

ORIGINAL

Defendants.

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 Friday, April 24, 1981,
at 10:50 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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* * *

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

6 EXAMINATION (Cont'd.)

7 BY MR. WISE:

8 Q Mr. Haimowitz, yesterday your counsel
9 mentioned to me during one of the recesses that you
10 had had some further recollections concerning
11 contacts with B&W. I did not have an opportunity
12 to get to that yesterday.

13 I would like to give you a chance at
14 this time to make any statement that you wish
15 with respect to other contacts that you had with
16 B&W besides those that you have already covered
17 in your testimony.

18 A Thank you.

19 I was a part of a negotiating team
20 to what we called the OTSG Program, it was a change
21 in scope under our nuclear steam supply contract
22 for TMI-2 and it was evidenced by a change notice.

23 The participation that I had in that
24 was in negotiating a price for those activities
25 which would be undertaken by B&W.

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Q Were there any other contacts besides that?

A Yes.

Q What was the other or others?

A In 1975, I partook for a short while in negotiations for a fuel fabrication contract but I don't remember if it was the reload of TMI-1 or TMI-2.

Q Do you know whether a reload for TMI-2 was ever purchased by GPU?

A I believe it was.

Q Do you know from whom it was purchased?

A To the best of my knowledge, it was split between two companies.

Q Do you have any recollection as to who you dealt with in connection with the reload contract? I say "dealt with," I mean at B&W.

A I don't remember.

Q Do you know whether you attended any face-to-face meetings in connection with that negotiation?

A I believe I was part of a team in face-to-face negotiations with B&W.

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Q Who else participated on behalf of GPU?

A I rememver Vince Zodiaco, I remember Bud Cherry to some degree, I remember Fred Glickman and there also may have been a Gordon Bond, another technical person.

Q Did Mr. Glickman take an active role in that negotiation?

A I don't know what you mean by the word "active."

Q Was he involved in participating in the decision making with respect to that negotiation?

A I believe it was a team effort and, consequently, he would have participated in any final decisions.

Q Do you know whether he attended any face-to-face negotiations?

A He may have but I am not sure.

Q Going back to the OTSG matter, with whom at B&W did you deal on that situation?

A I dealt with Grant Ward, I dealt with Lee Pletke and I dealt with Gordon Gray.

Q Do you remember what year this was?

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A I believe it was 1977 or 1978.

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Q You mentioned that this resulted in a change order.

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To what contract was that change order referenced?

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A The change notice referenced the 1967 nuclear steam supply system contract between B&W and JCP&L.

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Q Did the change notice adopt the terms and conditions contained in the 1967 contract?

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A To the best of my knowledge, it did.

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Q When did you first become aware of the OTSG negotiations?

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THE WITNESS: Would you repeat that question, please.

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(Record was read back.)

A In 1977 or 1978.

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Q How did you become aware of the negotiations?

A I was made aware of a problem by our Project Manager -- no, not the Project Manager but by an Engineering Manager. --

Q Had negotiations commenced with

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B&W at the time you became aware of it?

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A They may have but I am not sure.

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Q Why was the decision made to

5

reference the change order back to the 1967 NSS

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contract?

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A We believed and took a position that this

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could be warranty related.

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Q When you say "warranty related,"

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you mean one of the warranties that was provided

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under the NSS contract?

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A Yes.

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Q That was the reason why the decision

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was made to proceed by way of a change notice

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to that contract rather than negotiating something

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new, would that be correct?

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A That is correct.

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Q Did B&W agree that the change notice

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should reference the 1967 contract?

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A Yes.

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Q I know th y came to agree in the

22

end since that is the way the change notice went

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out. Perhaps I should have asked you did they

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agree initially with that position that GPU took?

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A I do not believe they agreed initially with

1
2 that position.

3 Q What was B&W's initial position?

4 A If I remember correctly, B&W sought to have
5 this performed as a task release under an
6 existing Master Services Agreement.

7 Q Do you know what Master Service
8 Agreement B&W wished to have this work performed
9 under?

10 A No, I don't.

11 Q Did you have occasion at that time
12 to review whatever master service contracts
13 existed between B&W and GPU?

14 A No.

15 Q Was there any discussion during
16 the course of the OTSG negotiation of the terms
17 and conditions of the 1967 contract services,
18 the terms and conditions of whatever Master Service
19 Contract it was that B&W initially wished to have
20 the work performed under?

21 A I don't recall any discussion with regard
22 to terms and conditions.

23 Q Did you make a review of the terms
24 and conditions in the 1967 NSS contract other than
25 the warranty provisions which you have already

discussed?

THE WITNESS: Would you repeat that question, please.

(Record was read back.)

A No.

Q Can you now recall any other contacts with B&W besides the two instances you have mentioned this morning and those that you testified to previously?

A I don't recall any other.

Q Have you made a search of your correspondence files, if you maintained such files, to determine whether you had any correspondence in them with B&W?

A I have not made a search of those files.

Q Do you know if anyone has?

A I believe so.

Q Who made the search?

A Counsel.

Q Do you know whether any search has been made of your files to determine whether there are any written memoranda or notes respecting communications with B&W?

THE WITNESS: Could you repeat that

question, please.

(Record was read back.)

A Do you mean other than counsel?

Q No, I just want to know whether anybody has done that task, then I will ask who did it, if anyone.

A I don't know.

Q Has anyone asked to review your files for the purposes of determining whether or not there are any notes or memoranda in them relating to communications with B&W?

A I don't remember. I do know my files were made available to counsel.

Q Did you make available all the files that you have?

A That is correct.

Q Do you know whether they were actually all reviewed by counsel?

MR. KLINGSBERG: Wait a second.

Off the record.

(Discussion off the record.)

MR. KLINGSBERG: Let's hear the question.

(Record was read back.)

MR. KLINGSBERG: You can answer that.

A I don't know.

MR. WISE: I would next like to mark as Defendants' Exhibit 28 for identification, a copy of what appears to be a Master Services Contract between Metropolitan Edison Company and Babcock & Wilcox. The contract recites that it is made and entered into as of June 1, 1977.

(Master Services Contract between Metropolitan Edison Company and Babcock & Wilcox entered into as of June 1, 1977 marked Defendants' Exhibit No. 28 for identification, as of this date.)

Q Would you take a look at Exhibit 28 and tell us whether you have ever seen this document in this form prior to today?

THE WITNESS: Could you repeat the question, please.

(Record was read back.)

A I may have but I am not sure.

Q Would you look at the signature page on the contract which is two or three in from the back.

1
2 Do you know whether you saw a copy
3 of the Master Services Contract after it was
4 executed by the parties?

5 THE WITNESS: Could you repeat the
6 question, please.

7 (Record was read back.)

8 A I may have but I am not sure.

9 Q Was there any practice regarding
10 filing of executed contracts at GPU Service and
11 the operating companies?

12 A There is a practice at GPUSC.

13 Q What is the practice?

14 A The practice at GPUSC is that GPUSC
15 executed contracts that are sent to the Corporate
16 Secretary's Office for filing.

17 Q How long has that practice been
18 in effect?

19 A I don't know.

20 Q Was it in effect when you arrived
21 at GPUSC?

22 A It may have been.

23 Q When did you first become aware of
24 the practice?

25 A I became aware of the practice at the time

1
2 that the Contracts Department took over the
3 function of coordinating reviews and obtaining
4 execution of contracts.

