

**NUCLEAR REGULATORY COMMISSION**



**IN THE MATTER OF:**

**TOLEDO EDISON COMPANY and  
CLEVELAND ELECTRIC ILLUMINATING CO.**

Docket Nos.

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

50-346A

50-500A

50-501A

and

**CLEVELAND ELECTRIC ILLUMINATING  
CO., et al.**

50-440A

50-441A

(Perry Nuclear Power Plants, Units  
1 & 2)

Place - Silver Spring, Maryland

Date - Monday

THIS DOCUMENT CONTAINS

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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: In the Matter of : Docket Nos.  
: :  
: TOLEDO EDISON COMPANY :  
: : 50-346A  
: (Davis-Besse Nuclear Power : 50-550A  
: Station, Units 1, 2 and 3) : 50-501A  
: :  
: and :  
: :  
: CLEVELAND ELECTRIC ILLUMINATING :  
: CO., et al. : 50-440A  
: : 50-441A  
: (Perry Nuclear Power Plant, Units :  
: 1 & 2) :  
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First Floor Hearing Room  
7415 Eastern Avenue  
Silver Spring, Maryland

Monday, June 14, 1976

The hearing in the above-entitled matter was  
reconvened pursuant to adjournment  
at 1:30 p.m.,

BEFORE:

DOUGLAS RIGLER, Chairman

JOHN FRYSIK, Member

IVAN SMITH, Member

Appearances:

(As Heretofore noted.)

C O N T E N T S

	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Voir Dire</u>
1						
2						
3	William M. Lewis					
4	(Recalled)		11,338	11,443	11,445	

	<u>Exhibits</u>	<u>For Identification</u>	<u>In Evidence</u>
5			
6			
7			
8			
9	Applicants Exhibit 180 (OE) (handwritten notations dated 6-11-75)	11,340	11,398
10			
11	Applicants Exhibit 182 (OE) "Interconnection Agreement Between the Ohio Edison Company and the City of Orrville"	11,358	"
12			
13	Applicants Exhibit 183 (OE) Letter dated Oct. 31, 1973 from Mr. Sinnot to Mr. Williams, with attachment entitled "City of Orrville, Ohio Transmission Inter- Connection and Production Cost Study, Explanation of Calculations"	11,364	"
14			
15	Applicants Exhibit ... No. 181(OE) two-page document dated 2-7-74, handwritten notes.)	11,356	"
16			
17	Applicant's Exhibit 184 (OE) Handwritten notations entitled "Orrville, re meeting on 10-22-73"	11,371	"
18			
19	Applicant's Exhibit 185 (OE) Letter dated Oct. 29, 1974, from Mr. Lewis to Mr. Williams	11,395	"
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C O N T E N T S (Cont'd)

<u>Exhibits</u>	<u>For Identification</u>	<u>In Evidence</u>
Applicants Exhibit 186 (Agreement between City of Orrville, Ohio, and Ohio Power Company, dated June 1, 1974)	11,400	
Applicants Exhibit 187 (Cover letter dated June 24, 1974 from Mr. Phillip Autrey to Mr. Williams)	11,405	11,441
Applicants Exhibit 188 (Letter dated June 27, 1974, from Mr. Lewis to Mr. Williams)	11,437	

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P R O C E E D I N G S

2 CHAIRMAN RIGLER: Mr. Lewis, I guess we will  
3 start by reminding you that you continue under oath.

4 MR. LEWIS: Yes, sir.

5 Whereupon,

6 WILLIAM M. LEWIS

7 was recalled as a witness and, having been previously  
8 duly sworn, was examined and testified further as follows:

9 CPOSS-EXAMINATION

10 BY MR. STEVEN BERGER:

11 Q Prior to your return today, can you tell me  
12 what documents you looked at in preparation for your  
13 testimony today?

14 A I looked at a copy of the notes that I  
15 prepared during a meeting at Ohio Edison's Offices on  
16 June 11, 1973, I think -- that was the year, I think.

17 I looked at a sketch of three diagrams showing  
18 transmission lines and substations that I was told was  
19 prepared by Mr. Firestone.

20 Q And that is the extent of what you have looked  
21 at?

22 A Yes, sir.

23 Q Did you look at the transcript of your  
24 testimony here the last time?

25 A I looked at a couple of pages of that

1 transcript back weeks ago. But that was about all.

2 Q When you were last here, we talked a bit about  
3 the files that you had on the negotiations for the 128 kV  
4 interconnection with Ohio Power and with Ohio Edison and  
5 you have made those files available to the Department  
6 of Justice, and I have copies of them now through the  
7 Department.

8 Did you look at those files and the contents  
9 of those files prior to your testimony here today?

10 A Yes.

11 Q Included in those files were the notes that  
12 you took of the June 11, 1973, meeting?

13 A Yes.

14 Q Along with a great many other documents, as  
15 well?

16 A Yes, sir.

17 Q Now, the files that you sent to the Department  
18 of Justice -- I believe it was your secretary who sent them;  
19 is that correct?

20 A Yes.

21 Q There were really two files; is that correct?

22 A Yes.

23 Q There was one file that was marked "Orrville  
24 Temporary Power Negotiations and Engineering-General."  
25 And another filed entitled "William M. Lewis and Associates,

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file number 178.1.0-Negotiations for Interconnection Agreement-General."

Does that sound right to you?

A That sounds right, yes.

Q Mr. Lewis, when you were last here, and I'm referring now to page 8019 of the transcript, I asked you, and I'm quoting now, "Y... read your notes of the June 11 meeting prior to your testifying here today; is that correct?" and you answered, "Yes, I did." "You did that yesterday?" You answered, "Yes, sir."

"Do you recall the specific negotiations with transmission services in your notes?"

And your answer is, "Yes, yes, I did."

MR. STEVEN BERGER: Your Honor, let me mark for identification as Applicants Exhibit 180 (Ohio Edison,) handwritten notations dated 6-11-75, entitled "Orrville, re Meeting" -- and I can't read the next word -- "Ohio Edison at Akron."

MR. PERI: I think that is with EO.

(The document referred to was marked Applicants Exhibit (OE) No. 180 for identification.)

BY MR. STEVEN BERGER:

Q Mr. Lewis, are those your notes of the June 11, 1973 meeting that you testified that you read prior to

bw4 1 to testifying here today?

2 A Yes, they appear to be.

3 Q Are those the same notes you read the day before  
4 you testified the last time you were here?

5 A Yes, sir, they appear to be.

6 Q And the same notes that you said that there  
7 was a specific notation with regard to transmission  
8 services?

9 A Yes, sir.

10 Q Can you find that notation for us?

11 A It is on page 2.

12 It is the upper part of the page 2.

13 It starts with the word "Lewis-Orrville. Not interested  
14 in standby capacity. True interconnection with emergency  
15 energy, short-term, limited term, transmission."

16 MS. URBAN: Excuse me. I notice that the  
17 copies that Mr. Berger has handed out are not that clear.  
18 The Department has much better reproductions, if anybody  
19 would like to have a copy that is more readable.

20 BY MR. STEVEN BERGER:

21 Q That is the specific notation you had  
22 reference to, when we talked about whether or not your  
23 notes reflected the request of Orrville for wheeling, and  
24 Mr. Mansfield's refusal?

25 THE WITNESS: Can I have the question back,



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1 (Whereupon, the Reporter read the  
2 pending question, as requested.)

3 THE WITNESS: The answer is, yes.

4 MR. STEVEN BERGER: It is your understanding of  
5 a true interconnection agreement that it provides for  
6 hweeling?

7 MS. URBAN: Objection.

8 Mr. Chairman, when Mr. Lewis was here the last  
9 time — the last time Mr. Lewis appeared the Board stated  
10 the cross-examination concern'ng the wheeling was to have been  
11 completed on that day and the Board stated on 8040 of the  
12 transcript that the cross-examination on wheeling was  
13 concluded.

14 I believe we have gone far enough in an area that  
15 was supposed to be concluded at that time.

16 CHAIRMAN RIGLER: The problem is, we did not have  
17 these notes at that time.

18 MS. URBAN: No, we did not.

19 CHAIRMAN RIGLER: I will permit him to cross-  
20 examine with respect to these notes.

21 Let me hear the pending question.

22 (Whereupon, the reporter read the  
23 pending question, as requested.)  
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MS. URBAN: Objection; that question does not seem to be based on the notes.

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CHAIRMAN RIGLER: I was having that problem with it, too.

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MR. STEVEN BERGER: I do believe Your Honor has certainly recognized my right to examine on the notes and matters raised by the notes. Mr. Lewis testified that the notation he made with regard to the question of Orrville requesting and Ohio Edison allegedly refusing wheeling services is reflected as he so testified after true interconnection agreement to -- I can't make out the other word --

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THE WITNESS: With. The other word is "with."

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MR. STEVEN BERGER: With. Emergency energy standby, short-term, limited term, and then it says transmission. This is something raised by the notes. I'm asking the witness whether or not it is his understanding of the true interconnection agreement, whether wheeling is something that is normally contemplated by that.

MR. LESSY: We join in the objection of the Department. You could ask whether or not the interconnection agreement he asked for, based on these notes, included transmission. Whether or not true interconnection includes transmission is irrelevant.

CHAIRMAN RIGLER: I'm having problems with the question. It seems you are assuming a relationship between

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1 the interconnection agreement reflected in the notes and  
2 transmission, which may or may not exist. With the  
3 discussion and objection, certainly the witness is now, let's  
4 say, alerted to his answer. I will overrule the objections.

5 You may answer.

6 THE WITNESS: I have trouble as to whether his  
7 question is directed to what I wrote here, as to whether  
8 that included transmission or whether he is saying the normal  
9 interconnection agreement contains an interconnection clause.  
10 I don't know how to answer.

11 CHAIRMAN RIGLER: That is the problem I was having  
12 with his question, Mr. Lewis. You may answer both ways.

13 THE WITNESS: All right.

14 CHAIRMAN RIGLER: Is that satisfactory, Mr. Berger?

15 MR. STEVEN BERGER: That is fine.

16 THE WITNESS: An interconnection agreement may  
17 or may not contain "and transmission service." Many do and  
18 many don't. What I was referring to in my notes is that  
19 Orrville is not interested in simply a standby capacity  
20 agreement that Mr. Mansfield was proposing. But rather  
21 we wanted, as I phrased it, a true interconnection agreement  
22 with all of the component, including emergency energy,  
23 short-term power, limited-term power, and transmission  
24 service.

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1 BY MR. STEVEN BERGER:

2 Q Is it your testimony that Mr. Mansfield refused  
3 that request?

4 A Yes.

5 Q Where in the notes is that reflected?

6 A I don't know that I particularly said he refused  
7 that. He said in my item 3 on page 1 that he had no legal  
8 choice and I notice that the word "legal choice" were his  
9 words, but to give Orrville an interconnection, and he  
10 further said he didn't necessarily have to give us a  
11 synchronous interconnection, but he wouldn't oppose it as long  
12 as there weren't technical problems in doing it.

13 Then the matter of standby was discussed. Mr.  
14 Firestone discussed that. And the general discussion that was  
15 going along was that or Orrville was not interested in this  
16 type of arrangement. We wanted an interconnection that  
17 would provide the services I have just mentioned

18 Then you will notice that Mr. Mansfield went on  
19 to say that the emergency was not equitable and that that  
20 was the position that Mr. Mansfield took, as I recall.

21 Q And the basis of your statement that Ohio Edison  
22 refused to wheel for the City of Orrville are the statements  
23 that you have just attributed to Mr. Mansfield?

24 A Could I have that read, please?

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

1 THE WITNESS: Yes.

2 BY MR. STEVEN BERGER:

3 Q Mr. Lewis, you also testified the last time that  
4 you were here, and I'm referring now specifically to page  
5 8002 of the transcript in answer to a question by me,  
6 what portion of that was communicated at the June 11, 1973  
7 meeting to Ohio Edison.

8 You answered, during the June 11 meeting, I  
9 personally discussed the arrangement that Orrville had AMP-O  
10 for the exchange of capacity and energy.

11 Could you find for me where in the notes that is  
12 reflected?

13 A I don't see it in these notes that I have in front  
14 of me.

15 Q I'm reading from 8002.

16 Continuing your answer, you said, secondly, you  
17 discussed the matter of emergency power supply from AMP-O  
18 to Orrville.

19 Can you find where that is reflected in the  
20 notes?

21 A Yes, on page 2. In the same place that the  
22 transmission is stated, emergency energy is stated. Also down  
23 under Mansfield, just below that section where it says  
24 Lewis, dash, then Mansfield, dash, Mansfield, and I discussed  
25 the emergency.

1 Q You were talking about emergency service from  
2 AMP-O using Ohio Edison's line here?

3 A No, in that particular case we were discussing  
4 emergency from Ohio Edison.

5 Q I asked you, I said the last time you were  
6 here, you testified, and I'm quoting, "I discussed the  
7 matter of emergency power supply from AMP-O to Orville."  
8 That was at the June 11, 1973 meeting.

9 My question was where in the notes was that  
10 reflected?

11 A I see. I didn't understand that you said from  
12 AMP-O. I don't see it about AMP-O.

13 Q You further stated, the last time you were there  
14 that, "I discussed the matter of short-term power supply  
15 from AMP-O to Orrville."

16 Is that reflected in the notes?

17 A No.

18 Q "I discussed the matter of limited term or  
19 annual capacity and energy from AMP-O to Orrville." Is  
20 that reflected in the notes?

21 A No, except that all of those items, emergency,  
22 short-term, limited term, could well have been discussed in  
23 relation to AMP-O at the same time I made the note where  
24 I said I was not interested in standby. The discussion  
25 could have gone something to the extent of why Orrville needed

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1 transmission service. I could have well discussed that  
2 at that point.

3 In other words, it is impossible for me to be  
4 involved in a discussion and write down specifically what  
5 is said. I make notes in general to refresh my memory and  
6 without trying to set down each specific word that is used.  
7 It is impossible to do that.

8 Q After you go back to your office from a meeting with  
9 handwritten notations, do you as a regular course then dictate  
10 to your secretary from those notes as to your recollections  
11 of what took place at the meeting?

12 A That is my normal practice, yes, sir. I usually  
13 either dictate to her directly or I dictate on a tape and quite  
14 often I will try to just maybe summarize the meeting as  
15 I remember it, and then give her my handwritten notes.

16 Sometimes she can read my notes. Sometimes she  
17 can't. She will come back to me and ask questions and she  
18 fills in from there.

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Q Sometimes the reading of the notes will reflect something or jar something in your recollection that wasn't specifically noted, and you will include that in the typewritten version of the notes.

A Quite often, yes, sir.

BY MR. STEVEN BERGER:

Q Mr. Lewis, I believe you have a document in front of you which is a memo dated June 12, 1973 from yourself to file, and the subject is "Meeting with Ohio Edison Company on June 11, 1973.

Are these typewritten notes of your meeting had on June 11, 1973, that we were just talking about?

A Yes.

