

ORIGINAL

NRC PUBLIC DOCUMENT ROOM

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DEPOSITION OF PAUL OREFFICE

Place - Midland, Michigan

Date - Monday, 14 May 1979

Pages 1-75

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

NATIONWIDE COVERAGE - DAILY

POOR ORIGINAL

444 001

79071300451 1

WEL/wel

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DEPOSITION OF PAUL OREFFICE

Dow Center
Patrick Road and Abbot Street
Building 2030
Executive Wing
Midland, Michigan
Monday, 14 May 1979

Deposition of PAUL OREFFICE, called for examination at
10:35 a.m., pursuant to prehearing conference order of the
Atomic Safety and Licensing Board, before Helen M. Rabbage,
a notary public in and for the County of Midland, State of
Michigan, when were present on behalf of the respective
parties:

WILLIAM J. OLMSTEAD, Esq., Office of Executive Legal
Director, U. S. Nuclear Regulatory Commission,
Washington, D. C., on behalf of the NRC Regulatory
Staff.

WILLIAM C. POTTER, Jr., Esq., Fischer, Franklin, Ford,
Simon & Hogg, 1700 Guardian Building, Detroit,
Michigan;

R. L. DAVIS, Esq., Michigan Division, Legal Department,
47 Building, Midland, Michigan 48640; and
LESLIE F. NUTE, Esq., Dow Chemical Company, Midland,
Michigan 48640, on behalf of Dow Chemical Company.

GERALD CHARNOFF, Esq., and ALLEN WEISBARD, Esq.,
Shaw, Pittman, Potts & Trowbridge, 1800 M Street,
N.W., Washington, D. C. 20036, on behalf of
Consumers Power Company.

RONALD G. ZAMARIN, Esq., Isham, Lincoln & Beale,
One First National Plaza, Chicago, Illinois 60603,
on behalf of Consumers Power Company.

Acc. Federal Reporters, 1444

002

C O N T E N T SWITNESS:DIRECT CROSS REDIRECT RECROSS

Paul Oreffice

2

40

64

69

73

74

EXHIBITS:

(None.)

444 003

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

P R O C E E D I N G S

MR. OLMSTEAD: On the record.

Whereupon,

PAUL OREFFICE

was called as a witness and, having been first duly sworn,
was examined and testified as follows:

MR. OLMSTEAD: Mr. Oreffice, I'm William J.
Olmstead, counsel for the Nuclear Regulatory Commission
Staff.

The purpose of this deposition is a discovery
deposition held to prepare for a case which has been
scheduled for hearings in July of this year, 1979, pursuant
to the Nuclear Regulatory Commission's Atomic Safety and
Licensing Board's prehearing conference order of May 3,
1979.

The issues for that hearing in July are:

(1) Whether there was an attempt by the parties
or the attorneys to prevent full disclosure of, or to
withhold relevant factual information from the Licensing
Board at the suspension hearings;

(2) Whether there was a failure to make affirma-
tive full disclosure on the record of material facts relat-
ing to Dow's intentions concerning performance of its
contract with Consumers;

(3) Whether there was an attempt to present

444 004

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

1 misleading testimony to the Licensing Board concerning
2 Dow's intentions;

3 (4) Whether any of the parties or attorneys
4 attempted to mislead the Licensing Board concerning the
5 preparation or presentation of the Temple testimony; and

6 (5) What sanctions, if any, should be imposed
7 as a result of affirmative findings on any of the above
8 issues.

9 DIRECT EXAMINATION

10 BY MR. OLMSTEAD:

11 Q On February 2, 1977 you were sworn as a witness
12 on behalf of Dow Chemical Company in the Midland remand
13 proceeding in Chicago, Illinois. Do you recall appearing
14 and testifying in that proceeding?

15 A Yes, I do.

16 Q Have you since had occasion to review that
17 testimony?

18 A I have read it, yes.

19 Q Did anyone else assist you in that review?

20 A What do you mean, did anybody assist me?

21 Q Was somebody else present that you discussed your
22 testimony --

23 A No, there was not. When I reviewed it immediately
24 I reviewed it for anything that might have been incorrect,
25 and I believe I gave my input on some misspellings of things.

1 I think somebody else might have been present in that sense.

2 I have recently reviewed it again by myself.

3 Q Okay. At transcript page 2688 you testified that
4 you were employed by the Dow Chemical Company, President
5 of Dow Chemical, USA, a member of the Board of Directors
6 of Dow Chemical, a member of the Dow Executive Committee,
7 Finance Committee, and the Public Interest Committee.

8 Has there been any change in your position with
9 the Dow Chemical Company since that time?

10 A Yes, there has. I am now President and Chief
11 Executive Officer of the Dow Chemical Company. Also
12 Chairman of the Executive Committee. I am no longer on the
13 Finance and Public Interest Committees.

14 Q Thank you.

15 Do you recall having read the testimony of Mr.
16 Temple as presented in that proceeding?

17 A I have not read the whole of his testimony.
18 Several years ago -- I'm talking about 77 -- after the
19 thing, I scanned some of it, but I did not read the whole
20 thing.

21 Q You testified at page 2689, which I believe is
22 the next page there, that the testimony of Mr. Temple and
23 your testimony accurately reflected the Dow corporate
24 position as of that date, February 2, 1977.

25 A That is correct. With one thing, that I stated

1 then, that I want to make sure we always keep clear we
2 call it a corporate position, but it was the Dow Chemical,
3 USA board at the time. It was not the Dow Chemical
4 Company's corporate board that made these decisions,
5 because we keep our operating decisions pretty well to
6 our divisions.

7 MR. POTTER: Excuse me just one second. I just
8 want to clarify for the record -- I'm sure the court
9 reporter has already done so -- but I just want to make it
10 clear, at the time these questions are coming in, Mr.
11 Orefice does have a copy before him of the testimony that
12 we gave him earlier, and he's making references to it in
13 answering the questions.

14 Go ahead. Thank you.

15 BY MR. OLMSTEAD:

16 Q Does the testimony that you are now referring
17 to still currently reflect the Dow USA position?

18 A I don't know if I understand the question. Does
19 the testimony still reflect today's position? Has anything
20 changed since '77?

21 Q Right.

22 A Well, I can't tell you accurately what changes
23 have occurred. There's been a new contract signed with
24 Consumers Power which has made some changes, and I have
25 frankly not followed the details on those because of my

1 new responsibilities over the last year. But there's
2 certainly nothing in my testimony in '77 that I've seen
3 that I would want to change.

4 Q During that testimony of 1977 you indicated that
5 you had ordered a review of the Dow position-- I assume
6 you meant the Dow USA position?

7 A Correct.

8 Q -- with regard to the alternative of purchasing
9 steam from the Midland Nuclear Power Plant.

10 When did you order that review?

11 MR. POTTER: Excuse me, Mr. Olmstead. I want
12 to clarify something. I think you said you were referring
13 to the Dow position as being the Dow USA position. I
14 think the review was to review the Dow Michigan Division
15 position.

16 THE WITNESS: Well, it was the Dow USA position
17 with reference to the Dow Michigan Division. They estab-
18 lished the position. We were reviewing their position.

19 BY MR. OLMSTEAD:

20 Q And the question is: When did you order that
21 review?

22 A In September of 1976.

23 Q Was that before or following a meeting of the
24 board, the Dow USA board, concerning the presentation of
25 the Midland Division?

1 A The review was ordered before. The Board met
2 after, to consider the recommendations of the Michigan
3 Division.

4 Q So the decision to order a review was yours
5 alone?

6 A Essentially.

7 Q How did you learn of the Michigan Division's
8 position concerning the long-term desirability of nuclear
9 steam?

10 A From Mr. Temple.

11 Q Did you have any other discussions with either
12 Dow USA personnel or Dow, Midland Division personnel prior
13 to ordering a review of the Dow position on the nuclear
14 steam contract?

15 A That's 2-1/2 years ago. I've had a lot of
16 responsibilities. I don't want to give you an answer that's
17 not 100 percent accurate. I don't remember having any
18 others except for Mr. Rooke, Mr. David Rooke, who was
19 present during a discussion I had with Mr. Temple. I
20 remember that.

21 But essentially no. Essentially I looked at the
22 recommendations of the Michigan Division and said that I
23 thought that a review needed to be done.

24 But, as I said, 2-1/2 years have gone by, and
25 I may have talked to one of my other long associates.

1 Q All right. Who was Mr. Rooke?

2 A Mr. Rooke at the time -- he's currently President
3 of Dow Chemical USA. He took my job. At the time,
4 September 1976, I'm not sure if he was already head of
5 operations, vice president in charge of operations of Dow
6 Chemical USA, or if he was just assuming that position and
7 he was still head of our hydrocarbons and energy.

8 In either situation he would have been very
9 deeply involved. I don't remember the exact date, because
10 there were several changes in those days occasioned by the
11 death of one of our top people.

12 Q Do you recall what specific guidance you gave to
13 the review group?

14 A What specific guidance? Essentially -- well, I
15 don't know what you mean by specific -- essentially I
16 wanted a whole review of the matter, to see where we were
17 going.

18 Q But you didn't just say do a whole review, you --

19 A Well, we had a recommendation from the Michigan
20 Division, and I asked them to take a look at the recommenda-
21 tion of Michigan Division to see what our position should
22 be.

23 Q I have here a document which was in the under-
24 lying proceeding, Midland Intervenor's Exhibit Number 60.
25 This is Exhibit DD, which is called "Draft LFN" which I

1 believe is Lee F. Nute, "Outline Supplied by Consumers
2 Power, October 6, 1976," which I'm going to show to you,
3 Mr. Oreffice, and --

4 MR. CHARNOFF: Just one moment, please, while we
5 get that out.

6 (Pause.)

7 MR. CHARNOFF: Okay, we have it.

8 (Document handed to the witness.)

9 BY MR. OLMSTEAD:

10 Q I want to go over -- there is a page, and then
11 there's a number 2, and then there's another page with the
12 Roman numeral II. Then there's a Roman numeral III, then
13 Roman numeral IV of that testimony.

14 The first page of Roman numeral IV -- this was
15 entitled, "Dow Chemical USA Review of Michigan Division
16 Position."

17 Mr. Oreffice, I'm going to ask you to take a
18 moment to read IV-A, Scope of the Review.

19 (Witness reviewing document.)