5 Q When was that?

6 A I believe in 19 -- late '75.

7 Q Was there any practice with
8 respect to executed contracts at the operating
9 subsidiaries?

10 A I don't know.

11 Q Did the operating subsidiaries ever
12 send copies of executed contracts to your
13 department?

14 THE WITNESS: Repeat that.

15 (Record was read back.)

16 A I cannot recollect, an' except but at a
17 specific request.

18 Q There was no regular ongoing practice
19 to provide your department with a copy of any
20 contract after its execution by an operating
21 subsidiary, is that correct?

22 A That is correct.

23 (Continued on the following page.)
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2 Q I would like now to have you look at
3 Exhibit 25 which was marked yesterday (handing
4 document to the witness), and in connection with
5 that exhibit, if you would look at page 7 of
6 Exhibit 28 which is the contract, on page 7 a
7 section entitled "Warranty," which is numbered
8 Section 10, begins.

9 I would like you also to look at
10 Exhibit 25, which is a copy of your memorandum to
11 Mr. Betz dated August 16, 1977, and specifically
12 at page 2 of that memorandum, and the top of the
13 page which concerns Section 10 and the warranty
14 provisions.

15 Let me first give you an opportunity
16 to read your memorandum and the Section 10 of
17 the contract to familiarize yourself with it, and
18 then I am going to ask you some questions.

19 Have you had an opportunity to do
20 that?

21 A Yes.

22 Q Referring to your memorandum, Exhibit
23 25 and the section of it that you wrote concerning
24 paragraph 10.1 of the proposed contract, can you
25 recall to say whether the Section 10.1, which is

2 titled "Spare or Replacement Parts" in your
3 memorandum corresponds to any of the warranty
4 sections that appear in the contract as eventually
5 executed.

6 MR. KLINGSBERG: Wait a second; I am
7 not clear.

8 The August 16th memo is commenting on
9 a proposed Master Services Contract. That is
10 Exhibit 25. Exhibit 26 -- and that is dated
11 August '77. Exhibit 28 is the final, executed
12 Master Services Contract, and the date of
13 execution, I guess we don't know at this
14 point.

15 Do I understand your question that
16 you are asking him whether the provision
17 that he commented on was the same as the
18 provision that ended up in the final contract
19 according to his recollection, that is the
20 question?

21 MR. WISE: My question is slightly
22 different, but you have highlighted a point
23 which, I guess, I was assuming, but perhaps
24 we should clear it up on the record in case
25 there is now doubt about it.

2 BY MR. WISE:

3 Q Mr. Haimowitz, with respect to your
4 memorandum, which is Exhibit 25, do you know whether
5 the proposal that you were commenting upon in
6 Exhibit 25 eventually wound up being the contract
7 which we have marked as Exhibit 28?

8 MR. KLINGSBERG: You mean whether it is
9 the same?

10 MR. WISE: In other words, was his
11 memorandum directed to the negotiation of
12 the deal which wound up being the contract that
13 is now marked as Exhibit 28.

14 A I believe not. The title of this one was
15 a "Proposed Master Services" agreement "for TMI
16 Unit 1."

17 This one says it is a proposed
18 agreement for Units 1 and 2.

19 Q Do you know whether there was a
20 separate Master Services Agreement ever entered
21 into between Metropolitan Edison and B&W for TMI-1
22 in 1977?

23 A I don't know.

24 Q Do you have any knowledge as to how
25 many Master Services Agreements Metropolitan

1 Edison entered into with B&W?

2
3 A I am aware of a Master Services Agreement
4 that is dated 1977 that is apparently for both
5 units, and I am certainly -- Met Ed, you know, the
6 other one, GPUSC.

7 I couldn't answer accurately.

8 Q Do you recall reviewing more than one
9 Master Services Contract between Met Ed and B&W
10 during the year 1977?

11 A I don't recall.

12 Q Do you have anything in your files
13 that would enable you to tell what this memorandum,
14 which was marked as Exhibit 25, related to?

15 A I don't know.

16 Q It is a mystery to you today, other
17 than what it says on its face?

18 MR. KLINGSBERG: I object to that. I
19 don't think he says that it is a mystery.

20 Q Do you have any information at all
21 based upon the memorandum which is before you,
22 Exhibit 25, and the Master Services Contract which
23 is also before you, Exhibit 28, as to whether or
24 not Exhibit 25 relates to the negotiations which
25 eventually wound up in Exhibit 28?

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MR. KLINGSBERG: Can we go off the

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record a second?

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MR. WISE: Yes.

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MR. KLINGSBERG: Off the record.

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(Discussion off the record.)

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(Recess)

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MR. WISE: Please repeat the last

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question.

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(Record read)

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A Since this is the only Master Services

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Contract entered into between the parties in 1977,

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I have reason to believe that this memorandum, in

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fact, referenced a draft of this particular

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contract.

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(continued on next page)

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2 Q Going back to Exhibit 25, let me ask
3 you first, do you know whether a copy of whatever
4 proposal it was that was before you when you
5 wrote the exhibit is still maintained by GPU
6 Service?

7 A I don't believe so.

8 MR. WISE: For the record, we do not
9 have a copy of any draft or proposal that
10 we can identify as having been the one
11 that Mr. Haimowitz would have had before him
12 at the time that he wrote Exhibit 25. If we
13 had such a document, we would be happy to
14 provide it to Mr. Haimowitz. Since we don't,
15 we will have to go forward with what we do
16 have, which is a copy of the final executed
17 agreement.

18 Q Now, looking at Exhibit 25 and
19 referring to page 2, would you look at what you
20 wrote on Section 10.1, which was labeled "Spare
21 or Replacement Parts."

22 First let me ask you whether you have
23 any knowledge as to whether or not the contract as
24 finally executed contained a warranty on
25 spare and replacement parts, and you may wish to

1
2 refer to Exhibit 28.

3 I would point you to Section 10, which
4 covers the warranties.

5 MR. KLINGSEERG: May I have that
6 question back, please.

7 (The reporter read back the last
8 question.)

9 Q Mr. Haimowitz, if it will help, I am
10 not trying to pin you down as to whether or not
11 there is or is not a warranty in this particular
12 contract on spare and replacement parts.

13 Exhibit 25, your memorandum, makes a
14 recommendation to Mr. Betz concerning what should
15 be done about spare or replacement parts,
16 warranties or that type of work, and all I am
17 trying to establish now is whether or not in fact
18 to your knowledge, what you recommended in Exhibit
19 25 in fact happened in the final agreement, and
20 that was the provisions relating to spare and
21 replacement parts were removed and handled
22 someplace else.

23 A It would appear from my reading of this
24 Article 10 that there is no reference to spare or
25 replacement parts in this document.

Q Do you have any recollection today of what the original proposal was on spare or replacement parts?

A I don't have a recollection.

Q Would you look at your memorandum on that point, which says "Such orders should be placed under the terms and conditions previously negotiated between GPUSC (on behalf of Met-Ed)" -- and that is in a parenthetical, "on behalf of Met-Ed," end of parenthetical -- "and B&W during the TMI-2 spare parts negotiations."

What negotiations were you referring to when you mentioned the TMI-2 spare parts negotiations?

A The negotiations I was referring to in that memo would be those conducted with B&W personnel with respect to pricing of spare parts.

