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- CRITICAL PATH PLANNING
 - LAND PLANNING
 - MANAGEMENT CONSULTING
 - PLANT LOCATION

RALPH J. STEPHENSON, P.E.
CONSULTING ENGINEER

15064 WARWICK ROAD
DETROIT, MICHIGAN 48223
PHONE 273-5026

April 27, 1981

Mr. Patrick A. Kennedy
Manager
Terre Haute Industries Inc.
1311 Stark Road
Livonia, Michigan 48150

Dear Mr. Kennedy:

There is a sizable amount of work to be done on the Breed plant program between now and early September, 1981. Therefore, I feel it is important I provide whatever professional and technical assistance I can in the most effective and prompt manner. Thus, I have taken the liberty of briefly reviewing below the activities we discussed at the meetings with you, Jim Stolt, and Max Goodwin on Monday and Tuesday, April 13 and 14, 1981. To help set these down quickly, I have covered the material at random, in numbered points for ease of reference and discussions.

1. We are limited to a discovery period which ends in early September, 1981. This makes it imperative that we rapidly organize our work and insure that all information expected from other than internal records is identified and obtained as early as possible.
2. The personnel available to work on this project (and I shall refer to it, as we discussed in Terre Haute, as a project) is limited, and therefore those who are involved must develop methods of communicating accurately, fully, and rapidly. To do this we shall have to spend some of the early time available organizing material in the best form possible for each of us to draw from it effectively.
3. As I see it my major involvement and contribution will be in the following areas:
 - a. To assist in preparing a project chronology that will be our master reference source about job activities, influences, and occurrences.
 - b. To analyze the job sequence plans and schedules prepared by various parties and in various times throughout the job to determine their influence upon the objectives we defined for ourselves in

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CONSULTING ENGINEER

our two day sessions. (These objectives were listed on flip charts now being transcribed by Mr. Goodwin).

- c. To prepare network models if required, that show the impact of various activities by various parties upon the performance of THI.
 - d. To assist the project team in understanding the practices surrounding such conditions as we are involved with here as they apply to design and construction programs. In this sense, I shall help determine the impact of actions taken by parties upon THI in their performance of the contract assignment.
 - e. To advise on whatever claim, design, planning, or construction points that might be appropriate as has, within my experience, been found in other similar and applicable experiences I have had.
4. In our meetings it was agreed that we should find a method of coding data for quick study and retrieval of all documents that are important to our work. We began developing such a storage and retrieval system and it is now being refined by Mr. Stolt and Mr. Kennedy for actual implementation. I have forwarded to Mr. Stolt copies of some of the very early elements of this retrieval system for his use in preparation of the material.

For my own work on the project I will find such a retrieval system helpful since there will be considerable need for selective sorting and reading to conserve time and make the effort most effective.

5. It is critical that we all speak the same language as we move through this project. Therefore, I have recommended that we prepare a glossary of terms with definitions that are accessible to all. This was started at our meeting on April 13 and 14, 1981 and should be continued as an ongoing process. Mr. Goodwin will do some of the early work in this glossary preparation; however, it will be essential that all four of us constantly define the words we use so that our communication with each other can be easily, quickly, and thoroughly understood.
6. Important to this program is an understanding of the difference between the planning and scheduling. We touched on this briefly at our session and just to review once again- planning is concerned with arranging the activities on any given project or program in a reasonable, effective, and workable manner. Following

this step in a planning process, the activities are quantified and calculations made as to the range within which the activities can be performed.

~~Scheduling is done when the activities are locked into a time position. Scheduling sets when~~

~~activities will begin and when they are to end. Planning tells you when an activity could start and when it must end. It is important to remember that scheduling follows planning.~~

7. Working on this program we shall proceed on the basis that it is to be ~~tried by a jury near Terre Haute.~~
8. To structure our time we prepared an ~~agenda~~ for our ~~second day's activities.~~ Due to the pressure of time, we were not able to complete our desired work; however, ~~I have shown the target agenda below,~~ since at some point we will have to complete all of the tasks defined:
 - a. ~~Prepare at least one month's history~~ on spread sheets. This includes editing the column headings on the spread sheets for this specific project.
 - b. ~~Prepare document classification method.~~ To a great extent this has been accomplished although there still remains some refinements to make such a classification and retrieval system usable by all concerned.
 - c. ~~Define project~~ (upon which we are presently involved) organization.
 - d. ~~Define RJS's role~~ in the project.
 - e. ~~Merge the CH and other files.~~
 - f. ~~Define and write a glossary of terms.~~
 - g. ~~Prepare an organizational bubble chart locating each~~ of the ~~parties~~ involved in the ~~project.~~
 - h. ~~Review the chronological card tickler file~~ already prepared.
 - i. ~~Identify the role of the various sub-contractors and vendors~~ in the project.
9. It was decided that we would number the various periods of the project starting with ~~period 1~~ being ~~January, 1987.~~ Each month is to be numbered consecutively from ~~January, 1976 on.~~ 77

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10. It was agreed that a ~~chronological file~~ would be prepared within the two major classifications ~~A and B~~. This file will be by period and may require that copies be made of the documents if it is desired to maintain integrity of the manner in which the documents are presently arranged.

It is not too critical which class of documents, copies, or originals appear in the chronological file but I do strongly recommend that the chronological file be arranged by period and by document number. The ~~document number will contain the period number, a consecutive document number within the period, and its origin or source.~~ It might be that the document number can be extended so that the date of the document is included although I tend to feel that document dates should be kept separate from document number to avoid excessive number length.

11. Key ~~project staff meeting dates~~ were established and these should be maintained at or very close to the agreed upon dates. Since time is very short we must make optimum use of meeting times available.

12. For the immediate future period, ~~Mr. Goodwin will concentrate heavily on the A files, while Mr. Stolt will focus on the B files. Upon arrangement of these in acceptable order we will begin, each of us, our study of those elements that are important to our particular assignment. I would appreciate having chronological information by period beginning just as early as possible and shall stay in touch with Mr. Stolt about this.~~

13. It was ~~agreed~~ that ~~Mr. Kennedy~~ and ~~Mr. Goodwin~~ would be out ~~prime contacts~~ in the project and that they will work to ~~effectively~~ disseminate and gather information within and outside of the project group.

14. ~~Photos~~ could prove to be an important source of information. I suggest that ~~early efforts be made at arranging all photos chronologically, clearly identifying the position from which they were taken and including the dates taken. It might be appropriate to prepare a small site plan stamp that could be put on the back of each photo and show the direction from which it was taken by an arrow on the plan.~~

15. Although there are several areas I might assist in later, ~~I shall concentrate my first efforts on evaluations of work relative to plans and schedules.~~

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16. The ~~form of the contract relative to changes in the work~~
~~is important.~~ Also important are the ~~general requirements~~
and any ~~other conditions that cover activities~~ as they
were to have happened on the job. These should be
studied carefully by all of the project team members.
so a thorough understanding is had by each of what
contract document requirements were.
17. The ~~method of instituting changes to the project should~~
~~be given careful attention at an early date.~~ This will
have an impact upon the various plans of work and must
be clearly and accurately analyzed relative to its
influence upon work progress.

* * * * *

The above is a very general summary of points that seemed
to be of importance in our session. In future meetings,
it would be good to review each item to assure that whatever
is discussed under the subjects identified is covered properly.
Meanwhile, ~~I shall remain in touch with Mr. Stolt~~ to insure
that the material I need in my work is available as soon as
possible.

Ralph J. Stephenson, P.E.

RJS:sps

cc: Mr. James Stolt
Mr. Max E. Goodwin, Esq.

- CRITICAL PATH PLANNING
- LAND PLANNING
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- PLANT LOCATION

81:21

RALPH J. STEPHENSON, P.E.
CONSULTING ENGINEER

15064 WARWICK ROAD
DETROIT, MICHIGAN 48223
PHONE 273-5026

June 5, 1981

Mr. Patrick A. Kennedy
Manager
Terre Haute Industries Inc.
1311 Stark Road
Livonia, Michigan 48150

Dear Mr. Kennedy:

At our session on May 20, 1981 I was asked to again prepare a report of our activities. This report follows:

I have taken the liberty of numbering these reports because we probably should continue to prepare a review after each of our sessions. Therefore, the format below, if acceptable, will be followed in the future.

* * * * *

Meeting Report #2

Date of Meeting: May 20, 1981 at Livonia, Michigan

Those Attending: Mr. Max E. Goodwin
Mr. James McDonald
Mr. Pat Kennedy
Mr. Jim Stolt
Mr. Ralph J. Stephenson

A review of our session set down at random in numbered points for reference and discussion is given below:

1. We first discussed material covered in the previous session. Most of the items are self-explanatory and those that required further discussion were covered early in today's conferences.
2. It was stressed by Mr. Goodwin that I should plan to help calculate damages and provide a sound basis by which a proper and appropriate claim will be made. There has been considerable work done on this matter already by the staff of THI and available material will be, of course, used in further study and analysis of the damage amount.