20 A Okay.

21 Q The next to the last sentence of that paragraph
22 says:

23 "The group's conclusions were to be consistent
24 with Dow's contract obligations with Consumers Power,
25 and Dow's consent order with the Michigan Air Pollution

1 Control position."

2 Do you recall giving guidance to the group, the
3 review group, of that type?

4 A These are the group's conclusions. I don't see
5 how that has anything to do with my --

6 Q Well --

7 A It has nothing to do with the guidance I may
8 have given them.

9 Q The paragraph says that you formed an independent
10 review group, and the group was told to conduct an inde-
11 pendent review.

12 A That is correct.

13 Q And then it says:

14 "The group's conclusions were to be..." which
15 I take to mean that was some guidance given to the group as
16 to how they were to conduct this review. My question is
17 whether you recall giving guidance of that type.

18 A It makes sense, but I don't -- I do not recall
19 2-1/2 years later exactly what the instructions were I had
20 given them.

21 Q When were you informed of the conclusions of the
22 review group?

23 A I believe the first time was at a meeting of
24 the U. S. Area operating board that heard the whole review.
25 But, again, if they gave me any advanced notice of what

1 they were going to say, I consider it immaterial, but I
2 just don't remember.

3 Q Did you recall receiving those recommendations
4 before or after you met with Consumers Power's personnel
5 concerning the contract?

6 A Without looking at a calendar, there's no way I
7 can remember the minutiae of what day what happened.

8 Q Do you still have a calendar from that time
9 period?

10 A I'm sure I have.

11 Q Along that same transcript page there, you
12 testified that there had been no threats of litigation
13 concerning the Dow-Consumers contract from consumers prior
14 to September 1976.

15 A What page are you on?

16 Q I think it's the next page

17 MR. CHARNOFF: What transcript number?

18 MR. OLMSTEAD: Well, it should be about 2692, or
19 is it -94?

20 Here it is. Page 2692.

21 THE WITNESS: That testimony is correct, to my
22 knowledge.

23 BY MR. OLMSTEAD:

24 Q Were you aware of, or did you receive any
25 suggestions from Consumers Power that they might sue if Dow

1 failed to support -- to continue to support the contract?

2 A Yes.

3 Q Who made those?

4 A Well, I think if you'll go over this testimony
5 it was amply stated, and I'm sure my mind was fresher in
6 '77 on these events than it is today.

7 There were some suggestions -- I heard about it
8 before meeting with Consumers, but then at the meeting we
9 had with Consumers sometime in --

10 Q September 24.

11 A -- September 24, Mr. Aymond, then Chief
12 Executive Officer of Consumers Power Company.

13 Q And you considered that a threat?

14 A I certainly did at the time.

15 Q Did you discuss this threat with anyone following
16 the meeting?

17 A Oh, I'm sure I did, with my people.

18 Q Do you recall anyone in particular?

19 A No. I'm guessing now, but I'm sure I must have
20 discussed it with Mr. Temple and Mr. Rooke. Possibly with
21 Mr. Nute, but I don't know for sure.

22 Q At any time did Dow consider suing Consumers
23 under the contract?

24 A Yes, we did, as I stated in my testimony in '77.

25 Q Were these thoughts communicated to Consumers?

1 A I believe so, but I did not communicate it. I'm
2 not certain.

3 Q If those thoughts were communicated to Consumers,
4 would you consider those to be threats?

5 A Well, maybe a counter -- you can call it a
6 counter to a threat.

7 MR. OLMSTEAD: I want to show Mr. Orefice a
8 memorandum from Mr. R.C. Youngdahl to the files, dated
9 September 16, 1976, and ask him to review that.

10 (Document handed to the witness.)

11 (Witness reviewing document.)

12 THE WITNESS: Yes, sir.

13 BY MR. OLMSTEAD:

14 Q All right. You will note that there are seven
15 Dow task force assignments listed by Mr. Youngdahl, which
16 the memo indicates were communicated to him by Mr. Temple,
17 of the Dow Company. And Consumers Power was invited to
18 comment on the -- quote -- legal aspects of the decision,
19 which I assume was the Midland Dow position which was
20 communicated to Mr. Youngdahl.

21 MR. POTTER: Is that your question?

22 BY MR. OLMSTEAD:

23 Q Well, this report from Temple to Youngdahl
24 indicates that you have appointed a task force which is to
25 do seven things, and that Consumers Power is being invited

Ace Federal Reporters, Inc.

444 015
444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 to comment on the legal aspects of the decision.

2 Do you feel that that's a correct paraphrase of
3 the memorandum to files?

4 MR. POTTER: Well, I want to object.

5 MR. OLMSTEAD: Well, let me -- I'll say it.

6 BY MR. OLMSTEAD:

7 Q Item number 2 here says:

8 "Review the legal aspects of the decision, past
9 present and future. Consumers Power Company is
10 invited to make comments."

11 Do you have any doubt that that's what Mr. Temple
12 communicated in this memo?

13 A I have no knowledge of Mr. Temple communicating
14 to Mr. Youngdahl, whether Consumers Power was invited or
15 not invited.

16 Q You didn't have any knowledge that he was going
17 to ask Consumers Power to comment on the legal aspects of
18 the Dow position?

19 A If I did, I do not recall it.

20 Q Assuming for the moment that Consumers was
21 invited, pursuant to Mr. Temple's invitation to comment on
22 the legal aspects of the Dow task force review, and the
23 Dow-Consumers dispute over the contract, would it have been
24 a fair assumption, given your understanding of the situation
25 in 1976, that Consumers would view Dow's abandoning the

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 016

1 nuclear steam project as a breach of contract?

2 MR. POTTER: Again, I'm going to object. You're
3 asking Mr. Oreffice to comment on material that's contained
4 in a memorandum that apparently was recorded by Mr.
5 Youngdahl, who was a Consumers Power Company employee,
6 recording the results of a conversation he had with Mr.
7 Temple.

8 Now, Mr. Oreffice, to my knowledge, did not
9 participate in that conversation. I don't see how he can
10 correctly interpret or pass on anything in this memorandum.

11 MR. OLMSTEAD: Well, I note your objection.
12 But my concern is if he had knowledge of that communication,
13 if it did occur, which is subject to later proof.

14 MR. POTTER: He has just testified he has no
15 knowledge of what Mr. Temple may have communicated to
16 Consumers Power Company. I think in pursuing that line of
17 questioning you're asking him to --

18 MR. OLMSTEAD: I'm asking him to --

19 MR. CHARNOFF: May we go off the record?

20 (Discussion off the record.)

21 MR. OLMSTEAD: Back on the record.

22 BY MR. OLMSTEAD:

23 Q Did you assign seven task force assignments to
24 the Dow review committee?

25 A There were several specific points, which I

1 assume to be correctly seven, assigned to the task force
2 to be done in this review.

3 Q And was one of those task force assignments to
4 review the legal aspects of the decision, past, present
5 and future?

6 A Yes.

7 Q Assuming that Consumers Power was aware of the
8 purpose of the Dow review through a communication with Mr.
9 Temple, what would you have thought if someone has asked
10 you to comment on the legal aspects of abandoning the
11 nuclear steam contract, had you been Consumers?

12 A I don't know what they think. That's not --

13 Q I'm not asking you what they --

14 MR. POTTER: I'm going to object to your charac-
15 terization of the communication to Consumers Power to be
16 that it was the abandoning of the nuclear steam contract.
17 To my knowledge that's not what was communicated to
18 Consumers Power. I think that's an unfair characterization
19 of what Mr. Temple did.

20 But either way, this witness doesn't know
21 anything about that aspect.

22 THE WITNESS: Look, it's obvious, in asking for
23 a review I'm asking for all of the legal aspects of the
24 whole thing. But I know nothing of what you're trying to
25 lead to.

1 BY MR. OLMSTEAD:

2 Q Were you aware that Dow Chemical Corporation and
3 Consumers Power Company were having major disagreements
4 over the nuclear steam contract?

5 A Yes, we had for some time talked of redoing the
6 contract. The contract has since been changed substantially.

7 Q And you previously told me in response to an
8 earlier question that Dow had considered the possibility
9 of legal suit for breach of contract against Consumers
10 Power, is that correct?

11 MR. POTTER: What was the question again?

12 MR. OLMSTEAD: I think he previously told me
13 that he had considered suing Consumers for breach of
14 contract.

15 MR. POTTER: Thank you.

16 THE WITNESS: As best I recall, that was after
17 the threat from Consumers Power.

18 BY MR. OLMSTEAD:

19 Q Would it have been reasonable to assume that
20 where the two parties were in disagreement over the
21 contract, that both parties might view the contract as
22 being one which they might sue on?

23 A It's possible, but I very strongly remember
24 that all along we had been trying to renegotiate the
25 contract on certain points, where both sides had changed

1 circumstances. And, of course, as I say, this has been
2 done since them.

3 Let me just add, we're not a litigious company.
4 We'd rather see things settled in an amicable way, and
5 discuss the contract, than have any kind of suits.

6 Q Okay. I'd like you to look at the Durand
7 memorandum to files, September 29, 1976, page 10.

8 (Witness reviewing document.)

9 You may want to read the first two lines at the
10 bottom of page 9.

11 A Who is Judd?

12 Q Judd Bacon, an attorney for Consumers Power.

13 A And who is Rex?

14 Q Rex Renfrow, an attorney for Consumers Power.
15 Milt is Milt Wessel.

16 A I know Milt.

17 How far do you want me to read?

18 Q Just that paragraph.

19 A Okay.

20 Q You'll note that it is stated in those notes
21 that, "Milt stated if Consumers Power pushed further on
22 this information then the parties may get into a situation
23 where Dow immediately filed suit against Consumers Power."

24 Would you view that as a threat?

25 A I don't know what, among lawyers, I don't know

444 020

Acc-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 what you people thought about it.

2 Q Milt Wessel was authorized to represent Consumers
3 Power Company, was he not?

4 MR. POTTER: He didn't represent Consumers Power.

5 MR. OLMSTEAD: I'm sorry. Dow Chemical.

6 THE WITNESS: Yes.

7 I don't consider -- you made me read one para-
8 graph. I don't consider that a threat. I consider it just
9 statement of fact, as he viewed it.

10 BY MR. OLMSTEAD:

11 Q Very well.

12 During your testimony before the Licensing Board
13 you indicated that if the facts changed Dow might reach a
14 different conclusion, and that Dow was keeping its options
15 open to re-review the contract again.

