

UP
SOUTHERN DISTRICT OF NEW YORK

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GENERAL PUBLIC UTILITIES CORPORATION, :
JERSEY CENTRAL POWER & LIGHT COMPANY, :
METROPOLITAN EDISON COMPANY and :
PENNSYLVANIA ELECTRIC COMPANY, :

Plaintiffs, CIVIL ACTION
: NO. 80 CIV.
-against- 1683 (R.O.)
:

THE BABCOCK & WILCOX COMPANY and
J. RAY McDERMOTT & CO., INC., :

Defendants. :
-----x

Continued deposition of the Plaintiff,
GENERAL PUBLIC UTILITIES CORPORATION, by
MILTON HAIMOWITZ, taken by Defendants, pursuant
to adjournment, at the offices of Davis Polk &
Wardwell, Esqs., One Chase Manhattan Plaza,
New York, New York, on Thursday, April 23, 1981,
at 10:10 o'clock in the forenoon, before
Charles Shapiro, a Certified Shorthand Reporter
and Notary Public within and for the State of
New York.

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* * *

2 M I L T O N H A I M O W I T Z, having been
3 previously duly sworn, was examined and
4 testified further as follows:

5 EXAMINATION (continued)

6 MR. WISE: Off the record.

7 (Discussion off the record.)

8 BY MR. WISE:

9 Q Mr. Haimowitz, when we broke off
10 yesterday, we were discussing Defendants'
11 Exhibit 21, which is a draft of a contract between
12 GPU Service and the operating companies on the one
13 hand and Gilbert Associates on the other, and
14 specifically, we were looking at Article XXIV of
15 that agreement and subsection B of that article
16 which relates to "Limitation of Liability;
17 Indemnity."

18 I have just a few follow-up questions
19 on that and then we will move on to something
20 else.

21 Do you recall discussing that
22 particular clause, subsection B of Article XXIV,
23 with anyone representing Gilbert Associates during
24 the negotiations (handing)?

25 A I don't remember if that specific clause was

1

2

discussed.

3

4

Q Did you discuss it with anyone within
the GPU System?

5

A Yes.

6

Q With whom did you discuss it?

7

A I believe I discussed the provision with
Metropolitan Edison.

9

Q Who at Metropolitan Edison?

10

A I believe it was John Mazella.

11

12

Q What did you say to him and what he
say to you about that clause?

13

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A I mentioned that it was an onerous provision
and if possible we should do our best to delete
it from the draft contract and it was of such --
this plus the other provisions that we found
objectionable were such that we felt that if
necessary, we should not enter into a master
services agreement and continue to do the work
under old existing contracts.

21

22

Q What, if anything, did he say to you
on this subject?

23

A I believe he concurred.

24

25

Q Do you know whether he had any
discussions with anyone representing Gilbert

1
2 Associates concerning this clause?

3 A I can't answer.

4 Q He never reported anything to you --

5 A No.

6 Q -- is that correct?

7 MR. WISE: Let me ask to have marked
8 as Defendants' Exhibit 24 for identification
9 a document that is entitled "Standard
10 Consulting Agreement, GPU Service
11 Corporation."

12 (Document entitled "Standard
13 Consulting Agreement, GPU Service
14 Corporation, was marked as Defendants'
15 Exhibit 24 for identification, as of this
16 date.)

17 Q Mr. Haimowitz, have you ever seen
18 Defendants' Exhibit 24 marked for identification
19 before today (handing)?

20 A Yes.

21 Q What is it?

22 A It appears to be a draft copy of a standard
23 consulting agreement with a set of proposed terms
24 and conditions.

25 Q Do you know who authored this document?

1

2

A Yes.

3

Q Who?

4

A Myself, Fred Glickman primarily.

5

Q When was it prepared?

6

A I believe in 1975 or '76.

7

Q Were you asked to begin work on this

8

by someone?

9

A I may have been. I don't recall.

10

Q What is your recollection of how this

11

came into being?

12

A We had been doing much work with small consulting firms, various tasks of a limited nature on a limited basis, and we believed that there should be a set or a standard format for these small consulting firms when they would undertake their services on our behalf.

13

14

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16

17

18

Q You say "we believed."

19

Whom are you including in that?

20

A Fred Glickman.

21

Q And anyone else?

22

A I don't recall.

23

Q Who did the first draft of this

24

document?

25

A I don't remember.

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Q Did you do any drafts of this document?

A I believe I may have.

Q Were there any documents that you looked at in connection with your work on this draft?

A I may have. I don't recall.

Q Was any effort made, to your knowledge, in connection with the preparation of this draft to review existing agreements between GPU or its operating companies and various contractors?

A I don't recall.

Q To your knowledge, were there any other standard agreements prepared within GPU Service?

A There may have been some drafts prepared.

Q With respect to what types of contracts were such drafts prepared?

A I believe we prepared drafts of contracts with construction managers, draft contracts with architect engineers, draft contracts for construction type services and draft contracts for owner-furnished equipment.

Q Did you work on the drafts for each

1

2

of those different types of contracts you have
just mentioned?

3

4

A I believe so.

5

Q Who else worked on the drafts?

6

A I believe I received some help from Ed
Murtagh.

7

8

Q Who is Mr. Murtagh?

9

A Ed Murtagh is a member of the Materials
Management Department in Parsippany.

10

11

Q When did he join GPU Service?

12

A I believe late in 1975.

13

Q Is he a lawyer?

14

A I don't know.

15

Q Did he work for you?

16

A No.

17

Q Who was his superior?

18

A Fred Glickman.

19

Q Was there anyone else who helped in
the preparation of the drafts?

20

21

A I don't recall.

22

Q What happened to the drafts after they
had been prepared?

23

24

A We solicited opinions from our counterparts
at the operating companies for suggested

25

1
2 modifications, additions or alterations.

3 Q Did you receive comments from those
4 people?

5 A No.

6 Q Did you ever do anything to follow up
7 to determine why comments had not been received?

8 A I don't specifically remember following up.

9 Q What happened with respect to the
10 drafts after they had been sent to the operating
11 companies for comments, if anything?

12 A Nothing.

13 Q So that to the best of your knowledge,
14 that was the end of it? You sent them out to the
15 operating companies and nothing further has been
16 done since that took place?

17 A To the best of my knowledge, nothing further
18 has been done.

19 Q Are copies of those draft contracts
20 maintained at Parsippany, to your knowledge?

21 A I believe so.

22 Q Do you have copies of them in your
23 files?

24 A I don't know.

25 Q Who would have copies of them, to the

1

2

best of your knowledge?

3

A They would be in the files of the Materials Management Department.

5

6

Q Do you know whether those files have been searched in connection with this litigation?

7

A I believe so.

8

9

Q Do you know whether any of those drafts contained clauses relating to insurance?

10

A I don't remember.

11

12

13

Q Do you know whether any of them contained clauses relating to consequential damages?

14

A I'm not sure.

15

16

17

Q Do you know whether any of those contracts contained clauses relating to indemnification?

18

A I'm not sure.

19

20

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MR. WISE: Mr. Klingsberg, we have gone through the materials from the contract production that was made here in New York at your offices and I believe we have also gone through the material from Parsippany at the time that it was produced to us on location --

1
2 MR. PU: That's correct.

3 MR. WISE: We have not seen any of
4 these draft contracts and obviously would
5 like to have them in order to examine
6 these witnesses.

7 I would appreciate if you could check
8 on why they weren't produced at some time.

9 MR. KLINGSBERG: I will check on
10 whether they were produced.

11 MR. WISE: All right.

12 MR. KLINGSBERG: And if not, why not.

13 BY MR. WISE:

14 Q In the preparation of any of the
15 draft standard contracts, was there consideration
16 given to the special problems that might be
17 raised by contracts for nuclear facilities?

18 A They may have but I don't recall if there
19 was any special consideration given to contracts
20 for nuclear stations.

21 Q Do you have any recollection as to
22 whether clauses were included in the draft
23 standard contracts which clauses were to be used
24 for nuclear facilities?

25 A I have no recollection.

1
2 Q Would you take a look at page 6 of
3 Exhibit 24.

4 Will you take a moment and read
5 Article IX, which is titled "Warrenties/
6 Indemnifications," and Article X on the following
7 page, which is titled "Consequential Damages."

8 Have you had an opportunity to review
9 those two clauses?

10 A Yes.

11 Q Did you participate in the drafting
12 of those particular two clauses?

13 A I believe so.

14 Q Did the definition of consequential
15 damages as defined in Article X reflect your
16 understanding of what consequential damages
17 includes?

18 MR. KLINGSBERG: Well, for what
19 purpose?

20 MR. WISE: His general understanding
21 at the time.

22 MR. KLINGSBERG: I will object to the
23 form of the question.

24 Q Do you understand the question,
25 Mr. Haimowitz?

1

2

A No.

3

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Q Did you at the time that this draft standard contract was being prepared have any understanding of what the term "consequential damages" meant?

7

A I believe so.

8

9

10

Q My question now is: Does Article X as it is written here conform to that understanding that you had?

11

A It conforms to my understanding.

12

13

Q Does Article X conform to your understanding of consequential damages today?

14

15

MR. KLINGSBERG: Well, now wait a second.