It should be kept in mind that there are many types of damages experienced when jobs are delayed, extra costs

are incurred, or major interruptions or cessations of work activity are imposed upon a contractor. Therefore, all items must be taken into account in any evaluation of the damage amount.

3. It was felt important by Mr. McDonald and Mr. Goodwin that we concentrate now on discovery due to the short time remaining to where this phase will end (September, 1982). 1981
It was further pointed out that presently the trial is tentatively set for March, 1982 although there is a possibility of an earlier trial date depending upon a number of factors. There also exists a remote possibility that the trial could be deferred until later than March, 1982, perhaps into the summer of 1982 depending upon circumstances surrounding the judicial structure in Terre Haute. This matter will be followed carefully by Mr. McDonald and Mr. Goodwin.
4. There was some discussion that the discovery period might for unusual reasons be extended beyond September, 1982 1981
but we are assuming it will not.
5. We will probably make copies of all contract documents to be used in my particular areas of work. These will be provided as available and needed.
6. We completed our discussion of document filing with several elements being reviewed and decided upon:
 - a. Document control numbers will be assigned to documents by Jim Stolt and Pat Kennedy.
 - b. Jim Stolt will move the documents in Max Goodwin's office to Detroit and put them into a similar filing format as he has for the T records.
 - c. Max Goodwin mentioned that there is much of the document material that appears to be redundant. It is possible we may wish to screen documents for redundancy but that decision will be made as the material is reviewed.
 - d. It was decided we will not arrange the billings and payments documents chronologically, but keep them in the subject file. However, document control numbers will be assigned to each billing and payment document and these will be represented in the chronological file by a colored piece of paper containing the document number and a cross reference as to the type of document it is.

(Note: Probably this would be a good way of filing other non-chronologically stored materials such as drawings, specifications, and bulky items that are not susceptible to use of binders and handing files for storage.)

- e. Max Goodwin and Jim McDonald will pick up the material from Fort Wayne and Canton just as quickly as possible.
- f. All documents going into the chronological files will be copies of the originals. Originals will remain in their subject files and be stored in a fire resistant place.
- g. The document control number will consist of the following:
 - First will appear two numbers designating the period based upon numbering the months beginning in January, 1976. All documentation prior to period #1 will be given a period designation of 00.
 - The middle four numbers will be the consecutively assigned document number within that given period. Each document irrespective of the number of pages will be given a single consecutive number.
 - The first of two initials following the document number will indicate where the document was filed either in the T or A file.
 - The last letter will refer to the location where the document was found within the filing system of A or T. (Note: Jim Stolt, please check these two definitions for accuracy, particularly definition of the last letter).
 - As an example, the document number 230001TL will refer to month #23, document number 1; T indicates it is a THI file found document and the file was located in Livonia.
- i. All documents stored elsewhere are to be represented in the chronological file by a colored sheet containing the document control number and a cross reference which identifies the location of the document.
- j. Mr. Stolt will have a good portion of the document chronological file available for start of my work on spread sheets by May 29, 1981. I will arrange to get this material so that I can begin my study.

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- k. Whenever the chronological files are taken out of the Livonia office of THI a sign out sheet should be kept indicating what documents have left the file, the date, and who it was that borrowed them. I also suggest that those borrowing the chronological file keep a corresponding log so that we know where the chronological file is at all times. The reasons for this is that it is the only chronological file available and will tend to be in fairly high demand as our study intensifies.
7. We next discussed the first and second set of interrogatories from Indiana and Michigan Electric Company to Terre Haute Industries. Since notes were made by each party affected the details of the individual questions will not be reviewed.
8. An important element to remember when evaluating the claim amount is that additional costs can be incurred without necessarily experiencing an increase in the length of time required or needed to do the job. If, for instance, work that had float time but was expected to be done prior to a pay raise period is not able to be done prior to that period but is done within its float time there is a cost incurred that was not anticipated. This is an important element to remember and should be used to evaluate the claim amounts. In brief, there can be cost impacts without necessarily having corresponding time impacts.
9. Of importance in our evaluation should be that there apparently was no well defined end date for the project, nor were the dates for the outages needed to bring the precipitator on line clearly established.
10. Apparently there was a specific number of weather days that were figured in the schedule as lost time. This number was agreed to by the parties to the contract but a larger number than agreed to was actually lost due to unusually inclement weather. This matter should be looked into very carefully and documentation fully made for the conditions that caused the weather delay.
11. Whenever answering a question that deals with the amount of damages incurred it is to be stressed that the answer should give the minimum and qualify it as being subject to further adjustment due to, as yet to be determined, causes. Quite often delays experienced produce a domino effect so that is not possible to evaluate the cost until later sometimes considerably further along in the job. Thus, we must always reserve the right to revise damage estimates as discovery and analysis on the point proceeds.

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12. Of great importance in any claim is the intent of those doing the work. We must solidly define the intent of the work patterns and schedules so that we have a comparison upon which to make evaluations of deviations from that intent.
 13. Our discussion revealed that a formal presentation on schedule acceleration was made in February, 1978. We should review that documentation very carefully to determine its role in our evaluation.
 14. The question was asked about internal communications within the Indiana and Michigan Electric Company leading up to dismissal of THI from the project. At present there does not seem to be any documentation that was circulated internally that dealt with this matter. However, I find it difficult to believe that a major move such as dismissing a very important contractor from a project for reasons that would normally require detailed explanations and backup could have been done without some type of written, internal communication. This matter should be investigated fully.
 15. There seems to be some feeling among the project group that it was a foregone conclusion before THI was retained and had moved on the job that the project could not be completed before the regulatory specified end date. If this is the case, then it is very possible that the dismissal should be reviewed in light of causes other than merely not being able to meet the regulatory agency requirement end date. If the project was known to have not been able to be completed even before it was let what would have changed that would indicate that it could be completed once the contract had been let?
- (Was it an impossible job?)
16. The early schedule submitted probably is first covered in a letter of September 29, 1977.
 17. For our next session I shall try to have at least six periods of early construction period chronology prepared for review for the project group. Our next meeting is scheduled for June 12, 1981 at the Livonia office.

Ralph J. Stephenson, P.E.

RJS:eps

cc: Mr. James O. McDonald
Mr. Max E. Goodwin
Mr. Jim Stolt

June 21, 1981

Meeting Report #3

Project: THI Breed

Project No: 81:21

Date of Meeting: June 12, 1981 at Livonia, Michigan

Those attending: Mr. Max E. Goodwin
Mr. James MacDonald
Mr. Pat Kennedy
Mr. Jim Stolt
Mr. Ralph J. Stephenson

Below is a review of our discussion with the points covered arranged at random and numbered for ease of reference.

1. The format of the project history spread sheets prepared to date (sheets #14, #15, #16, and #17) was reviewed briefly and copies provided to each of those attending. These spread sheets are a concise tabulation of the job history prepared from our chronological files.

On the spread sheets the period number and the dates covered are identified. Next the overall activity on the project during the period is reviewed briefly with references to the control document number made wherever appropriate. The next two columns concern items or questions that might have a bearing on the program. Further to the right in columns 7 and 8 is given a listing of the pertinent documents for the period and who wrote them and to whom they were directed.

In the project history spread sheets extensive use is being made of initials to conserve on writing time and for ease of reference. I shall publish a list of all of the abbreviations that I am using in my work to each of the people involved for their use as needed.

In preparing the project spread sheets I am also annotating the chronological file for each month and then abstracting the pertinent data for the spread sheets. In addition, I am presently marking each document to which I refer with three letter codes denoting the subjects covered. This is for my own particular analysis on the project, and these subject initials will not necessarily be of interest to other members of the Breed team.

The goal is to continue work on the spread sheets over the next month and by our next meeting, presently scheduled for July 6 and 7, 1981 in Terre Haute, I hope to have from 6 to 10 additional periods outlined and documented.

2. Along with the explanation of the project history spread sheets I also provided each of those attending a working day calendar starting with day number #1. Day #1 is the first working day of period #1, January, 1976. This calendar extends through 1976, 1977, 1978, and 1979. The working day calendar is for ease of reference and calculation material which concerns various dates with which we must prepare our delay analysis. I shall in my report and documentation show the calendar date first, followed, in parenthesis, by the working day as referred to this base working day calendar.
3. Mr. Stolt is presently assembling and putting in notebooks the New York material from AEP. He will also continue assembling the Canton and Fort Wayne information in the same overall manner. The chronological file should prove extremely valuable and has already been of great help in the work that I am engaged upon.
4. Mr. Kennedy suggested that we study the New York material very carefully, particularly those items that deal with visits to the job site and lost days on the project.
5. AEP top management requires internal submission of reports on the progress of each of their projects bi-monthly. Since a portion of our work in this program will concern evaluating comparatives between THI's performance and other's performance on similar jobs it would prove helpful to have the comments and observations prepared by AEP management for other jobs that were concurrent with Breed.
6. We carefully reviewed the contract document package. In the contract documents there are two basic categories of material, exhibit A and exhibit B. I would appreciate having clarified for me the distinction between the two relative to conflict in the content of each. Apparently exhibit A material generally governs where there is such a conflict. A continuing analysis of the contract documents, is, in my opinion, imperative to preparation of a sound claim presentation.
7. We discussed at some length what is meant by intent. This matter was covered in detail at our meeting and requires no further review here.
8. There apparently is considerable documentation within the internal files of AEP and JEP concerning the performance of contractors on the job particularly THI. As each of us reviews the material in the chronological file, I recommend we take notes and provide each other with information about such expressed opinions and attitudes.

