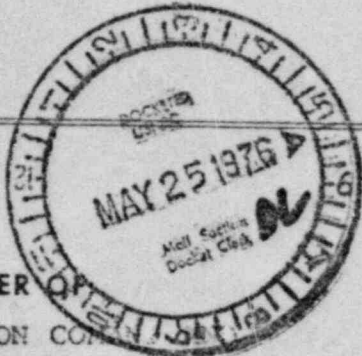


NUCLEAR REGULATORY COMMISSION



IN THE MATTER

TOLEDO EDISON CO.
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.

(Perry Nuclear Power Plant, Units
1 & 2)

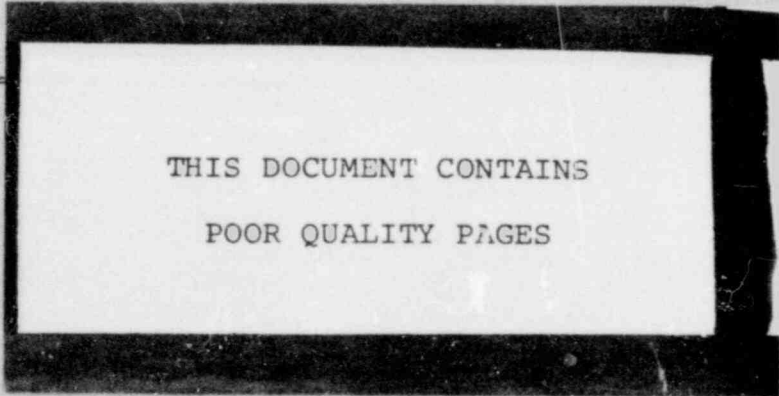
50-440A
50-441A

Place - Silver Spring, Maryland

Date - Thursday, May 20, 1976

Pages 9990-

10,173



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the matter of	:	Docket Nos.
TOLEDO EDISON COMPANY and	:	50-346A
CLEVELAND ELECTRIC ILLUMINATING CO.:	:	50-500A
	:	50-501A
(Davis-Besse Nuclear Power Station :	:	
Units 1, 2 and 3)	:	
	:	50-440A
and	:	50-441A
	:	
CLEVELAND ELECTRIC ILLUMINATING CO.:	:	
<u>et al.</u>	:	
	:	
(Perry Nuclear Power Plant	:	
Units 1 and 2)	:	
	:	
-----x		

First Floor Hearing Room
7915 Eastern Avenue
Silver Spring, Maryland

Thursday, May 20, 1976

The hearing in the above-entitled matter was reconvened, pursuant to adjournment, at 9:30 a. m.,

BEFORE:

- DOUGLAS RIGLER, Chairman
- JOHN FRYSIAK, Member
- IVAN SMITH, Member

APPEARANCES:

(As heretofore noted.)

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C O N T E N T S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Voir Dire</u>
W. Royce Moran		9993	10,074	10,089	
Paul H. Smart	10,093	10,117	10,153	10,158	

Exhibits For Identification In Evidence

P R O C E E D I N G S

1
2 P:bwl
3 sl
4 MR. PERI: When Mr. Lewis was left on the
5 stand on April 1, you asked us what we notify you if we
6 intended to call him for further cross-examination.

7 We do intend to do that, and with the Department
8 of Justice we will be trying to work out a mutually
9 agreeable date.

10 I believe we will be aiming initially for
11 June 2.

12 CHAIRMAN RIGLER: All right. And I anticipate
13 that that will not cut substantially into the other
14 witnesses' time for that day.

15 MR. PERI: I believe that is right. I am
16 reasonably certain it is something that will be completed
17 within the morning, if not less time than that.

18 CHAIRMAN RIGLER: All right.

19 When we closed yesterday afternoon, we had an
20 objection to a series of questions relating to the
21 organizational setup and the chain of authority in the Toledo
22 Edison organization, and I indicated that we would hear
23 further from the Department on that first thing in the
24 morning.

25 I do see one transcript correction on page 8998,
line 16, where I asked the Department, "assuming it
establishes the line of authority, to what part of it," it
should read "direct," instead of district, "does it relate."

2

arl 1 MR. MELVIN BERGER: Mr. Chairman, we do not have
2 anything further on this line at this time.

3 CHAIRMAN RICLER: All right, let's proceed.
4 Whereupon,

5 W. ROYCE MORAN

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

8 CROSS-EXAMINATION (Continued)

9 BY MR. MELVIN BERGER:

10 Q Mr. Moran, if I may, I would like to refer you
11 to Applicant's Exhibit 128, which is the large diagram
12 which you referred to earlier -- well, yesterday morning.
13 It is not the map. It is the one that is underneath the map.
14 I have a few questions on that.

15 I believe you stated yesterday that some Toledo
16 Edison customers are served from 138 kV lines; is that cor-
17 rect?

18 A Yes.

19 Q Would these be retail customers?

20 A Yes.

21 Q Then would you then classify these 138 kV lines
22 as distribution lines as shown on the diagram, Applicant's
23 128?

24 A The diagram does not indicate a name for that
25 particular line, which we show on the diagram at 69,000 volts.

1 We would classify that as subtransmission.

2 Q Not distribution?

3 A That's correct.

4 Q I notice in the upper left-hand corner of that
5 diagram you have the coal mine and something called a
6 unit train delivery coming out of that mine. What do you
7 mean by a unit train delivery?

8 A A unit train, which is a train provided for by
9 the tariffs of the railway, where by a large number of cars
10 designated for one location and originating at one location
11 are handled at a tariff more favorably than if they were
12 handled in normal single car shipments.

13 Q Do you know how many cars you need to have a
14 unit train?

15 A The number varies, depending upon the tariff which
16 has been established by the railroad. The tariffs under
17 which our unit trains are delivered are 10,000 tons nominal,
18 cars of hundred tons each, and 100 cars.

19 I believe there is a minimum beyond which that
20 cannot go of 9500 tons.

21 Q Mr. Moran, do you know how much generation one
22 would have to have in order to utilize a unit train such as
23 you just described?

24 A At our Bay Shore station, it is a day and a half's
25 worth. Usually you have about four or five unit trains a week

1 coming in.

2 Q In order to economically utilize --

3 MR. REYNOLDS: Can I have that last question and
4 answer back?

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

7 MR. REYNOLDS: Off the record.

8 (Discussion off the record.)

9 BY MR. MELVIN BERGER:

10 Q Mr. Moran, does that mean enough coal to burn
11 for a day and a half?

12 A That is what the normal utilization of coal at
13 the Bay Shore Station is. That is not very precise. The
14 Bay Shore Station generates power for about 9300 Btus per
15 kilowatt hour, or slightly less, and there are about 12,200
16 Btus in a pound of coal, and there are 10,000 tons of coal in
17 one of these trains.

18 We could divide all of those numbers out and
19 get the number in kilowatt hours. It is a big number.

20 CHAIRMAN RIGLER: What is the size of the Bay
21 Shore Station?

22 THE WITNESS: The Bay Shore Station, Mr. Rigler, has
23 four generating units and their aggregate capacity, as I recall
24 is roughly 500,000 kilowatts. Maybe slightly more than
25 that.

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1 BY MR. MELVIN BERGER:

2 Q And each of these units utilize coal as a fuel?

3 A Yes.

4 Q If I may, I would like to refer you now to
5 Applicant's 129, which is the map of the Toledo Edison
6 service area. I notice on this map around many of the cities
7 we have a rectangular or some kind of irregular shaped gray
8 line. Perhaps we can just pick one out at random here,
9 like Napoleon, which is, I guess, right in the center.

10 What does that gray line which surrounds the
11 city represent?

12 A It is my understanding that the gray line is
13 the corporate limits of that city or area. I don't believe
14 it is precise. It probably was an accurate representation
15 at one time of the limits of those particular communities.

16 Q So any area within that gray line would be within
17 the city limits; is that correct?

18 A Normally that would be the case, yes.

19 Q If we can take a look at Bowling Green for a moment,
20 I believe yesterday you discussed a 69 kV line which was
21 owned by Bowling Green. Is that line depicted on this map?

22 A Yes. It is the red horizontal line on the map.

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1 Q If the portion -- if the 69 Kv line, which is
2 owned by Bowling Green, were to be removed, physically
3 removed, from the Toledo Edison system, what effect would
4 that have on the Toledo Edison transmission system?

5 A It would impair the reliability of service for
6 the Toledo Edison system, because power may flow under
7 varying condition in any one of the three lines that
8 center at Bowling Green there.

9 Q Mr. Moran don't believe I have any further
10 questions on the map.

11 I do have a few other questions.

12 Mr. Moran, wouldn't the district managers have
13 of Toledo Edison be the people who are most familiar
14 with the competition that exists between Toledo Edison
15 and municipal systems?

16 A They would be the ones -- yes.

17 They would be the ones the most close to it.

18 Q I assume that would include their direct
19 superiors also?

20 A Yes.

21 Q There was some testimony yesterday about restrictive
22 provisions, such as Provision 8, in the Bowling Green
23 contract.

24 Let me ask you this: Is it your testimony that
25 a restriction, such as Provision 8, which may be waived, is not

bw2

1 a restriction, unless there is a request for waiver?

2 A I can conceive that it might have a restrictive
3 effect. So far as I I know, it did not.

4 Q Mr. Moran, are you aware of any Toledo Edison
5 employees advising a municipal system that the wholesale
6 contract that it had with that municipal system prohibited
7 the municipal system from serving a customer outside the
8 city limits which the municipal was interested in serving?

