I hate to interrupt this because it
22 is slowing it down, but is it your testimony that you have in
23 mind today a specific discovery request that called for notes
24 such as the Duran notes?

25 THE WITNESS: Not at that point. I think the

1 actual first request that we got in the whole proceeding was
2 the first day of the hearing, at the hearing itself. There was
3 a request made. It was an informal request made by Mr.
4 Cherry to Dow for certain Dow documents in that letter.

5 What we did was we put together all of the documents
6 that backed up our testimony and made them available to all
7 the parties anyway, had them available for people to look at.

8 Dow went through its files, and we went through our
9 files. And we put everything together even in the absence
10 of that request and had that available to all the parties in
11 Jackson to come and review -- had all the back-up material
12 in it, had the back-up documents that Dow had relied upon for
13 its internal cost studies.

14 He put that together for me, had the back-up
15 Consumers documents in it, everything we relied up to present
16 our case, we put in one spot and had it available.

17 BY MR. DAMBLY:

18 Q I suppose this has to do more with my unfamiliarity
19 with the case at that time, but how did it come about that
20 Mr. Nute's notes were made available to the parties?

21 A My best recollection of that was that sometime in
22 January, Dow turned over a list of documents that included
23 the Nute notes that I did not know even existed nor what was
24 in them until the day they were turned over. Nor did anyone
25 at Consumers to the best of my knowledge or Isham, Lincoln

1 and Beale know that.

2 MR. POTTER: January what year?

3 THE WITNESS: 1977, I believe. And that is to the
4 best of my recollection. I would have to go look.

5 MR. REYNOLDS: Was that pursuant to a specific
6 request to the best of your recollection?

7 THE WITNESS: Yes, it was pursuant, as I remember,
8 to a request that Mr. Cherry made once the hearing actually
9 had started.

10 BY MR. DAMBLY:

11 Q To the best of your recollection, did that include
12 the Duran notes on that list?

13 A Did what include the Duran notes?

14 Q I thought you indicated that the Nute notes were
15 made available in January of '77.

16 A I think the Duran notes were made available at the
17 same time.

18 MR. OLMSTEAD: Let me interrupt and just ask you
19 if you recognize Midland Intervenor's Exhibit 60A.

20 THE WITNESS: I remember seeing this. I don't
21 know when this was turned over. And I don't see the Duran
22 notes that the Nute notes refer to.

23 MR. CHARNOFF: You don't see the Duran or the Nute
24 notes referred to?

25 MR. REYNOLDS: Off the record.

1 (Discussion off the record.)

2 THE WITNESS: The answer to the question is no.

3 BY MR. DAMBLE

4 Q Did you know at that time or for that matter do you
5 know today that there were Wessel notes of those meetings,
6 of the meetings starting September 29 and running up to about
7 the time of the suspension hearings?

8 A No.

9 Q Would you have considered Mr. Wessel's notes to
10 fall in the same category as the Nute notes and the Duran
11 notes?

12 A You mean if somebody had asked them, I would have
13 claimed the privilege on them? Yes.

14 Q Would they have been within the ambit of discovery?

15 A Let me answer your question this way: If somebody
16 would have asked for those documents, they would have been
17 within the ambit of that discovery request, and I would have
18 then claimed privilege on them and let the Board know what
19 I was claiming it on.

20 Q Okay.

21 MR. OLMSTEAD: I would like to ask you just one
22 follow-up question on that. Did somebody ask for the Nute
23 notes?

24 MR. CHARNOFF: Before they were made available?

25 MR. OLMSTEAD: That led to the claim of privilege.

1 MR. CHARNOFF: Somebody asked specifically for the
2 Nute notes?

3 MR. OLMSTEAD: To your recollection.

4 THE WITNESS: I don't believe anybody asked
5 specifically for the Nute notes. Mr. Cherry made an all-
6 sweeping request that Dow told the Board it would fulfill. It
7 went back to its files. It went through it. I cannot even
8 tell you the amount of work that I know Lee and his people
9 put into that, including then giving the Board's list of the
10 documents that they had.

11 As the hearing went on then, the Board kept making
12 rulings, and Mr. Cherry kept requesting more and more stuff.
13 I think Dow, once the request was actually made and ruled upon
14 by the Board, did an incredible job of going back. There were
15 no dimensions to the discovery request. It was in essence
16 vomiting up every piece of paper you ever had of anybody having
17 to do with Midland.

18 And they went back and attempted to do that. I
19 think they did a good job.

20 BY MR. DAMBLY:

21 Q If we can go back to your affidavit again of
22 December 30, 1976, on page 3, it indicates that early on in
23 the meeting, I guess Mr. -- this is close to the bottom of
24 the page under paragraph 5 -- Bacon and I were presented with
25 a draft of testimony from Mr. Temple which apparently had

1 been prepared by Mr. Wessel. Mr. Bacon and I reviewed that
2 draft together and were not satisfied since it did not include
3 the items currently under negotiation between Dow and Con-
4 sumers or the interim position taken by the Michigan Division
5 in early 1976.

6 MR. CHARNOFF: Early September of 1976?

7 BY MR. DAMBLY:

8 Q I thought I did, but I may not have.

9 Was that the only thing that you considered unsatis-
10 factory about Mr. Wessel's draft?

11 A No, but it was not the only thing we considered
12 unsatisfactory. Setting here today, I would have to look at
13 that draft again to tell you, but it was the main point that
14 was entirely omitted we wanted in. There were some other
15 minor items we discussed.

16 I want to say this to you: I want to get it in so
17 it gets understood. My point of view about all of this has
18 always been that there was never a disagreement between Mr.
19 Wessel, Mr. Nute, Mr. Bacon, Mr. Rosso and myself about what
20 was material in this case. Material fact was Dow's corporate
21 position.

22 The discussions that came up for us was how we were
23 going to present that. My point of view, having practiced before
24 the NRC and knowing what went on with the proceedings, was
25 to put it all in at the start and go forth. Mr. Wessel was

1 not always of that opinion.

2 So we had some disagreements about the proper
3 approach to take with that.

4 Q Did you have any indication at the time you -- or
5 have any reason to believe at the time that you -- reviewed
6 this first draft by Mr. Wessel that it may have intentionally
7 been unsatisfactory; Mr. Wessel may have intentionally tried
8 to prepare an unsatisfactory draft?

9 A Truthfully, I don't get the question. I don't
10 know what you want to know. Intentionally for what? I think
11 what Mr. Wessel presented me with was a draft from his client
12 that he felt set forth his client's position in the best
13 light possible.

14 It was not satisfactory to me so we had a discussion
15 about it.

16 Q Going back to the Duran notes, on the second page
17 of the Duran notes -- maybe even before I get to that a
18 general question.

19 A Yes, sir.

20 Q At the September 29 meeting, is it true that you
21 made it known early on that you wanted the Michigan Division
22 position and the current negotiations between Dow and Con-
23 sumers put into the testimony?

24 A When you asked me earlier in the meeting, I didn't
25 recall. I do know that when the question of testimony was

1 addressed, whenever it was first addressed in the meeting,
2 I let them know that, yes. I don't remember if we discussed
3 other stuff before we got to the testimony.

4 Q Did you explain why you wanted it in?

5 A Yes.

6 Q And what reaction did you get from the Dow people?

7 A The reaction basically that I got was that they
8 were going to have to explain and that Joe's opinions would
9 come out and that we didn't want that -- let me put it this
10 way: if I knew all of the stuff about that, I would not want
11 to do that.

12 MR. CHARNOFF: I'm sorry, I didn't --

13 THE WITNESS: Excuse me. Let me try again.

14 The basic reaction that I got was that Mr. Wessel
15 did not want to put it in. He did not think it was material
16 and that he thought that Joe's personal opinions should not
17 be included, should not be allowed, in the hearing. He wanted
18 to be sure that I would object to them.

19 He also told me that the basis for Joe's opinion
20 would bring up some stuff that, as I discovered them, was
21 going to be touchy. And he didn't think Joe ought to have
22 to testify as to his own personal opinions as a matter of law.

23 BY MR. DAMBLY:

24 Q Did you at any time during the September 29
25 meeting indicate that you wanted either the Michigan Division

1 position or the present negotiation posture between the com-
2 panies excluded from Mr. Temple's testimony?

3 A No. My position throughout was to put it in. I
4 did not change that position until we had a final meeting with
5 Mr. Rosso, Mr. Miller and myself.

6 MR. POTTER: Excuse me for interrupting.

7 Do I understand your statement that was your position
8 throughout September 29?

9 THE WITNESS: Up until my meeting.

10 MR. POTTER: Your meeting with Mr. Miller and Mr.
11 Rosso?

12 THE WITNESS: Yes. I would have to look at the date,
13 but that was after there was another meeting between Dow and
14 ourselves about that.

15 BY MR. DAMBLY:

16 Q Did Mr. Wessel, during the September 29 meeting,
17 indicate to you that he was reluctant to get into the negot-
18 iations between the companies because they were ongoing?

19 A Yes.

20 Q Did he make any statements that would lead you to
21 believe that he viewed Consumers' attempts and your attempts,
22 I suppose, to have that included in the testimony as an attempt
23 to get discovery of the Dow negotiating positions?

24 A He never stated that to me, no.

25 Q Did he do anything that gave you that feeling?

1 A At that point in time, I don't believe so. And
2 it was very clear from his position that -- I think it is
3 discussed here with the documents at a later point that --
4 there were certain documents that Dow felt should not be
5 turned over, and it would want to claim a privilege to We
6 discussed the negotiations and that they were sensitive.

7 My position on that with Mr. Wessel was that I
8 agreed with him that there were probably documents in there
9 that shouldn't be turned over, and he should have the right
10 to object to and at least put his objections on the Board,
11 with the Board, set them out, and that what we needed to do
12 was to provide it and have it available so that we could move
13 forward with the greatest possible speed.

14 I need to be clear with you that Milt's and my
15 differences were how that was going to be done. Milt never
16 said to me, "I don't want to turn over documents." He said,
17 "I got documents that I got a right to claim a privilege to,
18 and I want to do it."

19 Q Did anyone at Consumers Power ever tell you or
20 suggest to you that you should use this upcoming suspension
21 hearing as a means to get access to the Dow negotiating
22 positions?

23 A Absolutely not. In fact, when I told them that
24 Dow was sensitive to that and had a problem with it, what they
25 told me to do was accommodate Dow in every way possible.

1 MR. CHARNOFF: Who was "they told you"?

2 THE WITNESS: Judd and Mr. Falahee. And that was
3 the attempt that we made through that letter to protect Dow's
4 documents with the agreement that we had which we would seal
5 the documents.

6 MR. CHARNOFF: We, Isham, Lincoln and Beale.

7 BY MR. DAMBLY:

8 Q That letter is a later letter, like October 15,
9 showing an agreement that was signed?

10 A I believe that is accurate. I'm not sure of the
11 day.

12 Q Back on the Duran notes, page 9, there is a state-
13 ment down at the very bottom, the last thing on that page 9
14 that says, "Judd pointed out for Consumers Power's purpose
15 initially Consumers Power would like to see everything there
16 is on the entire matter."

17 Do you recall that statement being made?

18 A Yes, but not in the context that he wanted to see
19 it. Consumers Power, i.e., their representative, me.

20 Q Was that made clear during the meeting?

21 A Well, it was for sure made clear, and I believe
22 it is this meeting because I think it was this meeting that I
23 basically agreed with Milton Wessell and Lee Nute that on
24 sensitive areas, they would discuss that with me without Judd
25 in the room.

1 And I believe it is also at that time that we
2 discussed how to protect the documents. And I agreed that we
3 would do it in a way that if Dow had to turn over its negoti-
4 ating documents, they would be turned over to me under the
5 care of Isham, Lincoln and Beale and only be opened upon a
6 court order so that Dow would have the opportunity to state
7 its privilege and that if there were any consumer documents
8 of the same type, they would be turned over at the same time
9 so that both parties would have access to the documents.

10 MR. POTTER: What was the page reference on that?

11 MR. DAMBLY: 9.

12 On page 10, there is a statement about, starting
13 on the third line down, that Milt stated if Consumers Power
14 pushed further on this information, the parties may get into a
15 situation where Dow immediately filed suit against Consumers
16 Power.

17 THE WITNESS: Yes.

18 BY MR. DAMBLY:

19 Q Do you recall that?

20 A Yes.

21 Q What was the context?

22 A I kept telling him I wanted it. He finally told
23 me Dow might have to file suit.

24 Q The suit was not a suit between Dow and Consumers
25 Power breach of contract; it was over document privilege?

1 A Not that I took it. I took it to mean that if
2 Consumers continued to push that position that Dow would file
3 suit against Consumers with regard to the whole thing. And
4 I want you to know that I then dismissed it.

5 Q Before we get to dismiss, what was this whole
6 thing?

7 MR. REYNOLDS: You said "file suit with regard to
8 the whole thing."

9 THE WITNESS: When I referred to the whole thing,
10 I meant the entire Consumers-Dow -- I don't know what the
11 word is I want -- proceeding. It is not the licensing
12 proceeding, but the entire relationship between Dow and
13 Consumers is what I took him to mean; that Dow might file
14 suit against Consumers.

15 BY MR. DAMBLY:

16 Q Then, that would be in the breach of contract
17 area?

18 A I took it to assume that.

19 Q Okay. I thought I just asked that a minute ago,
20 and you said you didn't take it to assume --

21 A No. It is not what you asked me. Go back and
22 ask again, and I will see if I can answer it so it is clear.

23 Q The statement here that we are dealing with where
24 Milt is saying, "If you push, if Consumers pushes" --

25 A Yes, I got it.

1 MR. REYNOLDS: Let him finish the question.

2 BY MR. DAMBLY:

3 Q -- "you may get in a situation where Dow immediately
4 filed suit against Consumers."

5 What context was that in and how did you take that?
6 What would be the nature of the suit?

7 A I assume that what Milt was talking about was that
8 he would sue Consumers for breach of contract.

9 Q Okay.

10 A Now, the thing that I wanted to say to you is that
11 I dismissed that. I did not operate that that was indeed
12 going to happen.

13 Q Why did you dismiss it?

14 A Well, Milt had a client to protect. Milt's position
15 was that this stuff didn't need to be stated. He was based on
16 the other side of the table with me who was demanding that it
17 was. I assumed that Milt was doing, one, what any good lawyer
18 would do, which was tell me this could happen and that would
19 happen so I could take a look at my options.

20 I took a look at my options and said I wanted it
21 anyway. I didn't assume that Milt was doing anything other
22 than telling me what might be so.

23 Q Was there any discussion in terms of this potential
24 lawsuit of what the ramifications of that lawsuit were or
25 how many dollars might be involved?

1 A No.

2 Q Was there any substantial discussion of --

3 A No.

4 Q Just a statement in passing?

5 A It was a statement. I didn't respond to it. As my
6 daddy would say, I didn't rise to the bait, and we went on.

7 See, now, the truth was I wasn't interested in that
8 stuff. That was contract negotiations and contracts. And
9 I wasn't interested in it in the terms of the contract itself;
10 only insofar as we needed to present to the NRC what Dow's
11 position was.

12 Q After you had reviewed Mr. Wessel's draft, and I
13 suppose taking a break at some point, you and Mr. Bacon pre-
14 pared a draft outline of the testimony; is that correct?

15 A Yeah.

16 Q What was the reaction of Mr. Wessel and Mr. Nute
17 when you provided them with this draft outline?

18 A They didn't want to put all of the information
19 that we requested in the testimony.

20 Q What specifically did they wish excluded?

21 A I don't remember all of that. I would have to look
22 at the actual draft to be able to tell you or review Mr.
23 Duran's notes. I do remember we again discussed the Michigan
24 Division position being in there. They were worried about
25 Joe having to testify to the first contracts which he hadn't

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1 been around on; that Joe didn't know all of the information
2 that we were asking for; that there were other people that
3 actually knew that, and they were concerned about that.

4 Q Did they have any problem with there not being
5 enough information requested in that draft?

6 A No, they thought there was too much.

7 Q Did they ever say to you there was something else
8 they thought needed to be put in at all?

9 A No.

10 Q Why did Dow -- that would be, I guess, Mr. Nute
11 and Mr. Wessel -- take the position that -- other than the fact
12 that it was considered irrelevant, did they ever express to
13 you why, beyond that, they were concerned with the Michigan
14 Decision position in the negotiations being included in the
15 testimony?

16 MR. POTTER: Let me interrupt. As I understand
17 what the witness said earlier, maybe we are getting too much
18 on words, but I understand there was never any disagreement
19 between the parties. And the word that was used was "immaterial."
20 And now you are using "irrelevant." And I don't know whether
21 that is going to have a significant weight or not.

22 THE WITNESS: To me, I am going to ask the question
23 again. To me, it doesn't. The thing that is material, a
24 material fact, is one that I considered you have an obligation
25 to present. For me, the material fact in this case was

1 what was Dow's position.

