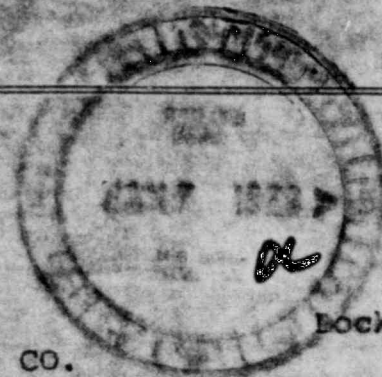


Regulatory Docket



NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY AND
CLEVELAND ELECTRIC ILLUMINATING CO.

(Davis-Besse Nuclear Power Station,
Units 1, 2 and 3)

and

CLEVELAND ELECTRIC ILLUMINATING CO.
et. al.

(Perry Nuclear Power Plant,
Units 1 and 2)

Place - Silver Spring, Maryland

Date - 6 January 1976

Docket Nos.

50-346A
50-500A
50-501A

50-440A
50-441A

Pages 2715 - 2860

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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In the Matter of: :

TOLEDO EDISON COMPANY and : Docket Nos.
 CLEVELAND ELECTRIC ILLUMINATING CO. : 50-346A
 : 50-500A
 (Davis-Besse Nuclear Power Station, : 50-501A
 Units 1, 2 and 3) :

and :

CLEVELAND ELECTRIC ILLUMINATING CO., : 50-440A
 et al. : 50-441A
 :

(Perry Nuclear Power Plant, :
 Units 1 and 2) :
 :
 -----X

First Floor Hearing Room
 7915 Eastern Avenue
 Silver Spring, Maryland

Tuesday, January 6, 1976

Hearing in the above-entitled matter was reconvened,
 pursuant to adjournment, at 10:35 a.m.,

BEFORE:

MR. DOUGLAS RIGLER, Chairman

MR. JOHN FRYSIAK, Member

MR. IVAN SMITH, Member

APPEARANCES:

(As heretofore noted.)

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C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDEPOSIT</u>	<u>REGRAND</u>
Warren D. Hinchee (Resumed.)	2719	2754	---	---
William Craig	2865	---	---	---
<u>EXHIBITS:</u>	<u>IDENTIFICATION</u>		<u>EXHIBIT</u>	
Applicant's No. 18 (CEI-1) Motion to Consolidate	2739		2748	
Applicant's No. 19 (CEI-2) Order Directing Immediate Temporary Emergency Interconnection & Standby Service, 3-8-72	2740		2749	
Applicant's No. 20 (CEI-3) Presiding Examiner's Initial Decision, Consolidating Proceedings	2741		2750	
Applicant's No. 21 (CEI-4) Opinion No. 644, 1-11-73	2741		2750	
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DJ-5 - Letter, Hollington to Howley, 1-10-72	2770		2771	
DJ-6 - Memo, Hinchee to Gaskill	2770		2772	

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	<u>EXHIBITS: (Continued.)</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
1	DJ-7- Memo, Rego to Hinchee,		
2	7-13-72	2775	2776
3	DJ-8 - Letter, Engle to Berry,		
4	1-19-73	2791	2793
5	DJ-9 - Letter, Duncan to Dodson,		
6	5-1-73	2795	2797
7	DJ-10 - Letter, Duncan to Rudolph,		
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9	DJ-11 - Letter, Engle to Berry,		
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11	DJ-12 - Letter, Howley to Duncan,		
12	5-14-73	2796	2797
13	DJ-13 - Letter, Duncan to Howley,		
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15	DJ-14 - Letter, Howley to Duncan,		
16	6-5-73	2796	2797
17	Applicant's No. 25 (CEI-8)		
18	Letter, Rudolph to Whiting, 3-13-74	2812	2814
19	Applicant's No. 26 (CEI-9)		
20	Draft to Dept. of Public Utilities, City of Cleveland	2816	
21	Applicant's No. 27 (CEI-10)		
22	Letter to James, 7-22-71	2825	2826
23	NRC Staff No. 71		
24	NRC Document No. 86	2848	2849
25	NRC Staff No. 72		
26	NRC Document No. 81	2856	2851
27	NRC Staff No. 73		
28	NRC Document No. 79	2856	2856
29			
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2 CHAIRMAN RIGLER: You may proceed with your
3 examination, Mr. Vogler.

4 Whereupon,

5 WARREN D. WINCHEE

6 resumed the stand and, having been previously duly sworn,
7 was further examined and testified as follows:

8 MR. VOGLER: Thank you, your Honor.

9 This morning we would like to, at this opportunity,
10 make a record correction at the request of the Witness.
11 The Witness has no notes, and at the request of the City of
12 Cleveland, left them in Cleveland when he left his position
13 there. But he felt in his conversation with you at the very
14 end of yesterday's section concerning a date or the year in
15 which a request, a written request for access to nuclear
16 power was made, he felt that he was wrong, and has had a
17 chance to refresh his recollection.

18 I believe I am referring to page 2616 of yesterday's
19 transcript, line 24, in which he advises that it was in
20 1972 that the written request for access was made, and
21 Mr. Winchee would like to change that date.

22 CHAIRMAN RIGLER: All right. Mr. Winchee,
23 what is your present recollection?

24 THE WITNESS: My present recollection is that I
25 misstated the year. The year was 1973 instead of '72.

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CHAIRMAN RIGLER: And that was referring to the second request?

MR. VOGLER: The written request.

THE WITNESS: That is correct. That is the written request.

CHAIRMAN RIGLER: There was an oral request by the director of utilities, and then there were subsequent contacts relating to both the Davis-Besse and the Perry plants, when you learned of the construction of the Perry plant. Is that correct?

THE WITNESS: That is correct.

CHAIRMAN RIGLER: All right.

MR. REYNOLDS: May I have that read back?

(The reporter read the record as requested.)

MR. REYNOLDS: Thank you.

MR. FRYSIAK: I refer to page 2617, line 12. Should that date be corrected?

MR. VOGLER: I believe the discussion -- I can hand the witness the transcript. I believe the discussion is the same. If we could just take a moment here.

CHAIRMAN RIGLER: Yes, give the witness an opportunity to examine the transcript.

MR. VOGLER: Would you like to do it now or later?

CHAIRMAN RIGLER: Right now, please.

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MR. VOGLER: What was the line, sir?

MR. FRYSIK: Line 13.

THE WITNESS: My answer is yes, that line 23 should be corrected to 1973, as well.

xxx

DIRECT EXAMINATION (Contd)

BY MR. VOGLER:

Q Mr. Hinchee, at the conclusion of yesterday's testimony --

MR. SMITH: Excuse me. Before you proceed, I wonder if you could clear up our interchange, Mr. Reynolds?

MR. REYNOLDS: That is fine. I was going to ask if he could wait just a minute, because I am trying to catch up with the date changes. Could you wait just a second on that and let me catch up with him on this?

MR. SMITH: Sure.

MR. REYNOLDS: All right. Thank you.

MR. VOGLER: Mr. Smith, did you have something?

MR. SMITH: Yes. Last evening, as we adjourned, Mr. Vogler asked the Witness on page 2621, beginning at line 18, asked the Witness if third party wheeling would be required in order to be a viable electric entity. When I asked, I was unhappy with the answer, because I didn't think it was clearly responsive, and then I asked the question, I stated on page 2622, beginning with line 15, "Now do you believe that third party wheeling as you have defined it, is

1 essential to the survival of MELP??

2 Now you recall the question to be as
3 a viable competitor. I think my view of Mr. Vogler's
4 question was a little closer than yours, and I think it should
5 be straightened out before he proceeds on this point.

6 MR. REYNOLDS: I would be more than happy to have
7 Mr. Vogler straighten us out on it.

8 MR. SMITH: The record is clear. The question
9 was can it survive as a viable electric entity, and you
10 suggested the question was as a viable competitor.
11 My version of the question was closer than yours. I am
12 just pointing this out in my view. That is all.

13 (Board confers.)

14 BY MR. VOGLER:

15 Q Mr. Hinchee, I believe the Chairman also asked
16 that the first thing we do this morning was to respond to
17 this question, and I will ask it again, if the Board please.

18 The question, and I will read from my previous
19 question, on page 2621. "Even with the full synchronous
20 interconnection we have just described..." -- going back
21 to yesterday, we are talking about -- "and even with access
22 to the nuclear power that we have discussed, in your opinion,
23 when you were commissioner of light and power, did
24 the city systems still require third party wheeling in order
25 to be a viable entity?"

1 A I believe that my answer to that is yes, but I
2 would like to qualify that answer by saying that
3 without third party wheeling, obviously we could not obtain
4 **capacity power if our contract with AMP/O went through and**
5 was approved. We had, the City of Cleveland also refused
6 overtures from the Ohio Power Company, in written form, they
7 said they would sell power to any of the AMP/O
8 members and they would even assist in negotiations for third
9 party wheeling, and third party wheeling was necessary, they
10 had previously told us they could not enter and did not
11 have a connection that was accessible to the City of
12 Cleveland.

13 There has been some discussions with Richwood,
14 Indian, for purchase of surplus power from their plant and
15 third party wheeling, being able to enter into this type of
16 contract, as an economic necessity for any utility, public
17 or private.

18 Q Thank you. Your remarks concerning Richwood,
19 Indiana, and Ohio power was during your tenure as commissioner?

20 A Yes, that is correct.

21 Q Fine.

22 CHAIRMAN ROGERS: What effect, if any, would third
23 party wheeling have on the City of Cleveland's rate of return
24 from nuclear plants in the area?

25 THE WITNESS: Well, third party wheeling would not

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1 have been necessary for the City of Cleveland to receive
 2 power from the Davis-Besse or Perry plants, but it would
 3 I believe, be necessary if the power allocation had gone out of
 4 Beaver Valley or one of the more remote plants

5 It would depend -- I am not sure about the
 6 transmission systems in those remote locations.

7 CHAIRMAN RIGLER: But beyond that, as I indicated
 8 your answer to Mr. Vogler's last question, in order to be a
 9 viable electric entity, you stated that Cleveland would need
 10 third party wheeling, even if it had the access to the
 11 nuclear plants?

12 THE WITNESS: Yes, that is correct.

13 CHAIRMAN RIGLER: I was looking for a little
 14 more elaboration on why.

15 THE WITNESS: Well, not only were there nuclear
 16 plants that we are talking about potential sources of
 17 supply for the City of Cleveland, but also the power
 18 authority of the State of New York was constructing nuclear
 19 plants, and if we could arrange wheeling of the hydro power
 20 when there was an excellent chance we could also arrange
 21 wheeling of some of the PSNY nuclear power, through
 22 third party wheeling. And we would then not necessarily
 23 be restricted in our purchases of nuclear power.

24 MR. SMITH: Is that all?

25 THE WITNESS: Yes, sir.

1 MR. SMITH: Have you thought of wheeling in terms
2 of transmitting power out from Cleveland, in the event that
3 you should have access to nuclear power or hydro?

4 THE WITNESS: We had thought of wheeling in terms
5 of affecting our contractual relations with any company
6 that we might enter into a contract with.

7 And most of the contracts that you have for
8 power supply require that you carry a certain amount of
9 backup or that you even exchange power, rather than actually
10 purchasing it, put something back into the system.

11 So there was the consideration that this is a
12 two-way, wheeling should be two ways, we should have access
13 to transmission, we should be able to give power as well as
14 receive it.

15 The primary need, of course, was for the system
16 to receive power.

17 CHAIRMAN RIGLER: Does the City of Cleveland
18 supply power to any customers outside of the City limits?

19 THE WITNESS: I believe -- they are permitted
20 to supply power up to 50 percent of their load outside of the
21 City limits. I believe there are some residences concerned
22 by the City which are outside of the City limits, but there
23 are very few.

24 There is a very small amount of residential
25 consumers outside of the city.

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CHAIRMAN RIGLER: Which company supplies the
 power outside of the City limits of Cleveland?

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THE WITNESS: Cleveland Electric Illuminating.

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CHAIRMAN RIGLER: Does the City of Cleveland have any industrial customers?

THE WITNESS: Yes. It did during the tenure of my office, have a certain portion of the load devoted to industrial customers.

BY MR. VOGLER:

Q Mr. Hinchee, in view of the remarks of the Board let's see if I can clarify something here. Has the CEI system of the City of Cleveland ever offered to sell power to CEI?

A Yes, we did. To the best of my recollection the City offered power to CEI in the summer of 1973. At that point there had been articles in the paper that the system of Cleveland Electric Illuminating System was reaching the peak of their capability and our production was such at the time that we could offer them a portion of that production to meet their peak requirements, and we did so.

Q What was the response, if you recall, of the Illuminating Company to your offer?

A It was a somewhat negative response that they had no need for power from the Municipal Light Plant and if they did, they would let us know.

Q I believe we have touched briefly on this before, but the Board's question, perhaps I can clarify it even further.

1 Is the city system surrounded by the Illuminating
2 Company?

3 A Yes. It is surrounded.

4 Q Is it possible for the city to obtain power from
5 any other source other than the Illuminating Company without
6 third-party wheeling?

7 MR. REYNOLDS: I will object to the leading
8 questions by counsel. But the reason I rose was with regard
9 to the prior question. Unless we can get some clarification
10 with respect to the word "surround," it is not very meaningful.

11 I have no problem going into it on cross, but for
12 the record it might be helpful if the Board at this time
13 had some explanation as to what we are talking about when we
14 say surrounded by.

15 CHAIRMAN RIGLER: Do you want to clarify that,
16 Mr. Vogler?

17 MR. VOGLER: I might ask another question. My
18 immediate response is I will hang on the everyday common
19 dictionary definition of the word surround. I haven't looked
20 at it recently, but I rely on it.

21 BY MR. VOGLER:

22 Q Is the city system isolated in its service area
23 and in its system from other utilities other than the
24 Illuminating Company?

25 A Yes. It is completely, electrically and

1 geographically, isolated.

2 Q Did he complete his answer?

3 I would like to go back, then, and rephrase the
4 question before the objection.

5 In view of your isolation, in your opinion when
6 you were Commissioner of Light and Power, would it be
7 possible for the City of Cleveland to obtain sources of
8 electric supply, bulk power supply, from suppliers other
9 than the Illuminating Company without third-party wheeling?

10 A Absolutely not.

11 Q Fine.

12 Mr. Hinchee, I would like to ask you a few brief
13 questions on your activities at Burbank, California.

14 Would you, sir, characterize the size of the plant
15 at Burbank in relation to the size of the plant at Cleveland,
16 if you can?

17 A Well, the plant is approximately the same size as
18 the plant in Cleveland, about 225 megawatts, oil-fired
19 generation, as compared with coal-fired in Cleveland. About
20 44,000 customers in a city of a total population of 88,000.
21 The demand on the system approaches 160 megawatts. And it is
22 very comparable in size to the City of Cleveland.

23 Q Would you describe for us the -- briefly -- the
24 condition of the light plant at Burbank?

25 A Well, the condition of the light plant in Burbank

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1 is very good. It is an excellently managed and maintained
2 production plant. With the contracts that we have for backup
3 power supply and with the sources that we have for obtaining
4 power when we need it, as needed, from various parties with
5 whom we are interconnected, we are able to take down a boiler
6 or turbine whenever it needs attention, and leave it
7 out of service until it is repaired, make the repairs and
8 put it back into service.

9 That, of course, is the key to the operation of any
10 well-run plant.

11 Q Do you at Burbank have interconnections with the
12 utilities that are adjacent to your service area?

13 A Yes, we do.

14 Q Are these interconnections synchronous?

15 A All of them are synchronous, yes.

16 Q Do you have any operating difficulties
17 with these interconnections other than the
18 usual engineering?

19 MR. HAUSER: Mr. Chairman, I have been very
20 indulgent in not objecting before this. My objection is on
21 the ground of any relevancy with regard to any of the issues
22 or the companies involved in this proceeding as to what
23 happens in Burbank is clearly not relevant.

24 MR. VOGLER: Your Honor, the Staff maintains it is
25 relevant. This is the concluding piece of our direct

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1 examination. We have two electric utilities, similar in
 2 size and in characteristics, both under the operation of the
 3 same Commissioner of Light and Water at different times, of
 4 course, and I would like to have in the record, for whatever
 5 weight the Board determines, what can be done when a utility
 6 is afforded a chance to -- access to nuclear power. I have
 7 just about five minutes of these questions.

8 CHAIRMAN RIGLER: There is one problem that I see
 9 with it, and that is there may be so many variables between
 10 the situation in Cleveland and the situation in Burbank, in
 11 addition to which, without creating a situation inconsistent
 12 with the antitrust laws, it seems to me competitor utilities
 13 may have fairly broad latitude in the way they deal with
 14 municipal systems.

15 MR. VOGLER: That is why I hoped to ask one
 16 or more questions along this line, to maybe respond to some
 17 of that, and to submit it for whatever weight the Board would
 18 like to give it.

19 CHAIRMAN RIGLER: Mr. Hauser, I think we may let him
 20 go a minute. I think the Board may at the end, however,
 21 give no weight to the answers from this line of questions.

22 We understand the basis for your objection.

23 MR. HAUSER: I would point out further in response
 24 to Mr. Vogler's comment that we already established an
 25 extremely important difference between the two systems.

1 Mr. Hinchee has testified the municipal system of
2 Burbank is completely oil-fired, as I understood his testimony
3 where the majority of the generation of the Cleveland system
4 is coal-fired. That alone is a significant difference.

5 CHAIRMAN RIGLER: Well, there may be a different
6 regulatory scheme within the State of California for all we
7 know.

8 We will listen. But we are sensitive to the basis
9 of your objection.

10 MR. GOLDBERG: This is on a collateral
11 matter, your Honor.

12 The Staff would like to note its continuing
13 objection to Mr. Hauser's active participation as an attorney
14 in this proceeding, for the reasons stated yesterday.

15 CHAIRMAN RIGLER: But you haven't filed any motion,
16 either?

17 We went through this pretty well yesterday.

18 MR. GOLDBERG: Yes. I just wanted to note our
19 continuing objection.

20 CHAIRMAN RIGLER: All right.

21 MR. VOGLER: Could I have the question read?

22 (Whereupon, the reporter read from the record as
23 requested as follows:

24 "Question: Do you have any operating difficulties
25 with these interconnections other than the usual engineering?"

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1 MR. VOGLER: I will strike that particular question.

2 BY MR. VOGLER:

3 Q Do you have third-party wheeling at Burbank?

4 A Yes. It is a very common practice in the entire
5 area.

6 Q It is?

7 A Yes.

8 Q Has Burbank been offered access to nuclear power?

9 A Yes, we have. We have been offered participation
10 in San Joaquin Nuclear Plant which is in the planning stage,
11 and the lead agency is the Los Angeles Department of Water and
12 Power. In other words, it is a municipal operation. And we
13 declined that offer after studying it. We are now considering
14 an invitation from the San Diego Gas & Electric to participate
15 in the Sun Desert Nuclear Plant to be constructed near
16 Blyth, California.