9 MR. BRILEY: Can I ask if you are referring to a
10 specific municipal system or municipal systems in general?

11 MR. MELVIN BERGER: Is Mr. Moran aware of any
12 such situations?

13 THE WITNESS: I am unaware of any.

14 BY MR. MELVIN BERGER:

15 Q Would you expect to be aware of them if such
16 a thing had occurred?

17 A I would think so, yes.

18 Q Mr. Moran, are you aware of any contractual
19 provision which at the present time or at some time in
20 the past prevented the Southeast Michigan Co-op from
21 selling the power it purchased from Consumers Power within
22 the State of Ohio?

23 A No. I am unaware of any provision in that
24 regard. It would probably be within any contract that they
25 had with Consumers, and I have no knowledge of those contracts.

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Q Are you aware of any contractual provision which in the past presented Southeast Michigan Co-op from selling the power it purchased from Toledo Edison in the State of Michigan?

A Yes, I am.

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arl 1 Q I believe yesterday you testified on direct that
2 there were three reasons why you thought you would be aware
3 of any territorial agreements Toledo Edison had with any
4 of the utilities.

5 I believe one of them was -- one of the reasons
6 was that the agreements would be filed with a regulatory
7 commission report.

8 MR. BRILEY: Can I have that question read back,
9 please?

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

12 MR. MELVIN BERGER: Let me withdraw that and try
13 to express myself a little more clearly.

14 BY MR. MELVIN BERGER:

15 Q I believe that you stated one of the three
16 reasons which you gave as reasons for your being aware or
17 probably being aware of any territorial agreements which
18 Toledo Edison had with any other utilities is that Toledo
19 Edison filed regulatory commission reports and these would
20 be reported in those reports; is that correct?

21 A Yes.

22 Q Mr. Moran, if the agreement -- if the territorial
23 agreements were not filed with any regulatory commission,
24 then would you be aware of it for that reason?

25 A Yes. I felt that I would be, anyway.

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1 Q Would it be, though, for that reason?

2 In other words, if the agreement were not filed
3 with a regulatory commission, then would it have to be part
4 of a report to the regulatory commission?

5 A I don't believe I understand your question.

6 Q What is contained in the regulatory commission
7 reports that you referred to yesterday?

8 A Well, there are many regulatory commission reports
9 and I don't recall specifically where this would appear.
10 There are several places where agreements of this kind for
11 the interchange of power or territorial limitations would be
12 mentioned.

13 I think of the 10K reports of the Securities and
14 Exchange Commission is one place where such contractual
15 arrangements are spread forth in considerable detail.

16 Q If such an agreement, such territorial agreement
17 were not required to be filed or were not filed with a
18 particular regulatory commission, would information about
19 that agreement be contained, necessarily be contained in a
20 report to the regulatory commission?

21 A Is your question would the actual text of the
22 agreement be there, or would there be a mention of the
23 agreement? Is that what you are asking?

24 Q Well, let's try both of those.

25 A This would depend upon the nature of the agreement

1 and the report. I don't think we can generalize.

2 Q Mr. Moran, isn't it true if you didn't notify
3 the commission about the report -- about the territorial
4 agreement, then you wouldn't have become aware of it through
5 your reporting function?

6 A I had felt we would be aware of it within the
7 management of the company, through normal internal relation-
8 ships, whether it was reported in this way or not.

9 Q But you wouldn't -- In other words, you would
10 become aware of it through something other than your function
11 of reporting to the commission?

12 A Yes.

13 Q I believe you gave as another reason for your
14 being aware of any territorial agreements with other utilities
15 such agreements would probably show up in some way in the
16 area of rate administration; is that correct?

17 A Yes.

18 Q How would they show up in that area?

19 A They would show up in the area of rate administra-
20 tion when a request for an interconnection to feed someone
21 on the far side of the line came up.

22 This would be discussed in the way of doing it,
23 or the rate that would be applicable or so forth. The
24 rate division of the company serves as a resource information
25 source for administrators in many areas of this type.

1 MR. MELVIN BERGER: Can I have the answer read
2 back?

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

5 BY MR. MELVIN BERGER:

6 Q Mr. Moran, would such a request ever get to the
7 rate administration if it were cancelled somewhere lower
8 down because of the agreement?

9 MR. REYNOLDS: Just a second. Can I have that
10 question back again?

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

13 MR. BRILEY: I object to that question. I think
14 it is unclear. I can't understand it.

15 CHAIRMAN RIGLER: Sustained.

16 BY MR. MELVIN BERGER:

17 Q Mr. Moran, would a request such as you referred
18 to in your last answer ever get to the rate administration
19 process level if somewhere along the line before it got to
20 that level, someone, some Toledo Edison employee, cancelled
21 it or --

22 CHAIRMAN RIGLER: Cancelled what?

23 MR. MELVIN BERGER: The request, or responded in a
24 negative manner to that request, because of the territorial
25 agreement.

1 CHAIRMAN RIGLER: You mean if the district
2 manager denied a request to serve a customer, would that
3 come to Mr. Moran's attention? Is that where you are trying
4 to go?

5 MR. MELVIN BERGER: Not quite. I believe Mr.
6 Moran's last answer was that he would become involved in such
7 a -- or the rate administration would become involved if
8 the request had something to do with rates or if it reached
9 the level where rates became a factor in granting a request.

10 However, if some time before you reached that
11 stage, someone gave a negative response to the request, my
12 question is, would Mr. Moran then have knowledge of that
13 request because of his rate administration function.

14 CHAIRMAN RIGLER: Can you answer that?

15 THE WITNESS: Yes, I can.

16 To answer that question, Mr. Berger, I will have
17 to explain very briefly the office layout of Toledo Edison.

18 In our general office we have developed an open
19 office concept, and we have worked very hard to make this a
20 functional arrangement and departments are not segregated
21 by their organizational position, but by their working
22 relationships.

23 As an example, there is a floor of Toledo Edison's
24 office building where all of the marketing people are located,
25 people that we no longer call marketing because that is not

1 a popular name in the utility circles. We now call them
2 customer contact people. Their function is the same. It is
3 to meet with the customers and find out what their needs are,
4 and see that Toledo Edison service is available.

5 In the middle of that department is the rate
6 division of the company, physically located right in the middle
7 of those people, so that they can talk to each other at a
8 grass-roots level, actually by yelling across a partition
9 if they are in a hurry, and we have good communications within
10 our company.

11 What you are saying could happen, of course, but
12 I think it is highly improbable.

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1 BY MR. MELVIN BERGER:

2 Q Is it more probable with the district manager
3 being involved in it, who is not located in Toledo?

4 A The district manager is further away. He
5 usually has as one of his functions an understanding of his
6 functions that he shall represent the company, all aspects
7 of the company, so he has communication throughout the entire
8 company.

9 Q But he doesn't necessarily communicate everything
10 that he does to the rate division, does he?

11 A I am sure he does not, but he should communicate
12 anything that is out of the ordinary. I believe this is
13 done in most instances.

14 Q Is request for service by a retail customer something
15 you consider out of the ordinary?

16 A To answer that question, we would have to know
17 whether it was a routine request for a small customer or
18 whether it was a larger customer, or even a small customer
19 might be out of the routine, if he were located at an
20 unusual point where we did not have service facilities.

21 One of our jobs is to see that the service
22 facilities are made available when needed.

23 Q Do you know approximately how many
24 requests the company gets each year for new service?

25 A No. I wouldn't have a number for that.

bw2

1 Q Are there outstanding instructions on how
2 different requests for service should be handled?

3 A Yes. There are many instructions in this area.

4 Q What are the instructions that deal with rate
5 administration?

6 A To answer that in detail would be -- would take
7 a long time.

8 Q Well, in general?

9 A In general. In general, we have a coding system
10 whereby we know the applicable rate for normal service at
11 any location within the company, and when an application
12 comes in for service at that location, we can determine
13 almost automatically what can be done and whether it
14 can be determined immediately that service is available.

15 If the customer wants an increase in his capacity,
16 then we have to refer it to another section of the company
17 to determine whether the wires are available and whether
18 multi-phase service is available instead of single-
19 phase, if that is involved, and whether the voltage which
20 the customer requires is available. And, if it is not,
21 then we have to work with the customer on ways in which these
22 things can be accomplished.

23 These people may involve contacts with
24 architects --

25 CHAIRMAN RIGLER: I think we are getting pretty

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1 far afield. NOT that you weren't trying to be responsible.

2 BY MR. MELVIN BEFSER:

3 Q Are there any other general ways?

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arl 1 CHAIRMAN RIGLER: Where are we going, Mr. Berger?

2 MR. MELVIN BERGER: Well, Mr. Moran has indicated
3 that there are three reasons why he believes he would be
4 aware of territorial agreements the company has.

5 CHAIRMAN RIGLER: All right.

6 And you have shown it is possible that there
7 would be instances in which none of the reasons might apply and
8 he might not be aware. He has conceded that. He conceded
9 that in his direct. Where are we going?

10 BY MR. MELVIN BERGER:

11 Q Mr. Moran, I believe yesterday we had some
12 testimony with regard to the opening and closing of the switch
13 when Napoleon has ready to disconnect for 90 days. I
14 would like to ask you whose responsibility or under whose
15 jurisdiction would opening and closing of such switches be?