16

All right, I will allow the question.

17

18

MR. WISE: Perhaps the reporter could read the question back.

19

20

(The reporter read back the last question.)

21

22

THE WITNESS: Could I have the previous question and answer read, please.

23

24

(The reporter read back from the record as requested.)

25

MR. KLINGSBERG: Well, I will object to

1
2 that question, I object to the question on
3 the grounds that I think that -- I want to
4 frame the objection in such a way that I
5 am not accused of making an improper
6 statement on the record, but it just seems
7 to me if you look at the clauses that are
8 involved, there is a kind of definition of
9 consequential damages in the context of
10 these clauses, it is not a definition like
11 a dictionary definition, so I think to
12 a certain extent the question is misleading.

13 You can answer it if you can.

14 I suggest you read the document
15 carefully.

16 Off the record.

17 (Discussion off the record.)

18 THE WITNESS: Could you repeat the
19 question, please.

20 (The reporter read back the pending
21 question.)

22 A I believe there is no difference in my
23 understanding of consequential damages then or
24 now.

25 Q So that the record is clear then,

1
2 this article, to the extent it defines consequential
3 damages, provides a definition with which you
4 agree today?

5 A No. I said that in my mind the term
6 consequential damages as used herein is clear.

7 Q Do you today have an understanding of
8 the meaning of the term consequential damages?

9 A Yes.

10 Q Does the definition that is contained
11 in Article X conform to your understanding today?

12 A My understanding of the term consequential
13 damages is the same as it was then when the
14 provision was drafted and it is the same now.

15 Q In your understanding, does Article X
16 contain a definition of consequential damages?

17 A It contains a definition that I can set
18 forth.

19 Q I'm sorry, I misunderstand your
20 answer.

21 A It is clear to me what the term was
22 intended to -- to be used as a definition.

23 MR. WISE: I'm sorry, could I have
24 that read back.

25 (The reporter read back the last

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answer.)

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A (continuing) It is clear to me that the term, as defined, carries forth the intentions of what consequential damages, to my mind, are.

6

Q Both then and now?

7

A Yes.

8

9

Q Mr. Haimowitz, when was the first time you ever had any contact with anyone from B&W?

10

A It may have been late '75 or early '76.

11

12

Q In what connection did you have contact with somebody from B&W?

13

A Can I modify that original answer?

14

Q Sure.

15

A I just remembered something.

16

17

Could you ask the question about the first time contact, I believe?

18

19

20

Q I don't know that I would get the question the same way. Why don't you just go ahead and make a statement as to what you recall.

21

22

A My first contact with B&W took place my second week at GPU in January 1975.

23

Q What happened then?

24

25

A Members of the B&W Construction Department involved with furnishing a boiler for the

1
2 Homer City station appeared and I attended a
3 meeting in which a claim that B&W had was
4 discussed.

5 Q Homer City is a fossil plant,
6 as I understand it?

7 A Homer City Unit No. 3 is a fossil
8 plant.

9 Q When was the next time that you had
10 any contact with anyone from B&W?

11 A I remember some communication with B&W
12 in very late '75 or early '76.

13 Q What happened at that time?

14 A I believe that a -- I was made aware of a
15 claim by B&W for additional moneys for a supposed
16 delay in the NSSS contract, the TMI-2.

17 Q How were you made aware of this?

18 A I think I was given a copy of a claim that
19 B&W had sent to our Project Manager.

20 Q What did you do about it?

21 A I reviewed the claim to determine its
22 validity.

23 Q Did you reach any conclusions after
24 reviewing the claim?

25 A Initially, I believed that the claim was

1
2 invalid in its entirety and recommended
3 rejection.

4 Q To whom did you make such a
5 recommendation?

6 A To the Project Manager, the Manager of
7 Projects, and I think Fred Glickman.

8 Q What happened next with respect to
9 that claim?

10 A After consultation with Fred Glickman and
11 others, we sought an interpretation from GPU's
12 counsel regarding the position that I had
13 generated based upon my interpretation of the
14 claim.

15 Q How had you interpreted the claim?

16 A I thought that the delay, which was the
17 basis of the B&W claim, was invalid under a
18 provision of the contract entitled "Excusable
19 Delay."

20 Q What contract are you referring to?

21 A I'm referring to the -- what we called
22 the 1967 contract with B&W and NSSS for TMI-2.

23 Q Had you had an opportunity to read
24 that agreement?

25 A I read portions of that agreement.

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2

Q From whom did you obtain it?

3

A I believe I obtained a copy of that contract from our project files.

4

5

Q Did you review any other files in connection with your review on this claim?

6

7

A I don't remember.

8

Q Do you recall whether there were any notes or memoranda contemporaneous with the contract or its negotiation which you saw at that time?

10

11

12

A I have no recall of any such documents or memoranda.

13

14

Q Did you ask anyone if any memoranda or notes had been prepared at or about the time of the negotiation and execution of the 1967 contract which might reflect on those negotiations or the meaning of the terms?

15

16

17

18

19

A I don't remember asking anybody for documents which led to the negotiations of that contract.

20

21

22

Q Did anyone ever mention to you that such documents existed?

23

24

A I don't remember.

25

Q Has anyone ever cited such documents

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2

to you in the course of any discussions?

3

A I do not believe so.

4

5

6

Q Has anyone ever mentioned in your presence that someone ought to look for those documents to see if any exist?

7

8

A They may have but I have no recollection of any.

9

10

Q Do you know whether anyone has ever undertaken to look for such documents?

11

12

A They may have but I have no recollection of that.

13

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15

16

Q Have you under any circumstances seen any writings other than the contract itself which relate to it and were made contemporaneous with the negotiation and execution of the agreement?

17

18

A I may have but I can't recall ever seeing any.

19

20

21

Q Did you have any writings to work with in forming your interpretation other than the contract itself?

22

23

A I believe that the only document utilized was the contract itself.

24

25

Q Did you have any discussions with anyone who was present during the negotiation or

1
2 execution of the 1967 contract in connection with
3 your review?

4 A I don't believe so.

5 Q Do you know which persons at GPU or
6 Met Ed or JCP&L were involved in the negotiation
7 and execution of the 1967 contract?

8 A I believe that the execution of the contract
9 was made by somebody from Jersey Central. That's
10 all I can answer of anything with respect to the
11 negotiation or whatever else you asked.

12 Q Execution I believe was the other word.

13 A Execution I know was a Jersey Central thing.

14 Q As of today, have you ever had any
15 discussions with any person concerning the
16 negotiation of the 1967 contract with B&W?

17 A I may have but I don't remember any incident
18 or specific incident.

19 Q And you don't remember any specific
20 person?

21 A I don't remember.

22 Q What happened after you received advice
23 from counsel?

24 A We took -- we in the Contracts Department and
25

GPU project personnel took another look at the provision.

Q Did you receive written advice from counsel?

A I don't believe so.

Q After you took another look at the provision, what did you do next?

A We felt that the claim could not be rejected in its entirety but felt that there was a basis for negotiation.

Q What was your reason for feeling that the claim could not be rejected in its entirety?

MR. KLINGSBERG: Well, other than advice of counsel, I take it?

MR. WISE: Well, I don't want to ask him what the advice of counsel was. I am now asking him what the business position of the company was as they negotiated with B&W. I think I am entitled to inquire into that. I won't ask him what the basis of his opinion was and I have stayed away from trying to ask him what the difference between counsel's opinion and his opinion was so we can avoid that problem. I think I am

entitled to find out what the position of GPU was during these negotiations.

MR. KLINGSBERG: O. K.

THE WITNESS: Could you have the question repeated.

(The reporter read back the question as requested.)

MR. KLINGSBERG: Well, that is different from what was the position of GPU with regard to --

MR. WISE: I will take your counsel's suggestion and rephrase my question.

BY MR. WISE:

Q What position did GPU take with respect to the excusable delay provision?

A The provision taken, that the excusable delay would not, not serve as a total sort of disclaimer of the entire claim.

Q What I am now trying to determine, without asking you what advice of counsel you may have received, is how you interpreted the clause, and by "you" I mean from the GPU Service side, putting aside how your counsel may have interpreted it, but what interpretation were you following

1
2 that led you to the belief that the claim could
3 not be rejected? I don't want to know whether it
4 was the same or different from whatever your
5 counsel may have told you.

6 A Facts were given to me by the Project
7 Manager and I may even have been shown
8 correspondence which showed that GPU Service
9 Company did in fact delay B&W for some portion
10 of time.

11 Q Were there further negotiations with
12 B&W on this claim?

13 A Yes.

14 Q Who conducted those negotiations on
15 behalf of GPU?

16 A I was present at some negotiations, Fred
17 Glickman may have been present at some of the
18 negotiations.

19 Q Who was in charge of running the
20 negotiations from GPU's side, if anyone?

21 A I don't believe I can characterize as
22 anyone running the negotiations. I believe a
23 better characterization would have been a team
24 approach.

25 Q In any event, you were on the team;

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2

is that true?

3

A I believe that's a fair statement.

4

Q Who negotiated on behalf of B&W?