Q When did those negotiations take place?

A I believe in the period of 1977 -- in 1977 or maybe late 1976.

Q Who represented GPUSC in those negotiations?

A I believe Fred Glickman did.

Q Do you know whether those negotiations

1
2 resulted in a contract?

3 A No, they did not result in a contract.

4 Q What did they result in?

5 A They resulted in an agreement which would
6 provide Met Ed an ability to insure that the
7 prices for these spare parts would in fact be
8 reasonable and I believe it gave Met Ed a right,
9 if it so wanted, to analyze certain cost data
10 held by B&W to in fact insure that the prices
11 appearing for spare parts would meet certain
12 criteria that B&W agreed to utilize in its pricing
13 technology.

14 Q Was this agreement embodied in any
15 writing?

16 A To the best of my knowledge, yes.

17 Q Who signed the writing on behalf of
18 GPU Service?

19 A I believe Fred Glickman or myself.

20 Q How long was the writing, how many
21 pages?

22 A I don't think more than a page.

23 Q What form did it take? Was it a
24 memorandum, a letter?

25 A I believe it was a letter.

1
2 Q Was it signed by someone on behalf
3 of B&W?

4 A I believe so.

5 Q Did it contain any terms and
6 conditions other than provisions relating to
7 pricing and cost data as you testified?

8 A I don't recall anything but matters of
9 pricing.

10 Q Do you recall whether the letter
11 contained any provisions relating to warranties?

12 A I don't recall any such provisions.

13 Q What led you to recommend in your
14 memorandum, Exhibit 25, that orders relating to
15 spare or replacement parts should be placed under
16 the letter agreement you just described for us?

17 THE WITNESS: Can you repeat the
18 question, please.

19 (The reporter read back the last
20 question.)

21 A Historically, Met Ed would issue unpriced
22 purchase orders for certain spare parts. These
23 unpriced purchase orders would authorize B&W
24 to undertake work to produce these spare parts,
25 and from a procurement point of view, we did not

1
2 believe that that is a prudent procurement practice
3 in just issuing unpriced purchase orders, and
4 possibly at the time have a delivery, for B&W
5 to come and say, "This is the price," and that's it.

6 We attempted for quite a period of time to
7 insure ourselves that what we would be paying
8 for these spare parts would be a reasonable price,
9 and after months and months of negotiations we
10 finally got an agreement with B&W which would at
11 least give us some assurance and a certification
12 that these prices are at least equivalent to what
13 anybody else was paying, with a right to review
14 their cost data to insure that.

15 Q My inquiry now is directed at what led
16 you to make your comment in the context of the
17 warranty provisions rather than elsewhere, such
18 as for instance, with respect to the scope of
19 supply or some other area of the contract? If
20 you can recall.

21 A I could not recall without seeing what the
22 10.1 was.

23 Q O. K.

24 Looking at your comment on "10.4,
25 "Engineering and Technical Advice and Consultation,"

1
2 would you look at the last sentence, which reads
3 "It is our opinion that the Pennsylvania Statute
4 precludes such limitation on warranty."

5 Mr. Haimowitz, I recognize that we
6 are limited here today because we don't have
7 before us the proposal or the draft that you had
8 before you when you wrote that. Recognizing that
9 limitation, are you able to tell us today from
10 your recollection to what you were referring in
11 that sentence which I just quoted, and you may take
12 your time and read both your memorandum on
13 Section 10.4 and also look at the warranty relating
14 to engineering and technical advice as it appeared
15 in the final contract as Section 10.3.

16 THE WITNESS: Could you repeat the
17 question, please.

18 (The reporter read back the last
19 question.)

20 A I have looked at the last sentence of the
21 memorandum and I have looked at the 10.3 and I can
22 only guess --

23 MR. KLINGSBERG: Did you look also
24 at 10.4? That is what he is asking about.

25 MR. WISE: Well, Mr. Klingsberg, I was

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2 asking about 10.3, which appears to be
3 10.4 in Mr. Haimowitz' memorandum.

4 MR. KLINGSBERG: Oh, I see.

5 MR. WISE: And from which, I believe
6 the spare and replacement parts warranty
7 which was 10.1 in the original was
8 apparently removed, as we covered in earlier
9 testimony.

10 MR. KLINGSBERG: O. K.

11 MR. WISE: However, you raise a good
12 point and it may help the witness if he
13 were to look at Sections 10.4 and in
14 particular, 10.5 in the contract as finally
15 executed, since they may conceivably have
16 also been the subject of his consideration
17 in connection with the comment he made in
18 his memorandum. We just don't know today how
19 those were numbered in the original proposal.

20 MR. KLINGSBERG: Right.

21 MR. WISE: Which we don't have.

22 MR. KLINGSBERG: Now, do you need the
23 question?

24 THE WITNESS: Yes, yes.
25

1
2 BY MR. WISE:

3 Q Recognizing my comments and preamble
4 to my question which were designed to make the
5 record clear that we didn't have the original
6 proposal, can you tell us today to what you were
7 referring in the last sentence of your memorandum
8 at the point where you were commenting on
9 Section 10.4?

10 A In looking at the entire Article X, and we
11 are talking about the last sentence?

12 Q Yes, on page 2.

13 A Yes.

14 Q The last sentence on that portion of
15 the memorandum in which you are commenting on
16 which was then 10.4.

17 A It would appear to be that the original
18 10.4, the proposal, may have had some other
19 limitation beside the time period.

20 Q But today you don't have any
21 recollection of what Pennsylvania Statute
22 you were referring to in your memorandum?

23 A No. I didn't say that at all.

24 Q I'm sorry, that was my question and
25 perhaps you misunderstood it.

1
2 I am trying to determine what it was
3 you were talking about in that last sentence.

4 What statute did you have in mind?

5 A I had been made aware of a statute in
6 Pennsylvania commonly known as the
7 anti-indemnification statute, which I was made
8 aware precludes total disclaimers by engineering
9 or architectural firms performing services.

10 Q Who made you aware of that?

11 A I believe I first heard about it from John
12 Mazella.

13 Q When did he tell you about this?

14 A Prior to August 16, 1977.

15 Q You have no recollection of the
16 specific time?

17 A No.

18 Q Do you have any recollection of the
19 circumstances under which this matter first came
20 up, that is, this statute that you have referred
21 to?

22 A No, I can't recall the circumstances.

23 Q Did you ever look at the statute?

24 A No, I did not.

25 Q Did you ever discuss it with anyone

1
2 other than Mr. Mazella?

3 A Yes.

4 Q Whom else have you discussed this
5 statute with? And I will exclude counsel acting
6 for you in this litigation.

7 A I have also had discussions with GPU
8 counsel, GPU Service Company counsel.

9 Q Was that before or after the accident?

10 A I believe it was after the accident.

11 Q Have you had discussions with any
12 other persons?

13 A Yes.

14 Q Who else?

15 A With representatives of Bechtel Power
16 Corporation.

17 Q What was the occasion for those
18 discussions?

19 A We had selected Bechtel as the firm to help
20 us in the cleanup of TMI.

21 Bechtel expressed concern with respect to
22 the Pennsylvania Statute and what its liability
23 may be.

24 Q Were you involved in those negotiations?

25 A Yes. Excuse me, when you say negotiations,

1
2 you mean total negotiations with Bechtel?