Q Can you find for me in there any discussion of wheeling?

A I don't see the particular word "wheeling," no, sir.

Q Transmission services?

A No, sir.

Q An indication that Mr. Mansfield speaking on behalf of Ohio Edison refused such

A I notice that my Section 5 in the typewritten notes is probably taken from the section on page 2 of the handwritten notes that was labeled "4." And I mention emergency energy and short-term. I notice I did not



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discuss an interim arrangement whereby Orrville could receive some emergency or standby power until the interconnection was made.

Now, by the word "emergency, That is not -- I'm not using that in the same context as emergency service that is used in my notes here.

That is the notes we have just been referring to.

Q What did you want clarified about Mr. Mansfield's letter?

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1 mention limited term and transmission, as I did in  
2 my handwritten notes.

3 Q Do you see AMP-O discussed anywhere in these notes?

4 A No, sir.

5 Q Any discussions at all from third party sources  
6 to Orrville?

7 A No, sir.

8 Q Any refusal by Mr. Mansfield with regard to such?

9 A No, I don't see any reference in these notes  
10 that says that.

11 Q Mr. Lewis, the last time you were here, you stated,  
12 and I'm quoting now from page 8003 -- really, it started  
13 at the bottom of page 8004, I asked the question, "Subsequent  
14 to the June 11, 1973, meeting, was the subject the transmission  
15 service every again raised by the City of Orrville with  
16 with Ohio Edison?"

17 "Answer. Yes."

18 "Question. When was that?"

19 "Answer. On February 7, 1974."

20 Is it your testimony that the subject of wheeling  
21 was discussed at the February 7, 1974, meeting?

22 A Yes.

23 Q And what was the purpose of that meeting?

24 A The purpose of that meeting was to clarify some  
25 technical details of the proposed interconnection and also to

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1 A Well, one of the things that I recall was  
2 clarification of the load control, metering instrumentation  
3 on just how we would go about this if we --

4 Q Just so the Board understands what we are talking  
5 about, Mr. Mansfield's letter of August 24, 1973 to Mr.  
6 Williams of the City of Orrville, which I believe is in  
7 evidence as Applicant's 108 -- I'm sorry to have cut  
8 you off, Mr. Lewis. If you like what you have thus far  
9 stated to be read back, we will.

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

12 MR. LESSY: Before Mr. Lewis continues his  
13 answer, I will object. I thought the cross-examination  
14 was to be limited to notes, Applicant's Exhibit  
15 180, or maybe Applicant's 127.

16 Now we are crossing on everything that was  
17 crossed on before the last time.

18 MR. STEVEN BERGER: I have further notes to  
19 put in of Mr. Lewis' meeting of February 7, 1974, and  
20 I'm laying a foundation for those now, Mr. Chairman.

21 CHAIRMAN RIGLER: We will overrule the objection  
22 at least temporarily.

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

25 THE WITNESS: On just how we would go about this if

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1 we were receiving power from AMP-O.

2 BY MR. STEVEN BERGER:

3 Q Mr. Lewis, do you remember the last time when  
4 you were here, I asked you the question after receipt of Mr.  
5 Mansfield's letter what services did you expect to take  
6 place over the proposed interconnection between Ohio Edison and  
7 the City of Orrville, and you stated in effect, "I didn't  
8 expect any services to flow over that interconnection."

9 Do you recall that?

10 A No.

11 Q On page 8011 of the transcript, I asked you the  
12 question when you got a copy of the August 24, 1973  
13 letter from Mr. Mansfield, what services did you think Ohio  
14 Edison was going to provide the City of Orrville of this  
15 synchronous intertie.

16 Answer, "Based on what Mr. Mansfield had told us,  
17 I didn't think they were going to furnish any."

18 Does that refresh your recollection?

19 A Well, it doesn't refresh my recollection. If that  
20 is what the transcript says, I'm sure I said it.

21 Q Did you want to have clarified at this February  
22 7, 1974 meeting the services that would take place over the  
23 synchronous intertie?

24 A I don't recall that at the February meeting, that  
25 we were particularly trying to clarify the services except for

1 a temporary or interim arrangement for standby or emergency  
2 service which again, emergency service is not in the  
3 same context as I use it in the interconnection agreement  
4 that was proposed and discussed during the meeting on June  
5 11. The meeting in February was more of a clarification  
6 with engineering personnel. On just what the facilities  
7 would consist of if the interconnection came about and how those  
8 various facilities would be used in coordination with Ohio  
9 Edison.

10 . Similar meetings were held with Ohio Power  
11 concerning the same thing.

12 Q Let me see if I can understand this. The last time  
13 you were here, you testified that the only two meetings you had  
14 with Ohio Edison re the question of 138 kV possible inter-  
15 connection with Ohio Edison was on June 11, 1973 and February  
16 7, 1974; is that correct?

17 A Yes.

18 MR. LESSY: I'm going to object. Mr. Lewis  
19 has already been crossed -- as I recall, the note thing came  
20 up in connection with we had requested a copy of engineering  
21 studies. Mr. Berger said at that time he wanted  
22 everything in Mr. Lewis' file. The Board limited the scope  
23 of the cross. We are now recrossing the entire testimony. We  
24 can go back and look up transcript references, but I think  
25 we are well beyond what I thought was to be Mr. Lewis'  
third return here for examination.

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2 MR. STEVEN BERGER: I think the Board is aware  
3 of the circumstances under which I was required to cross-  
4 examine Mr. Lewis the last time he was here.

5 I feel I should be given as much latitude as  
6 possible to develop the Orrville story as far as I can.

7 The Board has always shown an interest in  
8 trying to get at what the true facts are.

9 I'm going in that direction. I'm not harassing  
10 the Witness.

11 I'm trying to get to the Board as good an  
12 understanding of what took place through Mr. Lewis, as I  
13 possibly.

14 MR. LESSY: He has already asked a line of  
15 questions on Applicants 108.

16 MR. STEVEN BERGER: It will become apparent  
17 with further documents, I will be putting in, why it is  
18 I'm trying to get from Mr. Lewis his understanding of the  
19 negotiations that took place between Ohio Edison and Orrville  
20 on the 138 kV interconnection.

21 If it is necessary for me to ask the Board to  
22 continue this line on a subject to continuation basis,  
23 I will do so.

24 CHAIRMAN RIGLER: Overruled.

25 BY MR. STEVEN BERGER:

Q Is it correct that the only two meetings you had

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1 with Ohio Edison on behalf of the City of Orrville re the  
2 question of 138 kV , was the June 11, 1973, meeting and  
3 the February 7, 1974 meeting?

4 A Yes.

5 Q After the receipt of the August 24, 1973, letter  
6 from Mr. Mansfield, you testified that you didn't expect  
7 any services to be made available over this line by  
8 Ohio Edison.

9 Did anything take place after August 24, 1973,  
10 to change your mind with regard to that?

11 A No, except I would like to qualify my  
12 answer to this extent, that by services I mean the services  
13 now of emergency energy, short-term power, limited-term power  
14 and transmission service.

15 And my basis was simply the fact of Mr. Mansfield's  
16 position at the time of the June 11 meeting.

17 MR. STEVEN BERGER: I would like to have marked  
18 as Applicants Exhibit 181 (Ohio Edison), a two-page document  
19 dated 2-7-74 which are handwritten notes.

20 (Whereupon, the document  
21 referred to was marked  
22 Applicants Exhibit 181(OE)  
23 for identification.)

24 MR. STEVEN BERGER: Before I examine on this  
25 document, you will have to give me help. The files made

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1 available to us, more specifically, the file entitled  
2 "Temporary," and I emphasize the word "temporary"  
3 "power negotiations and engineering-general," contained  
4 these two pages.

5 Now, I don't know that the page attached to the  
6 list of people who were present on 2-7-74 are notes that  
7 were taken or are not.

8 Perhaps you can enlighten me.

9 MS. URBAN: Mr. Chairman, could we let Mr. Lewis  
10 take a look at the file from which the notes came?

11 Maybe it would give him a better idea of what  
12 order they were in.

13 THE WITNESS: I don't need that, Mr. Chairman.

14 The answer to your question is that the second  
15 page, the writing at the top half is not my writing.

16 The writing at the bottom are some things  
17 that the Ohio Edison people requested and if my memory  
18 serves me correctly, I sent them to, I think, Bob Dawson  
19 at the later time.

20 BY MR. STEVEN BERGER:

21 Q Other than -- are the notations that you  
22 made at the bottom, are those your handwritten notations?

23 A Yes, they are.

24 Q Are those notes that you took at the 2-7-74  
25 meeting?

A Yes, sir.

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2 Q Other than those notations and the list of the  
3 people reflected on the document entitled 2-7-74, were there  
4 any other notes you took on February 7, 1974 at the meeting  
5 you had with Ohio Edison?

6 A I don't know.

7 Q Is there anything else contained in your file?

8 A I would assume there is not since my girl copied  
9 the entire file for you.

10 Q Do you have an independent recollection of taking  
11 notes beyond what is reflected in Applicant's 181?

12 A No.

13 CHAIRMAN RIGLER: Mr. Lewis, could you read for us  
14 the first two lines on the second page that are in your  
15 handwriting there?

16 THE WITNESS: One line of station, impedance of  
17 transformers.

18 CHAIRMAN RIGLER: Okay.

19 THE WITNESS: That stands for impedance.

20 MR. STEVEN BERGER: I would like to mark as  
21 Applicant's 182 Ohio Edison a document entitled "Interconnec-  
22 tion Agreement Between the Ohio Edison Company and the City  
23 of Orrville."

24 (The document referred to was  
25 marked Applicants OE-182,  
for identification.)

1 MS. URBAN: Mr. Chairman, I believe Mr. Berger  
2 appears to have completed his cross-examination concerning  
3 the wheeling and concerning meetings that took place  
4 after the June 11, 1973 meeting.

5 Now he has introduced no new notes concerning that  
6 meeting other than something with two lines and a list of  
7 attendees. In light of the fact he has not introduced any-  
8 thing that was discovered from an examination of Mr. Lewis'  
9 files that the line of questioning concerning the wheeling  
10 beyond that concerning the June 11, 1973 meeting should be  
11 struck.

12 CHAIRMAN RIGLER: Denied.

13 MR. STEVEN BERGER: Do you want a response?

14 CHAIRMAN RIGLER: Denied.

15 BY MR. STEVEN BERGER:

16 Q Does the witness have a copy of Applicant's 182  
17 marked for identification?

18 A I have a copy of the interconnection agreement  
19 between the Ohio Edison Company and City of Orrville.  
20 I don't know what it is marked, there is no marking on it.

21 Q Have you seen that document before?

22 A Yes, it appears to be a document I have seen  
23 before.

24 Q When did you see it?

25 A I don't know.

1 Q Do you know who prepared it?

2 A Yes.

3 Q Who?

4 A Mr. Ray Williams.

5 Q Can you tell me when it was prepared?

6 A No, sir.

7 Q You have no recollection at all with regard to the  
8 preparation of this document?

9 A Could I have that question read back, Mr. Chairman?

10 (Whereupon, the reporter read the pending  
11 question, as requested.)

12 THE WITNESS: I just got through saying Mr. Ray  
13 Williams prepared it.

14 BY MR. STEVEN BERGER:

15 Q And you don't know when he prepared it?

16 A I do not know when he prepared it.

17 Q You see that it provides for emergency service?

18 A Yes, I do.

19 Q Economy service?

20 A Yes.

21 Q Short term power?

22 A Yes.

23 Q Do you have any reason to believe Mr. Williams  
24 prepared this at any time other than after the negotiations  
25 started with Ohio Edison?

1 MR. LESSY: I object. The witness says he  
2 doesn't know when he prepared it.

3 MR. STEVEN BERGER: He knows Mr. Williams. He  
4 knows how Mr. Williams operates. I'm asking him on that  
5 basis.

6 CHAIRMAN RIGLER: Overruled.

7 THE WITNESS: Mr. Chairman, may I have that read?

8 CHAIRMAN RIGLER: He asked if you know whether Mr.  
9 Williams prepared this prior to or after the commencement of  
10 the negotiations with Ohio Edison.

11 THE WITNESS: Mr. Chairman, that is where I'm  
12 having a problem. I don't know what he means by commencement  
13 of negotiations. If he means the meeting of June 11, then, yes,  
14 this document was prepared prior to that time.

15 BY MR. STEVEN BERGER:

16 Q You know that the document was prepared prior to  
17 June 11, 1973?

18 A Yes, sir.

19 Q What is the basis for that?

20 A Because this document was sent to Mr. Mansfield,  
21 perhaps a year before that meeting was ever held.

22 Q You have something to evidence that?

23 A I beg your pardon?

24 Q You have something to evidence that?

25 CHAIRMAN RIGLER: Wait a minute.

ar5

1 BY MR. STEVEN BERGER:

2 Q Does he have something to show that the document  
3 was sent to Mr. Mansfield a year before that meeting took  
4 place?

5 CHAIRMAN RIGLER: Overruled.

6 THE WITNESS: I didn't say it was precisely a  
7 year. As far as evidence, I have my own memory. If that is  
8 not evidence, then that is all I have. But I know that  
9 this document was sent to Mr. Mansfield some time prior to  
10 our meeting.

11 MR. STEVEN BERGER: I will need a moment, Mr.  
12 Chairman.

13 BY MR. STEVEN BERGER:

14 Q Mr. Lewis, isn't it true that it was a letter  
15 that was sent by Mr. Williams a short time before the June  
16 11, 1973 meeting that was the first contact that the City  
17 of Orrville made with Ohio Edison for the purpose of negotiating  
18 a 138 kV interconnection with Ohio Edison?

19 A No, I don't think that is true.

20 Q So you think that before this latest round of  
21 negotiations in 138 kV, there was an earlier round of 138 kV  
22 negotiations?

23 A Yes.

24 Q Were you a part of those negotiations?

25 A No.

1 Q Did anybody else serve as a consultant for the  
2 City of Orrville in connection with those negotiations?

3 A I don't know.

4 CHAIRMAN RIGLER: I don't want the record to get  
5 sloppy here. I'm not sure you two are talking about the  
6 same thing when you say negotiations.

7 MR. STEVEN BERGER: I think we are. I'm only  
8 talking about negotiations for the establishment of 138 kV  
9 interconnection.

10 CHAIRMAN RIGLER: By negotiations, do you mean  
11 meetings to discuss the terms of an agreement or expressions  
12 of interest?

13 MR. STEVEN BERGER: Do you know if there were  
14 negotiations precipitated by this agreement?

15 THE WITNESS: I was told there were, yes, sir.

16 BY MR. STEVEN BERGER:

17 Q Who were you told by?

18 A Mr. Williams.

19 MR. STEVEN BERGER: Your Honor, I would like to  
20 mark for identification as Applicant's Exhibit 183 Ohio Edison  
21 a letter dated October 31, 1973 from Mr. H. Elmo Sinnott  
22 to Mr. R. S. Williams, director of utilities, with an  
23 attachment entitled "City of Orrville, Ohio, Transmission  
24 Interconnection and Production Cost Study, Explanation of  
25 Calculations."