5

A I remember Grant Ward, who I believe was

6

a Senior Project Manager, I remember Lee Pletke

7

being present at the meetings, I remember

8

Gooden Gray of the New York sales office being

9

present at some meetings, I remember Gerry White,

10

also in the sales capacity, being present at

11

some of the meetings, and I also remember at one

12

of the meetings a Manager of Projects of B&W,

13

and I believe his name was Stewart.

14

Q Was GPU represented at any of the

15

negotiations by outside counsel?

16

A No.

17

Q What was the resolution of the claim?

18

A There was no resolution of the claim.

19

Q What happened?

20

A The parties never reached a total

21

understanding or an agreement on the value of the

22

claim, the length of delay or certain other

23

factors that we were not able to resolve.

24

Q What were the other factors?

25

A I remember that at all times during the

1
2 negotiations we expressly reserved any rights or
3 remedies that we may have but that any dollar
4 settlement would terminate completely all B&W
5 claims, disputes it has or which it may have under
6 the contract. That is one of the issues I
7 remember.

8 Q Were there others?

9 A I remember one other issue and that is the
10 licensing activities that B&W alleged would have
11 to be performed and how they would be reimbursed
12 for such licensing activities and at what point
13 would the reimbursement take place.

14 Q Did B&W object to a settlement of
15 the delay claim which would terminate its rights
16 to present other claims?

17 A I don't think so.

18 Q You mentioned that one of the other
19 factors involved in the parties' failure to ever
20 reach a total understanding was that GPUSC
21 wanted the total dollar settlement to clean up
22 all claims; is that correct? Am I correct in
23 that understanding?

24 A I believe so, yes. Your understanding is
25 correct.

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Q My question now is: How did that

factor contribute to the parties' failure to conclude an agreement? Was it because there were other claims or was it because you weren't able to reach an agreement on the value of such other claims or in what way did that factor contribute to the inability to conclude a final agreement?

A That factor did not contribute to the inability to reach a final agreement.

To the best of my knowledge, it was B&W's reluctance to allow GPUSC to reserve all of its rights and remedies that it has under the existing contract or which it may have.

Q You mentioned licensing activities.

What was involved with respect to the dispute between the parties on that issue?

A As I recall, B&W took a position and sought reimbursement for certain licensing activities that it alleged were performed at a time subsequent to when B&W perceived the contract to have been completed and also wanted to keep open any additional licensing activities that it had to perform until the contract would be completed.

Q What was GPU's position on that issue?

1
2 A We believed that many of the tasks which
3 B&W alleges increased its costs were contract
4 requirements, remained contract requirements
5 and should not be reimbursed.

6 Q And by "contract requirements," you
7 are referring to the 1967 agreement?

8 A I am referring to the 1967 agreement.

9 Q You used the language "many of the
10 tasks." Were some of the tasks that you
11 recognized B&W was entitled to reimbursement for?

12 A I believe a number of tasks were deemed as
13 out of scope, I think the term was "out of scope"
14 or "out of time frame."

15 Q What is meant by "out of scope" or
16 by "out of time frame"?

17 A By "out of time frame," which is a more
18 appropriate term, it is because of a delay certain
19 new licensing requirements allegedly became due
20 or mandated and those particular tasks, which are
21 a direct cause of the delay, which put the
22 requirements in a different time frame, could be
23 deemed as a cost to B&W attributed to the delay.

24 Q Did GPU ever reach any dollar value of
25 the amount which it believed B&W was entitled to

1
2 as excess costs for delay or whatever term is
3 the appropriate one?

4 A I don't believe GPU reached that decision,
5 but I believe that in the negotiations I was
6 prepared to summarize a dollar settlement which
7 could then be presented to management for review
8 and approval but would also include the so-called
9 agreements that we felt would have to be
10 incorporated as part of that settlement.

11 Q What was the dollar amount you were
12 prepared to recommend?

13 A I don't recall.

14 Q Do you have any rough estimate?

15 A Approximately a million dollars.

16 Q Do you know what the total amount of
17 the claim was by B&W?

18 A The claim that was under negotiation I
19 believe approached \$2 million.

20 Q Do you know whether B&W was ever paid
21 any part of the claim?

22 A I have no knowledge of whether they have
23 been paid.

24 Q The negotiations broke off before you
25 made a recommendation to management; is that true?

1
2 A That is correct.

3 Q Have you ever seen a copy of B&W's
4 answer and counterclaim in this lawsuit?

5 A I have.

6 Q Have you reviewed the counterclaim?

7 A I have seen the counterclaim.

8 Q Have you done anything other than
9 simply read it through?

10 A I believe so.

11 Q What have you done?

12 MR. KLINGSBERG: I think I am going
13 to exclude consultation with counsel from
14 that.

15 MR. WISE: Yes, I will exclude
16 consultation.

17 A The answer is no.

18 Q Have you examined any records with
19 respect to that counterclaim?

20 A No.

21 Q Have you consulted with anyone other
22 than your lawyers with respect to that
23 counterclaim?

24 A No.

25 Q At the time of the negotiations, who

1
2 was the most knowledgeable person at GPU Service
3 or Met Ed or JCP&L, whichever was the relevant
4 company, with respect to the facts underlying
5 B&W's claim? And if it is not one person, you
6 can name more than one.

7 A May I assume we are talking about the
8 counterclaim?

9 Q Yes.

10 A Of the 1967 NSSS contract?

11 Q That's correct.

12 THE WITNESS: May I have the question
13 read back, please.

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

16 A In my mind, the most knowledgeable man
17 with respect to the facts surrounding that claim
18 is Dick Heward.

19 Q Are you familiar with a Mr. Barton?

20 A Yes.

21 Q Was he involved in these discussions?

22 A To the best of my knowledge, John Barton was
23 never involved in any negotiations with B&W with
24 respect to its claim.

25 MR. KLINGSBERG: Off the record.

(Discussion off the record.)

MR. WISE: Why don't we take a break
now.

(Whereupon, a recess was taken.)

MR. KLINGSBERG: Off the record.

(Discussion off the record.)

MR. WISE: Where were we?

(The reporter read back the last
question and answer.)

BY MR. WISE:

Q Leaving for the moment the subject of
B&W's claim, which we have just been discussing,
what other contacts with B&W have you had?

A I have had several contacts and
communications with respect to its contract at
Homer City-3 for the boiler and negotiations
of claims relevant to that contract, I have had
contacts with B&W for the post accident Master
Services Agreement for TMI-2, and I have recently
had a communication with B&W for the purposes of
entering into a new Master Services Agreement
for all nuclear plants operated by GPU.

Q Were you involved in negotiating any
contracts with B&W relating to TMI prior to the

1
2 accident?

3 A I don't believe so.

4 Q Do you recall ever seeing or being
5 informed of an agreement between Metropolitan
6 Edison and B&W for long-term training services
7 entered into sometime in 1975?

8 THE WITNESS: Could you repeat that
9 question, please.

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

12 A Yes.

13 Q What do you recall about that?

14 MR. KLINGSBERG: Can I have the
15 question before that, please, before that
16 was repeated.

17 (The reporter read back from the
18 record as requested.)

19 THE WITNESS: Will you please repeat
20 the pending question.

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

23 A I recall being shown a copy of that contract
24 by counsel.

25 Q Was that after the accident?

1
2 A Yes.

3 Q Had you ever seen it before that time?

4 A I don't recall having seen that contract
5 before being shown by counsel.

6 Q Did you know it existed before counsel
7 showed it to you?

8 A I don't believe I knew it existed.

9 Q Do you recall being involved in the
10 negotiation of a Master Services Agreement between
11 Met Ed and B&W sometime in 1977?

12 A I do not believe I took any part in such
13 negotiations.

14 Q Do you recall having that agreement or
15 any drafts of that agreement submitted to you for
16 your review?

17 A Yes.

18 Q Who submitted them to you?

19 A I believe that agreement was submitted to
20 GPU Service Company for review by a member of
21 Met Ed's Contracts Department.

22 Q Do you know his name?

23 A I believe his name was Pete Betz.

24 Q Who is Mr. Betz?

25 A Pete Betz is a member of the Contracts

Department at Met Ed.

Q Who was his superior, or who was his superior at the time, I should say?

A I think John Mazella.

Q Was the 1977 contract required to be submitted to you for your review under LOSA?

A No.

Q Do you have any knowledge as to why it was submitted to you?

A I believe as a courtesy and probably for solicitation of some comments.

Q What did you do when you received a copy of that draft?

A I think a review was made of the draft.

Q Was that review made by you?

A I believe so.

Q What form was the draft in when you received it, that is to say, was it a proposal from B&W or had it been negotiated and retyped? At what stage of the drafting process did you first see a copy of the proposed agreement?

A I don't know at what stage that contract draft was submitted.

Q Do you recall whether or not it was

1
2 still in the B&W proposal form?

3 A I'm not sure.

4 Q Are you familiar with B&W proposal
5 form?

6 A No.

7 Q Have you ever seen proposals
8 submitted by B&W on B&W form paper that includes
9 a B&W proposal number on it in the bottom left-
10 hand corner?

11 A I may have but I'm not sure.

12 Q You are not familiar with that
13 particular form, format that B&W uses?

14 A I may have seen it but I'm not sure.

15 Q In any event, you don't recall today
16 whether or not when you first saw the 1977
17 proposed agreement it was in that form or some
18 other form?