2 There is a lot of difference, then, on the relevancy
3 of something and how that affects the material facts. I
4 don't think as far as I was concerned, the Michigan Division
5 position was certainly relevant to the material facts.

6 Once again, it then became a matter of strategy
7 about how Dow presented that. Some lawyers say you put it
8 in the documents, turn it over, and let somebody else pull
9 it out. I knew from my past experience in NRC proceedings
10 it was going to come out anyway. So I said to put it in at
11 the git go.

12 MR. REYNOLDS: Why don't you give us another word
13 for "git go"?

14 THE WITNESS: At the start.

15 BY MR. DAMBLY:

16 Q So I can be perfectly clear, you felt all along,
17 and Mr. Wessel agreed, that the Dow Michigan position and the
18 current negotiations were immaterial? You both agreed that
19 it was immaterial?

20 A Immaterial in the sense that I used the word.

21 Q There was a difference between the two of you as to
22 whether it was relevant or not; is that correct?

23 A I am not even sure that was so. As far as the
24 Michigan Division position by itself was concerned, I don't
25 think that there was ever a question you would actually have

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1 to ask Mr. Wessel, but as far as I was concerned, there was
2 never a question in Milt's or Lee's mind that was relevant.

3 You drop down to the third layer, then, which is
4 Joe's personal opinions about that contract. Then, Mr. Nute
5 and Mr. Wessel both said it was irrelevant. His personal
6 opinions were irrelevant to the case was their position.

7 Q I would like to pursue that a little bit because
8 maybe I am getting confused here, but I was under the impres-
9 sion -- correct me if I am wrong -- that Mr. Wessel was of
10 the view that you could keep the Michigan Division position
11 out of the hearings. If a question was asked on cross, it
12 could be objected to, and you could keep that from entering
13 into the hearings; is that correct?

14 A I don't believe that is accurate. You would have
15 to ask Mr. Wessel for sure. But I don't believe that is
16 accurate. He would say that, as I got his position, the only
17 thing material to this case is what is Dow's ultimate
18 position and that the Michigan Division position has nothing
19 to do with that.

20 Whether or not he would actually take the position
21 that it was irrelevant, you would have to ask him.

22 Q Let me see if you would agree with me, with the
23 proposition that if it was indeed relevant, even in all
24 likelihood, it would be brought out during the hearing?

25 A No, not necessarily. There is always a lot

1 of relevant material that never gets into a hearing. The
2 other parties then go through the files, and they bring up
3 what they think is relevant to the issue and make their case
4 out of it.

5 Sometimes, it may be relevant, and everybody agrees
6 it is worthless to put it in, so it doesn't go in.

7 Q We may have covered this previously, but could we
8 get to Mr. Nute's notes of the 9/29 meeting?

9 A Okay.

10 Q On the first page of those notes, under B, paragraph
11 3, it says, "Consumers' concerns and assays Joe Temple's
12 personal feelings on the matter, problem of witness."

13 Was that a Consumers' concern expressed at the
14 meeting?

15 A I think by then, both of us were concerned about it.
16 I was concerned about it from the point of view of where
17 Joe was now that the Dow corporate position had been adopted
18 and his position had been before that not to go with the con-
19 tract. Also his personal feelings about it had been made
20 real clear to me that Dow considered that to be a problem.

21 If I was going to present Joe as a witness, I
22 wanted to know what those were before I put him on the stand.

23 Q Let me refer you now to -- I would like to con-
24 sider two things -- page 2 of the Nute notes, down at the
25 bottom of that page or just up from the bottom, paragraph D.

1 And if you could take a minute to read that and read Mr. Duran's
2 notes, page 11, the paragraph that starts in the middle.

3 MR. REYNOLDS: Of what?

4 BY MR. DAMBLY:

5 Q The Duran notes and page 2 of the Nute notes.

6 On the Nute notes, it is the paragraph marked D
7 that is just up from the bottom. On the Duran notes, it is
8 the second full paragraph that starts "Milt pointed out."

9 A Yes, I reviewed both of those.

10 Q Did that discussion take place?

11 A Yes.

12 Q Did Mr. Wessel make statements to the effect that
13 if the information you wanted, you as Consumers wanted, was
14 to go into the record, the Board might draw the conclusion
15 that it was such a tenuous relationship that the license
16 should be suspended?

17 A Yes, to the best of my recollection, that was one
18 of his concerns.

19 Q I guess the problem I have, then, is if such a
20 fact could lead the Board to the conclusion the license
21 should be suspended, how could that be an immaterial fact?

22 A I think the thing that you have to look at is your
23 difference between materiality and relevancy. What Milt
24 was saying was that if we put in everything that we knew, it
25 was possible that the Board could draw that conclusion. For me,

1 the reason that you have hearings is for the Board to draw
2 exactly those conclusions. And they do it on what people
3 believe is relevant.

4 Ultimately, the Board decides what is material
5 to the outcome and put it in. You put in your case and pro-
6 vide the documents that are relevant so other people can get
7 their case in.

8 Now, Milt's position here, to me, was, great, I
9 got it. So how are you going to handle it? The Board may
10 indeed say it is too tenuous. My position was to put it all
11 in, get it out on the table from day one in our direct testi-
12 mony.

13 Milt's position was to do it another way, which
14 was to put the material fact in and then provide the docu-
15 ments and allow the other party to go through and make their
16 case.

17 It doesn't make any difference what this says,
18 Dow's corporate position was they were going to go ahead with
19 the project.

20 Q I understand you, but I am having a little problem
21 with the conversation here. It seems to me that this was --
22 this conversation took place -- after the Dow corporate position
23 had been established; is that correct?

24 A That's accurate.

25 Q And in this conversation, even taking the fact

1 as a given that Dow had reached a corporate position and would
2 continue, the statement is made that if all the information
3 behind that -- I assume that we are talking about the
4 Michigan Division position, the negotiations that were ongoing
5 -- all of that was put into the record, the Board might
6 conclude that in spite of the Dow corporate position, the deal
7 was too tenuous, and they would suspend the license.

8 A Yep, it could have, and --

9 Q Could you define "material" for me again?

10 A No. What I would rather do is refer you to
11 Black's Law Dictionary and let you look it up rather than have
12 me make it up for you.

13 What "material" is to me is down in our brief.

14 Q Go ahead.

15 A What a material fact is to me is a fact of an
16 ultimate position that is required to be put before a Board.
17 The ultimate position or the ultimate fact in this case was
18 Dow's corporate position. That is what the Board had to be
19 told about.

20 Q You don't think that a fact which could change the
21 outcome of a hearing is material by definition?

22 A No.

23 Q Are you familiar -- and I don't have it with me so
24 I will just ask if you are familiar -- with the North Anna
25 decision, NRC decision, on what is material?

1 A Yes.

2 Q And under that decision, you are still of the
3 opinion that something that could, a fact that could, change
4 the outcome of a proceeding is not material?

5 A If I believed that fact can change the outcome of
6 the hearing, then my obligation as a lawyer is to put it in.

7 Now, if I don't believe that the fact is material,
8 what I do is provide it to the other parties, if it is
9 relevant. The truth is if you look at this case, Mr. Cherry
10 said that this was a fact that ought to deny the construction
11 permit. We said it wasn't because what Dow said they were
12 going to do was go ahead with the project.

13 Evidently we were right since the Board ruled that
14 the license ought to continue and that Dow's corporate
15 position was to go ahead.

16 Q Okay.

17 A Now, certainly, we need to provide that data on
18 what was relevant. This was part of the process. We did
19 that. Anybody can then make their case out of it. Somebody
20 did attempt to do that in this case.

21 And what Milt is pointing out here is exactly
22 accurate of what we could expect to face when we got into that.
23 Once again, the question is when are you going to get into it?

24 Q Once again, didn't you just tell me that after I
25 asked you about the North Anna decision that if a fact could

1 change the outcome of a hearing, it was material?

2 A Yeah. If I as a lawyer look at a fact and believe
3 that is so, I need to present it.

4 Q Then, in light of this conversation where it is
5 stated by Milt that putting this information in the record
6 could change the outcome, wouldn't it have been material?

7 A No, not in my opinion. It never was.

8 Q By your definition and Milt's opinion, would it
9 have to have been?

10 A Milt may have had a problem; I never did. I don't
11 think Milt did either. What he was doing was talking as a
12 lawyer to a lawyer. We had to look at that. And eventually,
13 Mr. Miller or Mr. Rosso and I sat down and looked at that
14 very question. Whether or not the Michigan Division position
15 was a material fact that we ought to have to present.

16 I think Milton Wessel is doing a job that all
17 lawyers have to do. And that is bring it up and discuss it
18 and see if you think it is material. If you do, you put it
19 in. We ultimately reached the decision it was not.

20 Q At the point in time when the conversation was
21 taking place, did you disagree with Mr. Wessel's statement
22 that if all the information went into the record, the Licens-
23 ing Board could well have drawn the conclusion that it was
24 too tenuous and suspended the license?

25 A I don't want to tell you I disagreed with him. I

1 knew there was for sure that possibility that a Board could do
2 that. My position on it is what I told you when you asked me
3 the question before that as long as Dow's corporate position
4 was what it was, we had a live winner.

5 MR. REYNOLDS: Whatever you put in, is that what
6 you are saying?

7 THE WITNESS: Yeah.

8 MR. CHARNOFF: Whatever else.

9 MR. REYNOLDS: Is that right?

10 THE WITNESS: Yep.

11 BY MR. DAMBLY:

12 Q Let's back up again a second here now. Did you
13 just tell me that you wouldn't say that you disagreed with
14 Milt's statement?

15 A No. I think it is possible that a Board could come
16 out and say they weren't going to issue it, issue a construction
17 permit.

18 Q Based on the tenuous relationship between Dow and
19 Consumers?

20 A I think it is possible that a Board could come up
21 with that. I think it would be error, but I think they could
22 do it.

23 MR. CHARNOFF: You are saying they might misunder-
24 stand the significance of those background facts relative to
25 this corporate position; is that what you are saying when you

1 say it might be in error?

2 THE WITNESS: Yes. It has been our position
3 throughout if you go back and look that this Board in view of
4 Dow's corporate position could do nothing, but go ahead
5 because the Board is not empowered to make Dow's decisions for
6 it.

7 BY MR. DAMBLY:

8 Q Agreed that that is your position, but if you had
9 the feeling and you won't disagree with Wessel's statement
10 that the facts if all put out could have led the Board to
11 a different conclusion, do you think you were under a duty
12 to put that in?

13 A Into my direct testimony?

14 Q Well, I assume --

15 A Put it into my direct testimony?

16 Q Of course into your direct testimony.

17 A The answer to your question is exactly what I
18 answered. We took a look at that based on what Milt said and
19 decided it was not material. So, no, I don't have a duty
20 to do that. And I do have a duty to turn it over and allow
21 other parties to look at it. We did do that.

22 MR. REYNOLDS: Can I ask a question that might
23 maybe clarify this for everybody? And we should have it on
24 the record anyway.

25 Is your question whether Mr. Renfrow considers it

1 material if the fact is one that could conceivably have changed
2 the outcome or reasonably have changed the outcome or neces-
3 sarily would have changed the outcome? And if you are not, the
4 way I read your question is you just say "could change." And
5 maybe if you refine it in terms of those, we can at least
6 get clear on the record where his view stands on it.

7 THE WITNESS: I think that would be helpful because
8 it seems to me we have been --

9 MR. REYNOLDS: It could change. "could change" is
10 a very nebulous phrase. And maybe if we approach it that way,
11 we can refine whatever the views.

12 MR. DAMBLY: The Federal Rules define relevant
13 evidence.

14 THE WITNESS: But that is relevant. And you are
15 talking to me about material. And they are two different
16 things. Trial lawyers use them together, and they are not
17 the same.

18 MR. REYNOLDS: Go ahead with your question, and
19 we will work through it that way.

20 MR. OLMSTEAD: Okay, are you aware of the fact
21 the Federal Rules of Evidence do not use the word "material"?

22 THE WITNESS: With regard to the admission of
23 evidence, that is accurate.

24 MR. OLMSTEAD: Are you aware of the fact that the
25 Federal Rules substitute the term "of consequence" for the

1 word "material"?

2 THE WITNESS: It depends on which set. I know that
3 they changed the rule; I don't know exactly when it was.

4 MR. OLMSTEAD: Maybe if I read the rule.

5 "Relevant evidence means evidence having any tendency
6 to make the existence of any fact that is of consequence to
7 the determination of the action more probable or less probable
8 than it would be without the evidence."

9 THE WITNESS: I have no problem with that, Bill.
10 This evidence is relevant.

11 MR. OLMSTEAD: This is Rule 401.

12 MR. ZAMARIN: Which is the definition of relevant?

13 MR. OLMSTEAD: The definition of relevant.

14 THE WITNESS: And I have no quarrel with that.

15 MR. OLMSTEAD: It does not include a definition of
16 material because it does not have the word "material" in it.
17 That was dropped in favor of the words "of consequence."

18 Is this fact of the Midland Division position in your
19 opinion of consequence to the decision that the Licensing
20 Board must reach?

21 MR. CHARNOFF: In light of the fact that there was
22 a subsequent Dow corporate position taken.

23 MR. OLMSTEAD: Acknowledging the fact that there
24 was a subsequent Dow corporate position, but that one of Dow's
25 lawyers felt that if this fact were brought out, it would

1 lead to a suspension.

2 THE WITNESS: It is not what he said. You ask
3 me the question of what he said, and I might be able to answer
4 it. Bill, I don't want to pick words with you. I want you
5 to know my position up front as in the brief. There is a
6 difference between relevancy and material. A lot of lawyers
7 do not make it. Lawyers have an obligation on a material fact
8 to affirmatively present that to a Board. If it is material,
9 you are under an obligation to present it.

10 Our position was that the material fact in this
11 case was Dow's corporate position. We reached that after a
12 lot of study, and we presented it. This issue of the Midland
13 Michigan Division position is clearly relevant. There is no
14 affirmative duty to present relevant evidence to a Board.

15 You do have to make it available to the opposing
16 parties. We did do that. We very clearly did that. We were
17 not hiding anything.

18 MR. OLMSTEAD: I think that I understand what you
19 are saying. And I think that what we are trying to ascertain
20 is whether there were other material facts. We are not
21 arguing with you about whether the Dow corporate position was
22 material.

23 What we are asking is whether the Midland Division --

24 THE WITNESS: Our considered opinion is it is not
25 material.

1 MR. CHARNOFF: I suggest that we are a little
2 extended, I think, from that inquiry standpoint. You might
3 argue with Rex, but I think what the witness has said on the
4 position is that this specific fact, you do want to inquire
5 into, naturally. The Michigan Division position in his judg-
6 ment and he has said in Mr. Wessel's judgment, too, was not
7 material. So he has answered your question.

8 MR. OLMSTEAD: Well, I beg to disagree with you
9 because I don't think we have had a common definition of
10 materiality. And that is what we are trying to clarify.
11 I do not disagree with his statements it is not material
12 provided I understand what material is.

13 MR. REYNOLDS: Bill, maybe the way to ask him your
14 question is to ask him whether he considers it to be a type
15 of fact which is of consequence such as the outcome of the
16 proceedings would in all probability over whatever that
17 happening is in the rule being affected by that fact.

18 MR. OLMSTEAD: I thought that is what I was asking
19 him.

20 MR. REYNOLDS: We just have done it in terms of
21 the word "materiality." If you want to do it in words of
22 "of consequence" in the context of probably affecting the
23 outcome --

24 MR. OLMSTEAD: I don't want to argue with you.

25 MR. CHARNOFF: I think he has really even answered

1 that question by telling you that the Licensing Board had
2 that fact in front of it when it made the decision. And
3 obviously, it was not of consequence. That is what his
4 testimony was about ten minutes ago.

5 MR. OLMSTEAD: I heard that about ten minutes ago,
6 but we are talking about a period of time now when we didn't
7 know what the Licensing Board said it was going to be.

8 MR. POTTER: In the interests of the transcript,
9 possibly we could argue this off the record. Maybe you want
10 this on the record. Maybe we could just get an agreement on
11 the record.

12 MR. CHARNOFF: We may be almost finished.

13 MR. OLMSTEAD: Off the record.

14 (Discussion off the record.)

15 BY MR. DAMBLY:

16 Q Back on the record.

17 What I was going to ask about ten minutes ago, in
18 terms of your view at the time of the September 29, 1976,
19 meeting -- well, I will put three choices, and if I don't
20 give you enough, make a fourth one yourself. For a fact to
21 be material, did you think that:

22 A. It had to be a fact that would change the out-
23 come necessarily of the proceedings?

24 B. A fact that could change the outcome of the
25 proceedings.

1 C. A fact that by really a vast stretch of the
2 imagination might have an effect on the outcome of a proceeding?

3 A None on September 29.

4 Q You didn't think any of those?

5 A September 29, we had not even got to discussing
6 that. My position on September 29 was that it didn't make
7 any difference that it was relevant.