16 Has Dow re-reviewed the contract?

17 A Yes. There have been substantial changes of the
18 contract since 1977.

19 Q Is Dow satisfied with the current contract?

20 MR. POTTER: I'm going to object. I really can't
21 understand where we're going on this kind of --

22 MR. CHARNOFF: Can I have it read back?

23 MR. POTTER: Again, I want to interpose an
24 objection. We've got a lot of deposing to do in the next
25 three days, and then going at it in the following weeks.

1 And if we're going to engage in inquiries as to what
2 positions the parties have in the present contract - - I
3 don't understand that to be the scope of what this proceed-
4 ing is before the NRC now. I think it goes back to the
5 preparation of the Temple testimony, at the time of the
6 hearing around -- what was it -- November 30, December 1 and
7 2, 1976, and February 1977.

8 I just really don't see the relevancy of where
9 we're going, Bill.

10 MR. OLMSTEAD: Well, I think it's very relevant,
11 but I don't need to make the argument here.

12 MR. POTTER: Well, okay. I've made the
13 objection.

14 You can answer the question, Mr. Orefice.

15 THE WITNESS: Would you re-read the question?

16 (Whereupon, the reporter read from the record,
17 as requested.)

18 THE WITNESS: Well, it's a better contract than
19 it used to be. I think our people are satisfied with it
20 as it is now, yes. But I do not know that.

21 BY MR. OLMSTEAD:

22 Q Has any employee of Dow suggested to you since
23 your testimony before the Nuclear Regulatory Commission
24 that another corporate review is in order?

25 A No.

444

022

1 Q At transcript page 2694 you testified concerning
2 the meeting on September 24 with members of Consumers Power
3 Company.

4 You indicated that you remembered very clearly
5 one part of that meeting that was important to you, and
6 that was when Mr. Aymond said that if the plant was not
7 ready to supply Dow by 1984 Consumers would let Dow off
8 the hook.

9 You also testified as to one of Consumers'
10 lawyers objecting to that.

11 Then you said you asked your people to follow up
12 on that.

13 Who did you ask to investigate that?

14 A My best guess -- and it's a guess -- is that I
15 asked -- I first asked, I remember asking one of the lawyers,
16 and I don't know if it was Hanes or if it was Nute -- one
17 of our lawyers, well, what does this all mean? Because I
18 thought Mr. Aymond was making a legitimate offer in good
19 faith, and it was obvious that he greatly upset his lawyers.

20 And so I remember asking our lawyers why were
21 his lawyers upset, and they gave me an explanation, which
22 I frankly don't exactly remember. And I asked somebody in
23 the group, either the lawyers, or Joe Temple, or somebody
24 who was dealing directly with Consumer Power, to follow up.

25 Q Do you recall any conclusions from that follow-up?

444

023

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 A Well, the next thing I heard is that instead of
2 letting us off scot free, I'd have to say, which is what
3 Mr. Aymond was implying, there was a big amount of cash
4 involved. And I testified to that in 1977.

5 Q Did you receive any conclusions from that follow
6 up in any kind of written communication?

7 A You mean a conclusion from our people?

8 Q Right.

9 A Not that I can recall.

10 Q Did that suggestion from Mr. Aymond that he
11 would let Dow off the hook by 1984 lead you to push for
12 any concessions or any other terms in the renegotiated
13 contract?

14 A No, because between the time he made this
15 suggestion and the time they came back with what they --
16 their interpretation about it, was widely different in
17 my mind.

18 Q So the renegotiated contract now has a cutoff
19 date, is that correct?

20 A That was considerably later. You're talking
21 about later when the contract was renegotiated? I'm sure
22 that it must have been brought up when they -- again, I'm
23 drawing conclusions because I wasn't in on any of these
24 negotiations.

25 Q Okay. If you'll look at transcript page 2706

444 024

1 and 2707, you testified that the suggestion of a lawsuit
2 by Consumers Power came before the corporate review, yet
3 after the time when the Midland Division had recommended
4 abandoning the nuclear steam option.

5 Is that a correct summary of what you were
6 saying there?

7 MR. CHARNOFF: Could I have that question read
8 back?

9 MR. OLMSTEAD: Just let me repeat it.

10 He testified on cross-examination that the
11 suggestion of the lawsuit by Consumers Power occurred
12 at the September meeting which he attended, which, I take
13 it, to be the September 24 meeting, which came before the
14 corporate review, yet after the time when the Midland
15 Division had recommended abandoning the nuclear steam
16 option.

17 THE WITNESS: As I testified here, it came
18 during this corporate review. It was during the time the
19 task force was in operation. But it was certainly before
20 we met to hear the results of the task force.

21 BY MR. OLMSTEAD:

22 Q Was this the first time that you -- the
23 September 24 meeting the first time that you were aware
24 of suggestions of lawsuits by Consumers under the contract?

25 A Directly, yes, although probably a couple of

1 days before I'd heard something from one of our people --
2 again, I don't remember who it was -- that there might be
3 such a thing in the air.

4 Q When the corporate review position, then, was
5 presented to the members of the Dow board, do you recall
6 what your recommendations were with regard to the
7 conclusions reached by the review group?

8 A Well, the task force made its review to the
9 whole management committee of Dow USA, which is composed
10 of quite a few people.

11 Then the Dow USA board retired into a separate
12 room to take the recommendations of the task force under
13 advisement. And the recommendation of the task force, I
14 believe I testified two years ago, was that if the costs
15 were, indeed, \$1,670,000,000, with a startup date by
16 March of 1982, that the nuclear power alternative was still
17 the most satisfactory alternative for the Michigan Division.

18 Q Then it would be fair to conclude that the
19 basis of the decision was primarily economic?

20 A No, I don't think you can make that single
21 conclusion, and if you review my '77 testimony it was time
22 and again asked whether the threat of litigation was an
23 important consideration or not, and I testified then --
24 and I haven't improved in two years -- that I just cannot
25 divorce the two things, because I was given a bunch of

1 data that said, here are the economics, and here's the
2 threat of a \$600 million litigation. And the decision was
3 made based on the whole package of information.

4 I cannot conclude what I might have thought if
5 one of those things was not present.

6 Q Was Mr. Wessel present at that board meeting?

7 A Not in the board where we made the conclusion.
8 At the presentation from the task force he might have been.
9 I don't remember.

10 Q Did you have a discussion with Mr. Wessel or
11 Mr. Nute concerning how the Dow board reached their
12 decision?

13 A I don't remember. I just -- it's two years.
14 I just . . . if you tell me I had one, you're probably
15 right. But I just don't remember.

16 Q Do, or did, the other members of the Dow USA
17 board generally follow your advice and recommendations on
18 such matters?

19 A Well, it wasn't just mine. It was a conclusion
20 of the group. It wasn't my decision. I didn't arrive at
21 this decision by a 51 percent vote. It was a decision of
22 the Dow USA board. And in general I think -- I think it
23 was a unanimous decision, if I remember correctly.

24 Q Was anybody on the board critical of the review
25 group's conclusions or the Midland Division conclusions?

444 027

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 A No, not that I can remember.

2 Q You testified during those hearings that Joe
3 Temple did not have a piece of data available to him that
4 was available to you, and that was the threat of litigation.
5 Do you recall that?

6 A No. I think that's wrong. I don't think I
7 testified to that.

8 I'll tell you what I think I did testify to.
9 Joe Temple did not have a piece of data when he first made
10 his recommendation. He got his data one at a time. I got
11 those two pieces of data together to make a decision.

12 I think this is the difference, because if you
13 ask me can you make a decision purely on economic grounds,
14 without the threat of litigation, he could have because
15 that was his first step. He didn't know about litigation
16 at the time.

17 But I didn't, because I got two pieces of data
18 together.

19 Q To your knowledge had either you or Mr. Temple
20 requested legal advice from Dow's attorneys concerning
21 Dow's responsibilities and obligations under the contract?

22 A Well, that's what the legal review was all about.
23 The fact there was a task force for legal review, was what
24 our obligations were under the contract, or Consumers'
25 obligations. You have to put it in context. This is a

1 plant that was originally supposed to be on stream in the
2 mid seventies, and we were now already talking of 1982,
3 and there had been continuous delays, some which we felt
4 may have been Consumers' fault, some which were the fault
5 of the whole regulatory process and the intervenors, and
6 so forth.

7 But the fact was that we were trying to find out
8 what all alternatives were and what the legal position was.
9 I think that's a prudent businessman's attitude towards
10 something.

11 Q And weren't you advised that there was a risk
12 of litigation for breach of contract if Dow attempted to
13 terminate its agreement with Consumers?

14 A Well, we didn't intend to just up and terminate
15 an agreement for no good reason. So I don't think I ever
16 got any advice on that point, because that was not the
17 attitude. We felt there might be cause for terminating it.

18 Q I show you a document that's captioned Intervenor's
19 Exhibit Number 7. This is another memo to files from
20 a Consumers person by the name of Mr. Keeley.

21 MR. POTTER: This is a memorandum dated March
22 4, 1976 from Mr. Keeley to file, with copies to Youngdahl,
23 Howell . . .

24 MR. CHARNOFF: May I look over your shoulder?

25 THE WITNESS: Do you want me to read the whole

444 029

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 thing?

2 MR. OLMSTEAD: Yes, I would like you to read
3 over here to item -- through item g.

4 (Witness reviewing document.)

5 BY MR. OLMSTEAD:

6 Q This is a document which shows a meeting
7 between certain Consumers Power personnel and Dow personnel
8 regarding the Midland-Dow contract.

9 In attendance at that meeting was Mr. Joe
10 Temple.

11 Item g. on page 2 indicates there was talk about
12 the threat of litigation due to delays in Joe's letter has
13 to be removed at the end of the negotiation.

14 In light of that knowledge of Mr. Temple's
15 participation in that meeting, and the reference there to
16 the threat of litigation by Dow, do you think it's
17 reasonable to conclude that Mr. Temple hadn't considered
18 threats of litigation between Consumers and Dow when he
19 reached the Midland Division position following the Court
20 of Appeals remand in July, 1976?

21 A Well, you're asking me to conclude from --

22 MR. POTTER: Excuse me. Before you answer, I'm
23 going to object. If I understand that memorandum, it
24 refers to some alleged threat of litigation, but not by
25 Consumers against Dow, but maybe the other way.

1 MR. OLMSTEAD: Right, it's by Dow against
2 Consumers, in that particular memorandum.

3 MR. POTTER: And is your question to Mr.
4 Orefice, though, is he correct in his earlier statement
5 that since Joe Temple didn't have Consumers' threat of
6 litigation against Dow before him at the time he made the
7 decision, still a correct decision? Is that what you asked
8 him?