19 A I don't recall.

20 MR. WISE: I will ask to have marked
21 as Defendants' Exhibit 25 for identification
22 a memorandum dated August 16, 1977 concerning
23 a proposal for a Master Services Contract;
24 the memorandum appears to be from Mr.
25 Haimowitz addressed to Mr. Betz.

(Memorandum to Mr. Peter Betz from Mr. Haimowitz, dated August 16, 1977 was marked as Defendants' Exhibit 25 for identification, as of this date.)

Q Mr. Haimowitz, are you familiar with Exhibit 25 (handing)?

A What do you mean, "familiar"?

Q Have you ever seen it before?

A Yes.

Q Did you prepare that memorandum?

A I believe so.

Q Was it prepared in response to your review of the B&W proposed contract for a Master Services Contract?

A Yes.

Q Did you prepare any other memoranda to the best of your recollection concerning your comments on that proposed contract?

A I don't recall of any others.

Q The memorandum opens by saying, "We have reviewed."

To whom does the "we" refer?

A Myself.

Q Did anyone else at GPU Service review

that contract, to the best of your knowledge?

A I don't believe so.

Q Did you have any oral discussions with Mr. Betz or anyone else at Metropolitan Edison concerning your comments on the Master Services Contract?

A I may have but I don't recall any.

Q At the end of the memorandum you sent carbon copies to Mr. Glickman, Mr. Hulsebus and Mr. Mazella.

What was your reason for doing that?

A I sent a copy to Fred because I did work for Fred and I felt if a review was being made of a proposed contract he may want to see the comments that we have made.

I sent a copy to Mazella because I believe I have testified that Pete Betz worked for Mazella then.

I don't remember why I sent a copy to Hulsebus except that he was the acting or the Director of Materials Management at that time.

Q Do you have any independent recollection at this time of the 1977 Master Services Contract?

MR. KLINGSBERG: What do you mean, the

provisions of it?

MR. WISE: Yes.

Q In other words, do you recall anything, does anything stand out in your mind about that contract, terms, provisions, questions, comments you had or would we need to refresh your recollection with writings in order for you to be able to remember it?

A If you are going to ask me any questions on this particular contract, I would hope that a copy would be made available to me.

Q We will certainly do that. All I want to know for the moment is whether you have any independent recollection of the agreement aside from whatever documents we may have that may help you.

MR. KLINGSBERG: I will object to the form of the question.

The witness can answer but I think it is a little unfair to ask one about a whole agreement without asking some particular question about it. I mean, does he remember what about it? How many pages it was, what the color of the type was? I mean there

1
2 should be some more particularized question
3 before you are going to assume that he has
4 or he doesn't have a recollection on a
5 particular thing.

6 MR. WISE: I am not directing it to a
7 particular thing.

8 MR. KLINGSBERG: That's --

9 MR. WISE: What I am curious about at
10 this point is if I hadn't told him about this
11 1977 agreement and so on, whether he would
12 remember anything about it.

13 MR. KLINGSBERG: Well, that's
14 hypothetical. Who knows?

15 MR. WISE: All I am trying to get at
16 this point, Mr. Klingsberg, is whether or
17 not he has any recollections of his review
18 of that agreement, what form the agreement
19 took and so on.

20 MR. KLINGSBERG: That is a lot of
21 different questions. I mean I think if you
22 want to know his recollection about a
23 particular thing, you ought to ask him about
24 the particular thing and he will tell you
25 if he recalls or he doesn't, but to just ask

1
2 a broad-base question, do you remember
3 anything about a contract I don't think
4 is particularly fair.

5 MR. WISE: I will say I don't find that
6 objectionable.

7 MR. KLINGSBERG: You may answer the
8 question.

9 THE WITNESS: Will you repeat the
10 question.

11 (The reporter read back the question
12 as requested.)

13 A I really don't know how to answer that
14 question.

15 Q All right.

16 Would you look at the first page of
17 the memorandum and the bottom line. You make a
18 reference to "our usual Termination for Default
19 provision."

20 To what were you referring in that
21 clause?

22 A I believe I was referring to the fact that
23 each of our operating companies and the Service
24 Company used the provision in any contract which
25 would enable an operating company or the Service

Company to terminate a contract for default in
the event of nonperformance.

(Continued on page 187.)

2 Q Was that clause contained in any
3 larger body of terms and conditions?

4 A I don't believe so.

5 Q Were there other types of provisions
6 that were, quote, usual, close quote, within the
7 system?

8 A I believe so.

9 Q Where were they collected?

10 MR. KLINGSBERG: If anyplace.

11 MR. WISE: If anyplace.

12 A I don't believe they were collected. I believe,
13 though, that at meetings that I have discussed in
14 some detail yesterday, where terms and conditions
15 were discussed at these particular meetings, we, as
16 as group, agreed that our contracts would contain
17 a termination for convenience provision, a
18 termination for default provision, in
19 cost-reimbursable contracts an audit provision and
20 a suspension of work provision, and other
21 provisions that we thought should be in contracts
22 that we enter into.

23 Q Mr. Haimowitz, were there any
24 boiler plate or standard contract terms that were
25 in use at GPU Service or the operating companies

2 during the period 1975 through '79?

3 A To the best of my knowledge, there were no
4 standard terms and conditions used at GPU Service
5 Company for any of its major procurements for the
6 period of 1975 through '79 with the exception of
7 the standard consultant agreement for those small
8 type consultants that would enter into contracts
9 with GPUSC.

10 During that time I reviewed many
11 contracts from the operating companies. I do not
12 believe that Met Ed utilized a standard set of
13 terms and conditions. I do not believe that
14 Jersey Central utilized a standard set of terms
15 and conditions. I believe that Penelec made a
16 general set of terms and conditions for
17 construction.

18 Q What response, if anything, did you
19 get to your memorandum which is Exhibit 25?

20 A To the best of my knowledge, I don't
21 remember any response.

22 Q What involvement, if any, did you
23 have in the negotiation or execution of the
24 Master Services Contract after Exhibit 25 was
25 prepared and sent?

2 A I don't believe I had any involvement in
3 those negotiations.

4 Q Did you have any further discussions
5 with Mr. Betz or Mr. Mazella or anyone in their
6 office concerning that contract?

7 A I may have, but I don't remember any.

8 Q Have you ever met John Mullin,
9 M-u-l-l-i-n, of B&W?

10 A I have no recollection of that name.

11 Q Have you ever attended a meeting
12 with Mr. Mullin, sat across the table from him,
13 and spoken with him?

14 A I don't remember.

15 Q Do you know a man named Fritzen?

16 A I heard that name.

17 Q Do you know who he works for?

18 A I believe he works for Met Ed as an
19 engineer.

20 Q Have you ever met him?

21 A I don't believe I have ever met him.

22 Q Have you ever met a Mr. Lewis of
23 B&W?

24 A I don't recall meeting a man by the name
25 of Mr. Lewis.

1
2 Q Do you remember a meeting with
3 anybody, whether it be Mr. Mullin or Mr. Lewis
4 or some other person from B&W's Contracts
5 Department, in connection with the 1977 Master
6 Services Contract?

7 A To the best of my knowledge, I never met
8 with anybody from B&W regarding this Master
9 Service Contract for TMI Unit 1.

10 Q Have you ever met with Mr. Mullin or
11 Mr. Lewis or anybody else from the Contracts
12 Department with respect to any contracting matter
13 other than the claims negotiation which you
14 testified to this morning, and other than any
15 post-accident negotiations you may have had?

16 A I have no recollection of ever hearing the
17 name Mullin before and/or ever meeting Lewis.

18 Q Do you know a Mr. Taynton,
19 T-a-y-n-t-o-n, of B&W?

20 A I do not know that name.

21 Q Have you ever met a Mr. Schmidt?

22 MR. PU: I believe his first name is
23 Karl.

24 A I have no knowledge of ever meeting that
25 gentleman.

1
2 Q Do you know what happened to the
3 proposal for a master services contract after
4 your memorandum?

5 A No.

6 Q Do you know whether it was ever
7 signed?

8 A I believe it was signed.

9 Q How did you find that out?

10 A In deposition preparation.

11 Q But before you got involved in this
12 lawsuit, did you have any knowledge that that
13 contract was signed and in effect?

14 A I may have, but I can't think of no reason --
15 I can think of no instance where I can definitively
16 state that I know that contract was signed.

17 Q Do you recall ever reviewing any other
18 master services agreements between B&W and any of
19 the operating subsidiaries prior to the accident
20 at Three Mile Island?

21 A I may have, but I don't remember any.

22 Q Were you involved in the negotiation
23 of a fuel reload contract for TMI-1?

24 A I may have, but I don't know.

25 Q Are you familiar with when that

contract was negotiated and executed?

A No.

Q Are you today aware of any other Master Services Contracts entered into between B&W and GPU or any of its operating subsidiaries prior to the accident? I am speaking of other than the 1977 contract that we have been discussing.

THE WITNESS: Could you repeat that question, please?

(Record read)

A I may be, but I don't recall any.

Q Do you know whether there was a Master Services Contract between B&W and Met Ed in 1973 with respect to TMI-1?

A I believe so.

Q Was there also a Master Services Contract for TMI-2 entered into in 1974?