3 Q Yes.

4 A Yes.

5 Q Did you personally have any discussions
6 with any representatives of Bechtel in which this
7 particular topic arose?

8 A Yes.

9 Q What did you say to Bechtel about it?

10 A I believe I recommended that Bechtel's
11 attorney communicate with our attorney on this
12 specific issue.

13 Q Do you know whether that happened?

14 A I believe so.

15 Q What, if anything, resulted after those
16 discussions on this topic?

17 A We eventually negotiated and entered into
18 an agreement with Bechtel.

19 Q After you made your recommendation to
20 Bechtel that they have their attorneys talk with
21 GPU's attorneys, did you have any further
22 communication with Bechtel concerning the
23 Pennsylvania Statute?

24 A To the best of my knowledge, no.--

25 Q Did you ever hear from anyone what

1
2 resolution was made of that issue, if any
3 resolution was made?

4 A Yes.

5 Q From whom did you receive information?

6 A I believe from Bechtel.

7 Q What did they tell you?

8 A They recommended an insertion of a provision
9 in that contract.

10 Q What did the provision provide?

11 A I believe that the provision sets forth an
12 understanding by both parties that there is an
13 anti-indemnification statute in Pennsylvania and
14 that -- and here I am just paraphrasing -- we would
15 agree to the extent that we could agree not to
16 waive -- not to press any claims under this
17 particular statute in consideration for reduced
18 rates, exclusion of fee and the dollar limitation
19 which Bechtel agrees to use, but I believe the
20 provision specifies in certain instances where
21 the anti-indemnification statute may not be waived.

22 Q What is your understanding of what the
23 anti-indemnification statute provides?

24 A I believe I answered that question five
25 minutes ago.

1
2 Q And I believe you said that it
3 precludes total disclaimers by engineering and
4 architectural firms providing services. Is that
5 the extent of your understanding of it?

6 MR. KLINGSBERG: I don't think it is
7 fair to ask a witness his current
8 interpretation of a particular statute
9 without showing him the statute.

10 MR. WISE: Is your objection to the
11 fact that I am asking for his current
12 interpretation or are you objecting to
13 asking for any interpretation at all? I
14 mean if it helps, I will limit it to his
15 interpretation at the time he was
16 negotiating this Bechtel contract.

17 MR. KLINGSBERG: Yes, but I think in
18 fairness, he should have an opportunity to
19 look at the statute if he is going to
20 interpret it.

21 MR. WISE: I am not really interested
22 in his interpretation as a legal matter,
23 I am interested in his understanding of it
24 and I recognize that we don't have it before
25 us here this morning.

1

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A I testified that I had no knowledge of ever seeing the statute.

3

4

Q Exactly.

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Given that you never saw the statute, did you come to some understanding as to what it meant?

7

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A Yes.

9

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Q What I would like to know is what was that understanding?

11

12

A That architect or engineering firms performing services could not totally exclude themselves from all liability.

13

14

15

Q Would that include liability to the party for whom they were performing those services?

16

17

A It could.

18

19

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Q Do you have any knowledge as to whether Mr. Betz or anyone at Met Ed did consult with counsel with respect to the Pennsylvania Statute in connection with the negotiations with B&W?

21

22

A I have no knowledge.

23

24

Q Would you look now at the portion of your memorandum that discusses Section 11.0 titled "Limitation of Liability," and also look

25

1
2 at Exhibit 28, which contains a section numbered
3 11.0 and titled "Limitation of Liability."

4 A Yes.

5 Q Again recognizing that we don't have
6 whatever draft proposal it was that you had at
7 the time you wrote Exhibit 25, are you able,
8 looking at your memorandum and the contract as
9 finally executed to recall what the basis of
10 your comment concerning the limitation of
11 liability proposal was?

12 A The basis was a concern I had with the
13 article, Article XI, in which I thought that
14 B&W sought a blanket limitation of liability,
15 and that to me would appear unreasonable.

16 Q Was it your understanding that that
17 limitation of liability would have prevented
18 GPU from recovering for the items set forth
19 for instance, in Section 11.1 as it wound up in
20 the final contract?

21 MR. KLINGSBERG: For breach of
22 warranty under the --

23 MR. WISE: I think we are out of the
24 warranty section at this point and there
25 is a general limitation of liability clause

1
2 but let's find out what the witness recalls.

3 THE WITNESS: Can I have that question
4 repeated, please.

5 (The reporter read back the pending
6 question.)

7 A I believe a better way of saying it is my
8 concern that B&W may think that this provision, as
9 written, could exclude any type of liability.

10 Q Putting aside your concerns for
11 whatever understandings or misunderstandings B&W
12 might come to, did you come to any understanding
13 with respect to the limitation of liability
14 provision in the proposal that you had before you
15 when you wrote your memorandum which is now
16 Exhibit 25 as to whether that limitation would
17 prevent GPU or the operating subsidiary from
18 recovering for the types of damages expressly
19 set forth in that clause?

20 MR. KLINGSBERG: In regard to matters
21 under this contract?

22 MR. WISE: In regard to matters under
23 this contract.

24 A I think my concern was really that it was
25 a total blanket limitation of liability and I

1
2 don't specifically remember if I was -- I
3 specifically was concerned that GPU could not
4 collect. I do remember that the entire provision
5 was a total blanket that appeared to me totally
6 unreasonable.

7 Q Do you know whether the provisions
8 in the contract as finally executed contained
9 in Section 11.0 are substantially the same as
10 the provisions that you saw when you wrote your
11 memorandum?

12 A I don't know.

13 Q Do you know whether Met Ed was able
14 to obtain any concessions from B&W with respect
15 to Section 11 of the contract?

16 A I would think not.

17 MR. KLINGSBERG: It is getting on
18 past the lunch hour.

19 MR. WISE: Do you want to stop here?

20 MR. KLINGSBERG: It is up to you.

21 MR. WISE: Sure. Let's take a lunch
22 break.

23 (Whereupon, at 12:32 p.m., a luncheon
24 recess was taken.)
25

AFTERNOON SESSION

2:08 p.m.

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

EXAMINATION (continued)

BY MR. WISE:

Q Mr. Haimowitz, you still have before you Exhibit 25, which is your memorandum of August 1977, and Exhibit 28, which is the executed copy of the 1977 Master Services Contract.

I would like you to refer for a moment to page 9 of the Master Services Contract, and specifically Section 10.4, Section B (handing).

Do you recall whether you saw a provision similar to or the same as Section 10.4-B at the time you reviewed the proposal and wrote your memorandum which is Exhibit 25?

A Yes.

Q Did you form an understanding at the time that you saw that provision as to what it required?

THE WITNESS: Could you repeat the question, please.

(The reporter read back the last question.)

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2

A I believe so.

3

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Q What was your understanding at that time?

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A It was my understanding at that time that Met Ed would be obligated to decontaminate any parts or part that was being procured under this specific contract prior to B&W making the necessary corrections.

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11

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Q Did you understand that Met Ed's obligation might extend beyond a specific part to include any area of work?

13

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A I don't know if I gave that any specific thought.

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Q Looking now at the following page, page 10 of the agreement relating to indemnification, which begins at the bottom of page 10 and carries over onto page 11 and the top of page 12, do you recall whether the proposal which you had before you at the time of your memorandum contained a clause similar to or the same as what appears in the final contract on indemnification?