1 (The documents referred to  
2 were marked Applicant's OE  
3 183, for identification.)

4 BY MR. STEVEN BERGER:

5 Q Mr. Lewis, are you familiar with this document?

6 A Yes.

7 Q Did you help prepare it?

8 A No.

9 MR. LESSY: Mr. Berger, could I have a chance to  
10 read it? This is a multi-page document that we have never  
11 seen before. Can we have five minutes to read it?

12 MR. STEVEN BERGER: Certainly.

13 The witness' answer to my question as to whether  
14 or not he took part in its preparation was no.

15 THE WITNESS: The answer is no.

16 CHAIRMAN RIGLER: We will take five minutes.

17 (Recess.)

18 BY MR. STEVEN BERGER:

19 Q Mr. Lewis, before we discuss Applicant's 183,  
20 which is Mr. Sinnot's letter of October 31, '73, let me go  
21 back for a moment to Applicant's 182, which is the draft  
22 contract for 138 kV interconnection between Ohio Edison  
23 and Orrville. When you were last here, you testified on  
24 page 7941 as follows:

25 And the questioning from Mr. Berger from the

1 Department of Justice:

2 "After Orrville decided to seek an interconnection,  
3 do you know if they contacted any of the CAPCO  
4 companies in the hope of securing such an interconnection?"

5 Your answer was, "Yes, they did."

6 "right."

7 "Edison Company," you state.

8 "Edison?"

9 "Edison

10 Cor use on that

11 dr attended and

12 s hat the meeting

13  
14 In which were leading up

15 to the June 11, 1973 meeting, ve in mind the

16 earlier negotiations which you have just testified to that

17 took place, that Mr. Williams advised you of with regard

18 to the establishment of 138 kV interconnection?

19 A What I had in mind was the arrangement for the  
20 meeting on June the 11th.

21 Q When the parties meet on June 11th, 1973, the --  
22 strike that.

23 When they meet on June 11, 1973, was the tenor of  
24 the meeting such that you were left with the impression that  
25 the parties had already met with regard to the question of the

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1 establishment of an interconnection agreement for 138 kV?

2 A I believe that there was some discussion to the  
3 fact that they had, yes, on maybe several occasions.

4 Q Is that reflected in your notes anywhere?

5 A I don't --

6 Q Is it reflected in your notes anything  
7 other than the parties were meeting for the first time to  
8 establish a 138 kV interconnection?

9 A I don't know if my notes reflect that that was the  
10 first time or hundredth time.

11 Q You have a recollection that on June 11, 1973,  
12 the parties discussed at an earlier negotiation they had on  
13 138 kV?

14 A I didn't say that.

15 Q Tell me what you said.

16 A I said I didn't get any impression that this was  
17 necessarily the first meeting between the parties.

18 Q Let's go back to your notes. Do you have  
19 Applicant's 180 in front of you?

20 A Refresh me as to what 180 is.

21 Q Let's take a look at your typewritten notes which  
22 are Applicant's --

23 CHAIRMAN RIGLER: He stated the notes don't reflect  
24 any reference to an earlier meeting. What is the purpose of  
25 going back to the notes?

1 MR. STEVEN BERGER: If you will indulge me for a  
2 moment. . .

3 BY MR. STEVEN BERGER:

4 Q Looking at your typewritten June 12, 1973  
5 notes, under 2-A, B, C, D, it says that Mr. Williams  
6 presented Orrville's request by describing the Orrville  
7 electric system under A.

8 If they had had earlier negotiations, why would  
9 it be necessary to describe Orrville's electric system?

10 A Why, I think it was necessary to bring Mr. Mansfield  
11 up to date on setting the stage for his benefit.

12 Q Are you speculating now?

13 A No, I'm not speculating. I'm sure that is the  
14 reason why it was done.

15 Q Do you see that the draft interconnection agree-  
16 ment is dated 1973, do you not?

17 MR. LESSY: Which exhibit is that, Mr. Berger?

18 MR. STEVEN BERGER: Applicant's 182.

19 THE WITNESS: No, I don't see that.

20 BY MR. STEVEN BERGER:

21 Q Take a look on the first page inside the cover  
22 page.

23 A I still don't see it.

24 Q Agreement dated blank, 1973.

25 A The first page inside the cover page is another

1 cover page.

2 Q Inside that, you see that it is dated 1973.

3 A Yes.

4 Q Does that help you with regard to when these  
5 earlier discussions took place that Mr. Williams advised  
6 you of?

7 A As to the date?

8 Q Yes.

9 A No. I would suspect that this agreement could  
10 have been prepared in maybe '72 and Mr. Williams didn't  
11 think it would be consummated until '73.

12 Q You testified earlier that Mr. Williams would  
13 send you material back and forth even with regard to  
14 matters that you weren't directly involved in, involving  
15 Orrville; isn't that correct?

16 A Yes.

17 Q Did you find anything in your file or recollect  
18 anything in your file dealing with this earlier round of  
19 negotiations other than Applicant's 182, which is the draft  
20 contract?

21 A I didn't look for anything.

22 Q Do you recall seeing any?

23 A No.

24 Q Let's turn to Mr. Sinnot's letter with attachment  
25 dated October 31, 1973. Now you testified that you did not  
take any part in the preparation of this letter and the study

1 that is attached to it; is that correct?

2 A Yes.

3 Q Did Mr. Sinnot consult you, talk to you with  
4 regard to the matters that he was going to state in the  
5 letter and in the study?

6 A Yes.

7 Q Had Mr. Sinnot attended any of the negotiations  
8 sessions between Ohio Edison and the City of Orrville on  
9 the establishment of 138 kV interconnection?

10 A No.

11 Q Take a look at page 3 numbered item 4. I'm  
12 quoting, "There would be little difference from Orrville's  
13 standpoint between Ohio Power and Ohio Edison contractual  
14 agreements except for," and then under letter A, the cost  
15 of interconnection facilities would be less under an agree-  
16 ment with Ohio Power due to the possible availability of a  
17 convenient tie-in point at the existing 138 kV substation,  
18 approximately six miles west of the city limits; and then  
19 B, a tie to Ohio Power would assist in getting AMP-O  
20 started by making Orrville's excess generation capacity  
21 available and by being AMP-O's first customer.

22 Did Mr. Sinnot discuss that with you?

23 A He could have.

24 Q What basis would he have for concluding what  
25 differences or similarities there were between the contractual

1 agreements then being proposed between Ohio Power and  
2 Ohio Edison other than consultation with you?

3 A He probably read my notes.

4 Q And on the basis of reading your notes concluded  
5 that there was no difference?

6 A I don't know. You would have to ask him.

7 Q You have no recollection of independent discussions  
8 that you had with Mr. Sinnot that would have helped him formu-  
9 late this conclusion?

10 A Mr. Attorney, Mr. Sinnot and I used to have a lot  
11 of discussions. I don't know that we discussed my notes  
12 particularly. We may have.

13 Q Do you agree with his statement?

14 A Which statement?

15 Q That there would be little difference from  
16 Orville's standpoint between Ohio Power and Ohio Edison  
17 contractual agreements except for the two enumerated items  
18 set forth.

19 A No. I don't agree with that.

20 Q Were you present at the October 22, 1973 meeting  
21 that is the subject of Mr. Sinnot's letter of October 31,  
22 1973?

23 A Yes.

24 Q Did you take notes at that meeting?

25 A I don't know whether I did or not. It could have

1 been that Mr. Sinnot took the notes. Usually there are  
2 several of us from the firm. One of us may take notes. The  
3 others may not.

4 MR. STEVEN BERGER: Your Honor, I would like to  
5 mark for identification --

6 MR. LESSY: Can we move into evidence what has  
7 already been identified? That is the procedure we have been  
8 using, Mr. Berger.

9 MR. STEVEN BERGER: -- Applicant's 184, handwritten  
10 notations entitled "Orrville, re meeting on 10-22-73."

11 (The document referred to was  
12 marked Applicant's OE 184,  
13 for identification.)

14 BY MR. STEVEN BERGER:

15 Q Are those your notes, Mr. Lewis?

16 A Yes.

17 Q Will you take a look at the bottom of page 1, under  
18 1.5; it says, and I'm quoting, "There will be little  
19 difference from Orrville's standpoint between OE and OP  
20 agreement."

21 My next page is blank as far as the lead-in for  
22 A and B. I expect it was except for cost of facilities  
23 and then B, the assistance for getting AMP-O started.

24 Does that refresh your recollection any?

25 A Yes, it does.

1 Q In what way?

2 A I prepared these notes on the airplane going to  
3 the meeting. They were not prepared during the meeting,  
4 and as I recall, I prepared them and handed them to Sinnot.

5 Q What was the basis for your notation that I just  
6 quoted more specifically, that there would be little  
7 difference from Orrville's standpoint between an OE and OP  
8 agreement except for the enumerated items?

9 A Because Mr. Sinnot worked on the technicalities,  
10 the physical facilities, the costs. He did not work on the  
11 contractual arrangements for services that were to be  
12 provided.

13 If you will notice, when he wrote his letter,  
14 he said contractual agreements. I don't think he said  
15 contractual agreements. At least I don't see it. So I was  
16 trying to give him an idea of the technical matters and I  
17 don't think that this has any relevance to the services  
18 that were to be provided.

19 Q Take a look on page 3 of the study that is  
20 attached in Mr. Sinnot's letter. Under case 2, the  
21 second sentence, quoting, "The construction of an interconnec-  
22 tion with either Ohio Edison or Ohio Power will provide the  
23 necessary reserve requirement or an amount of purchased power  
24 to cover the single contingency outage and thus allows Orrville  
25 to sell all of its excess power."

1 Do you know Mr. Sinnot's basis for making that  
2 statement in the study?

3 A I think his basis for making that was under a  
4 normal interconnection agreement that would be true. That  
5 is what he was working with.

6 Q A normal interconnection arrangement?

7 A Right. He wasn't getting into the details of  
8 the negotiations between Ohio Edison and --

9 Q Isn't this being presented to the City of  
10 Orrville as analysis of the Ohio Power-Ohio Edison arrange-  
11 ment up until that time?

12 MS. URBAN: Objection. I don't believe the  
13 witness got to finish his prior answer.

14 THE WITNESS: Yes, I was finished.

15 BY MR. STEVEN BERGER:

16 Q Wasn't this study being presented to the City  
17 of Orrville as a complete study on behalf of William M.  
18 Lewis and Associates of the then-existing proposal of Ohio  
19 Power and Ohio Edison?

20 A No.

21  
22  
23  
24  
25



1 Q What was it being presented for, Mr. Lewis?

2 A As I recall it was presented to

3 address itself to one particular item, that was whether or  
4 not Orrville would have some excess generating capacity to  
5 sell to AMP-O and what the cost of that capacity ought to  
6 be to AMP-O.

7 If I'm not mistaken, that was probably the  
8 basis for it.

9 Q Did you prepare anything else, you or your firm  
10 prepare anything else in written form for the City of Orrville  
11 in the way of analysis of the Ohio Power and Ohio Edison  
12 proposals?

13 A Are you saying, did we?

14 Q That is what I'm saying.

15 A Other than this document?

16 Q That is correct.

17 A I would expect we did, yes.

18 Q Did you see it in your file?

19 A Did I see it in my file?

20 Q You said you read your file before you came here,  
21 the files that you turned over to the Department of Justice  
22 that they turned over to us.

23 A Yes, I think I did.

24 I think I did.

25 Q You think you did. Do you want to take a look

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1 at your file and tell me what you are talking about?

2 Do you have your file with you, Mr. Lewis?

3 A Yes.

4 Q Why don't you take a look at it?

5 A What was your question again?

6 Did I prepare any other documents?

7 CHAIRMAN RUGLER: The question was whether  
8 your firm submitted any other documents to the City  
9 of Orrville; is that correct?

10 MR. STEVEN BERGER: Studies.

11 MR. LESSY: That compared interconnections  
12 between Ohio Edison and Ohio Power.

13 THE WITNESS: Yes, I find a document dated  
14 June 27, 1974, which is a letter I wrote that  
15 discussed an agreement, that discussed the proposed  
16 agreements.

17 It was a six-page letter.

18 BY MR. STEVEN BERGER:

19 Q Was that after the contract was signed between  
20 Orrville and Ohio Power?

21 A I don't know whether it was or not.

22 Q Does this refresh your recollection?

23 I'm showing the Witness a document which is  
24 an agreement between the City of Orrville, Ohio, and  
25 Ohio Power Company, dated as of June 1, 1974, and signed.

1 MR. LESSY: I don't understand what has to be  
2 refreshed. I think the question was --

3 MR. STEVEN BERGER: The question was, does that  
4 refresh your recollection with regard to whether the so-called  
5 study you prepared on June 26, 1974, came after the signing  
6 of the Ohio Power agreement with Orrville.

7 Is the agreement signed?

8 THE WITNESS: Yes, this agreement is signed.  
9 But I don't know what date it was signed.

10 BY MR. STEVEN BERGER:

11 Q Does it state on the front, date, June 1, 1974?

12 A Yes, but I don't know whether that was the date  
13 it was signed or not.

14 THE WITNESS: Mr. Chairman, I would like to  
15 qualify that last answer.

16 MR. STEVEN BERGER: There isn't a question  
17 pending.

18 THE WITNESS: Base on this document I have  
19 referred to. The reason I don't know whether that was the  
20 date it was signed is because my letter of June 27, 1974,  
21 closes by saying we trust the above is sufficient  
22 engineering justification for Orrville to enter into the  
23 agreement with Ohio Power.

24 And for that reason, I don't know.

25 CHAIRMAN RIGLER: Are interconnection agreements  
sometimes signed on a date, other than the date on which they

bw4 1 become effective by their terms?

2 THE WITNESS: Yes, sir.

3 BY MR. STEVEN BERGER:

4 Q Other than the June 27, '74, letter, do you see  
5 anything else in your file which is a study prepared by you  
6 or your firm for the City of Orrville, representing analysis  
7 of the proposals made by Ohio Edison and Ohio Power  
8 Company for the establishment of service to Orrville at 138  
9 kV?

10 A Mr. Chairman, before I answer that, could I further  
11 clarify my previous question or answer?

12 CHAIRMAN RIGLER: You may.

13 THE WITNESS: I find something else in the  
14 file that leads me to believe that June 1 was not the  
15 date, because it says here that Council -- this is an agreement  
16 and it is a resolution, and it says whereas Council of the  
17 City of Orrville on the 10th day of June , 1974, by resolution,  
18 unanimously authorize the execution of a contract.

19 That would further lead me to believe that June 1  
20 was not the actual date.

21 BY MR. STEVEN BERGER:

22 Q Nonetheless, they passed that resolution prior  
23 to your letter of June 27th, did they not?

24 A Yes, yes, they did.

25 But that still doesn't mean that is when it was

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1 signed.

