

NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

CONSUMERS POWER COMPANY

(Midland Plant, Units 1 and 2)

Deposition of JOSEPH G. TEMPLE  
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Place - Coral Gables, Fla.

Date - Tuesday, 22 MAY 1979

Pages 1-166

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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4 In the Matter of: :  
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5 CONSUMERS POWER COMPANY : Docket Nos. 50-329  
:  
6 (Midland Plant, Units 1 and 2) : 50-330  
:  
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DEPOSITION OF JOSEPH G. TEMPLE

Coral Gables, Florida  
Tuesday, May 22, 1979

Deposition of JOSEPH G. TEMPLE, called for examination by agreement of counsel, at 2801 Ponce de Leon Boulevard, Coral Gables, Florida, at 8:15 a.m., before Elisabeth R. Craft, a notary public in and for the District of Columbia, when were present on behalf of the respective parties.

GERALD CHARNOFF, ESQ., and WM. BRADFORD REYNOLDS, ESQ., Shaw, Pittman, Potts & Trowbridge, 1800 M. Street, N. W. Washington, D. C., 20036; on behalf of Consumers Power Company; and

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

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

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

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C O N T E N T SWITNESS:DIRECTCROSS

Joseph G. Temple

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P R O C E E D I N G S

MR. POTTER: On the record.

The reporter has asked that we all stipulate that she be permitted to swear the witness since she is a notary in the District of Columbia and not in the State of Florida.

I certainly stipulate to that.

MR. CHARNOFF: We will do that.

Whereupon,

JOSEPH G. TEMPLE

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

DIRECT EXAMINATION

BY MR. OLMSTEAD:

Q Good morning, Mr. Temple. I am Bill Olmstead of the Nuclear Regulatory Commission Staff, Counsel for the NRC Staff.

We are taking depositions pursuant to and Atomic Safety and Licensing Board's Prehearing Conference Order of May 3, 1979, which set forth the following issues to be determined.

Issue No. 1. Whether there was an attempt by parties or attorneys to prevent full disclosure of or to withhold relevant factual information from the Licensing Board in the suspension hearings.

Issue No. 2. Whether there was a failure to make

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1 affirmative, full disclosure on the record of the material  
2 facts relating to Dow's intentions concerning performance of  
3 its contract with Consumers.

4 Issue No. 3. Whether there was an attempt to  
5 present misleading testimony to the Licensing Board concern-  
6 ing Dow's intentions.

7 Issue No. 4. Whether any of the parties or  
8 attorneys attempted to mislead the Licensing Board concerning  
9 the preparation of the Temple testimony.

10 Issue No. 5. What sanctions, if any, should be  
11 imposed as a result of affirmative finds on any of the above  
12 issues.

13 . Would you please state your name and business  
14 address?

15 A Joseph G. Temple, Jr. Business address is 2801  
16 Ponce de Leon, Coral Gables, Florida.

17 Q And what is your position with the Dow Chemical  
18 Company?

19 A I am President of Dow Chemical Latin America.

20 Q Is this the same position you have held between  
21 July 1, 1976, and May 31, 1977?

22 A No.

23 Q Would you please state what position you held  
24 during that period and identify any changes?

25 A Up until the end of 1976, I was the General

1 Manager of the Michigan Division of Dow Chemical USA. After  
2 that point in time and up until May of 1978, I was Vice Pre-  
3 sident in charge of Marketing for Dow Chemical USA.

4 Q Have you reviewed the testimony you gave in the  
5 Nuclear Regulatory Commission proceeding in November-December, 1976,  
6 supplemented by cross examination in 1977?

7 A Yes, I have gone through it.

8 Q Do you recall the testimony of Mr. Paul Oreffice  
9 in that proceeding?

10 A No, I wasn't present at his testimony.

11 Q To the best of your knowledge, does your testimony  
12 in that proceeding still currently reflect the Dow corporate  
13 position?

14 A Yes; as I testified to the Dow corporate position.

15 MR. POTTER: By "current," I don't understand.  
16 By the date, does it reflect it?

17 MR. OLMSTEAD: Right. To the best of his knowl-  
18 edge.

19 MR. POTTER: You are in a position to state that?

20 THE WITNESS: Yes, but I probably ought to add  
21 my jobs have been changed twice since then, and my intention  
22 has been to do my job and not to get involved in the job  
23 which is now that of others, which is worrying about being  
24 concerned about the relationship between Dow and Consumers  
25 Power.

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1 BY MR. OLMSTEAD:

2 Q At the time of your testimony in November-December,  
3 1976, you indicated you were not an officer of the Dow  
4 Chemical Company. Are you now an officer of the Dow Chemical  
5 Company?

6 A No, I am not.

7 Q Would you describe any other differences that there  
8 may be in your duties or responsibilities other than those  
9 you have identified? For instance, are you a member of the  
10 Board of Directors?

11 A No, I am not a member of the Board of Directors. I  
12 was in the previous job a member of the Dow USA Operating  
13 Board which was another Board that got into the action.

14 MR. CHARNOFF: You say your previous job.

15 THE WITNESS: Vice President of Marketing for Dow  
16 Chemical USA is a member of the Dow USA Operating Board.  
17 Mr. Morand held that position at the time I was General  
18 Manager of the Michigan Division.

19 BY MR. OLMSTEAD:

20 Q You indicated in your testimony before the  
21 Licensing Board that Dow was first told about a slippage in  
22 construction of the Midland Nuclear Facility near the end of  
23 1974. You were told of a second slippage shortly after the  
24 start of 1975.

25 Do you recall that testimony? It is about at

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1 transcript page 351.

2 A Well, I think we were told 118 days after we signed  
3 the contracts in 1974 that Consumers' financial conditions  
4 were such that they anticipated having to drastically reduce  
5 the work on the job or shut the job down. I think that would  
6 have brought us in May of '74. And I think what we learned  
7 thereafter was more of the specifics with regard to how long  
8 the job would be down and what the cost impacts would be.

9 Q And what was your reaction to learning of that  
10 information?

11 A I was very displeased.

12 Q And that caused you to take some action with  
13 regard to the Dow-Consumers steam contract?

14 A No, I don't think it caused us to take any action  
15 because the specifics of the circumstances were not spelled  
16 out at that time. It caused us to have a great deal more  
17 concern about both when the units would be online and how much  
18 the cost of the facility would ultimately be.

19 So we began internally to look more carefully at  
20 what our own understanding of the contract was, our operations  
21 were, and what their needs were and our situation with all  
22 agencies, including the Michigan Air Pollution Control Com-  
23 mission and what was required to operate the Division.  
24 Because we could see that we were getting into serious con-  
25 ditions with regard to --

1 Q Who were the principal members of your staff that  
2 you looked to for that?

3 A At that point in time, it was really our negoti-  
4 ating team which was composed of, I think, Mac Whiting,  
5 Parke Brown, Lee Nute, Jim Burroughs and myself.

6 Q On transcript page 358 --

7 A Should I be looking at these?

8 Q You may, yes.

9 -- you indicated in answer to a question that one  
10 of the problems not related to the alternatives of what is  
11 going to be your source -- and I assume that should mean your  
12 source of steam -- is the fact that we have a contract. And  
13 you say, "We are going under the assumption that it is con-  
14 tinuing. All parties are operating in good faith under that  
15 contract."

16 MR. POTTER: I am asking him to read 357 and 358  
17 together so he gets the context of how the testimony came up.

18 THE WITNESS: All right, would you try the question  
19 again?

20 BY MR. OLMSTEAD:

21 Q Okay. You indicate that one of the problems not  
22 related to the alternatives of what your source is going to be,  
23 which I assume is the steam source, is the fact that Dow has  
24 a contract.

25 You further indicate that you are going under the

1 assumption that it is continuing and all parties are operating  
2 in good faith under that contract.

3 Then, you say, "It is also a fact that we have been  
4 threatened with a massive lawsuit on two occasions recently  
5 if we repudiate or cancel that contract."

6 Can you identify those two occasions?

7 A Yes, I think I can. On one of the occasions, I  
8 was present, and on one of the occasions, I was not present.

9 I believe there was a meeting of attorneys on  
10 Spetember 21 where I was not present, where I was told that  
11 Mr. Falahee indicated that we would be faced by one helluva  
12 lawsuit if we failed to be supportive of Consumers.

13 Q Who told you chat?

14 A I assume it was one of the attorneys that was  
15 there -- perhaps Mr. Nute. Most probably Mr. Nute. But I  
16 don't really recall.

17 Q What was your response to that?

18 A Well, I guess the way he said it indicated that  
19 he felt very strongly about it or at least the way it was  
20 told to me that he said it.

21 And then, when it was followed up on the 24th by  
22 Mr. Aymond who is the Chairman of the Board, who went through  
23 a number of cases and indicated that if we repudiated the  
24 contract or breached the contract or frustrated their efforts  
25 in any way to sustain their construction permit and that

1 resulted in a whole series of damages that he went through and  
2 added up, that they would take whatever courses were open  
3 to them to recover all that money from Dow.

4 Q That was the second?

5 A That was the 24th where I was present. And I  
6 guess -- well, I consider it, I consider the threat of a  
7 lawsuit serious. And when the Chief Counsel of a company  
8 comes up and tells you like on Wednesday you are going to have  
9 a helluva lawsuit, and then the Chairman of the Board comes  
10 up on Friday and explains it to you, I have to have the feeling  
11 that the top management in Consumers is fairly serious about  
12 the whole thing.

13 So, yes, I took it seriously, which I think was  
14 the question.

15 Q And did you have the occasion to formally or infor-  
16 mally communicate these threats to someone senior to you in  
17 the Dow organization?

18 A Well, Mr. Orefice was present at the second meeting.

19 Q Had you briefed him on the first meeting?

20 A I don't know whether I did, but I'm sure he had  
21 been briefed because Mr. -- well, I think Lee Nute was there.  
22 And I think Jim Hanes was there at that meeting on the 24th.

23 MR. CHARNOFF: You mean the 21st?

24 THE WITNESS: Well, one or both of them were also  
25 there on the 24th, I believe. So I'm sure Mr. Orefice was



1 briefed. I don't know that I did it. I can't remember.

2 BY MR. OLMSTEAD:

3 Q And what was his response?

4 A He doesn't like to be threatened. I think I have  
5 heard him make that statement. I haven't seen his testimony;  
6 I don't know whether he testified like that, but --

7 Q Were these threats communicated to the Dow USA  
8 Board to your knowledge?

9 A Yes, I'm quite sure that they were. And I think  
10 there was a subject on the corporate review to determine the  
11 legal aspects or the implications of a decision that if Do  
12 made the same decision that the Michigan Division made, what  
13 would the legal implications -- I think it was the obligation  
14 -- of that group to report it there?

15 It has been a long time ago; to the best of my  
16 knowledge, they did.

17 Q Going back to your testimony, you just prior to  
18 making mention of the threatened lawsuit said that all parties  
19 are operating in good faith under the contract. How did  
20 you reach that conclusion?

21 A I guess what I would say today is that everybody  
22 was going along and doing what they felt was required on a  
23 day-to-day basis with regard to their understanding of the  
24 contract.

25 Q Was it your feeling that that was a good-faith

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1 effort to meet the terms of the contract?

2 MR. POTTER: Are you talking about Dow or Consumers  
3 at this point?

4 BY MR. OLMSTEAD:

5 Q Dow.

6 A We weren't doing anything. They were building  
7 the plant. We were trying to negotiate with them. Negoti-  
8 ations had been stopped at that point in time as I recall.  
9 So our role was not really an active one.

10 Q Well, it is true that Dow was not happy with the  
11 contract?

12 A Absolutely.

13 Q And it is also true, is it not, that Dow had sought  
14 concessions from Consumers prior to the Court of Appeals  
15 Remand?

16 A That's true.

17 Q Had Dow considered suing Consumers prior to that  
18 time?

19 MR. POTTER: Prior to the remand?

20 BY MR. OLMSTEAD:

21 Q Prior to the remand.

22 A The remand is the hearings that I testified at?

23 Q July 21, 1976, Court of Appeals Decision.

24 MR. POTTER: Excuse me. The remand refers to the  
25 Court of Appeals Decision in Washington in July of 1976 as

1 it has been used at least in the deposition.

2 MR. CHARNOFF: It is the remand order.

3 MR. POTTER: Can we have the question back?

4 (The question on page 12, line 17, was read by  
5 the reporter.)

6 THE WITNESS: The remand is July of --

7 MR. POTTER: '76.

8 THE WITNESS: Okay, I will answer that in this way:  
9 from the time that we were told the job was going to shut down  
10 in 1974, we contemplated that there was a reasonable chance  
11 -- it was very reasonable or slim -- that we would end up in  
12 court with Consumers and, therefore, our entire part of our  
13 strategy with regard to everything that we did was considering  
14 the fact that ultimately, we could end up in court with  
15 Consumers, including the fact that we could be the ones who  
16 sued them on a best-efforts basis and/or it could go the  
17 other way.

18 So I would answer, yes, there was discussion as  
19 we talked about all of the various things that could happen  
20 in this, what I call, a sea of unknowns to try to make sure  
21 that Dow was prepared for that contingency among others.

22 BY MR. OLMSTEAD:

23 Q Assuming that Dow might have had to sue Consumers  
24 at that point in time, what did you expect the financial impact  
25 on Consumers to be?

1           A       I had never contemplated beyond looking at that as  
2 a possibility.

3           Q       You had communicated to Mr. Youngdahl of Consumers  
4 Power the possibility that Dow might sue if you didn't get  
5 concessions in negotiations?

6           MR. POTTER: I will object to that. Where is that  
7 in the testimony?

8           MR. OLMSTEAD: Well, I will back up and show him  
9 some letters.

10          MR. POTTER: If you have a document that shows that,  
11 let's tender it to the witness and see what he says on it.

12          BY MR. OLMSTEAD:

13          Q       I will show you this letter of June 30, 1976,  
14 from Dow Chemical Company to Mr. Russell Youngdahl signed by  
15 Mr. Joseph Temple.

16          A       Can you point out --

17          Q       Well, I am particularly interested in the language  
18 at the end of page 2.

19          MR. POTTER: Which particular paragraph on page 2  
20 are you referring to, Bill?

21          BY MR. OLMSTEAD:

22          Q       The end of page 2 and carrying over to page 4.  
23 I am going to ask you some questions about that.

24          A       Two, three and four?

25          Q       Right.

1 Off the record.

2 (Discussion off the record.)

3 BY MR. OLMSTEAD:

4 Q Back on the record.

5 On page 3 of your letter, June 30, 1976, you out-  
6 lined a little bit of the history of the discussions between  
7 Consumers and Dow with regard to Dow's feelings that they  
8 need some modifications to the contract. You reference the  
9 September 10, 1974, letter to Consumers, your December 11,  
10 1975, letter which you quote from at the bottom of page 3  
11 and the top of page 4, and then the June 30, 1976, letter.

12 Do you believe that those letters indicate to  
13 Consumers fairly clearly that Dow might take legal action  
14 against them if they failed to negotiate with Dow?

15 MR. POTTER: I object to the form of the question.  
16 If you are asking for Mr. Temple to testify as to how Con-  
17 sumers might act to the letter, I think he is certainly com-  
18 petent about what he intended by what he put in that letter.

19 MR. OLMSTEAD: That's what I am asking.

20 MR. POTTER: Okay.

21 THE WITNESS: I hate to do it, but would you ask  
22 the question again?

23 BY MR. OLMSTEAD:

24 Q Well, there are three letters here -- the June  
25 30, 1976 --

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1 A I only have two.

2 Q The June 30, 1976, references to previous letters  
3 to Consumers Power concerning Dow's desire to negotiate  
4 changes to the steam contract. It quotes extensively from  
5 the December 11, 1975, letter and indicates -- and correct  
6 me if I am wrong -- that Dow is not satisfied with the pro-  
7 gress of the negotiations between Consumers and Dow. Is  
8 that true?

9 A That's true. There hadn't been any negotiations  
10 for some time prior to the December 11, 1975, letter.

11 Q Then, you had negotiations in early '76?

12 A Correct.

13 Q And by June, 1976, you were not satisfied that  
14 sufficient progress was being made; is that correct?

15 A That's correct.

16 Q And did you expect through these letters -- I  
17 assume some phone conversations with Mr. Youngdahl of Con-  
18 sumers Power -- to indicate to them that legal action might  
19 be taken by Dow if satisfactory negotiations were not con-  
20 cluded?

21 A Well, I viewed these letters -- the letter of the  
22 11th, December 11, 1975, as one which was a message from me  
23 to Rus Youngdahl going over some of the thing that we were  
24 dissatisfied with, but suggesting that -- and at that time,  
25 I think the job was going again -- it is time for us to get

1 together and address some of the issues and see if we can't  
2 come up with a better contract that recognizes the environment  
3 in 1976 as being different than the environment in 1967 and  
4 the environment in 1974 when most of the contract language  
5 was put together and bring the two companies back together.  
6 so that we can progress with the work that needs to be done and  
7 we can get both companies back on the track to fulfill  
8 the obligations of a new contract that makes more sense to  
9 both of us. And these are the things we need to have in order  
10 to have a contract that we think reflects our needs in today's  
11 environment.

12 The letter of June 30 was an attempt by us after a  
13 very, very, very, very, very frustrating negotiating session  
14 at the end of April to get our team to put something together.  
15 And the "our team" again is Lee Nute and Jim Burroughs and  
16 myself and either Parke Brown or Ray Gaska, I'm not sure, who  
17 was involved at the time, where we said, "Look, we are not  
18 getting anywhere; why don't we find out what it is that we  
19 would specifically propose, and then let Consumers react  
20 to that. And hopefully, we will take out some of the stuff  
21 that we wanted, some of the things that we felt were important,  
22 and ask them to try to accommodate us in these areas."

23 That letter was written on December or June 30.

24 MR. POTTER: 1976?

25 THE WITNESS: 1976.

1 And eleven weeks later, we still hadn't had any  
2 response until we finally got together on September 13. So  
3 I felt those were positive letters, not negative letters.

4 BY MR. OLMSTEAD:

5 Q Well, if you will look at the December 11, 1975,  
6 letter, on page 3 just before the portion of it that you quote  
7 from the June 30 letter, there is a paragraph that relates to  
8 a legal clean bill of health. What did you mean?

9 A That is on page 3?

10 Q I'm sorry, page 4.

11 What did you mean by a legal clean bill of health?

12 A Well, we had also, Mr. Youngdahl and I, exchanged  
13 a series of letters before this where we asked for assurances  
14 with regard to their being able to supply steam and power, but  
15 mostly, primarily, steam, to us on the dates that they agreed  
16 to supply it to us in the contract, which at that time were  
17 '79 and '80.

18 We asked for assurances. They wrote us back a  
19 letter which was unsatisfactory. We wrote them back a letter,  
20 told them we thought it was unsatisfactory, but we didn't  
21 feel the need to do anything.

22 And if you ask me whether there was a threat of  
23 litigation in those letters, I would certainly agree with  
24 you that there was.

25 And this paragraph talks about one of the things



1 that the Consumers people, to the best of my knowledge, had  
2 been talking about as being one of their desires. That is,  
3 wipe the record clean if we are going to come up with a new  
4 contract. And we agreed that we would give them what we  
5 came to call a legal clean bill of health with regard to  
6 everything that had gone on in the past, which really referred  
7 back to those much earlier letters.

8 Q I believe you had indicated just a few minutes  
9 previously that not much had changed between that December  
10 letter and June 30 letter of 1976.

11 MR. POTTER: Which December letter are you refer-  
12 ring to?

13 BY MR. OLMSTEAD:

14 Q December 11, 1975, letter.

15 A Well, the clean bill of health comments in the  
16 December, 1975, letter --

17 Q Yes, I understand, but had the circumstances between  
18 the two companies between that time and June 30, 1976, improved  
19 to your satisfaction?

20 A Absolutely not. Which, may I add, didn't diminish  
21 our desire to negotiate and try to find a contract that we  
22 could live with. We weren't any happier, but we were still  
23 trying to get together a document which represented what we  
24 could live with and what Consumers could live with and what  
25 was reasonable in the eyes of both.



1 Q After the Court of Appeals Remand in July, 1976,  
2 did Consumers then indicate a desire to negotiate further  
3 with Dow?

4 A They certainly did on September the 13th. We  
5 heard -- I think I got one call from Youngdahl around the  
6 fifth or sixth of August which was primarily for the purpose  
7 of telling me that they had a new estimate on the cost of  
8 the plant of \$1.670 billion which was the same time, I think,  
9 he indicated that they had also figures as high as \$2 billion  
10 from Bechtel, but they didn't believe in that figure.

11 I think we talked. I asked about the impact of  
12 the remand hearings which to us were very, very serious.  
13 And I can't really recall what the substance of the conversation  
14 was on that particular subject.

15 Then, on the prior to the 13th, I think Youngdahl  
16 called me, told me that they were ready to respond to our  
17 June 30 letter, and they were very anxious to come up and  
18 negotiate.

19 By that time, we had essentially reached the con-  
20 clusion in the Division that is written up in that letter  
21 that I wrote to Orefice on the 8th which included a position  
22 subject to hearing what Consumers had to say at that meeting  
23 on the 13th.

24 Q But it was not your intention at least until that  
25 meeting to further negotiate on the contract; is that correct?

1 Following the Court of Appeals Remand and prior to the  
2 September 13 meeting.

3 A I think when we got word of the remand hearing, we  
4 were in a state where we felt we had to again look at what  
5 the situation was because we didn't really know where the  
6 thing was going. And we evolved the position in the Division  
7 that is reported in that letter.

8 We then took the position that certainly we did  
9 not want to negotiate with Consumers at the meeting on the  
10 13th, having just told them what we were going to tell them,  
11 unless they gave us some information that caused us  
12 rethink our position.

13 MR. POTTER: Excuse me. In that response, you just  
14 referred to some letter which contained the Division --

15 THE WITNESS: That is the September 8 letter from  
16 me to --

17 MR. OLMSTEAD: Board Exhibit 1.

18 THE WITNESS: Yes, I think it is Board Exhibit 1.

19 BY MR. OLMSTEAD:

20 Q Okay. During that period prior to the decision of  
21 the Dow Corporate Board, but after you had communicated your  
22 position to Consumers in the September 13 meeting, I believe --

23 A That is correct. That is when we communicated our  
24 Division decision to Consumers.

25 Q -- was it your contemplation that you would have

1 to sue Consumers in connection with that?