9 MR. OLMSTEAD: What I was asking him is, if it's
10 in the mind of one of his executive officers of the Dow
11 Corporation to the point where he is considering litigation
12 against Consumers Power Company, and obviously I would
13 assume seeking legal advice in regard to it, is it reasonable
14 to conclude, using a reasonable-man standard, I'm not
15 asking him to speak for Joe Temple -- we'll ask Mr. Temple
16 later -- that he would not have considered the threat of
17 countersuit by Consumers Power Company.

18 MR. POTTER: I'm going to, for the record, just
19 object, because really you're putting a reasonable-man
20 standard, but you're asking Mr. Orefice to testify as to
21 whether Mr. Temple might have really considered that. And
22 that's the net effect of what your question is, whether
23 you put it that way or not. And I object, because Mr.
24 Orefice certainly is not, and would be the first to say, an
25 expert on what goes on in Mr. Temple's mind.

1 With that in the record, rather than taking any
2 more time, go ahead.

3 THE WITNESS: Well, I think that if --

4 BY MR. OLMSTEAD:

5 Q Let me put it this way:

6 Had you been in that meeting and made a threat
7 of litigation to Consumers Power Company, would you, before
8 you had gone to such a meeting, have considered the
9 threat of litigation against you, a countersuit by Consumers
10 Power Company?

11 A Well, I think you're taking the whole thing
12 completely out of context. You're talking about a
13 litigation-- I don't know what they're talking about here.
14 You're making me read something which might be a litigation
15 for \$10 million.

16 The question before, and what we were talking
17 about, is a very specific threat of \$600 million litigation
18 by Consumers Power, which I had to contend with in making
19 a decision, which Mr. Temple, to my best knowledge, didn't
20 know about at the time he made his original recommendation.

21 I don't know if we're talking about -- what
22 we're talking about here. Certainly, if anybody knew
23 anything before those days that there was anything like a
24 \$600 million possibility, I didn't know anything about it.
25 And to my knowledge Mr. Temple didn't know anything about

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 032

1 it.

2 Q What is the amount of the liability of Dow under
3 the contract? Assuming the contract is reasonably performed,
4 how much money is Dow Chemical Company talking about?

5 A That is a question that cannot be answered that
6 way, because in the first place to the best of my knowledge
7 the amount of liability continues to change. It's been a
8 changing thing. What it was in 1976 is considerably
9 different from what it is in 1979.

10 Q Well, I understand that. But how -- are you
11 talking about spending \$10 million, or several hundred
12 million dollars, or --

13 A This plant started out where the whole plant
14 was going to cost \$250 million. So you have to put
15 yourself -- you know, it's very easy to look back today,
16 with all the vision we have in 1979, to figure out what
17 things might have been. But the fact is, this has been a
18 changing and moving thing.

19 Now, you showed me a piece of paper. I don't
20 know what the hell it means. "The delays in Joe's letter
21 has to be . . ." I don't even know what this means.

22 I don't know if they're talking about litigation
23 of the whole contract, if they're talking about a little
24 piece of it.

25 I know that in our mind, as I stated before,

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 033

1 we were trying to settle the contract -- this letter also --
2 since you have introduced it, I insist on giving you --
3 you made me read this -- this letter also clearly indicates
4 a desire to negotiate and not to litigate -- clearly
5 indicates that this is what was being tried at the time.

6 Now, also there was a suggestion on a specific
7 point, which I don't know what it's about, of a litigation.
8 But the whole approach was to try to settle this in an
9 amicable fashion. And up to the time of this meeting on
10 September 24, that's the way I had hoped things would go.

11 Q When did Dow originally expect to be drawing
12 steam from the Midland nuclear plant?

13 A I believe the original date was 1976. I may
14 be off by a year or so.

15 Q So would it be fair to say that Dow was not
16 happy about the delay?

17 A No, but there had been a new --

18 Q No, it wouldn't be fair to say that?

19 A Yes, it would be fair to say that. It would be
20 very fair to say that we were very unhappy about all the
21 delays.

22 Q Since your testimony in 1977 have you had an
23 occasion to meet with Mr. Aymond of Consumers Power on
24 this matter?

25 A No, I have not.

444 034

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

1 Q Have you --

2 A Excuse me. You said since 1977?

3 Q Since your testimony. That was February, 1977.

4 A To make sure, when did Mr. Selby become chief
5 executive of Consumers Power? I believe that was shortly
6 after that. At that time I did talk to Mr. Aymond -- I
7 think that's the only time -- on the telephone. But I
8 talked to him at the time of the change in their management.
9 But I had no substantial discussion with him.

10 Q Have you had the occasion to discuss the Dow-
11 Consumers contract with other Consumers Power officials since
12 that time?

13 A At the time Mr. Selby became chief executive --
14 again, I think it was shortly after that -- we talked in
15 great generalities on the telephone. From everything I
16 understood from our people, he was known to be a reasonable
17 man, and I talked to him over the phone to say, hey, can
18 we get this contract settled to the satisfaction of both
19 parties? We both agreed that we would name our very best
20 people to a negotiating team, and really try to hammer out
21 a new agreement that was satisfactory to both parties.

22 And that's what happened.

23 Q And that was early 1977?

24 A I would have to know when he became chief
25 executive. It was very shortly after. I don't know if it

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 035

1 early, late -- but it was sometime in that period of time.
2 In fact, it could have been before the Chicago hearings,
3 although I don't think so.

4 The one fact I remember is he had been chief
5 executive for a very short time.

6 Q Did you have occasion to discuss with any
7 personnel involved in the Dow contract or in preparing
8 material for the Nuclear Regulatory proceedings regarding
9 the Dow contract the question of who would appear as
10 witnesses on behalf of Dow Chemical Company.

11 A You're talking about in 1976?

12 Q Right, for these hearings.

13 A Discuss it with Dow people?

14 Q Right, as to who the Dow people should be to
15 testify in the Nuclear Regulatory Commission hearings.

16 A Well, I testified in 1977, I think, to that
17 effect. Yes, I did have some meetings with them.

18 MR. CHARNOFF: Excuse me. With Dow people?

19 THE WITNESS: Yes.

20 MR. CHARNOFF: Not with Consumers people?

21 THE WITNESS: With both. Well, no, I didn't have
22 any meetings with the Consumers people, although I think
23 I testified in 1977 about some suggestions which were made
24 during the meeting of September 24 by Consumers people.
25

1 BY MR. OLMSTEAD:

2 Q You testified, I believe, that you got an
3 impression that Consumers wanted an unknowledgeable witness?

4 A That is correct.

5 MR. CHARNOFF: Could I have that read back,
6 please?

7 (Whereupon, the reporter read from the record,
8 as requested.)

9 BY MR. OLMSTEAD:

10 Q How did you obtain that impression?

11 A Well, I don't remember, obviously, that these
12 were the exact words used. But I think there was a statement
13 that the best witness to go for Dow might be somebody who
14 wasn't really that familiar with the whole thing. And I
15 remember getting very upset about it.

16 Subsequent to that I had discussions with our
17 people, and I think you could probably say that I raised
18 some hell with our people to make sure that we sent the
19 most knowledgeable witness, which I thought was Mr. Temple,
20 because inasmuch as I'm concerned any time we are testifying
21 to something, we want to send the most knowledgeable witness.

22 So I wonder why I'm testifying. I'm not the
23 most knowledgeable witness in this whole area.

24 (Laughter.)

25 Q You were present when someone from Consumers

1 lower or increasing Consumers Power expressed that desire?

2 A Yes, I was. That was September 24 at the
3 meeting.

4 Q Did you check this out with any other Consumers
5 Power people, or follow up on it in any way, to see if that
6 was --

7 A I personally did not.

8 Q Okay.

9 At page 2726 you testified that if the Consumers-
10 Dow contract did not come into being, that there was
11 uncertainty concerning whether Dow would continue to
12 operate units in Midland because of the competitive
13 advantage that Dow might have in other areas of the
14 country, such as Louisiana or Texas.

15 Has there been any intervening circumstance
16 which would change that testimony?

17 A No. As a matter of fact, there have been maybe
18 circumstances to prove that point, because we have had a
19 continuing debate, as I'm sure you are aware, with State and
20 Federal air authorities, on whether we can continue to
21 burn coal under our system. And we have stated very
22 clearly that if we don't get some relief in July of this
23 year when the new amendments of the Clean Air Act go into
24 effect, we will be laying off something like 800 to 1000
25 people and shutting some units in Midland.

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 038

1 Q At the time the corporate review team determined
2 that Dow should continue to support Consumers on the
3 contract were you or any members of the Dow management, to
4 your knowledge, anticipating that the revised contract
5 negotiations which were then ongoing would alleviate the
6 problem that you testified you saw in the contract which
7 was a lack of a fixed termination date?

8 A We definitely expected negotiations to improve
9 several points in the contract which, under the circum-
10 stances of starting in 1982, and the current costs and so
11 forth, were unbearable on the contract.

12 At the same time, Consumers Power wanted some
13 things on their side. And so we felt, yes, that there
14 were several points that could be negotiated.

15 Q So you reasonably expected that you would get
16 a termination date?

17 A Yes, I would say that I -- well, you asked me
18 when, when did I reasonably --

19 Q Well, that's the next question, when?

20 A I certainly did, after Mr. Aymond made the
21 statement he did in our meeting.

22 Q Which was the same meeting when they made the
23 threat?

24 A Yes.

25 Q And you testified that it was the fixed termina-
tion date that was offered by Mr. Aymond that was more

Acir Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

444 039

1 important, to your mind?

2 A Well, Mr. Aymond made a very clear statement,
3 and what I felt was a very honest statement, that he
4 considered -- my interpretation of his statement, if I may,
5 although I don't remember the exact words, is that he was
6 saying it would be unreasonable to keep you tied to a
7 contract if the plant were to not be started forever,
8 essentially, and you have a deadline, and that's 1984, and
9 I consider it reasonable to let you out by a certain date.

10 And I must say, we keep saying 1984, and I
11 don't remember if it was January 1 or December 31, 1984, at
12 this time. But it was -- and you know, I felt that that was
13 an honest statement that he made on his belief. And, as
14 I say, his lawyer jumped up and said you can't do that.
15 And I had to ask why of our people later.