8 Q You didn't understand my question.

9 MR. REYNOLDS: Let him answer.

10 THE WITNESS: Yes. You need to get it. It was
11 relevant and, therefore, I didn't even need to get to the
12 issue of materiality because of the nature of these proceedings.
13 I wanted it in.

14 BY MR. DAMBLY:

15 Q I undersatnd. My question was in your mind, what
16 was the definition of material?

17 A I didn't get to the definition of material on the
18 29th. I didn't care. To me, it was relevant, therefore, we
19 ought to put it in based on what I knew about these kind of
20 proceedings.

21 Q Today, again, which of those alternatives would
22 you consider? What would you consider to be a material fact --
23 one that would change the outcome, one that could change the
24 outcome, or one that had some kind of just very distant
25 potential possibility that --

1 A On your first choice, it would clearly be material.
2 On your third choice, it would clearly be not. And on your
3 second choice, I would have to look at each case individually
4 to make a determination.

5 Q Okay. You didn't have to deal with the question
6 yourself, you felt at the time, because you wanted it in?

7 A On the 29th, that is accurate.

8 MR. POTTER: Because he considered it relevant.
9 That is the other part of the equation.

10 MR. CHARNOFF: No. He considered it was relevant,
11 but his testimony was it would come in anyway.

12 MR. POTTER: For whatever reason, I understood him
13 to say he considered it to be relevant.

14 BY MR. DAMBLY:

15 Q Just to wrap it up, Mr. Wessel did make the
16 statements that are here?

17 A That is accurate.

18 Q And in those statements, did you have an impression
19 from what Mr. Wessel said as to how strongly he felt inclusion
20 of that material in the direct testimony or in the hearing would
21 affect the outcome?

22 A I didn't think that Mr. Wessel was ever coming from
23 the outcome when he expressed this.

24 Q Where did you think he was coming from?

25 A During the entire conversation that I had with

1 Mr. Wessel, which was the first time that I met him, the
2 impression that I got from Mr. Wessel was that he was pro-
3 tecting his client in the best way that he knew how. I did
4 not agree with him at all as the basis for the conflict between
5 Mr. Wessel and I on our two approaches.

6 Mine was to put it all in. His was not. It is
7 not to say I thought he was wrong legally. It is that based
8 on the experience I had in these proceedings, I didn't think
9 that the way he wanted to go would get us to the end that we
10 wanted to get to the quickest way possible.

11 Q What advantages did you see to putting it in in the
12 direct?

13 A Because every case that I have ever been in on
14 the NRC -- and I have been in on a lot -- it always comes in.
15 If it comes in on cross examination, it is sloppy. Your
16 witnesses get killed. It takes a long, long time. And you
17 never have the opportunity to go back and put it back in the
18 way it truly happens.

19 My approach, therefore, is to put it all in the
20 first time around, get it all out so you have some control
21 over it. Don't spend your time arguing for points you are
22 going to lose in front of a Licensing Board anyway. It takes
23 too much time. It is a waste of everybody's money.

24 Q Did you communicate that to Mr. Wessel?

25 A I don't know if I communicated it exactly that

1 way, but, yes, sir, we did have discussions about it.

2 Q There is some discussion on page 13 of the Duran
3 notes. If you will refer to those. Maybe if you would read
4 page 13.

5 A Okay.

6 Q There is an indication in several places on that
7 page that Mr. Bacon wanted to know the things that Mr. Temple
8 was going to have to say if he was pressed for reasons behind
9 his decision, his personal opinions, things like that. Did
10 Mr. Bacon indicate to you why he wanted that information &
11 did he convey it to Mr. Wessel?

12 A I think he did. Probably it was because of a
13 conversation I had with Judd where I told Judd that that
14 stuff was going to come in and we needed to know it before we
15 put Joe on the stand so we could get him ready to testify.
16 And Joe was pushing for it, to get it out.

17 I wanted it, too. I wanted to know what it was he
18 was going to say on the stand. I did not think there was a
19 chance at all that that type of information would be excluded,
20 and I wanted to know it before I put a witness on the stand.

21 Q Did you make these feelings known or did Mr. Bacon
22 make these feelings known to Mr. Wessel?

23 A No, I did.

24 Q At the top of page 14, it says, "Rex stated that
25 Bremmer, who is Brenner, told them that if Dow doesn't have a

1 witness there, then he, Brenner, would subpoena Dow's witness.
2 Milt asked if it wouldn't be better if Dow let Bremmer
3 subpoena Joe Temple. Rex stated he didn't think this was the
4 best thing to do."

5 In view of the controversy between you and Mr.
6 Wessel or you and Dow at the time of what should or shouldn't
7 be included, why did you rule that option out?

8 A Once again, it was from the place that I came from
9 with regard to these proceedings. It appeared to me that the
10 material fact that Consumers absolutely had to let the Board
11 know was what Dow's position was. I don't think it is a way
12 for a lawyer to make a case to allow some other party to
13 subpoena their own witness in order to make a material fact
14 that they need presented to the Board to be done.

15 So I didn't think it was a good idea. I had, I
16 guess, talked to Larry on the phone and said, "Well, just in
17 passing, maybe I won't have the Dow witness." And Larry
18 had said, "Good. You do that, and I am going to subpoena
19 him for sure."

20 MR. CHARNOFF: Larry is Larry Brenner?

21 THE WITNESS: Yes, Larry Brenner. That is what
22 that conversation came out of.

23 So the answer to your question, bottom line, is I
24 still think it is a terrible idea.

1 BY MR. DAMBLY:

2 Q Okay. During the meeting, I guess you adjourned
3 for lunch, and after you adjourned for lunch, you returned,
4 and Mr. Temple was then present; is that correct?

5 A No. First, we had a short conversation before we
6 talked to him about what we were going to do about Judd being
7 present in the room on sensitive issues.

8 Q And how was that resolved?

9 A That Judd would not be in the room.

10 Q Okay. On page 16 of the Duran notes, there is an
11 indication that following some discussion wherein Mr. Temple
12 indicated you had a concern for other parties being able to
13 probe his personal reasons, you were handed a preliminary
14 statement that had been prepared for, I guess, Mr. Temple to
15 read into the record; is that correct?

16 A Yes.

17 Q And what was your reaction to that statement?

18 A I thought it was the most asinine thing I had ever
19 heard a trial lawyer suggest be done. I don't even remember
20 what it was.

21 Q Do you have a reason for that?

22 A Well, you have read the statement which I believe
23 there is a copy of. I think the thing speaks for itself.

24 MR. DAMBLY: Could we get a copy handed to him so
25 that he will speak for the statement himself?

1 Have you located it?

2 MR. REYNOLDS: I'm sorry. The witness has a copy
3 of the statement in front of him.

4 Maybe just to make sure we are all looking at the
5 same thing, I have handed him Exhibit CC, Midland Intervenor's
6 Exhibit 60.

7 BY MR. DAMBLY:

8 Q What about this struck you as particularly asinine?

9 A Well, I had been talking with Milt all morning about
10 him not wanting to get Joe's personal opinions in. And then
11 what he proposes is that Joe stand up and make a statement
12 which invites somebody to talk to him about them. That first
13 off.

14 Second off, have never seen a witness stand up and
15 read this kind of crap before he testifies to anything.
16 My father talks about waving a red flag in front of a bull.
17 That is generally my opinion of this.

18 Q Maybe I shouldn't have skipped over like I did,
19 but just before you were handed this thing, there was,
20 according to on page 15 of Mr. Duran's notes, apparently some
21 discussion as to that Mr. Temple was concerned about his personal
22 opinions getting in and whatever.

23 Do you recall any conversation to that effect?

24 A Yeah. I always found Joe Temple to be real, real
25 straightforward. I enjoyed working with him a lot. And he

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1 just said, you know, look, he talked about his personal
2 opinions and where he was and that he didn't want to have to
3 put them out.

4 And I was always real clear from Joe that Joe was
5 not going to do anything, but get up on the stand and tell
6 the truth. I have a lot of respect for Joe Temple. If I had
7 a company, I would like for him to be one of my employees.
8 He always told it the way he saw it even if other people
9 didn't agree with him.

10 Q Did Mr. Temple at that time indicate any desire to
11 have either the negotiating positions or the Michigan
12 Division positions put into the testimony?

13 A No, he didn't indicate any desire like that at all.
14 What I got from Joe was that he wanted to know what it was
15 that he needed to testify to. And there were some things
16 that he preferred not to get into like his personal opinion,
17 some things that he personally had not done, and that if there
18 was a way around it, he, you know, did not want to have to
19 do that. And he would tell the truth about whatever was
20 asked of him.

21 Q Did he express any desire not to have the Michigan
22 Division position put in?

23 A He didn't express a preference or a nonpreference,
24 either way, on that particular subject. The best that I can
25 recall.

1 Q When you said a minute ago there were some things
2 that he wasn't personally familiar with, are you referring
3 to your affidavit, I guess December 30 affidavit, again on
4 page 4, which indicates close to the bottom, "Mr. Temple
5 expressed his concern being asked to testify to matters which
6 had occurred prior to the time he became head of the Michigan
7 Division"?

8 Is that what you were referring to?

9 A Yes. And there was also some technical things
10 that while he was aware of, if you would have pressed into
11 him very far, his depth on the actual technical issues was
12 not that great. He relied on other people to provide him
13 that. He was a little leery as he should have been of that.
14 And he let us know that.

15 Q On page 17 of the Duran notes --

16 A Yes.

17 Q -- the first complete paragraph, I guess the last
18 2 sentences indicate "Rex pointed out that he would rather Dow
19 err on the side of too much on their outline rather than not
20 enough. Rex observed he had to get into a lot about Joe and
21 his feelings on the matter."

22 A Yes.

23 Q Did you make those statements?

24 A Yes.

25 I want to be clear with you. At that point, that

1 did not mean we were going to present everything that Joe
2 wrote up either. It meant that for a first draft, we wanted
3 it all. Then, we would take it and look at it, determine
4 what needed to go in and what didn't.

5 Q During the September 29 meeting, did you ever get
6 the impression or the feeling that Dow wasn't playing 100
7 percent straightforward with Consumers?

8 MR. POTTER: Can I ask you to define what the heck
9 you mean by not playing 100 percent straightforward?

10 MR. DAMBLY: You can ask. I don't think I can
11 answer it.

12 MR. POTTER: Well, if you can't answer the question,
13 I don't see how the witness can either.

14 Go ahead. I am just going to put the objection on
15 the record, then.

16 MR. CHARNOFF: Let me ask --

17 MR. DAMBLY: I think that is fairly clear.

18 MR. CHARNOFF: -- this is a question and answer.
19 Are you suggesting a --

20 BY MR. DAMBLY:

21 Q Strike the 100 percent and say, did you get the
22 perception Dow wasn't playing straight with Consumers during
23 that meeting?

24 A I am going to have to answer your question this
25 way: To me, the Dow issue was real simple. It should have

1 been the easiest part of this case to handle. And it was
2 being made real difficult for me to get what I wanted to.
3 And whether or not they were playing straight with me, I
4 didn't really know. I needed to see the documents to do that.
5 I was having difficulty getting to see them.

6 I wanted the witness to write an outline in his
7 own words. That is my particular style of having witnesses
8 prepare. I was having a lot of difficulty getting that done.

9 Insofar as were they playing straight to me, were
10 they lying to me, I never got the impression that they were.
11 But I was having a lot of difficulty getting what I considered
12 routine answers to things. And I could see where they had a
13 problem with some of them.

14 Q As a result of the September --

15 A Let me answer the other part of that question, and
16 I will get it all done at once. The other thing that I got
17 out of the meeting was that it was going to be difficult to
18 get exactly what I wanted that I was going to have to get
19 real specific. And it was real frustrating because I needed
20 to get real specific, and they had all the information.

21 So it was frustrating also. Remember, at that time,
22 we had not seen what the Dow corporate position was based
23 on, and we were just learning what the Michigan Division
24 position was based on.

25 Q As a result of the September 29 meeting, do you

1 remember who was supposed to take what steps next in the
2 Temple preparation?

3 A Yes. I think as we left at that, they were going
4 to prepare a draft of Joe's testimony. And I asked that
5 Joe do that himself. And they were going to give it to us,
6 and we were going to come back up.

7 At that time, we still thought we were going to
8 hearing on October 6. And we were going to do an oral Q and A
9 because we didn't have time to prepare written testimony.
10 I believe that is how we left that meeting.

11 Q How did you reach an agreement that they would
12 prepare the testimony rather than yourself?

13 A Yes. The answer is yes, it was agreed upon, and
14 the thing that I wasn't clear about, whether or not I was
15 actually going to get Joe's version or a version from Lee and
16 Nute for Joe. But what I wanted was Joe's own version.

17 MR. REYNOLDS: You said Lee and Nute.

18 THE WITNESS: Lee Nute and Milt Wessel. I wasn't
19 clear what I was going to get.

20 Did I answer that? That was my only uncertainty.

21 BY MR. DAMBLY:

22 Q Yes.

23 Okay, as a result of the September 29 meeting, at
24 the end, what was your view at that time of the Dow-Consumers
25 relationship?

1 A Are you asking me in terms of -- what are you asking
2 me in terms of?

3 Q Well, your personal perception of the relationship
4 between Dow and Consumers. Was it an adversary relationship,
5 hostile? Were they still the best of friends, trying to help
6 one another 100 percent? What was your personal perception
7 of that relationship at the end of the meeting?

8 A So at the end of the meeting with regard to the
9 licensing hearing, I was still of a view that Dow was
10 going to provide a witness and set forth Dow's position on
11 it, that it was going to be much more difficult than I ever
12 anticipated to have it done the way we wanted to do it.

13 And I still believed at that time that it would be
14 done in a way that would work.

15 Q But my question was directed to the total relation-
16 ship between the two companies.

17 A I got it. That's why I asked you the question.

18 I think the question you actually want me to answer
19 is with regard to the contract, is it not?

20 Q I don't know that I can separate one from the other.

21 A Good.

22 Q It seems to me if two companies are fighting tooth
23 and nail --

24 A I got it.

25 MR. REYNOLDS: Let me see, because I think for the

1 record, it should be clear, are you asking him what his per-
2 ception is of the relationship insofar as his dealings with
3 Dow people during this meeting or are you asking him his
4 perception of the relationship between the two companies
5 overall after walking out of the meeting?

6 MR. DAMBLY: That was my question. Based on all
7 of the knowledge he had up to this time and based on what
8 took place at the September 29 meeting, his perception of the
9 overall relationship of the two companies.

10 MR. CHARNOFF: And did you ever think about that
11 question at that time?

12 THE WITNESS: I am going to have to answer your
13 question this way: as we got into the case, Mike and I
14 talked about the fact that we had a potential ethics problem
15 that we had to be aware of all the time. And that was the
16 fact that there was ongoing negotiations between Dow and
17 Consumers. And I was to make sure that Isham, Lincoln and
18 Beale was not to get involved in that.

19 I did not get involved in that at any time. So I
20 never looked at it in that point of view.

21 I do have to clarify that because I did push on them
22 to resolve them, but I didn't get involved in them. So I
23 never looked at it from what I would call the overall position.

24 What I kept focusing on was what was Dow's and
25 Consumers' position with regard to the suspension hearing

1 and what was Dow's position with regard, ultimate position
2 with regard, to the contract.

3 When I came out of the first meeting, my perception
4 of their relationship basically never changed which was that
5 they had some problems to resolve. And from what both parties
6 told me, there was nothing standing in the way of having them
7 resolved except personalities.

8 There was never any doubt in my mind that the
9 issues that were outstanding were going to be resolved between
10 the two.

11 BY MR. DAMBLY:

12 Q At that September 29 --

13 A Truthfully, throughout the thing. I looked -- you
14 know, when we ultimately got to what was open, it became
15 readily apparent to anybody that with just a little time,
16 they would get together and resolve their issues. They both
17 wanted the same thing. They both wanted steam and electricity
18 from the plant as soon as possible.

19 MR. DAMBLY: I think for the reporter and myself,
20 I am going on to the October 12 meeting, so this would be
21 a good time to break.

22 (Whereupon, a recess was taken.)

23 BY MR. DAMBLY:

24 Q We are back on the record.

25 Between the September 29, 1976, meeting and the

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1 next Temple testimony meeting, which I believe occurred on
2 October 12, 1976, did you have any discussions with Dow
3 personnel?

4 A I don't remember. And Lee Nute and I talked
5 quite often during that whole period in there. So it is quite
6 possible I talked to him on the phone.

7 Q You don't have any recollection of what it would
8 have been about?

9 A No.

10 Q Do you recall any discussions with Consumers
11 Power personnel between that same time frame?

12 A I was with them all the time. I don't remember
13 any specific discussions.

14 Q Did you in that time frame or in any time frame
15 have discussions with the Dow Board of Directors as to how
16 the Dow corporate position was reached?