2 A I don't think I personally went through the thought  
3 processes as to where we would go from that point in time that  
4 Dow might, if they did say the Division decision is the  
5 corporate decision. I was fully aware that the whole legal  
6 field with regard to this contract and us and them was extremely  
7 complicated.

8 So I can't say that I contemplated a course of  
9 action which would follow what we specifically concluded in  
10 the Division other than a course of action which would allow  
11 other parties not involved with the Division to make sure that  
12 we hadn't overlooked something, we didn't misinterpret some-  
13 thing, we didn't use the wrong set of bases for something  
14 which would have caused us to want to rethink our conclusions.

15 Q On transcript page 391, you were asked whether  
16 you were aware of any discussions dealing with different  
17 viewpoints by Consumers and Dow as to the content of the  
18 affidavit of your testimony for the remand proceeding.

19 A This is page 391?

20 Q Right. It probably --

21 MR. POTTER: Let him just take a minute to read  
22 390 and 391 together.

23 BY MR. OLMSTEAD:

24 Q It probably continues over --

25 A Can I stop with the questions of whether I regard

1 Rosso as my attorney or not?

2 Q You indicated you were not specifically involved  
3 in that in answer to the question.

4 A That's correct.

5 Q Did you meet with Messrs. Nute, Wessel, Rosso and  
6 Renfrow in regard to preparation of your testimony?

7 A I don't think I ever met Rosso until after the  
8 written testimony was completed and there was witness  
9 preparation -- preparation of the witness for cross examination,  
10 a couple sessions in November.

11 I think the one meeting I attended, I think, was  
12 the 29th.

13 MR. CHARNOFF: 29th of?

14 THE WITNESS: September.

15 Renfrow was there, but I think all the rest of the  
16 lawyers were Dow lawyers to the best of my recollection.

17 BY MR. OLMSTEAD:

18 Q So that remark that I just quoted to you about not  
19 being specifically involved in that refers to your written  
20 direct testimony prior to its being filed?

21 MR. POTTER: Well, I am a little -- let me go back  
22 a step. The question on 391 which the witness has been asked  
23 to read, among others, are you aware of any discussions dealing  
24 with different viewpoints by Consumers and Dow as to the  
25 contents of your affidavit or testimony for this proceeding

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1 or for the matters filed here in Washington, unfortunately,  
2 the question was in the conjunctive. And we are talking about  
3 two separate matters.

4 One is an affidavit, and the other is the actual  
5 preparation of testimony. I think we have to clarify which  
6 one we are talking to so he can answer.

7 BY MR. OLMSTEAD:

8 Q Let's talk about both.

9 A Take one at a time.

10 Q Let's take one at a time. Let's take the affidavit.

11 A Okay. That comment was directed primarily at the  
12 affidavit, the written document.

13 MR. CHARNOFF: Can we identify which affidavit  
14 was the subject of that question?

15 THE WITNESS: The one that I submitted. The question  
16 and answer. The one that ended up in the question and  
17 answer form.

18 MR. POTTER: Off the record just a minute.

19 (Discussion off the record.)

20 BY MR. OLMSTEAD:

21 Q Mr. Temple, we are showing you a copy of type-  
22 written direct testimony appearing at transcript page 220,  
23 or is it 230? Just a minute. 220. And I ask you if that  
24 is the testimony to which you referred on the pages I cited  
25 to you?

1 A Yes.

2 Q And were you referring to any other documents?

3 A No.

4 Q I am going to show you an affidavit filed October  
5 30, 1976, by Lee Nute and ask you if you recognize that.

6 MR. POTTER: Excuse me. For the record, I don't  
7 believe Mr. Nute filed that affidavit. It was filed by  
8 Consumers Power Company. It was prepared by Mr. Nute at the  
9 request of Consumers Power Company.

10 MR. OLMSTEAD: Okay.

11 THE WITNESS: I signed it.

12 BY MR. OLMSTEAD:

13 Q And the date of that is?

14 A It looks like the 20th of October.

15 Q 20th of October? So now, the first document you  
16 identified was the direct testimony that was actually put in  
17 the record. And the second one is an affidavit that was  
18 not filed in the record; is that correct?

19 A Well, these are the two documents.

20 Q And your testimony refers to both when you say  
21 "I was not specifically involved in that"?

22 A Well, to the best of my ability, I recall my  
23 testimony refers to the one that was filed at the time. I  
24 don't know that I was even thinking of that one.

25 MR. POTTER: By "that one," you are referring to

1 the affidavit?

2 THE WITNESS: The affidavit.

3 BY MR. OLMSTEAD:

4 Q Then, when you met with Messrs. Nute, Wessel,  
5 Rosso and Renfrow on November 8, November 15, 1976, that  
6 testimony was already prepared; is that correct?

7 A These were the meetings on the 8th of November  
8 and --

9 Q 15th of November.

10 A Yes.

11 Q During the course of any of the meetings you had  
12 following the Court of Appeals Remand, considering what  
13 options Dow had, did anyone indicate to you during the course  
14 of any meetings or conversations that it was likely that  
15 Consumers might ultimately lose its licenses?

16 A Yeah, I think that came up frequently.

17 Q Who made such indications?

18 A I think Consumers made comments at the September  
19 13 meeting. Certainly, Mr. Aymond made comments at the  
20 September 24 meeting.

21 I assume comments were made at the lawyers meeting  
22 that Falahee was in attendance. I think lots of comments were  
23 made to that effect at the meeting before we communicated on  
24 the 13th what the Division conclusion was. Comments were  
25 made, and lots of comments were made a number of places after



1 the 13th meeting.

2 MR. CHARNOFF: Pardon me. Where the comments that  
3 were made comments as articulated by Mr. Olmstead just now  
4 that it is likely Consumers will lose the licenses or were  
5 the comments that were made related to the possibility that  
6 Consumers might lose its license?

7 THE WITNESS: I guess if I were to characterize  
8 it, I would choose your word.

9 MR. POTTER: By that, you mean the second alter-  
10 native that Mr. Charnoff gave you there was a possibility?

11 THE WITNESS: There was a possibility that they  
12 could lose their license.

13 Of course, there were lots of comments with regard  
14 to Dow's ultimate position with this, i.e., what those odds  
15 of losing were.

16 BY MR. OLMSTEAD:

17 Q Did those comments have a significant impact on  
18 your thinking about what position the Michigan Division  
19 should take?

20 A The main --

21 MR. POTTER: Excuse me. I understand the question,  
22 if I understood the previous question, I think he indicated  
23 the comments came after September 8, 1976, when the Division  
24 decision had already been made.

25 MR. OLMSTEAD: Oh, I didn't understand they came



1 after September 8, 1976.

2 THE WITNESS: Certainly the preponderance of those  
3 comments..

4 BY MR. OLMSTEAD:

5 Q Did you have that belief yourself?

6 MR. CHARNOFF: Excuse me. Which belief?

7 MR. OLMSTEAD: It might be likely Consumers would  
8 lose its license.

9 MR. CHARNOFF: I think the way he answered the  
10 earlier question after our interruption was there were  
11 discussions concerning the possibilities of losing the  
12 license, but he did not, I think, testify that the comments  
13 stated it is likely Consumers would lose the license.

14 Now, when you say "his belief," I don't think  
15 there has been any testimony he had any belief that he would  
16 lose the license.

17 BY MR. OLMSTEAD:

18 Q What was your belief as to the likelihood Consumers  
19 might lose its license?

20 A I thought it was a possibility.

21 Q A strong possibility? No opinion?

22 A No real opinion.

23 Q What prompted you to take such rapid action during  
24 the first week of September, 1976, to request a corporate  
25 review of the Midland Division position?

1 MR. POTTER: I will object to the characterization  
2 of "rapid," but go ahead and answer the question.

3 BY MR. OLMSTEAD:

4 Q Let me rephrase the question. What prompted you  
5 to request a corporate review during the first week of  
6 September of the Midland Division position, September, 1976?

7 A Well, I think I commented earlier on some of the  
8 reasons. We considered the position that the Division reached  
9 to be one that was articulated which was considerably different  
10 and more definitive than any position we had had prior to that  
11 point in time and to be a very serious matter for both Dow  
12 and potentially Consumers Power.

13 It seemed prudent to all of us who made up the  
14 negotiating team for Dow, including the lawyers who were  
15 consulted throughout this thing, that we ask people who we  
16 felt had some degree of expertise in certain areas and who  
17 didn't work for me and who were not in the Division to  
18 thoroughly look into all of the things that we had done, all  
19 of the things that we had concluded, look far enough back into  
20 such things as the economics to make sure that they agreed  
21 that the way we put them together, the way we analyzed them,  
22 the conclusions we drew, the answers we got, were indeed  
23 right to the best of anybody's ability to ascertain that.

24 We were also concerned that if the conclusion reached  
25 by the Michigan Division became the corporate decision

1 that people outside of those who knew did not conclude that  
2 there were reasons for making that decision which were indeed  
3 not reasons such as safety factors in the plant. We did not  
4 want to see somebody conclude that safety was a significant  
5 reason and that we had a concern, therefore, we didn't want  
6 any part of the plant.

7 Neither did we want to have our decision, if it  
8 became a Dow decision, to be interpreted by people that Dow  
9 did not have confidence in the technology of nuclear power  
10 -- that is, aside from electric utility involved in this. .

11 And I think these are the main reasons that we  
12 wanted to do that.

13 Q You say "we." Did somebody suggest a corporate  
14 review to you?

15 A Most of the things that we did over this whole  
16 two-year period were done with lots of discussion amongs  
17 the people on the negotiating team and the attorneys. I am  
18 not sure that somebody didn't suggest that. I am not sure  
19 that didn't come from one of the attorneys.

20 I am not sure that it didn't evolve as a group  
21 discussion.

22 I was particularly concerned that somebody didn't  
23 feel safety was an issue. I was particularly concerned that  
24 somebody didn't conclude we thought nuclear power was a bad  
25 technology.

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1           Some of the other aspects, I'm not sure how we  
2 ended up jelling what we ended up calling a corporate review.  
3 It seemed like a good idea.

4           Q       What did you think the corporate review would do  
5 for you in the meeting of September 13? I believe you  
6 indicated to Consumers that you expected them to accept the  
7 Midland Division position; is that not correct?

8           MR. POTTER: I will object to that. I think the  
9 witness ought to be shown the document rather than characteri-  
10 zing. If you don't want to show him, I will.

11          MR. OLMSTEAD: Okay. Do you have a page reference  
12 where you say that that is what he said?

13          Your own speaking notes of September 13 on page  
14 2, Item 11.

15          THE WITNESS: Wait a minute. I don't have those.

16          BY MR. OLMSTEAD:

17          Q       If you will look at item 11 and item 12 --

18          MR. POTTER: Excuse me, Bill. You are referring  
19 to that 3-page set of notes?

20          MR. OLMSTEAD: Three-page. It says "JGT's Notes/  
21 Consumers/September 13, 1976, meeting."

22          MR. POTTER: Fine.

23          THE WITNESS: My recollection of --

24          MR. POTTER: Wait and get the question back.

25          What is the question?

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1 BY MR. OLMSTEAD:

2 Q Okay, if you will read item 12, it says, "Our  
3 Division conclusion and this recommendation for a corporate  
4 review was discussed at the Dow Board of Directors meeting on  
5 Thursday, September 8, and were accepted."

6 Was it your intent to indicate to Consumers follow-  
7 ing what you had heard at the September 13 meeting, to indicate  
8 that Dow's corporate position would in all likelihood be  
9 the Dow Midland Division position?

10 A No, it was not.

11 Q What do the words "and were accepted" mean?

12 A I think if you refer to Burroughs' meeting notes  
13 which reflect what he believes was said and what the intention  
14 was is that Orefice discussed the Division's conclusion and  
15 the Division's recommendation that a corporate review be con-  
16 ducted to determine the validity, if you will, of the  
17 Division's conclusions.

18 My statement, I think, was, the recommendation for  
19 the corporate review was, accepted and may even be the Division's  
20 conclusions were accepted subject to the corporate review.

21 But the recommendation that we made to Orefice to  
22 discuss with the Board was that he have a corporate review  
23 and to consider the Division's conclusion.

24 Q Okay. You referred to the Burroughs' notes, I  
25 believe. Jim Burroughs?

1 A Yes.

2 Q If you will look at page 9 of those notes, the  
3 bottom of the page where the paragraph begins, "Paul Oreffice  
4 communicated the Division's recommendation" --

5 A Yes.

6 Q -- the last sentence of that paragraph says,  
7 "Nothing that Consumers has told Dow today has changed Dow's  
8 opinion of the project."

9 A Okay, but the sentence you didn't read was, "The  
10 Board accepted the Division's recommendations contingent upon  
11 what Dow learned from Consumers today that could change the  
12 Division's views."

13 Nothing that Consumers told Dow today -- well, the  
14 "Dow today" was the Division people. And my view is that what  
15 Burroughs is talking about, what I was talking about, was  
16 if they told us something we didn't know prior to the 13th  
17 that would cause the Division to change their mind, then we  
18 wanted to consider that.

19 We heard nothing from the Consumers group that was  
20 new and/or significant that caused the Division group to  
21 change the Division's position. The recommendation to the  
22 Board was to have the corporate review to look at the Division's  
23 conclusion and see whether that Review Board agreed with it  
24 and whether Oreffice agreed with it and whether the Dow  
25 Board would accept it.

1 Q So it was your anticipation that if the Division's  
2 position changed as a result of what Consumers said at the  
3 September 13 meeting that a corporate review would or would  
4 not be necessary?

5 A If Consumers told us that everything was fine and  
6 gave us good reasons to believe that, and we felt that it  
7 contained information we hadn't had, then we would have held  
8 back on the Division's conclusions and reassessed that.

9 But regardless if the Division reached a conclusion  
10 as described in the letter in Board Exhibit No. 1, it was  
11 always our view to have that looked at by a corporate review  
12 team.

13 Q Regardless of whether you changed your position or  
14 not?

15 A I guess if it was just a continue on -- I don't know.  
16 I really didn't contemplate -- as we went into that, we didn't  
17 think we would hear anything new from Consumers. So I guess  
18 I really didn't contemplate what we would do if they told us  
19 something that where we had to say, "Well, stop."

20 I think we would have gone back and reconsidered  
21 the changed circumstances, and we would have -- I don't know  
22 what we would have done, frankly.

23 Q But what was your contemplation as to what the  
24 corporate review would do? What was the purpose of the  
25 corporate review?

1           A       Well, the purpose of the corporate review, as I  
2       said, was to make sure that everything was investigated and  
3       including everything that we did, and really was designed  
4       for the use of Orefice to help him arrive at a conclusion  
5       as to what the Dow Chemical Company's position should be.

6           Q       Were you surprised at the conclusion that the Dow  
7       Corporate Board reached?

8           A       No. Not based on what took place.

9           Q       Did your views as the Chief of the Michigan Division  
10      change as a result of what took place?

11          A       In what way?

12          Q       You said you weren't surprised that the Dow Cor-  
13      porate Board's decision was what it was based on what took  
14      place. And that decision was to, in essence, not accept your  
15      recommendation.

16                 I am asking you if you thought your recommendation  
17      should have been changed based on what took place.

18          A       Well, when we put our recommendation together, between  
19      the time we put our recommendation together and told Consumers  
20      Power and the time the Dow USA Board met with the Corporate  
21      Review Team, we had been threatened with this \$600 million  
22      lawsuit by the General Counsel of Consumers Power and the  
23      Chairman of the Board of Consumers Power. That is a new  
24      element.

25          Q       Did that surprise you?



1           A       Well, they came on awfully strong. Did it  
2 surprise me they would contemplate legal action? No, I guess  
3 it didn't really surprise me. But they came on awfully,  
4 awfully strong.

5           Q       Dow had been contemplating some legal action by  
6 this time, and then the Court of Appeals Remand occurred.  
7 And the legal climate was uncertain; is that correct? In  
8 your view.

9           MR. POTTER: Again, I am going to have to object.  
10 The question is leading.

11           MR. OLMSTEAD: Absolutely.

12           MR. POTTER: Okay. I am going to object because  
13 you are saying Dow contemplated some legal action. I don't  
14 know what you are referring to in the record.

15           MR. OLMSTEAD: I am referring to his earlier testi-  
16 mony. He indicated Dow contemplated some legal action.

17           MR. POTTER: The objection stands. The record will  
18 show.

19           THE WITNESS: Would you repeat the question?

20           BY MR. OLMSTEAD:

21           Q       Prior to the Court of Appeals Remand, you testified  
22 that even though Dow sought a negotiated agreement that they  
23 had looked into the legal rights that they had under the  
24 contract, and I believe you testified you recognized a law-  
25 suit might be necessary. Is that correct?

1 A It could have been one of the possibilities.

2 Q After the Court of Appeals Decision in July of '76,  
3 circumstances had changed, correct?

4 A Yes.

5 Q And Dow was more concerned about its legal position  
6 vis-a-vis Consumers; is that correct?

7 A There were many more unknowns in addition to lots  
8 of the old ones.

9 Q So did you seek legal advice as to Dow's rights under  
10 the contract?

11 A I can't recall specifically saying I think we ought  
12 to seriously bring up the subject of how we would go about  
13 suing Consumers Power at this point in time, for instance.

14 Q Was that subject brought up?

15 A I really can't remember.

16 Q You don't recall any discussions about possible  
17 legal action against Consumers?

18 A You are talking about from July 21 or whatever  
19 that date was?

20 Q Right.

21 A I assume there were probably discussions, but as  
22 Chairman of the Negotiating Committee, did I say this was  
23 something I wanted to seriously consider pursuing at this time,  
24 I don't think I said anything like that.

25 Q Was this discussed at the Board of Directors

1 meeting following the corporate review?

2 MR. CHARNOFF: Which Board of Directors?

3 MR. POTTER: Let me correct that. That was not a  
4 Board of Directors Dow USA Board.

5 BY MR. OLMSTEAD:

6 Q Corporate Review Board, is that Dow USA Board?

7 A I can't remember.

8 Q Do you recall what Mr. Wessel's views were with  
9 regard to Dow's position on the contract?

10 A Well, I think his position was that we are going  
11 to continue to regard the contract as in effect, keeping all  
12 our options open.

13 Q Did it occur to Dow at any time during the course  
14 of the negotiations on this contract subsequent to the Court  
15 of Appeals Remand?

16 A After the Court --

17 Q Right, after the Court of Appeals Remand, before  
18 your testimony on November of '76, that Dow might offer to  
19 share costs with Consumers and abandon the project?

20 A First of all, there were no negotiating sessions  
21 during that period of time.

22 Q I'm talking about your own thinking.

23 A I can't recall that kind of discussion.

24 Q Was that suggested to you?

25 MR. CHARNOFF: I'm not clear at the moment what the

1 question is.

2 BY MR. OLMSTEAD:

3 Q The question is whether it occurred to Dow to offer  
4 to Consumers a settlement where they might share part of the  
5 costs and abandon the project totally.

6 A As head of Dow's negotiating team, I never recall  
7 that kind of proposal.

8 Q In February, 1977 -- and this would be about:  
9 transcript page 2602 --

10 MR. POTTER: I'm sorry, Bill?

11 BY MR. OLMSTEAD:

12 Q 2602 -- you are asked a series of questions con-  
13 cerning what you discussed with the Dow Executive Board.  
14 And you indicate that you didn't discuss the impact with the  
15 Dow Executive Board of entering in these contracts on the  
16 State of Michigan.

17 MR. POTTER: Could I ask what period of time are  
18 you talking about now?

19 MR. OLMSTEAD: I am talking about the testimony on  
20 2602 and 03.

21 MR. POTTER: Bill, what period of time are you  
22 talking about when Mr. Temple did or did not do something?

23 MR. OLMSTEAD: I am talking about what he had in mind  
24 when he made those statements.

25 MR. CHARNOFF: If you look back at the previous

1 page, this discussion is in connection with Renfrew's questions.  
2 And on line 8, apparently, the discussion is in terms of  
3 1974.

4 MR. POTTER: The witness has now read from page  
5 2600 to 2603. Do you want to pose your question again, Bill?

6 BY MR. OLMSTEAD:

7 Q You testified concerning whether the impact of  
8 entering into the steam contracts was considered by the Dow  
9 Executive Board as relates to the State of Michigan.

10 MR. POTTER: In 1974?

11 BY MR. OLMSTEAD:

12 Q Yes. And you had also been asked whether you dis-  
13 cussed with the Dow Executive Board the impact of nuclear  
14 power in the United States.

15 A Yes.

16 Q And you were asked whether the Executive Committee  
17 considered the impact of the national energy program.

18 A Right.

19 Q And as I gather, you answered that you either  
20 didn't know or didn't discuss those ; is that correct?

21 A I think I indicated I didn't discuss those items  
22 in 1974.

23 I also indicated that we had 19 extensions of an  
24 agreement. And this was really the finalizing of what all  
25 the parties had intended to do over the period from whenever

1 we began this thing, 1965, until 1974.

2 So it wasn't really a significant -- it wasn't a  
3 change at all in Dow's position with regard to nuclear power  
4 or safety or anything else.

5 Q What I would like to know is whether you know whether  
6 Mr. Renfrow knew what discussions had been taking place at  
7 the Executive Board.

8 MR. POTTER: I am going to object to that. There is  
9 no way Mr. Temple can answer that question as to what Mr.  
10 Renfrow would have known.

11 BY MR. OLMSTEAD:

12 Q Well, did you know whether Mr. Renfrow had met  
13 with any members of the Executive Board?

14 A No.

15 Q Transcript page 2616, Mr. Wessel indicates that  
16 lawyers drafted the responses to interrogatories to reflect  
17 the company position. Do you see that reference?

18 A Yes.

19 Q Were you consulted concerning the answers to be  
20 given by Dow Chemical Company to interrogatories propounded  
21 to Dow in the Midland Remand Proceeding?

22 A Could you explain whether interrogatories is my  
23 testimony?

24 Q It goes beyond that. The questions in written  
25 form directed to the Dow Chemical Company for response.

1 MR. CHARNOFF: Off the record.

2 (Discussion off the record.)