24

25

THE WITNESS: Could you repeat the question, please.

(The reporter read back the last question.)

A It may have but I can't be sure.

Q Looking at your memorandum, on page 2 you made a comment with respect to what in the proposal was apparently numbered Section 12.0, "Indemnification."

Do you see that?

A Yes.

Q Why don't you take a second and read your comment there.

What did you mean by the "legal ramifications with respect to the Price-Anderson Act"?

A I believe at the time that the memorandum was written, there was a question being litigated on the validity of the Price-Anderson Act and my concern was that with respect to Article XII, "Indemnification," that Met Ed consider a provision where we would only be able to indemnify B&W only to the extent that we would obtain protection under the Act's provisions.

Q Did the proposal that you had before you at the time require Met Ed to indemnify B&W

1
2 beyond the extent of protection under the
3 Price-Anderson Act?

4 A I don't recall.

5 Q Do you know whether Met Ed was able
6 to obtain any concession from B&W in accord
7 with your suggestion?

8 Just to make my question clear,
9 Mr. Haimowitz, I am not asking for your opinion
10 today after reading the final contract whether
11 it does or doesn't conform to your recommendation,
12 the only thing I am asking is whether you ever
13 heard from anybody what results were obtained
14 in any negotiations with B&W following your
15 recommendation.

16 MR. KLINGSBERG: But you are, of
17 course, free to look at the final contract
18 to see whether that, to any extent,
19 refreshes your recollection in answering
20 the question.

21 A I don't recall being told by anybody at
22 Met Ed if in fact they had received any
23 concession with respect to indemnification.

24 Q Under the LOSA procedure, as you
25 understood it, was the level of authority

1
2 necessary for approval of a contract within the
3 GPU organization in any way dependent upon the
4 extent of the exposure to liability that the
5 particular contract entailed?

6 THE WITNESS: Will you repeat the
7 question, please.

8 (The reporter read back the last
9 question.)

10 MR. KLINGSBERG: Do you want to read
11 that again, please.

12 (The reporter again read back the
13 last question.)

14 Q Mr. Haimowitz, I realize the question
15 is difficult. If you would like me to rephrase
16 it, I will attempt to break it down into
17 parts; if you feel you can answer it the way it
18 is posed, we can begin there as well.

19 A Could you break it down in parts, please.

20 Q You are familiar with the LOSA
21 procedure at GPU?

22 A Yes.

23 Q And it covers contracts negotiated
24 both on behalf of GPU Service as well as the
25 operating companies; is that true?

1
2 A That is correct.

3 Q Is it correct that the procedure
4 contains certain requirements as to the level of
5 authority necessary to execute and approve a
6 contract?

7 A That phrasing is g'ving me a problem.

8 Q Does the procedure contain requirements
9 as to who is authorized to sign any particular
10 agreement or type of agreement?

11 A I don't believe it specifies who is
12 authorized to sign.

13 Q My understanding of the meaning of the
14 term LOSA was a level of signature authority.

15 I may be using a phraseology that is
16 not consistent with what is used within the GPU
17 organization. What I am attempting to determine
18 is whether or not the LOSA specifies who it is
19 within GPU Service or one of the operating
20 companies who has the authority to give the final
21 O. K. to any particular deal that is being
22 negotiated?

23 A The LOSA policy sets forth necessary
24 reviews and approvals of commitments prior to
25 execution.

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Q Does it also set forth who it is that has the final say, if you will, on whether or not the contract should be accepted on behalf of GPU or whichever operating subsidiary it is that is involved?

A It sets forth the approval cycle for each type of contract, yes.

Q To determine which approval cycle under the LOSA is applicable, what does one look at in the contract?

A One looks at the dollar value of the commitment.

Q How do you define "dollar value of the commitment"? Is it simply the purchase price or is there some other way of evaluating that?

A The commitment is based upon the contract price or the purchase price or the amount of funding within the contract.

Q What do you mean by the "amount of funding within the contract"?

A Many of our contracts put certain funding in that particular contract and a provision is generally included which says that the maximum amount authorized under this particular contract

1
2 is X number of dollars, that then puts a value
3 and based upon that value, reviews and approvals
4 are obtained.

5 Q That would be the maximum amount that
6 is authorized to be spent on the services or
7 goods covered by the contract?

8 A That is correct.

9 Q In determining which approval cycle
10 should be applied under LOSA, is any consideration
11 given to the potential exposure to liability
12 which a particular contract may entail as opposed
13 to the purchase price, contract price or level of
14 funding as you have just described them?

15 A It could be.

16 Q Under what circumstances could it be?

17 A The LOSA document sets forth mandatory
18 reviews and approvals of commitments. That does
19 not preclude each of the operating companies and
20 the Service Company from obtaining reviews and
21 approvals of other contracts that may not be
22 mandatory but discretionary on the part of the
23 operating companies.

24 Q Was there any policy at GPU to require
25 reviews of contracts that involved potential

1
2 exposure to GPU or one of the operating companies
3 beyond the amount of the purchase price, contract
4 price or funding authority?

5 A At the Service Company there was no policy
6 which mandated reviews other than those that
7 the policy set forth. However, as a practice,
8 since each Contract Manager had the ability to
9 seek and obtain reviews, certain contracts which
10 may not normally require a LOSA review and
11 approval could in fact go through that particular
12 process, but that is only as far as I know at the
13 Service Company.

14 Q Was there any understanding within
15 the Service Company and the operating companies
16 as to what those "certain contracts" would be?

17 A I do not believe there was any formal
18 understanding. I believe it was left as a
19 discretionary matter between the contract
20 professionals at each of the operating companies.

21 Q Did you ever have any discussions
22 with Mr. Betz as to why he had submitted the
23 proposal for a Master Services Contract to you
24 for your review? "

25 A I don't remember but I may have.

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Q Did you have any conversations with any other person as to why the Master Services Contract proposal had been submitted for your review?

A I believe I had some conversations with John Mazella on that matter.

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

A To the best of my knowledge, I believe that John Mazella solicited some opinions from us with respect to this proposed draft.

Q What opinions did he solicit?

A He sought a review of the terms and conditions in our opinion of the contract as proposed by B&W.

Q Did he say why he was seeking your review?

A I don't remember.

Q Did you have any discussions with Mr. Mazella concerning the warranty clauses?

A I believe so.

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

A With respect to the warranty provision, I

1
2 believe my comment to him was and recommendation
3 was to delete that provision in its entirety and
4 the only -- the remembrance that I have is my
5 encouragement to John to do the best possible job
6 he could with respect to that provision.

7 Q Did he say anything to you on that
8 topic?

9 A I was led to believe by John that he would
10 do the best that he possibly could.

11 Q Is that all you can remember that he
12 said to you?

13 A No. We discussed other provisions and we
14 discussed in general the difficulty that a
15 negotiator faces when he is in a sole source
16 situation, the problems and inequity of
17 bargaining power between the parties and I
18 commiserated with him on the problems that he
19 would face.

20 Q Did he say anything to you as to what
21 B&W's position was on the warranty provisions?

22 A I don't remember discussing what John told
23 me about B&W's position on the warranty.

24 Q Did you have any discussions with
25 Mr. Mazella concerning the limitation of

1
2 liability clause in the proposal?