17 A No.

18 Q I believe you your affidavit of December 30, 1976,
19 on page 5 -- you don't really need to refer to it -- you
20 indicate that you had a meeting on October 11 with, I believe
21 it was, Mr. Miller and Mr. Rosso at Isham, Lincoln and Beale
22 in which you discussed the Temple testimony.

23 I believe at that meeting, you agreed, it states
24 here, anyway, it was agreed that the Dow corporate position
25 was the only material fact necessary for direct testimony.

1 How did you reach that decision?

2 A Took a look at the decisions regarding materiality
3 and what was required: took a look at the facts as we knew
4 them as of the time; and reached a conclusion among the three
5 of us that the only material fact was the Dow corporate
6 position.

7 Q Was there any discussion between the three of you
8 as to whether or not inclusion of the Michigan Division
9 position, current negotiating position, a history of negoti-
10 ations between Dow and Consumers, could have an effect on the
11 outcome of the suspension hearings?

12 MR. CHARNOFF: Could I have that question read
13 back?

14 (The pending question was read by the reporter.)

15 THE WITNESS: Do you want to know for all of those
16 things?

17 BY MR. DAMBLY:

18 Q Yes.

19 A I don't think we discussed the history at all.
20 I think probably we did touch a little bit on the current
21 negotiating positions. And in the suspension hearing, we
22 determined they were not relevant.

23 And to protect ourselves for the final environmental
24 statement, one of the things we felt that we needed to do
25 for what I will call the large hearing would probably include

1 those.

2 We did talk about the Michigan Division recom-
3 mendation. I don't think we talked about it in terms of it
4 affecting the outcome. I don't believe that is the test.
5 We used the North Anna decision and the tests in the Federal
6 Court to take a look at exactly what materiality meant,
7 basis of our decision on that.

8 Q I have finally located the North Anna decision.
9 It is cited in Shaw, Pittman Consumers Power briefs that were
10 filed in 1979. And the statement is on page 23 of that
11 brief. And I don't know which page 23 because there are
12 several different sections.

13 From this perspective, the Commission held in that
14 case, referring to North Anna which was cited above that
15 the materiality should be judged by whether a reasonable
16 staff member should consider the information in doing his
17 job.

18 Is that the standard that you were looking at at
19 the time?

20 A One of them, yes.

21 Q Did you have an interpretation of what that meant
22 or could you give me your impression of what that meant?

23 A What we actually looked at was whether or not there
24 was an affirmative obligation for us to present that in our
25 direct case. What we concluded was that there was not; that

1 the Dow position was as it was, as it was stated, and that
2 all the machinations that went on in reaching that decision
3 were not necessary.

4 Q My question was --

5 MR. REYNOLDS: Not necessary for the direct?

6 THE WITNESS: Not necessary -- all the machinations
7 that went on to reach that decision were not material facts.

8 BY MR. DAMBLY:

9 Q My question was: how did you interpret the standard
10 of what made a fact material? What was the consensus opinion
11 of yourself, Mr. Rosso and Mr. Miller at that meeting as to
12 what it took to make something a material fact?

13 A I don't know that we actually reached a consensus
14 that you could set down as a rule. As I understand the rule,
15 what is required is that if it will do it, if it will affect
16 the outcome, you are required to do it. If it wouldn't affect
17 the outcome, you are not. And that what each lawyer is re-
18 quired to do in each case is look at the fact and make a
19 determination.

20 We did that bases upon our own judgment as attorneys
21 using the guidelines that we had that the fact was not
22 material.

23 Q You came to the conclusion at that meeting that had
24 the things that we had discussed previously that Mr. Wessel
25 was referring to back on the September 29 meeting, the

1 whole background, Mr. Temple's personal views, Michigan
2 Division current negotiations, had that been included, it would
3 not have had any effect on the outcome of the suspension?

4 A Yes. And I think we were ultimately proved right
5 by the Appeal Board of the Supreme Court and everybody else's
6 decision on the matter.

7 Q Am I correct that had you concluded that the
8 inclusion of that material would have affected the outcome,
9 then you would have felt an affirmative obligation to put it
10 in the direct testimony?

11 A I think if we had determined that was a material
12 fact, absolutely we were under an affirmative obligation to
13 put it in the testimony.

14 Q We are in agreement that material facts cannot be
15 just submitted in a bunch of documents and left to intervenors
16 or other opposing parties to bring out?

17 A Yes. As long as -- I am not clear that you are
18 clear on what a material fact is. Cite me the Federal Rules
19 of Evidence on admissibility. And I am not --

20 Q I understand those.

21 A I just want you to know that I am not clear.

22 Yes with regards to where I am about materiality.
23 That is accurate.

24 Q I am not at this point trying to have any miscom-
25 munication --

1 A Yes.

2 Q -- on whatever you consider a material fact. And
3 I guess that is something that is going to end up being
4 determined by the Board somewhere along the line. But if you
5 had in fact concluded something was material, we are in
6 agreement.

7 A We would have had an affirmative obligation to put
8 it in.

9 Q That cannot be left to cross examination for some-
10 body else to pick up or anything.

11 A Not as I understand the rule on materiality.

12 Q Do you recall if there were any drafts of Temple
13 testimony circulated between the September 29 and the October
14 12 meeting?

15 A I believe that we got a copy of one.

16 Q And that would have been prepared by whom?

17 A Well, I think later -- I am going from memory of,
18 I believe, the Duran document. I think we found out later
19 Mr. Nute had actually prepared that draft.

20 Q Do you have any recollection -- and there is an
21 October 6, 1976, draft apparently that was mailed -- this is
22 in your affidavit again, it is in the record in numerous
23 places -- that was mailed to you -- of the Temple testimony
24 which Dow had prepared based on the outline that you and Mr.
25 Bacon had presented at the September 29 meeting?

1 A I have no independent recollection of what that
2 looks like, and I am sure that happened.

3 MR. DAMBLY: Could we get that draft provided to
4 Mr. Renfrow?

5 THE WITNESS: I have that document in front of me.

6 BY MR. DAMBLY:

7 Q Do you want to quickly skim it or not, whatever
8 is necessary?

9 My question is: what was your reaction to the
10 document? Did you feel that it complied with your request
11 or supplied the information requested in your outline?

12 MR. REYNOLDS: Do you want to see your outline?

13 THE WITNESS: No. I have got it here.

14 MR. REYNOLDS: No, your outline.

15 THE WITNESS: It is attached to this.

16 MR. REYNOLDS: Let the record show, before answering
17 the question, I am going to show Mr. Renfrow his outline that
18 you referred to and ask him whether the draft that he is look-
19 ing at, that we prepared of Mr. Nute contained all the infor-
20 mation that he called for in the outline.

21 THE WITNESS: I have reviewed this. There were a
22 couple of things that were still not provided. I think the
23 big one is the decision in region, Michigan Division, in view
24 of the contract states this subject will be covered in dis-
25 cussions between counsel for Consumers, Dow, and Mr. Temple.

1 Obviously, we hadn't gotten 3C yet.

2 MR. REYNOLDS: That is a reference to 3C?

3 THE WITNESS: In the testimony given to us. I
4 think there were some other questions. We had some questions
5 on ROIBT. Take Mr. Nute, he had to enlighten Mr. Rosso on
6 Mr. Nute and Mr. Temple, on how Dow did that; some other
7 questions like that.

8 BY MR. DAMBLY:

9 Q Other than the things you just mentioned, what was
10 your overall impression of the testimony?

11 MR. REYNOLDS: In terms of what?

12 MR. DAMBLY: Did it satisfy his needs?

13 Is this what you were looking for in the Dow draft?
14 Let's put it that way.

15 MR. POTTER: The Dow draft being the draft provided
16 to Dow by Mr. Renfrow; is that right?

17 BY MR. DAMBLY:

18 Q No, no; I am talking about the October 6 Dow
19 draft that they mailed to Consumers.

20 A Actually, I don't remember. I do know we had a
21 number of things we wanted to discuss about this draft with
22 Dow. Generally, it was a whole lot more complete than any-
23 thing we had seen before.

24 Once again, though, it didn't have the one thing
25 in it that I had been asking for. And also, we discovered

1 that it had been drafted by Mr. Nute and not Mr. Temple.

2 Mr. Rosso had some questions of his own on things
3 that he had a better grasp than I did on the alternatives
4 and investments and charts and cost. I think on the whole,
5 though, we were considerably happier with that than with
6 anything else that we had received.

7 Q If I could have provided to you the Duran notes
8 of the October 12 meeting --

9 A Is this attachment H?

10 MR. REYNOLDS: Don't worry about that.

11 BY MR. DAMBLY:

12 Q It says Attachment H on the top of mine.

13 MR. OLMSTEAD: Let the record show that is
14 attachment H to Consumers brief.

15 MR. REYNOLDS: No, attachment H to Consumers
16 proposed designation of the record that was filed in --

17 MR. OLMSTEAD: In this proceed in March.

18 MR. REYNOLDS: March 30, 1979.

19 THE WITNESS: I have that in front of me.

20 BY MR. DAMBLY:

21 Q Okay. Down in the third paragraph, it starts
22 off and says, "Mr. Wessel talked about a letter he had
23 received from Myron Cherry asking for discovery and then read
24 a draft of a letter he was considering sending to Mr. Cherry
25 on the discovery matter."

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1 Do you recall that conversation?

2 A Um-hum.

3 MR. REYNOLDS: Yes?

4 THE WITNESS: I'm sorry, yes, I do.

5 BY MR. DAMBLY:

6 Q Can you give me to the best of your recollection
7 what took place in that conversation?

8 A We received a letter -- I don't remember, actually.
9 I thought that letter was dated September 20, something or
10 another. I have to go back and look at it. But we dis-
11 cussed a little bit of it. Mr. Wessel had a proposed draft
12 to send back.

13 The thing that I remember most about that letter
14 was that somewhere or another, Mr. Wessel had invited Mr.
15 Cherry to ask him for more discovery requests. And I didn't
16 think that was appropriate since Mr. Wessel's position was
17 they weren't a party. And I told him that if that was the
18 position, what I would rather have done is have all those
19 requests channeled from Mr. Cherry to me, not directly to Dow.

20 I believe we changed that letter that way and sent
21 it out to Mr. Cherry.

22 Q What was your position at the time -- that Dow was
23 or was not a party?

24 A Mr. Wessel had stated they didn't want to be treated
25 as a party as such. My position all through it was they were.

1 And I didn't argue about it with Mr. Wessel, but told him if
2 he was going to take that position, it needed to be consistent
3 all the way through. And it wasn't as consistent as a nonparty
4 to me if they would handle their discoveries so they ought to
5 send it through me.

6 MR. DAMBLY: Mr. Reynolds, do you have a copy of
7 the draft that Mr. Wessel provided us last week and the
8 final letter?

9 MR. REYNOLDS: I do have a copy of the draft of
10 Mr. Wessel's reply to Mr. Cherry's discovery request. I do
11 not have a copy of the --

12 MR. DAMBLY: It is in Midland Intervenor's 60A

13 MR. REYNOLDS: Then I have that, too.

14 May it reflect on the record Mr. Renfrow has both
15 the draft letter and the final letter from Mr. Wessel to
16 Mr. Cherry that have been referred to by counsel.

17 THE WITNESS: Okay.

18 BY MR. DAMBLY:

19 Q Who was responsible for the changes between the
20 draft and the final?

21 A I don't know. I think they came out of just a
22 conversation among the four of us. I remember now on the
23 paragraph 3 thing, Judd didn't want that in there. He didn't
24 think it would do any good. And I think Milt agreed to delete
25 that.

1 The change down at the bottom. if requested by
2 Consumers, Dow will be glad to comply. like that. came out of
3 the base -- actually, my discussion with Milt that that
4 wasn't necessary at all considering what he had said before.
5 So we changed the letter to as it reads now.

6 Excuse me. as it reads in Exhibit KK.

7 MR. REYNOLDS: To Midland Intervenor's Exhibit 60.

8 MR. POTTER: You said something to the effect
9 because of what Milt had said before. You mean within the
10 text of that letter?

11 THE WITNESS: Yes. I'm sorry. up at the top where
12 he refers to the fact that he is not a party, his involvement
13 is limited.

14 MR. POTTER: Thank you.

15 BY MR. DAMBLY:

16 Q Was there any reason why in that statement that
17 was deleted, if requested by Consumers? It then says, "Dow
18 will be glad to comply without the necessity of compulsion."

19 Did you consider that to have been stated previously
20 in the final draft somewhere?

21 A No. I didn't think it was necessary.

22 Q Did you possibly perceive that as inviting discov-
23 ery requests?

24 A Well, it is not -- it is hard to answer the
25 question accurately. To the extent that it set forth that, you

1 know you are going to comply without the necessity of com-
2 pulsion, but you have to remember, I am sort of privilege
3 confidential and otherwise inappropriate things for dis-
4 cussion and all that. I didn't think any of that was neces-
5 sary since we hadn't been requested for anything especially
6 in view of the fact that Dow was taking the position it was
7 not a party.

8 So where I came out, it was completely unnecessary,
9 did not need to be in there. And I talked to Milt about it and
10 said, "Look, let's just let him ask for whatever he wants
11 and let him ask me. And then we will do what we are supposed
12 to do."

13 So we changed the letter.

14 Q Okay.

15 A It was like so if I ask you, Dow, are you going to
16 provide the stuff, the answer is yes. I didn't see we needed
17 that in there.

18 Q Getting back to page 1 of the Duran notes, the
19 problem following where we just read, it says -- this is
20 again the third paragraph -- "Mr. Bacon stated he had some
21 deletions to suggest be made on Mr. Nute's 10/6/76 draft of
22 Mr. Temple's testimony."

23 Do you recall what those changes were?

24 A No.

25 Q Do you have any recollection if they were editorial

1 or whether he wanted things in or out?

2 A Let me say it to you this way: Judd Bacon is
3 probably the best nit-picker I ever met in my life. My
4 experience of it is they were probably nit-picks to be taken
5 care of. And I don't know that without having to go back and
6 look.

7 I could probably tell you Judd's changes.

8 Q Go to page 2 of the Duran notes now.

9 On page 2 of the Duran notes, there is a statement
10 here in, I guess, the second complete paragraph. It says,
11 "Mr. Nut- asked if Consumers Power was going to do the testimony
12 in question and answer form." And it says, "Mr. Renfrow
13 stated that he didn't want it done in question and answer
14 form." Why?

15 A Again, it is a matter of style. I like witnesses
16 to be asked a question and to respond to the question in
17 their own manner, answer it themselves, rather than using the
18 Q and A format. It is just a matter of style. I think it
19 works better and allows the witnesses to express themselves
20 as they would rather than have the lawyer shape the testimony
21 for them.

22 Q I don't know that I followed that. What is the
23 difference between question and answer form and asking someone
24 a question and having them give an answer?

25 A What I mean by that is it is like the difference

1 in Q and A form as you ask the question, get an answer, ask
2 a question, get an answer, ask a question, get an answer.

3 The style of testimony that I referred to in NRC
4 proceedings was to take a topic area like what is Dow's
5 corporate position, and allow the witness to answer the entire
6 question, including everything that needed to be put in there
7 in his own words.

8 Q It was just a personal style preference? There was
9 no particular advantage that you would see?

10 A Only that I always thought my style was best.

11 Q At the bottom of page 2, there is a statement,
12 the last thing said, "Mr. Renfrow stated he would like to see
13 more information end up in Mr. Temple's testimony than what
14 he, Rex, has asked for to date."

15 When did you make that statement?

16 A I assume during this meeting. I don't remember
17 making that statement. And if I did, it was during this
18 meeting.

19 Q In that case, I won't ask you what more you wanted
20 to see.

21 A One of the things that I wanted to see more of was
22 on that item 3C in the draft testimony.

23 Q That was the Midland Michigan Division position?

24 A Yes.

25 Q There is a discussion -- let's go to page 3.

1 A Okay.

2 Q Up at the first full paragraph is the discussion
3 there which talks about Mr. Wessel's position that Dow wasn't
4 a party. And then there is a statement that says, "Mr. Wessel
5 stated that apart from questions of trade secrets and pri-
6 vilege, Dow would share any information that Consumers felt
7 was important. He then emphasized that Consumers Power would
8 be the authoring party and Dow was the only supplying party."

9 What did you understand that to mean? Or when did
10 that conversation take place, again to the best of your
11 knowledge?

12 A Well, when Mr. Wessel said this to me, once again,
13 I dismissed it, but I had now been talking to the man for over
14 three weeks, telling him specifically what I wanted. And then
15 to have him tell me they are going to give me what I asked
16 for was incongruous to me.