3 MR. CHARNOFF: Back on the record.

4 THE WITNESS: What was your question?

5 BY MR. OLMSTEAD:

6 Q The question is: were you consulted by Mr.  
7 Wessel, Mr. Nute or other attorneys for Dow concerning the  
8 answers to be given by the Dow Chemical Company to inter-  
9 rogatories propounded in the Midland Remand Proceeding?

10 A Well, although I can't remember the specifics,  
11 anything that I signed, I read and I agreed with or I wouldn't  
12 have signed it. Whether that is an answer to your question  
13 or not --

14 Q I would like you to refer to the September 24, 1976,  
15 Lee Nute meeting notes which is Midland Intervenors Exhibit  
16 No. 27.

17 A It is hard to read.

18 Q On page 3, the paragraph beginning "Mr. Aymond  
19 asked Mr. Temple" --

20 A Excuse me. Does somebody have a better copy?

21 Q Those notes indicate that you asked what Con-  
22 sumers expects from Dow in the way of testimony so that  
23 Dow can fulfill its obligations in the contract.

24 What does Consumers want Dow to say? Had you been  
25 informed that Dow should say only what Consumers wanted it



1 to say?

2 A No, and I think Mr. Aymond made a statement at  
3 some point in time in the meeting that the Dow witness has  
4 to tell the truth and should tell the truth and he expected  
5 him to tell the truth or else he would go to jail.

6 Q So no one suggested to you that you should only  
7 say what Consumers wanted you to say?

8 A No one ever suggested that. It would have been  
9 repulsive.

10 Q You testified at the remand hearings that there was  
11 a question as to what type of Dow witness should be provided  
12 and that Dow determined that the most knowledgeable witness  
13 would be provided. Do you recall that testimony?

14 A Yes, I recall that being part of the hearings.

15 Q Was there any suggestion made in your presence that  
16 you are aware of that Dow should supply an unknowledgeable  
17 witness?

18 A Not in my presence, I don't recall.

19 Q How did you learn of such a suggestion if you did?

20 A My recollection is that it came up in meetings of  
21 attorneys, and I was told about it by one of the Dow  
22 attorneys.

23 Q Do you remember who?

24 No, I can't really say. It may have been more than  
25 one. We were surprised.

1 Q Did you take any steps to verify the suggestion?

2 A Nope.

3 MR. OLMSTEAD: Off the record a moment.

4 (Discussion off the record.)

5 BY MR. OLMSTEAD:

6 Q The last paragraph --

7 A I would like to read the letter.

8 I have read the letter.

9 Q In the last paragraph, Mr. Wessel says that it  
10 might be a good idea to ask Jack Friedman to draft some language  
11 assur. g it is without prejudice to whatever rights we may  
12 have to sue for breach or otherwise and including best  
13 efforts.

14 Do you know Jack Friedman?

15 MR. CHARNOFF: Off the record.

16 (Discussion off the record.)

17 THE WITNESS: Yes, barely.

18 BY MR. OLMSTEAD:

19 Q Who is he?

20 MR. POTTER: I would advise the witness not to  
21 answer the question on the grounds of attorney/client  
22 privilege.

23 MR. OLMSTEAD: Well, I think that answer is required  
24 since I can give you transcript reference to Mr. Wessel  
25 identified him on the record.

1 MR. POTTER: Then let's rely on Mr. Wessel's  
2 transcript.

3 MR. OLMSTEAD: I am asking Mr. Nute if he knows  
4 who he is.

5 THE WITNESS: I am Mr. Temple.

6 MR. OLMSTEAD: I mean Mr. Temple.

7 THE WITNESS: If I --

8 MR. POTTER: And he has answered the question,  
9 yes.

10 MR. OLMSTEAD: I am asking who is he.

11 MR. POTTER: I have advised the witness not to  
12 answer any further questions on the grounds of the attorney/  
13 client privilege.

14 BY MR. OLMSTEAD:

15 Q Was Mr. Friedman present at the Dow Corporate  
16 Review meeting with the Dow Company Board of Directors?

17 MR. POTTER: The Dow USA Board.

18 THE WITNESS: I believe he was.

19 BY MR. OLMSTEAD:

20 Q Did Mr. Wessel address some comments to the Dow  
21 Board to the best of your recollection?

22 A To the Dow USA Board?

23 Q Yes.

24 A He probably did.

25 Q Did Mr. Friedman address some comments to the

1 Dow USA Board?

2 A I don't remember.

3 Q At the meeting to discuss your testimony on  
4 November 8, 1976, which was the meeting among attorneys,  
5 do you recall a discussion of coal costs at that meeting?

6 A I recall the discussion of coal costs at one of  
7 those two meetings. I'm not sure which one. It could have  
8 been both.

9 Q Had it been suggested to you by a Dow employee or  
10 had it occurred to you personally that Consumers was inflating  
11 coal costs?

12 A Well, I would say it appeared strange that since  
13 the coal costs that we use in making the economic study of  
14 the alternative to nuclear power came from Consumers quite  
15 recently, as I recall that, late in September, we got word  
16 from Consumers that they had new coal costs to give us, and  
17 they were considerably higher.

18 As I recall, the main degree to which they were  
19 higher was in the escalation area. It seemed strange, and I  
20 wouldn't preclude, as I recall, from my thinking that they  
21 jacked them up to make the nuclear alternative look better.

22 I have no basis for that other than my historical  
23 relationship with Consumers Power.

24 Q Do you recall Mr. Rosso indicating that he was not  
25 happy with your attitude?

1 A He said I was a lousy witness for Consumers.

2 Q Can you relate your impression of that moment?

3 Was it said jokingly, seriously?

4 A I think it was more jokingly. He meant it, but  
5 I think it was -- that's the way it is. It reflected the  
6 general feeling, I think, of all of the Consumers, most of  
7 the Consumers, people that they wished they had somebody how  
8 was basically more enthusiastic about the Dow/Consumers  
9 relationship than I was.

10 Q At the later meeting on November 16, 1976, you  
11 met with attorneys Nute, Pribila, Duran, Rosso and Renfrow.  
12 And I would like to ask your counsel to show you Mr. Wessel's  
13 memo to files dated November 16, 1976.

14 MR. POTTER: What was the date again?

15 THE WITNESS: November 16.

16 MR. OLMSTEAD: November 16.

17 Particularly, I wish to direct your attention --

18 THE WITNESS: May I read it first?

19 I have read it.

20 BY MR. OLMSTEAD:

21 Q Do you recall Mr. Dave Rosso's concern over your  
22 volunteering responses suggestive of dissatisfaction with  
23 Consumers?

24 A Yes.

25 Q What was your response to that?

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1           A       Well, I felt I ought to answer the question com-  
2 plete, and I understood that volunteering lots of information  
3 gratuitously was not one of the things that he felt the  
4 witness should be doing.

5           Q       Did you make any change in the way you anticipated  
6 you would answer questions as a result of that suggestion?

7           A       I think the record shows that I was fairly responsive.

8           Q       The meeting evidently concluded in a further dis-  
9 cussion of coal prices. Do you recall any further discussion  
10 of the Dow methodology subsequent to this meeting?

11          A       Not on methodology, I don't think. I think we  
12 did agree to let the experts get together. We didn't agree  
13 to use their coal costs.

14                 We buy lots of coal, too. We thought we knew what  
15 we were doing.

16          Q       Even after the experts got together, you stayed  
17 with the lower figures?

18          A       With the right figures, the figures which in our  
19 view were the right figures and the figures which Consumers  
20 Power also agreed were the right figures thirty days earlier.

21          Q       So the meeting of experts to the best of your  
22 recollection didn't result in the supplying of more recent  
23 information by Consumers which resulted in a substantial change  
24 in Dow's analysis of coal costs.

25          A       I think the experts agreed to disagree. And the

1 factor of disagreement was the degree to which coal prices  
2 would escalate in the forthcoming years.

3 MR. TOURTELLOTTE: Excuse me. The Court Reporter  
4 has been taking these notes for a couple of hours. Maybe this  
5 would be a good time to take a break.

6 (Whereupon, a recess was taken.)

7 BY MR. OLMSTEAD:

8 Q Mr. Temple, you have asserted the attorney/client  
9 privilege with regard to questions concerning Mr. Jack Friedman.  
10 Do you assert that you had any conversations which are pri-  
11 vileged with Mr. Friedman?

12 A I really can't remember whether I did or I didn't.

13 Q Do you assert that any information which was  
14 privileged concerning Mr. Friedman's advice to the Dow  
15 Chemical Company had been communicated to you at any time?

16 MR. POTTER: Would you read that question back please?

17 (The pending question was read by the reporter.)

18 MR. POTTER: You are talking about Mr. Temple  
19 personally now?

20 MR. OLMSTEAD: Or in your presence.

21 MR. POTTER: Do you understand the question?

22 THE WITNESS: I don't really know whether I had  
23 any conversation with him. I don't remember whether he spoke  
24 at the U. S. Area Board meeting or the Corporate Review  
25 members reported.



1 BY MR. OLMSTEAD:

2 Q Do you remember any representations being made by  
3 anyone else to you concerning what his views might have been?

4 A I can't remember any.

5 Q Have you discussed this matter with anyone besides  
6 your attorney?

7 A What matter?

8 Q The testimony you are giving in this proceeding.

9 MR. POTTER: Today's testimony?

10 BY MR. OLMSTEAD:

11 Q Yes.

12 A No, I can't recall discussing it with anybody.

13 Q Do you consider yourself to be represented by  
14 counsel today?

15 A Mr. Potter, I think, represents me.

16 Q At the beginning of the deposition, I referred to  
17 the five issues set down by the Licensing Board for hearing  
18 in this matter. And I would now like to ask you whether you  
19 know to your own personal knowledge whether any of the  
20 parties -- the parties being in this case Consumers Power and  
21 Dow Chemical Company, Intervenor other than Dow, and the NRC  
22 Staff -- whether any of those parties or their attorneys  
23 attempted to mislead the Licensing Board concerning the  
24 preparation and presentation of your testimony.

25 A No.

1 Q That is, no, you didn't have any personal knowledge?

2 A The answer to your question was no.

3 Q Do you know whether anyone in your opinion attempted  
4 to mislead the Licensing Board concerning the preparation and  
5 the presentation of your testimony?

6 A I guess I don't know what was in the minds of all  
7 of the other people that were involved.

8 Q So your answer is you have no opinion as to  
9 whether --

10 A I guess that's right. .

11 Q I have got one last matter I would like to go  
12 over with you.

13 A Okay.

14 Q I hand you a document that is typewritten and  
15 double spaced. It has at the top, "Youngdahl-, and I guess  
16 that is JGT's side only 3/1/76. And I ask you if you recognize  
17 the document.

18 A Yes.

19 Q Can you identify it?

20 A It is one side of a phone call which I made to  
21 Youngdahl following a very frustrating meeting which I thought  
22 was later in the year than that.

23 Q Can you tell me what the purpose of the phone call  
24 was?

25 A May I go through this a little bit?

1 Q Sure.

2 MR. POTTER: For the record, this appears to be a  
3 13-page collation of papers which the witness is now reviewing.

4 MR. ZAMARIN: It appears to be a transcription of  
5 a tape of a one-sided telephone conversation.

6 THE WITNESS: This was a phone call that I made to  
7 Youngdahl to express serious reservations about the way  
8 negotiations were going with regard to coming up with a mean-  
9 ingful contract, and for the expressed purpose of commenting  
10 specifically on some of the things that the Dow negotiating  
11 team perceived to be not going well at all and being in many  
12 cases counterproductive to trying to resolve the issues in  
13 a meaningful way so both parties could get on with the job.

14 BY MR. OLMSTEAD:

15 Q And did you have any personalities in mind when  
16 you made these remarks to Mr. Youngdahl?

17 A Yes.

18 Q Were you concerned about certain members of  
19 Consumers negotiating team?

20 A Yes.

21 Q Who specifically?

22 A Mr. Bacon.

23 Q What was the nature of your concern?

24 A Well, it was our impression that -- mine as well  
25 as other members of our negotiating team -- that Bacon was

1 not doing his homework adequately prior to the negotiating  
2 sessions so that negotiations could proceed in a meaningful  
3 way was one point.

4 Q Was that the extent of your concern?

5 A I said that was one point.

6 Q What were some of the other points?

7 A Well, I raised the question with regard to who was  
8 really chairman of Consumers negotiating team, Youngdahl or  
9 Bacon. Bacon seemed to be more of a spokesman at times than  
10 Rus did. And the negotiating strategy seemed to be at that  
11 point in time for Consumers to bring up a lot of things on  
12 their side of the table so that they could bargain them over  
13 at a later date.

14 Judd seemed to be extremely inconsistent with  
15 regard to things which were in the contract. And there were  
16 three examples of this where a clause in the contract or some  
17 words in the contract when reread in 1976 didn't seem to make  
18 sense, but favored Consumers or, let's say favored Dow. Mr.  
19 Bacon's approach was, well we will have to put some words  
20 in the contract to fix that.

21 And at the very same meeting, at a later time,  
22 when it came to our attention that there were some words in  
23 the contract that favored Consumers as we looked at it in  
24 today's light, Mr. Bacon's response was, "Well, that is what  
25 the contract says," like we are not going to fix that one.

1           And he really made me mad when he expressed an  
2   ability to tell me what the principles' intentions or the  
3   parties' intentions were in 1974 when I never laid eyes on  
4   Bacon until after the 1974 negotiations were completed and  
5   a contract was signed.

6           I assumed Judd was doing the legal work, but he  
7   didn't know what the hell I thought, and I thought I was one  
8   of the parties.

9           Q       So what were you hoping Mr. Youngdahl was going to  
10   do?

11          A       Well, I was hoping he would at least counsel Judd  
12   to do his homework before the meeting. I was hoping he would  
13   at least assume the role of leadership of his negotiating  
14   team. And I hoped that by conveying to him the perception of  
15   the Dow people who were trying to negotiate of Judd and his  
16   actions that he could kind of get Judd to maybe change his  
17   style a little bit or take a more productive roll, the result  
18   being that we might have a better chance to get at the issues  
19   which were important.

20          Q       And what was his response, Mr. Youngdahl's  
21   response?

22          A       I don't know that I got a response from him other  
23   than acknowledging that he had heard my complaints. I don't  
24   think -- I really think that is more like a May date.

25               MR. POTTER: For the record, in making that statement,

1 you have referred to the date that appears at the front of  
2 that transcript. You think it may be incorrect?

3 THE WITNESS: I think this was after the last  
4 negotiating session we had prior to my June 30 letter where, in  
5 my view, everything came apart here. And I think this is the  
6 meeting.

7 BY MR. OLMSTEAD:

8 Q Do you recognize the writing on the front?

9 A Yes. It is my writing.

10 MR. POTTER: Excuse me. In answer to that question,  
11 you pointed to the front page of the exhibit, on the right-  
12 hand side; is that correct, Mr. Olmstead?

13 MR. OLMSTEAD: Which has the date. And that date  
14 is?

15 THE WITNESS: It says March 1.

16 BY MR. OLMSTEAD:

17 Q 1976?

18 A 1976. And I think it could be checked for its  
19 accuracy by referring to meeting notes.

20 Q Is it your practice to have notes taken of your  
21 side of the conference when you are on the telephone?

22 A I have never taped my side of any telephone con-  
23 versation in my life except for this one. And I wanted to  
24 make sure that I knew what I had said and my team knew what  
25 I had said to Youngdahl about the way we felt about that

1 meeting, about Bacon, and about the totally new proposal that  
2 they brought up at that meeting with regard to steam costs  
3 which their negotiating team had to recess for an hour to  
4 even get their own people to understand.

5 I felt the meeting was an absolute disaster.  
6 And I think up here, it says that I felt we made much negative  
7 progress.

8 Q And it was --

9 A And I think it is indicative of the general level  
10 the trust had dropped to between me and Consumers Power and  
11 particularly me and Rus Youngdahl.

12 Q And it was as a result of this conversation and  
13 that meeting that led to your June, 1976, letter that we  
14 were referring to earlier?

15 A That's my belief.

16 Q One last document I wish to show you is a memorandum  
17 from Joe Temple, dated March 12, 1976, to Levi.

18 Is that your writing?

19 A Yes.

20 Q Who is Levi?

21 A Levi at the time was my boss, and he was Operations  
22 Manager, I think Vice President of Operations, for Dow  
23 Chemical USA. And he was also a member of the Dow USA  
24 Operating Board and a member of the Dow Chemical Company Board  
25 of Directors. He is my boss.



1 Q Would you identify him by his full name please?

2 A J. M. L. Leathers.

3 Q Do you have negotiating meeting No. 2 notes?

4 Is that the second negotiating meeting in what  
5 time period?

6 A I guess the meeting that took place that caused me  
7 to call Youngdahl. And I assume that is the second meeting  
8 we had in 1976, following up my letter of December, 1975,  
9 suggesting that the teams come together and try to negotiate  
10 a responsible agreement.

11 Q You note in there, as I reviewed with you, "Rus  
12 was very apologetic." You had had previous discussions with  
13 Mr. Leathers concerning that meeting?

14 A Apparently, I did. He was my boss. I periodically  
15 communicated to him about things that were going on.

16 Q And you referenced a phone call to Rus. Is that  
17 the ore we were just discussing?

18 A Yes, it is.

19 Q And these notes are dated March 12, and these are  
20 dated March 1. Does that refresh your recollection as to the  
21 timing of these notes?

22 A I guess that must be the right date.

23 MR. POTTER: In answering that question, you referred  
24 to the notes of the one-sided recorded phone call with Mr.  
25 Youngdahl; is that correct?

1 BY MR. OLMSTEAD:

2 Q And you indicate in that memo that Rus was very  
3 apologetic. Does that refresh your recollection of his  
4 responses to your concerns as expressed in this phone convers-  
5 ation?

6 A Based on this note, I assume he was apologetic  
7 about the conduct of the meeting and admitted that Consumers  
8 Power Company was ill prepared.

9 Well, no. It says, "Consumers Power Company was  
10 also ill prepared when our man went to Jackson a week or so  
11 later to have them then explain to the Dow guy the proposal  
12 that they had made to us at the negotiating session which they  
13 didn't understand at the time."

14 Q And so even after your phone conversation, they  
15 continued not to be responsive to your concerns; is that  
16 correct?

17 A Yes, that's right.

18 Q Okay.

19 One final question on the September 29 meeting  
20 between attorneys, 1976. We have some rather extensive notes  
21 -- the Duran notes, the Nute notes, the Wessel notes. And  
22 you were at a portion of that meeting; is that correct?

23 A I don't think so.

24 Q You were not?

25 A No.

1           Q       In conclusion, I would like to ask you whether to  
2 your knowledge, there is any information other than what appears  
3 in your testimony in the remand proceeding and what we have  
4 covered today which bears on the issues concerning preparation  
5 of testimony that the Licensing Board is undertaking which I  
6 feel is needed to provide a more complete record with regard  
7 to the questions of misrepresentation or misleading testimony  
8 before the NRC?

9           MR. POTTER: Before the witness answers, I under-  
10 stand the tenor and reason why that question is being asked,  
11 but to protect the witness, I want to put an objection on the  
12 record. You are asking this witness who is not a lawyer to  
13 try and define what the scope of the issues were before the  
14 Nuclear Regulatory Licensing Board.

15           He will answer that question and as honestly as he  
16 can, but I want you to understand he is not a lawyer.

17           MR. OLMSTEAD: I accept it.

18           THE WITNESS: I don't know of anything.

19           MR. OLMSTEAD: Off the record.

20           (Discussion off the record.)

21           MR. OLMSTEAD: Back on the record.

22                   CROSS EXAMINATION

23           BY MR. CHARNOFF:

24           Q       Mr. Temple, my name is Gerald Charnoff. And I am  
25 of the law firm of Shaw, Pittman, Potts & Trowbridge in

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1 Washington. And we represent the Consumers Power Company in  
2 this special proceeding.

3 Are you aware of any contacts between Consumers  
4 Power Company and Mr. Cherry during the period following the  
5 decision in the Aeschliman case? That is the July, 1976,  
6 Court of Appeals Decision remanding the Midland case to the  
7 NRC.

8 I'm sorry, between Dow and Cherry.

9 A Yes.

10 Q Would you tell me what those were and when they  
11 were?

12 A Well, I think there was a letter, and there may  
13 have been some phone conversations.

14 Q Do you know the date of the letter?

15 A No, I don't remember.

16 Q Do you have the time frame?

17 A It was in that time frame that you talk about,  
18 I think.

19 Q Has that letter been produced in this proceeding?

20 A I don't know.

21 Q Could I ask your lawyers, Mr. Nute, do you know  
22 whether that letter has been produced in this proceeding?

23 MR. NUTE: I am not sure what you are talking  
24 about.

25 THE WITNESS: He is not my lawyer.

1 BY MR. CHARNOFF:

2 Q Was it a letter from Dow to Mr. Cherry or Mr.  
3 Cherry to Dow?

4 A I remember seeing one from Mr. Cherry to Dow or to  
5 Mr. Wessel. I'm not sure who.

6 MR. CHARNOFF: Do you know whether that letter  
7 has been produced, Mr. Nute?

8 MR. NUTE: I don't know what letter you are talking  
9 about.

10 MR. CHARNOFF: The letter Mr. Temple referred to.

11 MR. POTTER: Off the record a second.

12 (Discussion off the record.)

13 BY MR. CHARNOFF:

14 Q Back on the record.

15 Mr. Temple, the letter that you recall, do you  
16 recall what it dealt with?

17 A I guess the only thing really that I can recall  
18 was that he wanted to see me on that witness stand.

19 Q Now, was there a reply from Low to Mr. Cherry?

20 A I really don't know.

21 Q You also said there were some telephone calls.

22 Do you recall to whom they were made and by whom? Were they  
23 made to Mr. Cherry or by Mr. Cherry?

24 A It is my recollection that Wessel and Cherry talked  
25 on the telephone. I don't know whether it was once or more

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1 than once.

2 Q And you are referring to some Wessel/Cherry phone  
3 calls rather than Cherry to anybody else in Dow?

4 A Yes.

5 Q And you don't know the nature of those phone  
6 calls, do you?

7 A No, I don't know the nature of those phone calls.

8 Q There has been discussion in the record here of a  
9 Dow Michigan position. I take it that that reference is to  
10 the position that was developed and reflected in your September  
11 8 letter to Mr. Orefice; is that correct?