3 A I believe so.

4 Q What did he say to you and what did
5 you say to him on that topic?

6 A I think our conversation with respect to
7 the limitation of liability was similar to the --
8 our conversation regarding the warranty. I
9 recognized the difficulty of his position. I
10 recognized that he is dealing, you know, in a
11 situation where he just can't say we exclude
12 B&W, it is not responsive to our needs, and I
13 seem to remember giving him encouragement, just
14 try to do the best he possibly could.

15 Q What did he say to you, if anything,
16 about B&W's position on the limitation of
17 liability provision?

18 A I don't remember discussing the B&W position
19 with John except as it may have appeared in the
20 proposal, which I don't remember.

21 Q Did you discuss with Mr. Mazella the
22 indemnification provisions in the proposal?

23 A I believe so.

24 Q What did he say to you and what did
25 you say to him on that topic?

1
2 A Again, with respect to the indemnification
3 provision I brought up what appeared in the
4 memorandum to see if he couldn't scratch the
5 article in its entirety and consult with his
6 legal people to try to rewrite the provision so
7 that it would place less of a -- it would be
8 less of a general limitation, which I felt was --
9 or indemnification, which I felt was quite broad.

10 Q Did he say anything to you concerning
11 B&W's position on that issue?

12 A I don't think I can remember anything on
13 that.

14 Q Did you have any discussions with
15 anyone else besides Mr. Betz and Mr. Mazella
16 concerning your review of the proposed Master
17 Services Contract?

18 A I may have had some conversations with Fred
19 Glickman.

20 Q What did you say to him about the
21 proposal?

22 A I called to Fred's attention that I had
23 recommended in a memorandum to Met Ed that the
24 draft contract was objectionable and would hope
25 that negotiations, you know, would be undertaken

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by Met Ed to alter many provisions.

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Q What did you tell him was objectionable about it?

5

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A To the best of my recollection, I believe we discussed the points in the memorandum.

7

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Q Is that the only recollection that you have?

9

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A That's about all I can remember of discussions with Fred.

11

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Q What, if anything, did he say to you about the proposal?

13

A I think he concurred with my recommendations.

14

15

Q Do you recall anything else that Mr. Glickman said to you about the proposal?

16

A I don't believe so.

17

18

19

Q Do you remember talking with any other person concerning the proposed Master Services Contract?

20

A I may have but I can't remember.

21

22

MR. KLINGSBERG: Can we have a two-minute break.

23

MR. WISE: Sure.

24

(Whereupon, a recess was taken.)

25

MR. WISE: I would next like to have

marked as Defendants' Exhibit 29, a copy of a memorandum from Mr. Haimowitz to a Mr. Guerin dated January 19, 1976.

(Copy of a memorandum dated January 19, 1976, from Mr. Haimowitz to Mr. J. E. Guerin, was marked as Defendants' Exhibit 29 for identification, as of this date.)

BY MR. WISE:

Q Mr. Haimowitz, is Exhibit 29 a copy of a memorandum you prepared?

A I believe so.

Q Who was Mr. Guerin?

A Mr. Guerin was a Manager of Purchasing at Metropolitan Edison who later became a Director of Materials Management.

Q What was the subject of Exhibit 29?

A It says "Master Contract for Engineering and Technical Services."

Q Was there a proposal for such a contract under consideration?

A I don't recall.

Q Does reading the memorandum refresh your recollection?

A I don't recall.

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Q What occasioned your writing the memorandum?

A I don't remember.

Q Did you have any oral discussions with Mr. Guerin concerning the subject of this memorandum?

A I don't recall any conversations with Mr. Guerin.

Q Do you recall any conversations with any person concerning the subject of this memorandum?

A I do not.

Q Do you recall any negotiations between GPU and Met Ed on the one hand and B&W on the other during 1976 with respect to a Master Services Contract?

A I don't recall anything in '76 with respect to a Master Services Contract.

Q Do you remember whether in 1976 you made a review of a Master Services Contract that had been executed in the past between Med Ed and B&W?

A I may have but I don't recall.

Q Do you have any knowledge today as

1
2 to what the Master Contract for Engineering and
3 Technical Services was, to which you referred
4 in your memorandum?

5 A No, sir.

6 Q And I take it you have no recollection
7 of the terms and conditions contained in any such
8 contract?

9 A That is correct.

10 Q And you have no knowledge as to any
11 negotiations that may have occurred during 1976
12 with respect to a Master Services Contract for
13 TMI?

14 A I have no knowledge of any that could have
15 taken place in '76.

16 MR. WISE: I would next like to have
17 marked a copy of a memorandum from Mr.
18 Haimowitz to Mr. Heward, dated May 18, 1977.

19 (Copy of memorandum dated May 18, 1977,
20 from Mr. Haimowitz to Mr. R. W. Heward, was
21 marked as Defendants' Exhibit 30 for
22 identification, as of this date.)

23 Q Is Exhibit 30 a copy of a memorandum
24 that you prepared (handing)?

25 A It appears to be.

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Q Was this memorandum prepared in connection with the delay claims that B&W had presented to Med Ed and GPU?

A I believe so.

Q Who was Mr. Heward?

A Dick Heward was our Project Manager for TMI-2 at the time or at the date of the memorandum.

Q Why did you wish Mr. Heward to prepare the review described in your memorandum?

A Could you repeat the question, please.

(The reporter read back the last question.)

A The memorandum apparently included an enclosure which contained licensing efforts performed by B&W for which additional funds were required. This required some technical input to find out the dates, whether or not it fell within the scope of the nuclear safety analyses, which was a part of the contract, and I believe that Dick would have been the man most logically to get us the necessary answers.

Q Why were you interested in whether B&W "could have reasonably anticipated or known

1
2 that such work was required from NRC prior to
3 April 1976"?

4 THE WITNESS: Will you repeat that
5 question.

6 (The reporter read back the last
7 question.)

8 A I believe that the request for additional
9 funds by B&W for licensing activities would not
10 be valid if B&W could have reasonably anticipated
11 or known that such work was required prior to '76.

12 Q Did you believe it would be valid if
13 B&W could not have known or reasonably anticipated
14 that?

15 A I don't know if I ever came to that
16 conclusion.

17 Q Did you ever get any response from
18 Mr. Heward to your memorandum, Exhibit 30?

19 A I do not believe I got a response from Dick
20 Heward but I believe a response was furnished to
21 me.

22 Q Who within GPU would have the authority
23 to make a decision whether B&W was entitled to
24 be compensated for work that it would not
25 reasonably have anticipated or known would be

1
2 required by the NRC prior to 1976, April of 1976?

3 A I don't think I understand the question.

4 Q You testified that you were interested
5 in finding out whether B&W reasonably anticipated
6 or knew about certain NRC requirements before
7 April 1976 in order that you could determine
8 whether the claim was valid; is that correct?

9 A I think it is too narrow. You also have to
10 see that it is also a requirement to verify that
11 such items fall outside the scope of work as set
12 forth in the contract (indicating).

13 Q That perhaps is a second requirement
14 in your memorandum and we will come to that in
15 due course.

16 My question really is: Who was the
17 decision-maker within GPU as to whether or not to
18 pay the claims that B&W was making? Was that
19 something that you had authority to do or was it
20 something that somebody else had authority to do?