A I believe so.

Q Did you at some time have an opportunity to see those agreements?

A I believe so.

Q In what connection did you come across them?

A During the deposition preparation.

2

Q Do you recall whether you had ever

3

seen them before that time?

4

A I had no knowledge of seeing those documents

5

before that time.

6

MR. WISE: Off the record.

7

(Discussion off the record.)

8

(Luncheon recess: 12:30 p.m.)

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A F T E R N O O N S E S S I O N

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(Time noted: 2:01 p.m.)

4

M I L T O N H A I M O W I T Z, resumed.

5

MR. WISE: Off the record.

6

(Discussion off the record.)

7

MR. WISE: Let us go back on the

8

record.

9

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During the luncheon break, we have had delivered here a copy of a letter from Mr. Hulsebus to Babcock & Wilcox dated May 25, 1979. The particular copy that we have is a telecopy and it has some handwriting at the top with Mr. Klingsberg name on it, which was put on there only for the purposes of getting the telecopy delivered and I don't believe it was on the original.

I would like to have this document marked as Defendants' Exhibit next in order.

(Telecopy of a letter dated May 25, 1979 from Mr. Hulsebus to Babcock & Wilcox, bearing some handwriting at the top with Mr. Klingsberg name on it for delivery purposes was marked Defendants' Exhibit No. 26 for identification as of this date.)

MR. KLINGSBERG: I will just state for the record that the admissibility of either this document or any further questioning relating to the subject of this document is something on which we agree we can reserve objection for trial.

MR. WISE: That is correct, Mr. Klingsberg. You might preserve whatever objections you have to this document or any further questions or any questions during the course of this examination with the exception of objections going to form.

EXAMINATION (CONTINUED)

BY MR. WISE:

Q Mr. Haimowitz, have you seen Exhibit 26 prior to today?

(Handing document to the witness)

A Yes.

Q When did you first see that document?

A I believe at the time that the document was sent to B&W.

Q Did you have any discussions with anyone concerning the subject of that letter?

A Yes.

2 Q With whom did you have discussions?

3 A With counsel.

4 Q Did you participate in the drafting
5 of that letter?

6 A I don't recall.

7 Q Do you know who drafted it?

8 A I believe so.

9 Q Who drafted it?

10 A I believe it was generated by counsel.

11 Q Are you referring to someone at
12 Berlack, Isreals?

13 A I believe it was drafted by Jesse Meer.

14 Q Did you come to any understanding by
15 whatever means as to the intent behind that
16 letter?

17 MR. KLINGSBERG: Well, I will ask the
18 witness not to disclose the contents of any
19 legal advice he received from counsel.

20 Q Can you answer the question with the
21 qualification your counsel has put on it?

22 A I think so.

23 Q Did you?

24 A I came to a conclusion.

25 Q O.K.

1 Did you ever have any discussions
2 with any person at B&W concerning the subject of
3 that letter?
4

5 A Yes.

6 Q With whom did you have discussions?

7 A With Mr. George Kulynych.

8 Q When did you have discussions with
9 him about that?

10 A During the negotiations of the post-accident
11 Master Services Agreement.

12 Q When did the subject first come up
13 with him?

14 A During the negotiations.

15 Q How did it come up?

16 A I remember raising it and insisting that any
17 contract that we enter into would be subject to
18 the provisions as set forth in this May 25th, 1979
19 letter.

20 Q Did you discuss with him what those
21 provisions were?

22 A I believe he was aware of it.

2 Q Well, my question is, did you discuss
14 that with him, specifically?

A I don't remember any -- discussing anything

specifically with him.

Q Do you remember anything that he said to you or you said to him concerning the subject of this letter?

A To the best of my knowledge, I believe in discussing this letter, I made him aware of my opinion that this letter and the contents of this letter would serve to exclude any of the Master Services Agreement and the negotiations from any subsequent rights that GPU or Jersey Central or Metropolitan Edison or Pennsylvania Electric Company or subrogation rights of their insurers would serve as a barrier.

MR. KLINGSBERG: Subsequent rights, you said? Do you want to read that back?

THE WITNESS: What I -- can you read back the question -- my answer, I'm sorry.

(Record read)

A That is a totally garbled answer.

Q Feel free to make a statement.

A I will modify it.

I believe I made Mr. Kulynych aware of my opinion that the provisions in this letter would exclude negotiations conducted with B&W for a

1 Master Services Agreement from use in those
2 negotiations and the results of those negotiations
3 and the task orders released thereunder and the
4 payments made would be excluded from any potential
5 actions or litigation that we may potentially have.
6

7 Q Did you mention to Mr. Kulynych that
8 GPU had litigation under consideration?

9 A No.

10 Q Did Mr. Kulynych say anything to you?

11 A I don't remember.

12 Q Did he indicate that he had seen this
13 letter?

14 A Yes.

15 Q Was there any other discussion between
16 B&W representatives and GPU representatives that
17 you either participated in or heard about concerning
18 the subject of this letter?

19 A Yes.

20 Q What other information do you have on
21 that?

22 A I believe I informed people at TMI-2, those
23 that would issue the task releases, that before the
24 issuance of any task release that these words should
25 be incorporated in their entirety on the release or

1 the releases themselves.

2
3 Q Do those words reflect your
4 understanding of what was agreed with B& W?

5 A These words, as I interpreted them, and I
6 am of the opinion precluded the utilization of
7 any of the negotiations with the Master Services
8 Agreement as used by B&W in any -- any matter or
9 action that GPU or its operating companies would
10 proceed with.

11 Q What I am asking you now is, is that
12 your interpretation of those words, or is that an
13 additional agreement that you understood was made
14 orally?

15 A No, this is my interpretation. It has been
16 my interpretation.

17 Q So that your testimony is whatever is
18 said in that letter was in effect the agreement?

19 A I was led to believe or I had reason to
20 believe that what was said in this letter and as
21 I interpreted that was understood by my
22 counterparts at B&W.

23 Q What led you to believe that your
24 counterparts at B&W understood that?

25 A I think in oral discussions with George

1
2 Kulynych, I had always made any potential agreement
3 contingent upon this particular letter (indicating)
4 and during that -- those particular negotiations, I
5 am of the opinion I led him to understand what my
6 interpretation of that letter was.

7 Q Do you know whether he ever agreed
8 with that interpretation?

9 A I would like to assume he did.

10 Q Well, putting aside what you would
11 like to assume, did he ever say anything to you
12 which you can now testify to to indicate that he
13 agreed with the interpretation that you were
14 placing upon that language?

15 A To the best of my knowledge, I believe that
16 he knew my interpretation of this particular
17 letter and that he concurred.

18 Q Can you remember a specific
19 conversation or is that just a general impression
20 that you have at this point?

21 A This is a general impression that I have.

22 Q I asked you a moment ago about any
23 other information that you have, either conversations
24 that you participated in or things that you heard
25 about from others concerning discussions between

1
2 B&W representatives and GPU representatives on the
3 subject covered by this letter, you indicated that
4 you did have discussions with certain people within
5 GPU concerning the preparation of task orders.

6 Is there anything else that you can
7 recall in the way of discussions between B&W
8 personnel and GPU personnel on the subject of this
9 letter?

10 A No, I can't recall any other.

11 MR. KLINGSBERG: Off the record.

12 (Discussion off the record.)

13 MR. WISE: While we were off the
14 record, we have had a discussion concerning
15 the effect of Exhibit 26 and whether or not
16 there are subsequent agreements with respect
17 to the propriety of discovery into
18 post-accident negotiations and contracts.

19 Counsel for GPU has stated that there
20 may well be such additional agreements on
21 behalf of B&W, our current information is
22 that there were no agreements at least up
23 to the time that this lawsuit was commenced
24 in March 1980, the questions that I would
25 propose to go into at this time relate to

1 negotiations and discussions that occurred
2 during the summer and fall of 1979 well before
3 any agreement that may have been entered into
4 after the beginning of the litigation.
5

6 It is the position of B&W that Exhibit
7 26 does not preclude an examination into the
8 negotiations and surrounding matters
9 concerning post-accident contracts at least
10 up to the time that the litigation was
11 commenced, and it is on the basis of that that
12 I proposed to go ahead with this line of
13 questioning.

14 I will say that I have delayed
15 commencing this line of examination since
16 yesterday afternoon while an attempt was
17 made to consider this matter further and to
18 attempt to locate any relevant agreements or
19 letters.

20 To this point this afternoon, the only
21 thing that we have is Exhibit 26, so on that
22 basis I will propose to go ahead.

23 MR. KLINGSBERG: We do have one other
24 letter which you may have a copy of, dated
25 October 1, 1979, and as I stated before, off

1 the record. I think there is still a
2 subsequent letter which we are endeavoring
3 to find a copy of, and I am reserving our
4 rights until I see all the letters of
5 whether or not there is anything which
6 precludes either examination or use of the
7 information elicited in the area which you
8 are discussing.