2 Q Right.

3 Mr. Lewis, you have made certain allegations  
4 in this case with regard to what Ohio Edison was unwilling  
5 to do, including unwilling to provide emergency power, short-  
6 term power, limited-term power, a refusal to wheel and,  
7 in reviewing your file, I find nowhere in your communications  
8 with the City of Orrville a statement reflecting that to be  
9 the position of Ohio Edison.

10 My question to you is, do you regard those matters  
11 to be of importance with regard to the client you are  
12 representing and negotiating on behalf of in an attempt to  
13 secure a 138 kV interconnection agreement?

14 A Yes, I consider those important.

15 Q If you are evaluating two proposals from  
16 companies with regard to the establishment of such service,  
17 don't you think it is the kind of thing you  
18 should be advising your client of?

19 A Yes, and I did.

20 Q In a written form?

21 A I don't know whether it was written or not, but  
22 I sure told them verbally.

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23

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2 Q Mr. Lewis, when you were last here, you testified  
3 in answer to a question from Chairman Rigler, with regard  
4 to whether or not any other services were discussed at the June  
5 11, 1973, meeting, you said there was some discussion about  
6 standby service.

7 I characterized that in what I was asking for  
8 for Orrville was emergency service if it became apparent  
9 during the discussion that Ohio Edison was thinking of  
10 standby service even to the extent of an open switch,  
11 nonsynchronous type service.

12 Are you stating that the City of Orrville  
13 requested standby service on a synchronous basis at the June  
14 11, 1973 meeting?

15 A I don't recall that they requested standby  
16 service at that meeting with an open switch. I think that  
17 that came about when we were discussing the need for  
18 standby service on a temporary or an interim basis.

19 I don't recall exactly how I answered the  
20 Chairman, but my notes that I have read today would  
21 indicate to me that the standby matter was raised really  
22 by Mr. Mansfield.

23 I think he is probably the one that talked about  
24 standby, because it says there was quite a bit of discussion  
25 my notes say there was quite a bit of discussion about  
the amount of standby capacity required and about

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1 where the interconnection would be made.

2 I have standby in quotes. That would indicate  
3 that probably somebody from Ohio Edison said standby.

4 Q Let's move to the question of standby. Certainly before  
5 the establishment of a permanent interconnection at 138 kV,  
6 Orrville was concerned with trying to get established a  
7 temporary connection for their immediate problems; is that  
8 not correct?

9 A Yes.

10 Q You negotiated with Ohio Power and Ohio Edison  
11 for that purpose as well?

12 A Yes.

13 Q Did you discuss with them synchronous or  
14 nonsynchronous-type of service to be established?

15 MR. LESSY: Who is "them"?

16 BY MR. STEVEN BERGER:

17 Q Ohio Power and Ohio Edison?

18 A Yes.

19 Q did you indicate to them what you wanted?

20 A Yes.

21 Q What was that?

22 A Enough power to get us back on the line, if we  
23 lost all of our generation and enough power to take care of  
24 possible swings that were occurring, because of a welding  
25 load that had been placed or was expected to be placed on the

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1 Orrville system .

2 Q My question was, did you discuss with them —  
3 the choice that Orrville wanted with regard to synchronous  
4 or nonsynchronous standby service?

5 A Your question, sir, was did I discuss synchronous  
6 or nonsynchronous, and I said, yes, I did.

7 Q Did you indicate what Orrville wanted?

8 A Yes.

9 Q did you indicate whether you wanted a synchronous  
10 or nonsynchronous interconnection, in order to establish  
11 standby?

12 A Yes,

13 Q What was that?

14 A Either one.

15 Q No preference?

16 A Yes, sir; we had a preference, but we would  
17 have taken anyone.

18 Q What was their response?

19 A Whose?

20 Q Ohio Power's.

21 A Ohio Power's response was that they didn't  
22 think they could help us with the swings, due to the  
23 welding load, because of the voltage of their distribution  
24 system, and the lack of capacity in it, but that they had a  
25 33 kV line running south of Orrville and, if we wanted to



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1 build a temporary substation out at that line and tie it  
2 into our distribution system, they thought we could  
3 arrange it on a nonsynchronous basis.

4 If we went to synchronous basis, we would have  
5 to use some type of telemetering or control, because  
6 it wasn't feasible to build in 33 kV at that time.

7 Q What was Ohio Edison's response?

8 A They had the same 33 kV line. They also had  
9 a 33 kV line coming into town.

10 They felt they could tie this into the bank of  
11 transformers that were located on the east side of town  
12 through an open switch.

13 They did not expect to take care of our welding  
14 load.

15 They thought they had 3,000 kva capacity in that  
16 line.

17 That's about all I remember.

18 Q Do you remember whether or not they indicated  
19 a willingness or unwillingness to establish synchronous  
20 standby service on that basis?

21 A I'm not sure. I don't believe that they did.  
22 The problem we were having was that there was actually  
23 two requests made. There was an initial request that  
24 did not take into account the problems with the welding  
25 load. That came up later.

bw5 1 And I don't believe that that was on a synchronous  
2 basis.

3 Of course, for there to be any help on the welding,  
4 load that would have to be synchronous

5 Q Did you ever go to either Ohio Power or Ohio  
6 Edison and say that standby service we are talking about  
7 we need it on a synchronous basis.

8 Will you do it for us.

9 A I suppose we did.

10 Q Do you recall having done it at Ohio Edison?

11 A As my memory serves me, I think we did, yes.

12 Q Do you know what their response was?

13 A Their response was they could not handle the  
14 welding load. I'm not even sure that we felt the 3,000  
15 kva was sufficient for the welding load, but perhaps  
16 it was, because I think the welding load was only about  
17 2,000.

18 As I recall they had 3,000 capability  
19 in the line. Let me look just minute here.

20 It seems to me that -- it may have been 2,500,  
21 because I notice my calculations for 25, or that is my  
22 staff's calculations, was for 2,500.

23 That may have been it, rather than  
24 3,000.

25 Q Mr. Lewis, do you remember the last time that

bw6 1 you were here, we had a little discussion about whether or  
2 not Ohio Edison was willing -- excuse me, Mr. Chairman,  
3 do you have a question?

4 CHAIRMAN RIGLER: Go ahead with your question.  
5 At some point I want you to connect up right now --  
6 I'm assuming you are intending to relat this to the proper  
7 area of cross-examination for today.

8 I wonder if we are getting far afield.

9 MR. STEVEN BERGER: The proper area was everything  
10 Mr. Lewis testified to, other than the question of  
11 wheeling and wheeling was only discussed on cross-examination  
12 in regard to the notes that Mr. Lewis produced, which we  
13 didn't have at the time we examined him.

14 My right to cross-examine was unlimited with regard  
15 to everything else he testified to the last time he was  
16 here.

17 BY MR. STEVEN BERGER:

18 Q The last time you were you were here, Mr. Lewis,  
19 do you recall we discussed the question of whether  
20 or not Ohio Edison was willing to provide standby service  
21 to the City of Orrville, if the City of Orrville was going  
22 to establish a permanent interconnection with Ohio Power,  
23 rather than Ohio Edison?

24 A Yes.

25 Q Do you recall what your answer was?

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1 A Not specifically.

2 MR. LESSY: I'm not sure that is a proper  
3 question. Can he recall what his answer was to a previous  
4 question.

5 If he has an answer, why not show it to him?

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MR. REYNOLDS: Is that an objection?

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MR. LESSY: I object. I object because we are

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getting cross-examination on previous cross-examination.

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That was not my understanding of Mr. Lewis' third return here.

5

CHAIRMAN RIGLER: Your first objection is overruled.

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MR. STEVEN BERGER: As to his second objection,

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if I can interrupt, it was on direct examination that

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Mr. Lewis testified, and I believe it was to the Chairman's

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question as to additional services that were discussed and

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the question came up as to the willingness of Ohio Edison

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to provide standby service if they were not the ones whom the

12

City of Orrville chose to interconnect with at 138 kV. That

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is cross-examination.

14

CHAIRMAN RIGLER: It is. That was not the thrust

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of the objection. The objection went to the point as to whether:

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having cross-examined previously, you are allowed to go back

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to that transcript and ask questions based on the prior

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cross-examination.

19

MR. STEVEN BERGER: It was based on the direct

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examination, I said, Mr. Chairman. If you want me to take

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the time to find the portion of the direct it relates to, I

22

will.

23

CHAIRMAN RIGLER: That won't help. The question

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is whether there has been prior cross-examination with

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respect to that direct examination. I'm going to --

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1 MR. STEVEN BERGER: I submit to Your Honor --

2 CHAIRMAN RIGLER: It is not necessary to prolong  
3 it. If we get into the area of cross-examination on  
4 prior portions of the cross-examination, then the Board  
5 on its own motion is going to direct you out of that area  
6 on the basis that it is repetitious.

7 MR. LESSY: Can I get my transcript, or I will  
8 look at somebody's.

9 BY MR. STEVEN BERGER:

10 Q Mr. Lewis, is it your testimony here today --

11 MS. URBAN: Could you wait a second?

12 MR. REYNOLDS: Could I just read, because it  
13 may clear it up and expedite this -- the objections may be  
14 slowing this down as much as anything.

15 At page 8040 of the transcript, in terms of  
16 what cross-examination would be permissible when Mr. Lewis  
17 returned, after Mr. Berger had indicated a completion of  
18 his cross on transmission, discussed at the June 11,  
19 1973 meeting, the Chairman stated that cross would include  
20 cross as to the wheeling issue that was identified  
21 separately by the Department, but it would not include --  
22 what was finished would include cross as to the wheeling issue  
23 that was identified separately by the Department, but it  
24 would not include completion of cross with respect to the matters  
25 the Board went into, or any collateral matters as to which

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1 Applicants would claim insufficient notice.

2 I believe in light of that that collateral  
3 matters would therefore, as far as cross-examination was  
4 concerned, be a permissible area of interrogation insofar  
5 as they relate to the documentation that was received from  
6 Mr. Lewis after a screening of his files as well as the  
7 matters that the Board went into directly when Mr. Lewis  
8 was here before.

9 I'm only stating this because I think it may --  
10 if everybody is clear on the area we are talking about, it  
11 may eliminate some of the objections as to the proper  
12 scope of cross.

13 MR. STEVEN BERGER: At page 7970 of the transcript,  
14 you put the question to Mr. Lewis with regard to standby  
15 service and his response was the response that Ohio  
16 Edison would be happy to work with us if we were going to  
17 eventually interconnect with them, but that if we were  
18 going to interconnect with Ohio Power they felt we should  
19 look to them for a temporary lower voltage supply rather than  
20 to Ohio Edison.

21 BY MR. STEVEN BERGER:

22 Q Mr. Lewis, let me try again.

23 Mr. Lessy, would you please move a little bit.

24 Is it your testimony today that Ohio Edison was  
25 unwilling to provide standby service to the City of Orrville

1 did not choose Ohio Edison as the party that it would  
2 interconnect with at 138 kV?

3 MR. LESSY: I object. The question was covered  
4 on cross-examination by Mr. Berger on pages 8023, beginning  
5 on line 8. Precisely the question is, there was certainly  
6 no understanding in your mind if you went to Ohio Power  
7 for the 138 kV interconnection, that Ohio Edison would be  
8 unwilling to provide standby service, were you?

9 Answer: Why, there most certainly was that  
10 understanding in my mind.

11 Next question: If an offer was made after  
12 February 7, 1974 meeting to provide standby service to the  
13 City of Orrville, wouldn't that run counter to your answer?

14 I think this line was gone into and that was not  
15 my understanding of Mr. Lewis' third return here.

16 MS. URBAN: The Department would join in that  
17 objection. We would note on page 8020 of the transcript,  
18 I believe Mr. Berger asked almost the identical question  
19 he just asked now concerning whether Ohio Edison would offer  
20 standby service.

21 CHAIRMAN RIGLER: What question was that?

22 MS. URBAN: On page 8020. It begins on 8019 and  
23 it says:

24 "Was it also your testimony that Ohio Edison  
25 would not enter into a standby contract with the City of



1 Orrville without an agreement from Orrville to choose Ohio  
2 Edison as the entity with which you would interconnect at  
3 138 kv?"

4 CHAIRMAN RIGLER: I'm going to sustain that  
5 objection. Not based on the Board's desire to cut off the  
6 proper scope of the examination, but this will be a ruling  
7 made pursuant to Section 2.757 under our authority to take  
8 the necessary measures to limit cumulative or repetitious  
9 cross-examination.

10 MR. STEVEN BERGER: I would like to make an  
11 argument in support of a motion to have you reconsider that  
12 ruling without the witness present.

13 CHAIRMAN RIGLER: All right.

14 MR. STEVEN BERGER: Mr. Lewis, will you excuse  
15 yourself for the time being?

16 (Witness temporarily excused.)

17 MR. STEVEN BERGER: I didn't want to indicate  
18 to Your Honor at the time that objections were being made  
19 that the reason for my going into this again is on the  
20 basis of a document which came to my attention for the first  
21 time from Mr. Lewis which is file, a document which I think  
22 will demonstrate to the Board beyond any doubt that  
23 there was a willingness on behalf of Ohio Edison to offer  
24 standby service well beyond the time that Mr. Lewis could  
25 possibly imagine that Ohio Edison was laboring under the

1 belief that it had a chance of 138 --

2 CHAIRMAN RIGLER: You have new evidence that may  
3 impeach his earlier answer?

4 MR. STEVEN BERGER: Absolutely.

5 CHAIRMAN RIGLER: On that basis we will permit  
6 you to ask the question.

7 MR. STEVEN BERGER: Thank you.

8 CHAIRMAN RIGLER: In order to do that, you don't  
9 have to go through the whole prior line.

10 MR. STEVEN BERGER: I wasn't going through the  
11 entire line. I was asking one question to lay the foundation  
12 and refamiliarize the Board with the matter.

13 CHAIRMAN RIGLER: All right.

14 (Witness resumed stand.)

15 CHAIRMAN RIGLER: Mr. Lewis, the Board has  
16 reconsidered its ruling and will permit you to answer  
17 the question. Would you like to have it repeated?

18 THE WITNESS: Yes, sir.

19 (Whereupon, the reporter read the pending  
20 question, as requested.)

21 THE WITNESS: The answer is yes.

22 BY MR. STEVEN BERGER:

23 Q Mr. Lewis, do you remember when you were here  
24 the last time we discussed what is Applicant's 109 Ohio  
25 Edison, a document from Mr. Dawson to Mr. Ray S. Williams,

1 Director of Utilities, Orrville Municipal Utilities, dated  
2 August 30, 1974.

3 I am handing Mr. Lewis a copy of that now.

4 I should note as you are reading this over that the  
5 document as it went into evidence was approved at the  
6 bottom with a date in November of 1974. Mr.  
7 Peri is getting the exact information for me now.

8 MR. LESSY: When was this received into evidence?

9 MR. STEVEN BERGER: April 1.

10 MR. LESSY: It is not a new document that  
11 came into your possession subsequent to Mr. Lewis' last  
12 visit? That was the whole basis for the Board permitting  
13 this line. This was subject of negotiations.