21 A I don't know what you mean by a "decision-
22 maker." In any claim, input would be required
23 from the technical people who would be aware of,
24 in this specific instance, the licensing
25 requirements.

1
2 If the licensing costs are determined then
3 to be due or brought about totally by the delay,
4 at that point in time when we accept a validity
5 of a position, then negotiation on the amount of
6 moneys would take place.

7 I hope I have answered your question. I
8 didn't know what you meant by "decision-maker."

9 Q In your answer you said "we"
10 determined the validity.

11 Who are you including within the term
12 "we"?

13 A Certainly the contract's representative and
14 certainly the technical function.

15 Q And how would that determination be
16 made? Would you take a vote or would one person
17 have authority to make a final decision?

18 A At my particular level, and at the Project
19 Manager's level, we would reach a meeting of the
20 minds, at which point I would compel probably a
21 meeting with my superior, as Dick would do with
22 his, to receive their concurrence.

23 Q Your superior at that time would have
24 been Mr. Glickman, I take it? -

25 A That is correct.

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Q Mr. Heward's superior at the time would have been who?

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4

A Mr. Bill Hirst.

5

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Q Between Mr. Hirst and Mr. Glickman who had final authority on whether to pay the claim?

7

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MR. KLINGSBERG: If either of them.

9

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A I think depending upon the claim, depending upon the amount of that particular claim, it may have been of such magnitude that it would go up higher one other step.

11

12

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Q And what would be the next step?

14

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A Since Mr. Glickman and Mr. Hirst were both Managers at that time, I believe it would have gone to the next level, which would be a Vice Presidential level.

16

17

18

Q Would that have been Mr. Verrochi?

19

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A Bill Verrochi at that time was Vice President of Generation at the Service Company.

21

22

Q Would he have been the one with the final decision as to whether or not to pay the claim?

23

24

A Again it would depend upon the dollar involvement of that particular claim.

25

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2 Q You were involved in these negotiations,
3 were you not, concerning the claim?

4 A Yes.

5 Q And you were aware at the time how
6 much was involved?

7 A I believe I testified to that.

8 Q And you are aware today approximately
9 how much was involved?

10 A Very approximate.

11 Q Given your knowledge of the approximate
12 amount, can you tell us today who had the final
13 say on whether or not to pay this claim?

14 THE WITNESS: Could you repeat the
15 question, please.

16 (The reporter read back the last
17 question.)

18 A Could you clarify that? I believe that
19 question is giving me trouble.

20 Are you asking -- what are you asking. Are
21 you asking who today would have had then?

22 Q No, I am not interested in who occupies
23 today the position that would then have been the
24 final decision maker.

25 I am simply trying to find out,

1
2 Mr. Haimowitz, who it is at GPU who eventually is
3 going to have to make up his mind to pay B&W the
4 money they were asking for or not.

5 A At that time in May of 1977, based upon
6 the total claim, in remembrance of the approximate
7 amount of that particular claim, what we felt it
8 was worth, that would have been a decision that
9 Bill Verrochi would have made.

10 Q Thank you.

11 MR. KLINGSBERG: Off the record.

12 (Discussion off the record.)

13 (At this point, a recess was taken.)

14 MR. WISE: Let me next ask to have
15 marked as Defendants' Exhibit 31, a copy of
16 a memorandum dated September 7, 1977 from
17 a Mr. J. J. Barton addressed to Mr.
18 Haimowitz.

19 (Copy of a memorandum dated
20 September 7, 1977, from Mr. J. J. Barton
21 to Mr. Haimowitz, was marked as Defendants'
22 Exhibit 31 for identification, as of this
23 date.)

24 BY MR. WISE:

25 Q Is Exhibit 31 a copy of a memorandum

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you received?

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A It appears to be.

4

Q Who was Mr. Barton?

5

A John Barton apparently was the acting Project Manager at that point in time for Three Mile Island Unit 2.

8

Q Had he replaced Mr. Heward?

9

A I don't know.

10

Q Was Exhibit 31 sent to you in response to your memorandum to Mr. Heward of May 18, 1977 which has been marked as Exhibit 30?

12

13

A May I see Exhibit 30?

14

MR. KLINGSBERG: Yes (handing).

15

Q I would also direct your attention to the opening paragraph of Exhibit 31.

17

A I believe this is a response from John Barton to the memorandum of May 18, 1977 which is titled Exhibit 30.

19

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Q Did you receive any other written responses to your May 18, 1977 memorandum?

21

22

A I may have but I'm not sure.

23

Q Did you have any discussions with Mr. Barton concerning the subject of Exhibit 31?

24

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A I don't believe I had conversations with

1
2 Mr. Barton.

3 Q Did you have conversations with any
4 other person concerning what Mr. Barton reported
5 to you in Exhibit 31?

6 A I believe so.

7 Q With whom did you discuss these matters?

8 A With Bob Cutler.

9 Q Who was Mr. Cutler?

10 A Bob Cutler was a GPUSC Project Engineer
11 assigned to the Three Mile Island Unit 2 project.

12 Q For whom did he work?

13 A John Barton worked for Dick Heward.

14 Q I'm sorry, I was directing my question
15 to Mr. Cutler.

16 A Oh, I'm sorry.

17 Mr. Cutler reported to Dick Heward.

18 Q Were Mr. Barton and Mr. Cutler
19 approximately equal in rank within the GPU
20 organization?

21 A I don't think so.

22 Q Who was senior?

23 A John Barton was senior to Bob Cutler.

24 Q What discussions did you have with
25 Mr. Cutler concerning the subject of Mr. Barton's

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memorandum?

A I became aware that Bob Cutler had prepared the details within the specific memo and I believe my conversations with him were each of the elements that appear in this memorandum.

Q Was any memorandum prepared by Mr. Cutler subsequent to Exhibit 31?

A I don't know.

Q Did Mr. Cutler change any of the conclusions that are set forth in Exhibit 31?

A He may have but I can't recall.

Q Did Exhibit 31 serve as the basis for any conclusions that you drew in connection with the B&W claims?

A I believe that the contents of that memo didn't firm up any conclusions in my mind at the time the memo was written but at least it allowed me to intelligently rebut portions of the B&W licensing issues.

Q Did the memorandum, Exhibit 31, in any way support any of the claims that B&W was making?

THE WITNESS: Could you repeat the question, please.

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(The reporter read back the last

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question.)

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A I believe it led to potential additional negotiations which could address certain points within the memo.

5

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Q Was it your understanding at the time you were negotiating with B&W concerning its delay claims that if B&W could establish, first, that it could not have reasonably anticipated or known that a particular item of work was required by the NRC prior to April 1976, and second, that the work fell within the scope of nuclear safety analysis required for an operating license, that B&W would be entitled to be compensated for that work?

A That's confusing. May I have it reread, please.

(The reporter read back the last question.)

THE WITNESS: That's what I thought.

MR. WISE: I will have to rephrase the question.

Q Was it your understanding at the time you were negotiating with B&W on its delay claims

1
2 that if B&W could establish, first, that the work
3 could not have reasonably been anticipated or
4 known to be required by the NRC prior to April 1976
5 and, second, that the work did fall within the
6 scope of nuclear safety analysis required for an
7 operating license, that B&W would be entitled to
8 compensation?