12 A That's correct.

13 Q Is that the only formal statement of a Dow  
14 Michigan position?

15 A To the best of my recollection, it is.

16 Q Could you tell me how that Dow Michigan position  
17 was developed?

18 A I can try. The period when Dow under my direction  
19 started really digging into all of the aspects of what the  
20 contract meant, what Dow's rights were, what we needed to do,  
21 what we felt the prospects were for Consumers building the  
22 plant at a certain budget number and coming on line, started  
23 back in 1974. So really, the evolution of all of the basic  
24 information that went into the knowledge that all of us as  
25 members of that negotiating team had with regard to the

1 relationship and all the things we tried to accomplish was  
2 the data base from which the conclusion stemmed.

3 As I indicated earlier, we had spent the early  
4 part of 1976 trying to come to a renegotiated document which  
5 more reflected what we felt we could live with in the year  
6 1976 instead of 1967 when the July 21 decision came. Not  
7 only didn't we feel we were getting very far towards a reso-  
8 lution of an agreed-upon new contract, but we were certainly  
9 aware that we were going to be faced with the need to develop  
10 a position for Dow which could be articulated by a Dow witness  
11 who would undoubtedly be called to participate in these  
12 hearings.

13 At least in Dow, and I would think anywhere else,  
14 it would be expected by top management for the unit responsible  
15 for the action to develop their position before top management  
16 would attempt to develop theirs.

17 We were also aware, following and probably even  
18 prior to the July 21 decision, that the cost estimate --  
19 that there would be a new cost estimate for the Midland plants,  
20 but we weren't aware of what the specific numbers were or  
21 at least Consumers hadn't come with one number.

22 I don't remember whether we had been told it could  
23 be as high as \$2 billion by the Consumers people and that  
24 that was Bechtel's estimate at the time or not.

25 With the court decision on the 21st, it made to

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1 us a considerable addition to the number of unknowns that  
2 surrounded the entire project. So as a team, we faced the  
3 need to determine what the team's and, therefore, the Division's  
4 posture would be when we were asked the question about the  
5 changed circumstances between Dow and Consumers.

6 Certainly, the costs and the economics entered  
7 into that decision. By that time, we had gotten Black and  
8 Veatch to give us the latest data on the conventional coal-  
9 fired power houses with extraction steam capabilities so that  
10 we could assess the alternative.

11 We all had various experiences with Consumers  
12 which generally each and in their own way, I think, gave them  
13 a fairly strong feeling that a future full of that many  
14 unknowns would be very difficult for Consumers to cope with  
15 based on the track record of the Midland project to date,  
16 experiences at Palisades, the cost overruns at Marysville  
17 and various other things that Consumers had attempted to come  
18 to grips with and had not been terribly successful, not the  
19 least of which was our own financial condition and the fact  
20 that as some of the financial magazines rated the electric  
21 utilities.

22 I can recall Consumers Power was between 115  
23 and 120 on a list of 120 electric utilities. This is generally  
24 during the '74-'75 period when they ran out of money and  
25 couldn't continue the project.

1           When the whole question of the handling of nuclear  
2 waste came up, we couldn't help but feel that when that very  
3 difficult and real issue was resolved that it would result in  
4 some increased cost in nuclear energy and steam which was  
5 a factor we couldn't control. I think each member of the  
6 team interacted, did their homework, and we talked.

7           I reached the conclusion that although everybody  
8 could have their own ideas, that it was only me as the  
9 Chairman of the Team and the General Manager of the Division  
10 who could sort them out and say, "Okay, from what all of you  
11 have said, from what I believe, from what our experience  
12 is, from the way we see things now and in the future, this is  
13 what I think the Division's position should be."

14           And then we all interacted with regard to that.

15           It is my recollection that I really didn't  
16 finalize this until after I came back from vacation and  
17 had thought more on the subject. Although I'm not sure that  
18 I hadn't pretty much in my own mind concluded what our  
19 position was going to be. After I got back from vacation which  
20 was around Labor Day, I think, I probably drafted that letter  
21 to Orefice, had some further discussion with the negotiating  
22 team, probably drafted the letter, circulated it to the  
23 members of the Negotiating Team.

24           We probably got together, and everybody sort of  
25 agreed that it is tough to come to that kind of a conclusion,

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1 but that is probably what it ought to be.

2 Q Let's talk about some of these factors that were  
3 present as you have indicated as early as 1974, particularly,  
4 for example, the financial duress that Consumers Power Com-  
5 pany was in during that 1974-1975 time frame. And that was  
6 associated, too, wasn't it, with the two-year delay of the  
7 plant at that point?

8 A Yeah, they ran out of money and had to stop the  
9 job.

10 Q At that point, though, you didn't develop a Dow  
11 Michigan position that suggested that the project was no  
12 longer in the interests of the Dow Corporation or the Dow  
13 Michigan operations, did you?

14 A That the cost was \$940 million, and the advantage  
15 in nuclear steam over the alternative was significant.

16 Q But it was still apparent at that point --

17 A I don't think -- I may not be right on this, but I  
18 don't think -- the cost estimate for the plant had changed  
19 from early 1973 when we signed that document until 1974  
20 when all this financial problem happened.

21 Towards the end of '74, then, I think they began  
22 to be able to give us some of the specifics which said  
23 initially it is going to be a one-year delay and this much  
24 money. And then I think they said later like in early '75,  
25 that, no, it is going to be worse than that and longer than

1 that, then it is going to be somewhere up at the \$1.450  
2 billion level.

3 So all that all evolved, I think, over '74-'75.

4 Q Is it fair to say that the principal fact that  
5 galvanized the development of the position was then the July,  
6 1976, Court of Appeals decision?

7 A Well, it was one of the major factors. But at the  
8 same time, the cost had gone up, the economic advantage had  
9 gotten much less.

10 Q Excuse me. I am not talking about --

11 MR. POTTER: I think he ought to be allowed to finish  
12 the question, Jerry.

13 BY MR. CHARNOFF:

14 Q But I am not talking about the nature of the  
15 decision. I am talking about that which crystallized the  
16 decision or caused the decision to be made rather than the  
17 substance of it.

18 Do you understand what I am saying? What brought  
19 you to develop a Dow Michigan position? Was it the sudden  
20 coming together of all of these factors or was it as you  
21 indicated Dow thought as the remand order was understood by  
22 you, you would have to have a Dow position?

23 A I think that was a major factor.

24 Q Okay. And then, all these other concerns came  
25 together and led to the nature of the recommendation or the

1 conclusion you arrived at in September; is that right? That  
2 is, your concerns were schedule, your concerns were costs,  
3 that kind of thing.

4 A Everything in my entire experience from 1973  
5 on and the experiences of the other members of the team came  
6 into play to the best of our ability in reaching the con-  
7 clusion we reached.

8 Q What I would like to focus on is the period follow-  
9 ing the date of the Court of Appeals decision in July.  
10 Between that date and the September 13 meeting with Consumers,  
11 I take it there were no meetings between your people and  
12 Consumers.

13 How about between you and Consumers people?

14 A I had no meeting, although two telephone convers-  
15 ations that I recall. But I would add the ball was in their  
16 court because we had made a proposal on June 30 and eleven  
17 weeks later on September 13, we had never had any specific  
18 response.

19 Q I understand. I am not looking for fault here. I  
20 am just trying to understand the nature of the communications  
21 that existed if at all during that period of time.

22 During that period of time, then, between the Court  
23 of Appeals decision and September 8, you went away on vacation;  
24 is that correct?

25 A Yes.

1 Q For what period of time was that? Do you remember?  
2 A I would guess two weeks.  
3 Q I won't ask you where you went.  
4 A I remember that.  
5 Q Mr. Nute was away on vacation during a period of  
6 that time, too, wasn't he? Do you recall?  
7 A I don't recall.  
8 Q Again, then, focusing on the period following the  
9 remand decision by the Court of Appeals and the drafting of  
10 your letter of September 8, you were gone for about two weeks.  
11 Were there any other meetings of your negotiating group?  
12 A With their negotiating group?  
13 Q No, just internal to Dow. Did your group get  
14 together?  
15 A Yes, lots of times prior to when I went on  
16 vacation.  
17 Q And you said you probably, when you drafted the  
18 letter, drafted it and you probably circulated it to the  
19 negotiating committee. Do you recall whether you did?  
20 A I'm sure I did. At least Mr. Nute saw the letter.  
21 And I would guess everybody saw the letter.  
22 MR. POTTER: Excuse me. Is this all before he went  
23 on vacation?  
24 MR. CHARNOFF: No. In between. The letter wasn't  
25 written until he came back from vacation.

1 MR. POTTER: That is what I want to understand.

2 BY MR. CHARNOFF:

3 Q So Mr. Nute saw the letter in draft before it  
4 went to Mr. Oreffice?

5 A Yes. To the best of my recollection.

6 Q I understand the time problem that you have in  
7 remembering those kinds of things.

8 Do you recall whether any other particular member  
9 of the negotiating team saw it?

10 A I can't recall.

11 Q Do you recall whether you drafted the first draft --

12 A Yes.

13 Q -- of the letter to Oreffice?

14 A I'm sure I did.

15 Q Mr. Nute did not?

16 A Mr. Nute did not.

17 Q What is the normal way in which the Dow Michigan  
18 Division reached Dow Michigan positions on any major subject?  
19 What is the organizational way? Is there a Dow Michigan Board  
20 like a Dow USA Board?

21 A No. I had a staff of 14 or so people. But I  
22 would guess most -- for instance, in labor negotiations, we  
23 had a negotiating committee. That committee would formalize  
24 most of the decisions with my playing a role as advisor.

25 Q Are there any circumstances that you can recall,



1 Mr. Temple, where the Dow Michigan position on any matter was  
2 not also the Joe Temple position during your period as  
3 General Manager?

4 A Well, I am the boss, and I don't think a Michigan  
5 Division position can be a Michigan Division position unless  
6 I agree with it.

7 Q So that clearly the Dow Michigan position of  
8 September 8 was a Joe Temple personal position as well?

9 A It was a position that I helped to form and that I  
10 agreed with in its entirety.

11 Q In the evolution of that position between July  
12 and September 8, were there any studies conducted or papers  
13 presented to you by members of the negotiating team that you  
14 requested or that they volunteered to help crystallize the  
15 evolution of this position?

16 A Well, I think I said that back from 1974 on,  
17 work was being done to make sure we thoroughly understood  
18 all aspects of everything that was going on. And through  
19 that period of time, there were I am sure a number of studies  
20 particularly on alternatives which were made. And there was  
21 an updated study on a Dow alternative made, I would guess,  
22 and completed sometime during the period of first of June  
23 until the middle of August.

24 I can't remember when it was completed. It was  
25 to use the Black and Veatch data.

1 Q You got a new cost estimate, I think you said, in  
2 the course of a telephone call with Mr. Youngdahl on August  
3 5 as I recall.

4 A That is correct.

5 Q Did your group at that point then review the  
6 situation with regard to the economics --

7 A Yes.

8 Q -- of the plant?

9 A Yes.

10 Q How was that review done?

11 A That was done under the direction of Mr. Burroughs  
12 who is a member of the committee who had been in this area  
13 with regards to the nuclear project for an extended period  
14 of time. He had historically done this.

15 Q So you told him Mr. Youngdahl said, "Here is the  
16 new number," and then he went off and did another study?

17 A I would assume, although I don't know from first-  
18 hand knowledge, that he got more of the particulars from his  
19 counterpart who was Gil Keeley, and they exchanged infor-  
20 mation. And Jim got all of the data that Consumers was willing  
21 to give us.

22 And I think they were willing to give us all of  
23 the data so we could make the comparison. So it was not  
24 just the single raw number of \$1.67 billion.

25 Q So they gave you all of the data leading up to

1 that number?

2 A I didn't say they gave us all the data on how they  
3 derived it, but all the information we needed with regard to  
4 that number to determine the economics and our cost of steam  
5 from the plant as they now saw it.

6 Q Working from that number or the data that resulted  
7 in that number of \$1.6 billion?

8 A I don't really know. I think Jim had all he felt  
9 he needed to reliably determine what our steam cost would be  
10 from the plant coming on line in 1982 that would cost \$1.67  
11 billion.

12 Q Did he review with you between the August 5 com-  
13 munication of the new number and the development of your  
14 letter of September 8 results of his studies?

15 A I'm sure he did.

16 Q Do you recall what he told you?

17 A Well, I recall that the advantage for nuclear  
18 steam under a certain set of conditions which he outlined  
19 versus a Dow alternative of a conventional power was approxi-  
20 mately 4.3, I think it was, million dollars per year favorable  
21 to the nuclear alternative.

22 Q Over a 20-year period?

23 A No, \$4 million per year.

24 Q \$4 million per year over a 20-year period? Is  
25 that the approach or for how many years?

1           A       I think we were using what they call a levelized  
2 steam cost. You get me into an area which I am not an expert  
3 at.

4           Q       Did he at any time tell you that he challenged  
5 the \$1.6 billion estimate, plant cost estimate?

6           A       I don't remember.

7           Q       Did anyone else on the Dow negotiating team  
8 challenge that number?

9           A       Not that I can remember.

10          Q       Now, when you wrote the letter to Mr. Oreffice, you  
11 had apparently discussed the letter with him the previous  
12 evening before putting the letter on Mr. Oreffice's desk.

13          A       I think that is correct.

14          Q       Do you recall any other discussions with Mr. Oref-  
15 fice between the July Court of Appeals decision and the tele-  
16 phone call or discussion, the oral discussion, on, say, the  
17 evening of September 7 with regard to your Dow Michigan  
18 position?

19          A       I don't recall.

20          Q       Did you seek in the letter of September 8 to  
21 Mr. Oreffice to give him a letter which you could then use  
22 to discuss with the Dow Chemical Board?

23          A       I suggested that he probably would want to let  
24 the Board of Directors know the way this things was going and  
25 the Division had reached a conclusion and that this letter

1 would outline that conclusion.

2 Q Did you seek to place in the letter all of the  
3 reasons that you had for developing the Dow Michigan Division  
4 recommendation?

5 A No, I don't think so. Mr. Oreffice likes one-page  
6 letters. I had already abused that rule.

7 Q He told us he likes two pages, and I noticed  
8 yours was three.

9 A I still got promoted twice so he has got some other  
10 rules.

11 Q Was it important for Mr. Oreffice and the Board  
12 in your judgment in acting on your recommendation to know your  
13 reasons for it or is it only important for them to know what  
14 your recommendation is?

15 MR. POTTER: Let me just object with the obvious  
16 reason you are calling for the state of mind of Mr. Oreffice  
17 or somebody else, but he can answer the question.

18 MR. CHARNOFF: No, I wasn't. I was asking his  
19 state of mind. Is it important in his mind for them to know  
20 his reasons or just the bottom line?

21 THE WITNESS: I think it is important that Mr.  
22 Oreffice understand at least as much as what I put in that  
23 letter which I think was adequate for the reasons why I had  
24 reached the conclusion that I reached, particular bearing in  
25 mind that what I was really suggesting was that we were going

1 to take at least two steps prior to considering where that  
2 was a Dow decision.

3 One was to hear Consumers again. And the other  
4 was to have this corporate review.

5 The real recommendation was that he proceed to  
6 communicate with the Directors of the company the fact that  
7 we were approaching this kind of a decision in the Division  
8 and for some -- and giving him enough background so he could  
9 give some of the reasons and to find out whether anybody on the  
10 Board of Directors felt obligated to take exception to any-  
11 thing that we were doing at that point in time subject to a  
12 corporate review.

13 BY MR. CHARNOFF:

14 Q So clearly, at that point when you wrote the letter  
15 and made the recommendation, you recognized you were not  
16 taking a Dow Chemical corporate position.

17 A That's true, and I communicated that at the  
18 September 13 meeting to Consumers.

19 Q And in fact, if you have a copy of your letter of  
20 September 8 before you, I might ask you to look at the  
21 next to the last paragraph on the third page which presumably  
22 Mr. Orefice skimmed after he read the first two.

23 A No, he read it, I think.

24 The next to the last paragraph?

25 Q Yes.

1 A I have read it.

2 Q That paragraph does reflect what we were just  
3 talking about -- namely, your recognition that what you  
4 were recommending was not yet a Dow Chemical position?

5 A Correct.

6 Q And would it be fair to say your letter of  
7 September 8 insofar as it reflects a Dow Michigan recommendation  
8 is simply input into the development of the Dow Chemical  
9 corporate position?

10 A Yes; I think it is a significant input, but it is  
11 an input.

12 Q But nevertheless, just an input and not the Dow  
13 position?

14 A Not the Dow position.

15 Q While you have that letter in front of you, may  
16 I ask you to turn back to page 2 and please feel free to review  
17 the whole letter?

18 As I read the letter, the first page or so reflects  
19 in addition to your statement of concern the kinds of contract  
20 changes you were looking for. The second page refers to the  
21 July 21, 1976, Court of Appeals Remand Order and the kinds of  
22 questions that may have to be examined following that order.

23 And then in the last full paragraph of that page,  
24 there is in effect a short statement of reasons, if you will,  
25 for the Dow Michigan position, perhaps not a comprehensive



1 list, but the key reasons.

2 Is that a fair statement of that last, next to the  
3 last, paragraph?

4 MR. POTTER: Let me understand the question you  
5 are asking. I don't want to characterize it, but the basic  
6 reasons, you are saying, for the decision are contained in  
7 the last full paragraph appearing on page 2?

8 MR. CHARNOFF: Yes.

9 MR. POTTER: Okay.

10 THE WITNESS: Well, there are some specifics which  
11 are reasons in that paragraph.

12 BY MR. CHARNOFF:

13 Q And then on the top of page 3, you talk about the  
14 unknowns.

15 A Right.

16 Q And that is another reason, I take it, for your  
17 decision?

18 A The elements of today's situation plus the track  
19 record of Consumers in handling difficult situations.

20 Q And insofar as you presented any reasons to Mr.  
21 Orefice, they really appear in that bottom of page 2 and  
22 the top of page 3; is that correct?

23 A In this letter?

24 Q In this letter.

25 A If I may just read --

1 Q Surely.

2 A You asked me whether I had specific conversations  
3 with Orefice other than the one that took place the night  
4 before?

5 Q Yes.

6 A Which I think I recall I had.

7 Over the period of time from 1974 until September  
8 8, 1976, I had lots of conversations with Mr. Orefice.  
9 Well, lots, quite a few. I don't know how many. And I think  
10 he was quite aware of a number of the things that concerned  
11 me. And indeed, when Consumers wanted us to buy some of their  
12 preference stock or invest in their plant, Mr. Orefice, I  
13 think, was financial Vice President at the time, and became  
14 very much involved in those discussions.

15 So he himself has some background in direct dis-  
16 cussions with Consumers as well as conversations he had with  
17 me and others over about a 2-year period.

18 Q Would it be a fair reading of this letter and given  
19 your testimony to say while there was a long history of perhaps  
20 sometimes difficult negotiations and uncertainties that the  
21 uncertainties were, if you will, compounded by the Court of  
22 Appeals decision?

23 A Yes.

24 Q And that that was a critical factor among others  
25 perhaps, but a critical factor, in increasing your concern -

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1 as to whether the plant was advantageous to Dow?

2 A Yes. It sort of was almost like perhaps that is  
3 the straw that will break the camel's back kind of thing.

4 Q Now, you then wrote the letter to Mr. Orefice on  
5 September 8, and Mr. Orefice then, as I recall it, took the  
6 matter up with the Dow Chemical Board, is that correct, on  
7 the 8th or the 9th?

8 A Whenever the Board met. I think it was that same  
9 week sometime. I'm not a member of the Board of Directors,  
10 and was not there.

11 Q I understand.

12 And you got a report that the Dow Board agreed  
13 with the recommendation here for a corporate review to be  
14 undertaken?

15 A Yes.

16 Q And then did Mr. Orefice ask you how this review  
17 should be undertaken?

18 A I think I had already said in here that I had some  
19 ideas, and I was speaking for both myself and the negotiating  
20 committee as to some of the questions that ought to be on the  
21 corporate review and that I would like to put them together  
22 and give him that recommendation and see whether he has any  
23 difference or other ideas and then proceed from there.

24 Q Then, you wrote your letter of September 15 to  
25 Mr. Orefice outlining the areas that should be looked into

1 as far as you are concerned?

2 A Right.

3 Q And even the people who might best take up those  
4 matters?

5 A Right.

6 Q Now, in your conversation with Mr. Oreffice on the  
7 evening of September 7, did you just briefly describe to Mr.  
8 Oreffice your recommendation?

9 Well, scratch that.

10 Had you written this letter, this draft form,  
11 at that point?

12 A I'm sure I had.

13 Q And at that point, you had even cleared it with  
14 Mr. Nute? That may be the wrong form.

15 A I assume so.

16 Q You talked to Mr. Nute about it?

17 A I accepted or rejected his advice by that time.

18 Q Did you outline to Mr. Oreffice what the nature of  
19 the letter contained?

20 A I would guess so. And I may have even read him  
21 the draft.

22 Q What was his reaction?

23 A I can't really recall.

24 Q Did he say, "Send me the letter"?

25 A Well, I told him I was going to send him the

1 letter and the purpose of it, and he didn't say, "Don't sent it  
2 to me" or "Send it to me" or anything else to the best of my  
3 ability to remember what went on then.

4 Q Did he indicate an agreement with you that such  
5 a review should be undertaken?

6 A He was comfortable with what I had recommended.

7 Q Did he indicate --

8 A As near as I can tell how he felt, looking into  
9 his mind.

10 Q Did he indicate to you any view that he concurred  
11 in your underlying thought that the project may not continue  
12 to be advantageous for Dow Michigan?

13 A I don't remember that I even asked him to comment  
14 on whether he agreed or disagreed with the Division's  
15 conclusion.

16 Q So the gist of the conversation was more directed  
17 at "look, I am sending you this letter with our recommendation  
18 for corporate review, and you are going to get it tomorrow"?

19 A And I think in my view, you may want to discuss it  
20 with the Board of Directors.

21 Q Okay. So there was no discussion on the merits,  
22 if you will, of the Dow Michigan position with Mr. Orefice?

23 A I don't recall that much of the phone conversation  
24 or the discussion.

25 Q Then, the next day, Mr. Orefice received your

1 letter and took it to the Board, and you were not at the Dow  
2 Chemical Board meeting?