16 Q Okay. Now, that was an important piece of data
17 to you --

18 A Oh, yes.

19 Q -- the fact that the Chairman of Consumers would
20 see that as a reasonable termination date.

21 A Yes.

22 Q So in light of that, and in light of the threat
23 of litigation as you came away from that meeting, was your
24 general belief that you had improved matters, matters had
25 remained unchanged, or matters --

1 A You mean right after the September 24 meeting?

2 Q Right.

3 A Oh, mixed emotions. But a definite feeling of
4 improvement on the termination date, and some feeling that
5 the differences could be negotiated.

6 I'd say -- well, I'd say mixed emotions.

7 Q Did Consumers make any other suggestions concern-
8 ing revising the contract that Dow found to be to its
9 advantage? In about that time frame. I don't want to go --

10 A I don't remember the specifics of that meeting.
11 Later on -- we had made several suggestions of the things
12 which would alleviate our position, and they were being
13 negotiated and discussed.

14 Q Did you view the suggestion on the termination
15 date Mr. Aymond made at that meeting to be a gesture to
16 gain Dow's support in the Nuclear Regulatory Commission
17 proceeding?

18 A I don't believe so. I really interpreted it as
19 an honest expression of a man using a reasonable approach.
20 It sounded so reasonable to me that that's why I considered
21 it just a reasonable businessman making a point.

22 Q During the course of this time, leading up to
23 the preparation of your testimony, and ultimately your
24 testimony in 1977, did your attorneys advise you of the
25 need to keep the Nuclear Regulatory Commission advised of

444 041

1 changes in your testimony or the Dow position?

2 A During what time?

3 Q During the period of time from the September 24
4 meeting through your testimony in February of 1977.

5 MR. CHARNOFF: Did his attorneys advise him of
6 what?

7 MR. OLMSTEAD: The need to keep the Nuclear
8 Regulatory Commission advised of changes in your testimony
9 or in the Dow position.

10 THE WITNESS: In my testimony? I had given no
11 testimony, as I recall.

12 BY MR. OLMSTEAD:

13 Q While you were preparing it.

14 MR. POTTER: How could he change anything that
15 still hadn't been given? That aspect of the question
16 certainly must be clear. He had no duty to alter testimony
17 that hadn't been given.

18 BY MR. OLMSTEAD:

19 Q Were you ever given any advice concerning the
20 need of the Corporation, Dow Chemical Company, to keep the
21 Nuclear Regulatory Commission informed of changes in its
22 position?

23 A Well, I knew there were hearings going on, and
24 that any piece of paper in this company past, present or
25 future, had to go to the hearings. So I assume that means

1 keeping them advised.

2 Q Since the time of your testimony, once prepared,
3 have you provided to Dow attorneys, Consumers attorneys,
4 or other personnel for either company, materials indicating
5 any change in your position?

6 A None.

7 Q Did anyone ever suggest to you that the NRC should
8 not be provided with information concerning Dow's ongoing
9 review of the Midland Division recommendation?

10 A No, sir. As a matter of fact, I was advised of
11 exactly the opposite, that anything we said and anything
12 we wrote should be provided.

13 Q You were advised of that?

14 A I was advised that anything we wrote would go
15 to the NRC.

16 MR. OLMSTEAD: That's all the questions I have.

17 MR. CHARNOFF: Could we go off the record.

18 (Discussion off the record.)

19 CROSS-EXAMINATION

20 BY MR. CHARNOFF:

21 Q Mr. Oreffice, I think we've established that
22 during the time frame of September, 1976 you attended only
23 the meeting of September 24, 1976 with Consumers Power
24 Company present?

25 A That is correct.

444 043

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

1 Q You did not attend the September 21 meeting with
2 Consumers Power Company?

3 A I don't believe so.

4 Q Nor did you attend any other meetings with
5 Consumers Power Company during September and October of
6 1976?

7 A That is correct.

8 Q Did you take any notes of the September 24, 1976
9 meeting?

10 A I don't remember now. If I did, they were turned
11 over to our attorneys and to the hearing. So you would have
12 them if I did.

13 Q We don't have any that I'm aware of.

14 A Then I must not have.

15 Q Okay.

16 What, sir, was the purpose of that September 24
17 meeting with Consumers Power?

18 A It was -- we had been having these negotiations
19 for quite some time, no conclusions were being reached, and
20 essentially it was to sit down and talk over the whole
21 thing.

22 Q Was it in the context of trying to resolve the
23 negotiations, or was it in the context of trying to
24 understand -- was it in the context of that task force's
25 assignment; namely, to review Mr. Temple's or the Dow

444 044

Ace-Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

1 Michigan's recommendations?

2 A Oh, yes. Yes.

3 Q Do you know whether the meeting was called at the
4 initiative of Consumers Power Company, or at the initiative
5 of Dow Chemical?

6 A I don't remember.

7 Q Was one of the purposes to get some Consumers
8 Power Company input into the then ongoing Dow USA review
9 of Mr. Temple's and the Dow Michigan's recommendations?

10 A Well, obviously part of it was to find out what
11 their position was.

12 Q Their position with respect to what, sir?

13 A In general, on the whole situation of the
14 contract. We'd been trying to renegotiate it for some time.

15 Q Anything else?

16 A Just on the whole nuclear power situation.
17 Uncertainty is the worst thing you can have, and we were
18 trying to determine just what the position was.

19 Q Just to refresh your recollection --

20 MR. CHARNOFF: Bill Potter, do you have a copy
21 of Mr. Nute's notes of that meeting, September 24, 1976?

22 MR. POTTER: Yes.

23 MR. CHARNOFF: Could you show to Mr. Oreffice
24 just a brief paragraph which might refresh his recollection
25 as to what he had said at the opening of the meeting?

444 045

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 (Document handed to the witness.)

2 MR. POTTER: Where do you want him to look?

3 MR. CHARNOFF: Particularly under Roman II,
4 where there is a caption of Mr. Oreffice's name, and one
5 single paragraph.

6 MR. POTTER: The record should reflect I have
7 tendered to the witness a copy of the 9-24-76 notes.

8 MR. CHARNOFF: That's marked as Midland Exhibit--
9 Intervenors Exhibit 27.

10 THE WITNESS: All right.

11 BY MR. CHARNOFF:

12 Q Now, does that refresh your recollection that the
13 purpose of the meeting was to get some input, including
14 Consumers Power Company input, in connection with the
15 review of the Michigan Division's recommendations and
16 positions?

17 A Yes. But I don't see where it says anything
18 different from what I just told you. It says we need all
19 the input on the question of where we're going to get out
20 steam and power and different points in time, which means
21 to me to do the whole thing, and the input into the Division
22 review, yes.

23 Q Okay.

24 Now, you had assigned, with Mr. Temple's
25 recommendation, --

444 046

1 MR. POTTER: Excuse me. Are you finished with
2 the reference now?

3 MR. CHARNOFF: Yes.

4 MR. POTTER: Okay. I think he's not certain of
5 that. He's reading the notes while you're asking questions,
6 and I just want to make certain.

7 MR. CHARNOFF: Yes.

8 BY MR. CHARNOFF:

9 Q Well, briefly, that paragraph that summarizes
10 your opening statement, is essentially consistent with
11 your recollection of what you were looking for in that
12 meeting?

13 A Right.

14 Q Now, if I could have you refer to -- if you
15 have a copy, and if not I'll show you a copy of Mr. Temple's
16 letter to you, of September 8, 1976 and September 15, 1976,
17 Board Exhibits 1 and 2.

18 Do you have a copy of those?

19 (Documents handed to the witness.)

20 Have you seen these documents?

21 MR. POTTER: 9-15 is the date on the other one?

22 MR. CHARNOFF: That is correct.

23 THE WITNESS: What was your question?

24 BY MR. CHARNOFF:

25 Q Have you seen these documents before?

444 047

Acc-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 A I have in front of me September 8. I saw that
2 one. As a matter of fact, that's what started the whole
3 review process, when Joe Temple brought this letter over.
4 He didn't send it, he brought it in person.

5 (Document handed to the witness.)

6 And the September 15, in which he recommends
7 the items for the corporate review, yes. I remember seeing
8 that.

9 Q And did you adopt, where he lists proposed items
10 for the Dow corporate review of the nuclear steam project,
11 and he lists seven items, did you adopt those seven items
12 and ask the corporate review group to look at those seven
13 items?

14 A I believe we adopted them exactly as recommended.
15 I am -- I can't be 100 percent sure that we didn't make
16 some minor changes to it, but I believe we adopted them as
17 written.

18 Q Okay.

19 In examining item number 2, which is the review
20 of the legal aspects of past, present and future outlook,
21 which I take it Mr. Temple was recommending be assigned to
22 Mr. Hanes, what did you have in mind in asking for Mr.
23 Hanes to examine the future outlook of the legal aspects?

24 A Well, obviously when you have a major contract
25 we just wanted to know what all the aspects were. Had

444 043

1 Consumers breached the contract, what had they done, what
2 could we do, did we have some outs, didn't we, to make a
3 decision.

4 That's a very important part of the input.

5 Q And was one of those subsidiary questions that
6 if you terminated the contract you might be liable for
7 damages?

8 A Certainly would be in my mind, although I don't
9 know if it came up specifically, yes.

10 Q But I think you used a term in talking to Mr.
11 Olmstead earlier today, you were talking about the prudent
12 businessman would want to know the legal situation. So,
13 among other things, acting as a prudent businessman, among
14 other things you would want to know is whether or not if
15 the contract were terminated or frustrated, whether Dow
16 might have some liability?

17 A Obviously, I think you'd want to know can we
18 terminate it because we have just cause, or don't we have,
19 or if we don't or if we do, what might be the legal
20 consequences. Yes.

21 Q So in that context, you might want to know
22 whether you'd be the subject of a potential lawsuit,
23 perhaps, by the other party?

24 A That's your conclusion. That's reasonable.

25 Q It is reasonable, and a prudent businessman would

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

444 049

1 want to know that, is that right?

2 A I think that's a reasonable assumption.

3 MR. POTTER: Are we through with this exhibit
4 now?

5 MR. CHARNOFF: I think so.

6 BY MR. CHARNOFF:

7 Q In fact, Mr. Orefice, Dow is often the subject
8 of -- even though you say it's not a litigious corporation,
9 Dow is often the subject of some litigation. Any major
10 corporation is, isn't it?