9. We should make strong efforts to find out everything possible about the successor contractor's operations on the job. This among other things includes a copy of their agreement, evaluations of their performance, and comparative information about what was intended and what actually was provided by the successor contractor. The large disparity in the apparent amount of money to complete the job and the amount of job cost remaining in THI's contract at dismissal could be a significant element of our work.
10. We should also determine the impact of weather upon the successor contractor and whether or not it affected him much the same as THI had predicted it would affect them.
11. Mr. Kennedy said that AEP audited the project relative to the amount of lost time claimed by THI and summarized their findings in a letter dated December 13, 1978 (working day 754) from Mr. J. Santoro. This document should be reviewed carefully.
12. Apparently counterclaims are being filed against THI by AEP and IMP. We discussed these briefly.
13. It was mentioned that material expediting reports were prepared on deliveries to the job site. We should find as many of these that concern THI, the successor contractor, and those that were to do work during the outage. It is possible that the B.F. Shaw documents may reflect some of the delivery and expediting concerns.
14. We briefly discussed the rationale behind dismissal. It was agreed that the tradesmen who finished the job were drawn from the same labor pool as were those working for THI; that most if not all of the THI sub-contractors stayed on to finish the job; and that except for THI management the successor program was staffed much as with THI. Therefore it is very important to identify why in AEP and IMP's opinion the project was not being managed properly under THI.
15. It was felt of importance that THI had been authorized to provide almost \$1.3 million worth of extra services on the project. The question must be asked in such a circumstance, why was this work given to THI if their performance had been less than satisfactory.

This additional work required a sizable number of man days to accomplish. We made some preliminary analyses of what the dollar changes would require in time, and I suggest we continue this analysis to identify more clearly the impact of extra work as a measure of THI's ability to perform.

16. The actual length of the outage compared to the original intent of AEP should be determined. It seems there is some feeling that the original allowance for the outage time was considerably less than would normally have been required.

Running through our discussion today were frequent references to AEP and IMP internal correspondence that contained statements complimentary to THI or outlining the same kinds of problems and effects that THI had experienced on the job. The AEP and IMP documents should be reviewed very carefully to discover such reinforcing statements that may assist us in our review.

17. As more study is made of the files it appears that good reasons for dismissing THI are not contained in the written documentation. I re-emphasize my statement that no large company dismisses a major contractor from a complex and expensive program without a great deal of internal discussion and decision making at the higher levels of management. We should continue our search for internal documentation that deals with the rationale behind THI's dismissal.
18. Mr. Goodwin has asked that we prepare for him a day by day or week by week statement that answers this question:

If we had no more lost days due to weather or other reasons from now on (some time position within the project framework) when, according to the contract conditions, would we be obligated to complete our work in compliance with the current understanding?

19. We still must review interrogatory #3. Mr. Goodwin will mail us copies for our study. ?
20. Mr. Kennedy expressed a desire to obtain the successor contractor's backup material for the rest of the contract. Since the successor contractor was on the job, at least in part, on a T & M contract arrangement the audit backup sheets should be available.
21. There is strong interest in the role of the owner's engineer on this project. This was apparently a very strong position and there is some confusion about who actually was the owner's engineer. There appear to have been several during the course of the job and quite frequently wearing temporary hat as the engineer. Since this position as outlined in the general condition is so strong it would be well to identify the individual intended by IMP and AEP to fill that position.

22. We should determine the nature and content of AEP's or IMP's contract with Sanderson & Porter.
23. Mr. Stolt will prepare a contract document package for both Mr. Goodwin and myself.
24. It was brought to our attention that in this particular kind of business the bid package may change, sometimes considerably, when the job moves into construction. Thus, although you build the job from the drawings approved for construction, you bid the job from the bid set. In my opinion, it is urgent that we identify every difference between the bid set and the for construction set. We should do this at an early date.
25. We also should identify how closely the equipment furnished by AEP conformed to what THI expected to receive from them. Page 3 of 160008TL could be used as a discussion sample.
26. It would be well to have as much information in our files as possible about the sub-contractors on the project particularly with respect to their financial strength, ability to perform, management and overall competence.
26. We had several discussions about the relation of the air pollution control board to other parties on the Breed program. There apparently is no binding arrangement between the air pollution control board and THI. Thus, any commitments on target dates by or to the air pollution control board have nothing to do with THI unless made a part of THI's contract.
27. We made a detailed review of the general conditions attached to the service contract in document 170009TL. This review was of considerable help in clarifying many of the matters in the GC's. Each of those involved in the discussion made their own notes about the general conditions and shall use this information in their own work.
28. The words owner's engineer are used throughout the general requirements, and the role this individual plays and who he was should be carefully reviewed. It is of special importance, according to section #28 of the general conditions (170009TL), shown on page 15 that the owner's engineer must certify that sufficient cause exists to justify termination of any contractor from the job.
29. I still require copies of all job plans and schedules that were prepared. Mr. Stolt is currently tracking each of these down and will provide them as he located them.

sent to me
+ 6/28/71

30. It is important to remember that the management of a construction project by a contractor is often no better than the management of the program as it is carried out by the owner. Thus, we should try to identify if and how owner management caused such harmful impacts upon the project that it was difficult or impossible for THI to execute the job properly in the field.

Apparently there were large numbers of owner generated document revisions throughout the life of the job. This always imposes hardships upon the management of the project and we must carefully isolate each such revision and specifically determine its impact upon THI's job performance.

31. For our next session Mr. Goodwin will prepare an agenda. We should each, however, set agenda items that we would like to cover for specific work.

Of ongoing concern to me is a detailed explanation of each complaint and the counts contained in it. I would appreciate it if we could be certain to cover this at our next meeting.

*

In addition, it would be well to review the findings of each of the members of the team relative to the complaint and begin to round into final form how we intend to structure our presentations.

I also recommend we continue to discuss questions that are to be asked not only during the discovery period but during the time when we are actually preparing the court presentation.

Ralph J. Stephenson, P.E.

RJS:sps

To: Mr. Patrick A. Kennedy

cc: Mr. James MacDonald
Mr. Max E. Goodwin
Mr. Jim Stolt

July 21, 1981

Meeting Report #4

Project: THI Breed

Project No: 81:21

Date of Meeting: July 6 and 7, 1981 at Terre Haute, Indiana

Those attending: Mr. Max E. Goodwin
Mr. James MacDonald (part time)
Mr. Pat Kennedy (part time)
Mr. Jim Stolt

Below is a review of our discussions in the Terre Haute meeting arranged at random and numbered for ease of reference:

1. On the trip to Terre Haute Mr. Stolt, Mr. Kennedy, and I first reviewed the agenda we would like to accomplish in our session. Those points that we desired to discuss but were not able to cover as fully as we wished or not at all included:
 - How to obtain key job logs
 - Review the details of the counterclaim from AEP
 - Identify the nature and roles of the various people on the job identified in our list of names
 - Obtain full information on the successor contractor's cost to complete the work
 - Prepare timetable for assembling the case including preparation of graphics, written materials, study work and outlining the testimony.
2. Mr. Goodwin reviewed the rules of deposition with us and said the important thing to remember is that the questions and the deposition discussion must be germane to the case and must lead to discovery of admissible evidence. It normally is best not to carry documentation into the deposition and he added that questioning would usually proceed from the general to the specific. Opposing attorneys are not allowed to ask about personal attorney/client relationships and are not allowed to obtain or inspect any case work product.

Usually a short answer is better than a long one and it is prudent not to volunteer information. Questions should be answered in a straightforward manner and the burden of

leading the questions should be kept on the questioning attorney. Although attorneys normally take notes during the deposition it is suggested that those being deposed do not.

3. he reviewed the abbreviation list that I prepared for my own use in analyzing the project. This abbreviation list was distributed to those concerned. It contains two or three letter abbreviations of the names of all parties that I have come across in my studies so far. It also contains two and three letter abbreviations for the subjects that I have seen as pertinent to our case to this date. There are about 217 abbreviations in this list now, and I shall continue to add to it as additional names and subjects appear. Since the list is a working tool for all of us I suggest that each member of the team make additions as he sees fit and I shall incorporate them into the master reference document.
4. I also reviewed with the group the method I am using to code the control document for my analysis. This method is compatible with that that Mr. Stolt intends to use in his work. We shall continue to maintain contact with each to insure that we keep the techniques similar and compatible.
5. Mr. Stolt is presently preparing reproductions of calendars for each month of the construction period and will provide these to all of us for our use in identifying key dates and keeping notes on various occurrences during the job. Mr. Goodwin also mentioned that he would like a calendar of days, probably working days, from the time that the entire project started back in the early 1970's. When the need for this arises I shall prepare it for Mr. Goodwin in the format he desires.
6. All New York documents are available. ~~X~~ Canton, and Fort Wayne documents are apparently on their way to Mr. Goodwin. There seems to be some delay in getting the Canton and Fort Wayne documents.
7. There have been efforts to get copies of internal submissions of reports on progress of other AEP projects. However, these efforts have not been successful and it appears that we may not be able to obtain other job reviews for our use.
8. It was emphasized again that the remarks of WSC be studied carefully since there are some indications that very early in the project he was predicting lags that seemed inconsistent with actual job progress. Were these predictions brought on by actions of others?