3 A That's correct.

4 Q Who reported back to you on the results of that  
5 meeting?

6 A I really can't remember. I assume he told me "go  
7 ahead." I may have even said, "If I don't hear from you, we  
8 are just going to mush on." That's the way we do things in  
9 Dow.

10 Q Mush on?

11 A In the absence of having to have a lot of extrane-  
12 ous communications, we try to proceed with what we have  
13 decided we were going to do subject to somebody concluding  
14 we shouldn't do that.

15 I really don't remember.

16 Q Did you have any direct discussions with Mr. Oref-  
17 fire about the study between the meeting of the Board on  
18 September 8 and 9 and your submittal to him of your letter  
19 of September 15?

20 A I really don't remember. I think before we final-  
21 ized the letter, I probably either went over to see him or  
22 had a phone conversation with whether he was comfortable with  
23 what was on it, whether he was comfortable with the people  
24 we had indicated ought to perform these various assignments  
25 and that sort of thing.

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1 MR. POTTER: Excuse me. I know it is clear for  
2 us, but so the transcript is clear, you are referring now to  
3 the letter of September 15, 1976, in your last answer?

4 THE WITNESS: Yes.

5 BY MR. CHARNOFF:

6 Q How was that letter developed? Did you write it  
7 yourself?

8 A I wrote it myself.

9 Q Did you consult with Mr. Nute about that letter?

10 A Yes, I'm sure I did.

11 Q Did you consult with the negotiating team about  
12 that letter?

13 A I think we brainstormed as a team what items should  
14 be in the corporate review.

15 Q So you had a group meeting?

16 A We may have had several.

17 Q During the period between September 8 and September  
18 15?

19 A Or maybe even before September 8.

20 Q To what extent was Mr. Wessel involved in the  
21 development of the letter of September 15?

22 A I can't really recall. He may have been one of the  
23 individuals that was participating in one of those. Part  
24 of it may even have been his thought. It is hard for me to  
25 sort out who had what thoughts as I look back three years.



1 Q You don't recall any meetings directly that you had  
2 with Mr. Wessel alone or singly or with one or two other people  
3 in discussing that matter?

4 A For that specific matter, I may have, but I can't  
5 recall.

6 Q To what extent was Mr. Wessel involved in the  
7 development of the September 8 letter?

8 A I can't remember.

9 Q To what extent was he involved in the general  
10 desire to develop a corporate position that led up to the  
11 September 8 letter?

12 A Well, would you repeat the question?

13 Q To what extent was he involved in the decision to  
14 try to obtain a corporate position?

15 A I just say he probably was involved. I don't  
16 remember the specifics.

17 Q Was Mr. Friedman involved at these times?

18 A Not that I know of.

19 Q Incidentally, what law firm is he connected with?  
20 Do you know?

21 MR. POTTER: Don't answer the question.

22 We invoke the attorney/client privilege on that.

23 MR. CHARNOFF: He is a lawyer, isn't he?

24 MR. POTTER: He is a lawyer.

25 MR. CHARNOFF: And your objection goes to the name

1 cf the firm?

2 MR. POTTER: Identifying it. If nothing else, I  
3 like consistency.

4 MR. CHARNOFF: That is a virtue of some sort.  
5 What is Mr. Friedman's first name?

6 THE WITNESS: I think it is Jack, but I'm not even  
7 sure of that.

8 BY MR. CHARNOFF:

9 Q I was just wondering whether privilege would be  
10 invoked on that one.

11 Okay, now, we have explored the period between  
12 September 8 and September 15, and you said you might have  
13 had a discussion with Mr. Oreffice about the outlines,  
14 particularly about the people that you were suggesting for the  
15 various tasks. Is that correct?

16 A That's correct.

17 Q Do you recall whether the assignments that you  
18 were suggesting changed after your discussion, if any, with  
19 Mr. Oreffice?

20 MR. POTTER: May I have that last question back?

21 (The pending question was read by the reporter.)

22 THE WITNESS: I don't believe so.

23 BY MR. CHARNOFF:

24 Q Did you review with Mr. Oreffice the results of  
25 the meeting of September 13 with Consumers Power Company after

1 that meeting and before you gave him the letter of September  
2 15?

3 A I am sure that we had some kind of a conversation  
4 where I reviewed the highlights of it. Certainly, I told them  
5 we didn't learn anything new to cause us to change our  
6 position so we are going to the next step.

7 How much of what took place in that meeting I  
8 communicated to him, I honestly can't remember.

9 Q Then, you wrote this outline to Mr. Orefice. How  
10 was the outline implemented? Did he issue an oral or written  
11 statement to you to get this thing going or to Mr. -- let's  
12 see, Klomparens, I guess was designated for the project  
13 leader for the review.

14 A That's correct.

15 Q The team leader.

16 A Right.

17 Q That was your suggestion, as I see it on this  
18 piece of paper.

19 A Yes, but Orefice also suggested that.

20 Q Did he then call Mr. Klomparens into a meeting and  
21 discuss this study or did he ask you to talk to Mr. Klomparens  
22 or how was it communicated to Mr. Klomparens?

23 A I'm going to have to do the best I can on this.  
24 With regard to Klomparens' ability to spend the time to chair  
25 this thing, I had specifically talked to Mr. Morand who was

1 his boss to let him know what I was contemplating and to see  
2 if the needs of the U. S. Marketing Department could accom-  
3 modate our need to ask Al to do this job which might last a  
4 month.

5 When I discussed the outline with Paul, the recom-  
6 mendation was that he personally call everybody's boss and  
7 tell them that he would like them to serve on this committee.  
8 And I know he made some calls. I don't know whether he called  
9 everybody.

10 And the recommendation was to gather them up for  
11 him to charge the group or for me and I think Mr. Nute to be  
12 there to answer any questions, and then for us to disappear  
13 and let the individuals pursue their tasks.

14 Q That is the area I want to get into. Was there a  
15 meeting of this group where you and Mr. Nute briefed the group  
16 on what the issues were and what he ought to be looking at  
17 or was this appearance prior to a disappearance by you?

18 A My recollection is there was a meeting where  
19 Orefice was there, and these individuals and Lee and I were  
20 there. Orefice charged the group, and we probably gave them  
21 some of the background, told them what the Michigan Division  
22 conclusion was and answered questions.

23 And that is about all I remember about our role.  
24 it may have been me, it may not even have been him, although  
25 I think Mr. Nute was there.

1 Q Do you recall when that meeting took place, did  
2 it take place promptly around the 15th of September?

3 A I would guess it took place very promptly.

4 Q I recognize it is three years since the meeting  
5 took place, but I would like to know a little bit more about  
6 the nature of the briefing that you gave to this committee,  
7 the project review. Could you tell me, did you make any  
8 written , any chart, presentations to them?

9 A I don't remember doing that.

10 Q You said Mr. Nute may or may not have. Was there  
11 anybody else from your negotiating group there?

12 A To the best of my knowledge, it was just Lee and  
13 I.

14 Q It was a rather brief presentation, as you recall  
15 it?

16 A What is brief? Five minutes? No, it was longer  
17 than that. An hour? I would guess it was less than that.

18 Q Did you go into the reasons for your concern that  
19 the project was no longer perhaps in the best interests of  
20 Dow Michigan?

21 A I can't remember.

22 Q Do you remember whether the thrust of the review  
23 was simply to outline the seven tasks rather than to go into  
24 your reasons for the concern?

25 A I just would be guessing, but certainly that had

1 to be and care of so that the people who got the task under-  
2 stood what was intended by the words in the letter.

3 Q After that meeting, did you have any discussions  
4 with the members of the corporate review team prior to the  
5 meeting on September 27 when the corporate review team met  
6 with the Dow USA Board?

7 A If I did, they were casual and/or to answer  
8 questions.

9 Q Is it fair to say then that during that ten-day or  
10 two-week period that you were not fully knowledgeable as to  
11 how the corporate review group was proceeding?

12 A My objective was to stay as far out of that as  
13 possible. I think I generally achieved that.

14 Q And as a result, you would be less knowledgeable  
15 about what that corporate review group was about than maybe  
16 members of the corporate review group would be; is that right?

17 A Yes, I think so.

18 Q And in particular, Mr. Klomparens who would be the  
19 team leader; is that correct?

20 A Yes, I would say that is correct.

21 Q So at that point, he would be more knowledgeable  
22 of the corporate review activity of where they were going than  
23 you?

24 A Yes.

25 Q Incidentally, why was Mr. Klomparens suggested as

1 team leader?

2 A Well, in his background, he had been both in the  
3 business and the economic evaluation and the pricing side of  
4 Dow's business. And that probably is as much of a finite  
5 reason that I can recall for his selection. And I can't even  
6 tell you who else was considered.

7 Q Okay. Now, just by the way, did you have con-  
8 versations with any other member of the Dow Chemical Board  
9 about your September 8 recommendation other than Mr. Oreffice  
10 either before or after it?

11 MR. POTTER: Could I just characterize it again?  
12 You are talking about the USA Board?

13 MR. CHARNOFF: No, Dow Chemical Board. I was  
14 being very strict in my words.

15 THE WITNESS: During what period?

16 BY MR. CHARNOFF:

17 Q Lec's take it first in terms of prior to your  
18 development of or your submitting of the September 8 letter.  
19 You had the conversation with Mr. Oreffice the night before.  
20 Had you had any conversation with other members of the Dow  
21 Chemical Board?

22 A Well, Mr. Whiting was a member of our negotiating  
23 team and is also a member of the Board.

24 Q What was his role in the company apart from being  
25 on the Board? Did he have an executive role in the company?



1           A       Well, Mac was, I think, General Manager of the  
2 Division when we started all this. And his responsibilities  
3 were generally in the area of energy, but I don't really  
4 know. He has since retired from the Board.

5           MR. POTTER: When you say "when we started all this,"  
6 does that refer to the initial signing of the contract for the  
7 nuclear power?

8           THE WITNESS: Way back in the mid sixties.

9           BY MR. CHARNOFF:

10          Q       What do you mean it is before your time?

11          A       It didn't happen on my shift.

12          Q       Was Mr. Whiting involved as a member of the negot-  
13 iating team in the discussions, well, in the review of your  
14 September 8 letter to Mr. Orefice?

15          A       Yes, but to a much lesser extent than any of the  
16 other members of the team who were much more active at the  
17 time.

18          Q       Why was that?

19          A       Just because Mac was not a member of the Division,  
20 we had not made him an active participant in all of the studies  
21 that we had done, and we didn't need him that much.

22          Q       Would it be fair to say, then, that when you say  
23 "the September 8 letter and Dow Michigan position resulted  
24 from your discussions with and in effect was almost concurred  
25 in by the negotiating team," did that necessarily mean that

1 Mr. Whiting concurred or took any position with regard to your  
2 September 8 letter or did he not participate really in that?

3 A To the best of my knowledge, he knew the position  
4 that we had reached in early September, and I think was  
5 generally in agreement with it as a Michigan Division con-  
6 clusion.

7 Q But not necessarily as a Dow Chemical?

8 A We never asked that question. You know, I don't  
9 know..

10 Q He didn't express anything? Do you recall whether  
11 he orally articulated any agreement or concern with your  
12 letter or the development of the letter?

13 A None that I can recall other than that which I  
14 would expect from Mac who was involved in the birth of this  
15 thing and who was a very strong advocate, I think, of the  
16 concept of industrial use of by-product steam from utility  
17 plants. He was really a firm believer in that and I'm sure  
18 was very personally disappointed with the way things appeared  
19 to be evolving.

20 Q Even in September, 1976, he remained a firm believer  
21 in that concept and hoped the project would continue?

22 A No, I said was disappointed in the fact that it was  
23 coming on hard times in our view. I believe in the concept;  
24 it is the implementation that bothers me. I think everybody  
25 in Dow believes in the concept because Dow has been generating

1 steam on that principle since the year 1900 or before.

2 Q You don't know whether in September, '76, Mr.  
3 Whiting hoped the project would continue?

4 A He may have. I can't look into his mind and tell  
5 what he thinks. I tried to describe the circumstances as  
6 best I can.

7 Q Any other Board member other than Mr. Whiting and  
8 Mr. Oreffice contacted by you in connection with the develop-  
9 ment of your Michigan recommendation?

10 A Let me consult.

11 (The witness consulted with his attorney.)

12 May I have the question?

13 (The pending question was read by the reporter.)

14 Yes.

15 BY MR. CHARNOFF:

16 Q Who else?

17 A Mr. Carl Gerstacker.

18 Q When did you talk with him?

19 A Sometime, I believe, in August prior to my going  
20 on vacation.

21 Q At that point, you hadn't written your letter of  
22 September 8?

23 A I had not written the letter, but I had a multitude  
24 of notes which were a collection of my various thoughts.

25 Q And the nature of your conversation with Mr.

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1 Gerstacker was you were inclined to have a Dow Michigan  
2 conclusion that it was not in the best interests for Dow  
3 Michigan to continue, and you were going to recommend a  
4 corporate review?

5 A No. Haven't gotten to the corporate review stage.  
6 My purpose in calling Mr. Gerstacker was because I respect  
7 his mind and because in the very early stages, he had also  
8 been involved in the contract between Consumers and Dow. And  
9 I wanted somebody with his experience, brain power, keen way  
10 of asking difficult questions, to hear me talk about my thought  
11 processes, what I was thinking about, where I thought I was  
12 heading, and to have him either tell me where I was going  
13 astray or tell me what he felt was right or wrong or very  
14 right or partly wrong or what basis I may have used that he  
15 didn't think made sense.

16 It was an effort to use the best one of the  
17 best brains in the company to make sure that as we approached  
18 this thing, we did it in a responsible way.

19 Q So did you talk to him about the way in which  
20 to approach it or did you talk to him about, for example, the  
21 concerns that had been expressed at the bottom of page 2  
22 and top of page 3 of your letter to Mr. Orefice of September  
23 8 or both?

24 A We spent about as I recall, three hours together.  
25 And I talked extensively about my concerns.

1 Q Is that the concerns that were --

2 A Much beyond the concerns that are listed there.

3 Our concerns about the reliability of Consumers, which I  
4 think I have talked about a lot, the Court of Appeals decision,  
5 the knew higher costs, the feeling that we had that even  
6 after the plant was on line, we had a contract which required  
7 us to buy quantities of steam at a price which was subject  
8 to the judgment of the Public Service Commission.

9 I talked about everything that I could think of  
10 that was in pages of terribly disorganized notes, but the  
11 substance of my trying to bring together all of the inputs  
12 of all of the members of the committee and everybody else  
13 who had what I felt was a valid input that I should consider  
14 as I approached leading the Division to some kind of a con-  
15 clusion which at that time I thought g to be the gist  
16 of what ended up in the Orefice letter

17 Q Did Mr. Gerstacker bless the direction in which  
18 you were going or did he just raise some questions for you to  
19 consider or what did he say?

20 A He raised a great number of questions, but at the  
21 end concluded that he would conclude as I have concluded,  
22 given the same set of facts and the same history and the  
23 same concerns that Dow has historically had about doing business  
24 with public utilities, with other kinds of factors which he  
25 felt were important to probe me on.

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1 Q Incidentally, you briefly mentioned a reference  
2 to the buying steam at rates that would be subject to the  
3 Public Service Commission. What did you have in mind were  
4 your concerns?

5 A Well, Public Service Commissions in Michigan, at  
6 least are political appointees. Major multinationals are not  
7 the favorite people in the world for political appointees to  
8 do any favors for. Poor people generally are because they  
9 vote.

10 And we felt that we just had an agreement which was  
11 subject to continuous review by -- it happened to be at that  
12 time three people who were politically appointed by one  
13 Governor after another. Therefore, we really didn't have a  
14 contract which gave us a great deal of peace of mind with  
15 regard to what we were really going to end up paying for  
16 steam.

17 And that was a haunting on the part of our negot-  
18 iating team, I would guess, from Mid-1974 on.

19 Q Is it fair to say, Mr. Temple -- you described  
20 yourself as the boss --

21 A Of the Division.

22 Q -- of the Dow Michigan Division. Would you  
23 characterize yourself as a pretty powerful sort of person in  
24 your relationships with the people of whom you are the boss?

25 A I think I am a very good boss for people who

1 perform responsibly in their jobs. And I think people find  
2 it easy to interact with me. I think I have outstanding  
3 personnel and people skills.

4 Q In the course of interacting with people, do you  
5 find that your views are more often accepted than not by  
6 your subordinates?

7 A Well, if they are the wrong views and are getting  
8 acceptance, I got the wrong subordinates.

9 Q Well, I appreciate that. I think that is probably  
10 a wise observation. But I am curious about whether as a  
11 practical matter, in your day to-day relationships with  
12 subordinates, good subordinates, do you find your views  
13 generally carry the day?

14 A I wouldn't draw that conclusion.

15 Q Is the opposite conclusion one that you would draw,  
16 that your views generally do not carry the day?

17 A No. I think there is reasonable balance.

18 Q In the discussions that you had with the negotiating  
19 team in the period of August and early September, was there  
20 any significant opposition or dissent or even significant  
21 question raised by any member of the negotiating team towards  
22 the direction you were going?

23 A Don't forget, we got here over a long period of  
24 time.

25 Q I understand.



1           A       And if I intended something in the legal area to  
2 mean one thing and Mr. Nute concluded it didn't mean that, I  
3 would guess there was no case where he didn't express his  
4 views as clearly and succinctly, positively, as he could.

5           In the technical area and economic area, with Mr.  
6 Burroughs, he frequently told me I was all wet and that I  
7 didn't understand and that I needed to make sure that I  
8 walked through slowly.

9           Q       In your aggregating of all these separate specialist  
10 views into a conclusion, did anybody express any concern or  
11 regard whether they just enthusiastically embraced the idea  
12 of the Dow Michigan position, concluding that this was not in  
13 the Dow Michigan interest to continue with the project?

14          A       Well, I think everybody felt the serious burden of  
15 responsibility in making that kind of a decision. And with  
16 that given, and the fact that they all had, I think, plenty  
17 of opportunity to either support or not support the decision,  
18 I don't think there was any member of that team who was  
19 uncomfortable with that being the right decision for the  
20 Division at that time.

21          Q       Could you tell me specifically who was on that  
22 team at that time?

23          A       Nute, Burroughs, I think Gaska, myself --

24          Q       Who is Mr. Gaska? How do you spell that?

25          A       G-a-s-k-a. He had taken Parke Brown's place as

1 Manager of Basic Operations and probably had not had that  
2 job and, therefore, had not been a member of the committee  
3 for much more than a few months.

4 Q So it is Nute, Burroughs, Gaska and yourself?

5 A Right.

6 Q And Whiting?

7 A And Whiting was on that committee, too.

8 Q But I take it he wasn't involved as intimately  
9 as the others were during this period of time?

10 A That's correct.

11 Q Incidentally, do you still have in your possession  
12 the notes you used when you talked to Mr. Gerstacker?

13 A I don't have anything.

14 Q Does Dow Chemical?

15 A I doubt if they were saved. I doubt if anybody  
16 could have read them.

17 Q Okay. Give me just a minute.

18 I just took a break to determine whether your  
19 answer was complete or do you want to add something to that  
20 last set of answers as to whether the documents were available?

21 A No, it didn't have anything to do with the docu-  
22 ments.

23 MR. CHARNOFF: Okay, can we take a break?

24 (Whereupon, a recess was taken.)  
25

1 BY MR. CHARNOFF:

2 Q Mr. Temple, during the period after the time that  
3 you briefed the Dow USA review group and until September 27,  
4 when the review group reported to the Dow USA Board, you did  
5 not know what their conclusions were; is that correct?

6 A I think that's true.

7 Q They didn't discuss their conclusions with you  
8 before presenting it to the Dow USA Board, did they?

9 A I don't believe so.

10 Excuse me. Let me add I was present at the meeting  
11 on September 24 when the Consumers people came up to talk about  
12 the impact of the Dow Division decision if it became a Dow  
13 decision on Consumers Power.

14 Q Right. And Mr. Oreffice was there, and I take it  
15 some members of the Dow USA review group were there, too.  
16 Mr. Klomprens, I believe, was there and Mr. Hanes.

17 A He was there. I could refresh my memory.

18 Mr. Nute was there; I was there.

19 Q But neither you or Mr. Nute were on the review  
20 group?

21 A True.

22 Q When did you first learn that you were to be a  
23 witness in the proceeding?

24 A I had always assumed I was going to be the witness.  
25 Regardless of if Dow was going to provide one, I had always

1 assumed I was going to be that witness. So when everybody  
2 else agreed to that conclusion, I guess -- I really don't  
3 recall.

4 Q Do you have Mr. Burroughs' notes of the September  
5 13 meeting?

6 A If he has them, I can get them.

7 Q Could I ask you to turn to page 3 of those notes  
8 please?

9 A I am there.

10 Q And this is Mr. Burroughs' notes of the Dow-  
11 Consumers nuclear project meeting of September 13 held in  
12 Midland, Michigan, and you were present?

13 A True.

14 Q I guess the people present for Dow were the Dow  
15 negotiating team, Burroughs, Gaska, Nute, Temple, and Whit-  
16 ing; is that correct?

17 A True.

18 Q If I could ask you to look at the third paragraph  
19 from the bottom of page 3 --

20 A Yes, I see it.

21 Q -- of those notes, in that paragraph, there is a  
22 statement that Howell, Keeley and Bacon will carry the ball  
23 for Consumers in the hearings. However, they expect Youngdahl  
24 and Temple will have to answer the questions concerning  
25 contract negotiations. Consumers stressed that Temple would

1 an active participant in the hearings; that he would be on the  
2 stand quite a bit, and that all correspondence relating to  
3 the contract negotiations would be subject to scrutiny.

4 I take it this was the first discussion between  
5 you and Consumers on the forthcoming hearings; is that correct?  
6 There weren't any prior to September 13, were there?

7 A I don't recall any.

8 Q None that you participated in anyway; is that  
9 right?

10 A In that period of time, certainly in between the 21  
11 Court decision and these things.

12 Q The July 21 Court decision?

13 A July 21 Court decision.

14 Q At this meeting, Mr. Burroughs noted it was Con-  
15 sumers who stressed Temple would be an active participant  
16 in the hearings so there was really no difference of view  
17 between what you said was your personal view that you assumed  
18 you would be participant in the hearing and Consumers.  
19 That is --

20 A These individuals.

21 Q Did you have any misgivings on the 13th about being  
22 a witness?

23 A I hate to testify, but other than that, no.

24 Q Why do you hate to testify?

25 A Because it takes a lot of time, a lot of preparation.

1 for those hearings.