17 MR. VOGLER: Your Honor, this concludes our
18 direct examination of the witness.

19 CHAIRMAN RIGLER: Thank you.

20 Mr. Hauser?

21 MR. HAUSER: At this time, Mr. Chairman, I would
22 like to renew my motion to strike Mr. Binch's testimony.
23 As I will demonstrate shortly, there were a number of issues
24 before the Federal Power Commission. One of the issues was
25 whether the emergency condition of the municipal light plant

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which required the establishment of the 11 KV load transfer points between CEI and the City resulted from any improper, unlawful, or anticompetitive conduct on the part of CEI.

Also at issue before the Federal Power Commission was whether there was any improper, unlawful, or anticompetitive conduct on the part of CEI in connection with the establishment of the 11 KV load transfer points, 69 KV nonsynchronous interconnection and the 138 KV synchronous interconnection between CEI and the Cleveland Municipal Light Plant.

The third issue was whether, in there, was any improper, unlawful, or anticompetitive conduct on the part of the CEI in the manner in which the aforesaid transfer points and interconnections were administered and were operated.

There were other issues before the Federal Power Commission --

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1 CHAIRMAN RIGLER: Let us hear the third issue one
2 more time, please.

3 MR. BAUSER: The third issue was whether there was
4 any improper, unlawful, or anticompetitive conduct on
5 the part of CEI in the manner in which the aforesaid transfer
6 points and interconnections were administered, and/or operated
7 by CEI.

8 There were other issues which were fully litigated
9 before the Federal Power Commission, but these three are
10 directly involved with Mr. Hinchee's testimony in the following
11 areas:

12 One: The condition of the municipal light plant
13 during his tenure as Commissioner.

14 Two: The 11 kv load transfer points, and the manner
15 in which CEI administered the transfer of service.

16 Third: 69 kv nonsynchronous interconnection and
17 the manner in which CEI administered the transfer of service
18 over that interconnection.

19 And, the matter of the reliability of the municipal
20 light plants service.

21 At this time I would like to distribute for identifi-
22 cation, a number of orders of the Federal Power Commission.

23 CHAIRMAN RIGLER: Before you do that, let me ask you
24 this question: What is the anticompetitive standard of the
25 FPC?

mm2 1 MR. HAUSER: If I understand the question correctly
2 in the orders that I propose to circulate for purposes of
3 identification, it will be clear that the anticompetitive alle-
4 gations were raised in that proceeding --

5 CHAIRMAN RIGLER: Yes, but what is the standard?

6 In other words, under the Nuclear Regulatory
7 Commission's statute, we are involved in the creation or
8 maintenance of a situation inconsistent with the
9 antitrust laws, or the principles underlying those laws.

10 I am wondering what the FPC standard is that would
11 be comparable or similar to the NRC standard.

12 MR. HAUSER: Under the Gulf States Power Case, as
13 I understand it, the ruling there was that the issues to be
14 considered by the Federal Power Commission indicated that the
15 antitrust concerns were at least as broad as those before the
16 Commission, as you have outlined, the NRC Commission.

17 MR. SMITH: Would you address yourself to the
18 Federal Trade Commission Act in your answer?

19 MR. HAUSER: In terms of what?

20 MR. SMITH: Under the Atomic Energy Act we may
21 look to the Federal Trade Commission Act as one of the antitrust
22 laws in evaluating a situation inconsistent -- is the
23 litigation to which you refer, is that parallel?

24 MR. HAUSER: I believe it is, yes.

25 CHAIRMAN RIGLER: Would the FPC have found

1 anticompetitive conduct on a finding of unfair trade practices.

2 MR. HAUSER: I think so. It could, yes.

3 CHAIRMAN RIGLER: You referred to a Gulf States
4 Case --

5 MR. HAUSER: If it was contrary to the public
6 interest,

7 CHAIRMAN RIGLER: Is that the standard?

8 MR. HAUSER: Yes.

9 CHAIRMAN RIGLER: You see, that is a different
10 standard than our statutory language.

11 I wanted to start with a comparison of the statutory
12 standards relating to anticompetitive conduct and find
13 out if there is complete identity, if there is a difference
14 in language, or if there is a total statutory separation
15 between the concepts that the agencies are going to be
16 considering.

17 MR. HAUSER: If the standard, as I have stated, is
18 whether or not the activities complained of have been contrary
19 to the public interest, I think that is sufficiently broad to
20 cover the statutory language of a situation inconsistent with
21 the antitrust laws.

22 I think it would also cover the principles that are
23 involved in the Federal Trade Commission proceedings.

24 CHAIRMAN RIGLER: I would want to think about that.
25 Is there an effect in the FTC Statute?

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1 In other words, does the public interest test
2 require weighing and balancing anticompetitive considerations
3 versus, let's say, pro-efficiency considerations within
4 the power industry.

5 You see what is troubling me?

6 MR. HAUSER: Yes, ir.

7 CHAIRMAN RIGLER: You are asking me to say that
8 because the FPC has made a finding of no anticompetitive
9 conduct, that that issue has been litigated in the practical
10 terms before this Agency.

11 Unless I were certain the two tests were the
12 same, I don't think we could go along with you here. I think
13 maybe what you should do -- you may introduce your documents
14 at this time if you wish, but I think you are going to have to
15 brief this a little more fully and obviously there is plenty
16 of time to consider when and if to strike Mr. Hinchee's
17 testimony. It doesn't have to be decided right now.

18 Moreover, I might point out that a lot of his testi-
19 mony is completely factual; the existence of the interconnection
20 points, the operation of the system.

21 MR. HAUSER: Also the administration and operation
22 of the load transfer points is part of the issues which I
23 specifically referred to.

24 CHAIRMAN RIGLER: Right.

25 But it seems to me that the only basis for bringing

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1 a motion to strike before us would be in regard to the testimony
2 of anticompetitive conduct in the operation and the administra-
3 tion of these load transfer points.

4 And that is why I was focusing on what you described
5 as issue number 3 before the FPC.

6 MR. HAUSER: Mr. Chairman, we will submit a full
7 brief on the subject, supplementing certainly in part, some of
8 the material in Applicants' pretrial brief, but narrowed and
9 directed to the specific question.

10 CHAIRMAN RIGLER: Your point is that a federal
11 agency with expertise in the area has made a determination
12 of no anticompetitive conduct by CEI in the administration of
13 the load transfer points?

14 MR. HAUSER: That is correct.

15 CHAIRMAN RIGLER: And we should give great weight
16 to the decision of that agency with expertise in the field?

17 MR. HAUSER: That is correct.

18 And the specific issues I stated were before
19 the Federal Power Commission.

20 CHAIRMAN RIGLER: If you want to introduce your
21 documents, you may, and we will give you an opportunity to file
22 a brief.

23 Mr. Hauser, Mr. Frysiah has reminded me of a very
24 important point with respect to the motion, and that is that we
25 have already issued one opinion in regard to matters in which

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1 we pointed out that activities, although singly
2 nonviolative of the antitrust laws in and of themselves,
3 when bundled together may eventually constitute an anticompeti-
4 tive situation.

5 So there is a possibility that notwithstanding a
6 finding by another federal agency, that in isolation certain
7 activities were not anticompetitive, a series of such activities
8 might result in such a finding.

9 That would be another reason for our denying your
10 motion to strike.

11 A third point Mr. Smith raised is, if you are going
12 to talk in terms of collateral estoppel, you should address
13 the issue of whether the parties and the issues were
14 identical in the two forums.

15 MR. HAUSER: Yes, I understood that.

16 In our pretrial brief we do address that specific
17 issue, and I refer specifically to page 187, and you will
18 find there cited a case of FTC versus Waxaco, Inc., 517 Fed.2d,
19 146.

20 In addition, in our supplemental brief, we will
21 address Mr. Frysiak's question.

22 The first document that I would ask be identified
23 as Applicant's Exhibit Number 18(CHE), is entitled, A Motion
24 to Consolidate, set for hearing and investigation, Federal
25 Power Commission Docket Numbers E-7631, H-7633.

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It is a six-page document dated December 3, 1971.

(The document referred to was marked Applicant's Exhibit No. 19(CEI) for identification.)

MR. HAUSER: Mr. Chairman, it might be easier if we distributed all of these documents at once, and then I can go through and have them identified.

MR. MELVIN BERGER: Mr. Chairman, I am not sure what procedure we are following here, but I wanted to note the Department does have questions for Mr. Hinchey. I don't know if we have been skipped over or not.

CHAIRMAN RIGLER: No, it is your turn to be examined next.

MR. MELVIN BERGER: Thank you.

CHAIRMAN RIGLER: Off the record.

(Discussion off the record.)

CHAIRMAN RIGLER: On the record.

MR. HAUSER: The next document that I ask to be identified as Applicant's Exhibit Number 19(CEI-2) --

CHAIRMAN RIGLER: Wait a minute.

It will be identified as Applicant's Number 19(CEI), and then you can put your 1, 2, 3s on your internal numbers. I think that is the procedure we worked out.

In other words, the exhibit number will be Exhibit Number 19(CEI), or Applicant's Number 19. When the party's

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1 document identification number would be CEI-3, is that right?

2 MR. HAUSER: Yes.

3 The document is entitled "Order Directing Expedite
4 Temporary Emergency Interconnection and Standby Service,
5 Consolidating Hearing, Setting Expedited Hearing and Denying
6 Motion for Oral Argument, issued March 8, 1973, by the
7 Federal Power Commission of the United States of America,
8 permanent interconnection, emergency interconnection, rates,
9 antitrust, FPC Docket Numbers E-7631, E-7633, and E-7713
10 consisting of eight pages together with a dissenting opinion
11 of Commissioner Carver, of two pages.

12 (The document referred to was
13 marked Applicant's Exhibit
14 No. 19(CEI) for identification.)

15 MR. HAUSER: The next document I asked to be identifi-
16 fied as Applicant's Exhibit 20(CEI-3) --

17 CHAIRMAN RIGLER: It is Applicant's Number 20, (CEI-3)

18 MR. HAUSER: Excuse me.

19 It is entitled Presiding Examiner's Initial Decision
20 in Consolidating Proceedings, FPC Docket E-7631, E-7633,
21 E-7713, which consists of 21 pages.

22 CHAIRMAN RIGLER: That bears the internal
23 document number CEI-3.

24 MR. HAUSER: Correct.

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(The document referred to was
marked Applicant's Exhibit
No. 20(CBI) for identification.)

MR. HAUSER: The next document I ask be identified
as Applicant's Exhibit 21(CBI-4), is entitled Opinion Number
644, Opinion and Order in the Interconnection Proceeding, PSC
Docket Numbers E-7631, E-7633, E-7713, issued January 11,
1973 --

CHAIRMAN RIGLER: Once again the identification is
just Applicant's 21, and the internal document number is
CEI-4.

MR. HAUSER: And it consists of ten pages.

(The document referred to was
marked Applicant's Exhibit
No. 21(CBI) for identification.)

MR. HAUSER: The next document I ask to be identified
as Applicant's Exhibit 22, Internal Document CEI-5, Opinion
Number 644-A, issued March 9, 1973 by the Federal Power
Commission in Docket Numbers E-7631, E-7633, and E-7713,
consisting of a cover page plus three pages, and apparently a
copy of the envelope.

(The document referred to was
marked Applicant's Exhibit
No. 22(CBI) for identification.)

MR. HAUSER: The next document that I ask to be

1 identified as Applicant's Exhibit 23. Internal document CEI-6,
2 is entitled Order Denying Application for Reopening, issued
3 June 3, 1974, and the Federal Power Commission Docket Numbers
4 E-7631, and E-7633, and E-7713, and consists of three pages.

(The document referred to was
marked Applicant's Exhibit
No. 23(CEI) for identification.)

8 MR. HAUSER: The next document that I wish to be
9 identified as Applicant's Exhibit 24. Internal document
10 CEI-7, is an Order Directing Compliance with Previous Orders
11 and Denying Motion, issued April 6, 1974 in Federal Power
12 Commission Docket Numbers E-7631, E-7633, E-7713, and consists
13 of seven pages.

14 CHAIRMAN RIGLER: Which one is number 24?

15 MR. HAUSER: It is an Order Directing Compliance
16 with Previous Orders and Denying Motion, issued April 6, 1974.

(The document referred to
was marked Applicant's Exhibit
No. 24(CEI) for identification.)

1 CHAIRMAN RIGLER: Off the record.

2 (Discussion off the record.)

3 CHAIRMAN RIGLER: On the record.

4 MR. HAUSER: Mr. Chairman, you will find or
5 possibly already have discovered that these documents have not
6 been red-lined in keeping with the Board's previous ruling
7 and advice.

8 Let me explain that I will go through these
9 documents at this time and call to the Board's attention
10 particular sections.

11 I believe that it is very probable in the course of
12 these proceedings that the entire documents will be
13 important for review by the Board.

14 As I stated earlier, there were a number of
15 issues that I was addressing myself to specifically at this
16 time. There were other issues that I believe will arise
17 sometime in the future in these proceedings.

18 Mr. Reynolds suggests that if you would rather,
19 and not take the time here, if we, in our written submission,
20 would call these specific provisions to the Board's attention,
21 we, of course, would do this.

22 CHAIRMAN RIGLER: I think that is a good suggestion
23 because I want to move along and finish the witness today
24 so we will not take additional time right now to have you
25 designate portions of the documents.

1 You have made your point. You have told us that
2 you will file a brief in support of your motion, and I think
3 that at this time I would like to have the Justice Department
4 cross-examination.

5 MR. HAUSER: All right.

6 Before we do that, might I move that these documents
7 be introduced in evidence?

8 CHAIRMAN RIGLER: Hearing no objection, they will
9 be --

10 MR. HJELMFELT: I just want to inquire as to
11 whether these are being offered generally or for the purpose
12 of his motion at this time.

13 MR. HAUSER: Generally, Mr. Chairman, which would,
14 of course, include also for the purposes of the motion.

15 CHAIRMAN RIGLER: I don't really see the
16 distinction here because the only purpose of our examining
17 the documents would be to accept as fact the conclusions of
18 the FPC; and that is the very subject of the motion, isn't it?

19 MR. HAUSER: There might be other collateral
20 estoppel issues that would be contained in the documents
21 that we would raise at a later time.

22 CHAIRMAN RIGLER: I think we would permit you to
23 introduce them into evidence absent objection for the limited
24 purpose of your collateral estoppel motion seeking to strike
25 Mr. Kinchee's testimony.

1 If you intended to use them for other purposes
2 later, I think it would be appropriate to make an offer of
3 proof or to --

4 MR. HAUSER: That is fine, Mr. Chairman.

5 MR. VOGLER: Your Honor, the Staff has no basic
6 objection to the documents for the reasons Mr. Hauser noted.
7 The Staff would like to note my colleague Mr. Goldberg just
8 advised me some of the orders are not signed. I don't know the
9 procedure at the Federal Power Commission that is followed.
10 I know at the Federal Trade Commission the order had to be
11 signed for authenticating purposes. I am pointing that out as
12 opposed to objecting.

13 MR. HAUSER: I would represent that these are in
14 fact copies of Federal Power Commission orders duly issued.

15 CHAIRMAN RIGLER: The documents have been received
16 for the purposes announced by counsel.

17 (The documents heretofore marked
18 Applicant's Exhibits No. 18 (CEI)
19 thru 24 (CEI) for identification,
20 were received in evidence.)

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CHAIRMAN RIGLER: Mr. Reynolds?

MR. REYNOLDS: Mr. Chairman, Applicants are going to be object to any cross-examination by the Department of Justice of this witness.

The Department of Justice has an identity of interest with the NRC Staff. There is no adverse interest. And I think that it is well settled that cross-examination is confined to those parties which have an adverse interest.

For that reason we are going to object to the Department of Justice conducting any cross-examination of this witness.

CHAIRMAN RIGLER: Didn't we spend a few minutes with the past three witnesses going around in a circle where Applicants, with an asserted identity of interest, cross-examined the same witness?

MR. REYNOLDS: I believe it was exactly different, that we were talking about Applicants that did not have an identity of interest with respect to cross-examination, and that is why the Applicants felt it necessary that they had their right to cross-examine separately, because they did not have the identity of interest.

CHAIRMAN RIGLER: They all had an identity of interest in pursuing the application for an unconditional license of Davis-Bessie and Perry Stations.

MR. REYNOLDS: But that is far different than

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1 whether as to the testimony of a witness there is an adverse
2 interest in the testimony and whether the parties have an
3 identity of interest with respect to that testimony.

4 I think that the point that we made consistently
5 and clearly in this proceeding is that each of the
6 Applicants feel that the testimony that comes in should be
7 limited to a particular Applicant against which that testimony
8 is directed until such time as there is a sufficient demonstra-
9 tion to this Board of a connection that would warrant it going
10 as to all.

11 In the absence of a connection at a later date,
12 the feeling is that all of the testimony that might come in
13 as to one Applicant would not be admissible against the others
14 and they would not have an identity of interest with respect
15 to that testimony or any relationship to it.

16 The whole premise of the Applicants' position
17 has been they do not have an identity of interest.

18 I would also submit that as to the Department of
19 Justice's cross-examination heretofore of the other witnesses,
20 it has been in the nature of direct examination because
21 they designated those witnesses as their own.

22 CHAIRMAN RIGLER: I will take Mr. Berger first.

23 MR. MELVIN BERGER: Mr. Reynolds hasn't stated
24 what he believes the identity of interests between the
25 Department and the Staff to be. I would like to ask him what

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he believes that to be before I answer.

MR. REYNOLDS: I think that one has a right to cross-examination or confronts a witness who makes charges against the party, a party in proceeding.

It seems to me that in this case the government is pursuing a case which is to support a 105(C) finding that there is a situation inconsistent with the antitrust laws.

I don't see any difference except perhaps some difference in theory, but no difference in interests with respect to the Staff's position in this case as articulated in its September 5 filings, and the Department of Justice interest in the case as articulated in its advice letters, its September 5 filings, and its proffering brief.

MR. MELVIN BERGER: Do I understand Mr. Reynolds to say the identity of interest between the Department and the Staff is that we are both taking the position that there is an inconsistency with the antitrust laws under 105(c)?

MR. REYNOLDS: I think there definitely is. They both are taking that position. That is one point I am making. The other point I am making is that the Department of Justice is not an adverse party with respect to this witness. There has been no indication that this testimony is directed against the Department of Justice or has any possibility of an adverse impact on the Department of Justice. Without that adverseness,

1 it is not appropriate for the Department to cross-examine.

2 MR. MELVIN BERGER: Are you saying that the fact
3 is that this witness may not be adverse to us means that
4 we have an identity of interest with the Staff?

5 MR. REYNOLDS: I am not linking the two up.
6 I am saying I believe there is an identity of interest between
7 the Staff and the Department.

8 I am also saying that I think as to matters
9 testified to by this witness there is no remote possibility
10 of an assertion that there is any adversity as to the
11 Department of Justice.