10 There is some handwriting on this
11 document, so I think I better find out whose
12 it is before I give it to you, but this
13 essentially repeats the language of May
14 25th from Mr. Haimowitz to Mr. Pletke of
15 Babcock, and says: "Enclosed please find
16 three copies of the subject agreement for
17 your review and execution, which has been
18 backdated to provide an effective date of
19 March 28, 1979," and then skips down, "We
20 also affirm our mutual understanding that
21 neither execution of this contract nor task
22 orders performed, opinions made thereunder
23 shall waive any rights of GPU or the
24 subrogation rights, if any, of their
25 insurers with respect to the equipment,

1 materials and service within B&W's scope of
2 supply and furnished by B&W pursuant to the
3 contract for nuclear equipment and services
4 effective as of July 31, 1967, et cetera."
5 So that is essentially similar language to
6 what was in the May 25th letter that you
7 marked (indicating).
8

9 MR. WISE: I have not seen the October
10 1, 1979 letter, but given what you have read
11 I do not believe it would alter our position
12 that the agreement both in the May 25th
13 letter and the portion that you read from the
14 October 1 letter referred only to waiver of
15 whatever rights may have existed under the
16 pre-accident contracts and did not constitute
17 an agreement to prevent or prohibit discovery
18 and whatever evidentiary use might be made of
19 matters relating to post-accident negotiations.

20 Let me ask to have marked as
21 Defendants' Exhibit next in order a copy of
22 a letter dated October 25, 1979 from Mr.
23 Haimowitz addressed to Mr. Muir of B&W, and
24 attached to the one-page letter is a copy of
25 a Master Services Contract between B&W and

GPU Service Corp. The contract appears to have been executed on behalf of both parties. The signature for GPU Service Corporation appears to be that of Mr. Haimowitz, and for Babcock & Wilcox appears to be that of Mr. Nilson.

(Copy of a letter dated October 25, 1979 from Mr. Haimowitz to Mr. Muir of B&W, with an attachment thereto entitled "Master Services Contract Between GPU Service Corporation And The Babcock & Wilcox Company, Nuclear Power Generation Division, Lynchburg, Virginia," executed by Mr. Haimowitz of GPU and Mr. Nilson of B&W, was marked Defendants' Exhibit No. 27 for identification as of this date.)

(Handing document to the witness)

BY MR. WISE:

Q Mr. Haimowitz, are you familiar with Exhibit 27?

A What do you mean by "familiar"?

Q I'm sorry. You seem to have trouble with that particular term I use.

Let me put it to you this way: Have

1
2 you ever seen it before?

3 A Yes.

4 Q Is Exhibit 27 at the top a copy of
5 a letter that you wrote to Mr. Muir?

6 A Yes.

7 Q Would you look at the signature page
8 on the contract which appears several pages in from
9 the back and tell us if that is your signature on
10 behalf of GPU Service Corporation?

11 A Yes.

12 Q Who negotiated the Master Services
13 Contract which is attached to Exhibit 27?

14 A I was the negotiator for GPU and George
15 Kulynych and some others were the negotiators for
16 B&W.

17 Q When did you have your first meeting
18 with anybody from B&W concerning the negotiation
19 of this contract?

20 A I seem to remember early May 1979.

21 Q What happened at that time?

22 A B&W had been performing services during the
23 period of March 28th at the commencement of the
24 incident, and we had no vehicle by which B&W could
25 be reimbursed; and, consequently, B&W requested a

2 service type of agreement be arranged to cover
3 these -- I think they are called emergency services.

4 Q Did B&W submit a proposal for this
5 contract?

6 A I believe so.

7 Q Did you review that proposal?

8 A I believe so.

9 Q Did you have any comments with
10 respect to it?

11 A Many comments.

12 Q What did you do about those comments?

13 A To the best of my knowledge, we relayed those
14 comments to B&W and sought to make changes in
15 various articles.

16 Q Did you do that by way of a writing?

17 A I believe by writing and by oral.

18 Q When was the oral instance?

19 A In numerous conversations with B&W during
20 that particular period of time.

21 Q Were these on the telephone or
22 face to face?

23 MR. WISE: Off the record.

24 (Discussion off the record.)

25 (Recess)

1
2 A In addition to having transmitted, I think
3 by memo, certain of the comments, there were also
4 numerous telephone conversations and, I believe,
5 face-to-face meetings.

6 Q Were your telephone conversations with
7 Mr. Kulynych?

8 A With Mr. Kulynych, I believe Mr. Pletke.

9 Q Did you ever have any conversations
10 with anyone at B&W who represented himself to be a
11 lawyer?

12 A Yes.

13 Q Who did you have such conversations
14 with?

15 A I believe Mr. Muir.

16 Q Did you ever meet Mr. Muir in a
17 face-to-face negotiation?

18 A No.

19 MR. KLINGSBERG: Off the record.

20 (Discussion off the record.)

21 BY MR. WISE:

22 Q Did you make any attempt to review
23 any prior contracts between B&W and GPU or any of
24 the operating companies in connection with your
25 work on the proposed Master Services Agreement

1
2 after the accident?

3 A I believe so.

4 Q What B&W contracts did you look at?

5 A I don't remember.

6 Q Do you recall whether you looked at
7 the 1977 Master Services Contract?

8 A I don't remember.

9 Q Did you look at the 1973 or 1974
10 Master Services Contracts?

11 A No.

12 Q Did you look at the 1975 Long-Term
13 Training Contract?

14 A No.

15 Q Did you look at the 1967 Base NSSS
16 Contract?

17 A No.

18 Q You are not able to recall what
19 contracts you did look at?

20 A That is correct.

21 Q Let me ask you to turn to page 9
22 of the Master Services Agreement and look at Section
23 11 which is labeled "Limitation of Liability," and
24 I would like you to look at Section 11.1.

25 Do you remember seeing that at the time?

1
2 A Yes.

3 Q In fact, do you remember reviewing
4 each of the provisions in this agreement so we
5 can save time?

6 A Yes.

7 Q Did you understand at the time this
8 contract was executed what was meant by Section
9 11.1?

10 MR. KLINGSBERG: What was meant by
11 whom?

12 MR. WISE: What was meant by the
13 agreement. Did he have an understanding as
14 to what it meant.

15 MR. KLINGSBERG: All right, fine.

16 Q Did you have an understanding what that
17 meant?

18 A I believe I knew what I thought that meant.

19 Q Did you have any discussions with
20 anyone from B&W concerning the meaning of Section
21 11.1?

22 A I believe so.

23 Q With whom did you have such
24 discussions?

25 A With one of the three parties that I

1

2

discussed these provisions with

3

Q What did you say to him and what did

4

he say to you about it?

5

A I believe I proposed revised writing and I

6

think I submitted that in writing under a proposed

7

draft which had modifications (indicating).

8

Q What modifications did you propose?

9

MR. KLINGSBERG: Well, I think if he

10

submitted something in writing that we ought

11

to see the writing.

12

MR. WISE: We don't have it because you

13

haven't produced it to us.

14

MR. KLINGSBERG: He said he submitted

15

it.

16

MR. WISE: It was not produced from

17

files. It may be that B&W has it in its

18

files. I don't have it here. So I would

19

like to proceed with the best of his

20

recollection at this point. I won't hold him

21

to something that may be in a writing.

22

BY MR. WISE:

23

Q Do you remember what it is you proposed

24

be changed in 11.1?

25

A It would be very useful if that, you know, the

1
2 modifications were there.

3 Q Do you have any recollection at this
4 point of what you proposed to be changed?

5 A I would hope that I would have excluded --

6 MR. KLINGSBERG: Wait a second. Don't
7 say what you "hope". Either you have or don't
8 have a recollection.

9 A It would just be...

10 Q Do you know what anyone from B&W said
11 in response to your proposal?

12 A Yes.

13 Q What did they say?

14 A I believe every attempt to modify most of
15 the terms and conditions were rejected in their
16 entirety.

17 Q Was any reason given by the B&W
18 representatives for their rejection?

19 A I was led to believe by the B&W representatives
20 that this was the contract, this was under which
21 they would operate and outside of some economic
22 considerations I don't believe we received one
23 proposed change in any of the ones that we
24 submitted including the one on invoicing.

25 Q Limiting ourselves for the moment to

Section 11.1, do you recall what your objection was to the language that B&W proposed, which, I take it, is the language that ultimately went into the contract which you have before you?

A It would be extremely helpful if we could review the draft comments that we furnished to B&W.

Q Unfortunately, Mr. Haimowitz, we don't have those draft comments here.

THE WITNESS: Do you want me to --

MR. WISE: Just a minute. We may.

Off the record.

(Discussion off the record.)

BY MR. WISE:

Q What I was explaining, Mr. Haimowitz, is that we don't have the comments here, and I don't believe the intent or purpose of my questions is to test your recollection with respect to specific comments that you may have made and what specific words you wanted changed.

My question now is, in general, do you have any recollection of what it was you found objectionable about Section 11.1 at the time?

A I believe that I would have found objectionable

1
2 then the same things I testified previously to
3 what I would find objectionable into a B&W clause
4 of this nature (indicating). I certainly would
5 attempt to have in line 2, at least, "(including
6 negligence and strict liability)." I have never
7 taken a position that any of these limitation of
8 liability reasons are totally valid; and, as I
9 stated before, the term "special, incidental, or
10 consequential loss or damage of any nature" seems
11 too fuzzy to be included in a limitation of
12 liability.