16 A The jurisdiction for operations of this kind
17 are under the system load dispatcher, who is located in Toledo.

18 Q If we went up the line in authority, would
19 he be under your authority, under your vice presidency?

20 A No.

21 Q Whose vice presidency would he be under?

22 A The system operator is part of the power supply
23 function, and the vice president at this time is Mr. Grant.

24 Q If I may, for a moment, I would like to refer you
25 to NRC 127, which is the Lewis affidavit, and in particular

1 page 6, paragraph 2(c), which refers to the March 8th, 1972
2 meeting.

3 Mr. Lewis states what he requested of Toledo
4 Edison at that time, then he indicates what the response
5 of Toledo Edison was. Mr. Lewis says:

6 "Mr. Cloer responded by saying Toledo Edison will
7 do everything in its power to prevent Napoleon from taking
8 power from Tri-County."

9 Mr. Moran responded by saying, "We will have to
10 wait and see."

11 Mr. Moran, do you -- have you had an opportunity
12 to read over that paragraph (c)?

13 A Yes.

14 Q Do you believe that this states the facts as you
15 recall them?

16 A I stated yesterday that these two meetings were
17 not clearly distinguished in my mind. I know that Mr. Lewis
18 asked about the connection 10 miles outside of Napoleon
19 and I know that we were very negative to that possibility.

20 Then later the discussion centered on the
21 possibility of delivery in Napoleon and that we wanted to
22 explore further, and I also indicated yesterday that I
23 did believe Mr. Cloer had made some injudicious remarks in
24 that meeting, and this would indicate that.

25 CHAIRMAN RIGLER: Well, focusing here on paragraph

1 (c) on page 6, though, the question is, do you have any
2 recollection with respect to the facts as reported there?

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1 THE WITNESS: I do not have a clear recollection
2 as to this specific instances, no.

3 BY MR. MELVIN BERGER:

4 Q Mr. Moran, do you recall testifying on
5 deposition that you believe that this generally stated
6 the facts?

7 A I stated that, generally, Mr. Cloer had made
8 injudicious remarks. That was my meaning when I said
9 it generally stated the condition and I do also remember
10 that I wanted to explore it further, and said so.

11 MR. MELVIN BERGER: If I may have a moment, I
12 believe I am just about finished, but I would
13 like to check.

14 BY MR. MELVIN BERGER:

15 Q Mr. Moran, I believe yesterday you gave some
16 reasons as to why Toledo Edison would not serve Southeast
17 Michigan Cooperative in 1971. Those were engineering
18 reasons, as I recall; is that correct?

19 A Yes, that is.

20 Q Would Mr. Kozak be the person in Toledo Edison
21 who would be the most familiar with any capacity limitations
22 which would have prevented Toledo Edison from serving the
23 Southeast Michigan Co-op in 1971?

24 A I would expect Mr. Kozak to have been aware of
25 those reasons. I think it would be closer to the work of
Mr. Keck, however, so far as the immediate situation and the

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1 details.

2 Q What was Mr. Keck's position in 1971?

3 A Mr. Keck was a vice-president at the time. I am
4 not sure of his title. His responsibility, as I recall,
5 was for system planning and the relationship of facilities
6 outside of Toledo Edison to our own facilities.

7 Q Was Mr. Kozak vice-president too, at that time?

8 Q If Mr. Kozak determined that there were no
9 engineering limitations on Toledo Edison's ability to serve
10 Southeast Michigan Co-op in 1971, would you accept
11 his determination as being authoritative and correct?

12 A Yes. I would expect Mr. Kozak would have a
13 feel for that.

14 MR. MELVIN BERGER: That is all the questions we
15 have at this time.

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BY MR. GOLDBERG:

Q Do you recall the June 2nd, 1972 meeting at the Holiday Inn when Toledo Edison representatives and Bowling Green representatives held it in Bowling Green, Ohio?

A I am not positive which meeting this was. I know we had meetings at the Holiday Inn in Bowling Green.

Q I am speaking about the one on June 2nd, 1972.

A I don't tie it in with the date.

Q Do you recall attending a meeting in the early summer of '72 in the Holiday Inn at Bowling Green at which was present Mr. Hillwig, Mr. Powers Lewis, yourself, and Mr. Wendell Johnson?

A Yes, I do.

Q Do you recall the purpose of that meeting?

A The purpose of that meeting was to listen to a story by the organization known as the AMP-Ohio about their development and to explore whether there were possibilities for AMP-Ohio obtaining Toledo Edison power under favorable circumstances.

Q Why do you refer to it as a story?

A I refer to as a story because this was a development which was just beginning, and to some degree was a dream that was being implemented, they hoped, shortly, and that is why I refer to it as a story.

Q Didn't AMP-Ohio in fact become incorporated?

1 A Yes, it became a corporation.

2 Q Isn't it true that one of the purposes of that
3 meeting was also to discuss wheeling by Toledo Edison?

4 A I believe wheeling was discussed during that meeting.

5 Q Do you recall Mr. Hillwig personally requesting
6 Toledo Edison wheel power to Bowling Green?

7 A At that meeting?

8 Q At that meeting.

9 A No, I do not.

10 Q Do you recall telling Mr. Hillwig that Toledo
11 Edison was dissatisfied with its wheeling of Buckeye power?

12 A I don't recall saying that at that specific meeting,
13 but I expressed myself along those lines in a number of
14 meetings, so it is very probable that I did.

15 Q Was Mr. Hillwig present at any of those meetings?

16 A We have met with Mr. Hillwig --

17 MR. REYNOLDS: Any of which meetings?

18 MR. GOLDBERG: The meetings he just mentioned
19 in his answer.

20 MR. REYNOLDS: Well, if it is clear to the
21 witness. . .

22 BY MR. GOLDBERG:

23 Q Please answer.

24 A Mr. Hillwig was present at this meeting at
25 Bowling Green, and I do not recall whether he was present at
the other meetings or not.

1 Q Do you recall meeting with Mr. Hillwig in April
2 of 1972 in Mr. Sorgenfrei's office?

3 A We had a meeting with Mr. Hillwig, yes, about that.

4 Q Do you recall meeting with Mr. Hillwig in May of
5 '72?

6 A I do not recall two meetings so close together, no.

7 Q Didn't you express your dissatisfaction with
8 the Toledo Edison wheeling of Buckeye power in response to a
9 request for wheeling?

10 A I do not recall that I made that statement in
11 that connection.

12 Q Mr. Moran --

13 MR. BRILEY: Pardon me just a minute.

14 Can we have a second to read this over, please?

15 All right. Thank you.

16 BY MR. GOLDBERG:

17 Q Mr. Moran, I direct your attention to a document
18 which I have just distributed. It is identified as Applicant's
19 Exhibit 17 (Toledo Edison).

20 Does this document describe the June 2nd, '72
21 meeting about which we were speaking?

22 A Yes, it seems to.

23 Q Have you ever seen this document before?

24 A I did some time ago.

25 Q I direct your attention to the fourth paragraph

1 on the first page of this document, which is entitled
2 "Memorandum of AMP-Ohio, Incorporated, 1973 Power
3 Supply Negotiations with Toledo Edison Company."

4 Would you please review the fourth paragraph
5 there?

6 A Yes, I have.

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1 Q Does that refresh your recollection about what
2 happened at that June 2, 1972 meeting?

3 A Yes, it does. And I believe that is a fair
4 representation.

5 Q Thank you.

6 CHAIRMAN RIGLER: I thought that was consistent
7 with what the Witness had already said.

8 MR. REYNOLDS: It is.

9 MR. GOLDBERG: I don't believe it is.
10 My understanding of what the Witness testified was that
11 he didn't recall expressing dissatisfaction of wheeling
12 of Buckeye power in response to a request for wheeling.

13 CHAIRMAN RIGLER: I thought he said that he had
14 expressed that though several times over, and he just didn't
15 recall whether he did at this particular meeting.

16 MR. GOLDBERG: Well, this certainly establishes
17 that he did, indeed, at that meeting express that
18 dissatisfaction, in response to a request for wheeling.

19 BY MR. GOLDBERG:

20 Q Mr. Moran, is Toledo Edison policy on wheeling
21 today different from what it was in 1972?

22 A I do not believe that Toledo Edison's policy
23 is very much different.

24 It is crystallized to a greater degree than it
25 was in 1972.

1 Q Do you recall being asked during your deposition
2 whether or not Toledo Edison had in recent years changed
3 its policy on wheeling?

4 A I believe there was some reference in the
5 deposition.

6 Q Do you recall testifying then that,
7 indeed, there had been a change in your thinking in recent
8 years?

9 A That is what I refer to as crystallization here.

10 Q I see. In deciding whether or not to wheel when
11 a request was made, do you consider the competitive
12 effect of that wheeling?

13 A I am not so sure we have ever had a solid
14 request for wheeling, so that is very difficult to answer.

15 Q Mr. Moran, I again refer you to Applicants 17,
16 which, a short while ago, you agreed that paragraph 4 did
17 represent what occurred at the June 2, '72 meeting.

18 The first sentence states Mr. Hillwig then
19 asked whether Toledo Edison would be willing to wheel.
20 And it goes on.

21 Is that not a request to wheel?

22 A No, I would not so classify it, because in order
23 to have a request to wheel, you have to have something to
24 wheel.

25 Mr. Hillwig did not have any power available

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1 to him.

2 Q Didn't he pose the question in terms of, if he
3 did have the power, would Toledo Edison be willing to wheel?

4 A Yes, he did.

5 CHAIRMAN RIGLER: In considering Mr. Hillwig's
6 request in the June 2 meeting, did you consider the
7 competitive effect of granting the request?