9 A I believe there has to be a third element.

10 Q What is the third element?

11 A In that the delay in undertaking the work
12 was not due to B&W.

13 Q Did you ask anyone to make any
14 investigation with respect to whether or not
15 any of the delays involved in the claims made by
16 B&W were attributable to B&W?

17 A I believe so.

18 Q Did you receive any written analysis
19 on that topic?

20 A I may have but I can't remember.

21 Q Did you receive any oral analysis on
22 that topic?

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

24 Q From whom did you seek an analysis as
25 to B&W's responsibility for any delays?

1
2 A If I remember correctly, it appeared in early
3 memos and also I think that the May 18, 1977 memo
4 may request from the Project Manager if any of
5 it was performed at a later date due to the
6 convenience of B&W.

7 May I?

8 (Document handed to the witness.)

9 I believe that the intent of the first
10 numbered paragraph in that letter was the mere
11 fact that the work was performed at a later date
12 for its own convenience or a nonpriority basis as
13 an indication to the Project Manager to insure
14 that it wasn't due to any delay and consequently
15 on a nonpriority basis.

16 Q Did you have any discussion with
17 Mr. Cutler, any oral discussion prior to his
18 preparation of Exhibit 31?

19 A I believe so.

20 Q Did you give him any instructions as
21 to the format the memorandum he was preparing
22 should take?

23 A I can't recall giving him specific
24 instructions with respect to a format--that the
25 memo should take.

Q Did you discuss with him what he should put into the memorandum?

A I don't know what you mean by that.

Q Well, did he discuss with you what he intended to write?

A I don't recall.

Q Did you give him any advice or suggestions as to how he should write it?

A I don't recall.

MR. WISE: I don't think I have any further questions.

MR. KLINGSBERG: That's wonderful. Can we take a short break and we will decide whether we have any cross-examination.

(Whereupon, a recess was taken.)

BY MR. KLINGSBERG:

Q Mr. Haimowitz, I would like to show you Defendants' Exhibit 24-B, which you were asked about on your direct examination, that is the document entitled "Standard Consulting Agreement, GPU Service Corporation," and I would like to direct your attention to pages 6 and 7, Article IX and Article X (handing).

Now, Article X provides in part,

1
2 "Consequential damages as defined in this Agreement
3 shall mean all indirect damages other than the
4 actual, direct damages and incidental damages
5 mentioned in clause (b) of the first paragraph of
6 Article IX of this Agreement."

7 Do you see that?

8 A Yes.

9 Q Now, you were asked on direct
10 examination, and I am paraphrasing because I
11 don't have the transcript, whether that definition
12 was in accord with your understanding at the time
13 of the meaning of consequential damages. Do
14 you recall that question and answer?

15 A I believe so.

16 Q In answering that question, could you
17 explain more completely what your understanding
18 was of these two provisions in relation to the
19 definition of consequential damages in this
20 agreement?

21 A My understanding was that consequential
22 damages include direct damages.

23 In Article IX we have --

24 Q Clause (b)?

25 A Clause (b).

1
2 -- we have examples of direct damages but these
3 are merely examples or illustrations, they are not
4 all-inclusive and were not intended to be
5 all-inclusive as evidenced by further words
6 where we say "including" and also we mention
7 "without limiting the generality of the foregoing,"
8 so it is safe to say that my understanding is that
9 the direct damages in this specific provision
10 merely show examples of what we deem direct
11 damages.

12 I would also like to point out that this
13 specific consulting agreement is a document that
14 is utilized by GPU in its contracts with
15 consultants where very limited expenditures are
16 put forth.

17 MR. KLINGSBERG: I have no further
18 questions.

19 BY MR. WISE:

20 Q Do I understand your answer to
21 Mr. Klingsberg's question to be that you consider
22 consequential damages, damages other than direct
23 damages?

24 A That is correct.

25 MR. WISE: I have no further questions.

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MR. KLINGSBERG: Would you also include other than direct and incidental damages?

THE WITNESS: I will include --

MR. KLINGSBERG: As included in this agreement?

THE WITNESS: Yes, as included in this particular thing, also all.

BY MR. WISE:

Q So the universe of damages to you includes those things that are direct, those things that are consequential and those things that are incidental?

A I don't follow that.

Q Well, you have mentioned that in Article IX there is a description of direct damages, correct?

A Illustrations of direct damages, correct.

Q Right. And in Article IX Clause (b), direct damages are mentioned plus the illustrations are given as to what is meant by direct damages?

A The illustrations are given of direct damages.

1

2

Q And it also mentions the term

3

"incidental damages"?

4

A Let me see. Just let me see.

5

That is correct.

6

Q Other than direct and incidental

7

damages, does Clause (b) mention any other type

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of damages?

9

A O. K., what is your question?

10

Q Other than direct and incidental

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damages, does Clause (b) mention any other types

12

of damages?

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A Yes.

14

Q What other types?

15

A Actual.

16

Q Do you interpret Clause (b) to be

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drawing a distinction between actual damages and

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direct damages?

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A Yes.

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Q What is the difference between actual

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and direct damages?

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A An actual damage could be the actual amount

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of dollars suffered, direct damage could be a

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little more with damage that could consist of

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other elements that wouldn't be in the actual.

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Q Would all actual damages be included within direct damages?

A Yes.

Q So that within the terms "direct damages" and "incidental damages" have we included everything that you meant to cover in Clause (b) of Article IX?

A No.

Q Besides direct damages and incidental damages, what else did you mean to cover?

A Oh, in that light the direct damages and these -- yes, I'm sorry, I misinterpreted what you said.

Q And am I correct that in Article X you said that all damages, all indirect damages other than what was covered under (b) would constitute consequential damages?

A That is not correct.

Q Well, doesn't that --

A Indirect damages other than actual, direct and incidental damages.

Q And that is what is covered under Clause (b) of Article IX? We just covered that?

A Not totally. In other words, Article IX

1
2 has examples. Are you just sticking to the
3 term "actual, direct and incidental"?

4 Q Yes.

5 A That's the damages that are referred to in
6 Article IX (b).

7 Q Right. And Article X defines
8 consequential damages, says everything else
9 except those constitutes consequential damages?

10 A Yes.

11 MR. WISE: No further questions.

12 (Time noted: 3:58 p.m.)
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16 Milton Haimowitz

17 Subscribed and sworn to before me
18 this day of , 1981.
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CERTIFICATE

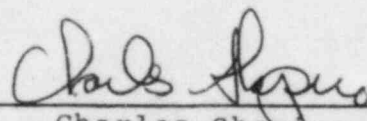
STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

I, CHARLES SHAPIRO, a Notary
Public of the State of New York, do hereby
certify that the continued deposition of
MILTON HAIMOWITZ was taken before
me on Friday, April 24, 1981 consisting
of pages 240 through 312;

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, CSR

I N D E X

WITNESS

PAGE

Milton Haimowitz (resumed)

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E X H I B I T S

DEFENDANTS' FOR
IDENTIFICATION

28	Master Services Contract between Metropolitan Edison Company and Babcock & Wilcox entered into as of June 1, 1977	250
29	Copy of memorandum dated January 19, 1976, from Mr. Haimowitz to Mr. J. E. Guerin	290
30	Copy of memorandum dated May 18, 1977, from Mr. Haimowitz to Mr. R. W. Heward	292
31	Copy of memorandum dated September 7, 1977, from J. J. Barton to Mr. Haimowitz	299

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