13 Q Is the problem that it seems to be
14 too fuzzy or too broad?

15 A I think this limitation of liability, as
16 written, is as broad as possible. It covers almost
17 everything I could think of, and I don't think I
18 could accept a provision like that unless an effort
19 in good faith is made totally on our part to
20 modify these provisions and only as a last resort,
21 a management decision is required whether to go
22 ahead with such a provision.

23 Q Would you look now at the following
24 page?

25 MR. KLINGSBERG: Have you had a chance

1
2 to review the provision that you are talking
3 about? Did you read it?

4 THE WITNESS: Not as carefully and as --
5 and as diligently as I would or could had the
6 time been different.

7 (continued on next page)
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2 Q Well, would any of your answers
3 change if you had more time to read this? I mean
4 do you feel that you are less confident of any of
5 the answers to the questions that I specifically
6 posed because you haven't had enough time to read
7 this paragraph?

8 A No, but I may be more specific in thinking
9 of what to delete or attempted to delete in
10 negotiations.

11 Q Going to the next page, would you
12 read Section 12.1 which appears on that page.

13 A I have read 12.1.

14 Q I would like to direct your
15 attention to the first paragraph in 12.1

16 Did you understand that paragraph
17 at the time this agreement was negotiated and
18 executed?

19 A I believe so.

20 Q Do you understand it today?

21 A I believe so.

22 Q In your understanding, in the event
23 that B&W through its negligence were to cause
24 damage to property owned by GPU or one of the
25 operating subsidiaries doing work under this

1
2 contract, could GPU or the operating subsidiary
3 recover for that damage under the first paragraph?

4 MR. KLINGSBERG: I object to the
5 question on the grounds that you are asking
6 for a legal conclusion.

7 Q You may answer the question.

8 THE WITNESS: Would you repeat the
9 question.

10 (Record was read back.)

11 MR. KLINGSBERG: I wonder how you
12 could explain to me how this differs from
13 the objection that you made during the
14 Womack deposition, page 135, where you
15 objected to a question and directed the
16 witness not to answer on the grounds that,
17 "You are asking legal questions that
18 are more appropriately addressed to the
19 District Court."

20 MR. WISE: I think that the question
21 I was objecting to there was a legal
22 question, that Mr. Womack was not the
23 appropriate corporate official to respond
24 to it.

25 The question I am now asking is

1
2 of a negotiator of a contract and the man
3 who executed the contract to determine
4 what his understanding of the contract
5 was. I am not asking him point blank what
6 the proper result here is. I am only
7 trying to find out what was in the mind
8 of the man who represented GPU Service
9 at the time this legal document was
10 entered into and naturally his understanding
11 and the understanding of the parties may
12 be extremely relevant here on the question
13 of interpretation of this document.

14 I would be happy to agree with
15 you that the contracts stand on their
16 face and that no testimony concerning
17 intent would be admitted in this case and
18 we will submit these contracts to Judge
19 Owen the way they are but I doubt very
20 much I would get that agreement from you
21 so I think that I am entitled to go into
22 the intent of Mr. Haimowitz or whoever
23 the appropriate official representing GPU
24 was at the time concerning what was meant
25 in these contracts.

1
2 I don't know how else to do it
3 except ask the man who signed it.

4 MR. KLINGSBERG: But I don't think
5 what you are saying now is your question.
6 I think you asked just a flat-out legal
7 question, you didn't ask him what was your
8 understanding at the time this contract was
9 entered into, if anything, in regard to
10 the question, et cetera; you just asked
11 him a straight-out legal question.

12 MR. WISE: I will rephrase it.
13 I don't remember what I said but rather
14 than waste time arguing about it, I will
15 put it to him again.

16 Q Mr. Haimowitz, my next question goes
17 to your understanding at the time you entered into
18 this contract.

19 Do you understand that?

20 A Yes.

21 Q Was it your understanding that
22 under the first paragraph of Section 12.1, B&W
23 would be liable to GPU for damage to GPU's property
24 in the event it caused that damage prior to
25 completion of the work under any individual task

1
2 order under this agreement and B&W was negligent
3 and it was not caused by a nuclear incident as
4 defined in the paragraph?

5 MR. KLINGSBERG: Are you limiting
6 as you had your previous question to work
7 done under this contract?

8 MR. WISE: Yes.

9 THE WITNESS: I am going to have
10 to ask you to repeat it.

11 MR. WISE: Mr. Reporter, will you
12 please read that back slowly.

13 (Record was read back.)

14 MR. KLINGSBERG: When you say "first
15 paragraph," you mean starting with the words
16 "For work performed" down to where it says
17 "as amended" before the lines are skipped?

18 MR. WISE: That's correct.

19 MR. KLINGSBERG: Take your time
20 and read the whole thing.

21 A I don't remember what I thought at that
22 particular time and that's -- and that's as
23 truthful as I could be.

24 Q Am I correct that reading this
25 does not refresh your recollection in any way as

1
2 to what you thought at that time?

3 A That is correct.

4 Q Do you remember any conversations
5 with anyone concerning the meaning of Section
6 12.1, the first paragraph?

7 A I may have but I don't recall.

8 Q Do you have any notes or writings
9 of any kind that would refresh your recollection
10 concerning whether you had any discussions with
11 anyone about the meaning of the first paragraph
12 of Section 12.1?

13 A I may but I don't, you know, specifically
14 know.

15 Q Do you have any recollection of any
16 discussion concerning the omission of the term
17 "property damage" from the exclusion which appears
18 at the end of the paragraph beginning with five
19 lines up from the bottom, "Provided such bodily
20 injury," and then goes on to the end of the
21 paragraph?

22 MR. KLINGSBERG: Can I have that
23 question back, please.

24 (Record was read back.)

25 MR. KLINGSBERG: I'm sorry, could

1
2 you explain what you mean by "omission"?

3 MR. WISE: Well, the beginning of
4 the paragraph speaks about "all losses,
5 claims, damages or liabilities arising out
6 of or based on bodily injury."

7 MR. KLINGSBERG: Right.

8 MR. WISE: And later on there is
9 an exclusion for nuclear incidents at the
10 bottom of the paragraph which also is
11 limited to bodily injury, property damage
12 is not mentioned in the first paragraph.

13 MR. KLINGSBERG: Right.

14 MR. WISE: And my question now,
15 perhaps it can be -- it is more easily
16 put to address it to the entire first
17 paragraph rather than just the last
18 section.

19 Q Do you have any recollection as to
20 why there is no mention of property damage in
21 the first paragraph of Section 12.1?

22 A I can only hazard a guess, which I don't
23 want to do. So the answer is I don't have a
24 recollection at this time.

25 Q Looking at the remaining two

1
2 paragraphs in Section 12.1, do you have any
3 recollection today of what your understanding was
4 at the time that you negotiated and executed
5 this contract, your understanding of those two
6 paragraphs?

7 A The second paragraph would appear an
8 attempt --

9 Q My question is, first, do you have
10 an understanding, do you have a recollection
11 today of your understanding at the time? I am
12 not asking you to interpret them today.

13 A Oh. It would be unfair. I don't remember
14 my recollections then.

15 Q Do you have any recollection of
16 any conversations with anybody from B&W
17 concerning what was meant by those clauses?

18 A I may have but I can't remember the
19 conversations but, again, I believe the proposed
20 changes did appear in a -- in communications with
21 them.

22 Q Did they accept any of your
23 proposed changes?

24 A To the best of my knowledge, there was
25 no change at all by B&W in the entire

1
2 indemnification provision.

3 Q Do you recall today what the basis
4 of your objection was to the indemnification
5 provision as proposed by B&W?

6 A It seemed to me a very broad attempt at
7 an indemnification which certainly would be
8 something that an owner may be deemed to assume
9 additional responsibilities or risks.

10 Q Did you understand this section
11 to apply to property owned by GPU?

12 MR. KLINGSBERG: Wait a second now.
13 Which section are we talking about?

14 MR. WISE: Section 12.1

15 MR. KLINGSBERG: The whole provision?

16 MR. WISE: That's right.

17 MR. KLINGSBERG: Well, I mean --

18 Q Did you understand this section or
19 any part of it to apply to property owned by GPU?

20 MR. KLINGSBERG: Or any part of it.

21 O.K.

22 A I don't remember at that point in time what
23 I thought.

24 MR. KLINGSBERG: We haven't had a
25 legitimate break but we have had a lot of

1
2 interruptions.

3 MR. WISE: Let's take a break here.

4 (Recess taken.)

5 MR. WISE: Where did we stop?

6 (Record was read back.)

7 BY MR. WISE:

8 Q Looking at the following page,
9 page 11 of the agreement, Section 12.2 is labeled
10 "Indemnity - Trainees."

11 Do you recall whether you had any
12 discussions with anyone from B&W concerning
13 Section 12.2 or any part of it?

14 A I may have but I don't recall anything
15 specific.

16 Q Do you recall today what your
17 understanding was then of the meaning of Section
18 12.2?

19 THE WITNESS: Would you repeat the
20 question, please.

21 (Record was read back.)

22 A I can only recall that at the time of
23 the review of that section as in the previous
24 section, that it seemed like an attempt by B&W
25 for a very broad indemnification provision.