14 MR. STEVEN BERGER: I'm getting there.

15 CHAIRMAN RIGLER: All right, Mr. Berger indicates  
16 that he will connect it, so we will overrule it subject  
17 to renewal.

18 BY MR. STEVEN BERGER:

19 Q Do you recall the discussion about this letter,  
20 Mr. Lewis?

21 A Yes, vaguely. Could I see the transcript where  
22 this was discussed?

23 MS. URBAN: Do you have a reference?

24 MR. STEVEN BERGER: 8029, I believe. 8030.

25 I'm referring to 109. It came into evidence,

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1 signed by Mr. Ray Williams, and dated November 19, 1974.

2 THE WITNESS: I have refreshed my memory on the  
3 discussion.

4 BY MR. STEVEN BERGER:

5 Q Do you recall having seen prior to your testimony  
6 in these proceedings Applicant's 109, which is Mr. Dawson's  
7 letter of August 30, 1974?

8 A I'm not sure when I did see this letter. I think  
9 that when I went back and looked at my files, that Mr.  
10 Williams asked me a question as to whether -- as to what  
11 he should respond to this. It runs in my mind that I  
12 wrote him a letter. But I don't recall exactly when I wrote  
13 the letter.

14 I can find it if you want to take a couple of  
15 minutes.

16 Q I have copies of it and we will be putting  
17 it into evidence momentarily.

18 When Mr. Williams sought your advice with  
19 regard to Mr. Dawson's letter of August 30, 1974, did he  
20 seek your advice as to whether or not there was still a  
21 need for standby service?

22 A Let me find my letter because that would  
23 help me remember.

24 Q I want your recollection right now, Mr. Lewis.  
25 I don't want you to find your letter.

Do you want the question read back?

1 A No.

2 It runs in my mind that there was a question  
3 as to whether it would be advantageous or feasible to pursue an  
4 interconnection on this temporary basis or rather a service  
5 on this temporary basis because of the lateness of the  
6 date, compared to the expected permanent facilities --  
7 completion of the permanent facilities.

8 Q Have you finished?

9 A No.

10 I believe that we were asked to further consider  
11 the fact that the welding load that I spoke about earlier  
12 either didn't materialize as it was expected, that is  
13 from a system disturbance standpoint, or else did not come  
14 on quite as quick as Orrville originally thought it would.  
15 And probably in that context we were asked to advise whether  
16 Mr. Williams should sign this letter and send it back to Mr.  
17 Dawson.

18 Q When Mr. Williams sought your advice and when  
19 you gave that advice, at either of those times was Ohio  
20 Power already selected by the City of Orrville as the entity  
21 with which you would interconnect at 138 kV?

22 A Yes.

23 Q Were you discussing then whether or not to establish  
24 standby service with Ohio Edison?

25 A Yes.

1 Q Wouldn't you be discussing a moot question in light  
2 of your earlier testimony?

3 A No, I don't think so.

4 Q Why is that?

5 A Well, as you know, if we wanted that emergency  
6 interconnection, all we had to do was go to the Federal  
7 Power Commission and get it.

8 MR. STEVEN BERGER: I will mark for identification  
9 as Applicant's 185 Ohio Edison a letter dated October 29, 1974  
10 from Mr. Lewis to Mr. Ray Williams, re temporary power.

11 (The document referred to was  
12 marked Applicant's Exhibit OE  
13 185, for identification.)

14 BY MR. STEVEN BERGER:

15 Q Do you recognize the letter, Mr. Lewis?

16 A Yes.

17 MR. LESSY: Can I have a second, Mr. Berger?

18 (Pause.)

19 Thank you.

20 BY MR. STEVEN BERGER:

21 Q Is this a copy of a letter you sent to Mr.  
22 Williams?

23 A Yes.

24 Q By October 29, 1974, would Ohio Edison have  
25 known to a moral certainty that it was not the entity  
with which the City of Orrville was going to interconnect

1 at 138 kV?

2 A I believe they would, yes.

3 Q Were you not advising Mr. Williams in your  
4 October 29, 1974 letter as to whether or not he should sign  
5 Mr. Dawson's letter of August 30, 1974?

6 A Among other things, yes.

7 Q Isn't it clear to you that at that point in time,  
8 it was open to the City of Orrville to go to Ohio Edison and  
9 say, "We want standby service"?

10 A Could I have that question read back?

11 (Whereupon, the reporter read the pending  
12 question, as requested.)

13 BY MR. STEVEN BERGER:

14 Q Notwithstanding the fact that they had  
15 already contractually obligated themselves to establish  
16 138 kV service with Ohio Power Company?

17 A It was open at that time, Mr. Berger, as it is  
18 open at this time today.

19 Q Via the Federal Power Act, you are suggesting?

20 A No, we can go to Ohio Edison right now if we want  
21 to and ask them if they will establish a temporary inter-  
22 connection.

23 Q Focus in with me for a second, Mr. Lewis, on the  
24 second paragraph of the letter which states, "We have not  
25 pushed either company for a response and the response is to a

1 synchronous intertie for standby service, and frankly I  
2 doubt that they have given the matter sufficient attention  
3 to respond simply because the matter of nonsynchronous  
4 temporary power was considered before, and then became moot."

5 In light of that statement, would you like to  
6 reconsider your statements made with regard to requests to  
7 establish a synchronous interconnection with Ohio Edison for  
8 purposes of standby service?

9 A No.

10 MR. STEVEN BERGER: I have no further questions.

11 I would like to move into evidence Applicant's  
12 Exhibits 180 through 185.

13 MR. LESSY: I don't think any of these documents  
14 have been red-lined. I would like to have red-lining on  
15 182 on the following:

16 Under transmission systems, I would like to have  
17 red-lined the first paragraph, begins with "the parties."

18 Under the next paragraph beginning with the company  
19 on that page, I would like to have red-lined the first  
20 full sentence.

21 On page 3 of that Applicant's 182, I would seek  
22 to have red-lined provision 5, term of the agreement.

23 We would like to note for the record that when  
24 we put documents into evidence, we were required on the first  
25 day of this hearing to put them in and move them in and



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1 argue them as it occurred. And to my feeling, that  
2 broke to some extent, especially for the early witnesses,  
3 much of the strain of the testimony.

4 I would object to the procedure that has been  
5 used in this case has not been complied with.

6 CHAIRMAN RIGLER: Give me the first portion of  
7 the red-linings.

8 MR. LESSY: I object to Applicant's 183 as not being  
9 at all red-lined.

10 I would object to the procedure by which  
11 documents are moved in in bulk after completion of examination  
12 of a witness.

13 CHAIRMAN RIGLER: Respond only to the point about  
14 183 and the red-lining, please.

15 MR. STEVEN BERGER: I had not gone through and  
16 done the red-lining as to the other documents. As to 183, I  
17 would red-line the entire document.

18 CHAIRMAN RIGLER: The objections are overruled,  
19 and in the absence of other objections, we will receive  
20 into evidence Applicant's 180 through 185.

21 (The documents previously  
22 marked Applicant's Exhibits OE  
23 180 through 185 for identifica-  
24 tion, were received in  
25 evidence.)

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1 MR. ZAHLER: Mr. Chairman, Applicants, other than  
2 Ohio Edison, have a little additional cross-examination of  
3 Mr. Lewis.

4 BY MR. ZAHLER:

5 Q I would like to get clear on the record what the  
6 contractual relations are between Orrville, AMP-O and Ohio  
7 Power.

8 Are you familiar with the contracts that have been  
9 negotiated between those parties?

10 MR. LESSY: I object.

11 I don't think that was covered on Mr. Berger's  
12 additional cross today.

13 MR. ZAHLER: As I understand the Chairman's ruling,  
14 the question of the types of negotiations and services  
15 entered into between Orrville and the other parties have  
16 become a matter of issue in this proceeding and Applicants  
17 have not yet had sufficient time to cross-examine as to those  
18 issues.

19 For us this is the first time around, so to speak.

20 CHAIRMAN RIGLER: You may proceed.

21 BY MR. ZAHLER:

22 Q The question is, are you generally familiar  
23 with the contracts entered into with the parties?

24 A And those parties were Ohio Power-AMP Ohio and  
25 Ohio Power-Orrville?

bw2 1 Q Yes.

2 A Yes. I'm generally familiar.

3 I don't have them with me, but I'm generally  
4 familiar with them.

5 Q I want to show you a document dated as of June 1,  
6 1974, and entitled "Agreement Between City of Orrville,  
7 Ohio, and Ohio Power Company," and I request that it  
8 be marked as Applicant's Exhibit 186.

9 (Whereupon, the document  
10 referred to was marked  
11 Applicants Exhibit 186 for  
12 identification.)

13 MR. LESSY: Can I inquire -- after the ending  
14 of page -- after the signature page in the first stack  
15 under Article 3, there was also another agreement.

16 MR. ZAHER: I intended to cover that with the  
17 Witness.

18 MR. LESSY: Between the City of Orrville and  
19 Ohio Power Company.

20 Can you identify what that is?

21 BY MR. ZAHLER:

22 Q Is this the agreement negotiated between the  
23 City of Orrville and Ohio Power?

24 MR. LESSY: Which one?

25 MR. ZAHLER: There is one document.

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BY MR. ZAHLER:

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Q Mr. Lewis, is this the agreement negotiated  
3 between the City of Orrville and Ohio Power?

4

A I don't know.

5

6

Q You told me before that you were generally  
familiar with those agreements?

7

8

A Yes, but sir, I haven't looked at every  
page of this document you have handed me.

9

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Q Then, let's sit here and take a look at it, if that  
is necessary to answer the question.

11

12

MR. SMITH: Mr. Lewis, perhaps we can take a  
break, if you need time.

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The Chairman was called away also.

14

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THE WITNESS: I have a problem with this.  
Can I express the problem.

16

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MR. SMITH: Will you wait until the  
Chairman comes back?

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I was asking about time.

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THE WITNESS: I would rather go right on, if  
we can.

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MR. SMITH: Let's take five minutes.  
The Chairman is not here, and we can't proceed anyway.

23

Let's take a five minutes.

24

(Recess.)

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BY MR. ZAHLER:

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Q The question is whether the document that has been marked as Applicant's Exhibit 186 is the executed agreement between the City of Orrville and the Ohio Power Company.

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A Mr. Chairman, there is my problem. During the negotiations with Ohio Power, AMP-Ohio, and between Amp-Ohio and Ohio Power and Orrville, and particularly at the last moments, there were a lot of documents that were floating around and they were revised and I don't know whether this is the document or not because even at the last there were some documents signed and as I recall, there were some things found wrong with them and then some pages were substituted.

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I can't honestly answer that question.

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Q If you were to go back to your files, could you compare the document that has been marked as Applicant's 186 and a file copy to determine if that is the copy that was executed between Amp-Ohio and Ohio Power Company?

MS. URBAN: I object. It is beyond Mr. Lewis' redirect.

MR. LESSY: It is beyond his direct and cross. If Applicant wants the witness to testify to the Orrville-Ohio Power contract, they should get a witness of their own. I think this is inappropriate at this time. We have brought this witness back here three times under

1 subpoena obviously at the loss of time and money. In view  
2 of the concessions made to certain of the Applicant's  
3 witnesses, Mr. Wilson, for example, I think this is beyond  
4 what is normally done with NRC subpoenas, especially when  
5 the parties other than Ohio Edison are now cross-examining  
6 on something that cross-examined on -- or have made  
7 direct examination on.

8 MR. ZAHLER: I have to take exception to Mr. Lessy's  
9 characterization of the direct.

10 CHAIRMAN RIGLER: I will overrule the objection.

11 In order to save more time, Mr. Zahler, have you  
12 made a comparison of the document you gave to Mr. Lewis  
13 with the actual signed copy of the Ohio Power-  
14 Orrville agreement?

15 MR. ZAHLER: Applicants believe this document  
16 to be the executed agreement. There is no file copy  
17 turned over to us by Mr. Lewis.

18 CHAIRMAN RIGLER: Assuming it is, where is the line  
19 going?

20 MR. ZAHLER: I would like to explain the  
21 relationship of this to two other file copies of Mr. Lewis.

22 MS. URBAN: They could have obtained the  
23 agreement from the Federal Power Commission.

24 MR. ZAHLER: I have no reason to believe this  
25 differs from the Federal Power Commission copy.

1                   CHAIRMAN RIGLER: Where are you going? Let's keep  
2 making progress.

3                   MR. ZAHLER: Can I continue to the line of  
4 questioning? I want to indicate how the documents inter-  
5 relate with one another and exactly what Orrville has contracted  
6 with Ohio Power for and what they have not contracted with  
7 Ohio Power for in light of the testimony of Mr. Lewis which  
8 I think differs from what they contracted for.

9                   CHAIRMAN RIGLER: Can that question --

10                  MR. ZAHLER: I have to introduce two other  
11 contracts.

12                  BY MR. ZAHLER:

13                  Q        I handed you a document which has been previously  
14 identified as NRC Staff Exhibit 141-A, the agreement between  
15 the AMP Municipal Power in Ohio and Ohio Power. Is  
16 this the agreement that is referred to in Section 102 of the  
17 document identified as Applicant's Exhibit 1867

18                  A        Mr. Chairman, I'm looking at Section 102, and I  
19 have the same problem. I don't know whether this is the  
20 document or not.

21                  CHAIRMAN RIGLER: Assuming this would conform with  
22 the signed and executed copy at the FPC, what would your  
23 answer be?

24                  THE WITNESS: Yes.  
25

1 BY MR. ZAHLER:

2 Q Now, Mr. Lewis, there is a third contract, that  
3 is the one between Orrville and AMP-Ohio, is that correct?

4 A Yes, there is such a document.

5 Q I would like to mark as Applicant's Exhibit 187  
6 a cover letter dated June 24, 1974 from Mr. Phillip P. Autrey  
7 to Mr. Ray Williams, a copy to Mr. Lewis, enclosing a  
8 three-page agreement between Americ Municipal Power  
9 Ohio, Inc., and the City of Orrville, Ohio.

10 (The document referred to was  
11 marked Applicant's Exhibit  
12 187 for identification.)

13 BY MR. ZAHLER:

14 Q Mr. Lewis, the document that has been marked  
15 as Applicant's Exhibit 187 was taken from your files and appears  
16 to be an unexecuted copy of the agreement.

17 Was the agreement in fact signed by the party as  
18 in this document?

19 A I don't think so.

20 Q Can you indicate to me what the changes were?

21 A I don't know.

22 Q Do you know whether there were any other copies  
23 of this agreement in your file that were executed that  
24 are different from this copy?

25 A I don't think that there were any other agreements



1 or documents in my file that were different from this,  
2 but I don't believe this is the one that was executed.

3 As I recall, when Mr. Ardery sent this, there  
4 was a meeting. I think the meeting was June 27, in fact,  
5 in Westerville, Ohio. I think at that meeting there were  
6 problems with this and there were changes made.