12 MR. MELVIN BERGER: But that is not your argument
13 with regard to the identity of interest, is it?

14 MR. REYNOLDS: I am making both arguments in
15 connection with the right to cross-examine.

16 MR. MELVIN BERGER: But it is not your argument
17 with regard to the identity of interest.

18 MR. REYNOLDS: I do believe there is an identity
19 of interest there which goes to the fact that I don't think
20 there is room to argue there is an adversity with respect to
21 the Staff's presentation of its case through this witness.

22 MR. MELVIN BERGER: I am still not sure if
23 Mr. Reynolds is saying the fact that this witness may not be
24 adverse to the Department means there is an identity of
25 interest between the Department and the Staff.

1 I am having some problems responding to that point.
 2 MR. REYNOLDS: I don't want to jump up and down.
 3 I am not drawing any conclusion as to the identity of
 4 interest solely on the basis of the testimony of this
 5 witness. I do not see that this witness' testimony has been
 6 in any way adverse to the Department of Justice. I therefore
 7 find no adversity which would warrant cross-examination
 8 by the Department of Justice. And in addition to that, it
 9 is my position that the Department of Justice and the NRC
 10 Staff have an identity of interests which further bolsters
 11 my conclusion that there is no adverseness here which would
 12 warrant cross-examination.

13 MR. MELVIN BERGER: First, I would like to state
 14 that apparently Mr. Reynolds is predicating his identity of
 15 interest on the fact that both the Department and the Staff
 16 have taken the position that there is a situation inconsistent
 17 with the antitrust law. Is that correct?

18 CHAIRMAN RIGLER: I think we have been over that.

19 MR. MELVIN BERGER: If that is the identity of
 20 interest, then it seems to me all of the Applicants share the
 21 identical identity of interest, that each of them is contending
 22 there is a situation inconsistent with the antitrust laws does
 23 not exist.

24 I don't see the distinction there between the
 25 Department and the Staff's position and the Applicants'

1 position.

2 Further, I think the Department has taken -- the
3 Department and the Staff have throughout the entire proceeding
4 submitted motions and argued as separate entities, and their
5 point has never been raised before that we do have an
6 identity of interest.

7 If Applicants wished to object to it, they should
8 have done so at an earlier point in time.

9 It was the Applicants who at one point agreed to
10 consolidate and in fact to only submit one brief on behalf of
11 all Applicants, and then they decided that didn't suit them
12 and they went ahead and decided they each wanted to submit
13 separate briefs.

14 I think Mr. Reynolds is a little late in arguing
15 now there is an identity of interest between the Department
16 and the Staff and we should not be allowed to cross-examine.

17 Furthermore, I would like to state I don't believe
18 that the fact that this witness has not been adverse to the
19 Department is a ground for denying us cross-examination.

20 The Department believes the standard to be applied
21 in whether or not cross-examination should be allowed in
22 administrative proceedings is whether the record can be
23 bolstered in any way so that a more clear and
24 complete record is obtained by the cross-examination.

25 I believe that is the standard of the Administrative
Procedure Act as well.

1 CHAIRMAN BIGLER: Mr. Vogler?

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2 MR. VOGLER: From the original beginning of
3 Mr. Reynolds objection, until just recently, he has backed
4 off a little bit. My main objection goes to the identity
5 of interest, which I deny. And if there had been an identity
6 of interests, there would have been one brief, one witness
7 list, and one documents list. The only time the Staff
8 has worked in conjunction with the Department of Justice,
9 and quite well, I might state, is upon order of this Board,
10 and that was in discovery.

11 I do not know what Mr. Berger has in mind with
12 regard to this witness, but I do know that under Section 105,
13 if the Attorney General of the United States recommends this
14 antitrust hearing be held, that the Attorney General or
15 his designee will be a party to that proceeding. And that is
16 Mr. Berger's role here today. And as a party to that
17 proceeding, under the Administrative Procedure Act, he has
18 a right to cross-examine in order to see that the examination
19 and the transcript will be full and true disclosure of the
20 facts.

21 For that reason, I oppose Mr. Reynolds' objection.

22 CHAIRMAN BIGLER: Mr. Hjelmfelt?

23 MR. HJELMFELT: Although it appears to be
24 a dead letter, I would simply like to refer to the agreement
25 found in the statement on consolidation procedures of

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1 March 29, 1974, wherein, in paragraph 4, page 2, it was
2 agreed by counsel for the Applicants that cross-examination
3 would be conducted by one counsel for each intervenor, one
4 counsel for the Regulatory Staff, and one counsel for the
5 Department of Justice, and one counsel for the applicants.

6 CHAIRMAN RIGLER: Who signed that letter on behalf
7 of the Applicants?

8 MR. HJELMFELT: Mr. Gerald Charnoff.

9 CHAIRMAN RIGLER: Was it signed on behalf of all
10 Applicants?

11 MR. HJELMFELT: He signed as counsel for
12 Applicants, in the plural.

13 CHAIRMAN RIGLER: Well, for a variety of reasons,
14 Mr. Reynolds, we will deny your motion.

15 Proceed, Mr. Berger.

16 MR. REYNOLDS: Mr. Chairman, I would like to have
17 the Board state the reasons for denying the motion, if it is
18 going to deny it. I appreciate the Board not wanting us
19 to reargue after it made a ruling, but for purposes of the
20 record, for purposes of possible appeal, it would be helpful
21 if we could have the Board state what its reasons are.

22 CHAIRMAN RIGLER: I don't believe the interests
23 of the Attorney General and the Staff are necessarily
24 identical. Obviously, the statute provides for independent
25 review by the Attorney General as a separate party. I believe

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1 that the references Mr. Vogler made to the Administrative
2 Procedure Act were well taken, and I believe that the
3 understanding of the parties throughout these proceedings have
4 been that each party would cross-examine separately.

5 I believe they had that privilege.

6 They have that ability as a matter of right,
7 but not withstanding that, your firm agreed to that procedure
8 a long time ago, and we have all been operating on that
9 premise up until now, including the first three witnesses.

10 Moreover, I am not persuaded that there is not
11 an identity of interest among Applicants.

12 In other words, I find that almost all of the
13 arguments presented on the other side were persuasive.

14 MR. REYNOLDS: Thank you.

15 CHAIRMAN RIGLER: We refer you again to the
16 Prairie Island decision, Mr. Reynolds.

17 MR. REYNOLDS: I believe that was directed to
18 intervenors, sir.

19 CHAIRMAN RIGLER: Go ahead, Mr. Berger.

20 CROSS-EXAMINATION

21 BY MR. MELVIN BERGER:

22 Q Mr. Hinchey, in response to some
23 questions by Mr. Vogler, you indicated that Burbank has been
24 offered participation in the San Joaquin nuclear units. Is
25 that correct?

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1 A Yes, that is correct.

2 Q Do you know if there are any private utilities
3 participating in the San Joaquin units?

4 A There are, but they are not the lead agency for
5 that development of that unit.

6 Q Do you know which utilities are participating
7 in it?

8 A There is Southern Cal Edison, is one.

9 Q I believe you also stated in response to some
10 questions by Mr. Vogler that Burbank does have third party
11 wheeling arrangements; is that correct?

12 CHAIRMAN RIGLER: Mr. Hauser?

13 MR. HAUSER: Mr. Chairman, I again object to
14 this line of question by the Justice Department on the grounds
15 of relevancy as to any situation existing out on the West
16 Coast involving the City of Burbank and utilities out there,
17 and the City of Cleveland and Cleveland Electric
18 Illuminating Company.

19 (Board conferring.)

20 CHAIRMAN RIGLER: What was the pending question,
21 please?

22 (The reporter read the pending question.)

23 CHAIRMAN RIGLER: I will permit that.

24 THE WITNESS: Yes, that is correct.

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1 BY MR. MELVIN BERGER:

2 Q With whom do they have these arrangements?

3 A With a variety of both public and private power
4 systems interconnected throughout the West Coast area.
5 Burbank can and does draw power from the Pacific Northwest,
6 we own and arrange for wheeling for power that we do
7 not own through the Pacific intertie, which is a high
8 voltage DC line. We are presently contemplating purchase
9 of dump power from Nevada Power Company, who is an entity
10 in the Nevada area.

11 So there are many entities, there are 33 companies
12 that are members of the West Associates.

13 CHAIRMAN RIGLER: Mr. Hauser?

14 MR. HAUSER: Mr. Chairman, now we are not confined
15 to the City of Burbank, we are extending into the entire
16 West and Northwest, and I submit again it is clearly not
17 relevant, and it raises the issue as to whether or not
18 we are required to enter into cross-examination and affirmative
19 case as to, as I say, what has now been expanded much greater
20 than the initial examination by Mr. Vogler.

21 CHAIRMAN RIGLER: I tend to agree with you.
22 I think we have had enough on that line, Mr. Berger.

23 MR. MELVIN BERGER: I have one concluding
24 question, if I may be permitted.

25 CHAIRMAN RIGLER: I will listen to the question.

1 I may not let the Witness answer it.

2 BY MR. MELVIN BERGER:

3 Q With what private utilities does Burbank
4 have these third party operating arrangements?

5 MR. HAUSER: I object.

6 (Board conferring.)

7 CHAIRMAN RIGLER: I don't see what right we could
8 give to the answers, no matter what it was. We will sustain
9 that objection.

10 MR. MELVIN BERGER: I will withdraw that question.

11 BY MR. MELVIN BERGER:

12 Q Mr. Hinchee, in some of your testimony yesterday,
13 you indicated, you discussed the condition of the main
14 plant at the time you arrived in Cleveland. I would like
15 to ask you what the situation was with regard to maintenance
16 of the generating equipment at the time you arrived as
17 commissioner of power and light in the City of Cleveland?

18 A Well, due to the extended period of time in which
19 the repairs of a large generating unit were required,
20 maintenance, basic maintenance had been postponed and there
21 were several of the 25 megawatt generating units in need of
22 turnaround, which is a term used in the trade meaning
23 that approximately every five years you remove that particular
24 any unit that has been operating continuously and you take it
25 up, look at it, make an inspection and make necessary

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1 operated beyond their limit for when this maintenance
2 should have taken place and their condition was obviously
3 deteriorating then, because this had not been done.

4 Q Why was the maintenance not done?

5 A Well, because the units were required to be in
6 service to provide electric power. There was not enough power
7 available to the City to remove any units from service that
8 could possibly be opened.

9 Q Mr. Hinchee, as commissioner of power and light,
10 who was your supervisor in the chain of command or the
11 table of organization?

12 A The director of utilities.

13 Q Who was that gentleman?

14 A When I first was employed by the City, it
15 was a man named William Gaskill. In the latter part
16 of 1971, -- I was acting director of utilities, I am
17 sorry.

18 The first part of '72 then it became
19 Ray Kudukis.

20 Q Was Mr. Kudukis the director of public utilities
21 from the beginning of '72 until you left the City of
22 Cleveland?

23 A Yes, that is correct.

24 Q Who would be the next up in the chain of
25 command above the director of public utilities?

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A The mayor.

Q And who was the mayor at the time you came to the
City of Cleveland?

A Mayor Stokes.

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1 Q And did someone follow him to office while you were
2 Commissioner?

3 A Yes. I am sorry. His name escapes me at the
4 moment. He is presently mayor of the city. He has
5 continued in office from that time until now.

6 Q With regard to the maintenance of the MELT
7 generating facilities, upon arrival as commissioner in the
8 city did you develop any program to deal with the maintenance
9 problem?

10 A Yes. The first -- one of the first orders of
11 business was to determine as quickly as possible the needs
12 of the power plant which apparently had the worst set of
13 conditions affecting it, we had to determine how quickly we
14 could complete the repairs on the large turbine, restore
15 it to service, and then map a program for returning lesser
16 units to top-notch operating condition and establishing
17 priorities for those smaller units.

18 Q Did you implement this program?

19 A Not entirely. We were also confronted with a
20 situation where precipitators had to be installed on the boilers
21 by a court order and that, compliance with that order did take
22 priority over the maintenance of the units involved.

23 Q In your prior testimony you discussed the load
24 transfer arrangements MELT had with CEI. I wonder if you
25 could give us a step-by-step description of what had to happen

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1 in order to activate these load transfer points.

2 A Well, when the municipal system had realized the
3 need for activation of a point of interconnection, then our
4 dispatching group was required to contact the CEI operation
5 group -- this is on the 11 KV system -- and the CEI group
6 in turn would dispatch personnel to the switching area, the
7 switching substation, and they would handle all of the
8 switching through a system of communications which created
9 some delay.

10 As I stated yesterday, instead of handling it
11 correctly with our people there was a cumbersome routing of
12 communications back through the dispatching office and
13 switches would remain open until clearances were given
14 by that office.

15 Q Did you ever discuss with CEI people a possible
16 way of activating the load transfer points more quickly than
17 with this procedure which you have just described?

18 A I did not discuss this personally with the CEI
19 operators. I had a person on my staff who did discuss it for
20 me. His name was Titus.

21 Q Did you consider using a radio communication plan
22 to aid in this load transfer?

23 A Yes, we asked that this be done and --

24 Q How would that have worked?

25 A Simply we would take a portable unit from our

1 system or use one of the portable units from the CEI system
 2 to communicate between crews at remote locations. Each truck
 3 has a radio in it and then there are portable units that
 4 can be hand-carried, and both systems had these units.
 5 Either one could have been used.

6 Q And you would have had a crew at each of the
 7 switches that had to be thrown; is that correct?

8 A Correct. And that would be one way of speeding it
 9 up if the open-close switch mode were necessary. My
 10 contention throughout the entire tenure in that office there
 11 was that that open-close switch arrangement was not necessary,
 12 that the two systems could be energized, tied together and
 13 then separated if the separate operation were desirable for
 14 continuing operation at any of the load transfer points.

15 That would have prevented any interruption what-
 16 soever.

17 CHAIRMAN RICLER: Did CEI give you any reason
 18 for resisting the use of the radio communication proposal?

19 THE WITNESS: No. They simply made a refusal and
 20 that was it.

21 BY MR. MELVIN BERGER:

22 Q As time went on and the switching became more
 23 frequent, was this procedure speeded up at all?

24 A No. As a matter of fact, as time went on the delays
 25 we encountered were longer and longer, apparently created by

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1 the fact that more and more people on the CEI end of the
2 business had to give their authority for clearance before
3 switches were opened.

4 We believed that to be the situation.

5 Q With regard to this load transfer arrangement,
6 if MELP needed, let's say, a half megawatt of power on the
7 system, was it possible for them to get just that much power
8 from CEI?

9 A No, that was one of the penalties that we felt
10 were unjust under that type of arrangement. In prudent
11 operation of the municipal system if it was apparent that we
12 were approaching the limit of the capability of our
13 generation under a given set of circumstances, then prudent
14 operation would require that we energize an additional load
15 transfer point so that we then had some reserve on our
16 generation for the events, if you had a failure, someone
17 hit a power pole or something would happen to drop one of the
18 other stations in operation, with the load transfer points
19 there is no way to buy any backup power. You are either
20 supplying all of it or none of it. So that when you needed,
21 say, 100 kilowatts, or 500, or 1000, as the case might be, you
22 were required to energize say a 5000 kilowatt substation and
23 buy all of that power, thus paying a penalty.

24 Q Even though MELP would have had the capacity to
25 let's say serve a portion of that load transfer?

A Yes.

end6

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1 MR. MELVIN BERGER: Mr. Chairman, may we approach
2 the bench with these documents?

3 (Handing to the Board.)

4 CHAIRMAN RICLER: Mr. Reynolds?

5 MR. REYNOLDS: May I make a request as to what
6 was handed to the Board?

7 MR. MELVIN BERGER: I am sorry, these are the
8 documents I put on your desk yesterday afternoon.

9 MR. REYNOLDS: Did you hand up all of the
10 documents, or just one of them?

11 MR. MELVIN BERGER: I handed up five documents from
12 the packet I handed to you.

13 MR. REYNOLDS: It may be appropriate to hand them
14 up one at a time, because we may have some objection
15 as to whether the Board should see some of these documents.

16 I, therefore, think it would be appropriate to
17 wait -- specifically with respect to some of the documents in
18 the packet, I believe I will take the position as to certain
19 of them, that they are not within the area of direct examination,
20 and therefore, as far as cross-examination is concerned,
21 they would not be appropriately introduced at this time.

22 CHAIRMAN RICLER: But he is still going to hand
23 them up for identification while that point is debated.

24 MR. REYNOLDS: All right.
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BY MR. MELVIN BERGER:

Q Mr. Hinchee, in some of your earlier testimony today, I believe you stated that at one time in 1970, the City offered to sell CEI some power.

Is that correct?

A Yes, that is correct.

Q I would like to hand to you now a letter from Raymond Kudakis to Karl Rudolph dated July 23, 1973, Department of Justice Document Number 012817, which has been marked as DC-3 for identification.

(The document referred to was marked Exhibit No. DC-3 for identification.)

xxx

BY MR. MELVIN BERGER:

Q Mr. Hinchee, I would like to ask you if you are familiar with this letter?

A Yes, I am.

Q Does this relate to the offer to sell power to CEI?

A Yes.

There had been several verbal offers before this, but we at the City thought it would be well to formalize it and bring it to the attention of the president of the company.

Q Is this the letter that was sent making the offer?

A Yes, that is correct.

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MR. MELVIN BERGER: I would like to move that DJ-3 be admitted into evidence.

MR. HAUSER: CEI has no objection.

MR. REYNOLDS: A continuing objection on the part of the other Applicants.

CHAIRMAN RIGLER: The continuing objection will be overruled.

It will be admitted into evidence as Department of Justice Exhibit 3.

(The document heretofore marked Exhibit No. DJ-3 for identification, was received in evidence.)

xxx

MR. MELVIN BERGER: I would now like to have marked for identification a letter from Earl Rudolph to Raymond Kudukis dated July 24, 1973, which bears Department of Justice Document Number -- it is incorrect here -- it should be 012916, which is to be marked as DJ-4 for identification.

(The document referred to was marked Exhibit No. DJ-4 for identification.)

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BY MR. MELVIN BERGER:

Q Mr. Hinchey, have you seen this document before?

A Yes.

Q Can you tell us what this document is?

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1 A It is the response to the City's formal offer to
2 supply some power for the Cleveland Electric Illuminating Company

3 MR. MELVIN BERGER: I would like to move that DJ-4
4 be admitted into evidence.

5 MR. HAUSER: CEI has no objection

6 MR. REYNOLDS: A continuing objection on behalf of
7 the other Applicants.

8 CHAIRMAN RIGLER: The documents identified as DJ-4
9 will be admitted into evidence as Department of Justice Exhibit
10 4.

11 (The document heretofore marked
12 Exhibit No. DJ-4 for
13 identification, was received in
14 evidence.)

xxxx

15 BY MR. MELVIN BERGER:

16 Q Mr. Hinchee, I believe in your testimony yesterday
17 you indicated that you had various problems with CEI in
18 effectuating the 69 kv interconnection; that is after you arrived
19 in the City of Cleveland.