8 MR. REYNOLDS: I didn't hear that. I am sorry.
9 Could I get it back?

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

12 THE WITNESS: Mr. Rigler, I don't think
13 we considered competition at that time, no. We are
14 very concerned about wheeling agreements which might open
15 the door for unprofitable transactions.

16 That was our primary concern, and is to this
17 time.

18 We are still concerned about a blank check
19 in the area of wheeling, because it is such a very
20 complex area and has so many possibilities for unprofitable
21 operations.

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BY MR. GOLDBERG:

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Q Don't you consider profit as an element of
3 competition?

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A We like to make money when we sell our product, yes.

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Q Generally speaking, Mr. Moran, in considering
whether you are willing to enter into any transaction, do
you take into account the competitive effect?

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MR. REYNOLDS: Let me have that again, please.

9

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

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MR. REYNOLDS: Mr. Chairman, I think in view of
the last couple of questions, it might be helpful if Mr.
Goldberg could tell us what he now has in mind in terms of
competitive effect. I had first thought he was talking
about the competition with regard to getting customers, if
there is a profit motive that he was putting in as an
element of his definition of competitive effect.

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I think we ought to find out so that everybody
is at least thinking along the same lines as the interrogator
is.

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BY MR. GOLDBERG:

Q Mr. Moran, what did you mean when you gave your
answer with respect to the question, the previous two
questions, one by the Chairman and one by myself?

MR. REYNOLDS: I will object to that.

1 BY MR. GOLDBERG:

2 Q How did you understand "competitive effect"?

3 MR. REYNOLDS: I don't mind that question.

4 THE WITNESS: When we talk about competitive
5 effect, I consider that as a recognition and an analysis
6 of what effect the transaction might have upon someone who
7 is a competitor of the company that I am working for.

8 That competitor might be in several different
9 areas. We compete in different areas from time to time.

10 BY MR. GOLDBERG:

11 Q Keeping that understanding of competitive effect
12 in mind, I would like you to tell me whether in considering
13 whether or not to enter into a transaction you take into
14 account the competitive effect of entering into that
15 transaction?

16 MR. REYNOLDS: This now is any transaction?

17 MR. GOLDBERG: Any transaction.

18 BY MR. GOLDBERG:

19 Q With any other utility.

20 A I am at a loss to figure exactly where there is
21 exactly a competitive effect in this connection.

22 Q Are you finished, Mr. Moran?

23 A Yes.

24 MR. SMITH: Excuse me.

25 When you describe your meaning of competition in your

1 reference to competitors, did you also include potential
2 competitors?

3 THE WITNESS: No, Mr. Smith, I don't think we
4 usually consider potential competitors, unless they are very
5 probable, highly probable, but we try to live a little
6 closer to the immediate situation in most instances.

7 BY MR. GOLDBERG:

8 Q Mr. Moran, when any other utility comes to
9 Toledo Edison with a request for a particular type of
10 transaction, isn't it true that whether or not you grant
11 that request or deny that request has some kind of an effect
12 on the company with respect to the competitive effect
13 with Toledo Edison to the company that makes the request?

14 MR. REYNOLDS: Mr. Chairman, I think that Mr.
15 Goldberg can be a little more precise with his questions.
16 He is going to get the information he is looking for. But
17 they are framed in such general terms that I believe they are
18 certainly confusing me. I believe they are confusing the
19 witness, and I don't believe they are going to elicit the
20 kind of responses he is looking for.

21 If we are talking about any transactions, there
22 are 10 different ways you can answer that question, and he
23 hasn't put any framework on the kind of transactions he is
24 talking about that someone comes and asks that the company
25 could enter into.

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I am not trying to obstruct his interrogation,
but I think it is getting awfully jumbled if we go at it
in a blunderbuss fashion.

It would be better to go on a more specific basis
and he can walk through and ask his questions in that
context. To me, it is terribly confusing. I am afraid
it may appear as though the witness is being unresponsive,
whereas he is not.

He is just having a difficult time sorting out where
the question really is.

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1 MR. GOLDBERG: I think the difficult time is
2 coming, simply by the Witness not answering the very simple
3 question as to whether or not, when they make a decision,
4 when any transaction is requested by another
5 company, whether they generally take into account in
6 deciding that, whether to grant or deny that request,
7 competitive effect.

8 That is, I think, a very simple question, and
9 I would like to know if it is a general company policy
10 to consider that.

11 CHAIRMAN RICLER: All right. I will let you
12 ask that.

13 BY MR. GOLDBERG:

14 Q You may respond, Mr. Moran.

15 A Well, we have a little more qualification now.
16 You are talking about transactions with other utilities.

17 Q Yes.

18 A And I do not believe that the element of
19 competition enters into our thinking in most such
20 transactions.

21 Q Mr. Moran, I would like to show you a portion
22 of your deposition in which the question was asked, in
23 considering whether you are willing to enter into a
24 transaction, do you take into account the competitive
25 effect of the company's other areas of service, such as

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1 that of retail, or in connection with the sales
2 of bulk firm power.

3 And your answer was, "To some degree we do
4 for a number of technological reasons."

5 Then the question was asked, "Do you consider
6 business reasons in whether or not to wheel?"

7 And your answer, "We are cognizant of that,
8 yes."

9 And then you were asked, "Do you take into account
10 the decision of whether to wheel or not to wheel?"

11 MR. BRILEY: What pages are you reading from?

12 MR. GOLDBERG: 6 and 7. Page 7, beginning
13 on line 14.

14 BY MR. GOLDBERG:

15 Q And you are asked, "Do you take into account
16 the decision of whether to wheel or not to wheel?"

17 And your answer is, "To the degree that we
18 can, we do, yes."

19 Do you recall testifying to that effect at
20 your deposition?

21 CHAIRMAN RIGLER: All right.

22 Now, before he answers, give Mr. Briley a
23 chance to catch up with you.

24 MR. CHARNO: Off the record.

25 (Discussion off the record.)

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MR. GOLDBERG: Would the reporter please read back the question.

CHAIRMAN RIGLER: Your question was, do you recall having testified to that and gave some extensive quotes.

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arl 1 CHAIRMAN RIEGLER: Your question is, does he recall
2 testifying to that?

3 MR. GOLDBERG: Yes.

4 THE WITNESS: I do not recall this specific part
5 of the deposition. I think it is probably correct. It is a
6 little more precise than we were thinking earlier. I think
7 for a number of technological reasons, we do consider competi-
8 tion as a factor.

9 This would apply to certain transactions. There
10 are many others where it is not a factor at all.

11 BY MR. GOLDBERG:

12 Q It certainly applies to wheeling?

13 A To certain wheeling transactions, it would.

14 Q Well, in responding to Mr. Hillwig with respect
15 to wheeling at the June 2nd meeting, did you take into
16 account the fact that Toledo Edison, that if Toledo Edison
17 did wheel, it might lose a wholesale customer?

18 A No. We were not considering that at that time
19 because we were uncertain how we were going to respond to
20 Mr. Hillwig, until after we studied the matter and discussed
21 it in our home office.

22 MR. CHARNO: Could I have the answer back, please?

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

1 BY MR. GOLDBERG: In light of your prior answers
2 with respect to competitive effect, that study would
3 include the competitive effect, would it not?

4 A Yes, it would.

5 Q Mr. Moran, do you recall testifying yesterday
6 that in 1971, Toledo Edison was not "openly" opposed to
7 wheeling? That it was not an expressed policy of Toledo
8 Edison?

9 A Yes, I do.

10 Q Was that simply than your internal policy?

11 MR. REYNOLDS: Excuse me. As opposed to what?

12 MR. GOLDBERG: As opposed to open expressed policy.

13 THE WITNESS: Well, at this period of time, I
14 believe we had evolved -- we were evolving a policy toward
15 wheeling transactions, and I don't think to this day we have
16 expressed them publicly. We haven't written our policy
17 down on a piece of paper and said, "This is what we are
18 going to do," because we do have a rather clear-cut
19 understanding of what our reaction will be when questions of
20 this kind are raised.

21 I said earlier that I was unaware of any
22 firm request for wheeling that Toledo Edison has ever
23 received, and I don't believe there has been one.

24 MR. GOLDBERG: I would like to move to strike the
25 portion of the answer which began "I am not aware of any firm

1 request for wheeling" as unresponsive.

2 CHAIRMAN RIGLER: What was the question again?

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

5 CHAIRMAN RIGLER: Denied.

6 BY MR. GOLDBERG:

7 Q In 1972, was it Toledo Edison's policy to
8 operate synchronously with another system only if that system
9 was not bringing in power from a third party?

10 A This is a hypothetical question because there
11 were no third party arrangements with anyone with whom we
12 had generating agreements.

13 CHAIRMAN RIGLER: The answer can be yes, it was
14 our policy; no, it wasn't our policy; or, no, we had no
15 policy because we hadn't considered it.

16 THE WITNESS: Mr. Rigler, I could be more precise.
17 We had not considered such a policy, but we would be very
18 concerned if such an occasion were to develop, because of
19 the technical problems related to this, both accountingwise
20 and propertywise and safetywise.

21 MR. GOLDBERG: Could I have that last question and
22 that answer read back, please?

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

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1 BY MR. GOLDBERG:

2 Q Didn't that in fact occur with respect to
3 Napoleon's request to operate synchronously?

4 MR. REYNOLDS: Didn't what occur?

5 MR. GOLDBERG: His answer was that situation
6 never occurred.

7 MR. REYNOLDS: Your answer to me is that situation?

8 MR. GOLDBERG: Yes.

9 MR. REYNOLDS: That is a little better.

10 THE WITNESS: Napoleon did request an operation
11 which would involve their own generation, plus Toledo
12 Edison's power, and we were concerned about synchronization
13 if there was a third party involved, and we expressed that
14 concern to them at that time.