17 And he made those kind of statements through the
18 thing. The fact that we were the authoring party and Dow
19 was the supplying, I didn't get it all. I would ask him for
20 Joe Temple's testimony on what Dow's position was. I was
21 clear it would be offered as a Consumers Power witness.

22 So other than that, you know, I dismissed the thing
23 and went on with getting the job done.

24 Q Before I continue with the Duran notes, again, a
25 question on the October 12 meeting. Did you take any notes

1 during that meeting?

2 A No.

3 Q Did you know if Mr. Bacon took any notes or Mr.
4 Rosso, I believe, was at that meeting?

5 A Is this the meeting we are at now?

6 Q Yes.

7 A Mr. Rosso may have taken notes. And I don't know
8 that he did nor have I ever seen them.

9 MR. POTTER: Can we ask you to inquire into that,
10 Mr. Charnoff?

11 MR. CHARNOFF: I have already made a note in anti-
12 cipation of your request.

13 BY MR. DAMBLY:

14 Q To be complete, do you know if either yourself,
15 Mr. Bacon or Mr. Rosso, wrote any notes to files as a result
16 of this meeting?

17 A I don't. You would have to ask Mr. Rosso and Mr.
18 Bacon if they did. I haven't seen any.

19 MR. REYNOLDS: Let me just for the record make it
20 clear that that request has already been made, and a search
21 has been made, and nothing has been turned up. We will under-
22 take to go back for a second search to see if something was
23 missed.

24 MR. POTTER: Is this with respect to the October
25 12 meeting?

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1 MR. REYNOLDS: This is with respect to all the
2 meetings and any notes that may have been taken by any parti-
3 cipants on the Consumers side, whether it be in-house or
4 Tsham, Lincoln and Beale; and what has been revealed from
5 that search and that effort has already been made available to
6 the extent that we are aware.

7 We will take another look, but I don't think there
8 is any --

9 MR. POTTER: I may be wrong, but I am unaware of
10 any Consumers Power notes with the possible exception of the
11 memorandum of the September 13 meeting Mr. Youngdahl pre-
12 pared, and also a very brief memo to Mr. Aymond in antici-
13 pation of the September 24 meeting. Those are the only two
14 notes I have ever seen.

15 MR. REYNOLDS: Those are the only ones we are aware
16 of. We have made a search and found nothing. We will
17 undertake a second search and see if we missed something.

18 MR. POTTER: I just wanted to know.

19 MR. REYNOLDS: I wanted the record to show that
20 has already been done once and what has been turned up, you
21 have.

22 BY MR. DAMBLY:

23 Q Was it apparent to you during this October 12
24 meeting that the Dow representatives were taking substantial
25 amount of notes?

1 A Without looking through and actually seeing the
2 dates of the meetings we had, I don't remember exactly which
3 meeting it was that I discovered that. I would have to look
4 at the meetings. I think it was a later meeting than this.
5 And I am not clear about that.

6 Q Was there any reason -- maybe it is just personal
7 habit or whatever -- was there any reason why no one on the
8 Consumers side was taking notes?

9 A I can't speak for Mr. Rosso and Mr. Bacon, but
10 for myself, generally when I go into these meetings, I don't
11 take notes. I found that by taking notes, I don't hear what
12 the other person has to say, which is the purpose of my meet-
13 ing with them. So I don't usually take notes at a meeting.

14 Q If you had considered yourself to be an adversarial
15 relationship to the Dow people, would you have taken notes?

16 A Depends on how adversary it was. And if I had
17 considered myself that adversary, I would have brought
18 somebody with me and told the people they were going to be
19 taking notes at the meeting so they would be recorded.

20 Q Then, would it be fair to say at this point, you
21 still didn't have a feeling there was a strong adversarial
22 relationship between yourself and the Dow?

23 A Yes, I think that is accurate with regard to this
24 hearing.

25 I do want to tell you it was getting pretty clear

1 to me it could become that way real easy. I didn't see that
2 that would serve any purpose.

3 MR. REYNOLDS: What would serve a purpose?

4 THE WITNESS: To turn it into an adversary relation-
5 ship between the two of us from my part and Mr. Rosso's part.

6 BY MR. DAMBLY:

7 Q Back on Mr. Wessel's comment that Consumers would
8 be the authoring party and Dow was only the supplying party,
9 did you attach any significance to that statement?

10 A No, I really didn't. By that, I think Mr. Rosso
11 took it to be the same way which would mean we would be the
12 ones that would offer Mr. Temple as a witness.

13 I don't know what those words mean today. I'm
14 sure with Mr. Wessel that they do have a meaning, but they
15 don't to me.

16 Q Down at the bottom of that same page, the last
17 paragraph, the first sentence reads: "Mr. Renfrow stated
18 that the strongest reason as to why Consumers Power cannot
19 stand a delay in construction is because of Dow's needs."

20 Could you explain that?

21 A Sure. Dow needed the steam from that. They were
22 using old fossil fuel units to supply their own needs for
23 steam, and the longer that it took to build that plant, the
24 longer those units kept operating.

25 Second of all, Dow was spending incredible amounts

1 of money to keep those units operating. So in terms of
2 delay in construction, every time it got delayed put more
3 pressure on Dow plus EPA was talking to Dow about their
4 emissions. And Dow needed the plant on-line.

5 I do want you to understand that Dow's position
6 was they were within a rock and a hard place. They needed
7 that steam, and they needed it as quick as they could get it..
8 That was my impression.

9 And they also needed some certainly that they were
10 going to get it.

11 Q On page 8, now, of the Duran notes, go to the first
12 complete paragraph, which is one line. It says, "Lee Nute
13 discussed how the decision was made by Dow USA Area Board."

14 Do you remember what he said?

15 A The best recollection that I have of that is that
16 what Lee told us is they got all of the information that
17 was presented from the seven committees. They went off into
18 a room by themselves, made the decision, came back and announced
19 it to the group.

20 Q So he didn't give you any basis for the decision?
21 It was just kind of the procedure they went through?

22 A Yes.

23 Q I would like to refer now to the Nute notes of the
24 same meeting.

25 A Okay.

1 Q On page 2 of those notes, paragraph 3, the
2 paragraph that is numbered 3 indicates that at this meeting,
3 Mr. Wessel again made some comments about not including the
4 Michigan Division position.

5 Did Mr. Wessel make any statements as to why at
6 that time he still didn't want it included?

7 A I think he did. And I think it is really stated
8 in the Duran notes when Judd left the room and Milt began
9 to talk to us about the reasons. I don't remember Milt
10 ever saying that you shouldn't ask Joe if he agrees with the
11 USA Board decision. I don't remember him ever saying that.

12 He always told us that Joe Temple agreed that that
13 is what ought to be done; was in agreement with that decision.

14 Q Then, what you are saying is you don't have any
15 recollection of this last part of that paragraph 3A that
16 says, "Milt again suggested Consumers shouldn't delve into
17 Temple's reasons for decision on September 13"?

18 A Stop. He did that.

19 Q He did that? Okay. The part that says "or they
20 shouldn't ask if he agrees with the USA Board decision."

21 A I never remember Milt saying that we shouldn't
22 ask him about agreeing with USA Board decision.

23 Q Now, back on page 8 of the Duran notes, I take it
24 that at this meeting after Mr. Bacon left the room, this was
25 the first time that you were made privy to the reasons that

1 Mr. Temple had problems with Consumers. There is a whole
2 laundry list of things indicated in these notes. When did
3 these notes accurately reflect your recollection of the
4 conversation?

5 A I think it does. I can't remember anything else.

6 Q What was your reaction to this information?

7 A As to Joe's personal experience or his personal
8 opinion, I didn't have much of a reaction one way or the other
9 to it. That these were his personal opinions with him and
10 the problems that he had; and I didn't like it because I was
11 real clear it was going to come out on cross examination if
12 that is the way we had to go.

13 So I wasn't real anxious to put a witness up there
14 who did that, but that is the way it was.

15 Q You weren't real anxious to put a witness up there
16 who did what?

17 A Who had these opinions about a client that I was
18 representing. But that seemed to be the colors I had drawn
19 that time around.

20 Q How much, if any, of this information did you have
21 prior to this point where Mr. Wessel made it known to you?

22 A I did learn sometime before this that one of the
23 things that bothered Joe was Mr. Youngdahl's demeanor, is a
24 polite way to put it.

25 Q Put it in a less polite way if that would be more

1 informative.

2 A I don't think so. And I knew that the shutdown
3 because of money problems in '74 caused them a problem. I
4 had known those two things.

5 Q On those two, why had the shutdown in '74 caused
6 them or what was the extent of your knowledge on that sub-
7 ject?

8 A Consumers had to shut down construction on Midland
9 because of a financial squeeze. And I knew that Dow was not
10 happy with that at all because of their need for the steam.
11 Where I learned that information, I don't really remember.

12 Q Were you ever aware of any indication that Dow
13 was unhappy that Consumers had discontinued or had to stop
14 instruction shortly after signing new contract agreements in
15 '74?

16 A No. I didn't know that part of it.

17 Q To your knowledge, how much of what is expressed
18 here on this page 8 of the Duran notes was known to Mr. Bacon?

19 A He knew that I didn't know it at that point, but
20 he did know about Mr. Youngdahl, he did know about Dow being
21 unhappy shutting down construction, he did not about this
22 disclosure thing that Dow did not agree with one of Consumers
23 disclosure statements.

24 Right now, that is all I can remember that I did
25 find out that Mr. Bacon knew.

1 MR. POTTER: So I am clear -- I am sure it is clear
2 on the record -- you found out later Mr. Bacon knew of the
3 points you just enunciated at the time you were first advised
4 of these items at the October 12 meeting; is that correct?

5 THE WITNESS: I think I got -- let me repeat
6 what you said. I found out about these October 12 and later
7 found out that Judd did know about the particular items I
8 just told you about before we went into the meeting.

9 MR. POTTER: Bacon knew about those at the time
10 of the October 12 meeting?

11 MR. REYNOLDS: Or before.

12 MR. POTTER: Okay.

13 THE WITNESS: Probably where I had learned them
14 was from Judd, but I can't tell you that that is so.

15 BY MR. DAMBLY:

16 Q To the best of your recollection, I just want to be
17 clear, there are statements now that you made, but was there
18 anything that Mr. Bacon knew prior to the October 12 meeting
19 that you didn't know prior to the October 12 meeting?

20 A The only one that I could think of --

21 MR. REYNOLDS: You mean in terms of this list on
22 page 8?

23 BY MR. DAMBLY:

24 Q This list; I'm sorry.

25 A Good. Thank you.

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1 I am not sure about the disclosure about the fin-
2 ancing by Consumers Power. It seems to me that Judd had
3 mentioned that to me, but I am not real clear about that. He
4 had talked to me about the other two before.

5 Q Okay. If we could go to page 9 of the Duran
6 notes, the fourth paragraph which starts off "Rex asked if
7 he and Dave Rosso should go back to Consumers Power," the
8 last sentence, what is that? The last two sentences.

9 "Milt stated if Joe Temple could get all the
10 changes he has asked for regarding a definite date of
11 liability, he would be happy and the various problems would
12 not exist. Dave Rosso stated that if Consumers Power were to
13 put in an out-date now, this would be very harmful to their
14 position in the suspension hearing."

15 Do you recall that conversation taking place?

16 A Yes, I recall talking about what it would take.
17 It became real clear real quick what Joe Temple wanted was an
18 in-date on that contract.

19 Q Do you recall Mr. Rosso making a statement if
20 Consumers Power would put in an out-date now, this would be
21 harmful to their position in the suspension hearings?

22 A Actually, no, I don't recall him making that
23 statement at the meeting. I do know that what David discussed
24 would mean what we would have to do if we did enter into a
25 contract and it had an out-date. My own opinion was it would

1 not be harmful to us. We would just have to show we could meet
2 the construction schedule to do that.

3 Q On page 10, I guess it is, the third complete
4 paragraph, it starts off with your name -- "Rex Renfrow stated
5 that on the substantive issues, Consumers Power has a winner.
6 On the suspension hearing, Consumers Power has a problem
7 because the Appeal Board may not realize that Dow does not have
8 until 1985 before they are forced to act on the decision of
9 whether to start on new plants or not."

10 Do you recall making statements to that effect?

11 A No. And it was a discussion that we had about this
12 1985 date that appears up here.

13 Q Up where?

14 A Up on the top of page 10. See, the truth is to
15 my recollection, there is no 1985 that appears in the contract.
16 And what the parties were doing was shooting for, I believe,
17 1980, 1981, to have the construction completed. And what I
18 didn't want to happen was that there would be any impression
19 left before the Board that actually the parties didn't need
20 the plant until 1985. Because if that was so, which it wasn't,
21 then there was no reason not to have a suspension until the
22 thing was decided which, under the cases, that is what you
23 were supposed to look at.

24 And I wanted it to be real clear in the record
25 that Dow couldn't stand to wait until 1985 and neither could

1 Consumers.

2 And, by the way, as far as I know, that was in
3 fact so.

4 MR. REYNOLDS: What was in fact so?

5 THE WITNESS: Dow could not stand to wait until
6 1985. My recollection is that the plants that they were
7 using probably would not make it that long.

8 BY MR. DAMBLY:

9 Q Jumping down two paragraphs, there is a paragraph
10 that starts, "Dave Rosso asked what the nature of the docu-
11 ments were that Consumers has not seen regarding negotiations.
12 Lee stated that there were a lot of privileged information
13 plus a lot of information that is 'confidential in-house,'
14 but may be discoverable. Dave pointed out that it may give
15 Consumers Power a problem if it is discoverable."

16 Do you recall that conversation?

17 A I don't recall talking about all of that stuff,
18 the privileged information and the confidential in-house
19 stuff. I remember talking about the problem at that time
20 would be if we would have to go through -- here is what I
21 remember: I remember a discussion with Lee about where it
22 was and how many files it was and that it would have to go
23 through, and it would have to be documented and all of that.

24 It would be like a tremendous logistical problem to
25 get all of that stuff together.

1 Q On page 12 of these notes --

2 A I do want you to go on down. We continued that
3 discussion, and Milt pretty well puts forth his position
4 about it being irrelevant.

5 Q So at that time, as far as you perceived things,
6 Mr. Wessel considered this area not only immaterial, but also
7 irrelevant?

8 A I don't want to speak for Mr. Wessel. His legal
9 position was at that time it was irrelevant, and he wanted it
10 argued at the hearing that that was so.

11 Q I feel the urge to ask is there any way it could
12 have been irrelevant and material?

13 A Irrelevant and material? Not that I know of.

14 Q Okay.

15 Now, running over to page 12, I guess the second
16 paragraph there at the top, there is a --

17 A Which page?

18 Q Twelve. It says, "In referring to factors (uncer-
19 tainties) that were neither discussed nor resolved, Dave
20 Rosso pointed out he preferred that this statement not be
21 included in any testimony."

22 Do you have any recollection of that kind of a
23 conversation?

24 A No, but if you can refer me back to the testimony
25 where that appears, I think it may.

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1 Q Back to which testimony?

2 A I assume we are talking now about the draft.

3 Q It must be the October 6 draft.

4 A I don't remember this discussion about this NRC
5 action strikes at the site, strikes at Consumers' vendor's
6 plants, nuclear moratorium at state or national level and
7 other. I don't remember a discussion about that.

8 I think what David was saying is if they weren't
9 discussed or resolved, there wasn't much sense to put them
10 in.

11 MR. REYNOLDS: I guess the record ought to show
12 in answer to that question, the witness did look at the October
13 6 draft testimony provided by Dow.

14 BY MR. DAMBLY:

15 Q As a result of this October 12 meeting and
16 specifically the things Mr. Wessel related about Mr. Temple's
17 concerns, did you have a change in your perception at that
18 time of the Dow-Consumers relationship, the overall Dow-
19 Consumers relationship?

20 MR. REYNOLDS: I believe that has been answered,
21 but I will let him.

22 MR. DAMBLY: It hasn't been asked.

23 THE WITNESS: I have to keep referring back to
24 where I was. What I was coming from then was the suspension
25 hearing. And unless it directly impacted on that, I didn't

1 considered that the Licensing Board's actions could have a
2 tremendous impact on the Consumers-Dow relationship and,
3 thus, that my representation of Consumers, I guess, indirectly
4 could. But I never did consider it in terms of actually me.

5 Q Did you consider that the Temple testimony itself
6 could have a relationship or be important?

7 A No, I never did because the only thing I ever
8 wanted from Joe Temple and Dow in that testimony was where they
9 were positioned. That's all I wanted. Just what is your
10 position.

11 Q I believe it was as a result of this October 12
12 meeting that it was decided Mr. Rosso would prepare two
13 drafts of the Temple testimony; is that correct?

14 A I think you have to be careful. What he said he
15 would do would be prepare a draft which included the section
16 on the Michigan Division and then a separate draft with the
17 Michigan Division position. We would then decide what
18 to do.

19 So actually, it would be one draft and two parts
20 and that we would then make a decision on what to do and get
21 back to Dow.