20 Is that correct?

21 A Yes, sir, that is correct.

22 MR. MELVIN BERGER: I would like to have marked
23 for identification, a letter from Richard Hollington to Lee
24 Howley, dated January 10, 1972, which bears the Department of
25 Justice Document Number 011866, and have it marked as DJ-5.

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(The document referred to was
marked Exhibit No. DJ-5 for
identification.)

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BY MR. MELVIN BERGER:

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Q Mr. Hinchee, have you seen this document before?

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A Yes.

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Q Can you tell us the circumstances surrounding its
preparation?

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9

A Well, yes.

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The circumstances, go back well beyond my
tenure of office, but during my tenure of office the investiga-
tion that I made related to the progress for synchronous 69,000
volt tie-in was made early in my tenure of office and relates
to this situation.

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And having come out of that meeting with a negative
reaction to any proposed tie-in, the City then went to the
Federal Power Commission and asked for an interconnection. And
we asked for that interconnection on the basis of the jeopardy
of the proposal and the lives and welfare of the citizens of
the community that we served.

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And each time we went before the Federal Power
Commission in informal hearings, as well as formal hearings,
there was a great deal of lip service by CEI that they would
support and did concur that a synchronous interconnection should
be made. But when we would return to Cleveland, there would

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1 be no further meetings and no discussion, and all of the
2 overtures of the City of Cleveland fell on deaf ears.

3 Q Did these events lead to the preparation of this
4 letter?

5 A And the frustrations with that kind of treatment
6 led to the preparation of this letter.

7 MR. MELVIN BERGER: I would like to move that DJ-5
8 be admitted into evidence.

9 MR. HAUSER: CBI has no objection.

10 MR. REYNOLDS: A continuing objection of the other
11 Applicants.

12 CHAIRMAN RIGLER: The continuing objection is
13 overruled, and DJ-5 will be admitted into evidence.

14 (The document heretofore marked
15 Exhibit No. DJ-5 for
16 for identification, was received
17 in evidence.)

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18 MR. MELVIN BERGER: I would now like to have marked
19 for identification, a memorandum of some type, although it
20 does not say memorandum, from Warren Hinches to a Mr.
21 Gaskill, which bears Department of Justice Document Number
22 00014868, and it is the notes of a meeting held on July 8,
23 1971.

24 I would like to have that marked as DJ-6.

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(The document referred to was marked Exhibit No. DG-6 for identification.)

CHAIRMAN RIGLER: Mr. Hauser?

MR. HAUSER: Mr. Chairman, I don't believe that this meeting was covered on the direct examination of Mr. Hinchey.

If Mr. Berger could refer me to the record -- but my recollection is he did not cover this.

MR. MELVIN BERGER: I do not know if this particular meeting was covered.

But Mr. Hinchey has referred to numerous meetings he had with CEI regarding the interconnection or the proposed interconnection, and I believe this would fall under that testimony.

CHAIRMAN RIGLER: Mr. Hauser, as we review this, it certainly touches, at least in part, on some of the subject matters that Mr. Hinchey covered on his direct examination.

If we turn to page 3, and look at items 3 and 5, it seems to me that there is a clear tie between some of the subjects covered in this document and the matters he went into on his direct testimony.

MR. HAUSER: The only meeting I recall which Mr. Hinchey testified to specifically, was a meeting shortly after he came into office in 1971, with engineers of CEI and

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1 certainly myself, Mr. Howley, Mr. Loshing were not present at
2 those meetings, and I am sure a number of other people
3 representing the City at this meeting in July, were not at
4 that specific meeting.

5 CHAIRMAN RIGLER: I see your point with respect
6 to his not identifying particular meetings.

7 Nonetheless, there is a relationship here, and
8 I am going to permit examination on it.

9 BY MR. MELVIN BERGER:

10 Q Mr. Hinchey, did you prepare this memo?

11 A Yes, I did.

12 Q Why was it prepared?

13 A It was a report documenting for the record, a report
14 of a meeting between the Cleveland Electric Illuminating
15 representatives and representatives of the City for the
16 express purpose of trying to establish an interconnection
17 between the two systems.

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Q At the meeting referred to in this document did you have much success in making progress on that inter-connection?

A Well, if you would refer to the third page, it appeared that there was substantial success. The points agreed to on the third page were a summary of what happened in the meeting. However, the company did not honor any of the statements made in the meeting.

MR. MELVIN BERGER: I would like to move that DJ-6 be admitted into evidence.

MR. HAUSER: Mr. Chairman, I have no objection other than that previously stated, that it goes beyond the direct examination.

MR. REYNOLDS: A continuing objection of the other Applicants.

CHAIRMAN RIGLER: All right. The continuing objection will be overruled and we will receive the documents identified as Department of Justice Exhibit 6 into evidence.

(Department of Justice Exhibit Number 6 previously marked for identification, was received into evidence.)

BY MR. MELVIN BERGER:

Q Mr. Hinchee, did MELP experience any other difficulties with CEI in attempting to construct the physical portion of the 69 KV interconnection?

1 A Yes, we did. After the federal order had been issued
2 and we were enabled to go ahead with the construction of that
3 particular part of the line, segment of the line, we encountered
4 difficulty in obtaining from CEI itself permission to set
5 policies on their property. We encountered problems in designing
6 the line to come into their property in that insufficient or
7 no information at all would be furnished to the City, and we
8 were required to submit a plan based on observation only without
9 knowledge of what the plans of CEI might be for entry or
10 exit into their own substation.

11 After about three or four submissions and
12 re-engineering, we came up with an acceptable plan which
13 they agreed to.

14 Then, at that point, it almost became another
15 matter of litigation. They charged us for the land rental
16 that the poles occupied on their property which had been an
17 unexpected development to the City.

18 MR. MELVIN BERGER: Can I have that answer read
19 back, please?

20 (Whereupon, the reporter read from the record as
21 requested.)

22 BY MR. MELVIN BERGER:

23 Q Specifically, Mr. Winches, what was the problem
24 with the poles on CEI's -- or placing the poles near CEI's
25 plant?

1 MR. HAUSER: Mr. Chairman, I think this is again
2 clearly beyond the direct examination of this witness.

3 MR. MELVIN BERGER: I think it is just an
4 elaboration on some of the difficulties that Mr. Hinchoe
5 had indicated CEI put in front of Cleveland's successful
6 completion of the 69 KV interconnection pursuant to the order.

7 MR. HAUSER: Mr. Chairman, that is exactly the
8 point. The Justice Department cannot elaborate on the
9 direct examination. He is confined to the scope of that direct
10 examination.

11 CHAIRMAN RIGLER: Well, I am going to hold him to
12 the general boundaries of that direct examination, but that
13 is not quite accurate, what you just said. If we look at the
14 Federal Rules of Evidence, particularly Rule 611, 611(a) I
15 think indicates that the purpose is to develop the truth, and
16 that is our primary purpose.

17 But then turning to 611(b), it states that the
18 Court may in the exercise of discretion permit inquiry into
19 additional matters as if on direct examination.

20 So that we have liberal discretion which we are not
21 going to exercise in a liberal fashion. We are going to hold
22 him to the general boundaries of the direct examination here.

23 I will permit this one more question.

24 MR. MELVIN BERGER: Could the reporter read the
25 question back, please?

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1 (Whereupon, the reporter read from the record as
2 requested.)

3 THE WITNESS: Well, the problem with placing the
4 poles near CEI's plant was simply that we should have had
5 from them a designated right-of-way and cooperatin in
6 staking the pole locations so it would not interfere with
7 CEI plans or CEI's maybe existing facilities which might not
8 be visible above ground. And we did not receive any
9 cooperation in this regard. It made it a situation where our
10 engineers had to guess at locations.

11 MR. MELVIN BERGER: I would now like to offer to
12 be marked for identification a memorandum from
13 Lucian C. Rego to Mr. Warren Hinchee dated July 13, 1972, and
14 bearing the Department of Justice Document Number 011289 and
15 have this marked for identification as DJ-7.

16 (The document referred to was marked
17 Department of Justice Exhibit Number 7
18 for identification.)

19 BY MR. MELVIN BERGER:

20 Q Mr. Hinchee, are you familiar with this memorandum?

21 A Yes, I am familiar with this document.

22 Q Can you generally describe the circumstances
23 surrounding the generation of this document?

24 A Well, yes. This was in reference to an ordinance
25 which permitted the City to pay in full all of the costs of

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1 CEI, whatever costs they might incur in modifying or
2 changing their system to accommodate the interconnection.

3 Q This was the 69 KV?

4 A The 69 KV interconnection.

5 Q Do you know if a purchase order was actually issued
6 for payment to CEI?

7 A Yes, it was.

8 MR. MELVIN BERGER: I would like to move that
9 DJ-7 be admitted into evidence.

10 MR. HAUSER: I have no objection on behalf of CEI,
11 Mr. Chairman.

12 MR. REYNOLDS: A continuing objection on behalf
13 of the other Applicants.

14 CHAIRMAN RIGLER: The continuing objection is
15 overruled, and the document designated DJ-7 will be admitted
16 into evidence.

17 (Exhibit Number DJ-7, previously marked
18 for identification, was received
19 in evidence.)

20 CHAIRMAN RIGLER: Going back to our problem of
21 yesterday, I can't help but note that here is a reference
22 to a conversation between the witness and the attorney who
23 apparently may be cross-examining the witness and then later
24 a witness himself.

25 It seems to me this is really a very specific example

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1 of the problems that we are going to encounter
2 unless some decision is made with respect to Mr. Hauser's
3 dual participation.

4 I just don't see how consistent with the canons
5 you can't hurt your client's case in terms of the canon's
6 reference to credibility, where in essence you may be
7 testifying as to a different version of the facts
8 and at the same time cross-examining the witness with respect
9 to those facts.

10 Think about it. I am sure you have been.

11 This letter just points up the problem that may be
12 affecting your clients.

13 The Board is going to be just as objective as
14 we can, and we are going to take your questions as the very
15 able and professional questions of the designated lawyer of
16 the clients, and we have a lot of confidence in you, but
17 the situation does exist. And seeing this
18 letter just reminds me of it, and in my judgment points
19 up the problem.

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1 MR. REYNOLDS: Mr. Chairman, just to respond to
2 that, we are sensitive to the problem, we are wrestling with
3 it, as you suggested. I think that at the present time
4 Mr. Hauser will have to proceed with this particular witness,
5 but we are, we do have the question uppermost in our
6 consideration, and we are trying to resolve the problem.

7 CHAIRMAN RIGLER: We have a lot of confidence in
8 your professional responsibility, and obviously in your
9 ability, and I just wanted to tell you what was on our
10 mind here.

11 BY MR. MELVIN BERGER:

12 Q Mr. Kinchese, I would like to ask you a question or
13 two about the meeting which Mr. Hauser just referred to,
14 which was the --

15 MR. MELVIN BERGER: Was there a ruling on DJ-7?

16 CHAIRMAN RIGLER: It was admitted into evidence.

17 MR. MELVIN BERGER: Thank you.

18 BY MR. MELVIN BERGER:

19 Q I would like to ask you a few questions about
20 the meeting which you referred to in your testimony yesterday,
21 and which Mr. Hauser just referred to, the meeting at which
22 you met with CEI engineers shortly after you came with
23 the City, in order to discuss the 69 kv interconnection.
24 Do you recall who was present at that meeting representing
25 CEI?

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1 A Yes. I believe there were four people present,
2 Ralph Neister and Fred Sener and a man named Moore, and
3 I believe, Mr. Hauser.

4 Q I believe yesterday you indicated that one of these
5 gentlemen drew out a sketch on a piece of yellow paper for
6 you with regard to his conception of the 69 kv interconnection.
7 Is that generally correct?

8 A Yes, that is correct.

9 Q Do you remember which one did it?

10 A Mr. Sener.

11 Q At that meeting did you complain about the lack
12 of progress and the 69 kv interconnection?

13 A Yes, I did.

14 Q Did CEI respond to that complaint in any way?

15 A Yes. The engineers indicated they were prepared
16 to go ahead with the engineering whenever it was approved,
17 whenever the work would be approved and they would be
18 permitted to do so by their management.

19 Q Did they acknowledge that they had not done much
20 work on it up until that point?

21 A Yes, they did.

22 Q Who acknowledged that?

23 A Mr. Neister and Mr. Sener.

24 Q Do you know the position that Mr. Neister and
25 Mr. Sener held at that time?

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1 A I don't recall their job at this time also. It
2 was the first occasion I had had to meet any of these
3 gentlemen, and I wasn't sure of anybody's relative position
4 in the company.

5 Q I believe yesterday in response to some of
6 Mr. Vogler's questions, you mentioned a meeting you had
7 with Ohio Power officials regarding the possible purchase
8 of power by the City of Cleveland; do you recall that?

9 A Yes.

10 Q I believe you indicated Ohio said they would be
11 willing to sell power to Cleveland; is that correct?

12 A That is correct.

13 Q You also mentioned something with regard to the
14 construction of transmission lines. Was Ohio Power willing
15 to construct transmission lines to reach the City of
16 Cleveland's system?

17 A They were willing to construct up to their, to
18 the terminus of their service area. They did not feel that they
19 could construct a transmission line inside of the territory
20 served by CEI.

21 Q Then did it come down to the fact that they would
22 supply Cleveland with power, if Cleveland built the
23 transmission line?

24 A Yes. They readily agreed that they would supply
25 Cleveland with power and enter into a contract with

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Cleveland, if Cleveland could arrange transmission facilities.

Q I believe you stated yesterday that it was unfeasible for Cleveland to construct such facilities; is that correct?

A That is correct.

CHAIRMAN RIGLER: Mr. Berger, I am going to cut you off on this line, because the last five questions were all asked and answered yesterday. You really haven't developed anything new. I would appreciate it if you would try to move along a little faster, please.

MR. MELVIN BERGER: I think the questions I asked were distinguishable from those asked yesterday. I had not meant to repeat them, and I carefully rephrased them as such. I will go to another area.

BY MR. MELVIN BERGER:

Q I believe yesterday you mentioned you had verbally requested participation, verbally requested of CEI participation by the City of Cleveland in nuclear units, do you recall that testimony?

A Yes.

Q Who did you ask at CEI?

A Lee Holley.

Q What was Mr. Holley's position at that time?

A He tended to disregard our request as of no consequence. His retort was where would the City get

1 \$50 million to pay for this kind of plant construction?

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2 Q Do you know, was Mr. Holley an officer of CEI?

3 A Yes, he was vice-president.

4 Q Did the City have any plans on how to finance
5 such participation, if it had been allowed?

6 A We had made an examination to determine, an
7 in-house examination, to determine whether or not it would
8 be feasible for the City to participate in the construction,
9 and our in-house study showed it would be.

10 As far as a final determination of what
11 mode of financing, whether it would be revenue bonds or
12 general obligation bonds, or some other form of
13 financing, that had not been determined and would not be, of
14 course, until we had reached the point of a contract with the
15 CAPCO people.

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1 Q Mr. Vogel asked you some questions yesterday with
2 regard to competition with CEI. Was there any restriction,
3 legal restriction, that you know of, which prevented MELP
4 from serving everywhere within the City of Cleveland?

5 A No. We had no legal restrictions on serving
6 within the City of Cleveland limits.

7 Q Do you know the approximate percentage of load
8 within the City of Cleveland which CEI had at the time you
9 were Commissioner?

10 A I would say it was approximately 80 percent of the
11 total load of the city.

12 Q And MELP would have had the other 20 percent?

13 A Twenty percent.

14 Q At the time you were Commissioner, do you know
15 if CEI's rates were higher or lower than those of MELP?

16 MR. HAUSER: I object, Mr. Chairman. This is
17 clearly outside of the scope of the direct examination of
18 this witness.

19 There were no questions and no answers regarding
20 the rates of either company.

21 CHAIRMAN RIGLER: I have some recollection that
22 there was testimony that Cleveland, the City, had lower rates
23 because that was the only way it could compete with CEI.

24 MR. HAUSER: That is not my recollection, Mr. Chairman,
25 from this witness.

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CHAIRMAN RIGLER: Yes. I am talking about this witness.

Could anybody refresh my recollection?

MR. HAUSER: Do you recall whether your recollection was yesterday or this morning?

CHAIRMAN RIGLER: I believe it was yesterday, Mr. Hauser.

I am going to permit it unless you can -- I will take a minute and see.

Off the record.

(Discussion off the record.)

CHAIRMAN RIGLER: On the record.

I am going to permit the question based on the Board's recollection. If it is faulty, I don't think it will prejudice you that much.

It is a fact one way or the other, and it is a fact that may be relevant, so let's get it in.

But I do think it was part of the direct examination.

MR. MELVIN BERGER: Can I have the question read, please?

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

THE WITNESS: Yes, during the time I was Commissioner generally the municipal power system rates were lower than those charged by CEI.

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1 CHAIRMAN RIGLER: For comparable classes of
2 customers?

3 THE WITNESS: For comparable classes of customers.

4 CHAIRMAN RIGLER: Mr. Hauser, that is a question
5 the Board would have asked itself, if that helps you out
6 any on that.

7 MR. HAUSER: I was so sure because I had prepared
8 in advance of Mr. Hinchee's testimony a line of cross-
9 examination with regard to this very subject matter and
10 had discarded it last evening.

11 CHAIRMAN RIGLER: It is a subject which has come up
12 with other witnesses, as you know, and it would be of
13 continuing interest to the Board.

14 BY MR. MELVIN BERGER:

15 Q Were rates an important factor in competing with
16 CEI for customers?

17 A Certainly, all other things being equal, you know,
18 the reliability of the service, and the voltage of the
19 system and so forth, then rates are quite often the deciding
20 factor as to who will take your service and who will not.

21 Q I believe yesterday you stated that reliability of
22 the MELP system was under attack by CEI; do you recall that?

23 A Yes.

24 Q In what way did CEI attack the reliability of the
25 MELP system?

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1 A Well, with a very hard-hitting publicity campaign
2 and continual reference and comment in the newspapers about
3 the antiquated and unreliable municipal electric power
4 system by some of -- these comments were made by some of
5 their top officials on a continuing basis.

6 Q Do you know anyone in particular who may have made
7 these comments?

8 A Yes. I think Mr. Rudolph made this reference from
9 time to time. Mr. Howly made it quite often. And Mr. Hauser
10 may have on occasion used those terms.

11 Q What was Mr. Rudolph's position in the company at
12 that time?

13 A Mr. Rudolph was the president of the company.

14 Q Did the City have a policy on the serving of new
15 customers?

16 A I am sorry --

17 MR. HAUSER: Mr. Chairman, I again must object on
18 the ground that this was in no way covered in the direct
19 examination of this witness.

20 CHAIRMAN RIGLER: May I hear the question?

21 (Whereupon, the reporter read from the record as
22 requested.)

23 MR. MELVIN BERGER: Mr. Chairman, I think this
24 would relate directly to the competition between CBI and MELF
25 as to what policies the City had on serving the customers.