7 Q Were you present at that meeting?

8 A Yes.

9 Q Can you explain to me what the problems were and  
10 the changes that were made?

11 MR. LESSY: I object. I think we are going  
12 on a fishing expedition. If they want a witness on that,  
13 they should call him themselves.

14 CHAIRMAN RIGLER: I understand your objection.

15 MR. ZAHLER: Mr. Chairman, this was the  
16 document turned over to Applicant pursuant to the request  
17 we made of Mr. Lewis. And this is a document contained in  
18 his files. It seems if Mr. Lewis is contending that the  
19 document is different from what was in his files, I am  
20 entitled to find out what was different.

21 THE WITNESS: I didn't intend to say that. I said  
22 my files didn't necessarily have the agreement that was  
23 finally executed. I want the record to reflect that.

24 MR. ZAHLER: I'm entitled to know Mr. Lewis'  
25 understanding of the agreement that was in fact executed if

1 that differs from this document.

2 CHAIRMAN RIGLER: How does that relate to anything  
3 covered on direct?

4 MR. ZAHLER: It relates to Mr. Lewis' testimony  
5 as to the advantages Orrville saw from interconnecting  
6 with Ohio Power vis-a-vis the advantages or lack of  
7 advantages it saw from interconnecting with Ohio Edison.

8 MR. LESSY: Then put the appropriate document in  
9 evidence and red-line it and we can agree with it.

10 CHAIRMAN RIGLER I'm inclined to agree with  
11 that. Asking him his recollection of changes made isn't  
12 going to get you where you want to go. I will sustain  
13 the objection.

14 MR. ZAHLER: Can we request of Mr. Lewis if he  
15 had a copy of the executed agreement that should have been  
16 turned over?

17 CHAIRMAN RIGLER: He has answered that. He told  
18 you this is what was in his files and he does not think that  
19 is the executed document.

20 Is that your testimony, sir?

21 THE WITNESS: That is my testimony, yes, sir.

22 BY MR. ZAHLER:

23 Q Can I have your understanding of what the signed  
24 agreement provided?

25 MR. LESSY: I'm going to object.

1 CHAIRMAN RIGLER: Sustained.

2 MR. ZAHLER: Could I ask the basis of the  
3 Chairman's ruling?

4 CHAIRMAN RIGLER: No.

5 BY MR. ZAHLER:

6 Q Mr. Lewis, can you take a look at the document  
7 identified as Applicant's Exhibit 186 -- excuse me, I'm  
8 sorry -- the document that has been identified as Staff  
9 Exhibit 141-A, agreement between AMP-Ohio and Ohio Power.  
10 Turn to Schedule A, please, transmission services, Section  
11 2.1, which is page 34 of the agreement.

12 A Yes, sir, I have it.

13 Q About halfway down that page, am I correct that  
14 Ohio Power agrees to transmit from an interconnection  
15 point established pursuant to such supplemental agreement  
16 to a delivery point established pursuant to such supplemental  
17 agreement?

18 Do you see that language?

19 A That is about at the middle of the page.

20 Q That's right.

21 A Where the sentence starts with the word "served,"  
22 is that what you are referring to? Served, transmit  
23 from an interconnection point, established pursuant to such  
24 supplemental agreement to a delivery point established pursuant  
25 to such supplementary agreement.

1 Q That's correct.

2 Does that language establish the path flow of  
3 power under which Ohio Power committed itself to transmit  
4 power for AMP-Ohio patrons?

5 MR. LESSY: I object. I think we are way  
6 beyond the scope of direct and cross.

7 CHAIRMAN RIGLER: What is your reference on  
8 Service Schedule A again?

9 MR. ZAHLER: Page 34, 12 lines down.

10 MS. URBAN: Request we have the question back.

11 (Whereupon, the reporter read the pending  
12 question, as requested.)

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1 CHAIRMAN RIGLER: I will hear the answer to  
2 this, but you better establish a connection soon.

3 MS. UFBAN: Can I have a clarification on the  
4 path flow of power?

5 BY MR. ZAHLER:

6 Q Under that provision does Ohio Power contract  
7 to transmit power from interconnection point to a  
8 delivery point and in that direction only.

9 A Could I have the question reread, please?

10 CHAIRMAN RIGLER: I want the reference again.

11 My page 34 --

12 MR. ZAHLER: We are looking at Staff Exhibit  
13 141-A, the agreement between AMP Ohio and Ohio Power.

14 CHAIRMAN RIGLER: Reread the question please.

15 (Whereupon, the reporter read the  
16 pending question again, as requested.

17 THE WITNESS: Be --

18 MS. URBAN: Mr. Zahler, are you using the  
19 terms interconnection point and deliverypoint as defined  
20 in the front of 1 -- defined in Section 1.01.03 and 1.01.04?

21 MR. ZAHLER: Yes. I am.

22 THE WITNESS: My response to that is I do not view  
23 that as being a one-way direction.

24 BY MR. ZAHLER:

25 Q What is the basis for that analysis?

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1 A Well, there is no language to say that it has to  
2 flow in that direction.

3 And the -- on page -- well, these pages aren't  
4 numbered, but the second page after the  
5 introduction page.

6 It says by providing under this agreement for  
7 the transmission from time to time of a quantity of electric  
8 power and energy from points where bulk transmission  
9 facilities of Ohio Power interconnect with facilities of  
10 AMP Ohio or of patrons of AMP Ohio or with points where  
11 Bulk transmission facilities of other electric systems  
12 to delivery points to be established as provided in this  
13 agreement.

14 Q That is the basis for your statement that we should  
15 not read the language on page 34 of Schedule A to be a  
16 one-way flow of power?

17 A I don't read it that way. I'm not sure whether  
18 you know or not that I'm not a lawyer.

19 Q Mr. Lewis, assuming for the moment that this  
20 Board was to decide as a matter of legal interpretation  
21 that that provision did provide for the flow of power in one  
22 direction only, that is from an interconnection point,  
23 which is defined in Section 1.01.03 and 1.01.04, would  
24 you please turn to Section 1.02 of the agreement between  
25 Orrville and Ohio Power, identified as Applicants 126,  
where the connection between the Orrville system and the

bw3 1 Ohio Power system is deemed to be a delivery point under  
2 Section 1.01.03 of the AMP Ohio-Ohio Power Agreement.

3 A Wait a minute, now.

4 Read back what he said. He has me completely  
5 confused.

6 (Whereupon, the reporter read the  
7 record, as requested.)

8 BY MR. ZAHLER:

9 Q Have you found that?

10 A I have found Section 102. I'm trying to find  
11 1.01.03?

12 Q That is in the other agreement identified  
13 as Staff 141-A.

14 A Okay.

15 Q Now, if this Board was to decide that the  
16 operation on page 34 of the AMP Ohio-Ohio Power contract  
17 provided for one way flow of power from an interconnection  
18 point to a delivery point, isn't it true that under the  
19 arrangement between Ohio Power and the City of Orrville  
20 power could flow only from Ohio Power to Orrville  
21 and not in reverse direction?

22 MR. LESSY: I object to the question. It is  
23 beyond anything that has been covered. It assumes a  
24 hypothetical for a fact witness, and it is not proper --  
25 this is not the appropriate witness, if any, to bring out this

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MR. ZAHLER: Mr. Chairman --

MS. URBAN: The Department joins in the objection of the Staff. I don't believe that the question of this Board's examination and determination as to the meaning of the contract is a question that should properly be put before this witness.

I believe Mr. Zahler has also been misstating the contract.

MR. ZAHLER: The issue I have finally gotten to is Mr. Lewis' testimony that by contracting with Ohio Power the City of Orrville would be in a position to sell its excess capacity.

The point I'm trying to examine Mr. Lewis with, is in light of the definition of interconnection point on delivery point in the AMP Ohio-Ohio Power contract, which is incorporated by reference in the Orrville Power contract and, in light of the provisions of Schedule A of the transmission agreement that Ohio Power will transmit power from an interconnection point to a delivery point, and in light of the fact that the Orrville-Ohio Power contract designates the interconnection between those facilities as delivery points and not an interconnection point, the City of Orrville is, in fact, in no position to sell excess capacity through the Ohio Power system.



1 trying to get at. I'm asking him assuming my interpretation  
2 is correct, does this contract in fact provide for the  
3 sale of excess power by the City of Orrville?

4 MS. URBAN: I believe Mr. Zahler has been  
5 mischaracterizing the contract. An examination of the  
6 various provisions would indicate the fact that Orrville  
7 has been designated as both a delivery point and an  
8 interconnection point.

9 I think it is unfair to take the witness through  
10 this type of hypothetical, particularly when the contract  
11 has been mischaracterized.

12 MR. ZAHLER: I did not mean to mislead the  
13 witness. If you will show me where it designated as inter-  
14 connection point, I will show it to the witness.

15 MS. URBAN: Section 1.02 of the Applicant's 186,  
16 it says that it is not exclusive. It says the facilities  
17 will be operated in continuous synchronism during such  
18 period of time as such systems are interconnected at such  
19 interconnection point. Such point of interconnection to be  
20 and to be deemed to be a delivery point under Section 1.01.03  
21 of the AMP-Ohio-Ohio Power agreement.

22 If you look at the definitions in 141-A, the  
23 terms of the delivery point and interconnection point are  
24 terms of art. I do not believe they have the type of, I  
25 guess, engineering definition that Applicants are trying

1 to indicate they do have.

2 MR. ZAHLER: I don't think I quarrel with a thing  
3 Ms. Urban says. They are defined explicitly and the  
4 Orrville-Ohio Power contract chooses as the definition  
5 the delivery point and not the interconnection point, and  
6 that has repercussions as to the manner of sale that  
7 Orrville can make.

8 CHAIRMAN RIGLER: I will see what the witness'  
9 answer will be.

10 THE WITNESS: I'm not sure after all that, that  
11 I understood what his question really is, but let me respond  
12 by saying that Orrville is a delivery point as well as an  
13 interconnection point. I think that you can find that in  
14 Section 1.01.03 and 1.01.04.

15 MR. LESSY: In which agreement, sir?

16 THE WITNESS: This is the agreement between  
17 AMP-Ohio and Ohio Power Company. Not only would Orrville  
18 meet this condition, but in fact any patron of AMP-Ohio  
19 would also fall into that category of being a dual position if  
20 they had generation.

21 BY MR. ZAHLER:

22 Q You say that in spite of the explicit language in  
23 Section 1.02 of the Orrville-Ohio Power contract that the  
24 connection between the two systems shall be deemed a  
25 delivery point without mention that it will be deemed as an

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2 CHAIRMAN RIGLER: My problem with your question  
3 is that it seems to be argument, particularly if the witness has  
4 already stated that under the AMP-O agreement, he does not  
5 interpret that to provide for one-way power flow. The  
6 conclusion you asked us to draw may be addressed to us in  
7 argument, but in light of his earlier answer, I don't see  
8 how he will agree with your conclusion in the question as  
9 posed.

10 MR. ZAHLER: The step I'm going to is the witness  
11 testified he wasn't in a position to draw a conclusion one  
12 way or the other. I removed that element from the question.  
13 I'm asking assuming my interpretation is correct, what is  
14 the impact of that on the Orrville-Ohio Power contract, and  
15 I think the witness is qualified to answer that question.

16 CHAIRMAN RIGLER: The problem with that is that  
17 he was not brought here as an expert and it is contradictory  
18 to his earlier answer.

19 MR. ZAHLER: But the witness did testify it was  
20 his understanding of the contract between Ohio Power and  
21 Orrville that Orrville could sell excess capacity.

22 I'm trying to test that conclusion. If the  
23 witness says he isn't qualified to answer the legal question  
24 as to the AMP-Ohio-Ohio Power contract, I don't understand  
25 in the first instance how he could have given the testimony  
he gave when he was here April 1. That is the issue I'm

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2           Q       And turning to the other option, if the  
3 municipality were to take ownership participaiton in  
4 the nuclear plant, would that introduce a form of price  
5 competition?

6           A       It       there were ownership in the nuclear  
7 plant, the real cost of power from that plant would be the  
8 same .. again to all participants in the power  
9 supplied by that plant.

10                   However, if a municipality had ownership  
11 participation, it would be able to apply to its share  
12 of the ownership its financing cost advantages and even though  
13 it were taking the power from the identical unit, with the  
14 same construction, and operation's costs. it would have  
15 a cost of power from that unit that would be below the  
16 cost of the investor-owned system and that might provide  
17 a basis for price competition, depending on how low that  
18 gets relative to the average embedded costs on the basis  
19 of which wholesale rates are determined.

20           Q       Is the subsidy the sole basis for competition?

21           A       Since the cost of the plant is determined by  
22 the investor-owned system that has built it, since the  
23 cost of the transmission is determined by the investor-  
24 owned system providing the transmission to get the power  
25 where it has to go, there is no other basis for competition  
other than the differential in cost resulting from the

1 transmission services whatsoever to the City of Orrville  
2 by Ohio Power?

3 A I don't recall that it does. I don't think it is  
4 necessary for it to.

5 Q Mr. Lewis, why is it your opinion that if  
6 Orrville were to contract with Ohio Power under the  
7 conditions of Appendix 1, it would not be necessary for  
8 Ohio Power to wheel the City of Orrville?

9 A Because there would be no AMP-Ohio.

10 Q Is wheeling to the City of Orrville feasible  
11 only if AMP-Ohio is in existence?

12 A No.

13 Q So then is there some other reason why it would  
14 not be necessary for Ohio Power to wheel for the City of  
15 Orrville if AMP-O wasn't in existence?

16 A There is no point in having wheeling for  
17 Orrville because AMP-Ohio is making all of the arrangements  
18 for the other sources of power.

19 Q And if AMP-O was not in existence, is it your  
20 testimony it would not be necessary for Orrville to secure  
21 wheeling services from Ohio Power Company?

22 A I didn't say that.

23 Q Would it be?

24 A It depends on whether they could take over some  
25 of the sources of power that AMP-O might have.

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Should I proceed?

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CHAIRMAN RIGLER: Yes.

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MR. REYNOLDS: Applicants call their next

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witness, Dr. Joe Pace.

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Whereupon,

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DR. JOE D. PACE

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was called as a witness and, having been first duly sworn,

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was examined and testified as follows:

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MR. REYNOLDS: Let me mark for identification

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as Applicant's Exhibit 190, which consists of a 36-page

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document under the title of "Prepared Testimony of Joe

12

D. Pace, and a two-page errata sheet that is attached there-

13

to.

14

(The document referred to was

15

marked Applicants Exhibit 190

16

for identification.)

17

DIRECT EXAMINATION

18

BY MR. REYNOLDS:

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Q Do you have a copy of what I have marked

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as Applicants Exhibit 190 in front of you, Dr. Pace?

21

A I do.

22

Q And does that document contain the testimony

23

you prepared for this proceeding?

24

A Yes, it does.

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1 interconnection point.