22 Q And why was it necessary to separate?

23 A At that point, what Mr. Rosso wanted to do was
24 reserve judgment on whether or not we would go forward with

1 Mr. Rosso and I, we decided to go ahead with preparing the
2 Michigan Division position even though it was not material
3 and then make a decision later after we knew more of the
4 facts to decide on the strategy which would be better to put
5 it in on direct or not.

6 So what Mr. Rosso wanted to do was to set down,
7 put it together, take a look at it, and out of that then make
8 a decision.

9 Q Do you recall following the October 12 meeting and
10 to the best of my knowledge, the next meeting that took place,
11 formal meeting, on the Temple testimony preparation was
12 November 1, 1976, do you recall any discussions that you had
13 with Consumers people or Dow people in the interim?

14 A Sometime in there, we filed an affidavit. I don't
15 know when it was. It may have been after November 1. I had
16 some discussions with Lee about it. It was basically Joe
17 Temple's testimony in affidavit form if I recall right.

18 And Lee made some changes to it. I forget. Joe was
19 someplace, and Lee traveled out to get his signature and get
20 the affidavit signed so we could submit it to the Commission.

21 I think there was also some discussions between
22 Lee and I about information that we needed to prepare some
23 of our cost data and environmental data that he got for me.

24 Q Do you recall during that interim also signing a
25 nondisclosure agreement?

1 A Actually, I don't remember when I did that. I
2 thought it was at this meeting. It may have been at the 11/1
3 meeting. But somewhere in there, yes, I signed that. I
4 don't remember when that was.

5 Q This affidavit that was prepared between the
6 October 12 and November 1 meeting and filed?

7 A Maybe I'm not sure of that. I don't remember the
8 date we filed that with the Commission. I would have to look
9 specifically for the date, but it was somewhere in that
10 time period.

11 Q To the best of your recollection, did it include
12 the Michigan Division position in it?

13 A No. It did not include it.

14 Q Why not?

15 A It is at that time Mr. Miller, Mr. Rosso and I had
16 made our final decision we would not put it in the direct
17 testimony.

18 Q You said the final decision was made sometime between
19 October 12 and November 1?

20 A No. That's what I don't know. I had a meeting
21 on October 18 according to my affidavit with Mr. Nute and
22 Mr. Duran about that affidavit. That's when I signed the
23 mutuality of disclosure agreement. October 21 is when I
24 sent the executed affidavit of -- when I got it from Lee.

25 It was on October 17 that Mr. Miller and I decided

1 we would not put the Michigan Division decision in the
2 affidavit.

3 Q From what you just said, I assumed you were refer-
4 ring to your affidavit.

5 A Yes.

6 MR. REYNOLDS: Affidavit of December 30?

7 MR. DAMBLY: Of December 30, 1976. I believe the
8 supplementary affidavit of, whatever, March of this year, '79,
9 only concerns the September 21 meeting.

10 For the record, if I failed to mention that, again,
11 if we are talking post September 21, it has to be the
12 December 30 affidavit.

13 In that same affidavit, on the same page you were
14 referring to, it indicates in Paragraph 11 that on October 22,
15 Mr. Rosso in the presence of Mr. Bacon and yourself dictated
16 a cover letter transmitting the draft of Dow outline of
17 testimony which he had prepared and which had been reviewed by
18 Mr. Bacon.

19 THE WITNESS: Yes.

20 BY MR. DAMBLY:

21 Q Do you recall what revisions had been made?

22 A Not much. There were not substantive changes to
23 the Rosso draft by Mr. Bacon. There were some changes. That
24 is the best of my recollection.

25 Oh, I do remember. There were some things about

1 the language of the contract and what the contract had
2 required. What happened was Mr. Rosso had taken the contract
3 and interpreted in a way that Mr. Bacon said was inaccurate.
4 So that is what Mr. Bacon actually changed was the draft
5 testimony regarding the original contract.

6 And by "original," I mean the one that was signed
7 in 1974 that was still in effect.

8 MR. POTTER: Excuse me.

9 MR. ZAMARIN: Would you read his answer back?

10 (The last answer was read by the reporter.)

11 MR. POTTER: Let me ask you a question. Do you
12 have a copy of the testimony as prepared on October 22 by
13 David Rosso and before Mr. Bacon made the changes on it?
14 Because we have never seen it.

15 MR. REYNOLDS: I will have to see. I really don't
16 know.

17 MR. POTTER: We have never had that. And we have
18 had the draft after Mr. Bacon changed, but we have never
19 seen the original October 22, 1976, draft as prepared by Mr.
20 Rosso. And we would like to have a copy of that.

21 MR. REYNOLDS: Let me go off the record.

22 (Discussion off the record.)

23 BY MR. DAMBLY:

24 Q Moving right along, your affidavit, the December
25 30, 1976, affidavit, paragraph 12, indicates on October 31,

1 1976, that you and Mr. Rosso received a copy of Dow's latest
2 version of the Temple testimony. And it was clear that this
3 version had not been based on Mr. Rosso's draft of October
4 22.

5 A Right.

6 Q Why was it clear? What was different?

7 MR. REYNOLDS: Let me have the question again.
8 Can you restate it?

9 BY MR. DAMBLY:

10 Q The last sentence says it was clear that this
11 version of the Temple testimony had not been based on Mr.
12 Rosso's draft which was sent to Dow on October 22, 1976. My
13 question is: Do you remember what led you to that conclusion
14 or why it was clear it wasn't based on that?

15 You can refer to the documents.

16 MR. REYNOLDS: Off the record.

17 (Discussion off the record.)

18 MR. REYNOLDS: On the record.

19 The witness is reviewing the draft of Mr. Rosso
20 that was dated October 22 with the Dow draft of October 29
21 before answering the question.

22 THE WITNESS: I think in reviewing it, the easiest
23 way to answer your question is that the outline that we received
24 back from Dow is clearly not as comprehensive as the draft
25 that Mr. Rosso had submitted, did not include as many areas,

1 did not include as much detail as what Mr. Rosso had sent to
2 Mr. Temple.

3 BY MR. DAMBLY:

4 Q Did you have a reaction to that?

5 A If I did, I don't remember.

6 Q I would like to turn to the November 1, 1976,
7 meeting. Do you recall that meeting?

8 A Yes.

9 Q Do you remember who was there?

10 A I would have to refer back to the notes of it.
11 Mr. Rosso and I were there. I believe Mr. -- the part of
12 the meeting that I was at that Mr. Nute, Mr. Wessel and Mr.
13 Duran were there. Maybe Mr. Pribila part of the time. And
14 I would have to look at the notes to find out.

15 I may have that confused with another one.

16 Q Did anything happen between October 12 of '76
17 and November 1 of '76 which changed your perception of the
18 Dow-Consumers relationship?

19 MR. REYNOLDS: Again, you are asking in the context
20 of the overall relationship between companies or the specific
21 relationship vis-a-vis the suspension area?

22 BY MR. DAMBLY:

23 Q I will ask two questions for both responses. Did
24 anything happen between October 12 and November 1 to change
25 your perception of the overall relationship between Dow and

1 Consumers?

2 A The overall? No.

3 Q Did anything happen between those two dates to change
4 your perception of the relationship between Dow and Consumers
5 in the suspension hearing?

6 A Probably I was a little disappointed in what we
7 got back from Dow. Once again, it wasn't what I wanted. And
8 I didn't really want to have to go to the meeting the next
9 day and have to go through it all over again. Other than
10 that, I would say no.

11 MR. DAMBLY: I would be willing to take a five-
12 minute break right now. I am about to start the November 1
13 meeting.

14 (Whereupon, a recess was taken.)

15 BY MR. DAMBLY:

16 Q We have now gotten up to the November 1, 1976,
17 meeting. I believe that you told me who was present or
18 haven't you told me that?

19 A Yes.

20 Q Good.

21 At that meeting, to the best of your knowledge, did
22 you take notes or did Mr. Rosso or Mr. Bacon?

23 A I don't think Mr. Bacon was there. And you would
24 have to ask Mr. Rosso if he did or not.

25 Q If we could go to the Nute notes first of this

1 November 1 meeting --

2 A Okay, I have those in front of me.

3 Q Under the big II, there is a discussion of what
4 Rosso intended to do in his draft followed by a discussion
5 of why Milt didn't like that draft. Milt being Mr. Wessel.

6 Do you recall that conversation?

7 A Some of it, yes.

8 Q What do you recall?

9 A I remember Milt talking about that. I remember
10 talking about the draft would appear disingenuous and mislead-
11 ing.

12 Q Do you remember why Mr. Wessel didn't like Mr.
13 Rosso's draft?

14 A Yeah. He said that it looked like it told a complete
15 story, and it really didn't.

16 Q And that was the context in which he made the dis-
17 ingenuous comment?

18 A Yeah.

19 Q You feel that was a valid comment?

20 A No, I felt it was just another one of Mr. Wessel's
21 shots and let it go.

22 Q Okay. On that page, in those paragraphs, it
23 indicates under II A1, that Mr. Rosso -- let's go to No. 2.
24 I'm sorry. Mr. Rosso tried to flavor the testimony a little.
25 And that was taken out, and he wanted to know how it was

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1 taken out. How did he try to flavor the testimony?

2 A I think what David had actually done with it was
3 put in some conclusions that seemed to naturally flow from the
4 Dow statements of data that had been taken and that Dow didn't
5 like that he had done that.

6 Q Could you repeat that?

7 A Yes. David had put to the best of my recollection
8 some conclusions into the facts and data that Dow had given
9 us and that Dow didn't like that and had taken them back
10 out.

11 Q What kind of conclusions?

12 A Things on the economic benefits of why nuclear was
13 the way to go for Dow; that it was more economical; con-
14 clusions that he had stated.

15 Q To the best of your recollection, did Dow disagree
16 with the conclusions or they just had a problem with putting
17 the conclusions in at all?

18 A That is a hard question to answer. I don't believe
19 Dow disagreed with them, and I don't think they agreed with
20 him.

21 MR. POTTER: Could I have that answer back please?

22 (The last answer was read by the reporter.)

23 THE WITNESS: By disagree, what I mean is that
24 taken from the facts themselves, I believe they were accurate
25 presented in the way that Mr. Rosso prepared them. Dow did

1 not agree that they wanted their position presented that way.

2 BY MR. DAMBLY:

3 Q When you say "the way he prepared them," what was
4 it about the way he prepared them that they didn't like?

5 A I don't know. I don't know that anybody ever stated
6 that directly.

7 Q Okay, can we go to the Duran notes now, the same
8 meeting?

9 A I have those in front of me.

10 Q There is a statement in the second paragraph there,
11 the last sentence of the second paragraph, that says: "Rex
12 stated that he didn't want to see the subject of continuing
13 negotiations aired in public, and Milt voiced his agreement
14 with this statement."

15 Could you elaborate on that? Page 2.

16 A Yes. One of the things that I was always concerned
17 about would be that out of this suspension hearing, we would
18 get an order that required Dow and Consumers to report con-
19 tinuously on everything that they did with regard to the
20 negotiation. And I didn't see that that would be of any use.

21 I was also a little bit afraid of Dow being
22 pushed, Consumers being pushed. In fact, it was a question
23 we got into in the hearing which was that is our position.
24 And then the question was asked, good, in essence, what will
25 you compromise to?

1 And I was in agreement with Milt. He and I both
2 agreed that that is the kind of stuff that we did not want
3 to have happen to us.

4 Q Now, on the subject of the continuing negotiations,
5 at the earlier meetings you attended, September 29 and
6 October 12, you made indications that you did at that time
7 want the Michigan Division position and the subject of the
8 negotiations to be included.

9 A And the which negotiations?

10 Q Of the contract negotiations ongoing between Dc
11 and Consumers.

12 A I need to correct you. I wanted the '74 negotiations
13 that had occurred after the license had been issued as well
14 as the current ones included. What I had asked for in my
15 first draft.

16 Q Okay, you want '74 and the ongoing current ones.

17 A Yes, I did want that, thank you.

18 Q Is this a statement here, this one I just referred
19 to on page 2, you no longer wanted the present, ongoing
20 negotiations included in the testimony?

21 A No. It is not that I didn't want them or didn't
22 see that we needed them. It was that I for sure didn't
23 want to get into that area where they would have to report
24 on what they did meeting together out into the future or that
25 we got asked questions like, great, so you guys want what

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1 came to be known as a drop-dead date, you know, what is the
2 earliest drop-dead date they will take on the witness stand.

3 Q On page 3 of these Duran notes, the third paragraph
4 -- I guess the second complete paragraph -- starts out: "Milt
5 stated that Dow is concerned that once some of this stuff
6 on a continuing negotiations is out on the table, people may
7 then tend to select things that would show that the negot-
8 iations between Dow and Consumers Power are of a very tenuous
9 nature. He stated this could be very easily brought out
10 on cross examination."

11 Do you remember that taking place?

12 A Actually, I don't have an independent recollection
13 of it.

14 Q Back up in the preceding paragraph, there is a
15 discussion there, again about Mr. Wessel's position, that you
16 want to make it clear testimony was Consumers Power's testi-
17 mony and not Dow's testimony.

18 Do you recall that?

19 A Um-hum. Yes, I recall that.

20 Q Did he make any representations as to why he wanted
21 to make that so clear?

22 A Yeah, I think at that time, like it is reflected
23 in this paragraph, what he said was he didn't want Consumers
24 coming back at some time and saying Dow shot the thing down.

25 Q At that time, did Mr. Wessel consider himself a

1 party or nto a party?

2 A No, Mr. Wessel always stated he wasn't a party.

3 Now, I don't know what he believed, but he stated
4 that he wasn't. Once again, you know, as far as I was con-
5 cerned, Milt was coming up with this stuff, and Joe Temple
6 is going to take the stand. And while it was real nice that
7 is what he wanted to do and tried to do, what the truth about
8 it was we still had to put Joe Temple up on the stand and have
9 Joe Temple give Dow's position.

10 And as far as I was concerned, since I wasn't con-
11 cerned with the contract dispute, what I wanted to do was
12 to get that done.

13 Q There is a discussion in, again, the second full
14 paragraph there that starts off, "Dave Rosso asked if it
15 would be better if the testimony was put in a question and
16 answer format. Milt stated that this would at least show that
17 the testimony was being brought out in response to Consumers
18 Power's questions and not a product solely of Dow."

19 Do you recall that conversation taking place?

20 A Yes.

21 Q Whose idea was it to put it in question and
22 asnwer form?

23 A I don't actually remember whose idea it was the
24 first time around. I do remember David and Milt talking about
25 that and deciding that seemed to be the easiest way to go to

1 satisfy everybody. So we decided to do that.

2 Q Did you have a feeling -- as I understand it, Mr.
3 Wessel had a concern that in a nonquestion and answer format,
4 this was misleading and disingenuous testimony.

5 A No. You got to be careful which draft you are
6 talking about now. What we were talking about then was the
7 Nute draft which he never characterized as misleading and
8 disingenuous. He thought Mr. Rosso's draft was because it
9 wasn't complete.

10 But what we were talking about with the Q and A
11 was Mr. Nute's draft, the one that we had received the night
12 before.

13 MR. CHARNOFF: Could I have that answer read back
14 please?

15 (The last answer was read by the reporter.)

16 BY MR. DAMBLY:

17 Q Then, the idea to put this in a question and
18 answer form had absolutely nothing to do with whether the
19 testimony was going to be disingenuous or not?

20 A No. We were talking about two separate drafts.
21 Actually, if you look at the drafts, you will see it follows
22 Mr. Nute's draft pretty carefully.

23 Q I'm glad we cleared that up because I was somewhat
24 confused by that the other day. The draft that was finally
25 put in question and answer form, nobody ever considered to

1 disingenuous?

2 A That is accurate. At least nobody ever -- Lee
3 never expressed it to me nor did Mr. Temple. We put it
4 together and submitted it to Mr. Temple, and Mr. Temple looked
5 it all over. In fact, if I remember accurately, we made a
6 couple of changes to some of the words, phrases, and put it
7 in final form.

8 And I can double check that real easily for you
9 if you would like for me to.

10 Q On page 4 of the Duran notes, the second complete
11 paragraph, there is a statement that says: "Dave Rosso talked
12 about the factors Consumers Power did not have in the testimony;
13 that Dow was also concerned about Consumers Power's reliable-
14 ness to deliver steam. And if it came to a certain point that
15 Dow would walk. Dave Rosso stated that Consumers Power
16 didn't put this into the testimony because it would lose the
17 case."

18 Do you recall such a conversation taking place?

19 A No. I remember a conversation about Consumers
20 Power Company's reliability. I know that that is one of the
21 things that Joe Temple was concerned about was whether or not
22 he could rely on Consumers to have the plant completed in
23 time to supply the steam and whether or not the plant itself
24 would then be reliable. We did discuss that.