9. We should continue our efforts to get a handle on performance of AEP relative to their other projects. For example, it came out in the meeting that Mr. Kennedy felt that the dismissal route is one not usually followed by AEP. I, too, find that dismissal of a major contractor from a job is not normally done spontaneously or without a great deal of pre-thought and high level corporate involvement.
10. An interesting thought to keep in mind is whether the dismissal could be the result of a self-fulfilling prophecy. What was the true early attitude of the owner toward THI? This should be analyzed particularly in its interaction with demands placed upon AEP by the APC. As our discussions proceed, it still seems strange that there are so little references throughout the course of the job to poor THI performance. What were the true reasons for dismissal? *few*
11. During our two day session there was an ongoing discussion of what constitutes the contract document set. It was agreed that there are three groups of contract documents which make up the full contract document package.
- Group A - the original contract documents upon which proposals were based and submitted.
- Group B - All subsequent contractual modifications signed by both parties. Apparently this consists of two letters one dated October 4, 1978 (working day 704), the other dated November 13, 1978 (working day 732).
- Group C - All contractual modifications signed by one party and orally or by reference accepted by the other. This would include extra work orders (EWO's) and letter changes. Some of the letter changes were probably converted to EWO's or letters with both signatures appended, at a later point.
- 7300*
- I suggest in our depositions we be careful to consider only the network prepared by R. Lopez, revision #5 and issued March 4, 1977 (working day 400) as the only contract document plan or schedule upon which our proposal was based. In my opinion, the subsequent network models and schedules produced are no different than shop drawings submitted for review and approval. They do not necessarily become a part of the contract documents. Thus, violation of the contract network began with the late award of the contract itself.
12. It was brought out that the successor contractor made a visit to the job site in July, 1978. In light of this and the fact that J. Santoro was very familiar with the firm, early relations of AEP with the successor contractor should be examined in depth.

13. Mr. Goodwin made a detailed review of the complaint with Mr. Stolt and myself. This was very helpful and assisted in refreshing our minds about the actual scope of our case. We should at some early date in the future try to review the counterclaim as more information and details become available.
 14. It was mentioned that the increase in cost of the project was due in part to the increase in weight of materials needed. We should continue our analysis of cost increases on the project and the impact upon delays and extra time required for work to and by THI.
 15. Mr. Goodwin has found indications in one of the files that the AEP people felt they needed 16 weeks for the full outage in order to properly incorporate the needed maintenance. Is this true?
 16. Mr. Goodwin repeated that he will need the day by day or week by week statement identified in point #18 on page #4 of Meeting Report #3. I shall prepare this as my analysis proceeds.
 17. Mr. Kennedy stressed that we still need successor contractor's backup material. This includes the manpower and equipment daily force reports, the daily activity reports, and the time sheets that would have been submitted for approval. Mr. Goodwin feels that the material is all there, but apparently we have not found it as yet.
 18. It seems that as of February, 1979 the owner's engineer designated was RKS. There is a memo dated February 22, 1979 (working day 802) that is not in our files. This may be a document we wish to find. *
- As we discussed the subject of the owner's engineer it is still very unclear as to who this individual was, how he was selected, his qualifications, and the role played as defined by the specifications. We should continue to follow the matter carefully since the owner's engineer is a key individual in the dismissal process.
19. We should still determine the nature of AEP or ^{THI's} IMP's contract with Sanderson and Porter.
 20. A set of construction documents are not in the Livonia file. Apparently the documents were removed from the job trailer prior to demobilizing and moving off the project. These construction documents contained as built drawings and were marked up with all field notes maintained during the course of the construction work. As such, they are very valuable. We should immediately determine who has these construction drawings and where they are now. This is very important and immediate efforts should be made to locate them. *

Mr. Eddie Williams said that the drawings were given to AEP. There is some feeling that they, in turn, were then given to the successor contractor. Mr. Goodwin, Mr. Kennedy and Mr. Stolt will investigate this in the very near future.

21. D and B's are to be obtained on the parties involved in the project. Mr. Goodwin in conjunction with Mr. Kennedy and Mr. Stolt will obtain these.

22. Mr. Stolt has furnished the project team with reduced copies of the applicable networks and schedules used throughout the project.

23. It was decided during our session that we will defer discussions on preparation for trial procedures until after the discovery period when we will have a better idea of what the overall approach of AEP might be.

24. I reviewed the project history spread sheets #16, #17, #18, #19, and #20 with the group. A few of the points discussed are given below at random:

- Early in the job THI clearly defined their hoisting intentions. These were apparently agreed to since there does not appear to be any major early criticism of THI's decision.
- Increases when pay lines were crossed were collected.
- General and special requirements of a set of contract documents are always very important. We should review these occasionally to refresh our memories regarding the provisions.
- Was the contract[?] signing delayed because of the absence of an AEP/ZEP key executive on vacation in Europe? It would be of interest to see if this relatively minor event could possibly have delayed the entire project. It could have a psychological impact upon a person hearing the trial.
- The question has been raised as to the participation of the chief operating executive of AEP in the dismissal of THI. We should continue to explore this participation.
- Was the project design actually complete when the contract documents were issued or was there still additional work to be done on engineering for the program?
- Early in the job it appears that adequate drawings were not available, and those that were sent to the project arrived by various routes and to various individuals. Specifications say that drawings will be available.

- Apparently words that appeared in the proposal documents were changed when the full set of contract documents was issued after award. We must identify these words. Mr. Kennedy and Mr. Stolt will do this. *
- Early in the job the site was getting extremely crowded and maneuvering room was at a premium.
- Tolerances seemed to play a part in both early and later difficulties. This is a suitable major topic.
- Erection of early precipitator steel was on, or well ahead of, scheduled progress. Was there any dissatisfaction with THI in these early stages?

At each session I suggest we make a brief review of the periods, as we did today to identify key issues and to convey to each other additional information.

25. Mr. Goodwin reviewed the entire complaint in detail with Mr. Stolt and myself. This review was of great help in better understanding the nature of our case. Some of the following points resulted from this discussion.
26. The question was asked; could we link a loss of business to THI to the claimed breach of contract. This is an important tie in, and I believe there is a distinct possibility of doing it. For instance, certainly the claimed breach of contract affected THI's ability to do other work for ASP or IME.

I recommend that Mr. Stolt and Mr. Kennedy review historical records to see how many projects THI could expect to get out of the jobs that were bid, and to use this expected percentage of jobs obtained to jobs bid, to see if there has been an influence upon the batting averages since the Breed dismissal. *

27. The entire case at this time seems to boil down to a need to prove that the dismissal was not justified by the measurements for dismissal set up in the contract documents. To better address this point in an organized manner, we later in the session delineated several major subject headings which will be concentrated upon as important to proving dismissal was unjustified.
28. We reviewed the interrelationship of the suit with the bonding company. This is a very complex situation and a major discussion was not conducted about it at our session.

It was noted in the bonding documents that there appears to be a two year limit on legal action. This matter should be investigated on an ongoing basis.

29. Mr. Goodwin, Mr. Stolt and I defined several major topics to help structure our analysis of the case. These are listed below for future reference. The list of subjects was later reviewed by Mr. Kennedy and Mr. Sims, and all are in agreement that this is a valid grouping.
- A. Amount of damages - this includes additional expenses, lost profits, equipment seizure losses, and loss of business and economic harm caused by actions that damaged.
 - B. Contract documents definition
 - C. Timeliness of contract party performance
 - D. Defamatory oral or written statements and their publication
 - E. Adequacy of tools, materials, and equipment provided by THI
 - F. Adequacy of tools, materials, and equipment provided by others
 - G. Adequacy of THI's supervision
 - H. Adequacy of other's supervision
 - I. Lost time due to weather, labor disputes, misfabrication, errors and all other reasons (show up time and holds on work should be investigated as other possible expense factors)
 - J. Job plan and schedule considerations and analysis
 - K. Approval delays, and costs of such delays.
 - L. Delays due to work of others (concrete work, site interferences, access difficulties and others)
 - M. Regulatory agency impact upon work
 - N. Proof of THI's competence
 - O. Drawing issues, revisions, deletions, and errors
 - P. Procurement by others
 - Q. Outage and tie in impacts
 - R. Temporary supports and structures
 - S. Other contractor claims

- T. Hoisting considerations
- U. Loss of money for job related reasons
- V. Job organizational structure
- W. Establishment of type and amount of damages
- X. Conditions surrounding termination
- Y. Tolerance demand impacts

Undoubtedly additional subjects will come to mind as our discussions continue. However, this list represents a good starting point and we should prepare ourselves to investigate each one of these subjects in detail. Perhaps at a later date each of us may be assigned to do additional work on each of these topics about which we have special knowledge.