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Q Is that the extent of your recollection today of what you understood then was meant by Section 12.2?

A Yes.

Q Can you recall any discussions with anyone concerning the meaning of Section 12.2?

A I may have but I don't recall.

Q Would you next look at the following page and Section 13.2.

MR. WISE: For the record, Section 13 is labeled "Insurance" and Section 13.2 is titled "By Purchaser."

Q Let me give you my question before you begin your reading so you can have it in mind and you can complete your reading.

My question is whether you have any recollection today of what your understanding then was of the meaning of this clause and the other question which I am going to ask you, just so that you have it in mind, is whether you recall having any discussions with anyone from B&W concerning the meaning of Section 13.2.

THE WITNESS: Can you repeat the question, please.

(Record was read back.)

A I don't believe I have an accurate recollection of the meaning of that clause.

Q My second question was do you recall any discussions with anyone from B&W concerning the meaning of Section 13.2?

A I may have but I can't remember.

Q Were you aware in the fall of 1979 that as a result of the accident at Three Mile Island, substantial sums would be required to decontaminate TMI-2?

A I don't think I was aware in the fall of 1979 with respect to the sums in any -- with any degree of surety.

Q Did you understand at that time that there would be expenses in connection with decontamination of TMI-2?

A I was aware that there would be expenses in connection with the decontamination of TMI-2.

Q Were you aware of any approximate range of the amount of those expenses at that time?

A I may have been but I can't recollect.

Q Were you aware that they would be in excess of \$100 million, for instance?

1

2

A I can't remember.

3

4

5

Q You have no recollection today as to whether in the fall of 1979 you had any feeling for the size of the decontamination expenses?

6

7

A I don't believe I can answer the question with any degree of accuracy in the fall of 1979.

8

9

10

Q You were aware, in any event, that there would be some expenses regardless of the amount?

11

12

A I was made aware of that.

13

14

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16

Q In connection with this contract, did you give any consideration to who would be responsible for decontamination expenses in the event of an accident in the future caused by B&W's negligence?

17

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MR. KLINGSBERG: In other words, you are talking not about the decontamination that had to be done as a result of the March 1979 accident, you are talking about something that would be required relating to some work under this contract?

23

24

25

MR. WISE: That's correct.

THE WITNESS: Can you repeat the question, please.

(Record was read back.)

MR. KLINGSBERG: When you say

"accident," you mean --

MR. WISE: In the event of an incident which resulted in radioactive contamination of a GPU facility.

A I may have but I can't remember.

Q Were you aware in the fall of 1979 that property owned by GPU was damaged in the accident on March 28, 1979?

A Yes.

Q In connection with this contract, did you give any consideration to who would be responsible for property damage to GPU property in the event of a future incident in which B&W working under this contract was at fault?

A I may have.

Q Do you recall whether you did or not?

A I can't specifically recall that point.

Q You have no recollection as to any conclusions that you may have reached on that question?

A I don't remember.

Q In the fall of 1979, were you aware

1
2 that as a result of the accident at TMI-2, GPU
3 was incurring certain additional costs for
4 replacement power, additional interest and other
5 economic and financial damages?

6 A I believe so.

7 Q In connection with this contract,
8 did you give any consideration to whether B&W
9 would be responsible in the event of its
10 negligence leading to a future incident for that
11 type of damage, that is, increased costs of
12 replacement power, increased interest costs and
13 other such damages?

14 A I believe so.

15 Q Did you reach any conclusions as
16 a result of considering that?

17 A I believe so.

18 Q What conclusion did you reach?

19 A An attempt to modify the provision in
20 here dealing with consequential damages and to
21 exclude certain foreseeable damages from the
22 exclusion as appeared in the B&W proposed contract.

23 Q Was that because you reached the
24 conclusion that the contract as drafted would
25 prevent GPU from recovering such damages from

1
2 B&W?

3 MR. KLINGSBERG: Now, wait a second.
4 We are talking about a nuclear accident
5 or are you talking about a breach of
6 warranty?

7 MR. WISE: I am not talking about
8 either, I am talking about in the event of
9 an incident in which B&W was at fault and
10 in which those types of costs resulted for
11 whatever reason.

12 MR. KLINSBERG: O.K.

13 THE WITNESS: Can we get the question
14 back.

15 MR. WISE: Surely.

16 (Record was read back.)

17 A I don't know if that's totally accurate.
18 I think a more accurate way of saying it would be
19 it's been a position of the Contracts Department
20 that where suppliers seek consequential damages --
21 exclusion from consequential damages, that we
22 would do our best to remove from those examples
23 of what a supplier feels is a consequential
24 damage those that we deem to be direct.

25 Q Was it your understanding that the

1
2 proposal submitted to you by B&W, that in the
3 Limitation on Liability clause, which is Section
4 11.1, in particular, that B&W had included within
5 that clause various types of costs which you
6 understood to be direct damages?

7 A I believe in the draft proposal there are
8 examples of damages that I deem to be of a direct
9 nature.

10 Q Did you consider at the time that
11 Section 11.1 would prevent GPU from recovering
12 from B&W for the types of damages set forth in
13 that section in the event that those damages should
14 be caused by a future accident which was the fault
15 of B&W?

16 THE WITNESS: Would you repeat that,
17 please.

18 (Record was read back.)

19 A I don't remember considering the validity
20 of the entire provision but I felt it prudent to
21 at least exclude from this particular provision
22 and use our best methods possible in negotiation
23 to exclude those damages which I think are
24 foreseeable and don't qualify as either a special
25 or an incidental or a consequential loss or damage.

1
2 I don't believe I reviewed or had
3 reviewed the validity of that provision which
4 is apparently what you are asking me.

5 Q Separate from the question of
6 validity, as some court of law may later
7 determine it, did you come to any understanding
8 whether the clause as written would prevent GPU
9 from recovering the types of damages set forth
10 here in the event of an accident caused by
11 B&W occasioning these losses?

12 THE WITNESS: Now you had better
13 repeat that question.

14 MR. WISE: O.K.

15 (Record was read back.)

16 MR. KLINGSBERG: You mean in the
17 course of doing work under this contract?

18 MR. WISE: That's correct.

19 A I don't know if I considered what the
20 legal protections of GPU under that specific
21 clause would be.

22 I do know that I thought that the
23 provision as written by B&W was an attempt by
24 B&W to exclude many types of loss and I felt,
25 and I will reiterate, that it would be best if we

1
2 could exclude certain types of loss which I
3 believed were foreseeable and not a consequential
4 thing.

5 Q Was anyone at GPU Service responsible
6 for examining this contract to determine the
7 exposure which GPU might have under it in the
8 event of a future accident?

9 THE WITNESS: Can you repeat that
10 question, please.

11 (Record was read back.)

12 A I don't believe anybody was responsible
13 for making management aware of the risks it
14 could be undertaking in the event of a future
15 accident.

16 Q Do you know whether this contract
17 was ever analyzed from the point of view of what
18 exposure GPU might have under it in the event
19 of a future accident?

20 A I don't know if anybody did an analysis
21 with respect to risk for a future accident.

22 Q You did not, in any event?

23 A I did not, for an accident.

24 Q I mean you did not have any
25 discussions with anyone who said they had?

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A I don't believe so.

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What happened then?

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Q What decision was reached?

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Q That was done?

25

A Yes, sir.

MR. WISE: Off the record.

(Discussion off the record.)

(Time noted: 4:22 o'clock p.m.)

Milton Haimowitz

Subscribed and sworn to before me

this day of 1981.

CERTIFICATE

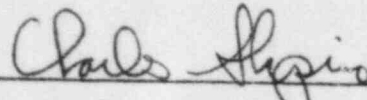
STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

I, CHARLES SHAPIRO, C.S.R. and, a Notary
Public of the State of New York, do hereby
certify that the continued deposition of
MILTON HAIMOWITZ was taken before
me on Thursday, April 23, 1981 consisting
of pages 146 through 237;

I further certify that the witness had
been previously sworn and that the within
transcript is a true record of said testimony;

That I am not connected by blood or
marriage with any of the said parties nor
interested directly or indirectly in the matter
in controversy, nor am I in the employ of any
of the counsel.

IN WITNESS WHEREOF, I have hereunto set my
hand this 29TH day of April, 1981.



CHARLES SHAPIRO, C.S.R.

I N D E X

WITNESS

PAGE

Milton Haimowitz

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E X H I B I T S

DEFENDANTS'

FOR IDENT.

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|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 24 | Document entitled "Standard Consulting Agreement, GPU Service Corporation" | 150 |
| 25 | Memorandum to Mr. Peter Betz from Mr. Haimowitz dated August 16, 1977 | 182 |
| 26 | Telecopy of letter dated May 25, 1979 from Mr. Hulsebus to Babcock & Wilcox bearing handwriting on top with Mr. Klingsberg's name on it for delivery purposes | 194 |
| 27 | Copy of letter dated October 25, 1979 from Mr. Haimowitz to Mr. Muir of Babcock & Wilcox with attachment entitled "Master Services Contract between GPU Service Corporation and The Babcock & Wilcox Company, Nuclear Power Generation Division, Lynchburg, Virginia" executed by Mr. Haimowitz of GPU and Mr. Nilson of B&W | 206 |

* * *