11 A Especially in today's society. You lawyers have
12 to make a living.

13 Q There might even be some legitimate reasons for
14 the lawsuits.

15 A Sometimes.

16 Q Isn't that right?

17 A Sometimes.

18 Q And sometimes I assume that your lawyers bring
19 litigation at the direction of the management rather than
20 of their own instigation, isn't that correct?

21 A Oh, I'm sure, although I don't know of any
22 litigation of the size of this one.

23 Q So it's the size of the litigation that was
24 really of great impression to you in this particular
25 instance, is that right?

1 A When Consumers, on September 24, brought it up,
2 yes, sir. \$600 million captures my attention.

3 Q That's a lot of money.

4 A Even more back then in '76.

5 Q It's worth somewhat less today, isn't it.

6 A Yes.

7 Q Now, in the context of today's society where
8 lawyers like to do whatever it is they like to do, I take
9 it it is customary for managers of enterprises to take
10 such active litigation or fact of potential litigation into
11 account in making prudent business judgments, isn't that
12 correct?

13 A It doesn't happen very often but, yes.

14 Q But where it exists, that is, where you are told
15 that there is potential litigation or where you suspect
16 there is potential litigation, as a prudent businessman
17 you would like to know about that, wouldn't you?

18 A Correct.

19 Q And then you would factor that into your prudent
20 business decision making?

21 A Yes.

22 Q Dow, I take it, has often entered into a number
23 of contracts which appear -- well, I shouldn't say often --
24 but Dow has entered into contracts which sometimes appear
25 to be less favorable after their inception than at the time

444 051

1 the contracts were entered into, isn't that right?

2 A That is correct. Less favorable on either side.

3 Q On either side. And I assume that in evaluating
4 the nature of, or in evaluating the desirability of whether
5 continuing that contractual activity, one of the questions
6 is the extent to which you are legally obligated to carry
7 out that contract, isn't that - -

8 A My first approach has always been to sit down
9 with the other party and try to negotiate something that
10 is more equitable for both, despite the fact if it is more
11 unreasonable to us later than before, our approach is to
12 sit down, and lay on the table why we think this contract
13 is too generous for us and try to get a friendly settlement
14 of some type.

15 Q And that's probably the reasonable and almost
16 standard practice for large enterprises.

17 A And that's how I think 99 percent of these things
18 are solved.

19 Q All right. But one of the elements of resolving
20 those is the awareness that there is some litigation
21 potential if reasonable people don't reach an amicable
22 agreement, isn't that it?

23 A Well, you can't make a generalization like that,
24 because in most every case I know of -- one was relief, for
25 instance, on our pricing when the oil price increase of

444 052

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 '74 and we had some escalations which were no longer satis-
2 factory. Our approach was always to try to get some relief,
3 but if there was no relief and no breach at all of the
4 other party, we'd live up to our contracts.

5 And I think one of the main considerations --
6 everybody keeps asking me about the breaking of this contract.
7 We felt there was good cause -- at least, I know in my mind
8 the thing that I asked the lawyer is do we have good cause
9 for demanding, if you will, an amendment to this contract.

10 We were looking more for an amendment of the
11 contract, in my mind.

12 Q The thing that was impressive, then, at the
13 September 24 meeting when Mr. Aymond mentioned the potential
14 of litigation was really the amount of exposure that might
15 be involved?

16 A Well, plus the fact that we had -- up until that
17 day I had really felt that we could get the contract
18 amended, that we could find the way, because there were
19 some things we needed, some things they needed. And I
20 felt at that meeting we were being told you're going to be
21 sued for \$600 million, and sort of take it or leave it.

22 That's a big change.

23 Q Did he do that in the context that that would
24 be Consumers only recourse if, in fact, Dow either
25 repudiated or frustrated the contract?

444 053

1 A No, I think it was done in the context that we
2 tried to negotiate some contract changes, we were getting
3 nowhere, and if you don't live up to the contract, he said,
4 we're going to sue you for \$600 million.

5 That's the kind of thing I felt . . .

6 Q I think you testified -- I think Mr. Olmstead
7 referred to 2692 -- that there were no threats, if I
8 remember, by Consumers Power Company with regard to losses
9 prior to September, 1976, is that correct?

10 A To my knowledge there were none. Yes. There
11 might have been, but not to my knowledge.

12 Q Do you know whether prior to September 1976
13 Dow or any of its elements, like Dow Michigan, had ever
14 told Consumers Power Company that it was recommending to
15 the parent body that it review the contract to determine
16 whether or not it was continuing to be in the interest of
17 Dow Chemical to carry it out?

18 A I know they were talking with Consumers about
19 making substantial changes in the contract.

20 Your question is, did they tell Consumers they
21 were asking for a corporate review?

22 Q Yes, that's right.

23 A Not to my knowledge.

24 Q So it had never amounted to that level of
25 concern, is that right?

1 A There was concern, but, no, that's right. There
2 was an escalation of concern after a long period of time
3 with the negotiations not going in the right direction.

4 Q Yes, I'm not looking to you to finger point it,
5 but as I understand it, there was a meeting on September 13
6 between Dow and Consumers Power Company where Dow people
7 told Consumers that there was the Dow Michigan recommendation
8 and a decision by the board to carry out that recommendation,
9 that is to have a corporate review of the contract. And
10 that is an escalation of concern, perhaps a logical one,
11 but nonetheless an escalation of concern, isn't that right?

12 A I would agree with that, yes.

13 Q And it was only after that event occurred that
14 there was a threat or statement of litigation by Consumers
15 with the potential of \$600 million of damages being raised,
16 is that right?

17 A That is correct, to my knowledge, yes.

18 Q Now, there was some reference in your discussion
19 with Mr. Olmstead of Dow's considering suing Consumers Power
20 Company.

21 Recognizing what you said before about your
22 general disposition in trying to resolve these matters,
23 controverted matters, whenever you could, when do you recall
24 this consideration by Dow of the feasibility or desirability
25 or undesirability of suing Consumers Power Company? Did it

1 follow the statement by Consumers Power Company on September
2 21 or 24 that it might sue, or did it precede that period
3 in time?

4 A To the best of my recollection, it followed it.

5 Q I see.

6 A At least in my part of the discussions. But
7 let me tell you, at the same time, as we started the
8 review, as we started the legal proceedings, it's possible
9 that when we said legal proceedings the subject also came
10 up, so we have any -- you know, I think it's one of the
11 things that we asked them to look at, do we have any legal
12 recourse?

13 . So it's possible that I heard something, but
14 I don't believe so. I believe it was after.

15 Q But it was possibly in task force item number
16 2, as something to be looked at.

17 A Well, they were to look at the whole legal
18 implications.

19 Q Now, Mr. Hanes testified this morning on
20 deposition that following his meeting on September 21 with
21 some Consumers lawyers where a discussion came up about
22 Mr. Temple being a witness, and whether there ought to be
23 a witness presented by Dow who was unaware of Mr. Temple's
24 position, and that he took the position that Dow would have
25 to put forward a fully knowledgeable witness, knowledgeable

1 of Mr. Temple's position, and so on, and he said he then
2 met with you prior to the meeting on September 24.

3 Do you recall that?

4 A If Mr. Hanes said he met with me, he's probably
5 right. I know in those days I met with him, sometimes with
6 Mr. Nute or Mr. Temple, to get a briefing on what was going
7 on. And that possibly is where I first heard of this.

8 It could have been September 24 when I first
9 heard about it.

10 Q How many times did you hear about it?

11 A I don't know.

12 Q Mr. Hanes testified that you took the position
13 consistent with his, that Dow ought to put forth the most
14 knowledgeable person.

15 A A very violent position.

16 Q As a matter of fact, you said earlier today you
17 raised hell with your people?

18 A Yes.

19 Q Was that --

20 A It could have been at Mr. Hanes' meeting. I
21 thought, frankly, it was after the 24th. But it could have
22 been the 22nd.

23 Q Why would you have raised hell with your people?
24 Was there some possibility that some of your people were
25 suggesting that --

44 057

1 A No, they weren't suggesting that. Well, when I
2 raised hell I became, I remember, very excited about any-
3 body making a suggestion that Dow should not put its most
4 knowledgeable witness up.

5 Q Okay. Whether it be Consumers people saying that
6 or your own people saying that.

7 A Well, my own people were obviously just a conduit.
8 But you always behead the messenger. And I think when I
9 say raised hell, I was really beheading the messenger by
10 saying to hell with it, I took a very strong stand, that
11 we will at any hearing put the most knowledgeable witness
12 on, whatever the subject.

13 Q Did Mr. Hanes tell you that at a meeting on
14 September 21 that some of the Dow people at that meeting
15 had at least some reservation about putting Mr. Temple on,
16 because of the prior statements he had made, or prior
17 public positions he had taken?

18 A I don't remember that, as of now, if he did say
19 something like that.

20 Q If they had told you that, would that have
21 caused you to raise hell with them?

22 A I'd raise a little more hell, yes.

23 Q I see. So there's levels of hell that you raise?
24 All right.

25 Now, Mr. Hanes also testified that it is not

1 his recollection that the question of a Dow witness,
2 knowledgeable or otherwise, was raised at all at the
3 September 24 meeting. So now I would like to ask you to
4 focus as hard as you can -- and I recognize we're a couple
5 of years away from your testimony, which was then months
6 away, is it at all possible that your recollection of that
7 issue came up only in a meeting with Mr. Hanes, Mr. Nute
8 or somebody else, or that it necessarily came up in the
9 September 24 meeting?

10 A In February of 1977 I seemed to have a very
11 clear recollection that it came up at the 24 September
12 meeting, and I have had nothing since to change my mind.

13 Q Allright. So your statement here this morning
14 that it came up on the 24th meeting with Consumers is
15 really based upon your re-reading your testimony of
16 February 1977.

17 A There is no new recollection.

18 Q Okay.

19 Now, let's go back -- and I recognize that
20 difficulty, it really is -- your testimony which appears
21 on page 2703 of the transcript talks about a suggestion --
22 I'm looking at the bottom paragraph of that page, sir,
23 lines 13 and 19, where you said that if there was no
24 statement that there ought to be a fabricated position,
25 but the suggestion was made we should supply maybe a witness

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 059

1 who wasn't the most knowledgeable witness that Dow had,
2 "...a suggestion which led me to doing the review, led me
3 to question this, because I said as much as I'm concerned
4 Joe Temple is the most knowledgeable man that we have on
5 the subject."