25 I don't remember talking about losing the case,

1 Dave talking about that in that form.

2 Q In your opinion, would putting that in have lost
3 the case?

4 A No.

5 Q Was that ultimately put in there?

6 A I don't know. I would have to go look at the
7 testimony to see for sure. It came out during the testimony
8 itself on the reliability of the plant, Consumers reliability,
9 in delivering the plant when it said it would; whether it was
10 in the direct, I would have to go check.

11 Q Backup for one second to page 3. I was just
12 wondering if you had an independent recollection. We could
13 all check the documents later so that is not a problem.

14 A Let me say this to you: I don't know if it did
15 or not, and I do know we talked about the thing, about the
16 in-date that they wanted. In a sense, that was what Joe was
17 looking for.

18 Q Okay, back on page 3, there is a statement at the
19 bottom again that Milt stated Dow was very interested in
20 maintaining its rights to leave its options open. He stated
21 he felt Dow has a good case for a cause of action against
22 Consumers Power based on its best efforts clause in the con-
23 tract between Dow and Consumers. Milt pointed out Dow has not
24 said a thing about this item. He mentioned Dow wants to leave
25 this option and others open. Plus a lot of what happens in

1 the future depends upon what is agreed upon during continuing
2 negotiations. And Milt stated he thought he had made this
3 clear when he talked about Dave Rosso and talked to both Dave
4 Rosso and Rex about Joe Temple's views at an earlier meeting.

5 Do you recall that conversation? It starts on 3
6 and ends on 4.

7 A I recall discussing with Milt the fact about Dow
8 leaving its options open; that if there were changes that
9 occurred, Dow would have to review it and exercise its
10 options. I never had a problem with that statement. I
11 assumed that Dow would continue to do that on the basis of
12 good business judgments.

13 Milt wanted specifically that to be put into the
14 testimony. And, indeed, it appeared in what the Dow cor-
15 porate position was in Joe's testimony.

16 The last sentence of that question to him that
17 Joe answered reads" Further, the matter would be kept under
18 continuous review, and Dow would keep all its options open.

19 Q At the time that Mr. Wessel made these statements,
20 did it have any effect on how you viewed the testimony or
21 the relationship between Consumers and Dow in either the
22 overall picture or --

23 A No, it was like for me, Milt was stating the
24 obvious if Dow did not keep its options open and keep looking
25 at it, it should not be running the business that it is

1 running. Since it has the record it has, I assume it does
2 what good business does which is keep reviewing it all the
3 time.

4 Q On page 5 at the bottom --

5 A Yes, sir.

6 Q -- the last paragraph, the discussion between all
7 present took place about various feelings and relationships
8 between Dow and Consumers Power that have evolved over a
9 period of time. Lee Nute stated Dow and Consumers Power
10 were at a point now where they do not trust each other at
11 all. Milt pointed out because of this mistrust between Dow
12 and Consumers Power, it would be better to say the contract
13 speaks for itself.

14 Do you recall that discussion taking place?

15 A Yeah.

16 Q Did that discussion change at all your impressions
17 of the Dow-Consumers relationship either in the overall or
18 purposes of the suspension hearing?

19 A Actually, at that point, no. It became like I
20 told you before, it became readily apparent to me when you
21 looked at the difference between the two parties, there was
22 nothing keeping them apart or resolving the contract except
23 personalities.

24 Second of all, there was stuff in the contract that
25 Consumers said it meant that, and Dow said it meant that.

1 And actually, it looked to me like it was a big todo about
2 nothing; that neither one of them made any difference. So it
3 didn't really change it for me.

4 It was like a lot of intrigue for nothing.
5 Especially with what I was interested in.

6 Q Okay. On pages 7 and 8 of the same Duran notes,
7 at the bottom, there is a discussion of which you referred
8 to just a few minutes ago about you wanted to put in and Dow
9 wanted to keep its options open. And these notes indicate
10 that Milt cautioned this statement and brought out the
11 tenuousness between the Dow and Consumers Power.

12 Did Mr. Wessel not want a statement about Dow
13 keeping its options open put into the testimony?

14 A Where I was at this point in time with Mr. Wessel
15 was that I couldn't get what it was that he wanted. He
16 would say X and four or five minutes down the road, we would
17 be talking about something else. And I couldn't find a line
18 to get together with him.

19 It seemed to me as if putting that in only stated
20 the obvious and that if it was tenuous, then it was tenuous,
21 and the Board would tell us so. It wouldn't grant the license.
22 If it wasn't, then they do it.

23 So, you know, to me, it was a way of handling it,
24 pulling it out and getting on with it.

25 Q Did anything else of importance in your mind

1 occur at the November 1 meeting? Anything we haven't dis-
2 cussed?

3 A Yeah. I think you referred to it, but I think this
4 is the first time that Milt actually began to talk about this
5 possible lawsuit between Dow and Consumers. At least in a
6 way that I began to get that he actually thought there was some
7 substance to it other than a way to talk to me and David.
8 I guess that is the other thing that happened.

9 MR. POTTER: Could I have that answer back?

10 (The last answer was read by the reporter.)

11 BY MR. DAMBLY:

12 Q Okay, I think the next thing is your affidavit of
13 December 30, 1976, indicates that you made a telephone conver-
14 sation -- this is page 9, paragraph 14 -- you made a telephone
15 conversation or had a telephone conversation with Mr. Nute on
16 November 5 of '76 regarding some minor changes that ou felt
17 were appropriate to Mr. Temple's testimony.

18 Do you recall what those changes were?

19 A No. They really were minor, though. I think one
20 of them had to do with we misstated the contract, we misstated,
21 I think, the steam section of the contract, and we changed
22 that.

23 I mean, they were not even sentence changes. They
24 were like word changes to the best of my recollection. And
25 I talked to Lee, and he talked to Joe and called me back and

1 agreed to them. And we made the changes.

2 Q Okay, before I move on to the November 8 meeting,
3 I probably should ask for the record, taking you back to the
4 October 11 meeting between Mr. Miller, yourself, and Mr.
5 Rosso, wherein I believe it is October 11, the decision was
6 made that the Michigan Division position was immaterial.

7 Who was responsible for that decision?

8 A Ultimately, I guess if there was anybody responsible,
9 it was Mr. Miller, although Mr. Rosso and I agreed with him
10 that that was accurate; that the conclusion we reached was
11 accurate.

12 In fact, most of the discussion centered around me
13 arguing for strategy reasons we ought to put it in.

14 Q Do you recall any conversations between yourselves
15 and Dow or yourselves and Consumers between November 1 and
16 November 8?

17 A I think that there was a time we met with Mr. Rosso
18 and I met with Mr. Temple for a while to have him -- to pre-
19 pare him. I don't know when that was.

20 Other than that, I don't remember any specific
21 discussions.

22 Q Could this meeting you just talked about be the
23 November 8 meeting or do you think there was one prior to that?

24 A I think it was probably November 8.

25 Q Do you recall what happened during the November 8

1 meeting?

2 A We talked to Mr. Temple about his testimony, asked
3 him some questions, got the responses that he would give,
4 talked about what we would do if his personal opinions were
5 asked.

6 Q What did you decide to do in that event?

7 A We told him as we had told Mr. Wessel earlier we
8 object to them as being irrelevant to the proceeding.

9 We also told Joe at that time that it was our
10 opinion as attorneys that we would be overruled, and he would
11 have to answer them.

12 Q On page 4 of the Duran notes of this November 8
13 meeting --

14 A I have got it.

15 Q -- I am interested in what has become rapidly
16 famous as the "lousy witness tatement." It says at the very
17 top, "Dave Rosso made the observation that Joe was a lousy
18 witness in terms of Consumers Power position in the case."

19 Do you recall that statement being made?

20 A Yeah.

21 Q In what context was it made and how was it made?

22 A We were talking about Joe's responses to cross
23 examination, his personal opinions when they all came out.
24 And Dave was laughing with him that he really was a lousy
25 witness from our point of view with the opinions that he had.

1 Q The next meeting that I am aware of occurred on
2 November 15 of 1976. Are you aware of any meetings that occur-
3 red between November 8 and November 15?

4 A No.

5 Q What was the purpose of the November 15 meeting?

6 A To talk to Joe Temple, I think was the basic
7 thing.

8 Q It was the same kind of discussion you had on the
9 November 8 meeting?

10 A Yes. Mr. Pribila was at this meeting, and we
11 talked a little bit about the Michigan Air Pollution Commissions.
12 I think that is accurate.

13 Q Who is Mr. Pribila?

14 A He is another attorney for Dow. And he handled that
15 case before the Michigan, whatever it is, Air Pollution
16 Control. I can't remember what it was. But anyway, it was the
17 state agency that handled air pollution in Michigan.

18 We needed the testimony in on the emissions from
19 Dow's fossil plants.

20 Q Okay. On page 1 of the D... n notes of this meet-
21 ing, at the bottom, there is an in... tion and a discussion
22 ensued on whether or not Dow has initiated any legal action
23 against Consumers Power in relation to the contract between
24 Consumers Power and Dow. The discussion then continued on
25 the letter Lee Nute sent to Judd Bacon. Lee pointed out that

1 the Consumers Power has stated in the prospectus that there is
2 a possibility that Dow will sue Consumers Power over the
3 Consumers Power's action.

4 A Yes.

5 Q Do you recall that conversation?

6 A Yes. Actually, that is the conversation that we
7 referred to back in the meeting about Joe's personal opinions,
8 about Dow's opinions, on whether or not Consumers had acted
9 properly in reporting the letter from Lee to whoever it was
10 written to at the Consumers considering Dow's actions.

11 And we talked about that. I think what Rosso's
12 advice to Joe was to stay out of legal matters.

13 Q And the next statement is that Dave Rosso asked
14 Joe to stay out of the area of legal actions taken or not
15 taken.

16 Why did you want Mr. Temple to stay out of those
17 or why did Mr. Rosso want Mr. Temple to the best of your
18 knowledge to stay out of those areas?

19 A You have to ask Dave what his opinion was. My
20 opinion, it was not proper to ask a witness to state legal
21 conclusions unless he is qualified to do that. And Mr.
22 Temple wasn't qualified to do that.

23 Q Would he have been unqualified to say whether
24 Dow had initiated any legal action?

25 A Well, the truth of the matter is in that he probably

1 would be since there was a question about whether or not that
2 letter constituted a legal action or not.

3 Q Which letter are you referring to?

4 A The one that is referred to above in the paragraph
5 you just read me in discussion then continued on the letter
6 that Lee Nute sent to Judd Bacon.

7 Q Do you recall what was in that letter?

8 A No, I don't. I would have to see the letter
9 again to refresh my recollection.

10 MR. DAMBLY: Does anyone have that letter? Does
11 anybody know if we have that letter?

12 Does anyone from Dow know what that letter is?

13 MR. POTTER: I am not being obtuse; I don't know.

14 MR. CHARNOFF: Off the record.

15 (Discussion off the record.)

16 MR. DAMBLY: Back on the record.

17 I would like to make a request from Dow to the
18 extent that there is a Nute to Bacon letter on, I assume,
19 dealing with the prospectus, we would like a copy if it exists.

20 MR. POTTER: We will make the necessary investi-
21 gation.

22 I think the record should show, though, we did
23 have an off-the-record conversation, and it is the present
24 feeling -- I can't speak for the other side, but I can speak
25 for Dow -- that the paragraph that was under discussion just

1 a few moments ago, the bottom paragraph on page 1 of the Duran
2 notes, November 15, 1976, carrying over to the top of page 2,
3 refers to some correspondence that resulted in a statement
4 appearing in Consumers Power Company prospectus.

5 It is my present belief that may refer to what has
6 become known as the Rus and Joe correspondence. But we will
7 check it out and see if there is such a letter from Mr. Nute
8 to Mr. Bacon that bears on this issue in any way.

9 MR. REYNOLDS: I assume that request also goes to
10 us, and we will undertake to see if we can find such a letter.

11 MR. CHARNOFF: We are not currently aware of any
12 such letter in the way of a Nute to Bacon letter.

13 (Consultation between Mr. Nute and Mr. Potter.)

14 MR. POTTER: Let's go back on the record.

15 Mr. Nute has just advised me I was correct in my
16 earlier statement that his notes, the Nute notes, bearing the
17 date of November 18, 1976, in fact are the notes of the meet-
18 ing of November 8, 1976. It is simply a typographical error.

19 He then followed up about a statement there are no
20 Nute notes from November 15, 1976. Mr. Nute advises me that is
21 not correct, he did take notes of November 15, 1976, meeting.
22 The Board had determined those to be privileged. I don't have
23 them with me. We will find them and turn them over. That
24 is all I can say.

1 BY MR. DAMBLY:

2 Q Okay, we can go to page 2 of the Duran notes of
3 the November 15 meeting. There is a statement on the second
4 complete paragraph down which is the one sentence which says,
5 "Rex told Joe that he (Joe) should refrain from referring to
6 the fact there were two separate reviews, Michigan Division
7 and Dow corporate."

8 Do you recall making a statement to that effect?

9 A Yes. I told Joe unless he was asked, he should
10 always refer to Dow corporate review since that was Dow's
11 position.

12 Q And why?

13 A Because in that opinion, that was a material fact.
14 That was what we have Joe testify to.

15 MR. POTTER: When you say because it was Dow's
16 position, do you mean to say it is Dow corporate position or
17 rather Dow tactical decision as to how to handle the matter?

18 THE WITNESS: The Dow corporate position was as
19 Joe had stated in his testimony, and that was what we con-
20 sidered the ultimate fact. And that is what he should refer
21 to unless he was asked about the Michigan Division recom-
22 mendation.

23 BY MR. DAMBLY:

24 Q I hate to do this, but I would like to go back now
25 to the November 8 meeting because I was under the impression

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1 it was the November 15 meeting, but in the Nute Notes which
2 say November 18 on them --

3 A I have those in front of me.

4 Q In paragraph C, II C, first page --

5 A Yes.

6 Q -- there is a statement, "Joe refuses to mention
7 that we have a contract."

8 Do you recall Mr. Temple making such a statement?

9 A No.

10 Q That continues and says in A, "One of the factors
11 considered was the legal liability of breaching the contract."

12 Do you recall any statement by Mr. Temple that he
13 did not wish to or refused to mention that it is Dow USA
14 Board that had considered legal liability as one of the
15 elements in their decision to support the Midland facility?

16 A I have no independent recollection of that.

17 Q Were you aware at the time that such was the case
18 that the Dow USA Board had considered this apparent to them
19 threat by Mr. Falahee and I guess Mr. Aymond subsequently
20 for \$600 million lawsuit as one of the bases for their
21 decision?

22 A I didn't know they had perceived it as a threat. I
23 assumed they had taken into account their own legal liability
24 if they decided to -- and I don't want to use the word
25 "breach" when I am talking about Dow because it was clear

1 what their position was. It wouldn't have been a breach, but
2 I assume that Dow being as well run as it is, it had taken that
3 into account in reaching their decision on what to do.

4 Q You had no personal knowledge that had been con-
5 veyed to you by Mr. Bacon or Mr. Falahee or anyone else from
6 Consumers or anyone from Dow, Mr. Wessel or the other, Mr.
7 Nute or any of the Dow people that the Board had specifically
8 considered the alleged \$600 million threat in reaching --
9 that the Dow USA Board considered that threat in reaching
10 the decision to support?

11 MR. REYNOLDS: I don't read that into the Nute
12 notes anywhere. And I am not sure I know where you are getting
13 that from. The Nute notes only make reference to one of the
14 factors being legal liability of breaching the contract.
15 There is no mention of any statements by Mr. Falahee or
16 \$600 million or Consumers or anyone else.

17 BY MR. DAMBLY:

18 Q I didn't say there was in the Nute notes. My
19 question was after having discussed -- that was at the time of
20 the November 8 meeting -- whether or not Mr. Renfrow has had
21 any knowledge that had been imparted to you directly from some
22 other individual or you had seen any documents or anything which
23 would indicate to you that the Dow USA Board considered what
24 I will characterize as an alleged threat of a \$600 million
25 lawsuit as one of the bases for reaching the decision to

1 support the nuclear project.

2 A At that time, I had no idea that they considered
3 that to be a threat.

4 MR. REYNOLDS: That being what?

5 THE WITNESS: That they considered Falahee's and
6 Aymond's statement to them about the results of Dow not
7 continuing with the contract to be a threat. I did assume
8 and had assumed all along that one of the factors that Dow
9 would have considered using good business judgment was what
10 their liability might have been if they had decided not to
11 continue with the contract.

12 BY MR. DAMBLY:

13 Q Do you recall any conversations that you had after
14 the start of the suspension hearings on November 30, 1976,
15 with Consumers or Dow people dealing with the preparation
16 of the Temple testimony?

17 A I would have to go back and look. I think during
18 the first week when Joe got on the stand, the preparation
19 came up, and that was the first time I was actually shocked
20 at Dow's response to some of the Board questions.