15 BY MR. GOLDBERG:

16 Q When was that, Mr. Moran, that you expressed that
17 concern?

18 A That concern was expressed in the meetings
19 with Mr. Lewis which have been previously referred to.

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1 Q As of 1974, you were vice-president in charge
2 of corporate planning; is that correct?

3 A Yes.

4 Q And that included long-range planning?

5 A That is all that it did include.

6 Q If you were to study future power resource
7 alternatives for an electric system, would you consider
8 the possibility of joint ownership of generating facilities?

9 A The future power supply alternatives were not
10 a function of our strategic planning function. This is an
11 area that would be covered in Mr. Rock's
12 department of our company, where our physical facilities
13 were being studied and planned for.

14 Q In that department would not the possibility
15 of joint ownership of generating facilities be
16 something that would be considered?

17 A They might well be. That would be the
18 proper place for them, if we were to make such
19 considerations.

20 Q Wouldn't they necessarily be one of the
21 considerations?

22 MR. REYNOLDS: Objection.

23 The witness has already indicated he can't say
24 necessarily what would have -- also I am not too clear where
25 we are going with this line in terms of what the direct
was or the scope of the testimony even including cross.

1 CHAIRMAN RIGLER: Sustained.

2 BY MR. GOLDBERG:

3 Q Do you recall yesterday testifying that Mr. Lewis
4 was retained by Napoleon to study future power resource
5 alternatives?

6 A Yes, I do.

7 Q then, how can you say, as you did yesterday,
8 that it wasn't one of the purposes of the meetings with
9 Mr. Lewis, referred to in NRC-127, to discuss joint ownership
10 of generating facilities?

11 MR. BRILEY: I object to that. He didn't testify
12 that was one of the purposes of the meeting. He testified
13 that is one of the things that came up peripherally at one
14 of the meetings.

15 You are mischaracterizing his testimony, Counsel.

16 MR. CHARNO: I believe he is not only correct --

17 CHAIRMAN RIGLER: Let Mr. Goldberg respond first.
18 It is his question.

19 MR. GOLDBERG: He testified that was not one of
20 the purposes of the meetings. It was something done when the
21 papers were being put in the briefcase by Mr. Lewis.

22 CHAIRMAN RIGLER: That is my recollection.

23 MR. CHARNO: Further, he testified that was
24 beyond the scope of Mr. Lewis' duties, as he understands
25 them.

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1 MR. BRILEY: What was beyond the scope of
2 his duties?

3 MR. CHARNO: Consideration of joint generation.

4 CHAIRMAN RIGLER: Objection overruled.

5 That is my recollection, too.

6 MR. GOLDBERG: Read back the pending question.

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

9 MR. REYNOLDS: My objection was to form.
10 It seems to me that I have no problem if Mr. Goldberg
11 wants to ask a question which is directed to the area it is,
12 but it doesn't seem to me that there is any follow from the
13 question he asked as to what Mr. Lewis' functions were,
14 and then to conclude from that, well, then, how can you
15 say that one of the purposes of the meeting was not.

16 I really object to casting questions in that
17 light. I think if Mr. Goldberg wants to get to his
18 point he can get to it, but it doesn't seem to me there
19 is any reason to conclude from whatever Mr. Moran might
20 conceive as Mr. Moran's responsibilities, that necessarily
21 the purpose of a meeting called by Mr. Lewis going to embrace
22 any subject matter.

23 So my objection really goes more to the form of
24 the question than anything else.

25 I do feel that it can be a little more

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artfully worded.

CHAIRMAN RIGLER: All right.

Let's hear the question.

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

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1 CHAIRMAN RIGLER: The objections are overruled.

2 THE WITNESS: Mr. Lewis expressed the things
3 rather precisely that we was working on in Napoleon. One
4 of these was to assist the power plant operators in making
5 the plant operate continuously.

6 There was a period of time when Mr. Lewis had
7 some of his own employees actually manning the power plant
8 during that period.

9 The second objective that Mr. Lewis had was to
10 develop a system for a larger interconnection with Toledo
11 Edison which was needed immediately because of the load
12 growths that had occurred in Napoleon, with no corresponding
13 growth in the interconnection capacity.

14 The third part of Mr. Lewis' assignment was to
15 develop the future power needs for Napoleon.

16 In doing this, he had projected what he felt
17 the future growth of Napoleon's load requirements would be
18 over a period of some 10 or 15 years, and then he had
19 developed four or five alternative methods of providing that
20 power. And he asked Toledo Edison to give him figures on
21 what the Toledo Edison proportion of these various plans
22 would be.

23 None of the plans that he showed us involved
24 any joint operation of power plants.

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BY MR. GOLDBERG:

Q Would you please explain how the 60 percent ratchet clause works that was discussed briefly yesterday?

A I don't recall that we mentioned the specific number. A 60 percent ratchet clause would operate in the event that a customer of a power company sustained a demand, that is had a maximum requirement for power during a month, and then in succeeding months had a much lower requirement for power, and a 60 percent ratchet would say that that customer would be required to pay 60 percent of the demand charge for a succeeding number of months, depending upon how the rate was worded.

It might be six months. It might be a year, or it might be two or three months.

Q That would be no matter how little power he actually took?

A Yes.

Q Even if he took no power?

A Yes.

Q With respect to Bowling Green, what was the period of months for which the ratchet clause -- in which the 60 percent ratchet clause applied?

A I do not recall. I would have to read the contract.

MR. REYNOLDS: What was the witness handed?

1 MR. GOLDBERG: The witness was handed NRC 48,
2 which was the May '57 contract between Toledo Edison and
3 Bowling Green.

4 MR. REYNOLDS: Is there a pending question?

5 MR. GOLDBERG: Yes, there is.

6 THE WITNESS: This contract is the 1967
7 contract between Bowling Green and Toledo Edison, and its
8 ratchet clause says that the monthly billing demand
9 shall be the monthly demand, but not less than 80 percent
10 of the highest monthly demand obtained during the last 12
11 months ending with the month under consideration.

12 BY MR. GOLDBERG:

13 Q So the ratchet clause in the case of that
14 contract applied for a one-year period; is that correct?

15 A Yes.

16 Q Is that typical of all the wholesale contracts
17 Toledo Edison had with its wholesale customers?

18 MR. REYNOLDS: Objection. The contracts are
19 in evidence and they speak for themselves.

20 CHAIRMAN RIGLER: He testified with respect to
21 the uniformity of contract provisions of this nature
22 generally. Overruled.

23 MR. REYNOLDS: I don't want to argue with you, but
24 if the question goes to the 12 months, Mr. Rigler, he also
25 said quite specifically he had no idea, without looking at

1 the contract, then he was specifically shown the contract
2 and read the provision.

3 My only difficulty is, if we are going to get
4 the answer to the question, we ought to go to the contract,
5 if the question really addresses itself to the text and
6 the contract speaks for themselves, and are all in evidence.

7 If we are talking about the general provision
8 of ratchet, then it is a different matter. But I didn't
9 understand the question to be that way.

10 BY MR. GOLDBERG:

11 Q Mr. Moran, to the best of your knowledge, is
12 that typical of all the wholesale contracts between Toledo
13 Edison and all of its wholesale customers at that time?

14 A Generally speaking, a ratchet clause is more restric-
15 tive for larger companies -- or larger customers than for
16 smaller customers, and Bowling Green is the largest municipal
17 customer of Toledo Edison.

18 I would not expect the smaller customers to
19 have a 12-month ratchet clause.

20 Q With respect to Mr. Dorsey's proposal of
21 having simply an open switch for the 90-day disconnect
22 period, isn't it a fact that he never insisted that only
23 his personnel would close that switch in case of an emergency?

24 A I do not recall that Mr. Dorsey was particularly
25 concerned about this. He asked if we could operate with the

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1 open switch.

2 We told him that we regarded it as being unsafe
3 and I think that was the last of it. So far as we know,
4 we went ahead with our plans for making the more permanent
5 disconnection.

6 Q But he never did insist, did he, that only
7 Napoleon personnel would operate the switch in case of an
8 emergency?

9 A I am sure he did not. He would have no occasion
10 to do so.

11 Q With respect to your concern about the safety
12 of the operation of that switch, did you ever propose
13 that safeguards be initiated so that the switch could be
14 kept in an open position?

15 A I am unaware of whether this was discussed with
16 Mr. Dorsey or not.

17 MR. GOLDBERG: Could the reporter please read back
18 the question?

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

21 BY MR. GOLDBERG:

22 Q Mr. Moran, did you in fact propose safeguards?

23 CHAIRMAN RIGLER: I thought he said he didn't
24 know that the matter was ever discussed. Wasn't that his
25 answer?

MR. GOLDBERG: Yes, it was.

1 BY MR. GOLDBERG:

2 Q Do you know when Napoleon has its peak
3 during the year? In 1971, for example?

4 A At that time I believe that Napoleon had a
5 summer peak.

6 Q At that same time, when was Buckeye's peak during
7 the year?

8 A The Buckeye peak occurs during the winter months.

9 Q With respect to those two systems, when, wouldn't
10 you describe that condition as being an example of seasonal
11 diversity?

12 A Yes.

13 Q Mr. Moran, you have testified on a number of
14 occasions that you never considered Toledo Edison to receive
15 a firm request for wheeling. Do you recall that?