2 Q But it was clear then these individuals for Con-  
3 sumers felt that you were going to be an active participant  
4 in the hearing?

5 A Yes, but they also felt Youngdahl was.

6 Q Now, as I understand the next paragraph, after  
7 noting that everything Dow and Consumers have been discussing  
8 will be aired in the hearings, there is an expression that it  
9 was Consumers' opinion that Dow would be very much involved  
10 in the hearings. And then Dow commented they agreed and feel  
11 that Dow will have to clearly define its position with regard  
12 to the nuclear project. Is that correct?

13 The second paragraph from the bottom.

14 A That's what that says.

15 Q Do you recall that discussion?

16 A I recall the point coming up several times during  
17 this meeting that we were going to have to furnish a witness  
18 who would have to testify to Dow's position.

19 Q And that Dow position had not yet been formulated?

20 A The Dow position had not yet been formulated.

21 Q So there was no mistaking in your minds as of  
22 September 13 that the Dow Michigan position was somehow or  
23 other the Dow corporate position?

24 A It was clear in my mind. I don't know what was in  
25 everybody else's mind.

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1 Q It was clear in your mind?

2 A That it was not.

3 Q And did anyone at that meeting disagree with that  
4 proposition given the fact that Dow was stating it would have  
5 to develop a position?

6 A I can't remember.

7 Q Now, you said that you were long of the view that  
8 you would have to be -- if there were to be a Dow witness,  
9 it would have to be you at the hearings.

10 A If Dow was to have to provide Consumers with a  
11 witness, then it would be me.

12 Q Likely you, perhaps others, but certainly you; is  
13 that correct?

14 A That's correct.

15 Q How did you arrive at that understanding?

16 A I didn't see how anybody else could possibly have  
17 the scope of understanding of our relationship with Con-  
18 sumers and the "changed circumstances" kind of an issue that  
19 I had.

20 Q And yet, you weren't involved directly in the develop-  
21 ment of the corporate position?

22 A That's true.

23 Q Did you discuss that matter with either Consumers  
24 lawyers or Dow lawyers?

25 A Which matter?



1 Q That you weren't involved directly in the develop-  
2 ment of the corporate position and perhaps someone else, too,  
3 should be a witness.

4 A Well, I can remember stating that if we got into  
5 some technical areas or some special areas like the economics  
6 or like safety or any of these other aspects, that I felt we  
7 would need witnesses other than myself to testify to the  
8 specifics of any issue like that.

9 Q That would be in detailed, specific areas?

10 You shook your head yes.

11 A Yes.

12 Q But again, those people would not be any more  
13 knowledgeable than you as to the development of the corporate  
14 position?

15 A That's correct.

16 Q Did you discuss with anyone, Mr. Wessel, Mr. Nute,  
17 Mr. Rosso, Mr. Renfrow, or any fellow officer of Dow, your  
18 view that there ought to be somebody to testify to the Dow  
19 corporate position other than you since you are not involved  
20 in --

21 A I recall no such conversation.

22 Q Now, what did you understand was to be the purpose  
23 of your testimony? You said you would be the, obviously the,  
24 Dow spokesman, but what did you understand the purpose of your  
25 testimony would be? What did you expect it to address?

1 A Are we talking about the direct testimony or the  
2 cross examination aspect of testimony or everything?

3 Q Well, let's take it first in terms of direct and  
4 then separately in terms of cross.

5 A Okay. As I think we all know, the subject of what  
6 went in the direct testimony, what form it took, and all of  
7 that, was decided between the attorneys with a minor involve-  
8 ment on my part, short of making sure that what was said  
9 in the final direct testimony was indeed true and complete  
10 answers to the questions which were asked.

11 Now, going back, early on, I really didn't think  
12 about the difference between what should be in a direct  
13 testimony and what kinds of questions a Dow witness should be  
14 prepared to answer.

15 From the standpoint of what could, might be likely  
16 to, or would take place on cross examination, it was my  
17 judgment there wasn't anybody else in Dow who would be as well  
18 prepared and as knowledgeable as I was to respond to questions  
19 which might be asked.

20 Q When did you first become involved in the direct  
21 testimony?

22 A Well, I attended one portion of one meeting between  
23 the attorneys.

24 Q Do you recall which one that was?

25 A I think it was the September 29 meeting.

1 Q I think you had testified to Mr. Olmstead you weren't  
2 at that meeting, the September 29 meeting.

3 A Then there was a misunderstanding of the question  
4 if I testified. I think that is the date of the meeting. I  
5 was at one meeting with the attorneys. Renfrow was there  
6 and Dow attorneys. I think I said I was there.

7 Q Well, I think you said both this morning, and  
8 that's why I was curious as to whether that was the right date.

9 A I apologize if I answered the question wrong.

10 Q No, that may be correct. I think you said earlier  
11 in answer to a question of Mr. Olmstead -- I think he was  
12 addressing the interrogatories that had your signature on  
13 them. You said, well, if you signed it, then you had reviewed  
14 it before you signed them. And you would review it to make  
15 sure that is is accurate and complete.

16 A To the best of my knowledge.

17 Q To the best of your knowledge.

18 That same statement of policy and approach would  
19 apply to testimony as well as to a signed set of interrogatories  
20 or signed letter or anything else, I take it; is that right?

21 A I would never sign anything that I didn't think was  
22 truthful and honest and a complete answer to the question  
23 which was asked.

24 Q And that applies to your written testimony as well  
25 even though there was no signature on it by you; is that

1 right?

2 A Yes.

3 Q Now, did you understand that your testimony was to  
4 be in writing or did you understand it was to be oral at any  
5 time in terms of direct testimony?

6 A I guess it was my understanding during this period  
7 of time when the lawyers were having all their meetings that  
8 there was going to be a written testimony from me.

9 Q That was from the meetings beginning September 29;  
10 is that right? Did you have any sense before that as to whether  
11 you might be called upon to give some oral direct testimony?

12 A I just assumed I would be on the witness chair.

13 Q You don't know whether it was for direct or cross;  
14 is that right?

15 A That's the lawyers' business how we do it. I  
16 assumed I was going to be the guy.

17 Q What did you understand was to be, in addition  
18 to just giving truthful and accurate and complete answers to  
19 the questions, the purpose of your direct testimony?

20 A I am not sure I understand what you mean by "the  
21 purpose."

22 Q Well, you emphasized that you took special care  
23 to make sure that your answers to the questions were truthful  
24 and complete to the questions asked; is that right?

25 A Yes. I do that on everything I sign.

1 Q Did you have any sense that the questions as answered  
2 by you did not completely disclose the Dow corporate position?

3 A No.

4 Q Did you have any sense that the questions as answered  
5 truthfully and completely by you omitted anything of signi-  
6 ficance to someone trying to understand the cost/benefit of  
7 proceeding with the Midland plant?

8 A No. I don't believe so. Because what was to be  
9 done was to be done following the Dow corporate decision.

10 Q Did you discuss the completeness of the questions  
11 asked of you with either the Consumers attorneys or the  
12 Dow Chemical attorneys?

13 A I guess I would answer that in this way: I was  
14 aware that conditions were very delicate between both companies;  
15 that although I was an employee of Dow, I was going to be a  
16 witness for Consumers. I knew that it took a multitude of  
17 meetings for the lawyers to determine what was the right  
18 form and content of the testimony.

19 The lawyers who represented my interests were  
20 people I had a great deal of confidence and faith in, both in  
21 their legal capabilities and in their moreals and ethics.  
22 And when I saw the final product, I had no trouble concluding  
23 that it represented the important aspects of the Dow relation-  
24 ship with the Consumers Power Company.

25 Q And there was nothing that occurred to you that was

1 left out that should have been placed in?

2 A Oh, during the course of it, I asked questions as  
3 to why the Michigan Division's conclusion was or wasn't  
4 relevant.

5 Q And what were you told?

6 A I was told that basically, the thing that is impor-  
7 tant and the thing that will guide everything that Dow does  
8 is the Dow corporate decision.

9 Q Do you remember who told you that? Were these  
10 your lawyers?

11 A Among others, yes. The Consumers outside law  
12 firm, I think, stressed the fact that the corporate decision  
13 was the decision that was important.

14 Q And your lawyers agreed with that, too?

15 A Yes. It is my understanding that they agreed  
16 with that.

17 Q Incidentally, did you see prior drafts of your  
18 testimony or you only saw the testimony in its question and  
19 answer form?

20 A I saw other drafts.

21 Q Before the question and answer form was given to  
22 you for review?

23 A Yeah.

24 Q So did you have any hand in reviewing those drafts  
25 or their development?

1           A       Well, I am a little confused with the process  
2       which I was not playing a role in, but involved in. I know  
3       I saw a draft which was submitted by Mr. Bacon and I think it  
4       was a proposal by him sometime in the course of these meetings  
5       which had some things I didn't like.

6           Q       Like what?

7           A       Well, it called upon me to be familiar with Mr.  
8       Howell's testimony, and I was not interested in spending time  
9       either reading or understanding his testimony.

10           It stipulated that one of the alternatives that  
11       the division was looking at which was coal gasification had  
12       been discarded which was not true.

13           It stipulated this coal gasification was not  
14       energy efficient which I didn't think was true.

15           It also stipulated that Dow had gone through this  
16       review process and now had concluded that the nuclear alter-  
17       native was the best alternative. And in my view, it should  
18       stipulate that on the basis of the economic judgment, it  
19       was the best alternative, but not necessarily on all bases.

20           Q       Because of your concerns with reliability schedul-  
21       ing?

22           A       Right. And it also stipulated that in the review  
23       process, I think we had concluded we could rely on Consumers  
24       Power Company to supply steam and energy. And that really  
25       blew my cool because there is no way I would sign anything



1 that said I felt I could rely on the Consumers Power Company  
2 at that point in time.

3 Q So it said too much or too many things you couldn't  
4 agree with?

5 A I don't know whether it was too long or it said  
6 some things I didn't agree with than I would not sign.

7 Q Were there any criticisms you had of the Bacon  
8 testimony insofar as -- the Bacon draft -- it did not include  
9 any material that you thought should be --

10 A No, although it didn't have anything in there with  
11 regard to the Michigan Division's conclusion which again I  
12 had become comfortable with the fact that the important thing  
13 was what the Dow Chemical Company had concluded it was going  
14 to do, or I was becoming comfortable with that.

15 Q Did you see the draft of the testimony prepared  
16 by Mr. Nute and Mr. Wessel which had your testimony set out  
17 in the third person?

18 A I believe I saw one that Mr. Nute prepared.

19 MR. POTTER: For the record, I referred the witness  
20 to Exhibit GG, which is a bound volume which purports to be  
21 the various drafts of the testimony that were prepared.

22 BY MR. CHARNOFF:

23 Q My question was: had you seen that draft either  
24 in the course of its preparation or prior to the review of  
25 the question and answer form of the testimony?

1 A I believe I had.

2 Q Was there a reasonably complete statement of the Dow-  
3 Consumers relationship?

4 A As far as I know, it must have been. It must have  
5 satisfied me or I would have put some suggested changes or  
6 alterations or additions in it. I can't remember.

7 Q You don't remember suggesting to Mr. Nute or Mr.  
8 Wessel that it be supplemented in any direction?

9 A I don't remember. My whole attitude is when you  
10 lawyers make up your mind where you are at, then come show  
11 me what you determine. And if I am comfortable with that in  
12 signing it, fine. But in the meantime, I have got a Division  
13 which has 7,500 employees, and I would like to spend a few  
14 minutes a day running that Division.

15 Q I think you are entitled to a few minutes a day  
16 to run that kind of Division.

17 Incidentally, has Dow either here or at any of its  
18 other plants installed any coal gasification units?

19 A We don't have a plant in Coral Gables.

20 Q I'm sorry, okay. At anyplace in the United States.

21 A I believe we have installed some in Louisiana.  
22 Certainly, we have installed prototype units, and I believe  
23 we have installed or are in the process of installing one  
24 or more commercial units.

25 Q Are those processes that have been developed by

1 Dow?

2 A I don't know.

3 Q Could you determine at our next break whether those  
4 units are prototypes or are actually in what you might call  
5 commercial operation or commercial units?

6 A Well, I can probably call somebody.

7 Q Can I ask you to do that during our next break?

8 A Yes.

9 Q If in fact the question and answer form of testi-  
10 mony that you delivered is substantively the same as the  
11 third person form of testimony that Mr. Nute prepared --

12 Scratch that.

13 I would like you to give him a copy of the testi-  
14 mony available on the hearings in February.

15 MR. POTTER: What page?

16 BY MR. CHARNOFF:

17 Q Page 2303. At the bottom of that page, Mr. Temple,  
18 you were asked certain questions about the Black and Veatch  
19 data. Could you tell me what that Black and Veatch report  
20 concerned itself with?

21 A I think it was a study which we referred to earlier  
22 which we asked them to do--to make sure we had the latest  
23 technology for development the economics of the Dow alternative  
24 to nuclear power.

25 Q And that is what Mr. Burroughs considered when he

1 concluded that on a levelized basis, the nuclear unit would  
2 still show a gain of about, or an advantage of about, \$4  
3 million a year; is that correct?

4 A I believe that is correct.

5 Q Okay. Now, Mr. Cherry asked whether that infor-  
6 mation -- that is, the Black and Veatch data -- found its way  
7 into your testimony. And you said you don't believe so. Did  
8 you consider in reviewing your testimony early in November  
9 when it was being finalized with you that the Black and Veatch  
10 data should have been included in your testimony?

11 A No. I don't know whether I even asked myself that  
12 question.

13 Q Is it true that the Black and Veatch study, since  
14 it was an input into the Burroughs economic analyses and so  
15 on, was in that sense considered in the development of the  
16 Dow corporate position?

17 A Yes, it certainly was.

18 Q And lots of other data, presumably, were considered  
19 in developing the Dow corporate position; isn't that correct?

20 A I hope so.

21 Q Other than the Black and Veatch data?

22 A I hope so. I believe so.

23 Q And you didn't feel it necessary to put in all  
24 the details of that data in your testimony either?

25 A No.

1 Q And even though the Black and Veatch data was not  
2 identified or referenced in your testimony, nevertheless,  
3 your testimony, your direct testimony, did set out completely  
4 the Dow corporate position on the project, didn't it?

5 A I believe that it did.

6 Q And you believe that it did in November, too,  
7 when you reviewed the draft of the testimony with Mr. Nute  
8 and Mr. Rosso or Mr. Renfrow?

9 A I don't think I reviewed it with any of the Con-  
10 sumers attorneys prior to the time that it had been finalized.

11 Q When you reviewed it with Mr. Nute and Mr. Wessel,  
12 you were of the view that was complete testimony insofar as  
13 it was setting out the Dow corporate position?

14 A That is correct.

15 Q Now, did you in any sense feel that you were  
16 restricted or restrained in developing your testimony?

17 A In?

18 Q In terms of what it should cover or should not  
19 cover.

20 A You have got to consider the circumstances between  
21 the two companies and the amount of discussion that took place  
22 with all the attorneys, the fact that I had confidence in  
23 the Dow attorneys who were involved in that process. And out  
24 of all that came a testimony.

25 Now, if somebody had said to me on the 15th of

1 September, go draft a written testimony for this hearing,  
2 it probably would have had different things in it than what  
3 had been -- than what appeared in the Dow or in my direct  
4 testimony.

5 Q If somebody had said that to you in September,  
6 would you have turned around and said, "Tell me what you think  
7 the purpose of my testimony is so I will know what I am  
8 supposed to be considering and what I am not supposed to be  
9 considering"?

10 A I don't know. I just sheerly speculated that if  
11 left to my own druthers, it probably wouldn't have taken that  
12 form because I am not a lawyer. It wasn't an usual set of  
13 circumstances between the two companies that existed.

14 Q But even so, given the processes between the two  
15 companies or the sensitivity of the relationships between the  
16 two companies, when you reviewed the document given to you  
17 by Mr. Nute and Mr. Wessel to finalize it, did you have any  
18 sense that you weren't free to prepare or to include in the  
19 testimony anything that you thought was necessary to include  
20 in it?

21 A I did not have the feeling that I was precluded  
22 from doing that.

23 Q Okay, let me ask you to turn to transcript page  
24 2305, the bottom of that page, where Mr. Cherry asks you  
25 on line 11" "Had you been free in preparing your testimony



1 in order to place forward sufficient facts to understand in  
2 detail the various options, et cetera, would your testimony  
3 have been different than the one that Consumers submitted on  
4 your behalf?"

5 Do you see that paragraph in the middle of the  
6 page?

7 A Yes.

8 Q And then, after, apparently what happened rather  
9 normally in that hearing, certain objections, you do answer  
10 the question at the bottom of the page. And you describe  
11 yourself as being open and candid. And you say, "Yes, I  
12 would say yes. I think there probably would have been that  
13 kind of information included in the testimony."

14 Do you see that?

15 A Yes.

16 Q Now, was that said in the context in which you  
17 just told me before that had you been told in September to go  
18 write a draft of the testimony, you would have written some-  
19 thing that was different than what ultimately appeared or was  
20 it said in the context of some sense of restraint that you  
21 had that perhaps would be lifted under a different sense of  
22 direction, restraint, either given to you by Mr. Nute, Mr.  
23 Wessel, Mr. Renfrow, anybody?

24 A I guess it was more said in the sense that if I  
25 were to do it without instruction, I would have done it



1 different. Not with the idea that I was restrained from put-  
2 ting things in that final draft that I felt needed to be in  
3 there to describe Dow's corporate position.

4 Q Did it occur to you in the course of your review  
5 of the Nute-Wessel draft of your testimony that relevant  
6 information was not being included?

7 A No.

8 Q Again, then, looking at your statement at the  
9 bottom of 2305 and recognizing that, of course, had you written  
10 it, rather than the word "freedom," under the direction to  
11 write your own testimony, you might have said things dif-  
12 ferently, is there any sense that you would have put in  
13 information that was relevant that was not included in the  
14 testimony?

15 A Under the actual conditions that prevailed, you  
16 are talking about?

17 Q Yes.

18 A I was comfortable in what the testimony included  
19 and the fact that it did not require to fulfill what I felt  
20 was telling the Dow corporate story more than what was in  
21 there.

22 Q I think I heard that, but could I have that answer  
23 read back?

24 (The last answer was read by the reporter.)

25 If you recall being on the witness stand in

1 February, '77, what, if anything, did you have in mind when  
2 you said at the bottom of 2305 that there probably would have  
3 been that kind of information included in the testimony?  
4 What does that kind of information refer to?

5 A Well, given my nature of being open and candid,  
6 I might have put more information in there which I don't know  
7 whether would have been relevant or not relevant, but if  
8 left to my druthers, I might have put some other things in  
9 there just based on the nature of the individual that I am.

10 Q So you didn't have any specific matter in mind at  
11 that point that you were saying should have been in there or  
12 would have been in there had you drafted it?

13 A No.

14 MR. POTTER: I want to go on the record that in  
15 the earlier session this morning, there was some reference  
16 to disclosure of documents contained in a notebook. And  
17 since other counsel are sitting here listening while these  
18 questions are going on, it probably would be worthwhile to  
19 go ahead and give them copies.

20 I want the record to show at this point in time,  
21 we are turning over two documents that were previously  
22 requested. Specifically, a draft of the Complaint prepared  
23 by Milton Wessel, a 13-page document which purports to be the  
24 recording of Mr. Temple's side of a telephone conversation  
25 with Mr. Youngdahl, March 1, 1976, and then five documents

1 coming from a notebook containing seven documents. We are  
2 turning over five at this time. We are retaining the other  
3 two because of problems I earlier described which relate to  
4 material which is in my judgment irrelevant and immaterial to  
5 this particular proceeding and which we may want to have the  
6 Board rule on with the idea of expunging it before turning  
7 over the other copies.

8 As I noted earlier, there is a question as to  
9 whether we can get it out sufficiently so we can disclose  
10 the document itself.

11 So we wish to reserve the other documents back.  
12 Otherwise, we are turning over these.

13 MR. OLMSTEAD: Would you define the two you are  
14 not turning over?

15 MR. POTTER: The first of the two documents which  
16 are not being disclosed at this time is a letter dated  
17 August 5, 1976, to Mr. Temple from Mr. Nute. And the second  
18 document is a memorandum prepared -- it is dated August 27,  
19 1976, to Mr. Temple from Mr. Nute.

20 And that, I think, is sufficient description at  
21 this point.

22 MR. CHARNOFF: Is this one set for me and one set  
23 for Bill?

24 MR. POTTER: Let me see how many I have got here.  
25 I think there are plenty for everybody.

1 MR. OLMSTEAD: If you don't mind, I would like to  
2 ask a question about these documents.

3 My understand previously was that none of these  
4 documents had been previously requested in this proceeding.  
5 I thought somebody said this morning that the Board had rules  
6 on these.

7 MR. POTTER: My understanding -- and I was not  
8 involved in this case at that stage -- is that there were a  
9 series of documents presented to the Board by the Dow Chemical  
10 Company, and the Board was asked to rule on what the status  
11 of those documents was.

12 I don't know whether it covers all seven documents  
13 in that notebook, but at the very least, the document which is  
14 turned over to you, which is the August 19, '76, cover letter  
15 from Mr. Nute to Mr. Temple, attaching a memorandum of tele-  
16 phone conversation between Myron Cherry and R. W. Barker, a  
17 counsel for the Dow Chemical Company, that specific docu-  
18 ment was certainly declared at that time to be privileged  
19 by the Board.

20 Now, which of the others of these were or were  
21 not, I don't know.

22 BY MR. CHARNOFF:

23 Q You described yourself as a person whose nature  
24 is one of being open and candid and attempting to tell all  
25 the information that you think might be relevant. When you

1 reviewed your testimony with Mr. Nute and Mr. Wessel -- that  
2 is the draft question and answer form of testimony that became  
3 your direct testimony --

4 MR. POTTER: The copy as filed with the Board.

5 BY MR. CHARNOFF:

6 Q -- and the copy as filed with the Board, did you  
7 feel that that testimony was consistent with your nature of  
8 being open and candid and a person who attempts to tell all  
9 the information that you think might be relevant?