29. Our next session is to be held in Terre Haute on Monday and Tuesday, July 27 and 28. Mr. Goodwin will prepare an agenda for that session. I suggest we take the major subjects decided upon, begin outlining the use of each subject in proving the validity of our complaint, and disproving the counterclaim assertions.

Ralph J. Stephenson, P.E.

RJS:sps

To: Mr. Patrick A. Kennedy

cc: Mr. James MacDonald
Mr. Max E. Goodwin
Mr. Jim Stolt

August 3, 1981

SUPPLEMENTAL REPORT NO. 1

Project: THI Breed

Project No: 81:21

Subject: Contract Document Interpretation

From: Ralph J. Stephenson, P.E.

On July 28, 1981 I made a review of the various elements of the contract document (CD) package and below are given my observations on a sequential basis, beginning from page 1 of the contract.

The points are numbered for ease of reference. Please note that my observations are, as indicated, interpretations of the documents and naturally are open to further discussion and review by each member of the project team.

In some cases, the observations will contain questions or suggestions as to what further analysis would be appropriate.

* * * * *

1. Date of contract - July 1, 1977 (working day 384)
2. Parties to the contract - IME and THI
3. Scope of the contract - install precipitators, platforms, elevator and stair tower
4. Attachments include:

Exhibit A

- Letter of inquiry, March 9, 1977 (working day 303)
- Bid drawings
- Special conditions
- Technical specifications
- Appendices 1 through 9
- Owner's instructions
- General conditions - revised April 1, 1977 (working day 320)
- Owner's letter dated March 20, 1977 (working day 318)
- Minutes of meeting - April 22, 1977 (working day 335)

Exhibit B

- Contractor's proposals - April 18, 1977 (working day 331)
- Contractor's revisions by letter - April 26, 1977 (working day 337) and May 4, 1977 (working day 343)

- Telegram - May 6, 1977 (working day 345)
 - Letters of May 13, 1977 (working day 350), June 16, 1977 (working day 373) and June 20, 1977 (working day 375)
5. The provisions of Exhibit A supersede inconsistent provisions of Exhibit B.
6. Work week assumed to be 5 days, 40 hours; overtime required to regain unexcused time losses at contractor's expense.
7. Critical milestones specified on owner's project network schedule of March 4, 1977 (working day 300):
- A- Work to start within one week of notification of award (in Exhibit A, it states that work is expected to start two weeks after award but not later than week of May 16, 1977). *AA Award*
 - B- Release lower hoppers for mechanical and low voltage electrical - ~~September 1, 1977 (working day 427)~~
Oct 1, 77 (440)
 - C- Release lower precipitator roof for low voltage electrical - January 3, 1978 (working day 511)
 - D- Release upper hopper for mechanical and low voltage electrical - April 17, 1978 (working day 585)
 - E- Release upper precipitator roof for mechanical and low voltage electrical - July 17, 1978 (working day 648)
- (The above dates were taken directly from the owners project schedule dated March 4, 1977 (working day 300)).
- F- Installation complete ready for check-out - September 17, 1978 (working day 692)
 - G- Installation complete ready for 10-week tie in - November 16, 1978 (working day 735)
 - H- Complete tie-in and make installation available for operation with existing system - January 25, 1979 (working day 782)
8. Owner retains option of accepting Item 3.A outlined in contractor's letters of June 16, 1977 (working day 373) and June 20, 1977 (working day 375).
9. Owner declined acceptance of Item 3.B in contractor's letter of June 16, 1977 (working day 373).

782
125
907

10. Penalties are to be assessed against the contractor for failure to meet:

- (F) a. Start of complete check-out by September 17, 1977⁸
(working day 692)
- (G) b. Complete ready for tie-in - November 16, 1977⁸
(working day 735)
- (H) c. Complete tie-in and available for operation to
existing system-January 25, 1979 (working day 782)

11. If the failure to meet Date a above is due to loss of time because of inclement weather in excess of 15 working days, an equitable extension of time will be given.

12. The penalty date for failure to meet Date c shall be extended by one day for each day of delay in start of the tie-in outage.

13. Contractor shall provide written notification of each loss of work day due to inclement weather.

14. The owner's schedule prepared by RJL dated March 4, 1977 (working day 300) and included in the contract documents was apparently to provide the basis for the contractor's preparation of an expanded logic sequence schedule. This schedule was then to become the contract schedule. According to Exhibit A, a determination of progress would be based upon a mutually acceptable schedule of work which was presumably the expanded schedule prepared by the contractor. A question arises as to whether there was any schedule, of those prepared by the contractor, which was mutually accepted formally and made a part of the contract documents.

Schedule
A
never
formally
accepted

15. There exists several contractor time scaled network models including the following (there are others but these are the principle early networks issued):

- a. A single drawing dated June 3, 1977 (working day 364) showing an early February, 1979 completion
- b. Another, dated June 3, 1977 (working day 364) and carrying a drawing number of 1272 PSS. This network shows a May 1, 1979 (working day 340) completion.
- c. Revision A to Sheet 1272 PSS dated August 29, 1977 (working day 424) with completion date shown of May 1, 1979 (working day 850)
- d. Issue B of drawing 1272 PSS dated September 10, 1977 (working day 433) showing a completion of mid-May, 1979. Note: the date on this network is illegible but based upon our chronological file, probably is September 10, 1977 (working day 433).

- e. Issue C of Sheet 1272 PSS dated October 20, 1977 (working day 461). This network shows completion in mid-May, 1979.

(Note: There are several networks and schedules issued later, but the above seem to be the critical early schedules).

16. Important to us is that the contract clearly states the schedule is based upon having all required material and approved-for-construction drawings supplied by the owner on site and as called for by said schedule. Said schedule apparently being the mutually agreed upon document discussed above.
17. The owner is to pay for cost increases due to changed labor rates from those in effect from beginning of contract.
18. The contract spells out total costs as well as adjustments to the total costs for unit price work and other such considerations.
19. Retention is not to exceed more than 5% of the total contract amount.
20. Owner may delete air testing of ducts and accept visual inspection with a credit being given him of \$40,000.00.
21. Provisions of the contract are governed under New York state laws.

The above represents a discussion of information contained on pages 1 through 8 of the contract documents. From the above, I interpret that certain key dates have been made a part of the contract but that penalties will be assessed only upon failure to meet start of check-out, start of tie-in, and completion of plant ready for operation.

The penalty target dates shown are read or taken directly from the owner's progress schedule dated March 4, 1977 (working day 300) or the contract text, and apparently had not been updated to reflect a late contract award date of July 1, 1977 (working day 384) (the owner's schedule of March 4, 1977 shows a contract award on May 1, 1977 (working day 341)). However, the network models produced by THI starting with issue of drawing 1271 PSS dated June 3, 1977 (working day 364) reflects appropriate extensions of the end date.

It is not clear whether this revision was ever mutually agreed upon.

RALPH J. STEPHENSON, P.E.
CONSULTING ENGINEER

SUPPLEMENTAL REPORT No.1
THI Breed
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A review of the documents in Exhibit A and B will be made next.

(to be continued)

Ralph J. Stephenson, P.E.

RJS:sps

To: Mr. Patrick A. Kennedy

cc: Mr. James O. MacDonald
Mr. Max E. Goodwin, Esq.
Mr. Jim Stolt

August 19, 1981

Meeting Report #5

Project: THI Breed

Project No: 81,21

Dates of Meeting: July 27 and 28, 1981 at Terre Haute, Indiana

Those attending: Mr. Max Goodwin
Mr. James MacDonald
Mr. Pat Kennedy
Mr. Jim Stolt

This session was the first following early depositions and we spent a portion of our session reviewing the information that had been obtained so far in depositions. Mr. Goodwin said that a trial date has now been set for May 10, 1982 in Princeton, Indiana a small town near Evansville. Thus, our efforts now will be to concentrate on discovery work on through to as late as possible. There is some indication that the judge will allow the discovery period to extend beyond September, 1981 although we cannot be certain about an extension.

As at previous sessions, we reviewed the material in random order and the points discussed are outlined below, numbered for ease of reference.

1. Mr. Goodwin reviewed the depositions of Mr. Santoro and Mr. Sloderbeck. Their transcripts will be made available to us for our review as needed so details of our discussion will not be included here. Further depositions will be made this month and again these will be available for study once they are transcribed.
2. It appears that we will be able to obtain Mr. Sloderbeck's logs, but these may take some time to obtain. Other key logs on the job will be sought after, but the chances are that we will not be able to obtain all of them.
3. It was felt that there was no need to address the details of the counterclaim at this time. Mr. Goodwin pointed out that if we pursue and win our case there will be no need to do any work with the counterclaim.
4. From Mr. Santoro's deposition it appears that he was not told when he should plan to take the plant off line. It also seems that IME was not ready for the start of tie in in February, 1979 and it might be important to discover reasons why they were not ready.