16 A Yes.

17 Q Do you also recall testifying that wheeling
18 was discussed throughout the Toledo Edison Company?

19 A Yes.

20 Q Well, if no firm request for wheeling were
21 ever made to Toledo Edison, why was it that you discussed
22 wheeling throughout the company?

23 A We had received certain generalized
24 requests, but never a specific one that I recall. Now, of
25 course, the Buckeye power agreement I have already said

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1 was a wheeling agreement, so that is one exception; but
2 it is the only one I am aware of.

3 Q I believe you testified that the May '67 contract
4 between Toledo Edison and Bowling Green, which was
5 NRC Exhibit 45, was typical of the contracts you had
6 between Toledo Edison and its wholesale customers; is that
7 correct?

8 A Yes. It would be typical for the larger customers.

9 Q Isn't the minimum ratchet clause in any of
10 those contracts 50 percent over a 12-month period?

11 A I am unaware, unless I read it.

12 Q Does Provision 8 in the Bowling Green-Toledo
13 Edison '67 contract, NRC 45, apply both to inside and outside
14 the corporate limits of Bowling Green?

15 MR. REYNOLDS: You mean paragraph 8?

16 MR. GOLDBERG: Provision 8.

17 MR. REYNOLDS: Would you show the witness the
18 paragraph you are asking him about?

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1 MR. GOLDBERG: The Witness can testify
2 concerning his recollection first.

3 CHAIRMAN RICLER: That is pointless. It
4 applies on its face both inside and outside.

5 BY MR. GOLDBERG:

6 Q Does Provision 8 apply to competition only
7 for new customers or also for competition for existing
8 customers?

9 A The contract applies to existing customers.

10 Q It has no application at all with respect
11 to future customers?

12 A I would say it could apply to new customers
13 also.

sense?

14 Premises -- will not supply a premise. It could
15 be a new one or existing premise.

16 Q It could apply to a new customer outside the
17 corporate limits of Bowling Green?

18 CHAIRMAN RICLER: Well, noting the long delays
19 here, the Board is just going to note that it will speak
20 for itself. This is really a waste of time.

21 BY MR. GOLDBERG:

22 Q Mr. Moran, yesterday you testified that most
23 communities did not express an interest in provisions such
24 as Provision 8. Do you recall that?

25 A Yes, I do.

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1 Q If most of the communities did not
2 express an interest, why did Toledo Edison put a provision
3 such as Provision 8 in almost all its wholesale contracts?

4 A This was an attempt to develop a uniform contract
5 package and we felt that it would be to the mutual benefit
6 of both the Toledo Edison Company and its wholesale
7 suppliers, in that it would provide the firm usage
8 for the distribution equipment, which would prevent
9 a situation which we had had develop in a few instances
10 where customers wanted to jump back and forth

11 Q So it would be accurate to say, then, that Toledo
12 Edison unilaterally decided this would be to the benefit of
13 both Toledo Edison and the wholesale customer; is that
14 correct?

15 A I would not say unilaterally, because in the
16 instance of Bowling Green, as an example, the utilities, the
17 utility department felt there was some advantage in having
18 this provision and the other people were, I think apathetic
19 is the word.

20 They could see that it might help them, but
21 they didn't really get very excited about it one way or
22 the other.

23 Q Are you aware of the fact that if it were not for
24 Provision 8 Bowling Green would have competed with Toledo
25 Edison for customers outside Bowling Green's corporate

bw3 1 limits?

2 A I am not aware of that fact, except that
3 Mr. Hillwig said he might like to compete in the future,
4 in 1971 or 2.

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ari 1 Q Do you recall Mr. Hillwig attempting to negotiate
2 a contract with Toledo Edison which did not have a
3 provision such as provision 8 in it?

4 A Mr. Hillwig gave us a copy of a contract in which
5 he had indicated the items that he would like to have changed
6 in 1971 or '2, when we were negotiating, and paragraph 8
7 was one of the items he said he would like to have eliminated.

8 Q Did that occur in Mr. Sorgenfred's office?

9 A Yes, it did.

10 Q Do you recall Mr. Hillwig attempting to
11 negotiate a contract with Toledo Edison which did not have a
12 provision such as provision 8 in it on more than one occasion?

13 A I don't recall that this specific item was mentioned
14 more than at that one meeting.

15 Q I have just distributed a document which is NRC 46.
16 Mr. Moran, have you ever seen this document before?

17 A Yes, I have.

18 Q On what occasion did you see this document before?

19 CHAIRMAN RIGLER: Mr. Goldberg, I don't want to be
20 impatient, but is this the Hillwig proposal?

21 MR. GOLDBERG: Yes.

22 CHAIRMAN RIGLER: Mr. Moran testified Mr. Hillwig
23 made a proposal and in the proposal he suggested provision
24 8 be deleted and this reflects that.

25 Where are we going to go? Mr. Moran has admitted

1 that. I mean the document you have just given him
 2 certainly isn't going to contradict anything Mr. Moran said.
 3 It is going to support what he said.

BY MR. GOLDBERG:

5 Q You testified yesterday, did you not, that
 6 after you cancelled the May '67 contract at the end of the
 7 first five-year term, rather than renegotiating a new
 8 contract, you simply filed a rate with the FPC?

9 A Yes, I did.

10 Q If the municipality was not satisfied with
 11 that rate, its option would be to intervene in the rate
 12 proceeding; would that be correct?

13 A Yes.

14 Q If the wholesale customer could not or did not
 15 intervene in the rate proceeding, then that tariff, if
 16 approved by the FPC, would go into effect; is that correct?

17 A Yes, it probably would.

18 Q Mr. Moran, since September 1st of 1968, has Toledo
 19 Edison ever used the transmission facilities of any other
 20 electric utility to transmit power?

21 A I would say that in conjunction with the
 22 CAPCO transactions, there have been occasions when power
 23 was transmitted to Toledo Edison from other power companies,
 24 yes.

25 Q What about other than the CAPCO transactions?

1 A I do not recall where there were other occasions
2 where there would be systems other than Toledo Edison's
3 used.

4 Q Mr. Moran, I would like to refer you to Applicant's
5 Exhibit 129, which is the map which you have up there, and
6 I would like to direct your attention to the 69 KV transmis-
7 sion line which passes through the Bowling Green corporate
8 limits in an east and westerly direction.

9 You have testified, have you not, that Bowling
10 Green owns that transmission line?

11 A Yes. It is within the corporate limits.

12 Q Do you not transmit power across that transmission
13 line?

14 A There would be occasions when Toledo Edison transmits
15 power over that line.

16 Q You testified yesterday that there was an oral
17 agreement between Toledo Edison and Bowling Green with
18 respect to Toledo Edison's use of that line. Do you recall
19 that testimony?

20 A Yes, I do.

21 Q With whom in Bowling Green did you make that
22 oral agreement?

23 A I did not make the agreement. That was before I
24 was involved in rate operations. This was quite a complex
25 arrangement. It involved a number of people in Toledo

1 Edison, both operating, engineering, as well as the rate
2 personnel.

3 Q Who in Toledo Edison at that time would have
4 made that agreement on behalf of Toledo Edison?

5 A The rate negotiations at that time were accomplished
6 by Mr. W. E. Trimble, T-r-i-m-b-l-e, and the district manager
7 at that time was Mr. Hildebrand.

8 Q With whom in the Bowling Green system did they make
9 that oral agreement?

10 A That would be Mr. McKnight.

11 Q What was the approximate date of that agreement?

12 A It would be about 1956, I believe, and there
13 is some language in the 1957 contract with Bowling Green
14 which relates to some of the physical facilities and
15 the provisions related to this agreement.

16 Q Other than pursuant to the terms of that oral
17 agreement, does Toledo Edison compensate Bowling Green in
18 any way for the use of that line?

19 A The compensation that Bowling Green receives
20 for the use of the line is the fact that Bowling Green's
21 power usage each month is billed as if there was only one
22 deliver point rather than two.

23 Q Since that rate schedule is no longer in effect,
24 is there any written reference to that oral agreement?

25 MR. REYNOLDS: Which rate schedule are we talking

1 about?

2 MR. GOLDBERG: The '57 one, referred to in his
3 answer.

4 MR. REYNOLDS: I am lost. I didn't hear him refer
5 to a rate schedule.

6 MR. GOLDBERG: The one that was in effect when
7 the '57 contract was in effect.

8 MR. REYNOLDS: If the witness understand, I am
9 not going to delay things.

10 THE WITNESS: The continuing fact that Bowling
11 Green is still being billed as one customer with two
12 delivery points is a recognition of the existence of this
13 agreement.

14 BY MR. GOLDBERG:

15 Q Are you aware that Bowling Green does not
16 consider that it is being compensated in any way for the use
17 of that line?

18 A I have heard it mentioned that Mr. Millwig was
19 under that feeling, yes.

20 Q I would like to refer you to NRC 45 once again,
21 specifically Exhibit B attached, the third page from the
22 back.

23 I would like to direct your attention to the
24 writing in the left-hand margin which says "insert A" in
25 quotes. Do you see that?

1 A Yes.

2 Q Do you recall who wrote that?

3 A No, I do not. It was on this document when it
4 was handed to us by Mr. Hillwig.

5 Q I would now refer you to the next page of the
6 document which at the top is entitled "Insert A." Do you
7 see that?

8 A Yes.

9 Q When Mr. Hillwig presented this document to you,
10 did he explain why he wanted Insert A in there?

11 A As I recall, he felt that this would be a means
12 of providing compensation for the use of the line.

13 Q Mr. Moran, isn't it a fact that when Mr. Hillwig
14 handed this document to you and referred to Insert A, that
15 you rejected it?