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1 CHAIRMAN RIGLER: Mr. Hjelmfelt?

2 MR. HJELMFELT: My recollection is Mr. Hinchee
3 did state one of his programs to combat the flow of customers
4 to CEI was to go out and call on customers, both
5 those currently on the system and to seek out new customers.

6 CHAIRMAN RIGLER: Mr. Hauser?

7 MR. HAUSER: My recollection of his testimony was
8 a followup to outages with existing customers and followup
9 to outage reports.

10 CHAIRMAN RIGLER: We will sustain that objection.

11 BY MR. MELVIN BERGER:

12 Q Mr. Hinchee, was the fact that MELP was having
13 problems with its generation equipment, was that fact a
14 limiting factor in your ability to compete for new loads?

15 A Yes, it was definitely a limiting factor.

16 Q If MELP had had access to additional bulk power
17 supply would it have been more able to compete for new
18 business within the City of Cleveland?

19 A Yes.

20 Q Would it have done so?

21 A Yes.

22 Q I believe yesterday you testified about AMP/O and
23 obtaining PASNY power for the City of Cleveland. I would like
24 to ask you a few questions on that.

25 When did you first become aware of the availability

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1 of PASNY power to municipalities in the State of Ohio?

2 A I first became aware of the availability of PASNY
3 power when I was assistant superintendent in the City of
4 Columbus. At that time I looked at the feasibility of
5 obtaining 30 megawatts for the Columbus municipal system, but
6 discarded the idea as not being feasible due to the extremely
7 small amount of power involved, and the extremely long
8 transmission distances.

9 Q Mr. Hinchee, I believe you stated yesterday you
10 were a director of AMP/O; is that correct?

11 A Yes, that is correct.

12 Q I also believe you stated that AMP/O was the
13 bargaining agent with PASNY; is that also correct?

14 A That is correct.

15 Q Did AMP/O decide to allocate -- again I also believe
16 you stated it was 30 megawatts of power that was requested;
17 is that correct?

18 A That is correct.

19 Q Did AMP/O decide to allocate this 30 megawatts to
20 the City of Cleveland?

21 A Yes. In fact, there was a contract between AMP/O
22 and the City of Cleveland signed for the express purpose of
23 delivering that power to the City of Cleveland.

24 Q What were some of the reasons that AMP/O took into
25 account when they allocated this 30 megawatts to Cleveland?

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1 rather than to some other municipality?

2 A Well, first of all the economic feasibility of
3 delivering the power to the City of Cleveland, and then the
4 availability of existing transmission facilities to carry the
5 power.

6 Q Did AMP/O also consider the fact that Cleveland
7 was purchasing power from CEI at that time?

8 A Yes, they did.

9 Q To your understanding, is PASNY power available to
10 investor-owned utilities?

11 A Yes, there are investor-owned utilities who
12 receive power from PASNY.

13 Q Do you know which ones in particular?

14 A I have not seen the contracts, but I am
15 reasonably sure that Niagara Mohawk and Consolidated Edison
16 Companies receive power from the PASNY Project.

17 Q You indicated that 30 megawatts of power was an
18 unallocated portion of power from PASNY; is that correct?

19 A That's correct.

end11

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#12 mm1 1 Q Was there a decisional power that might have been
2 available to the State of Ohio?

3 A Yes.

4 To the best of my recollection, the State of Ohio
5 was entitled to about 180 megawatts of power from the Niagara
6 project, but because the State had not claimed the power,
7 150 megawatts of it had been allocated to other entities and
8 only 30 megawatts remained so to speak, unclaimed.

9 It was the intention of the AMP/O group to first of
10 all, obtain the 30 megawatts of unclaimed power, and then
11 pursue a course for obtaining the 150 megawatts, obtaining a
12 reallocation of the 150 megawatts of power to which the State
13 was entitled.

14 MR. MELVIN BERGER: If I may, I would like to
15 approach the bench with some more documents.

16 CHAIRMAN RIGLER: How much longer do you have,
17 Mr. Berger, off the record.

18 (Discussion off the record.)

19 CHAIRMAN RIGLER: On the record.

20 BY MR. MELVIN BERGER:

21 Q Mr. Hinchee, I believe yesterday you testified
22 generally to the transactions you had as a member of the
23 Board of Directors of AMP/O with the Power Authority of the
24 State of New York.

25 MR. REYNOLDS: Excuse me, I can't hear.

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1 MR. MELVIN BERGER: I would like to have marked
2 for identification, a letter from John Engle, president of
3 AM/Ohio, to George F. Berry, Director of Power Utilization for
4 PASNY, dated January 19, 1973. It bears the Department of
5 Justice Document Number 00014528, and I would like to have it
6 marked for identification as DJ-8.

7 (The document referred to was
8 marked as Exhibit No. DJ-8 for
9 identification.)

XXXX

10 BY MR. MELVIN BERGER:

11 Q Mr. Hinchee, are you familiar with that document?

12 A Yes.

13 Q Can you tell us the circumstances that surrounds
14 the preparation of that document?

15 A Well, prior to the -- this is a letter of transmittal
16 to Mr. Berry.

17 Prior to this letter being prepared, AMO/O had met
18 with the people in PASNY on a couple of different occasions
19 and had found out from the PASNY people the documents necessary
20 to perform a formal application for the 30 megawatts of power,
21 and this was now applying for that 30 megawatts of power,

22 Q I believe the engineering study referred to in
23 this letter was the one you testified about yesterday, is that
24 correct?

25 A Yes.

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1 MR. MELVIN BERGER: I would like to offer DJ-8
2 into evidence.

3 Note that the letter indicates that enclosed with
4 this letter was the engineering report, and we do not have a
5 copy of that report, or the other attachments that are indicated
6 as being transmitted with this letter.

7 MR. HAUSER: Mr. Chairman, I believe the City of
8 Cleveland produced in discovery, the O'Brien and Gare
9 Engineers' Report, but I wonder if we could get a copy of the
10 resolution of the Executive Committee of AMP/O Ohio.

11 MR. MELVIN BERGER: Mr. Hauser, the attachments
12 did not come with this letter, as far as I am aware. I do
13 not know if I have a copy of the resolution of the Executive
14 Committee of AMP/O Ohio.

15 CHAIRMAN RIGLER: Will you undertake to contact
16 AMP/O Ohio and see if you can obtain a copy of the
17 resolution?

18 MR. MELVIN BERGER: Yes, I will.

19 CHAIRMAN RIGLER: All right.

20 Subject to that commitment, we will accept DJ-8
21 into evidence and will overrule Mr. Reynolds' continuing
22 objection, which I see him rising to make.

23 Is that right, Mr. Reynolds?

24 MR. REYNOLDS: I was trying to see what you were
25 saying.

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1 CHAIRMAN RIGLER: I am going to admit the exhibit
2 into evidence.

3 I will give you your continuing objection, and
4 Mr. Berger is to contact AMP/O Ohio and see if he can get the
5 resolution from them and will make it a part of the record.

6 MR. REYNOLDS: That will be made a part of this
7 exhibit, or whatever?

8 CHAIRMAN RIGLER: Yes.

9 MR. REYNOLDS: That is all I was wondering.

10 CHAIRMAN RIGLER: Do you want to confirm on the
11 record that you made your objection; if you did make it?

12 MR. REYNOLDS: I will confirm I made it and it was
13 treated as you indicated.

14 (The document heretofore marked
15 Exhibit No. D9-3 for
16 identification, was received
17 in evidence.)

18 MR. MELVIN BERGER: I would like to now have marked
19 for identification, a letter from --

20 CHAIRMAN RIGLER: I think maybe we will take our
21 luncheon break.

22 I might encourage you to mark them as a group.
23 Maybe you and Mr. Hauser can even meet over the lunch hour
24 and see if we can get them all in in one minute as a group,
25 with the possible exception of the PENSELEC letter.

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1 Think about it. We are dragging again and I want
2 to move it along.

3 MR. MELVIN BERGER: All right.

4 CHAIRMAN RIGLER: Can we take a short lunch today
5 and come back at 2?

6 (Whereupon, at 1:00 p.m., the hearing was recessed
7 to resume at 2:00 p.m. this same day.)
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AFTERNOON SESSION

(2 p. m.)

CHAIRMAN RIGLER: On the record.

MR. MELVIN BERGER: I would like to have marked for identification a letter from Wallace Duncan to Gyne Dodson, president of PENELEC, dated May 1, 1973, Department of Justice Document Number 00014480. I would like that marked as DJ-9 for identification.

(The document referred to was marked Exhibit DJ-9 for identification.)

MR. MELVIN BERGER: I would like to have marked as DJ-10 for identification a letter from Wallace Duncan to Karl H. Rudolph, president, Cleveland Electric Illuminating Company, dated May 1, 1973.

(The document referred to was marked Exhibit DJ-10 for identification.)

MR. MELVIN BERGER: I would like to have marked -- excuse me. That document bears the Department of Justice Number 014477. I would like to have marked for identification as DJ-11 a letter from John Engle to George T. Barry, director of power utilization for PASHY, dated May 10, 1973, which bears the Department of Justice document number 00014483. I would like to have marked for identification

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1 as DJ-12, a letter from Lee C. Holley to Wallace Duncan,
2 dated May 14, 1973, Department of Justice document number
3 00014485.

4 I would like to have marked for identification
5 as DJ-13, a letter from Wallace Duncan to Lee Holley,
6 dated May 22, 1973, which bears the Department of Justice
7 document number 014623.

8 I would like to have marked for identification
9 as DJ-14, a letter from Lee Holley to Wallace Duncan, dated
10 June 5, 1973 which bears the Department of Justice document
11 number 014626.

12 (The documents referred to were
13 marked Exhibits DJ-11, 12, 13
14 and 14 for identification.)

15 MR. MELVIN BERGER: I would like to move all
16 six of these documents into evidence.

17 MR. HAUSER: On behalf of CEI, we have no
18 objection.

19 MR. REYNOLDS: A continuing objection on behalf
20 of the other Applicants.

21 CHAIRMAN RIGLER: We will override the continuing
22 objections of the other Applicants and admit these documents
23 into evidence as Department of Justice Exhibits 9, 10, 11, 12
24 13 and 14.
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(The documents heretofore

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marked as Exhibits

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DJ-9, 10, 11, 12, 13, and

4

14, for identification,

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were received in evidence.)

6

MR. MELVIN BERGER: The Department has no more

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questions of this witness.

8

Whereupon,

9

WARREN D. HINCHEE

10

resumed the stand and, having been previously duly sworn,

11

was examined and testified further as follows:

12

CHAIRMAN RIGLER: Thank you.

13

Mr. HJELMPFELT?

14

CROSS-EXAMINATION (Cont'd)

15

BY MR. HJELMPFELT:

16

Q Mr. Hinchee, you described that when you became

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commissioner you undertook a program of maintenance for the

18

City's generating plant. Did the operation of the load

19

transfer service affect the City's ability to maintain

20

its generating plant?

21

A Yes, it did. The operation of the load transfer

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point was such that the only time that they could be

23

energized was when the City had proven to the representatives

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of CEI that maximum available generation was on the line

25

and operating, and that precluded us from taking the

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1 generation out of service and performing maintenance on
2 it, with reliance on the load transfer points.

3 Q Was the City able to purchase maintenance power?

4 A No, we were not.

5 MR. HAUSER: Objection. This subject
6 was not covered in the direct examination by the NRC Staff.

7 CHAIRMAN RIGLER: I will sustain that.

8 BY MR. HJELMFELT:

9 Q Was the City able to utilize the 11 kv load
10 transfer points to obtain power for use while maintaining
11 other units?

12 A Only in the case of the precipitator installation, on
13 one boiler. It was not able to obtain this power for main-
14 tenance on its turbines and generating equipment.

15 Q As part of your efforts to institute a program of
16 rehabilitating the City's system, did you make an effort
17 to obtain maintenance power?

18 A Yes, I did.

19 CHAIRMAN RIGLER: Mr. Hjelmfelt, what do you
20 mean by maintenance power? Maybe it would be helpful to define
21 that on the record.

22 BY MR. HJELMFELT:

23 Q Mr. Hinchey, would you please define maintenance
24 power.

25 A There are several types of power that can be

1 purchased or interchanged between utilities. One is
2 emergency power, where a system has unforeseen and unpredicted
3 conditons which removes part of its apparatus from service.
4 And they make an immediate demand upon a supplier for power
5 and that is one type of contract and one type of supply.

6 Another type maintenance, is where you plan
7 and foresee you are going to need power at a certain given
8 time, and you preplan it, perhaps 30 days in advance, maybe
9 even longer than that, and you shut a unit down and they you
10 have the flow of power coming into support your system while
11 the planned maintenance is in effect. That is a
12 different type of contract, as distinguished from emergency
13 power.

14 There are also other types, just straight,
15 wholesale purchase of power for no particular reason, other
16 than just bulk load.

17 Q What efforts did the City make to obtain
18 maintenance power?

19 MR. HAUSER: I object again. This was not the
20 subject of direct examination by the NRC Staff.

21 CHAIRMAN RIGLER: Mr. Frysiak reminds me that there
22 was testimony with respect to 25 percent power supplied by
23 CEI by load transfer during improvements or maintenance.

24 MR. VOGLER: Was that on direct?

25 CHAIRMAN RIGLER: On direct.

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1 MR. HAUSER: I thought he just testified that
2 the load transfer service was not utilized for maintenance.
3 It seems to me that this is contradictory.

4 MR. REYNOLDS: Could we have the page?

5 MR. FRYSLAK: I don't have it. I am looking
6 for it now.

7 CHAIRMAN RIGLER: While we are looking,
8 Mr. Hjelmfelt, where are you going with this line?

9 MR. HJELMFELT: I am practically through with
10 this line. I think this next question and the -- obviously,
11 it is to show that the interconnection or the lack of
12 interconnection of 11 kv that was available was not a type
13 of power arrangement which permitted the City to do
14 maintenance on its units.

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1 CHAIRMAN RIGLER: All right. We will permit that.

2 MR. HJELMFELT: May I have the question?

3 (Whereupon, the reporter read from the record as
4 requested.)

5 THE WITNESS: I think I have to answer that in two
6 parts.

7 CHAIRMAN RIGLER: Before you do, let's hear
8 Mr. Reynolds.

9 MR. REYNOLDS: Mr. Chairman, that question does not
10 follow from what I understood Mr. Hjelmfelt to state to the
11 Board that he was intending to elicit from the witness. I
12 think he should rephrase the question to conform with his
13 statement.

14 CHAIRMAN RIGLER: I agree.

15 BY MR. HJELMFELT:

16 Q Did the City attempt to obtain power over the 11 KV
17 transfer points for use as maintenance power?

18 A Yes, we did. And the term used earlier about
19 maintenance power refers to the period of time when CBI
20 did furnish maintenance power. They furnished it when we
21 were installing the precipitators on the boiler for environ-
22 mental control, and while that boiler was being overhauled
23 in a previous agreement in 1969 with the City.

24 But after that, they then refused to supply anything
25 other than emergency power.

1 Q You testified that the rehabilitation of the City
2 system was to be financed by bond issuances and leases. While
3 you were the Commissioner did the Utilities Department request
4 the City Council to authorize bonds to finance the
5 rehabilitation of the City's generating facilities?

6 A Yes, on two different occasions. The first occasion
7 was in 1971 when we requested that an ordinance be passed
8 permitting the issuance of \$5 million in bonds. After the
9 change in administration and the failure to issue the bonds
10 as approved in the previous ordinance within the time frame
11 allowed, another ordinance was presented to Council and
12 subsequently passed which permitted the issuance of
13 \$9,800,000 worth of bonds.

14 Q Was that later ordinance passed by the City Council
15 in the manner in which it had been proposed by the Utilities
16 Department?

17 A No, it was not. At the meeting, or hearing, of
18 the Utilities Committee, the ordinance itself was modified on
19 an amendment proposed by Mr. Hauser and handed to the
20 Chairman of that Committee which struck from the ordinance
21 the right of the Department to finance the bonding through
22 selling the bonds to the City's sinking fund, which was in very
23 good financial condition, and forced the sale of the bonds on
24 the open market.

25 Q Was the City assisted by Council in the preparation

1 of the bond ordinance?

2 CHAIRMAN RIGLER: Mr. Hauser?

3 MR. HAUSER: Again, I have been very lenient in
4 this regard, but I must object, that this extends far beyond
5 the scope of anything covered on direct examination of this
6 witness.

7 MR. HJELMFELT: I am simply exploring the details
8 of something that was covered in a very general fashion on
9 direct.

10 CHAIRMAN RIGLER: Going into the advice of counsel
11 with respect to it, the Board feels does go substantially
12 beyond the scope of the direct.

13 I think we are going to sustain that,
14 Mr. Hjelmfelt.

15 BY MR. HJELMFELT:

16 Q You testified that the requirement that all
17 the 11 KV load transfers be used before the 69 KV tie was
18 used reduced the flexibility of the City operations. Would
19 you explain how that requirement reduced the operational
20 flexibility of the City?

21 A Well, yes. If you can visualize a substation
22 system, a number of substations being served from individual
23 feed points, each substation being served as a separate entity,
24 then each substation has to be cut over on the 11 KV feeder
25 from CEI and energized one at a time and there was no

1 flexibility of flowing this power between stations. Whereas
2 if the 69,000 volt service serving all of the substations
3 were energized, serving all of the substations were
4 energized, then this flow could be channeled as needed from
5 one point to the other without service interruption or without
6 a change in the operating format of the City or the power
7 company.

8 Q You testified that the City had suffered a severe
9 loss of customers prior to your becoming Commissioner. What
10 effect did that loss of customers have on the City's system?

11 A Well, it incurred great financial burdens and
12 pointed the system towards having to raise the rates
13 earlier than it would normally have had to do.

14 It also prevented expenditure of funds for
15 what I considered as an engineer to be some very necessary
16 items for the preservation of the integrity of the system.

17 Q How did the loss of customers cause the system to
18 incur a financial burden?

19 A Well, loss of revenues is directly related to the
20 loss of customers.

21 Q Did the City experience a reduction in fixed costs
22 associated with the loss of these customers?

23 A No. The fixed costs and employee costs remained
24 relatively the same or increased while the system was reduced
25 by the loss of customers, while the income was being reduced by

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1 the loss of customers.

2 Q You testified that in response to one of the
3 requests by the City for participation in nuclear plants
4 that the request was directed to CEI. Did CEI respond in
5 referring to consultations with others? Do you recall when
6 that request was made?

7 A Well, yes. I think that was the formal request
8 that we made in July or August of 1973 and there was then --
9 and this request was made to all of the members of CRPCO.
10 And the response back to the City, I believe, was only from
11 CEI.

12 There may have been other responses, but the only one
13 that I saw was from CEI, and CEI took the position that they
14 had had a meeting with the other members of CRPCO and they
15 were authorized to negotiate or speak on behalf of the CRPCO
16 pool.

17 CHAIRMAN RIGLER: May I hear that answer again,
18 please?

19 (Whereupon, the reporter read from the record as
20 requested.)