2 MR. LESSY: Objection as argumentive.

3 CHAIRMAN RIGLER: Overruled.

4 THE WITNESS: As I read the Ohio Power-Orrville  
5 agreement, it is also an interconnection point. As such  
6 systems are interconnected at such interconnection points,  
7 such point of interconnection to be and to be deemed to be  
8 a delivery point.

9 It is saying that it is a point of interconnection.  
10 It is an interconnection point and it is also a delivery  
11 point.

12 BY MR. ZAHLER:

13 Q Mr. Lewis, let's talk about the appendix of the  
14 document, appendix to the agreement between the City of  
15 Orrville and Ohio Power Company. Am I correct that the  
16 appendix which is attached to that agreement is a proposed  
17 contract between the City of Orrville and Ohio Power  
18 should the contract between American Municipal Power Ohio  
19 and Ohio Power be terminated for one reason or another?

20 A I think that is true, yes.

21 Q Is it also correct under that case the services  
22 that would be provided to Orrville would be governed solely  
23 by the appendix one?

24 A That is my understanding.

25 Q Is it a fact that Appendix 1 provides no

1 Q What sources of power does AMP-O have at the  
2 present time?

3 MR. LESSY: I object. I think we are getting far  
4 afield now.

5 CHAIRMAN RIGLER: Overruled.

6 THE WITNESS: At the present moment, I'm not sure  
7 that AMP-Ohio has any other source of power other  
8 than Orrville.

9 However, there are several things in the mill.  
10 And it is conceivable that AMP-Ohio would have a  
11 source of power or sources of power available to it at any  
12 time.

13 BY MR. ZAHLER:

14 Q Mr. Lewis, what is in the mill, so to speak?

15 MS. URBAN: Objection. I think this is beyond  
16 the scope.

17 CHAIRMAN RIGLER: You are way beyond the scope  
18 now, Mr. Zahler.

19 MR. ZAHLER: I have no way of evaluating Mr. Lewis'  
20 last answer if I can't find out what he is talking or  
21 thinking about by "things are in the mill."

22 CHAIRMAN RIGLER: It is enough that AMP-Ohio has  
23 Orrville as its source and he thinks that they may have  
24 alternate sources available. To go into the specific  
25 sources, I don't believe is connected to his direct testimony.



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MR. ZAHLER: Mr. Chairman, this line of questioning was prompted because the Witness testified that if AMP Ohio had gone out of business Orrville would take over AMP Ohio sources.

The only source he identified was Orrville. Clearly Orrville is not the only source.

CHAIRMAN RIGLER: If he said that, we understand it.

MR. ZAHLER: I want to know what the others are he contemplated at that time.

CHAIRMAN RIGLER: We have ruled. It is not possible to continue to argue it.

MR. ZAHLER: I request an order from the Board striking from the record the reference to other sources in the mill.

CHAIRMAN RIGLER: Denied.

BY MR. ZAHLER:

Q The last time you were here at the bottom of 7974 and going to the top of 7975 in response to a question Mr. Smith asked: "Is there a seasonal diversity between Orrville and AMP-O, other AMP-O users?"

"The Witness: Other AMP-O patrons, you mean?"

"Mr. Smith: Yes..

"The Witness: Yes, I think there would be, to the extent that Orrville experiences a summer peak and some of

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the members of AMP-0, their patrons have winter peaks.

"For example, the City of Westerville that is north of Columbia has a instinct winter peak, and they would be able to utilize some of the capacity from Orrville on a seasonal basis."

Can you tell me exactly when Orrville has ever experienced a summer peak?

MR. LESSY: I would like to know the basis of that on recross examination by the Applicant.

This was a question and answer gone into before. The Witness now comes back, based on files he has agreed to make available.

There were questions on that. Why go back to this subject which happened over three or four months ago again?

MR. ZAHLER: I will link it up to a document turned over to Applicant. With the exception of Ohio Edison, the other applicants have not even cross-examined this witness.

CHAIRMAN RIGLER: Overruled.

BY MR. ZAHLER:

Q The question is whether Orrville has ever experienced a summer peak?

A As I recall, they had a summer peak in '75.

Q Aside from 1975, was there ever a date they

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1 experienced a summer peak?

2 A I don't know.

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ari 1 Q Mr. Lewis, do you know whether between the years 1962  
2 and 1972 Orrville experienced a summer peak on one occasion  
3 and at that time the summer peak was almost equivalent to  
4 its winter peak?

5 MR. LESSY: Objection. The witness said he was  
6 not familiar with the peaks other than 1975.

7 MS. URBAN: Objection.

8 CHAIRMAN RIGLER: Overruled.

9 BY MR. ZAHLER:

10 Q Mr. Lewis, can I have your recollection without  
11 referring to any of the documents? If you need to refer  
12 to them after that, we can do that.

13 A I don't recall.

14 Q I would like to show you a letter from Mr.  
15 Williams to yourself dated September 7, 1973, disclosing  
16 information on the City of Orrville, particularly the  
17 chart entitled "Orrville Municipal Utility Electric  
18 Department to Maximum and Minimum Loads for Summer and Winter  
19 Seasons from 1962 through 1969," and the page prior to that which  
20 is the maximum and minimum summer peaks for 1970 through  
21 1972, and ask you if that refreshes your recollection as to  
22 whether Orrville ever experienced a summer peak with the  
23 exception of 1967?

24 MS. URBAN: May I see that document?

25 THE WITNESS: According to this information, it

1 looks like from '62 to '69, except for 1968, they were all  
2 winter peaks.

3 Q What about 1970 through 1972?

4 A And in 1970, '71, '72, they were winter peaks.

5 Q Mr. Lewis, do you have a document with you  
6 today that would enable you to establish the magnitude of the  
7 summer peak that Orrville experienced in 1975?

8 A Not that I'm aware of.

9 Q Could you compare for me the magnitude of the  
10 summer peak of the Orrville system in 1975 with the winter peak  
11 that it experienced?

12 A Could I have my last answer and the last question  
13 prior to that read? I think I said I didn't have this  
14 information with me.

15 Q I'm asking you now to give me a ball park  
16 comparison of the two.

17 A Mr. Chairman, I don't know these things in my  
18 mind, what they are.

19 Q Based on the historical trend of the City of  
20 Orrville, would you expect there to be a significant  
21 difference between the winter peak and the summer peak?

22 A No.

23 Q Mr. Lewis, are economy energy transactions  
24 a significant form of energy exchange in the State of Ohio?

25 MR. LESSY: I object to that question unless it is

1 tied up to anything he has testified to hopefully today.

2 MS. URBAN: Could I have the last question and  
3 answer before this back, please?

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

6 MR. ZAHLER: I intend to tie it up with a  
7 document that was taken from Mr. Lewis' file and it relates  
8 to the form of transactions that Orrville could enter into  
9 if it was a member of AMP-Ohio and the significance of those  
10 to its bulk power supply costs which Mr. Lewis testified  
11 to in terms of their inability to get those things from Ohio  
12 Edison.

13 CHAIRMAN RIGLER: Overruled.

14 THE WITNESS: Could I have that question read  
15 back?

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

18 THE WITNESS: You mean now?

19 BY MR. ZAHLER:

20 Q Yes.

21 A No, I don't believe they are.

22 Q Would a utility enter into an interconnection  
23 agreement solely on the basis of the economy energy transac-  
24 tion?

25 MR. LESSY: In Ohio now?

1 BY MR. ZAHLER:

2 Q In the State of Ohio presently.

3 A I need a clarification, Mr. Chairman. Are you  
4 classifying as a utility a municipal utility?

5 Q Yes.

6 A The answer is yes, I think they would.

7 Q Would the absence of such a transaction be a  
8 reason for a municipal utility not to enter into an inter-  
9 connection agreement?

10 A No, I don't think so.

11 Q Would the ability of a utility to obtain a firm  
12 power schedule -- would the ability of a municipality to  
13 obtain a firm power schedule be a significant reason for  
14 entering or not entering an interconnection agreement?

15 A I could have the question read back, but did you  
16 say municipal utility or utility?

17 Q Municipal utility.

18 A No, I don't think the absence of a provision for  
19 firm power would keep a municipal utility from entering  
20 into an interconnection agreement.

21 Q Was the City of Orrville able to negotiate a  
22 firm power transaction with the Ohio Power Company?

23 A Are you defining -- I need a clarification. Are  
24 you defining firm power as the customary definition that is  
25 contained in the interconnection agreements between Ohio Power

1 and Dayton Power & Light, for example?

2 Q I'm defining firm power as the standard term of  
3 art as a schedule that is used in the industry to denote  
4 firm power service.

5 A Could I have the question read, please?

6 (Whereupon, the reporter read the pending  
7 question, as requested.)

8 THE WITNESS: Yes, as you define it.

9 BY MR. ZAHLER:

10 Q Is there a schedule in any of the agreements  
11 that have been entered into between Ohio Power and the City  
12 of Orrville and AMP-O that contained a schedule for firm  
13 power sales?

14 A As you defined it previously?

15 Q As a separate schedule.

16 A As you defined it previously?

17 CHAIRMAN RIGLER: Rephrase it.

18 BY MR. ZAHLER:

19 Q Mr. Lewis, is there in the industry as a term of  
20 art a schedule that is denoted firm power service as  
21 distinct from a schedule denoted short term power, limited  
22 term power, emergency power or any other schedule one could  
23 think of?

24 A Yes, but that is not the way you defined it before.

25 Q Could you define for me what the firm power



1 schedule is in the industry so that we know what we are  
2 talking about, on the same ground?

3 A Firm power means a specific block of capacity  
4 with the associated energy that is available for a period  
5 of time and has a fixed rate for that period of time.

6 Q Now is the City of Orrville able to negotiate  
7 such a schedule with the Ohio Power Company?

8 A No.

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1 Q Why was the City of Orrville unable to negotiate  
2 such a schedule?

3 CHAIRMAN RIGLER: Refresh my recollection:  
4 did they try to negotiate such a schedule?

5 THE WITNESS: The City of Orrville,  
6 no, sir.

7 BY MR. ZAHLER:

8 Q Is it your testimony that that was never presented  
9 to the Ohio Power Company?

10 A By Orrville?

11 Q By Orrville.

12 A No.

13 MR. LESSY: When you say "no," do you mean  
14 they never presented it to Ohio Power Company?

15 THE WITNESS: AMP Ohio did, but Orrville didn't.  
16 He said Orrville.

17 BY MR. ZAHLER:

18 Q Did you ever advise the City of Orrville that  
19 you were able to negotiate a contract with Ohio Power  
20 advantageous to the operation of Orrville's electric  
21 utility, except for the specific provision of the purchase  
22 of economy energy and firm power, all in accordance with  
23 the assignment by the public utilities board?

24 A Would you read the question?  
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1 (Whereupon, the reporter read the  
2 pending question, as requested.)

3 THE WITNESS: I probably did.  
4 I don't recall it, the specific document or  
5 specific discussion at the time.

6 But I probably did.

7 MR. ZAHLER:

8 Q Then it was in your copy of your assignment  
9 to attempt to negotiate for the City of Orrville a firm  
10 power contract or schedule?

11 A Yes, that is true.

12 Q Now, my question was, why was it you were unable  
13 to negotiate such a schedule?

14 A Mr. Chairman, this gets into some private  
15 discussion that were held between Ohio Power,  
16 American Electric Power, AMP-O, Orrville and this was  
17 the problem I was having before with these documents.  
18 It involves some private discussions that we had -- I don't  
19 know who he represents, but I doubt that Ohio Power and  
20 American Electric Power would want these discussions  
21 brought out. Who does he represent, Mr. Chairman?

22 MR. ZAHLER: For your information --

23 MS. URBAN: In addition, I think that again  
24 we we are getting way off base, and I'm not sure of the  
25 relevance of this line of questioning.

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1 CHAIRMAN RIGLER: Mr. Zahler represents the  
2 five Applicants. Do you know who they are?

3 THE WITNESS: CAPCO Pool.

4 CHAIRMAN RIGLER: With the exception during  
5 this line of questioning of Ohio Edison. He does represent  
6 Ohio Edison for occasion. For purposes of today's  
7 examination, Mr. Steven Berger is representing Ohio Edison.

8 Now, you are telling me that you think the  
9 subject matter of these negotiations is regarded as a possible  
10 business, confidential matter by some of the parties thereto,  
11 but not by the party represented by your firm; is that  
12 correct?

13 THE WITNESS: Yes, sir. You see, sir, as you  
14 may know, American Electric Power is in an SEC proceeding,  
15 attempting to acquire Columbus and Southern Ohio Electric  
16 Company. And there were specific reasons that firm  
17 power was not included, and I really think that it could  
18 jeopardize those proceedings and the Commission's decision, if  
19 this became public.

20 MR. LESSY: I would add to the Department's  
21 objection, the objection of relevancy of the detailed  
22 negotiating history between a nonapplicant and the City of  
23 Orrville.

24 CHAIRMAN RIGLER: The question of why they could  
25 not secure firm power from Ohio Power might be related to

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1 the subjects which were raised on direct.

2 I'm having a couple of problems here.

3 The first is whether if the information is relevant to  
4 the development of the SEC, why it should be  
5 withheld, in any event.

6 When Mr. Lewis says this could impact on the  
7 decision of the SEC, it strikes that the public interest,  
8 therefore, might favor the disclosure.

9 The other problem I have is that the parties sought  
10 to be protected are not the client of Mr. Lewis.

11 He is perhaps speculating as to whether  
12 there is any real necessity for affording confidential  
13 treatment to the answer.

14 I will permit the question.

15 I will overrule the objection on grounds  
16 of being too far afield.

17 My concern now is what I do to protect the  
18 answer, if I do anything.

19 THE WITNESS: May I make one further comment,  
20 Mr. Chairman?

21 CHAIRMAN RIGLER: You may make a comment on the  
22 record.

23 THE WITNESS: I happened to be present during  
24 conversations between attorneys. I'm not a lawyer, but I  
25 remember that attorneys representing clients have some  
privilege about disclosing their conversations.

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1 CHAIRMAN RIGLER: The problem is there, that  
2 that privilege is lost, if those discussions are conducted  
3 in the presence of third party.

4 Presumably, the attorneys would have been  
5 aware of it. That is not a ruling. It would depend, perhaps,  
6 on the circumstances. I'm not sure that any privilege  
7 would exist.

8 Certainly, none has been asserted by one of the  
9 parties to these discussions.

10 When did these discussions take place?

11 THE WITNESS: Well, they took place at different  
12 times.

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arl 1 CHAIRMAN RIGLER: When was the latest date?

2 THE WITNESS: Just a minute; I think I can tell  
3 you.

4 Mr. Chairman, the latest date that I have readily  
5 available would have been August 10 of '73 and I might say  
6 to you that if you will recall, my first letter to the  
7 Department transmitting this stuff --

8 CHAIRMAN RIGLER: I don't, except generally.

9 THE WITNESS: I took a request for privilege  
10 of certain documents.

11 CHAIRMAN RIGLER: Yes, sir.

12 THE WITNESS: Then after you ordered me to  
13 produce them, I went back to the attorneys for Ohio Power,  
14 American Electric Power, and AMP-O and Orrville and read them,  
15 specifically the documents, and they carefully considered the  
16 words that were in my notes and said on that basis that I  
17 should not take an exception.