Apparently THI's performance was not a part of Mr. Santoro's answer to deposition questions about the tie in. This brings up the fact that February is normally a high load month and that it is desirable to have outages during off peak periods. Therefore, it is perhaps important that we find out whether equipment was actually available for a maintenance and tie in shutdown in February, 1978 or whether there was no intention by IME and AEPCS of shutting down in February, 1978 in any event.

5. Mr. Kennedy and Mr. Stolt are doing a full audit on lost time. They will cast this in a format that they believe is most usable for each of us. We discussed at length the methods by which time could be lost and it was decided that the following items would reflect in what could be called direct time losses:

- a. Misfabrication
 - b. Misalignment
 - c. Labor problems
 - d. Delayed or withheld approvals
 - e. Bad construction weather
 - f. Corrective actions needed
 - g. Poor working documents
- (and others to be added)

Of equal importance are the indirect losses caused by the domino effect from direct losses. For instance, if a labor problem caused the loss of ten working days it is entirely possible that starting up and regaining job momentum once the labor problem was resolved could require another three working days which would make the loss not ten but ten plus whatever start up time would be required to resume full production. Domino effects are occasionally of equal or greater impact than the direct time losses.

Another element of great importance is to always remember that increased costs can be incurred on a job even though time delays on critical tasks are not experienced. Therefore, if a non-critical task has been delayed beyond a desired scheduled start, it very well could cause an increased cost to the job by disrupting procedures that have been planned to be followed.

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THI Breed
Page three

6. Canton documents are still on the way. Port Wayne documents are in our hands.
7. There is an ongoing effort to get copies of internal submissions and reports on progress of other AEP projects. However, these efforts have not met with success to date.
8. It was pointed out by Mr. Goodwin and Mr. Kennedy that there were a considerable number of complaints about THI's performance as the job moved on. These complaints are found in both the THI document file as well as in the New York document file and a review of the nature of the complaints will be made as the project history is prepared.
9. There was considerable discussion about progress on the project history I am preparing. I told the group that my plans are to have the project history prepared through August, 1978 by the end of August, 1981. Meanwhile, the project history sheets for each period will be available as it is prepared. The group said they will obtain these in a single package so far as they have been prepared at our next meeting on August 24, 1981. It is to be emphasized again that these sheets are available and if anyone feels a need for the project history done to date or for any specific period please do not hesitate to get in touch with me, and I shall print them and forward them to those who need them.
10. There was ongoing discussion of contract documents, and I was requested to prepare an analysis of what constitutes the contract documents. This was done in Supplemental Report No. 1 for the basic documents, and I shall in the very near future prepare a continuation of that memo for exhibits A and B. The report on the basic contract documents interpretation has been sent to Mr. Kennedy, Mr. MacDonald, Mr. Goodwin, and Mr. Stolt for their use.
11. It was suggested by Mr. Kennedy that the visit of the successor contractor to the job site in July, 1978 could have been noted in WFC's log book. This will be checked.
12. Mr. Goodwin mentioned that he did find the specific reference to where the AEPSC felt they needed 16 weeks for the full outage to properly incorporate needed maintenance. This brought up an interesting further point that a strength of our case may be in the number of decisions that were made in New York without consultation with the local operating people.
13. The week by week time loss on the project is still needed by Mr. Goodwin and we shall work to provide this for him

from the work loss analysis being made by Mr. Kennedy and Mr. Stolt. The form of this statement should be such that at any point we can say the following:

Currently the target end date is Z. As of A we have lost P days. There the end date is now $\underline{Z} + \underline{P} = \underline{H}$ as of A.

For any point in time during the entire construction period it would be desirable to be able to fill in the lettered blanks in the above statement with values for Z, A, P, and H.

14. It was brought up by Mr. Stolt that we might have considerable amount of the successor contractors backup material in our file at present. This will be checked by Mr. Stolt and Mr. Kennedy. Mr. Kennedy pointed out that it is very important for us to understand how it is that the successor contractor could have spent \$5 million to complete what THI considered to be worth \$2 million. Another question is, how could the successor contractor possibly use 200 to 300 men to finish what would normally have taken THI 50 to 150 men to have finished.
15. Mr. Kennedy said he felt GLO probably took on the remainder of the contract for the successor contractor at the same hard money price as for THI. However, the gunite firm apparently charged the successor contractor \$350,000 whereas their charge to THI was to have been about \$100,000.
16. It was confirmed that Mr. Santoro signed the dismissal document.
17. We are still trying to identify the nature of ANP or IME's contract with Sanderson and Porter.
18. Mr. Stolt and Mr. Kennedy will review their on hand documents relative to the changes made to proposal drawings to see what was possibly added to the construction documents.
19. D and B's are being obtained by THI for key firms involved.
20. We made a detailed review of what we consider the contract documents to be. During the review, there arose a question as to what the phrase check out means. Perhaps this should be clarified since it does appear throughout the scheduling discussions.
21. It was suggested by Mr. Stolt that it would be interesting to compare Dun and Bradstreet reports for THI prior to and after dismissal. This could give us an indication as to what outside agencies would have read from the D & B's on a comparative basis to allow us to determine if THI's reputation had been damaged by the dismissal.

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Page five

RALPH J. STEPHENSON, P.E.
CONSULTING ENGINEER

22. The question was asked about whether a source is available to determine the number of inquiries that could be expected for work of the type THI does. I shall investigate this matter.
23. Mr. Stolt, Mr. Kennedy, and I will meet sometime soon to prepare a logic plan for assembly of the Breed precipitator. This logic plan will be used for detailed discussions in preparing our analysis of direct and indirect time and money losses on the job.
24. Our next full session is to be held in Livonia, on August 24, 1981. At that session I suggest we review the deposition material given to date, the time loss analysis, and the project history sheets.

Ralph J. Stephenson, P.E.

RJS:sps

To: Mr. Patrick A. Kennedy
cc: Mr. Max E. Goodwin
Mr. James O. MacDonald
Mr. Jim Stolt

September 12, 1981

Meeting Report #6

Project: THI Breed

Project No: 81:21

Date of Meeting: August 24, 1981 at Livonia, Michigan

Those attending: Mr. Max Goodwin
Mr. James MacDonald
Mr. Pat Kennedy
Mr. Jim Stolt

This session was primarily devoted to a review of the current status of our work and a discussion of additional items that we have discovered or identified which could be of importance in the case preparation. There is no formal word yet that the discovery period will extend beyond September, 1981 although there seems to be a general feeling that we will be able to continue this important part of our preparation beyond that date.

The material reviewed at the session was extensive and somewhat self-contained within the session. Therefore, the report below is not as comprehensive as previous reports.

1. Mr. Goodwin and Mr. MacDonald reviewed a few of the elements in recent case depositions that they have taken. Detailed information will be contained in the deposition transcripts.
2. The contract document interpretation issued on August 3, 1981 was discussed briefly and all at the meeting generally agreed with its contents. I will continue this interpretation with a review of the documents in exhibits A and B once additional work has been done on the project history.
3. Considerable discussion was held about drawing revisions. I feel that in my review of the job history to date that it might be wise to carefully study the number and types of revisions to contract documents as the project proceeded. Although many of the changes and revisions may have been taken care of by extra work orders and other funding, the disruptive nature of these changes could very well have caused considerable financial damage to job continuity and overall progress.

It is to be stressed that the domino effect whereby one single action causes many others to occur, (sometimes also called the ripple effect) plays an important

role in how job revisions impact upon job activities. Apparently an excellent record was kept of the drawing issues and the revisions. The drawings affected analysis only need deal with the some 100 working drawings that were a part of the contract document set. Thus, it should be fairly easy to determine what changes were made, when they were made, and if THI was properly reimbursed or credited for the impact of the changes. Mr. Kennedy and Mr. Stolt will initiate this work when they have completed some of their present project work.

4. It is not too early to begin considering how we are to convey the technical information needed to prove our positions to a jury composed primarily of laymen. These men and women will be less than totally familiar with construction and certainly will know little, if anything, about a precipitator and how it is designed and built. Therefore, we should be giving early attention to the methods by which we wish to convey our thoughts and arguments to this group of people who are to judge our case.

There are dozens of graphic techniques that we can put to good use including transparency overlays, slides, motion pictures, scale models, flip charts, and other such translation devices.

Once we are at a point where our findings are in good shape, and we are confident of how we want to approach the presentation of this material we should begin the translation process so we are properly prepared in adequate time to rehearse and critique the trial material that has to be conveyed.

5. The number of design errors, misfabrications, misalignments, and mismarking that occurred on this job are numerous. The need is still there in completing the interrogatory responses to identify to the greatest extent possible the time, the problem and the part number where a misfab occurred. This identification process will be undertaken as soon as time permits by Mr. Stolt and Mr. Kennedy.

The records that we are presently preparing for the project history should aid since I am trying in my coding to identify all documents where misfabrication, mismarking, design errors, or misalignment have been found. These should offer a cross reference to that information already available in the drawing files.