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CHAIRMAN RIGLER: Was this a written response or
2 an oral response by CEI?

3 THE WITNESS: This was a written response.

4 CHAIRMAN RIGLER: Is someone going to make that
5 response a part of the record of these proceedings?

6 MR. HJELMFELT: The City of Cleveland will
7 ultimately offer that.

8 I am not prepared to do so today.

9 CHAIRMAN RIGLER: All right.

10 BY MR. HJELMFELT:

11 Q Did the city of Cleveland ever offer to sell power
12 to any utility other than CEI?

13 A Not to the best of my knowledge.

14 Q Why not?

15 A Well, I think that the small amount of power that
16 we had available was simply designated to CEI to meet their
17 emergency, and we would not ordinarily have been willing or
18 able to sell power to any remote locations.

19 MR. HJELMFELT: That is all of the questions I have
20 (The Board conferring.)

21 CHAIRMAN RIGLER: Did the City of Cleveland meet
22 with representatives of any other member of the CAPCO
23 pool, other than CEI, in connection with the request to obtain
24 nuclear power, to your knowledge, or during your tenure with
25 the City?

1 THE WITNESS: I, personally, didn't meet with
2 anybody. I don't know whether the director or the law
3 director might have met with their representatives. There was
4 some discussion along that line, but I don't know for a fact.

5 CHAIRMAN RIGLER: I have a little confusion now
6 about the number of separate requests for participation or
7 access to the Davis-Besse plant, and also to the Perry plant.

8 You made an oral request?

9 THE WITNESS: Yes, sir, that is correct.

10 CHAIRMAN RIGLER: Then there was a written request?

11 THE WITNESS: Yes, sir.

12 CHAIRMAN RIGLER: The written request you now
13 recall was made in 1973?

14 THE WITNESS: There were two written requests.

15 The first one was, I believe, sometime in 1971
16 by the first director.

17 CHAIRMAN RIGLER: All right.

18 And the '71 request resulted in a turndown with no
19 explanation of the reasons?

20 THE WITNESS: Well, sort of ignoring as much as a
21 turndown. Just an avoidance of the situation.

22 CHAIRMAN RIGLER: All right.

23 And the second request was denied, or was merely put
24 under consideration?

25 THE WITNESS: In my opinion, the second request was

mm3 1 denied. It was not under consideration.

2 CHAIRMAN RIGLER: And were any reasons advanced
3 with respect to why the request was denied?

4 THE WITNESS: No.

5 As I recall, there was a letter --

6 CHAIRMAN RIGLER: I will hear Mr. Vogler first,
7 because he tried to get on his feet earlier.

8 MR. VOGLER: It is simply clarification, your
9 Honor. I am confused now on the requests.

10 When you were talking about -- were you responding
11 about the written request, or the oral request, with regard
12 to the turndown?

13 I thought --

14 CHAIRMAN RIGLER: Let's go into that.
15 Mr. Reynolds?

16 MR. REYNOLDS: I had the same question.

17 I also was going to ask whether the written request
18 that you have just discussed was going to be introduced by the
19 Staff or by the City?

20 CHAIRMAN RIGLER: Mr. Vogler, I think that is a fair
21 question.

22 MR. VOGLER: I believe the City is going to put that
23 in by request along with other documents.

24 CHAIRMAN RIGLER: Here is information which, on
25 its face, it seems to me is relevant to this proceeding. I think

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1 one of the parties should assume the obligation of putting it
2 before the Board.

3 MR. VOGLER: I agree.

4 MR. REYNOLDS: I will state for the record that
5 Applicants have no copy of that request, nor does CEI, and have
6 not seen one in this proceeding yet.

7 So I would ask that the City furnish it to us as
8 soon as it is able to.

9 MR. HJELMFELT: Excuse me, you are referring
10 to --

11 MR. VOGLER: There were no documents concerning my
12 inquiry of Mr. Hinchee.

13 CHAIRMAN RIGLER: I understand.

14 But he made reference to an oral request, a written
15 request, and then a subsequent written request.

16 MR. VOGLER: Right.

17 In response to questions from the Board, as I
18 understand it.

19 CHAIRMAN RIGLER: Yes.

20 Now, Mr. Hjelmfelt?

21 MR. HJELMFELT: During the presentation of our case,
22 I certainly anticipate putting in copies of the requests.

23 Now, with respect to the request that Mr. Reynolds
24 indicates he doesn't have copies of, since they were directed
25 to CEI, I should think they do have them.

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CHAIRMAN RIGLER: He says he doesn't.

2

MR. HJELMFELT: I will undertake to locate copies
and provide them.

4

MR. VOGLER: That was my understanding of the
procedure.

6

CHAIRMAN RIGLER: Mr. Berger?

7

MR. MELVIN BERGER: I was going to say, the Department
does not have, to my knowledge, a copy of the 1971 request.

9

But we did intend to put in the 1973 request.

10

CHAIRMAN RIGLER: Right.

11

I want to go over this one more time to get the
chronology straight.

13

In 1971 you personally made an oral request of
CEI officials for access to the Davis-Besse power?

15

THE WITNESS: It is correct.

16

CHAIRMAN RIGLER: That was followed to your knowledge
in 1971 by a written request by the Director of Utilities?

18

THE WITNESS: That is correct.

19

CHAIRMAN RIGLER: For access to Davis-Besse
power?

21

THE WITNESS: Yes.

22

CHAIRMAN RIGLER: And you testified yesterday that
that request, the written request was denied?

23

and 15

24

THE WITNESS: That is correct.

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1 CHAIRMAN RIGLER: Then in 1973 after Cleveland
2 learned through newspaper articles about the proposed Perry
3 Plant, the request was renewed, and this time the request was
4 addressed to all five members of the CAPCO pool?

5 THE WITNESS: Yes.

6 CHAIRMAN RIGLER: And this you believe to have been
7 a written request?

8 THE WITNESS: Yes.

9 CHAIRMAN RIGLER: And the response to that written
10 request was either a deferral or in your judgment a turn-down
11 of that request?

12 THE WITNESS: Yes.

13 CHAIRMAN RIGLER: All right. Mr. Reynolds?

14 MR. REYNOLDS: Mr. Chairman, if I could just ask
15 for clarification whether we could also determine from the
16 witness if the denial of the first written request was
17 in writing or was oral?

18 CHAIRMAN RIGLER: Surely.

19 MR. VOGLER: The 1971 one?

20 MR. REYNOLDS: Yes.

21 THE WITNESS: I do not recall any written denial
22 to the second or to the first request or the first written
23 request, but there were statements about it made and
24 publicized in the newspaper about how ridiculous the request
25 was.

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1 MR. REYNOLDS: Thank you.

2 CHAIRMAN RIGLER: Does Applicant have any cross-
3 examination? Or do the Applicants have any cross-examination?

4 MR. REYNOLDS: I guess we do. Mr. Hauser.

5 CHAIRMAN RIGLER: Mr. Goldberg?

6 MR. GOLDBERG: The Staff objects to Mr. Hauser
7 cross-examining on behalf of CEI for the reasons stated
8 yesterday.

9 CHAIRMAN RIGLER: All right. We are going to permit
10 it for the reasons stated yesterday.

11 MR. HAUSER: Mr. Chairman, Mr. Sahler is
12 circulating a document which I ask to be marked for
13 identification as Exhibit Number 25, CEI internal document 8,
14 which is a letter addressed to Mr. Herbert B. Whiting,
15 Director, Department of Law, City of Cleveland,
16 dated August 13, 1973 and signed by Karl H. Rudolph,
17 President, with copies to those shown, Mr. John M. Arthur,
18 Duquesne Light Company; D. Bruce Mansfield, Ohio Edison
19 Company; Mr. R. E. Semmler --

20 CHAIRMAN RIGLER: It is not necessary to read the
21 names of the carbon addresses.

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22 (The document referred to was marked
23 Exhibit Number 25 (CEI) for
24 identification.)

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1 BY MR. FAUSER:

2 Q I ask you, Mr. Hinchee, if you are familiar with
3 this document that has been marked for identification as
4 Exhibit Number 25.

5 A No, I am not.

6 Q Could this be the basis of your testimony with
7 regard to a response to the letter of August 3, 1973 to
8 the various CAPCO companies with regard to participation in
9 certain nuclear units?

10 A I am simply not -- I simply do not remember this
11 particular document. It appears to be an answer to that
12 letter.

13 Q Mr. Hinchee, would your testimony be based on a
14 recollection that the response was contained in a
15 document other than Exhibit Number 25 or do you simply not have
16 any recollection with regard to it?

17 A This could be the document. I just do not recall
18 this particular letter. But looking at it, it embodies the
19 things that I did recall about our answer, and it could be the
20 document.

21 Q Mr. Hinchee, as I recall, you left the City of
22 Cleveland in November of 1973? Is that correct?

23 A No. I left the City of Cleveland in September. I
24 simply didn't report for work in Burbank until November.

25 Q So you wouldn't have any knowledge one way or the

1 other with regard to any further activities or meetings
2 between CEI and representatives of the City of Cleveland
3 after September 1973?

4 A That is correct.

5 MR. HAUSER: Mr. Chairman, I would offer into evidence
6 Exhibit Number 25. Applicant's Exhibit 25. CEI internal
7 document 8.

8 CHAIRMAN RIGLER: Hearing no objection, Applicant's
9 Exhibit 25 will be admitted into evidence.

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10 (Exhibit Number 25 (CEI) previously marked
11 for identification, was received
12 in evidence.)

13 BY MR. HAUSER:

14 Q Mr. Hinchee, you testified this morning that at
15 one period of time the City of Cleveland did offer to
16 assist CEI by selling the power in an emergency during the
17 summer of 1973 and I believe you testified with regard to
18 Department of Justice Exhibit Number 3 and the Department
19 of Justice Exhibit Number 4; is that correct?

20 A Yes, sir, that is correct.

21 Q Mr. Hinchee, what was --

22 MR. VOGLER: Are they marked there so you know what
23 he is talking about?

24 THE WITNESS: Yes.

25 MR. VOGLER: Fine. I withdraw it.

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1 BY MR. HAUSER:

2 Q Mr. Hinchee, what was the nature of the emergency
3 faced by CEI during that summer of 1973?

4 A Well, our information came from a newspaper
5 account of the problems that the Illuminating Company
6 was having in obtaining power supply during this
7 extremely hot period of weather.

8 Q Is it your recollection as stated in Exhibit
9 Number 25 that at that time the Cleveland Electric Illuminating
10 Company was having difficulties, in fact it was in the midst
11 of a four-month strike of its operating employees?

12 MR. MELVIN BERGER: Excuse me. I think Mr. Hauser
13 just referred to Number 25. Is that right?

14 MR. HAUSER: Yes. Applicant's Exhibit 25. The
15 last paragraph I referred to specifically.

16 THE WITNESS: I recall that there was a long
17 extended strike by your company but I am not sure of the
18 time or what the connotation of that was.

19 BY MR. HAUSER:

20 Q At the time of the Department of Justice Exhibit 3
21 dated July 23, 1973, wasn't it a fact that the City of
22 Cleveland during the period of time before and after that date
23 was taking load transfer service from CEI?

24 A Yes, that is true.

25

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S17 1 Q Mr. Hinchee, you testified in response to questions
2 from Mr. Berger concerning a meeting held between certain
3 representatives of the City and CEI on July 8, 1971 and also
4 with regard to a memorandum you prepared of that meeting; is
5 that correct?

6 A I am not sure about July 8, but generally I suppose
7 that is correct.

8 Q Would you refer to Department of Justice
9 Exhibit Number 6.

10 A Yes, I have that.

11 Q As I recall you prepared that memorandum?

12 A Yes, that is correct.

13 MR. HAUSER: I request that there be marked for
14 identification as Exhibit Number Applicant's Number 26,
15 CEI internal document number 9, a six-page document that
16 at the top of the page is marked "draft," and a date
17 of July 6, 1971. The draft is addressed to the Department
18 of Public Utilities, City of Cleveland, 1628 Lakeside Avenue,
19 attention, Mr. William Gaskill, Director.

20 (The document referred to was
21 marked Applicant's Exhibit No. 26,
22 for identification.)

23 BY MR. HAUSER:

24 Q I ask you to look at that document and ask you
25 whether or not you are familiar with it. And is this the letter
that you referred to in the second paragraph of the memorandum

bw2 1 dated July 9, 1974, Department of Justice Exhibit Number 67

2 MR. MELVIN BERGER: I have an objection.

3 It seems quite clear this is not the letter he is referring
4 to. It is a draft, it is not signed and we don't know
5 where it came from or anything else.

6 MR. HAUSER: I believe there is a question
7 pending, Mr. Chairman.

8 MR. VOGLER: The Staff will join in that objection.
9 It appears to be a draft and it just ends on page 6, with
10 no indication that that is the conclusion of it or anything.

11 CHAIRMAN RIGLER: And the pending question is
12 whether Mr. Hinchey is familiar with this letter; is that
13 correct?

14 MR. HAUSER: With this document.

15 CHAIRMAN RIGLER: I will permit him to answer
16 with respect to his familiarity with the document.

17 MR. REYNOLDS: I believe the pending question
18 also included whether this was the document that was
19 referred to in the second paragraph of his memorandum.
20 I think the objections are a bit premature until we get
21 a response to that.

22 CHAIRMAN RIGLER: I agree.

23 MR. MELVIN BERGER: Can we have one question at
24 a time?

25 CHAIRMAN RIGLER: All right. Break the question into

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1 two questions.

2 BY MR. HAUSER:

3 Q Mr. Hinchee, are you familiar with the document
4 which has been marked Exhibit Number 26?

5 A Not particularly.

6 Q What do you mean "not particularly"?

7 A Well, I do not know that this was the document,
8 or even similar to the document that we considered at this
9 particular meeting.

10 It seems to me that this may be just what it
11 says, a draft, but I would not say that this is the document
12 submitted to the City, or that I reviewed. It might be
13 a similar document.

14 CHAIRMAN RIGLER: The Board has another problem
15 with it. If we turn to page 2, there appear to be some
16 margin notes that have been deleted or obscured in the
17 copying.

18 MR. HAUSER: We would ask that those illegible
19 markings be ignored.

20 CHAIRMAN RIGLER: The problem I have with that is
21 that apparently it is a draft, somebody was making comments
22 on the draft, and it may be those obscure comments are
23 relevant. Mr. Hjelmfelt?

24 MR. HJELMFELT: I would inquire whether copies
25 of these Applicant's exhibits have been passed out 24 hours

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1 in advance of the cross-examination. I am not raising to
2 object to them on that ground, but if the rule is going
3 by the board, I would like it on the record, so when my turn
4 comes --

5 CHAIRMAN RIGLER: I don't think that is a well-taken
6 point, because the cross-examination right now is on the
7 Department of Justice exhibits. The questions relate back
8 to the Department of Justice exhibits which were introduced
9 only this morning, so clearly there was no opportunity to
10 comply with that rule, Mr. Hjelmfelt.

11 MR. HAUSER: I would also point out to Mr. Hjelmfelt
12 that this was document 99 in the list of documents noticed
13 by CEI previously.

14 MR. HJELMFELT: I wasn't aware that had anything
15 to do with the 24-hour rule.

16 CHAIRMAN RIGLER: No, it doesn't. But I think
17 the answer to your 24-hour question is that this line of
18 questioning originated with reference to the Department of
19 Justice exhibits this morning.

20 MR. HJELMFELT: Fine.

21 MR. REYNOLDS: I think that is correct, your Honor.
22 I have some question as to whether Mr. Hjelmfelt is suggesting
23 that the 24-hour rule has any application on cross-examination
24 in any event. It seems to me that if it has an application
25 at all, it is perfectly appropriate with respect to direct

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1 examination, but I don't understand how it could apply
2 on cross-examination.

3 I think it is a terrible handicap to the parties.
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1 CHAIRMAN RIGLER: Mr. HjoImfalt?

2 MR. HJELMFELE: It was my understanding there was a
3 24-hour rule with respect to the cross-examination.

4 I am not necessarily advocating that rule either.
5 But if that is the rule, I would like to have it clear.

6 That is all.

7 CHAIRMAN RIGLER: That is not the rule.

8 The Board has just conferred and we agree that the
9 rule really is not appropriate for cross-examination purposes.

10 So we agree with you, Mr. Reynolds, and that will
11 be a universal rule for all parties in this proceeding. The
12 24-hour rule applies only to direct examination.

13 MR. HAUSER: Mr. Chairman, could I then request
14 the Department of Justice, Mr. Berger, if he would provide me
15 with a copy of the letter referred to in the second paragraph
16 of Department of Justice Exhibit 6 or possibly an alternate
17 suggestion, to give Mr. Hinchee, the witness, an opportunity to
18 compare the quote in the Department of Justice Exhibit 6 and
19 the document marked Applicant's Exhibit No. 26 before I direct
20 further questions to him?

21 (The Board conferring.)

22 MR. MELVIN BERGER: I do not know if I have a
23 copy of the July 6, 1971 letter referred to here.

24 If I do have a copy, it is only because it was
25 provided to me during discovery by CEI, and therefore CEI

mm2 1 should also have a copy.

2 I did look for this last night and was not able to
3 locate it. It may well be in our files, but I cannot find it.

4 CHAIRMAN RIGLER: I take it your problem, Mr. Hauser,
5 is that you can't locate the actual letter that was sent,
6 rather than the draft?

7 MR. HAUSER: I can attest to the fact that the
8 document marked Applicant's Exhibit Number 26 --

9 MR. REYNOLDS: Wait a minute.

10 Can we confer a moment?

11 CHAIRMAN RIGLER: Yes.

12 Mr. Hauser, would it be your contention that
13 Applicant Exhibit 26 is in fact the letter that is referred
14 to in paragraph 2 of Department of Justice Exhibit 6?

15 MR. HAUSER: I believe that, and that is CSI's
16 position.

17 MR. HJELMFELT: I would just rise to point out that
18 this is the very problem there is with Mr. Hauser being
19 both counsel and attorney. He is listed as being at the
20 meeting, and now in effect he is testifying about what went
21 on at that meeting.

22 CHAIRMAN RIGLER: He is authenticating a document
23 that he is using for cross-examination purposes.

24 MR. HJELMFELT: That is correct.

25 CHAIRMAN RIGLER: Mr. Hinchee, give me your response

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1 again as to whether you recollect having seen this letter
2 before?

3 THE WITNESS: No.

4 As we have talked here, I have had a chance to read
5 my own memorandum of the meeting, and I specifically say:

6 "Mr. Howley introduced a letter."

7 And this is not a letter, this is a draft. All
8 of the letters from CEI are on letterhead stationery, and
9 this is not.

10 I don't know what Mr. Hauser had at the meeting, but
11 this is what the City had, because I would have said it was a
12 memorandum or draft memorandum, if it had not been a letter.

13 CHAIRMAN RIGLER: I think you are going to be stuck
14 with that answer, Mr. Hauser, and I think this gets back to the
15 problem we have with your cross-examining and then later,
16 perhaps testifying that this is similar to the letter that was
17 received.