10 A Yes.

11 Q Now, I appreciate the difficulties of being on a  
12 witness stand, but I would like you to refer now to page 2,307.  
13 Mr. Cherry asked you a rather long question on that page,  
14 the gist of which is, I think, that if you wanted to tell the  
15 whole story, you don't want to limit it to certain questions,  
16 given the surrounding circumstances as to what Dow knew and  
17 what were important issues of the day, would you agree he  
18 asked you, that the presentation of your testimony if the  
19 goal was to tell in complete detail, reasonably complete detail,  
20 everything that was going on at that point, without identi-  
21 fying what he meant by "everything that was going on," that  
22 your testimony as judged by that criterion was not open, not  
23 honest and not consisting of all the relevant information?

24 And you answered in the affirmative.

25 Now, how could you answer that question in the

1 affirmative in light of the fact that your direct testimony  
2 which Mr. Nute and Mr. Wessel went over with you and which  
3 was filed with the Board was consistent with your nature of  
4 being open, candid and attempting to tell all the information  
5 that is relevant?

6 Was this just such a long, involved question or was  
7 something else going on in your mind?

8 A Well, it is partly that plus --

9 Q Partly what, sir?

10 A Obviously, it was a long, involved, complicated  
11 question, one of many of which Mr. Cherry asked. But he says  
12 if the intention was to tell the whole story in complete  
13 detail or almost complete detail everything that was going on  
14 at that point, if that was the objective, then was the testi-  
15 mony open, honest and not consisting of all the relevant  
16 information. If that was the objective of the testimony,  
17 then I would agree that my answer is correct.

18 I didn't think that was the objective of the  
19 testimony because there was so much going on, it would be  
20 impossible to put the whole complete story with all the detail  
21 on everything that was going on at the time.

22 Q Before we get to what was the purpose of the  
23 testimony, is it really your view that even given Mr. Cherry's  
24 criteria, is it your view that your testimony was not honest?

25 A No. And I think there was a previous line of



1 questioning where I stated that I answered the questions  
2 completely and honestly, and he agreed with that.

3 Q That's right.

4 A It is the testimony somewhere.

5 Q Then, he tried to move you in this question into  
6 the area if you weren't limited to certain questions, was your  
7 testimony not honest. And you said, "Yes." And is that really  
8 your view?

9 A Well, if the objective was to tell the whole story,  
10 14 volumes worth, and it required doing all of that to make  
11 a complete and honest story, then I stand by my answer. And  
12 that is my interpretation of what he was asking me.

13 Q What, then, was your understanding of the purpose  
14 of your testimony if it wasn't to tell the whole story in  
15 all of its detail, whatever the word "story" means?

16 A Well, to me, the whole story goes back at least,  
17 for me, four years from that point in time. That wasn't the  
18 purpose as I viewed it of my written testimony. It was to  
19 appear, to be crossed on whatever they wanted to cross examine  
20 me on. It seemed to me the purpose of my testimony --

21 Q The direct testimony?

22 A The direct testimony -- was to have it cover all  
23 those things which are relevant to Dow's corporate position  
24 with regard to Consumers Power.

25 Q And insofar as that objective is concerned, your



1 testimony was open, was honest, and did consist of all the  
2 relevant information?

3 A I believe that.

4 Q Okay. Incidentally, you said that you reviewed the  
5 final draft of your testimony with Mr. Nute and Mr. Wessel  
6 and not with the Consumers attorneys as I recall. Is that  
7 correct?

8 A I think what I said was I don't believe I reviewed  
9 it with any Consumers attorneys.

10 Q Under those circumstances, is it clear in your mind  
11 that you had the final say as to what that testimony was  
12 going to say or do you feel that you were obliged to let  
13 someone else, perhaps from Consumers, have the final say on  
14 your testimony?

15 A I think I said that anything that I sign or  
16 represent as my testimony, I am going to have the final  
17 say on.

18 Q How about in terms of the scope of the testimony?  
19 Was it your view that you were limited by the scope of the  
20 questions asked perhaps only by Consumers attorneys? Did you  
21 feel limited in that? Was there any constraint on you to be  
22 sure there was an appropriate question asked if necessary to  
23 be sure it was a candid, honest discussion of the Dow  
24 corporate position vis-a-vis the project?

25 I have said a lot of words. Let me phrase it

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1 again.

2 Insofar as the scope of the direct testimony was  
3 concerned, did you feel that you were constrained by Consumers  
4 or Consumers lawyers having any final say over the questions  
5 that were asked of you?

6 A Well, I didn't know what went on in the meetings  
7 with all the attorneys. I assume that since I was going to  
8 be Consumers witness that they would have a major say in  
9 what the questions were.

10 I also felt that my lawyers would make sure that  
11 they felt that the questions were both appropriate and were  
12 complete in covering the Dow corporate position. And based  
13 on my understanding of all of that, I felt that I had not been  
14 constrained in putting something that I had a great urge to  
15 incorporate in my testimony before it went out.

16 Q In other words, your lawyers worked with Consumers  
17 lawyers in assuring that the scope was complete enough to  
18 present the full Dow corporate position vis-a-vis this  
19 project?

20 A I don't know what they did in those rooms all that  
21 time, but they were all there.

22 Q Well, judging by the end product.

23 A Yes, that would be my judgment.

24 Q Let me ask you to turn to transcript page 2379  
25 where the first question and answer seems to suggest an

1 understanding by you, perhaps not direct knowledge, but under-  
2 standing by you, that perhaps Consumers had some final say  
3 as to the scope of the testimony and ask whether --

4 I will let you read it.

5 A Please. The first half of that page?

6 Q You might want to read the whole page, sir, and  
7 even the answer on the next page.

8 A Down to where Wessel comes in?

9 Q I think that would probably be enough.

10 Now, addressing yourself to that page or page and  
11 a half, Mr. Cherry asked you whether you recall your earlier  
12 testimony which he characterizes as your belief that the  
13 scope of the testimony was too narrow in order to tell openly,  
14 candidly and honestly all of the relevant facts.

15 Do you see that question of his?

16 A Yes.

17 Q And you say, "Yes, sir, I do."

18 Now, are we to understand that characterizations  
19 being accurate only if it is qualified as you just told me  
20 before -- namely, that you had understood this question in  
21 terms of if the standard had been or the objective had been  
22 to tell all of the details of the negotiating history and  
23 relationship between the two companies -- obviously, your  
24 testimony was not complete?

25 A I think that is the part of the testimony he is

1 referring back to.

2 Q The material we were just looking at at 2307, as  
3 I recall?

4 A Yes, correct.

5 Q And it is in that sense that you recall it was  
6 only not open, candid and honest, in that sense, in the sense  
7 of it not being complete if the objective were to tell the  
8 whole history rather than to present the relative facts of the  
9 Dow corporate relationship to the Consumers Midland project?  
10 Is that right?

11 A Yes.

12 Q Okay.

13 And then, Mr. Cherry in this series of questions  
14 on this page says, "Well, in that sense, was the scope defined  
15 by Consumers having the final say as to what the scope should  
16 be?"

17 And you said, "Yes, that is my understanding."

18 And yet, I think you also testified to me it is  
19 your view your lawyers worked with their lawyers to achieve  
20 a reasonably complete set of questions and answers that did  
21 fully tell the Dow corporate position; isn't that true?

22 A Yes, that's right. But I think as I understood  
23 it, the thrust of the Dow attorneys was that I was a witness  
24 being provided by Dow, but I was Consumers witness, and they  
25 were presenting me. So from a layman's point of view, if

1 they were presenting me and I was their witness, they would  
2 have the major role in structuring the testimony.

3 But at the same time, I didn't think my attorneys  
4 would settle for something which was less than what was  
5 appropriate in light of the objective of the testimony which  
6 was to tell the relevant facts about the Dow corporate  
7 position.

8 Q So what you had in mind in your answer which is  
9 set out on line 13 of page 2379 is the format in which you  
10 were going to appear -- namely, as a Consumers witness,  
11 presented by Consumers, answering Consumers attorneys'  
12 questions -- and you did not have in mind that you and your  
13 people were going to be limited in any way in telling the  
14 full Dow corporate position in the Midland project?

15 A That's correct.

16 Q Incidentally, even on reflection, and you did  
17 prepare yourself for this deposition by rereading some of  
18 these transcripts, did you?

19 A Yes, I did.

20 Q Even on reflection now, is it still your view  
21 that your direct testimony fully told the Dow corporate  
22 position vis-a-vis the Midland nuclear project?

23 A Yes. And my cross examination certainly elaborated  
24 upon it.

25 Q No, but I am talking about in terms of had we

1 just reviewed your direct written testimony, that did actually  
2 accurately, honestly, disclose the Dow corporate position?

3 A True.

4 Q Now, in the middle of transcript page 2382, there  
5 is a question and answer beginning on line 9 through line 15  
6 that I would appreciate if you would look at.

7 A Shall I stop before you get into the electricity  
8 part?

9 Q Yes. I am most concerned with lines 9-15.

10 And there, as I understand the question, you were  
11 asked whether prior to your coming on the stand you were  
12 told that Dow representative has made it clear to Consumers  
13 that the scope of the testimony as set out by Consumers did  
14 not reflect all of the underlying facts concerning the Dow  
15 corporate position.

16 And you answered, "I think that is true."

17 What specific communication did you have in mind  
18 there?

19 A I can't recall.

20 Q Do you know whether Dow lawyers or you wanted  
21 more facts concerning the Dow corporate position disclosed  
22 than was contained in your direct testimony?

23 MR. POTTER: May I ask something just a minute?  
24 Let's take a minute. I would like to have the witness read  
25 page 2381-82 to see if that assists him in answering the

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1 question in any way.

2 THE WITNESS: As I read this now, it appears that  
3 I wasn't terribly certain about this area of questioning  
4 three years ago. I am certainly no more clear on it now.

5 The reference to getting to the question and  
6 answer form, I recall being something our people felt we  
7 wanted to go to to make it abundantly clear that while telling  
8 what we felt were the relevant facts, we were not trying to  
9 tell everything that might be viewed as being required if we  
10 were going to go back and tell the whole story in complete or  
11 almost complete detail of what was going on during the period  
12 of time that we were involved.

13 BY MR. CHARNOFF:

14 Q But there was no area of information that you  
15 thought needed telling in order to be complete and honest  
16 that was not included in your testimony, was there?

17 MR. POTTER: Of the Dow corporate position?

18 BY MR. CHARNOFF:

19 Q Of the Dow corporate position.

20 A That is still true.

21 Q And you don't recall any specific area or item  
22 of information or history or anything else that you or your  
23 lawyers wanted included that any Consumers lawyers urged be  
24 excluded?

25 MR. POTTER: On the Dow corporate position?



1 BY MR. CHARNOFF:

2 Q On the Dow corporate position.

3 A I know of none.

4 Q You left Dow Michigan to your new position, I  
5 take it -- Marketing was it?

6 A Yes.

7 Q -- in December, '76, officially; is that correct?

8 A The announcement was made on the day, the first  
9 day of the hearings in November 30 or whenever we started.

10 Q How long did you retain your position as General  
11 Manager of Dow Michigan?

12 A I moved out early January, but I retained all  
13 responsibility for the Consumers Power-Dow relationship up  
14 through the hearings in February.

15 Q Do you know whether Dow and Consumers have sub-  
16 sequently completed their negotiations on their contract and  
17 now Dow continues to be interested in obtaining steam and  
18 electricity from the plant?

19 A I understand that there is a new contract which  
20 has been negotiated between the parties.

21 Q So that the new contract as it ultimately developed  
22 was consistent with the Dow corporate position taken in  
23 September, 1976, and it continued to be interested in the  
24 project and wanted steam output for Dow purposes?

25 A Well, I am totally uninvolved from a totally

1 uninvolved point of view. I would agree with that repre-  
2 sentation of what that means.

3 Q Does totally uninvolved mean you don't know the  
4 details of the new contract?

5 A I only know there is one.

6 Q Okay, we are at a breaking place in terms of my  
7 questioning. And my own belief is I probably have no more  
8 than another hour at most, but we could break for lunch.

9 (Whereupon, at 1:10 p.m., the deposition was  
10 recessed for lunch, to reconvene immediately after lunch.)  
11  
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## AFTERNOON SESSION

1:35 p.m.

Whereupon,

JOSEPH G. TEMPLE

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

## CROSS EXAMINATION (Continued.)

BY MR. CHARNOFF:

Q We are back on the record.

Mr. Temple, when you reviewed Mr. Bacon's draft testimony which you said had a number of things in it which you didn't care to state and you also wondered why the draft testimony had not included any discussion of the Dow Michigan Division position, which you subsequently resolved talking with your lawyers and the Consumers lawyers, do you remember seeing attached to Mr. Bacon's draft of testimony an outline of about six or seven paragraphs to which Mr. Bacon attached as an addendum to draft testimony which did discuss the Dow Michigan Division position, although he said that was not currently planned as part of direct testimony?

A I don't recall seeing that. And really, in part of restoring my recollection was to look at that testimony again as part of the documents I reviewed. And what I looked at, I don't think had that on.

So most of my recollection is a refreshed recollection

1 having looked at it.

2 Q Let me just show it to you and see if it now looks  
3 familiar to you.

4 I will first show you the outline of testimony as  
5 submitted. This is Exhibit EE which was shown to you, I think,  
6 before by your counsel as the draft of testimony, and then an  
7 outline of detail of last review conducted -- namely, the  
8 Michigan position, although not currently planned as part of  
9 direct testimony.

10 Do you remember seeing that along with the Bacon  
11 draft of testimony?

12 A I may have seen that, but what I did was try to  
13 go -- I can't recall what I saw when I reacted initially to  
14 it. And this is what I went through, this stuff here.

15 Q Okay. I think, referring to the September 24  
16 meeting, you said Mr. Aymond made it clear that he wanted  
17 Dow to tell the truth about its position; is that correct?

18 A That's correct.

19 Q At a meeting, Mr. Aymond did refer to the possibility  
20 of a lawsuit between Consumers or initiated by Consumers  
21 against Dow; isn't that correct?

22 A That's correct.

23 Q But did he threaten the lawsuit in any way to ask  
24 Dow to lie or to adopt a false position?

25 MR. POTTER: Before you answer, let me object.

1 There is no way Mr. Temple could say what the state of mind  
2 was of Mr. Aymond at the time he made the statement. Subject  
3 to that objection, go ahead and answer.

4 BY MR. CHARNOFF:

5 Q Let me ask it another way. Did you understand the  
6 threat of a lawsuit to be a threat?

7 A A threat of a lawsuit? Yes.

8 Q And did you understand the threat to be that Dow  
9 ought to lie to avoid a lawsuit?

10 A No.

11 Q Did you understand the threat to be that Dow ought  
12 to adopt a false position at the hearing in order to avoid  
13 a lawsuit?

14 A I didn't think so. We wouldn't have done it any-  
15 way.

16 Q I understand that.

17 Did anyone at that September 24 meeting for Con-  
18 sumers ask Dow to either lie or to adopt a false position?

19 A No, not to my recollection.

20 Q Did you get such a request at any other time in  
21 any encounter with Consumers?

22 MR. POTTER: You are talking about Mr. Temple  
23 personally now?

24 MR. CHARNOFF: Yes.

25 THE WITNESS: No, I did not.

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1 BY MR. CHARNOFF:

2 Q When you were told of the statement as reported  
3 in Mr. Nute's notes that Mr. Falahee said something about Dow  
4 and Consumers having a heck of a lawsuit or heck of a legal  
5 problem at the September 21 meeting which you were not at,  
6 did anyone in telling you about that tell you that that amounted  
7 to a threat to compel Dow to either lie or adopt a false  
8 position?

9 A I don't recall anybody telling me that.

10 Q The Dow Michigan position was not accepted by the  
11 Dow as a result of the Dow corporate review; isn't that  
12 true?

13 A Well, a position did not become the Dow Chemical  
14 Company's position.

15 Q The Dow Chemical position as it was articulated  
16 to you did not say that it agreed with all the facts that you  
17 presented and the conclusions you drew were that because of  
18 the lawsuit, Dow Chemical is not agreeing with the Dow  
19 Michigan position?

20 A That was not articulated to me.

21 Q By anyone in the Dow USA Board group?

22 A That's true. To the best of my knowledge.

23 Q And after you got that message from on high, you  
24 didn't go back and ask how come, fellows?

25 A No, I didn't want to know.

1 Q So that there is no way of your telling us the  
2 Dow corporate position was in any way in substance the same  
3 as the Dow Michigan position, but for the lawsuit?

4 MR. POTTER: Of his own personal knowledge.

5 MR. CHARNOFF: Mr. Temple's own personal knowledge.

6 THE WITNESS: Ask the question again please.

7 BY MR. CHARNOFF:

8 Q Based on your personal knowledge, you have no way  
9 of testifying whether or not the Dow corporate position was  
10 in substance the same as the Dow Michigan Division position,  
11 but for the lawsuit?

12 A I think that's correct.

13 Q What is correct is that you couldn't make that  
14 statement, is that what you meant by that statement?

15 MR. POTTER: Of his own personal knowledge.

16 THE WITNESS: Of my own personal knowledge, that is  
17 correct.

18 BY MR. CHARNOFF:

19 Q I ask your attorney to provide you with a copy of  
20 Midland Intervenors Exhibit 24 which is a letter from you to  
21 Mr. Leathers, dated June 30, 1976.

22 Do you have a copy of that?

23 MR. POTTER: I think you better show him yours,  
24 Jerry. I don't see mine.

25 THE WITNESS: I have read it.



1 BY MR. CHARNOFF:

2 Q With reference to that exhibit, Mr. Temple, there  
3 is a statement in there that something is attached which you  
4 say is a critical step in our negotiation strategy. Do you  
5 know what it was that was attached?

6 A Yes. It is my June 30 letter to Mr. Youngdahl.

7 Q That was the letter, then, that was discussed with  
8 Mr. Olmstead this morning?

9 A Yes.

10 Q And that was the letter which I understand set  
11 forth a new set of conditions or proposals by Dow and certain  
12 requests that had been withdrawn by Dow as I recall?

13 A That's correct.

14 Q You said in here, in your note to Mr. Leathers,  
15 copies, I take it, basically to the negotiating team plus  
16 Mr. Oreffice, that --

17 A Plus Mr. Hanes.

18 Q Plus Mr. Hanes, too. I'm sorry. -- that their  
19 reaction -- namely, Consumers reaction -- to it, the June  
20 30 letter to Mr. Youngdahl, was unpredictable, and you  
21 underscored unpredictable.

22 Why did you underscore unpredictable?

23 A I underscore lots of things in lots of letters.

24 To me, their response to many of the things that  
25 we had proposed was unpredictable.

1 Q Did you have the impression you were asking for or  
2 presenting a rather strong bargaining position in the letter  
3 and, therefore, you would anticipate that perhaps Consumers  
4 would not accept it? Is that what that means?

5 A No, I don't think so. There was nothing in that  
6 letter in any of those items as I recall them that we hadn't  
7 discussed at length with Consumers in the past.

8 However, as I recall, this was the first attempt  
9 to get the negotiations back on track after a disastrous  
10 negotiating session that we had earlier on which I referred  
11 to this morning when we talked about my telephone conversation  
12 with Russ Youngdahl and the views I expressed of Mr. Bacon's  
13 role in the negotiating team and so forth.

14 Q You said in learning a lot about dealing with these  
15 guys -- your language -- maybe it is just Consumers Power  
16 Company, but maybe a lot of it is common to public utilities.

17 What did you have in mind by that?

18 A Well, the whole history of constant changes and  
19 nonreliability and unpredictability.

20 Q Did this reflect your general preference for Dow  
21 controlling its own sources of supply, not being subject to  
22 Public Utility Commissions and various other forces to which  
23 utilities may be subject that a corporation such as Dow may  
24 not be subject to? Is that what you had in mind there?

2 A That may have been a part of it, but it was the

1 whole, in my view, sore history we had had of unfulfilled  
2 promise and missed dates and cost escalations.

3 Q Why would you translate that into perhaps it is  
4 applicable to all public utilities? Would it be that there  
5 was something in the character of regulated public utilities  
6 that might have compelled other utilities to be in the same  
7 position that Consumers found itself in during this sore  
8 period as you call it?

9 A Well, at the time, there was consideration by the  
10 Texas Division to a project which would be point with Houston  
11 Power and Light.

12 Q And you were concerned that another public utility  
13 might have the same sort of difficulties with carrying out  
14 its projects -- for example, financing equally dependent by  
15 a utility upon actions by Public Utility Commissions who,  
16 as you indicated, are political appointees and have certain  
17 affirmatives in that regard?

18 A Not particularly limited. Totally unlimited, but  
19 only the fact that the Michigan Division since the mid-sixties  
20 was now going into the late seventies, had been involved in  
21 what essentially was a partnership relationship, not legally,  
22 but from the standpoint of both being involved in the same  
23 thing.

24 It seemed to me that as a stockholder and as a  
25 responsible manager of a major division, other locations

1 who would contemplate getting into very close relationships  
2 on very big projects with an electric utility should at least  
3 hear what our experiences had been and how we viewed them  
4 prior to signing on the dotted line and proceeding.

5 Q Was this your first experience in entering into  
6 a commercial arrangement with a regulated public utility,  
7 you personally?

8 A I think so.

9 Q This memorandum that you sent to the negotiating  
10 committee and to Mr. Orefice and Mr. Hanes and the attachment  
11 to it, did you also send it to Mr. Wessel? It is not listed  
12 here as such. I was wondering.

13 A I don't remember.

14 Q Do you know whether it was sent to Mr. Friedman?

15 A I doubt it, but I don't remember.

16 Q You said that at the September 24 meeting that  
17 Mr. Aymond's statement with regard to the possibility of a  
18 lawsuit that Mr. Aymond came on awfully strong, was your  
19 language. Was he very heated and excited when he said that  
20 or in talking about \$600 million lawsuit, that is an awfully  
21 strong proposition in and of itself?

22 A I don't think he was heated and excited. To me,  
23 it was part of the scenario of the General Counsel, and then  
24 the Chairman of the Board coming up, and he was obviously  
25 well prepared to go through all these various cases and made

1 it very clear that if he felt that we were at all at fault  
2 in any way, shape or form, if they lost the license, that  
3 they would take whatever avenues they could find in order  
4 to recover full damages or whatever they could from the Dow  
Chemical Company.

6 Q When you said he came on awfully strong, you  
7 simply understood when that kind of statement is made by the  
8 Chairman of the Board of the company, he wasn't kidding;  
9 is that what you are saying? You take this seriously?