21 Our discussions with Milt concerning attorney/
22 client privilege, we argued very hard that the notes to
23 prepare the Temple testimony were under attorney/client
24 privilege. And then Milt turned around in the hearing and
25 turned them over and argued against us -- not against us, but

1 argued that they should be turned over which was to me a
2 direct violation of his conversation with me.

3 So at that point during that first week, I think
4 we did. Later on when Consumers' documents were made available,
5 the other thing that happened that shocked me was that a
6 representative of Kayescholer showed up at Consumers to
7 review all those documents. So those two things happened.

8 Q Is Kaye a female?

9 A No, it is a law firm. -- showed up at Consumers
10 Power Company and went through all of the documents that we
11 made available.

12 Q Do you recall any discussions that you had with
13 Dow personnel, including Mr. Wessel, outside of the suspension
14 hearings themselves?

15 A I don't know. I think Mr. Rosso had a discussion
16 with Mr. Wessel. I am not sure that I did, and I could have.

17 Q You said you were shocked by some of the responses
18 Dow made during the suspension hearings. Did the responses
19 that Dow made during the suspension hearing after the Temple
20 testimony became the focus of considerable attention give
21 you any perception that during the preparation of that
22 testimony, all these meetings we have just been talking about
23 that Dow had been less than candid and forthright in dealing
24 with you in the preparation of that testimony?

25 MR. REYNOLDS: Let me have that question read.

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1 (The pending question was read by the reporter.)

2 THE WITNESS: I have to answer the question, I
3 think, in two parts. With regard to Dow's position on the
4 suspension hearing of what its ultimate issue was, no. I
5 never felt that Dow communicated to me anything other than
6 the truth about what their ultimate corporate position was.

7 What I did change my mind about was what it was
8 that Dow was up to with regard to the suspension hearing and
9 how it was going to approach it.

10 BY MR. DAMBLY:

11 Q How did it change your mind and what did you then
12 perceive?

13 A I had assumed that Dow would take the position dur-
14 ing the suspension hearing that Mr. Wessel had told me that
15 they would which was that they would set back and allow us
16 to do the hearing. That turned out not to be so.

17 And, in fact, Dow took its own independent course
18 during that proceeding.

19 Also, some things that had been said to me about
20 documents and what had been turned over later turned out not
21 to be so, plus there were a number of documents which
22 turned up in the January material such as the Duran notes
23 and the Nute notes that I had no idea about, statements that
24 I had made that evidently Mr. Nute and Mr. Wessel had
25 questions about that had not been talked to me about.

1 So it became evident to me that with regard to the
2 preparation of the case, that probably there were some under-
3 lying factors that Dow was operating out of that had never
4 been communicated to me.

5 Q Did you ever then or now have the feeling that in
6 some way or other, Dow had used the preparation of the Temple
7 testimony to set up Consumers, put them in a more vulnerable
8 position, either in the suspension hearing or for a possible
9 breach of contract litigation suit?

10 A The answer to your question is yes. I think Mr.
11 Wessel attempted to do that insofar as future contract pro-
12 ceedings that he sought.

13 Q When did you form that opinion?

14 A Probably during the first week of the hearing.
15 Some of that may have carried over to the suspension hearing,
16 but I want it made real clear as far as I am concerned, Dow
17 did provide the information on their corporate position and
18 the discovery documents that were required.

19 Q Do you recall any meetings -- and I can't recall
20 exactly the dates; maybe somebody can tell me -- between the
21 end of the first part of the suspension hearings which I
22 believe was early December of '76 and then reresumed in February,
23 I believe, of '77 or at least between the time Mr. Temple
24 was delayed in his testimony between, something like, December
25 4 and, I think he came back on the stand in February of '77?

1 Did you have any discussions during that time frame
2 with either Dow personnel or Consumers personnel on the Temple
3 testimony preparation?

4 A On the preparation of Joe's testimony? I don't
5 believe so. I had discussions with Mr. Rosso and maybe Mr.
6 Bacon about it since we prepared the affidavits. So I guess
7 I need to amend my answer with the exception of Mr. Bacon.

8 Now, see, when you take February, we filed those
9 affidavits in December. I don't think I had any personal
10 conversations, but I think somebody did, with Mr. Falahee.

11 Q Who would that somebody be or you don't know?

12 A I don't really know. I don't believe we had any
13 conversations with Dow, though. Mr. Rosso may have talked to
14 Mr. Wessel, but I don't recall that I did.

15 MR. DAMBLY: Mr. Reynolds, would you supply Mr.
16 Renfrow with a copy of the December 4, 1976, memorandum to
17 file by Mr. Wessel? This is the last Wessel memo.

18 Would you please review that?

19 THE WITNESS: Yes.

20 BY MR. DAMBLY:

21 Q I guess two things I would like. One is your
22 reaction to Mr. Wessel's characterization of Mr. Rosso in the
23 second paragraph and then your overall reaction to the
24 memorandum.

25 MR. REYNOLDS: What is the first question now?

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1 MR. DAMBLY: I would like Mr. Renfrow's character-
2 ization of Mr. Renfrow's reaction to Mr. Wessel's characteri-
3 zation of Mr. Rosso.

4 MR. REYNOLDS: You mean his reaction today?

5 MR. DAMBLY: Yes.

6 MR. POTTER: I am going to object. I think it is
7 immaterial.

8 MR. REYNOLDS: I object to that.

9 MR. POTTER: If we can state Mr. Renfrow was with
10 Mr. Rosso at that particular date and can remember what he
11 looked like, I think it is relevant, but if you are going to
12 ask him to read Mr. Wessel's description of what Mr. Rosso
13 looked like and characterize it, I object.

14 BY MR. DAMBLY:

15 Q Okay, were you with Mr. Rosso on December 4, 1976?

16 A Yes.

17 Q Would you describe in your own words what Mr.
18 Rosso's appearance was?

19 MR. REYNOLDS: Throughout the day?

20 MR. DAMBLY: In the morning.

21 MR. POTTER: What was the date this was supposed
22 to have occurred?

23 MR. DAMBLY: It says December 4.

24 MR. POTTER: As long as you are going to put the
25 question which we objected to, I think if you look at the

1 paragraph -- Well, let's go off the record.

2 (Discussion off the record.)

3 BY MR. DAMBLY:

4 Q Let's try December 3. Were you with Mr. Rosso,
5 did you see him daily, throughout the suspension hearings,
6 November 30 through December 4?

7 A Yes.

8 Q Let me ask you, did you have discussions with Mr.
9 Rosso during the evenings after the suspension hearings
10 in this same time frame?

11 A Yes.

12 Q Are you aware of Mr. Rosso's spending any sleepless
13 nights during that same time period?

14 A No.

15 Q Are you aware of Mr. Rosso crying overnight --

16 A No.

17 Q -- during this time frame?

18 Did Mr. Rosso appear to you to be emotionally
19 upset?

20 A He certainly did get antry at some of the things
21 that happened.

22 Q Now, in regard to the rest of this memorandum to
23 file, let's take the last two paragraphs. Do the last two
24 paragraphs of Mr. Wessel's memorandum to file comport with
25 your understanding of the Temple testimony preparation?

1 MR. POTTER: I will ask you to read the question
2 back.

3 (The pending question was read by the reporter.)

4 MR. POTTER: Well, for the record, I just want to
5 object. I think Mr. Renfrow certainly is more than capable of
6 commenting on what his understanding was as to how testimony
7 was prepared.

8 If you are asking him to comment as to how Mr.
9 Wessel thought the testimony was prepared, for one witness to
10 comment on another witness' testimony, I think is improper.

11 If you can, go ahead. Fine.

12 MR. CHARNOFF: I have an objection, too. I don't
13 know that it is clear those two paragraphs or any specific
14 parts of them describe in any way completely or in part
15 how the testimony was prepared. And it seems to me that in
16 referring to two paragraphs, they have some reference to the
17 time frame, but don't really that I see in quick review. To speak
18 about how something was prepared is not a predicate for the
19 question, unless you point to some specific section.

20 BY MR. DAMBLY:

21 Q Let me change the question and try and see if I
22 can make everyone happy.

23 The third and fourth paragraphs in this memorandum
24 appear to me at least to deal with Mr. Wessel's perception
25 of the Dow-Consumers relationship leading up to the

1 presentation of Mr. Temple in the suspension hearing. Does
2 your perception --

3 MR. POTTER: Excuse me. To the extent that is
4 your characterization of what is in those two paragraphs, I
5 object to it. I don't think that is the proper characteri-
6 zation, but go ahead. I am not going to hold you up.

7 MR. CHARNOFF: Did the witness answer?

8 MR. DAMBLY: I haven't gotten that far.

9 Let's just strike that question. I don't think it
10 is necessary. I have a better one, I hope.

11 Let's go down to the last paragraph, starting about
12 the sixth line down. It says, "He then said he -- and the
13 he is Mr. Rosso -- might want affidavits from me -- the me
14 being Mr. Wessel -- and others in connection with the Temple
15 preparation.

16 I trust I have no objection that that does have to
17 do with the Temple testimony.

18 And I replied that this might well be the case
19 where it was necessary for us to proceed alone. He -- again
20 Mr. Rosso -- then said what his position had been that the
21 underlying Dow reasoning was irrelevant to the final action
22 decision and that this had been the Dow position.

23 I -- Mr. Wessel -- said it indeed had been the
24 original Dow position, but it had been overruled by Mr.
25 Renfrow and Mr. Bacon at the first conference I attended

1 with them.

2 Does that set forth your understanding of your
3 conferences with Mr. Wessel and on whether or not how Dow
4 perceived the Michigan position?

5 THE WITNESS: No.

6 BY MR. DAMBLY:

7 Q I have only one more subject I would like to discuss.
8 The subject I would like to discuss is coal costs.

9 A Yes.

10 Q Do you remember during the time Mr. Temple's
11 testimony was being prepared any discussions of differences
12 between Dow and Consumers on coal costs?

13 A Yes.

14 Q Can you give me generally what the flavor of that
15 was?

16 A Yes. What had happened was there had been a meet-
17 ing between Dow and Consumers, I think, around September in
18 which they had agreed upon, which their coal costs actually
19 matched that, did and periodically in time. Consumers was
20 then involved in an in-house study to determine overall for
21 the company what they were going to use for coal prices in
22 the years to come.

23 Between the time that the meeting occurred with
24 Dow and the time that we were filing the testimony in the
25 case, Consumers in-house study was prepared. And what it

1 showed was an increase in coal costs.

2 The Consumers technical people advised me that the
3 coal costs actually differed at this point in time, and I
4 think what I did was call Lee and advise him of that and tell
5 him that I thought if we could get them together as I under-
6 stood the history that this thing had happened from time to
7 time, and generally over a period of time, it would resolve
8 itself, and that what I would like to see if we could was
9 to at least identify what the difference was so that we
10 could get ready.

11 We talked to Mr. Temple about that because his
12 testimony included costs of coal on his alternatives and on
13 the alternatives that we were using.

14 You have to remember at the same time this was
15 going on, we were also preparing an environmental report.
16 So we discussed all that. I think eventually, the resolution
17 of it was that we did tie it down; that it was to a difference
18 in escalation rates. We submitted the Consumers prices. The
19 Dow testimony went in with the Dow prices.

20 Sidney Feld from the staff testified on a whole
21 different set of prices. And I don't know. And the guy from
22 the State of Washington who was Cherry's witness testified
23 to another whole set of coal prices.

24 Q In your opinion, was there an honest disagreement
25 between Dow and Consumers as to coal prices?

1 A I think definitely any time you deal in this
2 proceeding with coal prices or prices of uranium, as far as
3 I am concerned, what you do is you take what you believe to
4 be the costs to run your plants, and you can put them in the
5 environmental report and send them into the Commission.

6 I know for a fact that what the Commission does is
7 do an independent review of those costs. Sometimes, the
8 Commission says the costs are going to be more for a particular
9 area and sometimes less. And as far as I am concerned, I
10 have never yet met two people who agree on the price of coal
11 except for maybe three or four days at a time.

12 The same is true, by the way, with the cost of
13 uranium or petroleum.

14 Q Do you recall making a statement -- this is in the
15 Duran notes of the October 12 meeting, page 4. I will just
16 read the one statement.

17 "Mr. Renfrow stated Consumers Power would not argue
18 with Dow about the coal cost being too low as the truth
19 probably lies somewhere in between."

20 A It is my opinion on all those costs the truth is
21 nobody knows for sure. And what we know, I was letting Milt
22 know we wouldn't cross examine Joe on the coal costs even
23 though they were different.

24 Q Again, the Duran notes of the November 8 meeting,
25 I would just ask you if you could read pages 2 and 3, top of

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1 3, of the November 8.

2 A You want me to read what, now?

3 Q Page 2 and the very top of 3 of the November 8
4 Duran notes.

5 MR. REYNOLDS: All of 2?

6 BY MR. DAMBLY:

7 Q Starting with about the third paragraph, the
8 parties present discussed the coal prices.

9 A Yes.

10 Q Does that to your recollection accurately depict
11 the discussion that took place?

12 A I think at that point, I had some fear and Joe
13 had some fear and we really didn't know where it was, where
14 the exact difference was. I think that what happened in the
15 11/15 meeting was that we had gotten it down to the base
16 price hadn't changed, but the escalation factors had.

17 I think if you look on page 2 of Mr. Duran's notes
18 of 11/15, it says we were talking about escalation factors.
19 As far as I was concerned, that happened. At least, Joe could
20 identify the difference in the two, and we could just put
21 it up, say that is the difference in the prices.

22 Q The things I asked you to read on November 8, I
23 guess my question was, did you think that fairly accurately
24 represented the discussion that you had?

25 MR. CHARNOFF: On the 8th?

1 BY MR. DAMBLY:

2 Q On the 8th.

3 A I think that is accurate. I specifically remember
4 the stuff about the high-sulphur and the low-sulphur coal being
5 talked about and the fact that they had used the Consumers'
6 data that had come out on 9/21. But I do remember thinking
7 at one time that maybe the difference was that Dow got coal
8 from its own mines while Consumers bought it on the open
9 market. So that is some of the things we were talking about
10 that might have been the difference.

11 Q Then, on the November 15 Duran notes, you just read
12 the bottom of page 2, and I assume that you thought that
13 fairly accurately depicted what that discussion was?

14 A I don't remember Milt talking about Dow buckling
15 under to Consumers. I remember letting the thing go and
16 escalation factors.

17 I would have liked to have it flattened before the
18 hearing because it was something that then we wouldn't have
19 to spend time on. But by that point, it was okay with
20 me if we didn't.

21 Q You saved me a question.

22 Now, the last thing I would like to ask is going
23 back to the issues which I read at the beginning that the
24 Board has said should be discussed in this hearing.

25 The first issue is whether there was an attempt

1 by parties or attorneys to prevent full disclosure of or
2 withhold relevant factual information from the Licensing
3 Board in the suspension hearings.

4 To the best of your knowledge, did you engage
5 in any attempt to prevent full disclosure of or withhold
6 relevant factual information from the Licensing Board in the
7 suspension hearing?

8 A No.

9 Q Did anyone else to your knowledge engage in such an
10 attempt?

11 A Nope.

12 Q I will ask you again the question in terms of I
13 want to make sure we are clear on this, the terms used in this
14 issue as the Board has stated it refer to relevant material and
15 and not relevant factual information, not to material
16 information?

17 A Yes. I am real clear there was no relevant infor-
18 mation that was withheld. We turned over reams and reams of
19 material even when we weren't asked.

20 Q Do you feel that there was, one, on your part,
21 was there a failure to make an affirmative, full disclosure
22 on the record of material facts relating to Dow's intentions
23 concerning performance of its contract?

24 A No.

25 Q Are you aware of anyone else making such an

1 attempt?

2 A No.

3 Q Was there an attempt by either you or anyone else
4 to your knowledge to present misleading testimony to the
5 Licensing Board concerning Dow's intentions?

6 A No.

7 Q To your knowledge, did any of the parties or
8 attorneys attempt to mislead the Licensing Board concerning
9 the preparation of the Temple testimony?

10 A No.

11 Q That's all the question.

12 MR. POTTER: There is no way I can complete in an
13 hour. I think I would like to start fresh when he comes
14 back.

15 I don't know how long it will take, Mr. Renfrow,
16 and I will be as fast as I can; I promise you that. But I
17 don't see any reason why we couldn't complete within the
18 time frame.

19 I don't know how long you will be.

20 (Whereupon, at 5:35, the taking of the deposition
21 was recessed, to reconvene on June 4, 1979.)

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CERTIFICATE OF NOTARY PUBLIC AND REPORTER

I, Elisabeth R. Craft, the officer before whom the foregoing deposition was taken, do hereby certify that the deponent whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said deponent was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said deponent; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

ELISABETH R. CRAFT
Notary Public in and for the
District of Columbia

My commission expires 1 December 1980.

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