18 BY MR. HAUSER:

19 Q Mr. Hinchee, subsequent to July 8, 1971, did the City
20 of Cleveland receive any response from anyone at the
21 illuminating company commenting on your memorandum of July 8,
22 1971, identified as Department of Justice Exhibit 6?

23 A Would you repeat the question?

24 Q Would the reporter read the question back?

25 (The reporter read the record as requested.)

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1 THE WITNESS: I don't recall whether we did or not.
2 If we did, there was a matter of further meetings
3 and it was probably discussed at a further meeting. But I
4 don't recall any specific response.

5 My notes of that meeting, I don't know they were
6 ever submitted to the illuminating company. This is an in-house
7 memorandum.

8 BY MR. HAUSER:

9 Q Would you refer to Page 3 of Department of Justice
10 Exhibit 67

11 A Yes.

12 Q Directing your attention to the bottom of the page,
13 would this indicate that copies had been distributed to
14 representatives of CEI?

15 A Are you talking about paragraph 7?

16 Q No.

17 At the bottom of the page. Carbon copies.

18 A Yes, that does indicate that they were distributed to
19 CEI.

20 MR. HAUSER: Next I ask a document be identified as
21 Applicant's Exhibit 27, CEI internal document 9. A letter
22 dated July 22, 1971 directed to the Honorable Clarence E.
23 James, Jr., Director, Department of Law, City of Cleveland.

24 CHAIRMAN RIGLER: All right.

25 But I believe your internal number is CEI-10.

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1 MR. HAUSER: Number 16, right.

2 CHAIRMAN RIGLER: So it will be identified as
3 Applicant's Number 27.

4 (The document referred to was
5 marked Applicant's Exhibit
6 No. 27(CBI) for identification.)

7 BY MR. HAUSER:

8 Q Mr. Hinchee, have you had a chance to review the
9 document, Applicant's Exhibit Number 27?

10 A The copy is so bad, I can't read it.

11 (Mr. Zahler handed another copy to the witness.)

12 BY MR. HAUSER:

13 Q Would you take your time to look at the document
14 that I have just handed to you?

15 Have you had an opportunity to read Applicant's
16 Exhibit Number 27?

17 A Yes.

18 Q Do you recall ever seeing Exhibit Number 27 before?

19 A Yes.

20 Q Did you ever prepare a reply for Director Gaskill
21 to Applicant's Exhibit Number 27?

22 A I am not sure that a reply was asked for.

23 end #18

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1 CHAIRMAN RIGLER: Well, do you recall ever
2 preparing one?

3 THE WITNESS: No.

4 MR. HAUSER: At this time I move for admission of
5 Applicant's Exhibit Number 27.

6 MR. VOGLER: There is information contained in
7 here that was not covered on direct. Clearly the payment
8 of bills which the Staff did not inquire about. I don't know
9 whether that will lead the Board or not. With that objection
10 as to that portion of it, the Staff has no objection.

11 CHAIRMAN RIGLER: Well, there is no testimony before
12 the Board at this point in the record with respect to payment
13 of bills one way or another.

14 I think clearly the document is admissible --

15 MR. VOGLER: For that portion of it, yes, sir.
16 The Staff does not object to that. But it does object to that
17 portion containing the information regarding payment of bills.

18 CHAIRMAN RIGLER: All right. It will be received
19 into evidence as Applicant's Exhibit 27.

20 (Applicant's Exhibit Number 27 (CEI)

21 previously marked for identification,
22 was received in evidence.)

23 CHAIRMAN RIGLER: What are you going to do with
24 Applicant's 26, Mr. Hauser? Are you going to withdraw that
25 or what?

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1 MR. HAUSER: I am going to leave it marked for
2 identification as Exhibit 26. I would propose to, sometime
3 later, move for its admission into the record.

4 CHAIRMAN RIGLER: All right.

5 BY MR. HAUSER:

6 Q Mr. Hinchee, do you recall testifying before the
7 Federal Power Commission in 1972 in the proceedings
8 involving the City of Cleveland and the Cleveland
9 Electric Illuminating Company?

10 A Yes, I was a witness in that proceeding.

11 Q Do you recall testifying with regard to the
12 condition of the generating facilities of the City of
13 Cleveland?

14 A I recall testifying. I don't recall what the
15 testimony constituted.

16 Q Mr. Hinchee, in response to a question presented
17 by the Presiding Examiner in those proceedings on March 21,
18 1972, the question being "How would you characterize the
19 City's system when you came on," do you recall responding,
20 "I would characterize it as being in dire need of some major
21 overhaul in all of these areas. It had been operated to the
22 point of real dangerous and deficient operation. I would
23 characterize it as that when I came on the job"?

24 Do you recall giving that testimony?

25 A I think so.

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1 CHAIRMAN RIGLER: I think you might have to back up
2 there. To what areas was he referring?

3 BY MR. HAUSER:

4 Q Mr. Hinchee, to what physical facilities of the City
5 of Cleveland were you referring in response to the question of
6 the Presiding Examiner?

7 A Mr. Hauser, that has been so long ago, I don't know
8 how to answer that question. I have no idea what we were
9 talking about in general at that particular point in the
10 inquiry.

11 CHAIRMAN RIGLER: Mr. Vogler?

12 MR. VOGLER: I have a point of clarification,
13 primarily.

14 Are you going to use his testimony as evidence --
15 testimony at the Federal Power Commission as evidence in this
16 proceeding, or are you trying to impeach him as a witness?

17 I object if you are going to submit the testimony
18 as evidence in this proceeding, other than for impeachment
19 purposes.

20 CHAIRMAN RIGLER: I think he is pointing toward
21 impeachment.

22 MR. VOGLER: That is the inquiry?

23 MR. HAUSER: I am directing my attention to
24 that area, and I did not intend to introduce the testimony
25 in evidence, and I thought it would be helpful to facilitate

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1 the proceedings in a line of questions I wish to correct to
2 Mr. Hinchee with regard to the details of the physical condition
3 of the generating facilities of the municipal electric light
4 plant when he did come with the City of Cleveland in March of
5 1971.

6 CHAIRMAN RIGLER: What I want you to do is identify
7 the areas he was discussing with the FPC, if that is your
8 intention, when he said certain areas were in run-down
9 condition.

10 He has told us the generating plant was in run-down
11 condition, but he believed the transmission facilities were
12 in pretty good shape.

13 If you are contending he said the transmission
14 facilities were also in run-down condition, identify it on
15 the FPC record and we can move along.

16 MR. HAUSER: No, it was not directed toward the
17 transmission or distribution system. It was directed towards
18 the generating facilities of the municipal electric light
19 plant and more specifically those located at the light plant
20 on Lakeshore Drive in the City of Cleveland.

21 CHAIRMAN RIGLER: But that is what he has already
22 told us. He said in these proceedings that the generating
23 system was in a bad state of disrepair and maintenance.

24 BY MR. HAUSER:

25 Q Mr. Hinchee, could you tell us what the extent of the

1 disrepair of the respective generating facilities of the
2 Cleveland Municipal Light Plant at this time was, namely March
3 1971?

4 A I think I have already stated that. But the 75
5 megawatt unit was out of service with a bowed shaft
6 and a wiped bearing. I would say that is pretty dire, if
7 you want to use that word.

8 I was a little more dramatic about it then than I have
9 been here.

10 The 25 megawatt units operated by the City were
11 all that was sustaining its load at that particular point in
12 time.

13 Q Was there any other equipment out of service at that
14 time? Generating equipment?

15 A No, that is all we had.

16 Q What about boiler Number 1?

17 A I don't recall. We had five boilers feeding three
18 turbines and at any given time one of the boilers could be
19 down for a number of reasons. We had boiler capacity enough
20 to operate the turbines.

21 Q How many turbines did you have at that time?

22 A Three. Three 25-megawatt turbines.

23 Q And were all three of those turbines operating at
24 25 megawatts at that time that you came with the City of
25 Cleveland?

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A There were operable at 25 megawatts.

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Q I thought the question was were they operating at 25 megawatts.

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A Well, on any day, in any given period of time, you have swings, and your question, you know, is really not answerable the way you asked it, so I had to answer the way I did. If they were operable, that means they can meet the peaks of the day. The peak may vary from 75 down to 50 megawatts, so the load is continually changing on these units.

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So the only way I could answer your question is to say what they were capable of being operated at.

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Q Do you recall testifying on March 21, 1972, that boiler number one was inoperable? And had been for some period of time?

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16

A No, I don't recall testifying to that effect. But if it is in the record, then I did.

17

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MR. VOGLER: Are we at the Federal Power Commission?

19

MR. HAUSER: Yes.

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21

Q Mr. Hinchee, did you, on the same date, testify before the Federal Power Commission that boiler number 3 was out of service, being repaired by Foster and Wheeler?

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A I have no idea, Mr. Hauser, on that date what I gave as testimony.

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Do you recall then whether boiler number 3 was out

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1 of service at that time?

2 A No, I don't.

3 Q You don't recall one way or another?

4 MR. VOGLER: He has answered.

5 THE WITNESS: No, I don't recall one way or the other.

6 BY MR. HAUSER:

7 Q Do you have any recollection as to whether or not
8 boilers number 4 or 5 were in operation at that time?

9 A At what time?

10 Q On March 21, 1972, or at the time you became
11 commissioner.

12 MR. VOGLER: Which?

13 BY MR. HAUSER:

14 Q Let's take at the time you became commissioner
15 in March 1971.

16 A No, I don't recall which specific units were
17 working and which were not. That would be a matter of
18 operating of the Department, and if it is pertinent, it could
19 be researched.

20 Q Would you have any recollection as to March 21,
21 1972, when you testified before the Federal Power Commission?

22 A No, again the same answer. It is a matter of
23 record.

24 CHAIRMAN RIGLER: Mr. Hauser, the Board really, I
25 think, is coming to the end of what it wants to hear on this

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1 line. We want to give you wide latitude, but at the same
2 time he has testified that the generating side of the plant
3 was in a bad state of disrepair, pointing out specific
4 instances is not really going to advance that point.

5 And as far as impeachment, his testimony seems
6 consistent; identifying specific parts of the generation
7 facility that was out of service, doesn't advance the ball.
8 So unless you have some contradiction you want to bring
9 to our attention, maybe we could go on to something else.

10 MR. HAUSER: As I recalled, the Witness, early
11 in his testimony with regard to the condition of the plant,
12 had emphasized the 75 or 85 megawatt unit being out of
13 service, and I was attempting to develop that other portions
14 of the generating facilities were likewise in need of
15 maintenance and repair.

16 CHAIRMAN RIGLER: I think he testified to that. I
17 think he testified that he had even deferred some of the other
18 than routine maintenance they would have scheduled, because
19 of the need to keep all three units running while the 75 unit
20 was down.

21 So the Board has all of that in mind.

22 BY MR. HAUSER:

23 Q Mr. Hinchee, I believe in response to a question
24 of Mr. Berger of the Justice Department you testified that
25 an in-house study had been made by the municipal light plant to

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1 determine the final feasibility of participating in nuclear
2 units; is that correct?

3 MR. MELVIN BERGER: Mr. Chairman, if I may, just
4 to clarify the record, since we have had some problem with
5 whether the Department will be conducting direct or cross-
6 examination, this appears to be cross-on-cross.

7 Is that permitted in this proceeding?

8 CHAIRMAN RIGLER: Yes.

9 BY MR. HAUSER:

10 Q Who made that in-house study?

11 A I did, along with members of my staff acting
12 as a task force.

13 Q Who were the members of the Staff?

14 A To the best of my recollection, Russ Milan
15 would be one person involved, Phil Matthews would have been
16 another. There may have been others, but I would say those
17 were the key people.

18 Q Do you have a copy of that in-house study?

19 A Do I have a copy of it? No.

20 Q Was there a written report of that study? Or
21 was it reduced to writing?

22 A It was not formalized, as a formal study and
23 circulated throughout the City, if that is what you mean.
24 It was an in-house review and study for our own particular
25 needs and purposes. There were discussions with our finance

1 director, and with other financial people, and this in effect
2 composed what amounts to an informal study.

3 CHAIRMAN RIGLER: But was it reduced to
4 writing?

5 THE WITNESS: I am not sure, I don't recall
6 whether it was made as a report to someone outside of the
7 department or not.

8 BY MR. HAUSER:

9 Q Was it reduced to writing?

10 A I am not sure. The question I had to answer
11 was simply can we do it, if we are permitted to do it,
12 and the answer came back, yes, we can do it.

13 MR. HAUSER: Mr. Chairman, could we have about
14 five minutes and possibly we can wrap it up pretty quickly
15 then?

16 CHAIRMAN RIGLER: Fine. We will take a five
17 minute recess.

18 (Recess.)

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1 CHAIRMAN RIGLER: Mr. Hauser?

2 BY MR. HAUSER:

3 Q Mr. Hinchey, yesterday you testified that AMP/Ohio
4 had requested nuclear power from Beaver Valley and Davis-Besse
5 nuclear plants, and the plants under construction in the
6 Cleveland area, is that correct?

7 A I believe that is correct.

8 Q Do you recall when those requests were made by
9 AMP/Ohio?

10 A No, I don't.

11 Those requests were made, probably, under the
12 signature of John Engle, who was president of AMP/Ohio and I
13 could not be sure as to what time he made those requests.

14 Q To whom were those requests specifically made, by
15 Mr. Engle?

16 A I am not certain, but I know they were made to the
17 various companies involved in CAPCO.

18 I am not certain as to what individual.

19 Q Is it your understanding that those requests
20 were in writing?

21 A Yes.

22 Q How much power was requested in these requests
23 on behalf of AMP/O?

24 A I don't recall.

25 Q Did AMP/O receive any response to these requests

mm2 1 for nuclear power?

2 A Well, yes. I am certain --

3 MR. VOGLER: I wish he would be more specific, or if
4 the witness can answer, fine. But counsel is confused as to
5 which request and for who.

6 For NERP or for AMP/O in general?

7 MR. HAUSER: All of my questions were directed to
8 the requests of AMP/O.

9 THE WITNESS: I am certain there were responses back.

10 I know in one instance, Cincinnati Gas and Electric
11 did respond and say they would sell nuclear power or nuclear
12 plant capacity to AMP/O.

13 BY MR. HAUSER:

14 Q Have you seen copies of the written requests
15 or any of the written responses?

16 A I saw copies at the time the inquiries were being
17 made or going on, but I have not seen copies of it for
18 several years.

19 Q Were copies sent to you of the written requests?

20 A They might have been, or they might have been shown
21 me at a Board of Directors meeting. I am not certain.

22 Q Did you see copies of any of the written
23 responses?

24 A I saw a copy of the Cincinnati Gas and Electric
25 response.

mm3

1 Q Any others?

2 A I am not sure.

3 Q Do you know whether there were any copies of either
4 the written requests by AMP/O or the written responses in the
5 City of Cleveland files?

6 A No, I do not know.

7 Q Mr. Hinchee, yesterday you testified that you asked
8 CEI to wheel PASNY power to the City of Cleveland.

9 Do you recall testifying to that?

10 A Yes.

11 Q Is it your testimony that that request that you
12 made of CEI was on behalf of the City of Cleveland, or
13 was it on behalf of AMP/O?

14 A My request was on behalf of the City of Cleveland.

15 Q To whom did you make that request?

16 A Well, at one time I made it to you.

17 Q When was that?

18 A After we had been to a meeting in which the
19 PASNY people indicated that they could make an allotment of
20 power available to us provided we could arrange transmission
21 services.

22 In those meetings I was not representing AMP/O,
23 I was representing the City of Cleveland as its contractual
24 recipient for such power.

25 Q Was that an oral or a written request to me?

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1 A It was an oral request to you.

2 I asked to discuss the matter with you.

3 Q Did you make a request of anyone else at AMP on
4 behalf of the City of Cleveland to wheel PASHY power?

5 A As I recall, you were going to make the inquiry of
6 your people and get back to me with an answer.

7 Q Then I take it you did not make a request to anyone
8 other than myself on behalf of the City of Cleveland for the
9 wheeling of PASHY power?

10 A That is correct.

11 Q Mr. Hincho, as I recall, you also testified
12 yesterday that AMP/O had received a commitment for PASHY
13 ~~power~~ for the City of Cleveland.

14 Do you remember that testimony?

15 A Yes, sir.

16 Q What was the nature of the commitment with regard
17 to which you testified?

18 Was it in writing?

19 A Yes.

20 AMP/O had a commitment in writing from PASHY.

21 Q Was that a letter of intent or a contract?

22 A I suppose it would be in the form of a letter of
23 intent.

24 The contract itself could not be finalized until
25 we had, or until AMP/O had been able to arrange all of the

1 transmission services necessary to deliver the power. That was
2 a condition laid down by PASNY. And they had arranged the trans-
3 mission services through the State of New York and through
4 the State of Pennsylvania, through FINELEC Company, and the only
5 holdup was CBI.

6 Q Who executed that commitment on the part of the
7 Power Authority of the State of New York?

8 A I don't recall specifically.

9 But I would presume --- most of the correspondence
10 came from a man named Barry, and I would presume this was
11 from Mr. Barry, or one of his staff assistants.

12 Q At this time were there any other state agencies
13 claiming entitlement to the PASNY power?

14 A Were there other state agencies?

15 Q Yes.

16 A No.

17 There were no other agencies in the State of Ohio.
18 AMP/O had to obtain a certificate for that express classifica-
19 tion before PASNY would proceed.

20 Q How about the state agencies outside of Ohio?
21 For example, the Allegheny Co-op in Pennsylvania?

22 A AMP/O made an arrangement with the Allegheny Co-op,
23 and that may have been the reason why FINELEC was so quick to
24 make transmission available to us, that Ohio would claim the
25 30 megawatts of power, and in the event it could not complete

mm6 1 the arrangements for transmission, that Allegheny Cooperative
2 would, A, wheel the power for us if we could not make the
3 transmission arrangements through Pennsylvania; B, if we
4 couldn't transmit through CRI, they would use the 30 megawatts
5 until such time as the City could arrange wheeling by CRI.

6 Q When was that arrangement made?

7 A Prior to the allocation and the use of the power as
8 it is presently being used by the Allegheny Cooperative.

9 Q How much prior?

10 A I have no idea.

11 It was a number of years ago.

12 Q Was it still while you were with the City?

13 A No.

14 I think it was discussed while I was with the City,
15 but the final agreement was not reached until after I left
16 the City.

17 Q Had the State of Vermont Public Service Board also
18 made a claim with regard to the 30 megawatts of PASHK power?

19 A Not at the time that I was active in Cleveland.

20 Q To your knowledge, did they subsequently make such
21 a claim?

22 A I have heard that they did.

23 I am not familiar with what happened.

24 Q Do you know whether or not these competing claims
25 are presently in litigation before the Federal Power Commission?

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1

A It is my understanding that they have been in

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litigation and it has been resolved in favor of the

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Allegheny Cooperative and AMP/O.