16 A Yes, I think that is correct.

17 Q Isn't it also true that when you rejected it,
18 you did not explain about the compensation for the use of
19 that line by Toledo Edison?

20 A My recollection is that I did explain to him that
21 if he had compensation for that line, we would have to
22 consider his delivery as two customers.

23 Q But you did not refer, did you, to the oral
24 understanding about that line?

25 A I don't recall whether it was mentioned or not.

20 1 Q Was Mr. Sorgenfrei present at that meeting?

2 A Yes, he was.

3 Q Mr. Moran, when you rejected that proposal insert
4 A, don't you think that would have been an appropriate time
5 to refer to the oral agreement, if in fact one existed?

6 A Yes, I believe it would have been an appropriate
7 time, and I rather thought that it had been.

8 MR. GOLDBERG: Could I have the last question
9 and answer read back, please?

10 CHAIRMAN RIGLER: Let's take a 10-minute recess.

11 (Recess.)

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1 MR. GOLDBERG: Would you read back the last
2 question and answer, please?

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

5 BY MR. GOLDBERG:

6 Q- Is it your testimony, Mr. Moran, that you, in fact,
7 referred specifically to that oral agreement at that time?

8 A I cannot say categorically that I did. It
9 is my recollection that it was mentioned at the time.

10 Q Concerning opportunities for competition between
11 municipals and Toledo Edison, if a municipal, in fact,
12 did not compete with Toledo Edison, because it believed
13 it was prohibited from doing so, because of provisions
14 in its contract with Toledo Edison, would necessarily
15 have any way of knowing that that is the reason why
16 municipals did not compete with Toledo Edison?

17 A We would not have that knowledge, no.

18 Q Yesterday you gave a number of answers indicating
19 there was no room for -- no opportunity for competition
20 into limited growth or no growth in certain areas. Even
21 if there were no growth, if it were not for provisions
22 in a contract between a municipal and Toledo Edison,
23 couldn't there be competition for existing customers?

24 A This would be very unlikely, due to the provisions
25 of the state law which require the 90-day disconnection
before service is undertaken by another utility.

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bw2 1 Q Is it your understanding that that 90-days
2 applies to all categories of service?

3 A Yes, it is.

4 MR. REYNOLDS: Can I have the last question
5 and answer, please.

6 CHAIRMAN RIGLER: Is it your understanding that
7 that applies to all categories of service. The answer
8 was, yes, it is.

9 Do you mean if a commercial customer wanted to
10 switch from one company to another and each had lines in the
11 immediate vicinity, that the commercial customer would have
12 to be disconnected from all electric service for 90 days?

13 THE WITNESS: Yes, sir. That is the way the law
14 has been interpreted.

15 CHAIRMAN RIGLER: Throughout the State of
16 Ohio?

17 THE WITNESS: Yes, sir. I think it is in the
18 state constitution.

19 MR. REYNOLDS: Mr. Rigler, I believe it is a
20 statutory provision. Not a constitutional provision.

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CHAIRMAN RIGLER: How does this affect door-to-door competition between CNE and the City of Cleveland? Has Toledo Edison ever considered that situation with respect to the statutory applicability in its own service area?

THE WITNESS: We have had a few instances, Mr. Rigler, with the Napoleon system which serves a large area outside of Napoleon, where customers wish to change, where we have had to refuse them because of this consideration.

CHAIRMAN RIGLER: But have you ever thought about that situation in the Toledo Edison area with respect to what might be happening in Cleveland? Has that ever come to your attention?

THE WITNESS: No, sir, it has not.

MR. CHARNO: I would simply at this point like to note the existence in the record of a stipulation by counsel with regard to the applicability of the 90-day cut-off provision.

CHAIRMAN RIGLER: Pardon?

MR. CHARNO: I would like to note also there is a stipulation of counsel on the applicability of the 90-day cut-off statutory provision to competition between a municipal system and investor-owned utility within Ohio.

CHAIRMAN RIGLER: An industrial utility within a mile --

1 MR. CHERNO: Within Ohio, investor-owned utilities.

2 CHAIRMAN RIGLER: What is the basis of this
3 stipulation?

4 MR. CHERNO: We were just discussing that. It
5 is my recollection that counsel for Applicant has conceded
6 the 90-day statute has no applicability to a
7 municipal utility.

8 CHAIRMAN RIGLER: Okay. Discuss it and advise
9 the Board after the next break.

10 Move ahead.

11 MR. CHERNO: Certainly.

12 CHAIRMAN RIGLER: Move ahead then.

13 MR. REYNOLDS: Off the record.

14 (Discussion off the record.)

15 BY MR. GOLDBERG:

16 Q Mr. Moran, at the meetings which were held
17 with Mr. Lewis, when you believed that some of the remarks
18 made by Mr. Clear were, to use your language, injudicious,
19 and inflammatory, did you tell Mr. Lewis that you believed
20 them to be injudicious and inflammatory?

21 A No, I did not.

22 Q So then Mr. Lewis had no reason to believe
23 that you thought them to be injudicious and inflammatory;
24 is that correct?

25 MR. REYNOLDS: I object.

1 CHAIRMAN RIEGEL: Sustained.

2 MR. GOLDBERG: Just one more line, Mr. Chairman.

3 BY MR. GOLDBERG:

4 Q Mr. Moran, yes or no: was provision 2 designed
5 to prevent other utilities from taking customers away from
6 Toledo Edison?

7 A Well, I can't answer yes or no to a question
8 like that because it has several facets, that provision
9 did have --

10 MR. NEWCOMB: I believe the Department of
11 Justice went into at quite some length on cross-examination
12 already.

13 CHAIRMAN RIEGEL: I believe it is covered pretty
14 thoroughly, and secondly, I agree with the witness, it
15 cannot be answered yes or no.

16 If you had asked was it one of the purposes,
17 then he might have been able to answer yes or no; but he
18 testified it has several purposes.

19 I think the question is rather repetitive after
20 Justice's lengthy cross-examination.

21 MR. GOLDBERG: Mr. Chairman, may I have the witness
22 excused for a moment?

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CHAIRMAN RIGLER: Yes.

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(Witness temporarily excused.)

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MR. REYNOLDS: Mr. Chairman, I read over
Transcript pages 4977 to 4983 very carefully and the
Witness has not specifically answered this question. The fact
that it can be answered yes or no is evidenced by the
Witness' simple yes or no answer to the very same question
asked in his deposition, and this has not been explored.
And I think it is appropriate to examine a prior inconsistent
statement by this Witness.

CHAIRMAN RIGLER: I will permit you to ask if that
was one of the purposes, but it can't be answered yes
or no with respect to whether that was the purpose, because
he has testified there were multiple purposes.

MR. REYNOLDS: Can we have the page references,
please?

MR. GOLDBERG: Can I ask him if it was the
principal purpose?

CHAIRMAN RIGLER: You say.

MR. REYNOLDS: Do you have a page reference?

MR. GOLDBERG: The reference to the
deposition is on page 83 of his deposition, beginning at
line 3. There the Witness was asked the exact same question
and answered the question with a simple "Yes."

CHAIRMAN RIGLER: All right. I will permit you

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1 to ask him if that was one of the purposes or the principal
2 purpose, then if you want to refer him to the deposition,
3 you may, but let's move right ahead.

4 Let's get the witness.

5 Whereupon,

6 W. ROYCE MORAN

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

9 CROSS-EXAMINATION (Cont'd)

10 BY MR. GOLDBERG:

11 Q Mr. Moran, I would like a yes or no answer,
12 and if you feel it is necessary to explain, you may do so.

13 Was the principal purpose of Provision 9
14 to prevent others from taking customers away from
15 TeleCo Edison?

16 A No. That was not the principal purpose.

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1 Q Mr. Moran, I would like to direct your attention
2 to your deposition, page 83, beginning at line 1. Will you
3 look at that, please?

4 CHAIRMAN RIGLER: Line 3 to what line?

5 MR. GOLDBERG: Line 3 or line 2, it is sort of in
6 between 2 and 3, down to line 6.

7 CHAIRMAN RIGLER: All right. Let's have the
8 witness read that into the record, or someone do it.

9 THE WITNESS: The question is:

10 "So is it safe to say that these provisions
11 are designed to prevent others from taking customers away
12 from Toledo Edison?"

13 And the answer is: "Yes."

14 BY MR. GOLDBERG:

15 Q Mr. Moran, how do you reconcile that with your
16 answer to my previous question, was one of the principal
17 purposes to prevent the taking of customers of Toledo
18 Edison and your answer was no?

19 MR. REYNOLDS: I believe the question was, was
20 the principal purpose. Not one of the principal purposes.

21 CHAIRMAN RIGLER: You may answer.

22 THE WITNESS: This would be one of the purposes
23 of the provision.

24 However, this provision also would prevent
25 Toledo Edison from taking customers from the municipality.

1 and neither of these was the primary purpose for this
2 provision.