10 A I take it seriously.

11 Q At some point this morning, in answering a question  
12 from Mr. Olmstead, you talked about Mr. Wessel's position.  
13 And you said his position was to keep the contract in effect,  
14 but to keep options open. Do you remember saying that?

15 A His position with regard to the Consumers-Dow  
16 relationship?

17 Q Yes.

18 A Yes.

19 Q When Mr. Wessel's position was to keep options  
20 open, what did that mean to you?

21 A Well, with a history of things changing with a fair  
22 degree of regularity, that day, we had concluded that  
23 conditions had not changed sufficiently to alter our position  
24 from being one of continuing to regard the contract as in  
25 effect, but tomorrow if something happened or the next day

1 if something happened, we would relook at the entire matter,  
2 something of some consequence.

3 Q Switching just briefly to two more matters with  
4 regard to the coal costs, you said that Consumers thirty or  
5 more days after the prior meeting suggested to you that  
6 escalation rates that ought to be used ought to be higher than  
7 what you had talked about with them a month or so earlier in  
8 1976. Is that right?

9 A What they had provided, I think, in writing to  
10 Burroughs within about a thirty-day period of that time.

11 Q Now, you were surprised that they came back with  
12 that figure or those figures so soon after that other meeting;  
13 is that right?

14 A Nothing surprised me, but, yes, it seemed strange  
15 is a better way to put it.

16 Q I guess you are unflappable at this point.  
17 Just turning for a moment to page transcript 2293,  
18 if you have that --

19 A What day is that? The second?

20 Q February 1, 1977.

21 A 2390?

22 Q 2293.

23 And I am referring to the answer that appears on  
24 lines 15 through the bottom of the page, and particularly  
25 the first paragraph, 15-19.

1 A May I read it?

2 Q Surely.

3 A Okay.

4 Q Now, it is our understanding the paragraph I  
5 referred you to on 2293, you did say in the hearing in Feb-  
6 ruary, 1977, that when Consumers and your people had agreed  
7 tentatively or otherwise on some of the data to be used,  
8 Consumers did confirm that your values were appropriate, but  
9 also added that they were relooking into the coal situation;  
10 is that right?

11 A That's what that says there.

12 Q And those are your words?

13 A Those are my words.

14 Q So the fact that they came back within a month  
15 or so thereafter is almost a natural consequence of the fact  
16 they were looking at something and told you they were  
17 looking at it and what they came back with were the results  
18 of their relcok; is that right?

19 A That's what they came back with.

20 MR. POTTER: I don't see how he can testify  
21 about --

22 MR. CHAPNOFF: Well, we are dealing with the  
23 witness' surprise that they came back.

24 MR. POTTER: Let's get this straight, though.

25 You are asking him to say what it is that Consumers came back



1 with. He has testified to the fact they came back, but what  
2 their motivation was and what they came back with, he can't  
3 testify.

4 BY MR. CHARNOFF:

5 Q Let's deal with this. You were on notice they  
6 were looking into the coal price studies. They did and  
7 talked with you and agreed with you as to the reasonableness  
8 of their numbers.

9 A That's what that says. And I assume that I was  
10 more aware of it then than I am now. And I wouldn't dispute  
11 that.

12 Q Now, do you recall or have any personal knowledge,  
13 Mr. Temple, as to what was happening with escalation rates  
14 for various fuels -- coal, oil, gas, uranium -- during the  
15 period '75, '76, '77?

16 A I am sure that they were going up.

17 Q At more rapid rates than historically had been the  
18 case?

19 A I can't comment on that.

20 Q Do you recall any concern with regard to coal  
21 prices in 1976 as to whether coal producers and maybe coal  
22 buyers were concerned with new stripmine legislation that the  
23 Congress was then considering?

24 A I am sure that is a fact. Whether I considered  
25 those things at the time, I can't recall.

1 Q Do you remember any concern at that time with  
2 regard to the potential for a large coal strike early in  
3 1977?

4 A Not particularly.

5 Q Would you agree that there necessarily is a great  
6 deal of uncertainty with regard to projecting escalation rates  
7 for fuel in the period of '75, '76, '77?

8 A I would agree that speculating on the future is  
9 always full of uncertainties.

10 Q And possibly reasonable people at that very time  
11 could disagree as to what future escalation rates would be?

12 A I would agree with that as well.

13 Q After Consumers people advised you of the higher  
14 escalation rates that they urged that you use and your people  
15 reviewed it and determined to maintain the escalation rates  
16 that you were using at the time, was there any discussion as to  
17 the basis upon which Consumers arrived at these higher esca-  
18 lation rates?

19 A I have no knowledge of that. What I recall taking  
20 place is that the people from Dow who were also buying coal  
21 who I think were buying coal in the ground as well as coal  
22 for us, were told that there was a difference. And I think  
23 at the meetings, at least as I recall, we said we would set  
24 up a meeting so that the Consumers experts and the Dow experts  
25 could get together and exchange the rationale and the reasons

1 and whatever they needed to know about one another's projection  
2 to be knowledgeable about the basis.

3 Q Did such a meeting take place?

4 A I think it did.

5 Q You were not there?

6 A I was not there.

7 Q Do you know whether Mr. Burroughs was there or  
8 would he have been one of the principal Dow representatives  
9 or was there some other Dow person knowledgeable?

10 A He is not the coal expert. He may have been there;  
11 I have no recollection.

12 Q Who is the Dow expert on coal pricing?

13 A I don't remember who it was at the time.

14 Q Are you familiar with that memorandum, a memorandum  
15 transmitted to you from Mr. Nute, dated August 19, 1976,  
16 attaching a memorandum of a telephone call that a Mr. R. W.  
17 Barker of the Dow Legal Staff had with a gentleman named  
18 Myron Cherry?

19 MR. POTTER: Let me correct the characterization.  
20 It was a telephone call Mr. Cherry had with Mr. Barker.  
21 So we don't leave the impression Mr. Barker called Mr.  
22 Cherry, it is the other way around.

23 MR. CHARNOFF: I accept that.

24 MR. POTTER: But I don't want it to look on the  
25 record the telephone call originated at Dow. It did not. It

1 came into Dow from Mr. Cherry.

2 BY MR. CHARNOFF:

3 Q Do you recall seeing this memorandum from Mr. Nute?

4 A If it was addressed to me, I probably saw it.

5 Q Do you recall having any concern with regard to  
6 what might be characterized as threats against Dow by Mr.  
7 Cherry?

8 A Without refreshing my memory, none whatsoever.

9 Q Would you like to take a moment just to skim  
10 through that memorandum and see if it does refresh your  
11 recollection?

12 A You mean do the whole thing here?

13 Q As much as you need to refresh your recollection?  
14 Are you finished?

15 A Yes, I have read it.

16 Q Does that opportunity to read the memorandum of  
17 Mr. Barker of this telephone call with Mr. Cherry which was  
18 initiated by Mr. Cherry on August 19 refresh your recollection  
19 of having seen that memorandum at the time?

20 A I don't really remember whether I saw it or not.

21 Q Do you remember any discussion of the threats  
22 against Dow that were contained in this memorandum?

23 A No. I remember that there was a conversation  
24 between Barker and Cherry. That's about the extent to  
25 which I recall short of reading this again was an event that

1 took place sometime in that time period.

2 Q I don't have any further questions. And I thank  
3 you.

4 BY MR. POTTER:

5 Q Mr. Temple, at any time prior to the remand  
6 decision or decision to remand the case from the U. S. Court  
7 of Appeals for the District of Columbia in July of 1976, at  
8 any time prior to that while you were General Manager of the  
9 Michigan Division, did you at any time yourself communicate  
10 any threat to the Consumers Power Company to the effect that  
11 the Dow Chemical Company either was, a, planning to sue, b,  
12 was going to sue, or was contemplating suing Consumers Power  
13 Company?

14 A I don't recall that.

15 Q Do you recall ever yourself making such a statement  
16 to anybody from Consumers Power Company in the period after  
17 the remand decision in July, 1976?

18 MR. OLMSTEAD: Could I have that question read  
19 back please?

20 (The pending question was read by the reporter.)

21 MR. CHARNOFF: Wasn't that asked and answered?

22 MR. POTTER: No. The first was in the period  
23 during the remand. The second part of the question is  
24 afterward did he ever communicate such.

25 THE WITNESS: Did I personally?

1 BY MR. POTTER:

2 Q Yes, sir.

3 A I guess I can't recall it.

4 Q Let me ask you to take a look at the letter which  
5 I believe may have been referred to during the examination  
6 by Mr. Olmstead, but may not. It is a letter dated November  
7 11, 1974, to Mr. Russell Youngdahl of Consumers Power Company.  
8 Could you identify that?

9 A Yes, it is a letter of November 11, 1974, and I  
10 don't think this was a part of this morning's discussion.

11 Q Now, did you sign that letter?

12 A Yes, I did.

13 Q Can you tell me what was your intention in sending  
14 that letter to Mr. Youngdahl?

15 MR. OLMSTEAD: Can I correct the record here?  
16 That letter is referred to in another letter. We didn't  
17 discuss it this morning.

18 MR. POTTER: Okay.

19 THE WITNESS: This was the letter, the first of  
20 a series of Russ and Joe letters, which attempts to get  
21 Consumers Power to provide us assurances that they would meet  
22 their obligations to deliver steam to us in 1980 consistent  
23 with the dates which were in the Dow-Consumers agreement.

24 BY MR. POTTER:

25 Q Now, at the time that this letter was written,

1 was there ongoing construction on the site to your knowledge?

2 A Construction -- it was either shut down or it was  
3 at a very, very low level.

4 Q What specifically were you trying to get from  
5 Consumers as a result of sending that letter?

6 A Well, what we were trying to do is to get them to  
7 provide assurances that they were going to meet the dates.  
8 We felt they were obligated to deliver steam in 1980. And  
9 based on our interpretation of that contract, we felt we  
10 were justified in demanding assurances that would satisfy us  
11 that they were indeed going to be capable of doing that and  
12 exerting their best efforts to achieve that end result.

13 Q I show you a letter dated November 25, 1974, which  
14 is addressed to you from Mr. Russell Youngdahl and ask if  
15 you can identify that letter.

16 A This is in response to my letter of November 11 --  
17 This is in response to my letter of November 11  
18 wherein we requested assurances. Russ said a lot of things,  
19 but as far as we were concerned, upon receipt of the letter,  
20 didn't think much of the assurances that we were given.

21 Q That was your judgment of the letter you received  
22 from Consumers Power Company dated November 25, 1974?

23 A And I believe I responded to that letter later on.

24 Q I now show you a letter dated December 19, 1974,  
25 to Mr. Russell C. Youngdahl of Consumers Power Company and



1 ask you if you can identify that.

2 A Yes.

3 Q That is your response to the letter of Consumers  
4 Power Company that you received on November 25, 1974?

5 A That's correct.

6 Q I ask you to read if you would the last two  
7 paragraphs of that letter aloud.

8 A It says: "Quite frankly, we have not yet decided  
9 how to proceed. We are reluctant to do or write anything which  
10 would unnecessarily 'exerbate' your present difficulties.  
11 At the very least, Dow does not want the situation as  
12 presently forecast to further deteriorate. At the same time,  
13 we do not consider it yet commercially necessary to take any  
14 action which might prove irreversible.

15 "Accordingly, we will continue to monitor the  
16 matter while considering our options. I also urge you to  
17 review your conclusions and advise me if you are modified  
18 or if you are able to give us the assurances we need."

19 Q Was there any further response to this letter, do  
20 you know? That is, the Dow letter to Consumers Power dated  
21 December 19, 1974.

22 A I think Youngdahl wrote me another letter after the  
23 first of the year.

24 Q Would you take a look at a letter dated January  
25 3, 1975, to yourself from Mr. Youngdahl and tell me whether

1 that relates to this exchange of correspondence in any way?

2 A It starts off by saying it acknowledges receipt of  
3 my letter of December 19 where in essence he says he is glad  
4 it is not yet commercially necessary for us to take any action  
5 which might prove to be irreversible.

6 Q Now, was the project still shut down at that point  
7 to your knowledge?

8 A Yes.

9 Q Does this complete the exchange of correspondence  
10 that you referred to as the Russ and Joe correspondence?

11 A No, there was another, at least one or two more  
12 letters, at the end of -- near the end of 1975 or the begin-  
13 ning of '76.

14 Q I invite your attention to a letter dated December  
15 11, 1975 to Mr. R. C. Youngdahl and signed by yourself and  
16 ask if you can identify that.

17 MR. CHARNOFF: This is now on --

18 MR. POTTER: This is December 11, 1975, letter.

19 THE WITNESS: Yes, I wrote this letter.

20 BY MR. POTTER:

21 Q Is that the next in the series of correspondence  
22 as you recall it between yourself and Mr. Youngdahl?

23 A As I recall it, yes.

24 Q What was your intent in sending that letter to  
25 Mr. Youngdahl?

1           A       Well, the intent of sending the letter -- and I  
2 think by this time, the job had been restarted -- was to bring  
3 the parties together with the idea of beginning negotiations  
4 to alter the contract as may be necessary to make it be a  
5 usable document and be good for both companies, recognizing  
6 the situation which existed in 1976 and -- well, '76. And  
7 to commence negotiations. I think it suggests we get together  
8 January 9.

9           Q       I hand you a letter dated January 2, 1976, addressed  
10 to Mr. Joe Temple, Jr., and signed by Russ, apparently  
11 Russ Youngdahl, and bearing the letterhead of Consumers  
12 Power Company, and ask if you can identify that.

13          Q       Now, this one says "Joe." The "dear" has been  
14 dropped.

15                   Yes, I recognize this.

16          Q       Is this to your understanding the response to your  
17 letter of December 11, 1975?

18          A       That is what it says in the first line.

19          Q       Subsequent to the receipt of that letter from Mr.  
20 Youngdahl, did negotiations again resume between Consumers  
21 and Dow Chemical Company?

22          A       Yes, they did.

23          Q       Does this to the best of your knowledge complete  
24 the correspondence of the Russ and Joe letters?

25          A       Well, I wrote again on June 30.

1 Q June 30, 1976?

2 A 1976. I don't recall other ones.

3 Q So you regarded the June 30, 1976, letter as being  
4 the last letter in this continuing exchange beginning November  
5 11, 1974?

6 A Yes.

7 Q Okay.

8 MR. OLMSTEAD: Just as a matter of clarification,  
9 the last letter that you wrote --

10 THE WITNESS: To Youngdahl?

11 MR. OLMSTEAD: -- was your answer that was the last  
12 letter between the two of you or the last letter that you  
13 wrote?

14 MR. POTTER: Whatever his answer is, I want him  
15 to understand what the question was from me at that point.  
16 And that is, he characterized the Russ and Joe letters, and I  
17 wanted to make sure are the Russ and Joe letters the ones that  
18 begin in November of 1974 and end in Consumers response in  
19 January of '76, or does it end in your judgment with the  
20 June 30 letter, 1976?

21 THE WITNESS: I think that series really ends,  
22 the January letter from Russ to me.

23 BY MR. POTTER:

24 Q Now, in addition to the different drafts of  
25 testimony that were prepared between the period of September

1 29, 1976, and the draft that was finally filed with the Board  
2 before you testified on November 30, 1976, do you recall  
3 signing an affidavit that was prepared at the request of  
4 Consumers Power Company to be filed with a brief or something  
5 of that nature with the Board?

6 A I think I did.

7 Q What did you understand the purpose of the affidavit  
8 to be or do you know?

9 A I don't know or I don't recall.

10 Q Did you understand at the time that the affidavit  
11 you were signing was separate and distinct from the testimony  
12 that was to be prepared and filed with the Board?

13 A I think so.

14 Q Now, the answer to one of the questions that was  
15 posed to you -- and I think it was from Mr. Charnoff -- the  
16 question was at the time that you received the telephone  
17 call from Mr. Youngdahl on August 5, 1976, advising you that  
18 the cost of the project had increased to \$1.67 billion --  
19 and I think the question was: do you recall, you, Mr. Temple,  
20 if anyone challenged that figure?

21 I believe your answer was no. Is that correct?

22 A I don't recall that anyone challenged that figure.

23 Q Did you have any confidence that would be the  
24 ultimate figure for the cost of the project when it was given  
25 to you at that time?

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1           A       No. I didn't have any confidence that it was any  
2 better or any worse a number than other numbers they had  
3 given us at various points in time plus at that time, at least  
4 I was aware that there was a figure of \$2 billion which I think  
5 was a Bechtel figure.

6           Q       Who in fact made the decision Mr. Klomparens  
7 should be the head of this corporate review team? Was it you  
8 or Mr. Oreffice, if you can recall?

9           A       I can't really recall, but, well, Oreffice may  
10 have suggested it. I can't recall.

11          Q       I invite your attention to pages 2381 and 2382  
12 of the transcript of your testimony of the earlier proceeding  
13 before the Nuclear Regulatory Commission. Would you take  
14 a moment and look at that again?

15          A       Okay, I read it.

16          Q       I invite your attention specifically to the  
17 question and answer on page 2382. The question reads as  
18 follows-- I believe this is by Mr. Cherry: So the answer to  
19 my question is yes. You were informed by a Dow representa-  
20 tive that one or more Dow representatives made it clear to  
21 Consumers and in that period prior to your coming on the  
22 stand that the scope of the testimony as set up by Consumers  
23 did not reflect all of the underlying facts concerning the  
24 "Dow corporate position"?

25                   And your answer is, I think: that is true. Is

1 that correct?

2 A Yes.

3 Q That's what that testimony states there?

4 A That's what it says.

5 Q I believe when Mr. Charnoff asked you that question  
6 you were unclear as to what specifically that related to. And  
7 I am going to ask you did it relate to the Consumers Power  
8 Company draft of testimony that was prepared around October  
9 22, 1976, in which you earlier testified to that you had some  
10 problems with?

11 A That Mr. Bacon prepared?

12 Q Yes, the Bacon draft as it was referred to.

13 A I believe it did.

14 Q So your reference then on that page, reference to  
15 that particular draft of the testimony, that was prepared by  
16 Mr. Bacon; is that correct?

17 A To the best of my ability to recall, that is correct.

18 Q Now, during Mr. Charnoff's examination of you, he  
19 showed you a copy of that particular draft of testimony that  
20 was sent. And he asked you whether you had seen an addendum  
21 which appeared on the back of that testimony.

22 Let me see if I can find it.

23 He asked you to look at this addendum on the back  
24 which is 4-1/4 pages draft and entitled "Outline of Detail of  
25 Last Review Conducted not Currently Planned as Part of Direct



1 Testimony)."

2 Do you agree that is what that says?

3 A That's what it says.

4 Q And I believe your testimony was you don't recall  
5 whether you ever saw that particular addendum when you saw  
6 this particular draft of the testimony when it came in; is  
7 that correct?

8 A That's correct.

9 Q My question to you is this: when your testimony  
10 was finally prepared between the attorneys for Dow and  
11 Consumers Power Company, do you recall Consumers Power Com-  
12 pany attorneys at any time requesting that your direct  
13 testimony include any of the material that is set out in this  
14 addendum?

15 Take a minute and read that if you need to.

16 MR. REYNOLDS: As a matter of clarification, you  
17 mean a request made to Mr. Temple as opposed to questions  
18 that might have been made to one of the Dow attorneys that  
19 were working with the Consumers attorneys?

20 MR. POTTER: Either way. Certainly he can answer  
21 if it was a request made to him directly or if he knows a  
22 request made to the Dow attorneys.

23 THE WITNESS: Ask me the question again.

24 BY MR. POTTER:

25 Q Do you recall if any of the sessions that you had

1 with the Dow attorneys and the Consumers attorneys in the  
2 actual preparing of you to testify in this proceeding had  
3 any request -- in this proceeding, I refer to the earlier  
4 suspension hearing -- any request coming from the Consumers  
5 Power attorneys either to you directly or to the Dow attorneys  
6 in your presence that the information contained in that  
7 addendum that you have just read, that it be included in your  
8 testimony, the direct testimony?

9 A I don't have any recollection at this time.

10 Q Mr. Charnoff asked you a question as to whether  
11 according to your own personal knowledge, you had any knowledge  
12 of what effect, if any, the threat of litigation or however  
13 one might want to interpret whatever was said by the Consumers  
14 Power people on the 21st and 24th of November, 1976, what  
15 effect that had on the Dow USA Board decision. And I think  
16 you stated you had no personal knowledge as to what effect  
17 that might have had on them; is that correct?

18 A That's correct. They went off in a separate room  
19 and discussed whatever they discussed.

20 Q Do you have an opinion as to what significant, if  
21 any, that threat had on the decision?

22 MR. CHARNOFF: I am going to object. I don't know  
23 the basis of an opinion when a man has no personal knowledge.

24 MR. POTTER: The record is replete in this lot  
25 of depositions in the last two weeks, so we will take the

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1 answer.

2 Go ahead.

3 THE WITNESS: Well, I have a personal opinion that  
4 that made a significant difference.

5 BY MR. POTTER:

6 Q That is your personal opinion that it did make a  
7 significant difference?

8 A Yes.

9 Further, nobody ever specifically came to me and  
10 said they disagreed with anything that we had said in the  
11 Division.

12 MR. REYNOLDS: Is that the basis of your opinion  
13 that nobody came to you?

14 THE WITNESS: The complete answer is the basis of  
15 my opinion.

16 MR. POTTER: I don't have any further questions.

17 MR. CHARNOFF: To clarify that one point, all  
18 together in the record, nobody came to you and said they  
19 agree with the specifics of your recommendation either; is  
20 that right?

21 THE WITNESS: That is also true.

22 MR. OLMSTEAD: No further questions.

23 MR. POTTER: On the record so we can clarify this,  
24 on behalf of the Dow Chemical Company, we will waive sig-  
25 nature of Mr. Temple.

(Whereupon, at 2:35 p.m., the taking of the depo-  
sition was concluded.)

\* \* \*

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CERTIFICATE OF NOTARY PUBLIC AND REPORTER  
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I, Elisabeth R. Craft, the officer before whom the foregoing deposition was taken, do hereby certify that the deponent whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said deponent was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said deponent; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

*Elisabeth R. Craft*  
ELISABETH R. CRAFT  
Notary Public in and for the  
District of Columbia

My commission expires 1 December 1980.

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