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Q Resolved by whom?

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A By the Federal Power Commission.

end #21

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1 Q With regard to the PASNY power, who executed the
2 commitments on behalf of AMP/Ohio?

3 A Who executed the commitments of AMP/O to whom?

4 Q On behalf of AMP/O, and we are referring to the
5 commitment of the power authority of the State of New York
6 for PASNY power to the City of Cleveland that we talked
7 about earlier?

8 MR. VOGLER: Objection. I believe we have a letter
9 of intent as opposed to a commitment. I don't know whether we
10 are discussing the same thing or not.

11 CHAIRMAN RIGLER: I think we are.

12 MR. HAUSER: That was my understanding, commitment
13 or letter of intent.

14 THE WITNESS: Well, that is really the same question
15 you asked me before.

16 BY MR. HAUSER:

17 Q I thought I asked who had executed the letter of
18 intent or commitment on behalf of the Power Authority of the
19 State of New York.

20 Now I am asking who executed that letter of intent or
21 commitment on behalf of AMP/Ohio.

22 A John Engle.

23 MR. HAUSER: That is all of the cross-examination
24 I have.

25 CHAIRMAN RIGLER: Is there any redirect?

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1 MR. VOGLER: If I could have 30 seconds to confer
2 with Mr. Goldberg, please.

3 MR. REYNOLDS: Just a minute.

4 CHAIRMAN RIGLER: I beg your pardon, Mr. Reynolds,
5 do you have any examination?

6 MR. REYNOLDS: I believe that concludes it. But I
7 want to check.

8 Applicant has no further cross-examination.

9 MR. VOGLER: The Staff has nothing further, your
10 Honor.

11 MR. MELVIN BERGER: Nor does the Department.

12 MR. HJELMFELT: I have no questions.

13 CHAIRMAN RIGLER: All right. We will take a
14 recess until the next witness can get over here, at which
15 time perhaps one of the attorneys can rap on the door of the
16 Board room.

17 Mr. Hinchee, thank you very much.

18 (Witness excused.)

19 (Recess.)

20 MR. LESSY: The Staff's next witness is
21 Mr. William Craig.

22 Whereupon,

23 WILLIAM CRAIG

24 was called as a witness on behalf of NRC Staff and, having been
25 first duly sworn, was examined and testified as follows:

XXXXXX

DIRECT EXAMINATION

1
2 BY MR. LESSY:

3 Q Please state your name and home address.

4 A My name is William Craig, 244 Bane Street, Newton
5 Falls, Ohio.

6 Q By whom are you employed, sir?

7 A I am the City Manager of Newton Falls.

8 Q When did you become City Manager?

9 A On January 3, 1973.

10 Q Please summarize for us your biographical and
11 employment history prior to that time?

12 A I was born in Chicago. I attended grad. school at
13 the University of Pennsylvania in city management. I was
14 employed by the City of Zanesville, Ohio as Administrative
15 Intern. I then entered the U.S. Army. I was an enlisted man
16 for a year, artillery officer for two years.

17 I went to work for Painesville, Ohio as the
18 Administrative Assistant and then was employed as City Manager
19 by Newton Falls.

20 Q As City Manager of Newton Falls, do you have
21 responsibility for the electrical system?

22 A Yes. I have electric, water, and sewer systems.

23 Q Could you describe for us briefly the current
24 electrical system of the City of Newton Falls?

25 A Yes. It services almost all residences and small

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1 businesses in the city, approximately 5000 people, 2600
2 meters. It is entirely generated by diesel power. It
3 is not interconnected. It was built in 1939 and 1940 with
4 federal help. I believe it had to do with the rearmament of
5 the country because we had a large war worker group in our
6 area.

7 Our principal fuel from the beginning until
8 1965 was diesel oil and from '65 to '75 it was natural gas.
9 Of course in 1975 the natural gas was discontinued. So we are
10 back on oil.

11 Q Are you familiar with the peak load of the
12 electrical system of the City of Newton Falls?

13 A Yes. It is approximately 4 megawatts or 4500 KW.

14 Q Is Newton Falls a member of AMP/Ohio?

15 A Yes, we are.

16 Q Does the electrical system of the City of Newton
17 Falls serve any industrial customers?

18 A No, we have no industrial load on our system.

19 Q When, to the best of your recollection, did you
20 first discuss the possibility of Ohio Edison providing
21 electric power to the city?

22 A We began a serious discussion in July of 1973,
23 looking into this as an alternative to our continued generation.

24 Q Why were you considering requesting power from Ohio
25 Edison at that time?

1 A Well, the writing was on the wall for natural gas
2 and oil, I am afraid, and we felt that if the prices would boom,
3 as it seems they did, it would be wiser for us to have an
4 alternative.

5 CHAIRMAN RIGLER: Mr. Reynolds?

6 MR. REYNOLDS: Mr. Chairman, could I make a
7 continuing objection on behalf of Applicants other than Ohio
8 Edison with respect to testimony by this witness?

9 CHAIRMAN RIGLER: It will be overruled.

10 BY MR. LESSY:

11 Q Subsequent to your discussions in July of 1973,
12 according to your recollection were there any subsequent
13 discussions or meetings with representatives of Ohio Edison
14 concerning the possibility of them providing power to Newton
15 Falls?

16 A Yes. Following that in 1973 the Ohio Edison
17 Company sent various engineers and technical people and they
18 went all through the plant, and they asked questions and we
19 provided them with charts and graphs and information on our
20 capability and how much power we used and needed.

21 They, of course, indicated they needed this to
22 make a proposal or to draw up a proposed contract.

23 Then I wrote on two other occasions to them after
24 that, sort of pursuing this matter, and there were some
25 telephone calls.

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1 Then in November I wrote and asked point-blank
2 will you serve us and on what terms, because we hadn't gotten
3 any concrete response.

4 Q Excuse me. November of what year, sir?

5 A This is 1973. Then it was, I believe, December
6 1973 that we received an answer, and the Ohio Edison Company
7 said yes, they would serve us and they made certain suggestions
8 as to the amount of power we might purchase, the size of
9 the substation, the amount of power we might purchase.

10 Q Mr. Craig, I show you a letter dated January 24,
11 1974. It bears the Staff Document Number 85. I ask that it
12 be marked for identification as Staff Exhibit Number 71.

13 (The document referred to was marked
14 NRC Staff Exhibit Number 71 for
15 identification.)

16 BY MR. LESSY:

17 Q Can you identify this letter for us?

18 A Yes, I can. I acknowledge my error. I said
19 December. This is plainly January that I received this.

20 MR. LESSY: The Staff would like to move into evidence
21 the document identified as Staff Exhibit Number 71.

22 MR. STEVEN BERGER: I have no objection.

23 MR. REYNOLDS: A continuing objection on behalf of
24 the other Applicants.

25 CHAIRMAN RIGLER: The continuing objection will be

1 overuled and NRC Exhibit Number 71 will be admitted into
2 evidence.

XXXX

3 (NRC Staff Exhibit Number 71, previously
4 marked for identification, was
5 received in evidence.)

6 BY MR. LESSY:

7 Q Subsequent to your receipt of the document entered
8 into evidence as Exhibit 71 were oral requests for electric
9 service made by you to Ohio Edison on other occasions?

10 A It was a continuing topic of discussion back and
11 forth with our division office of Edison, and we employed an
12 engineer on our behalf to design this substation, first to do
13 a study on it, give us a proposal, and then to design a
14 substation for us. And, of course, the result of
15 the engineer's work, we filed a letter in May of 1974
16 indicating a firm intent to purchase power and also the
17 amounts that we proposed to pick up year by year or month by
18 month as this interconnection would be accomplished.

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1 Q I show you a document dated May 16, 1976, signed by
2 yourself, and addressed to Mr. David Bixler of Ohio Edison, and
3 ask the document be marked for identification as Staff Exhibit
4 Number 72.

5 (The document referred to was
6 marked WNC Staff Exhibit No. 72
7 for identification.)

8 MR. LESSY: It bears the Staff Document number of
9 81.

10 BY MR. LESSY:

11 Q Is this letter a formal request, as you described
12 it?

13 A Yes.

14 This is the letter I was referring to.

15 Q Can you tell us why the letter was written?

16 A Specifically in the conversations back and forth,
17 I believe it was suggested by the Edison Company that this be
18 entered at this time because we had orally indicated to them
19 previous to this, our intent to purchase.

20 I believe Mr. Bixler asked me to put this in writing
21 and deliver it to him after I told him we had reached our
22 conclusion.

23 Q Had there been any oral responses to your previous
24 discussions, previous to your writing this letter?

25 A Yes.

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1 It was stated all along that the company didn't have
2 a particular objection to selling us power, that they intended
3 to sell us power.

4 They said they have to work out the contract terms
5 and other technical matters.

6 MR. LESSY: I would like to move into evidence the
7 document identified as Staff Exhibit Number 72.

8 MR. STEVEN BERGER: No objection.

9 MR. REYNOLDS: A continuing objection on behalf of
10 the other Applicants.

11 CHAIRMAN RIGLER: The continuing objection will be
12 overruled and NRC Staff Exhibit 72 will be admitted into
13 evidence.

14 (The document heretofore marked
15 NRC Staff Exhibit No. 72 for
16 identification, was received
17 in evidence.)

xxx

18 BY MR. LESSY:

19 Q Mr. Craig, when did you first receive a response
20 to your May 14, 1974 formal request?

21 A The response took the form of a meeting in June of
22 1974, early June, when the various engineers from the
23 Edison Company came over and we sat down with the City's
24 engineer and myself and discussed the technical aspects of
25 what this would require, what was involved.

mn3 1 Q What happened after that?

2 A Very little.

3 We entered a long dry spell. I would call periodically over there seeking a draft contract, because we kind of
4 wanted to proceed, and there was no contract received by us
5 written up -- we were told it was in process -- until late
6 October of 1974.
7

8 Q Did you regard the draft contract that you received
9 as something that Ohio Edison indicated it could be bound by,
10 or was it simply a draft?

11 A It was a draft.

12 And certain --

13 MR. REYNOLDS: I will object to the form of that
14 question.

15 It calls for the kind of opinion that I don't think
16 this witness is in any position to speak to. In terms of what
17 view or attitude Ohio Edison may have had with respect to a
18 draft document that was sent, is something that I don't think
19 he is qualified to testify to.

20 CHAIRMAN RIGLER: The question being, whether he
21 understood Ohio Edison was willing to sign the contract,
22 or whether they advanced the contract merely for purposes of
23 additional negotiation?

24 MR. REYNOLDS: If the question is rephrased in that
25 manner, I have no objection to it.

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1 MR. LESSY: I will be happy to.

2 BY MR. LESSY:

3 Q Did Ohio Edison indicate it would be willing to sign
4 if it was agreeable to Newton Falls, the October '74 contract
5 you testified you received?

6 A The language within it indicated that certain
7 figures there were not final, and as it turned out, they
8 weren't final. The money we had paid, and as it turned
9 out, the amount of power.

10 Q The amount of power?

11 A That is right.

12 Q What do you mean by the amount of power?

13 A Well, the size of the substation or the amount of
14 power we would be permitted to draw from their lines totally
15 during the term of the contract.

16 Q At a subsequent time, did Ohio Edison present you
17 with a contract that they were firm on?

18 A What they did was to --

19 MR. STEVEN BERGER: Your Honor, is he asking a
20 question with regard to the same specificity as Mr. Reynolds'
21 objection was raised before?

22 I mean, is he asking the question again, did they
23 submit another contract to you that they were willing to sign
24 at the time that they submitted that now contract to you?

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1 CHAIRMAN RIGLER: I believe that is the question.
2 That is how I would interpret it.

3 Is that the question?

4 MR. STEVEN BERGER: It is the use of the word "finds"

5 CHAIRMAN RIGLER: Yes. Is that the thrust of your
6 question?

7 MR. LESSY: Yes, sir.

8 THE WITNESS: The change that was made was in the
9 form of changes of paragraphs within the documents. We were
10 furnished a whole new draft, but I believe there were two
11 paragraphs in it that had been specifically changed and
12 which were outlined in the letter from Mr. Seil to myself.

13 BY MR. LESSY:

14 Q When did you receive this second contract?

15 A That draft was received in April and/or possibly
16 the beginning of May 1974. I believe it was April.
17 Excuse me. 1975. I am in error.

18 Q So you received an initial contract in October 1974
19 and a subsequent contract in April of 1975; is that correct?

20 A That is correct. In the meantime there had been
21 speech back and forth, and a meeting regarding these changes
22 I am referring to.

23 MR. REYNOLDS: Mr. Chairman, I don't want to belabor
24 the point, but I believe Mr. Lessy was referring to draft
25 contracts in both instances and the record should be clear if

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1 we are going to characterize the testimony that it was draft
2 contracts which the witness spoke of.

3 CHAIRMAN RIGLER: All right.

4 BY MR. LESSY:

5 Q How long of an interval was it from the time you
6 first requested power to the time that you got a draft of
7 a contract which in your view Ohio Edison was willing to
8 commit itself to?

9 MR. STEVEN BERGER: I think that was asked and
10 answered, or I would like clarification as to what he is
11 talking about when he first asked for power.

12 Is he talking orally, written?

13 I think it needs some specificity attached to it.

14 MR. LESSY: I will be happy to clarify the question.

15 BY MR. LESSY:

16 Q How long of an interval was it from the time you
17 first formally requested bulk power to the time that you
18 received a contract which you felt, if you signed, would be a
19 binding agreement between Ohio Edison and the City of Newton
20 Falls?

21 A It would be over a year, close to a year and a half.

22 Q Who presented you with a copy of the contract that
23 you received in the spring of 1975?

24 A I believe it was both the gentleman we dealt with,
25 Mr. Bixler, the Division Manager, and Mr. Bell, the Commercial

1 Manager.

2 Q Mr. Craig, I show you a document which is labeled
3 on the top "Contract," and has the Staff Document Number 70
4 on it and I ask that this be identified as Staff Exhibit
5 Number 73.

6 (The document referred to was marked
7 NRC Staff Exhibit Number 73 for
8 identification.)

xxxxxx

9 BY MR. LESSY:

10 Q I ask you if you can identify this document for us.

11 A Yes. This is the draft contract we received in
12 April or early May 1975.

13 MR. REYNOLDS: Could I have the answer back again?

14 (Whereupon, the reporter read from the record as
15 requested.)

16 BY MR. LESSY:

17 Q Generally did the City of Newton Falls attempt to
18 negotiate changes in certain provisions of this contract
19 which Ohio Edison delivered to you?

20 A Well, yes.

21 Q Can you generalize as to the response of Ohio
22 Edison to those suggested changes?

23 MR. STEVEN BERGER: What suggested changes are we
24 talking about?

25 MR. LESSY: We are talking about generally. When we

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1 will go into them specifically.

2 THE WITNESS: Well, the general response of the
3 company was that certain paragraphs and clauses were
4 standard with them and, therefore, would not be subject to
5 change.

6 BY MR. LESSY:

7 Q Other than their being standard, did Ohio Edison give
8 another reason as to the position that changes could not be
9 made?

10 A Well, they indicated that these contracts are filed
11 with the Federal Power Commission, and the FPC required
12 certain uniformity in the filing.

13 Q Now, did you attempt to negotiate or modify
14 at that time the maximum capacity of the electric service to
15 be furnished during the term of the contract?

16 CHAIRMAN RIGLER: What do you mean by capacity.

17 MR. LESSY: Well, let me withdraw the question
18 and go at it step by step.

19 BY MR. LESSY:

20 Q With respect to page 1 of the contract, I direct
21 your attention to the paragraph labeled 1 and I ask if
22 you can describe that language to us?

23 MR. STEVEN BERGER: I think it speaks for itself.

24 CHAIRMAN RIGLER: Yes. On the capacity question,
25 just tell us what you mean. We would allow that question if

1 you define the term.

2 MR. LESSY: The maximum capacity of power that Ohio
3 Edison would deliver under the contract. On page 2 of the
4 contract. It is the first sentence.

5 CHAIRMAN RIGLER: Mr. Reynolds?

6 MR. REYNOLDS: Mr. Chairman, I notice we are
7 getting close to the closing hour. I have some problem with
8 a question as to general objections and general responses
9 which are not tied up immediately as was indicated.

10 I think if we are going to get into this area, we
11 ought to get into it and speak in terms of what the objections
12 or suggested changes might have been specifically and what
13 the responses were specifically. To have a general one and
14 leave it hanging it seems to me is inappropriate.

15 CHAIRMAN RIGLER: That is something you could
16 address on cross-examination. I permitted the general
17 question because I felt it might relate to tone or attitude of
18 the company during the course of these negotiations.

19 Surely you are entitled to go into the specifics on
20 cross-examination if Mr. Lessy does not do so during his
21 direct examination.

22 Earlier he had raised the point that among the
23 unresolved features of the contract were the amount of power
24 to be delivered and I don't recall now if he mentioned price.
25 I hope he intends to go back into those.

1 I think we will break for the day at this point,
2 however.

3 MR. LESSY: I just wanted to state certainly a
4 witness who is negotiating a contract can give his opinion
5 of the tone of the negotiations.

6 CHAIRMAN RIGLER: I permitted the question,
7 Mr. Lessy. It is not necessary to argue your right.

8 MR. LESSY: Why don't I just move this into
9 evidence and we will go into it in more detail tomorrow. I
10 would like to move into evidence the documents identified as
11 Staff Exhibit Number 73.

12 MR. REYNOLDS: I will have the continuing
13 objection of the Applicants. And I also will raise an
14 objection to the relevancy of this document to the
15 matters that are in controversy in this proceeding. It is a
16 draft document.

17 We have been told there was a final contract that
18 was entered into, and I really don't see how this draft or any
19 of the other drafts are relevant.

20 CHAIRMAN RIGLER: Well, it could bear on an
21 attempt to frustrate or prolong the rendering of services. I
22 thought you were going to ask how even the final contract might
23 relate to the issues in controversy. And I assume we will
24 have some connection on the record on that.

25 MR. REYNOLDS: At the appropriate time I would raise

1 it.

2 I guess what I am saying is I am not sure I under-
3 stand how this document would be relevant, even assuming it
4 was determined that the kind of testimony you were talking
5 about might be relevant.

6 CHAIRMAN RIGLER: I don't think Mr. Lessy has had
7 a fair chance to develop that. He has only had the witness
8 for a few minutes, and I am sure we will get into that.

9 So I will overrule that objection at this time and
10 also overrule the continuing objection.

11 And, hearing no objection from Mr. Berger, we
12 will admit NRC Exhibit 73 into evidence with the under-
13 standing that Mr. Lessy intends to pursue this tomorrow.

14 (NRC Staff Exhibit Number 73, previously
15 marked for identification, was
16 received in evidence.)

17 (Whereupon, at 4:40 p.m., hearing in the above-
18 entitled matter was adjourned, to reconvene at 9:30 a.m.,
19 Wednesday, 7 January 1976.)

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