6. We spent considerable time going through the project histories from early in 1977 to near the end of March 1978. Notes were taken by each as we reviewed these points and therefore no detailed review will be given below. The project history sheets prepared to date were printed and Mr. Goodwin, Mr. MacDonald, Mr. Stolt, and Mr. Kennedy each have copies.
7. I shall continue working on the project history sheets and complete these at as early a date as possible. (Note: Sheets through July 1978 were completed before I went on vacation September 8, 1981 and are in Jim Stolt's hands).

The next goal is to complete as many months as possible, hopefully through February, 1979 by our next meeting in mid-October 1981.

8. We spent considerable time also reviewing the time lost format that has been assembled by Mr. Stolt and Mr. Kennedy. All agreed that it was a good format and Mr. Goodwin and Mr. MacDonald will review it in more detail to suggest whatever additions can be incorporated that will make it easier for them to use in their work.

The basic goal is to be able to complete the unknowns in statement #13, shown on pages 3 and 4 of our Meeting Report #5. I also suggested that the kind of time lost be identified so we keep clearly in mind what the various causes of delays were, as well as the total amount of the delay. The analysis is good and should give us all a clear picture of how time was lost.

9. As part of our time lost analysis we also should, it has been decided, prepare a network model for the project to depict how it was intended the job would be built. Presently there is no clear cut model that we can refer to, relative to the various sequences planned for the construction period. This is a second priority to the project history and as soon as time permits Mr. Kennedy, Mr. Stolt, and I will meet to prepare the network model for construction of the precipitator.
10. We discussed the timing of our next session and it was decided that it should be held in mid-October, 1981 for one or possibly two days.

The exact dates, time, and agenda will be set in the near future. Meanwhile, however, we shall all continue

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RALPH J. STEPHENSON, P.E.
CONSULTING ENGINEER

working at the various assignments that have been made
to us concurrently analyzing the project for delays,
extra job costs, and damages.

Ralph J. Stephenson, P.E.

RJS:sps

To: Mr. Patrick A. Kennedy

cc: Mr. Max E. Goodwin
Mr. James O. MacDonald
Mr. Jim Stolt

- CRITICAL PATH PLANNING
- LAND PLANNING
- MANAGEMENT CONSULTING
- PLANT LOCATION

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RALPH J. STEPHENSON, P.E.
CONSULTING ENGINEER

15064 WARWICK ROAD
DETROIT, MICHIGAN 48223
PHONE 273-5026

January 19, 1982

Messrs. Pat Kennedy
Jim Stolt
Max Goodwin
James O. MacDonald

Re: Meeting on Monday and Tuesday, January 25 and 26, 1982 in
Terre Haute, Indiana

Dear Pat, Jim, Max, and Jim:

It has been some time since we were all in a session together, and I am looking forward to our meeting on the 25th and 26th of January, 1982. There are many subjects I would like to discuss in preparation for the trial in May. I realize that each of you also may have a large number of items that you would like to review during this two days. Therefore, in the hope we can effectively merge our desires, below are listed some of the topics I feel might be appropriate to discuss at our session. These are at random.

- A. Review deposition material obtained to date and identify significant elements of each.
- B. Review the time lost audit to insure we have a satisfactory approach to lost time analyses.
- C. Review the network model sequences of anticipated work and discuss how best to use this information for the trial.
- D. Discuss the major topics upon which we wish to base our case presentation. These were identified in Meeting Report #4 dated July 21, 1981 on pages 7 and 8. A list of the items is given below for reference.
 - a. Amount of damages - this includes additional expenses, lost profits, equipment seizure losses, and loss of business and economic harm caused by actions that damaged.
 - b. Contract documents definition
 - c. Timeliness of contract party performance
 - d. Defamatory oral or written statements and their publication

- e. Adequacy of tools, materials, and equipment provided by THI
 - f. Adequacy of tools, materials, and equipment provided by others
 - g. Adequacy of THI's supervision
 - h. Adequacy of other's supervision
 - i. Lost time due to weather, labor disputes, misfabrication, errors and all other reasons (show up time and holds on work should be investigated as other possible expense factors)
 - j. Job plan and schedule considerations and analysis
 - k. Approval delays, and costs of such delays
 - l. Delays due to work of others (concrete work, site interferences, access difficulties and others)
 - m. Regulatory agency impact upon work
 - n. Proof of THI's competence
 - o. Drawing issues, revisions, deletions, and errors
 - p. Procurement by others
 - q. Outage and tie in impacts
 - r. Temporary supports and structures
 - s. Other contractor claims
 - t. Hoisting considerations
 - u. Loss of money for job related reasons
 - v. Job organizational structure
 - w. Establishment of type and amount of damages
 - x. Conditions surrounding termination
 - y. Tolerance demand impacts
- E. Each of us might plan to discuss our findings relative to the overall program and how each feels we should best approach a merging of the ideas of each individual into a cohesive presentation.

- F. We should begin identifying the graphic material that should be prepared for the trial. This will have to be done with some care to insure that it is simple, dramatic, easily understood by laymen, and conveys information accurately and easily.
 - G. It would be helpful if we could have the construction photos available for this session. I understand that there has been some difficulty in acquiring these but they are still important and would be of help.
 - H. We should discuss damages and how best to assess them and their cost.
 - I. Much of the strength of this case, I feel, will rest upon the fact that there were enormous numbers of extra work orders, continuous changes to the documents represented as construction drawings, changes to the bid drawings once construction started, misfabrication both minor and major throughout the project, and that overall, the performance of the owner was below the level to be expected in the design and administration of those sections of the job that were his responsibility. This had an enormous impact on THI's ability to pursue their work continuously and effectively.
- It would be good for us to focus on some of these elements to see if we are all in agreement as to how we can best bring this out in the trial.
- J. It would be good for us to discuss how to best convey information about the enormous amounts of bad weather encountered during the two winters of construction. We had talked earlier about having a weather expert appear. Pictures would also help. This matter should be reviewed in some detail to determine how best to accomplish the emphasis of bad weather impacts.
 - K. I would like to review all of the information available about the successor contractor. We have not done much on this matter to date, and I feel there is some merit in determining what the conditions were surrounding the successor contractor's commissioning to do the job and their performance particularly relative to time, sub-contractors used, and cost of the work compared to what it is estimated it would have taken THI to complete the job.

There are other subjects that would be of help to discuss and the above is merely a starter list. It would also be of great interest to talk about how it is intended to

RALPH J. STEPHENSON, P.E.
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pursue the case in the courtroom since it will help all of us to better prepare for whatever our role in the presentation will be.

Again, I am looking forward to our meeting and trust that it will be a valuable and interesting discussion. Meanwhile, I would like to wish everyone a very happy and prosperous new year and best wishes and good luck for the upcoming months.

Sincerely yours,

Ralph J. Stephenson, P.E.

RJS:eps

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RALPH J. STEPHENSON, P.E.
CONSULTING ENGINEER

15064 WARWICK ROAD
DETROIT, MICHIGAN 48223
PHONE 273-5026

July 15, 1982

Mr. James Stolt
Terre Haute Industries
120 1/2 State Street
Princeton, Indiana 47570

Re: THI Breed Comments

Dear Jim:

On our recent trip home from Princeton, Thursday, July 8, 1982, you and I discussed at length the various items that might possibly be brought up in the direct testimony I probably will be engaged in August 2, 1982 and possibly August 3, 1982. I have listed these below to serve as a help to all of us in formulating the approach for questioning.

I am sending this directly to you with carbon copies to Pat and Max in the hope that all who are involved will see the information and have it available. I would very much appreciate being made aware some time prior to July 28, 1982 what subjects will be covered by our attorneys in their direct questioning of me; this so I can properly prepare and answer their questions intelligently.

As I understand it, the direct questioning to be initiated by our attorneys will be followed by another cross examination period by the other attorneys. Presumably they are allowed to question me on whatever comes up in the direct questioning by our group only. Again, I need guidance in terms of how to respond because I do not feel we should be engaged in any more cross examination than is essential.

The points below are at random and may require some additional clarification. The list will be updated as time permits. Any additions you or Pat might want to make will certainly be very welcome. Please, however, keep me posted on the subject content you are all working with.

Meanwhile, sometime this week or next I shall try to get my master files to your office for copying. If you can please make certain that these are copied as quickly as possible and kept in somewhat the same order that I send them I would certainly appreciate it.

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Here, then, are the points that I think might be worthwhile elaborating upon or concentrating upon in the direct questioning to be done in early August, 1982:

1. I shall critique letters of apparent criticism from Mr. Dunn and Mr. O'Connor in which they evaluate THI's performance. I have quickly read Mr. Dunn's letter and it doesn't appear to contain much more than superficial comments, somewhat emotional in nature. If it appears that a purpose can be served by my evaluating the worthiness of these two letters our attorneys might wish to devise a questioning which would allow it.

h
Please send me the other letter from Mr. O'Connor so I can be prepared in the event we do wish to cover this material.

Important to evaluate in comments of this nature are the backgrounds and the experience patterns, along with the emotional issues, that surround each individual as they prepare such documents. Also the vested interest of parties in activities other than described in the evaluation might be of help in identifying the nature of the evaluation and its true purpose.