18 But now you are getting into other discussions  
19 that I didn't write down.

20 CHAIRMAN RIGLER: Okay. I will permit it. It  
21 seems to me that you have just satisfied one of the  
22 pending questions in my mind which was the question of  
23 possible notice to parties not represented at this  
24 proceeding because they are not parties to this proceeding.

25 It seems they should have been alerted to the

1 possibility of the subject matter coming up.

2 Secondly, in view of the August '73 date, I'm not  
3 persuaded that the information need be confidential.  
4 I will permit you to answer the question.

5 THE WITNESS: Could I have the question either  
6 restated or read?

7 BY MR. ZAHLER:

8 Q The question was why Orrville was unable to  
9 negotiate a firm power schedule with Ohio Power, understanding  
10 firm power schedule to be what we discussed a little earlier.

11 MR. LESSY: If need be, we could put your answer  
12 under seal so that it is not available to the public.

13 THE WITNESS: I would ask that until I have a  
14 chance to talk to the attorneys --

15 CHAIRMAN RIGLER: This is an unusual situation  
16 in that none of the parties to these proceedings are  
17 asking for confidential treatment. The Board has no  
18 inherent objection to safeguarding the information.

19 On the other hand, nothing we have heard persuades  
20 any of us that the material is entitled to protection in any  
21 event.

22 I think we will go ahead and let you answer.

23 THE WITNESS: Orrville did not pursue the request  
24 for firm power because Ohio Power had denied it to AMP-Ohio.

25



1 BY MR. ZAHLER:

2 Q Are you aware of the basis on which Ohio Power  
3 refused to sell firm power to AMP-Ohio?

4 CHAIRMAN RIGLER: Now you are getting far  
5 afield. Now you are asking questions about a company that  
6 is not a party to these proceedings and dealing with an  
7 association that is not a party to these proceedings.

8 MR. ZAHLER: AMP-O at one time was a party to  
9 these proceedings. I don't think that should be used as a  
10 way of keeping probative evidence from the Board.

11 CHAIRMAN RIGLER: That is my problem. What is  
12 probative about a response from Ohio Power? Let's assume  
13 it violates the antitrust laws. This can't serve then as a  
14 defense for paralegal action by someone else assuming that is  
15 what the evidence shows. Taking it down the furthest path  
16 you choose to argue, I don't see where it gets you anywhere  
17 in terms of probative value.

18 MR. ZAHLER: I don't know what Mr. Lewis' answer  
19 would be.

20 CHAIRMAN RIGLER: No matter what it is, how can it  
21 help you?

22 MR. ZAHLER: The question is having gotten his  
23 response whether that impact on Orrville's decision not to  
24 seek firm power further from Ohio Power, whether it impacts  
25 on Orrville's decision to seek certain services from Ohio

1 Edison and under what conditions and in what time frame.

2 If we have only half of the story, it is difficult,  
3 if not impossible, to evaluate the responses of Ohio  
4 Edison, which is a party to this proceeding, in light of  
5 the request that Orrville made.

6 CHAIRMAN RIGLER: I tend to disagree with you,  
7 but there was no objection.

8 MR. LESSY: I am going to object as its being  
9 irrelevant to the issues in controversy.

10 CHAIRMAN RIGLER: I will sustain it.

11 BY MR. ZAHLER:

12 Q Mr. Lewis, I'm going to show you and have  
13 marked as Applicant's Exhibit 188 a letter of yours, June  
14 27, 1974 to Mr. Williams, and ask you whether this is the  
15 further study that you referred to earlier during the  
16 cross-examination by Mr. Steven Berger?

17 A Yes.

18 (The document referred to was  
19 marked Applicants Exhibit 188  
20 for identification.)

21 BY MR. ZAHLER:

22 Q Does this letter set out your understanding of  
23 the contractual relationships between Orrville, AMP-Ohio  
24 and Ohio Power?

25 A Yes.

1 Q Does this letter set out the reasons why you did not  
2 believe it essential for Orrville to secure either a firm  
3 power schedule or economy energy schedule from Ohio Power?  
4 I have particular reference to page 5, paragraph J.

5 A Could I have the question read back, Mr.  
6 Chairman?

7 (Whereupon, the reporter read the pending  
8 question, as requested.)

9 THE WITNESS: Yes.

10 MR. ZAHLER: Mr. Chairman, at this time I would  
11 like to move into evidence Applicants 186, 187, and 188.  
12 I ask that Applicants Exhibit 186 be red-lined in its  
13 entirety. That 187, the second, third, and fourth sheets be  
14 red-lined.

15 Applicants 188, the entire document would be  
16 red-lined.

17 MR. LESSY: I object to 186. The document is about  
18 an inch thick. Saying it all should be red-lined isn't  
19 realistic. If there are portions we should look at, we  
20 should comply with the red-lining rule.

21 187 is a letter from Mr. Ardery to Mr. Williams  
22 with the enclosure of an agreement between AMP-O and the  
23 City of Orrville. Mr. Lewis says this is not the current  
24 contract. I suggest under the best evidence rule, the  
25 Applicants have the burden of setting forth what is the

1 appropriate contract.

2 CHAIRMAN RIGLER: But this is the exhibit that was  
3 in his files.

4 MR. LESSY: But it can't be cited in light of the  
5 testimony as the contract. If he wants to go into something  
6 that is in his file, as in all probability a less than complete  
7 draft, that is fine.

8 But it can't be cited according to the testimony  
9 as the contract.

10 MR. HJELMFELT: I object to Applicants 186 and 187.  
11 The witness wasn't able to identify either one as the existent  
12 contract. And all they can represent is copies of  
13 documents that were in his files. And that by itself doesn't  
14 seem to me to have relevance.

15 MS. URBAN: The Department joins in the objection  
16 of the Staff and City of Cleveland. If Applicants wish to  
17 put in the actual contracts, then they should go about and  
18 secure them from the FPC.

19 MR. ZAHLER: Could I know whether any of the  
20 parties to this proceeding believe that Applicants 186 --  
21 that is the agreement between the City of Orrville and Ohio  
22 Power -- is not the complete and present contract between  
23 those two parties and whether they will represent that to  
24 this Board?

25 MS. URBAN: Mr. Chairman, the Department neither

1 believes nor disbelieves the Applicants as to whether  
2 that is the contract. We have no idea.

3 As introducing parties, the duty is on the  
4 Applicant to secure and introduce a sealed copy or signed  
5 copy.

6 MR. LESSY: The duty is to red-line.

7 CHAIRMAN RIGLER: All right.

8 MR. ZAHLER: Mr. Chairman, with respect to 186,  
9 Applicants believe that a full reading of the entire  
10 contract, as long as it maybe is essential to the case --  
11 selected red-lining of the providing of contracts does not  
12 give the Board full understanding of how the contracts  
13 fit together and what they do. The contract in its  
14 entirety is necessary for our case.

15 CHAIRMAN RIGLER: I opened at random to Article 7  
16 that relates to billing and payment, and I could not disagree  
17 with me more with respect to whether that has relevance  
18 to the case.

19 In the event we take that into evidence, we  
20 expect it to be red-lined. If you give us the document  
21 this thick without red-lining, we undercut the entire  
22 purpose of the rule.

23 We will sustain the objection to 186.

24 I don't recall whether there was specific objection  
25 to 187 or 188.

1 MR. LESSY: To 187, the objection was that by the  
2 testimony of the witness, the attachment probably does not  
3 represent the agreement.

4 CHAIRMAN RIGLER: That is overruled. We will receive  
5 137 into evidence.

6 188, was there objection? Was there red-lining?

7 MR. LESSY: No red-lining.

8 Is this one of the ones we need to read every  
9 paragraph of the agreement?

10 MR. ZAHLER: It is a letter and the entire  
11 document will be red-lined.

12 CHAIRMAN RIGLER: All right. We will receive 187  
13 and 188 into evidence.

14 (The documents previously  
15 marked Applicants' Exhibits  
16 187 and 188 for identifica-  
17 tion, were received in  
18 evidence.)

19 MR. ZAHLER: Mr. Chairman, at this time I would like  
20 to re-move the admission of Applicants 136 as unsponsored  
21 document and I will represent to the Board that this is the  
22 current contract. For example, the Consumers Power agreement  
23 came in.

24 CHAIRMAN RIGLER: Over objection as to its  
25 authenticity?

1 MR. ZAHLER: I don't understand that the parties  
2 were objecting to authenticity.

3 MS. URBAN: The Department is objecting to the  
4 authenticity as to whether that document is the contract  
5 between the two parties.

6 MR. LESSY: As on file with the FPC. And I object  
7 that it is not appropriately red-lined.

8 MR. ZAHLER: I will underline 186, if it  
9 bothers Mr. Lessy.

10 CHAIRMAN RIGLER: I have further problem with 186  
11 on the unsponsored part, and that is that it came from  
12 Mr. Lewis' files and not from one of the Applicant's files.

13 MR. REYNOLDS: There were unsponsored documents  
14 that came in that were not from the sponsoring parties'  
15 files.

16 CHAIRMAN RIGLER: I object to 186 under the  
17 unsponsored rule, particularly in light of the witness'  
18 testimony that he believes documents in his file may  
19 represent unchanged or unedited versions. There is some  
20 value, it seems, in getting the actual contract, which  
21 shouldn't be difficult.

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1 MR. ZAHLER: I make oral motion for  
2 request of admissions by the other parties as to whether  
3 this document is or is not authentic, pursuant to the  
4 Commission's rules.

5 CHAIRMAN RIGLER: That is frivolous.

6 MR. ZAHLER: Could I understand how it is  
7 the Board intends Applicant to authenticate the document,  
8 other than on representation that it is a complete  
9 document, and the absence of a definitive statement by  
10 the other parties that they have any reason to  
11 believe this is not the authentic document.

12 CHAIRMAN RIGLER: No, you may proceed, if  
13 you have other examination.

14 MR. ZAHLER: I have no further questions.

15 REDIRECT EXAMINATION

16 BY MS. URBAN:

17 Q Mr. Lewis, can I refer you back to the  
18 June 11, 1973, meeting and your handwritten notes at  
19 that meeting? Do you recall how long that meeting lasted?

20 A It started at 1400 and finished at 1527, so it  
21 must have been an hour and 27 minutes.

22 Q Did you make notes of everything that was said  
23 at that meeting?

24 A No.

25 Q You referred to two statements by Mr. Mansfield



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1 as referring to Ohio Edison's refusal to wheel power.  
2 Were those two statements as represented in the notes  
3 the only basis for Ohio Edison -- for your statement that  
4 Ohio Edison refused to wheel power?

5 A I'm sorry. I know the hour is late, but I need  
6 that read back.

7 Q I will rephrase it.

8 Did anyone at Ohio Edison make any statements that  
9 Ohio Edison refused to wheel power to Orrville at that  
10 meeting?

11 A As I recall, Mr. Mansfield said they would not wheel  
12 power.

13 Q Was that statement reflected in your notes at  
14 all?

15 A I don't know that --

16 CHAIRMAN RIGLER: If it was, it was and if  
17 it wasn't, it wasn't.

18 If you have the note reference, you can  
19 show us. Otherwise, let's go on.

20 MS. URBAN: We have nothing further.

21 MR. LESSY: I want to clarify a point.

22 BY MR. LESSY:

23 Q Mr. Lewis, as of the June 11, '73 meeting,  
24 do you have independent recollection of Mr. Mansfield  
25 stating that Ohio Edison would not wheel power for Orrville?

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1 A Mr. Mansfield very clearly said they would not  
2 wheel power for Orrville.

3 MR. LESSY: No further questions.

4 BY MR. HJELMFELT:

5 Q Mr. Lewis, do some AMP-O patrons have winter  
6 peak?

7 A Yes.

8 Q Do some have summer peaks?

9 A Yes.

10 Q And that is aside from Orrville in either  
11 case?

12 A Yes.

13 MR. HJELMFELT: I have no further questions.

14 RE-CROSS EXAMINATION

15 Q By Mr. Steven Berger:

16 Q Do you know whether or not Applicant Exhibit  
17 186 has been filed with the FPC?

18 A What is 186?

19 Q That is the contract between Ohio Power and  
20 the City of Orrville.

21 MR. LESSY: It is the document identified  
22 as 186 and not Applicant Exhibit 186.

23 MR. STEVEN BERGER: Correct.

24 MS. URBAN: I object to that question on the  
25 basis that Mr. Berger is assuming again this is the

bw4 1 actual contract.

2 CHAIRMAN RIGLER: I had that question in the  
3 back of my mind too.

4 Is your question whether the Orrville contract  
5 was filed or whether this document was filed? He has  
6 testified he is not sure whether this is the final version  
7 or not.

8 BY MR. STEVEN BERGER:

9 Q Is it your understanding that the contract  
10 between the City of Orrville and Ohio Power was filed with  
11 the Federal Power Commission?

12 A Yes, it is my understanding that it has been  
13 filed with them on at least two occasions, but I'm not sure that  
14 it has every been accepted for filing.

15 Q Mr. Lewis, one more question.

16 Q Is it your practice to record in notes that  
17 you take at meetings those things you regard to be of  
18 importance at those meetings?

19 A It is my practice to record at meetings the  
20 things that I think I might forget.

21 The things that are so clear as I would forget,  
22 I don't usually write them down.

23 MR. STEVEN BERGER: I have no further questions.

24 CHAIRMAN RIGLER: Thank you, Mr. Lewis.

25 THE WITNESS: Am I excused from the subpoena

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CHAIRMAN RIGLER: You are.

(Witness excused.)

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1 MR. GOLDBERG: I have an important matter that  
arl  
2 we would like to discuss.

3 MR. REYNOLDS: I would like to ask a question  
4 before he does that is relevant to what went on with  
5 Mr. Lewis, if I might.

6 With respect to Applicants Exhibit 186, if  
7 Applicants produce a copy that was filed with the FPC, is  
8 that sufficient authenticity as to the contract that is now  
9 in existence between the two?

10 MR. CHARNO: It is the Department's understanding  
11 that the Board ruling has been consistently if it came  
12 in with the FPC stamp on it, it is self-authenticating,  
13 and we have no argument on that.

14 MR. REYNOLDS: Is that the Board's position?

15 CHAIRMAN RIGLER: Certainly. And I don't know  
16 why Applicants are belaboring the point. There seems to be  
17 genuine issue as to whether or not this is a final version  
18 of the report. We are not requiring you to do an idle act.  
19 We are not satisfied that this is the contract that is on  
20 file.

21 MR. REYNOLDS: I don't think there is dispute  
22 that this is the exact contract on file. We will go  
23 through the extra exercise.

24 CHAIRMAN RIGLER: We are not trying to add to your  
25 burden, but we will adhere to our rule.