6 Now, I recognize that even February, 1977, while
7 it's pretty far back from now, it was also roughly six
8 months after the September meeting that you had with Mr.
9 Hanes and your people had with Consumers Power.

10 Are you absolutely certain that in fact that
11 suggestion was made at the September 24 meeting, or rather
12 what you were recollecting was your discussion with Mr.
13 Hanes prior to the meeting?

14 A You're asking me if I'm absolutely certain in
15 May of 1979. I was pretty damned certain in February of
16 1977, yes.

17 Q Well, who made the suggestion at the September
18 24 meeting?

19 A I do not remember.

20 Q You weren't asked that in February, 1977, but
21 since you were given to a -- what you might say a violent or
22 an almost raising hell type reaction to that kind of an
23 issue, let me try to put you back into your frame of
24 reference in September.

25 Can you picture Mr. Aymond discussing who the

1 witness ought to be? Would that have been in his province
2 or his area of discussion?

3 A Possibly. But I just . . . I just don't
4 remember as of now.

5 Q You can't remember who might have made that
6 suggestion?

7 A It's very possible Mr. Aymond might have.

8 Q Is it possible that Mr. -- who else was at that
9 meeting? Is it possible that it might have been another
10 person at that meeting?

11 A Mr. Aymond took the lead, as I recall, from the
12 group. Who was their lawyer? He did some talking.

13 Q There was a Bacon and a Falahee there.

14 A I think Falahee -- either Bacon or Falahee did
15 quite a bit -- a fair amount of talking, as I remember.

16 Q Could I ask you to refer again, then, to Exhibit
17 27, which were Mr. Nute's notes of the September 24 meeting?

18 (Document handed to the witness.)

19 A Yes.

20 Q Have you seen these notes before today, sir?

21 A I believe I must have seen them at the time they
22 were written then, in '76. I believe so. I can't be
23 entirely sure.

24 Q Do you recall any recollection that these notes
25 were reasonably comprehensive and captured the significant

Acc. Federal Reporters, Inc.

444 061

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 points made at the meeting?

2 A No, I frankly don't remember it.

3 Q Do you recall any reaction that it lacked or
4 omitted any significant points of the meeting?

5 A Maybe I ought to make sure you understand. I
6 probably didn't read these notes very carefully. I had
7 in my job a mountain of papers. In fact, I spent all my
8 time --

9 Q I'm sure you did.

10 A That was about the time I issued an instruction
11 that I didn't read anything over two pages long, which
12 still exists in the Company, unless somebody asked me
13 please.

14 Unless Mr. Nute asked me please to read it
15 carefully, four pages, I probably didn't read it that
16 carefully.

17 Q Was your directive to limit everybody to two
18 pages, was that after Mr. Nute gave you a 4-page document?

19 A No, no, that was after I kept getting 50 and
20 60 page reports.

21 Q I see.

22 Do you recall whether Mr. Nute asked you to
23 read all four pages?

24 A I don't remember his doing so, no. Which
25 doesn't mean he didn't do it. I just don't remember.

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 062

1 Q I don't know whether you're a quick reader or
2 not, and I don't like to ask you to read all four pages
3 very quickly, but could I ask you to scan those four pages
4 to determine whether there's any discussion in here --

5 A Boy, this is the worst copy I've ever seen. Does
6 anybody have a decent copy that I can read?

7 Q Sure. Is this any clearer than yours?

8 (Document handed to the witness.)

9 A Yes, this looks a little easier.

10 Q Now, what I'm asking you to look for, if you can,
11 sir, is any reference at all to a discussion in that
12 meeting of the identify of the witness to be presented by
13 Dow.

14 (Witness reviewing document.)

15 A What was the question again?

16 Q Is there any indication in that set of meeting
17 notes of a discussion of the identity or character of the
18 witness that Dow should present?

19 A No, I don't see any. Well, on the witness I
20 don't see any. But I see there was a suggestion that we
21 shouldn't volunteer the date.

22 Q That goes to the question of --

23 A Termination date.

24 Q -- termination date. But there's nothing in
25 there suggesting who the witness should be or should not be,

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 063

1 is that correct?

2 A That is correct.

3 But there's also something here which reminds
4 me of something that says, "Still think Mr. Cherry may
5 show." There was a great feeling that this hearing would
6 be a very fast one without Mr. Cherry, and --

7 Q I think that's something that most attorneys
8 would probably agree to, including Mr. Cherry.

9 (Laughter.)

10 In scanning these notes, did you have the
11 impression that they were reasonably comprehensive of the
12 meeting?

13 A I guess so. Mr. Nute is present. I can't tell
14 you that he doesn't take good notes.

15 Yes.

16 Q Now, in light of the fact -- and I really do
17 understand the difficulty that one has in recollecting
18 events and statements made sometime ago -- in light of the
19 fact that Mr. Hanes has testified that he had no
20 recollection of the witness' character or identity being
21 discussed at the meeting, and in light of the fact that --
22 I'm speaking of the 9-24 meeting -- and in light of the
23 fact that Mr. Nute's notes of 9-24 do not refer to that
24 matter, and in light of the fact that Mr. Nute's notes of
25 September 21 do refer to that matter, and in light of the

444 064

1 fact that Mr. Hanes said he had discussed this matter with
2 you after September 21 but before September 24, and even
3 recognizing the testimony you gave at page 2703, do you
4 have any doubt at all that the statement or the concern
5 with regard to the nature of the witness was necessarily
6 made at that meeting, or the discussion you recall was
7 really a discussion made or had by you with Mr. Hanes?

8 A I'm a reasonable man. Obviously you planted the
9 seed of a doubt in my mind by all of these other statements,
10 by showing me these minutes which may or may not have
11 shown it. So all I can tell you is, to the best of my
12 ability on February 1977 I was very sure it was done at
13 that. Today I can't be sure somebody told me that.

14 Yes, you have planted a reasonable seed of
15 doubt by giving me this other input, whether I heard it
16 on the 22nd or the 24th.

17 Q You referred to the new contract in your
18 discussion with Mr. Olmstead. I would take it that under
19 that new contract you are relying upon the Midland nuclear
20 plant providing you with steam and electricity, is that
21 correct?

22 A Yes. Mostly steam. The electrical contract
23 is short term.

24 I want to volunteer something else. My lawyers
25 say you never volunteer. But --

444 065

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 Q Just for the draft.

2 A I'll say that at this time, in the last two
3 years, we have more confidence that it will be built at
4 the price and timing than I did two years ago. I think
5 progress has been good in the two years.

6 Q Thank you.

7 Just one final matter. You were advised, you
8 said, that anything written with regard to the Dow-Consumers
9 arrangements would go to the NRC and, therefore, in that
10 context you assumed that in effect any new developments
11 were being reported to the NRC.

12 A Yes.

13 Q Who gave you that advice?

14 A I believe it must have been Mr. Nute. It could
15 have been Mr. Hanes. I'm pretty sure that it was one of
16 our lawyers.

17 Q And it was in the context --

18 A It could have even been Joe Temple.

19 Q And it was in the context, wasn't it, that
20 anything you write is subject to discovery and --

21 A And they also asked me to provide any notes or
22 other things that I might have, from handwritten notes or
23 any papers I had in my files.

24 MR. CHARNOFF: Thank you. I believe I'm
25 finished.

Am. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 066

1 MR. POTTER: I just have a couple questions.

2 BY MR. POTTER:

3 Q Mr. Oreffice, I'm going to show you again the
4 memorandum which was apparently directed to you from
5 Joseph Temple on September 8, 1976, and I'm going to ask
6 you:

7 Is it a fair statement that whatever the recom-
8 mendation of Joesph Temple, the general manager of the
9 Michigan Division and as head of the negotiating team,
10 whatever recommendation he was making to Dow USA for the
11 corporate review was contained within that memorandum?

12 A Yes, it was contained within this memorandum.
13 Yes, it was.

14 Q So, to the extent that someone might have
15 attempted to characterize Mr. Temple's recommendation at
16 some point as a recommendation that we walk away from the
17 contract, whatever recommendation Mr. Temple made is
18 contained within that memorandum, is that correct?

19 A It sure is, yes.

20 Q Now, if you'll take a look at issue number 2,
21 looking again at the September 15, 1976 memorandum to you
22 from Mr. Temple, which is kind of really just a cover
23 letter with the seven issues outlined there, is that
24 correct?

25 A Yes.

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

444 067

1 Q And those are recommended by Mr. Temple and
2 you approved them, is that correct?

3 A That is correct. And I think they're approved
4 exactly as recommended.

5 Q Now, would you agree with me that issue number
6 2 states:

7 "Review of the legal aspects, past, present
8 and future, outlook by Jim Hanes" and there's an
9 asterisk there, and it goes on and says,

10 "...particularly the 1975 decision to
11 renegotiate the existing contract to reduce our
12 dependence upon Consumers for steam and power to
13 an absolute minimum, rather than pursue a claim
14 of breach of contract."

15 Does that appear in there?

16 A That's what it says.

17 MR. CHARNOFF: Excuse me. Is not the asterisk
18 next to the word "past" rather than --

19 MR. POTTER: Yes, that's where the asterisk
20 appears.

21 BY MR. POTTER:

22 Q Now, one final question, and it's along the
23 line of the examination that was being conducted by Mr.
24 Charnoff:

25 Do you recall during the corporate review -- I'm

Acc. Federal Reporters, Inc.

444 068
444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 talking now -- I mean when the presentation was being
2 made on September 27 to the Dow USA board, whether Mr.
3 Hanes made any statement to you about whether or not, in
4 turn, he had heard of a statement from somebody else as
5 to the type of Dow witness that was to be used?

6 MR. CHARNOFF: Could I have that question read
7 back?

8 (Whereupon, the reporter read from the record,
9 as requested.)

10 THE WITNESS: I don't remember for sure that
11 Mr. Hanes made the statement, but when I previously
12 testified that I raised some hell that I made a statement,
13 I know I did at that meeting, because I wanted to make
14 sure that the whole management committee of Dow USA heard
15 that, that we were going to supply the most knowledgeable
16 witness we had.

17 BY MR. POTTER:

18 Q Would I be correct, then, if you did make a
19 statement like that at the September 27, 1976 meeting, that
20 somewhere during the presentation somebody on that review
21 team said something to you to the effect that they had
22 heard that a less than knowledgeable witness was being
23 requested?