2. Comments as to the current health of your company are still very much in line if it is felt that they will serve a purpose by you, Pat, and the attorneys. I, as you know, am concerned about the company's future and do not wish to be involved in making comments that might further hamper THI's ability to get current work. Nevertheless, I do believe it is important to drive home with emphasis the extreme problems that have been caused by the dismissal and the paralyzing effect it has had on your marketing efforts.

3. Direct questioning should clarify the number of people actually on the job for THI during the discovery and resolution of the bayline problem. It appears there were about 29 THI people on the job during this period although it varied from day to day. However, the 29 scarcely measures up to the 80 or 90 emotionally described in the courtroom during my cross examination.

Jim will cover
It would be very well to specifically identify what these people were doing during each day of the problem as it existed. This will have to be done skillfully since the bayline problem is still a bit unclear in the minds of many people, in my opinion. I suggest it be clarified in part by me but in more detail in Pat's direct questioning if he is to be brought back to the stand.

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7. 4. There was some consideration that we should introduce into evidence a residential network which might help explain the nature of network models to all concerned by easily grasped examples. There are many ways this can be done, and I do have a classroom exercise taken from an actual project which shows construction of a house. I can easily assign durations, calculate the diagram, and use it as an illustration of how concurrent activities can sometimes occur where a few are critical and many are not critical. This would clearly illustrate the nature of float time on concurrent but not critical activities. If everyone still feels the diagram would be of help and desirable I shall proceed to prepare the example.

X 5. I would like some comments and opinions regarding whether it is necessary to further clarify the starting point and value influences upon the regression line for bid volume. The starting value selected was that equivalent to actual bid volumes in the years 75, 76, 77, and 78. Therefore, in my mind, it represents the point at which reasonably any lessening of bid volume would start. It is scarcely logical to assume that the adjusted value should be less than what actually is historical. It seems that influences can only be felt upon the future projected bid volume based upon what you consider the adjusted characteristics from dismissal on through to our current analysis point in July, 1982.

I believe it is important to understand that our major recessionary influences have only been felt within the past year and in many cases within the last six months. The years of 1979, 1980 and most of 1981 were quite good. Thus, I believe that those years could have been used to build and implement a company plan that would have permitted THI to continue actively increasing their bid volume, and consequently their opportunity.

Also important to realize is that the projections of power companies based upon very long range considerations show continuing high expenditures for plant and equipment. I believe the statement of Mr. White in the annual report as reported to me by Max is extremely significant and can be used effectively in the direct questioning if it is done so that cross examination cannot turn up any flaws in his comment quote.

X 6. I suggest we stay away from any further discussions of linear regressions if at all possible. The lost profit point has been made, in my opinion, to the judge. He appears to understand what regressions are, and any further concentration on this might actually weaken our case by virtue of the need to defend anything

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Mr. Yoder might choose to use his enrichment questioning techniques upon. As you know, he can easily change the meaning of a question until it sometimes sounds like his question is your answer.

- X
7. I need your advice as to whether we should work further with weather reports. I would like some some sample copies of the reports from wherever you have them from. As you pointed out I did mistakenly say we did not have the weather reports. I truly was not aware of the fact that you had received them. However, I doubt seriously if I would have used them in my evaluation because in the past I have found they do not accurately reflect the true conditions that exist on any given day or hour on a job. Far more accurate is a good job report, the daily time reports, and of course, the weekly job meeting reports, in this case, that give an overall approach and attitude of the entire work force toward weather.

In addition, we should realize that certain kinds of weather do not force all contractors, at all sections of the project, under all trade conditions to walk off. Sometimes inside work is possible or sometimes work on certain kinds of trades proceeds when other journeymen have left the project. The weather questioning should be done carefully although it does appear there is adequate confirmation from our analysis and their records that we are almost in agreement, irrespective of who made the evaluation. I would like to know if this statement is essentially correct.

8. You had mentioned there was some sub-contractor bidding by your company to other prime contractors on an AEP project. The details of this would be wise to have in hand although the essential ingredient here is that there was no monitoring of AEP whether or not their prime was using you as a sub-bidder. If AEP had known you were bidding to one of their possible primes do you have a feeling for what might have happened to your proposal?

Presumably this is similar to what happened on Wabash where we all generally feel that the ultimate choice of a prime contractor sub was influenced away from your firm by the client, primarily due to the current litigation and the difficult position that your firm finds itself in now.

9. This point in my notes deals with an adjustment of the linear regression from dismissal on. I have covered the material above.

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10. It would be handy to have the general locations of as many jobs as possible bid in the four years prior to dismissal. We should have this data available so the attorneys could bring the matter out in direct questioning, if they desire.
11. It would be helpful also to try and emphasize, not only the states where THI has bid work and done work, but also where THI feels it wants to bid and to work. This is known as creative rather than adaptive marketing and certainly is something that the company has to engage in if it is to be successful in the future. Naturally, we have been severely hampered from engaging in this because of the restrictions under which we are working due to dismissal.
12. This item dealt with specific jobs relative to #10 and #11 above. It is covered adequately there.
13. I would like to have a copy of Mr. White's address to AEP shareholders in April, 1982. (I believe April was the date scheduled for his presentation). We should make certain this talk is given as much mileage as possible provided that it does truly reflect an optimistic outlook and increasingly or even moderately high investment in the facilities of AEP over the coming years.
14. The increase in regulatory requirements might be of some importance in showing the future potential for air pollution control work. Max had mentioned the acid rain legislation. Perhaps the use of that as a discussion topic might be appropriate provided it is done well and within the technical capabilities of those who are asked the questions. Please let me know if it would be wise to do further research on this or if our attorneys plan to use it at all in the courtroom.
- may
go to
15. It appears Mr. Mann would like to review in more depth the walkoff in late December 1977 due to an apparent lack of heat. He was particularly concerned with the apparent contradiction in the cause of the walkoff and the location of the need for heat. Please let me know your observations so that I can properly bone up on the subject.
16. If you will recall I had asked that you identify by document control number the items that refer to design errors. The code for this is DBE. I also want to make a special review of the ENR's but any other reference to design errors would also be of help.

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In addition, drawing change notices (DCN's), would be of help, dimensional errors (DME's), drawing omissions (DOM's), design interferences (DSI's), error reports (ERR's), and whatever else you might feel would be helpful to indicating problems that we had with the contract documents.

Since most of these problems appear to have existed between the start of this job and March or April of 1978, perhaps only a limited search need be done initially. I shall leave this to your good judgement.

Prior to going back to the courtroom, perhaps our attorneys would want to discuss this with me to see what kind of direct questioning might be appropriate.

yes.
17. As I understand it, it would be well for me to read Mr. Dunn's deposition. I shall attempt to do so as soon as possible and will let you know when I am complete. If you wish to have the deposition back at any time, please call the office.

PK
18. I would like to get a feeling from our attorneys about how much more discussion will we involve ourselves in about labor delays. I do not have a good feeling for how effectively they think we have presented the labor delay portion of our claim so perhaps they can clarify this to me and indicate what they intend to do.

PK
19. We have all agreed that we should emphasize sections of the labor agreement between IME and the local trades council. I am not exactly clear on how the attorneys plan to carry this out. Will you please discuss this with me, or they can discuss it directly with me so that I might be prepared to answer any questions that might be brought up by them in the direct questioning.

PK
20. As you know, there was some rather intense questioning about welding and the needs for maintaining high productivity by getting various supplies to the job. As I understand it, we basically used arc welding and then burning was accomplished by gas either under high pressure or working pressures. It is further my understanding that the vast majority of any welding on the project was done by electrical processes, namely the arc welding process. Thus, the supply of gas would merely be for use in cutting.

I would like to have this matter clarified to me by you and Pat if our attorneys choose to pursue it to indicate the somewhat irrelevant nature of the defense's questioning.

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X 21. There has been little, if any, mention made in the courtroom of claim item #20 for extra costs in receiving and unloading. I believe this was introduced as a claim item and is officially a part of our total dollar request. However, I do not recall being asked about it in the cross examination and would like some direction as to whether it should be re-emphasized as an item in our claim. drop-

X 22. Is it the intent to go into any more detail than we already have on the factors that are essential to good job productivity? These, of course, are those factors that are especially related to owner's activities on the job both prior to start of field work and during and after. It is a very important subject and one that could strengthen our belief that the job was managed poorly by the owner. However, it may be that the judge has already grasped the nature of poor owner management and we needn't go into it in any greater detail than we have to date. drop-

This then, Jim, represents what I see as possible discussion topics prior to our session in Princeton on August 2 and 3, 1982. Please let me know if these sound appropriate to you and whether or not our attorneys have any comments. Again, I don't mean to be putting you in the middle as a channel of communication between me and them and certainly if they would like to contact me directly I would be pleased to go over the list with them. However, I want to make it easy for all of us - you, Pat, Max, Hansford, and Jim - to be able to talk to each other and us so that we all know what the subjects being reviewed are. Looking forward to seeing you again shortly.

Best regards,

Ralph J. Stephenson, P.E.

RJS:sps

cc: Mr. Pat Kennedy
Mr. Max E. Goodwin