24 MR. CHARNOFF: Excuse me. That somebody at that
25 meeting said it, or prior to the meeting said it?

1 MR. POTTER: Yes, at that meeting.

2 THE WITNESS: No, I certainly believe that it
3 was part of the review, and probably Mr. Hanes was the one
4 that said it, but I don't remember it.

5 BY MR. POTTER:

6 Q The only thing that I'm suggesting, Mr. Oreffice,
7 is: Is it possible that the first time that you heard the
8 Dow employee's statement that they had, in turn, heard
9 that a Consumers Power Company's attorney had requested
10 a less than knowledgeable witness, is it possible that the
11 first time you heard that statement was at the September
12 27 meeting?

13 MR. CHARNOFF: I've got an objection as to the
14 characterization of that, because I think Mr. Hanes'
15 testimony was -- and I think even Mr. Oreffice's testimony
16 was -- that it was a suggestion or a statement made in the
17 context of kind of a rambling discussion, as distinguished
18 from a request that Dow put on a non-knowledgeable witness.

19 MR. POTTER: Well, the record will speak for
20 itself.

21 MR. CHARNOFF: I just note an objection to the
22 term "request."

23 THE WITNESS: Is it possible that the first
24 time I heard it was --

25 BY MR. POTTER:

444 070

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 Q That the first time you heard of a Consumers
2 Power Company request relating to the character of the
3 Dow witness, is it possible that the first time you heard
4 that request was at the September 27 meeting, rather than
5 at the September 24 meeting?

6 MR. CHARNOFF: Same objection to the word
7 "request."

8 THE WITNESS: I guess anything is possible
9 2-1/2 years later, between this question whether it's
10 September 22 or 24 or 27, 1976, you are all putting a seed
11 of a doubt in my mind.

12 When I was fresher on this, I thought for sure
13 it was September 24th when I first heard about it.

14 BY MR. POTTER:

15 Q One last question:

16 At any time, Mr. Orefice, prior to the -- I
17 won't even put a date on it -- at any time did any Dow
18 lawyer or any Dow employee come to you and suggest that
19 Dow put on a less than knowledgeable witness?

20 A Absolutely not. I think that it was put in
21 terms to me that such a thing had been suggested by
22 Consumers, and none of our people thought that it was a
23 good idea.

24 MR. POTTER: I have no further questions.

25 MR. OLMSTEAD: I have no further questions.

444 071

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

1 BY MR. CHARNOFF:

2 Q When it was put to you that there was a Consumers
3 Power Company representative who suggested the possibility
4 of a witness not fully knowledgeable of Mr. Temple's
5 position, was it told to you in the context of that there
6 was some concern because Mr. Temple had taken some public
7 positions before, or was it simply told to you nakedly?

8 Do you remember?

9 A I think the context was this is going to be a
10 quick hearing, Cherry's not even going to show up, you
11 really shouldn't send somebody that knows too much and
12 prolong the thing. And that's the kind of context I
13 remember it in.

14 I don't remember specifically anything being
15 said about Mr. Temple not being the witness. I more
16 remember it being the witness doesn't know too much, he
17 can't answer too much.

18 Q Incidentally, would Mr. Klomparens -- who was
19 Mr. Klomparens?

20 A He's changed about three jobs since, so you're
21 asking who he was then?

22 Q Right.

23 A He was head of Pricing, Dow USA. Pricing and
24 some other marketing functions.

25 Q And what was his task? I notice that in the

444

072

1 September 15 memorandum from Mr. Temple to you he
2 recommended that Al Klomparens be the team leader for this
3 corporate DOW USA review, corporate review.

4 A Right.

5 Q Was he named the team leader?

6 A Yes.

7 Q By you?

8 A Yes. His specialty, obviously, was the economic
9 aspects.

10 Q Was it his function as team leader to become
11 knowledgeable as to the Dow position with respect to the
12 Dow-Consumers arrangements?

13 MR. POTTER: I'm not sure what you mean by
14 Dow-Consumers arrangements.

15 MR. CHARNOFF: Let me state it again. I'm
16 sorry.

17 BY MR. CHARNOFF:

18 Q As team leader -- I'm not sure whether it was
19 team leader or project review leader or what, but I
20 understand we're talking about the group assigned by you
21 at Mr. Temple's suggestion to have a Dow USA review of --
22 using Mr. Temple's language in his September 8 memo --
23 a Dow, USA review of the Dow Michigan, or at least Mr.
24 Temple's own conclusions, that under today's conditions --
25 referring to September 8 -- the nuclear project will be

1 most likely disadvantageous to Dow and to the Midland
2 plant.

3 He was asked to make that review, wasn't he,
4 the review of the Dow Michigan?

5 A Mr. Klomparens?

6 Q Yes.

7 A He was the team leader, but I think in this
8 context the team leader -- he was really part of the
9 economic thing, and the team leader was somebody to get
10 everybody together so that they could come up with a
11 conclusion.

12 There were some people very senior to Mr.
13 Klomparens in that group.

14 Q But in so doing he was asked, in effect, to
15 become knowledgeable about the Dow --

16 A In general, but you could not expect a man who
17 had not been involved with this to become knowledgeable
18 of every detail. That's why we had some other people
19 running each part of it.

20 Q Okay. Would it be unreasonable for, say, an
21 outside lawyer like myself or Mr. Potter, who recognized
22 that a gentleman like Mr. Klomparens was asked to become
23 team leader of this review, to assume that Mr. Klomparens
24 would become knowledgeable of the Dow-Consumers arrangements
25 and the Dow intent with regard to the Midland project?

444 074

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 MR. POTTER: I'm going to have to object. In
2 all fairness, there's no way Mr. Oreffice can form a
3 judgment as to whether an outside lawyer should draw from
4 a document appointing somebody as head of a commission or
5 a review team inside of Dow.

6 You could rephrase it, but --

7 MR. CHARNOFF: I'll accept that.

8 BY MR. CHARNOFF:

9 Q Would you, Mr. Oreffice, in reviewing documents
10 such as Board Exhibits 1 and 2, under which you see the
11 assignment of Mr. Klomprens to make this review, would you
12 assume that either before the review or as a consequence
13 of the review that the team leader would become knowledgeable
14 of the studies conducted by each of the seven task forces,
15 and of the results of those studies?

16 A Oh, I would hope that whoever is the leader
17 would find out about each of the things, because he's going
18 to have to put it all together.

19 But, again, I don't think he'd become knowledge-
20 able of all the details. I don't think there's any way
21 anybody can do that.

22 Q He might not become the most knowledgeable
23 person, but he would become knowledgeable as to the nature
24 of these task force studies and results of those, so that
25 he could sum these up and present an informed opinion to you

444 075

1 and to your board, isn't that right?

2 A Yes, although some were presented by some of
3 the task force --

4 Q Well, they might ask the sub task force members
5 to make some specific presentations, but you would assume
6 that this chairman or task force leader would become
7 knowledgeable and informed, so that he could give you an
8 informed opinion, isn't that right?

9 A Yes, but not necessarily deeply so. What I
10 tried to say in the very beginning, he was not the boss
11 of these other people. He was more of a coordinator of
12 this whole effort.

13 Q But he would become more deeply involved than,
14 say, you would, as the recipient of the report, would he not?

15 A Without a doubt. Absolutely.

16 MR. CHARNOFF: I have no other questions.

17 BY MR. POTTER:

18 Q Just one further, Mr. Orefice:

19 Regarding again Mr. Klomprens' role, basically
20 he was the member of the review team that was to conduct
21 the investigation as to the economic aspects, is that right?

22 A Well, it's clearly stated here that he was,
23 among other things, to do the impact, the economic impact.

24 Q And he was to be the administrative head of the
25 other members of the team?

444 076 *Ace-Federal Reporters, Inc.*

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 A Right.

2 Q And he was not to be spending a lot of time
3 trying to conduct his own review of his area while he was
4 trying to conduct a review of everybody else's area as well,
5 is that true? He relied upon the other team members to do
6 their own reviews?

7 A Without a doubt. We had, I repeat, some very
8 senior people doing that.

9 Q And at the actual presentation before the Dow
10 USA board most, if not all, of the panel members in fact
11 made their own presentations, did they not?

12 A That's right. As I say, we had some very senior
13 people on this, including a member of the Board of Directors
14 of the Dow Chemical Company, who was not part of Dow USA.

15 We tried to pull the best people.

16 What I liked about the recommendation that Joe
17 Temple made was that he really was getting the best men for
18 each part of the review that we had around.

19 BY MR. CHARNOFF:

20 Q Why did he suggest to you that Mr. Klomprens be
21 the team leader, do you know? Or why did you agree with
22 that selection?

23 A Well, I agreed with it because I thought he was --
24 again, 2-1/2 years ago I thought he was a fine man to do it.
25 He probably had the time available from his regular duties.

444

077

Ace-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

1 That's part of it. And I thought he was a good man to do
2 it.

3 When you look at who else was on this team and
4 their time availability, and ability to put all of it
5 together, there's probably only one other guy who could
6 have done it. And it was a matter of selecting one.

7 Q And you did value his judgment as well as the
8 judgments of each of these members?

9 A Obviously.

10 Q And so did the Dow USA board, I take it?

11 A All of these would be people who had the highest
12 esteem of the Dow USA board.

13 MR. CHARNOFF: Thank you.

14 MR. OLMSTEAD: I assume, Mr. Oreffice, that
15 you've been advised that there may be a possibility of
16 your having to appear and testify in July?

17 MR. OREFFICE: I have heard that. I don't know
18 when in July, because I'm going to be out of the country.

19 MR. CHARNOFF: Washington is lovely in July.

20 MR. OREFFICE: I hate that place.

21 (Whereupon, at 12:30 p.m., the taking of the
22 deposition was concluded.)

23
24
25
444 078

CR-4810

CERTIFICATE OF NOTARY PUBLIC

I, Helen M. Rabbage a notary public, do hereby certify that the witness whose testimony appears herein, appeared before me and was duly sworn by me.

Helen M. Rabbage
Notary public in and for the

Midland County, Mich
My commission expires

HELEN M. RABBAGE
Notary Public, Midland County, Michigan
My Commission Expires August 3, 1980

CERTIFICATE OF COURT REPORTER

I, William E. Landon, Court Reporter, do hereby certify that the testimony contained herein is a true record of the testimony given by said witness, and I further certify that I am neither attorney nor counsel for, related to or employed by any of the parties to the action in which this statement is taken; and, further, that I am not a relative or an employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

444 079

William E. Landon
Court Reporter