3 MR. GOLDBERG: No further questions.

4 CHAIRMAN RIGLER: Mr. Hjelmfelt.

5 MR. HJELMFELT: Yes.

6 BY MR. HJELMFELT:

7 Q Mr. Moran, how long has Toledo Edison had 345 KV
8 lines?

9 A The first line was completed in 1970.

10 Q That is the line to Detroit Edison?

11 A Yes.

12 Q Does Toledo Edison have a 345 KV line to Ohio
13 Edison?

14 A Yes.

15 Q When was that constructed?

16 A I am not sure. I think it was developed with
17 the planning for the Davis-Besse Unit.

18 Q Is that line operational?

19 A Yes.

20 Q How long has it been operational?

21 A I do not know.

22 Q Do you have any approximation of the time?

23 A I believe it became operational, I should think,
24 about 1972. 1972-1972.

25 Q Was that Toledo Edison's first interconnection

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1 with the CAPCO Company at 345 KV?

2 A Yes, it would be.

3 Q Are all of the 345 KV lines shown on this map
4 operational at the present?

5 A Yes, they are.

6 Q When was the Water Street Station shut down?

7 A Water Street Station is not shut down, in that
8 it operates as a steam station and it is still operational.
9 The 60 cycle turbogenerator located there was retired in
10 place approximately a year and a half or two years ago, as
11 I recall.

12 Q Was it utilized up until its retirement in place?

13 A It was regarded as an emergency unit. It was
14 seldom operated, but had some importance because of the
15 fact that the downtown Toledo area is immediately adjacent
16 to that plant, and in the event of a catastrophic accident,
17 which would have befallen the transmission lines, this would
18 have been a source of power for the downtown Toledo area.

19 It also had some benefit in that being an older
20 station, it had steam-powered auxiliaries, and therefore
21 could serve as a crank for the system in the event there
22 were a severe accident.

23 Q What is the size of the Water Street generation
24 or what was the size?

25 A The 60 cycle generator was 60,500 kilowatts.

1 There is also a 20,000 kilowatt, 25 cycle generator there.

2 Q Is that also retired in place?

3 A Yes.

4 Q Was it retired in place at the same time?

5 A No, it was retired some years earlier.

6 Q Do you have any idea when the 12,000 KW station
7 was last operated, or unit was last operated?

8 A It has never been operated within the past six
9 to eight years that I can recall, for load-carrying purposes,
10 but we operated it every year, approximately, in order to
11 be sure that it was available if needed.

12 Q Do you know whether Toledo Edison gets credit
13 either for that 12,000 KW unit, or did get credit for it in
14 the CRPCO calculation?

15 A I am not positive about those calculations. My
16 recollection is that that unit was considered as part of the
17 Toledo Edison capability, but at a reduced number, something
18 like 7-8,000 kilowatts, perhaps.

19 Q What was the output from that unit stepped up to?

20 A I don't know. I would have to study the diagram
21 for that station. I can tell you that the ultimate delivery
22 from that station was at 23,000 volts underground, and that
23 some way that power would have to reach that voltage.

24 Whether it went directly to that voltage, I do not
25 know.

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1 Q Would that be the highest voltage that that would
2 have been stepped up to, whether it was in one step up or two?

3 A That would depend upon how far these particular
4 amps get. That would be the ultimate upward transformation
5 out of that station.

6 Q Where do you have 345 step up capability on your
7 sytem?

8 A We have a 345 Kv transformer at the Bayshore
9 station. We have one at the Lemoyne Substation, south of
10 Toledo. We have one at Davis-Besse and we have one at --
11 I have forgotten the name of it. We have one at the
12 Allen Junction Substation.

13 Q When was the one installed at Bayshore?

14 A The transformer was installed at Bayshore
15 about 1972, I believe.

16 Q How about the one at Davis-Besse?

17 A Davis-Besse's transformers, I am not sure of the
18 date. It would be approximately '73 or '74.

19 Q How about the one at Lemoyne?

20 A The Lemoyne transformer went into service in
21 1970, as I recall.

22 Q And the one at Allen Junction?

23 A That one is the most recent one and would have
24 gone into service in '75, probably. '74 or '75.

25 Q What is the size of the combustion turbines at
Richland?

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1 A There are three combustion turbines at Pickland.
2 Their winter capability under cold weather operations,
3 believe, is 30,000 kilowatts.

4 Q Is that each one?

5 A No, in total.

6 Q Do you know what the individual unit sizes are?

7 A I think they are called 16,600.

8 Q Their winter rating, is that their highest rating?

9 A Yes.

10 Q How about the combustion turbines located at
11 Stryker? What sizes?

12 A There is one unit at Stryker of approximately
13 20,000 kilowatts.

14 Q Could you tell me why these units are installed
15 at these particular locations?

16 A Yes. They are installed in these locations
17 to serve as emergency power and short-term power and
18 by spotting them at a maximum distance from the power
19 plant, we get the greatest utilization of them, because
20 of the lessening of transmission losses, when they are
21 located at that point.

22 Q Does that increase the economics of your system?

23 A Yes. It does.

24 Q Looking at Applicant 129, which is the large
25 map that is behind you, if Napoleon had built a 10-mile

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1 line to interconnect with, I believe it is Tri-County, where
2 would that line have gone?

3 A The line would have gone, as I understand it,
4 somewhere east of Napoleon, to a Tri-County delivery
5 point which was known as East Liberty or New Liberty or
6 some such title. It had Liberty in the name.

7 Q Is that shown on this map?

8 A No. It is not.

9 Q If Napoleon had constructed transmission lines
10 ten miles out of its town, would that have permitted
11 Napoleon to serve customers along that line?

12 A That was a concern we had. It would have been
13 a possibility.

14 Q When Mr. Dorsey discussed joint construction
15 or joint ownership of generation with Toledo Edison, was
16 Mr. Dorsey informed that Toledo Edison had a policy of per-
17 mitting small utilities to participate in nuclear
18 facilities?

19 A I don't believe this was ever discussed
20 seriously with Mr. Dorsey.

21 Q Did Toledo Edison ever inform the other
22 CAPCO members that it was seriously interested in joint
23 development of a power plant with Napoleon?

24 A I am unaware of whether it was or not.

25 Q Is that one of those things you would be aware
of, if it had happened?

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1 A I probably would not be, because I had very
2 little to do with CAPCO relationships.

3 Q Do you know whether Toledo Edison had every
4 notified its CAPCO partners that it had agreed philosophically
5 to engage in generation with AMP-OP?

6 A No. I am unaware of any such thing.

7 Q Do you know when Toledo Edison first planned
8 to construct a 345 Kv line to Detroit Edison?

9 A I do not recall when it was first planned,
10 no.

11 Q Do you have any knowledge of how long it,
12 took to plan and construct that line?

13 A The construction period was very protracted,
14 because of the legal entanglement which Detroit Edison
15 had with a governmental unit in its service area which
16 delayed the line for, I believe, two years or more, after it
17 was undertaken.

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1 ar1: Q When Toledo Edison decided to construct the line
2 to Detroit Edison, did Toledo Edison notify Southeast
3 Michigan it would then be willing to sell power to Southeast
4 Michigan for resale in Michigan?

5 A So far as I know, there was no contact with
6 Southeastern Michigan at that time.

7 Q Which third party was Toledo Edison concerned
8 that Napoleon might interconnect with?

9 A There were two possibilities, we felt.

10 One was the Northwestern Ohio Co-op, which obtains
11 its power from the Ohio Power Company.

12 The other possibility was the Ohio Power System
13 itself, which is about 10 to 15 miles south of Napoleon, and
14 Napoleon does have some distribution not too far from that.

15 Q Is it possible to provide by contract that if
16 Toledo Edison was operating in parallel with Napoleon, that
17 Napoleon would not interconnect and operate in parallel with
18 another entity without making proper provisions for the safety
19 of the operation?

20 A Yes. This is a possibility. And the Buckeye
21 agreement does have such a provision in it.

22 Q That sort of provision is rather routine, is it
23 not?

24 A I do not consider it routine, no.

25 CHAIRMAN RIGLER: Mr. Moran, take a look at the

1 map, which is Applicant's Exhibit 129, and Napoleon. You
2 indicated that Ohio Power has lines approximately 10 miles
3 south of Napoleon.

4 Does that mean that in central and southern
5 Henry County there would be competition between Ohio Power,
6 Toledo Edison and Napoleon?

7 THE WITNESS: I am not sure, Mr. Rigler, where
8 Ohio Power lines, just how far north they come. I do know
9 that Toledo Edison has only a few customers in Putnam
10 County, to the south, and I do know that Ohio Power does
11 have lines in Henry County.

12 I would say there was competition in parts of
13 Henry County, yes.

14 CHAIRMAN RIGLER: Between Napoleon, Toledo Edison
15 and Ohio Power?

16 THE WITNESS: Yes, sir.

17 CHAIRMAN RIGLER: Thank you.

18 BY MR. HJELMPFELT:

19 Q With respect to the 1971 request for
20 service by Southeast Michigan Cooperative, I need clarifica-
21 tion on what you testified to.

22 Did you testify that one of the reasons given
23 was lack of capacity?

24 A Yes, I did.

25 Q You stated that Toledo Edison would have reported

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1 the existence of any territorial agreements to the SEC
2 on Form 10K; is that correct?

3 A I stated that this was one of the governmental
4 forms that I thought might contain information of that type,
5 yes.

6 Q What other governmental forms would contain
7 information of that type?

8 A I was thinking that perhaps this would be a
9 factor in the front pages of FPC Form 1. We have some
10 places in the annual report to the Public Utilities
11 Commission of Ohio that might have contained some reference
12 to this.

13 Another source which I did not mention at that
14 time might well be in some of our financial reporting
15 transactions, such as registration statements.

16 Q Is it your testimony that reference to such
17 agreements would be required in these reports?

18 A I believe reference would be dependent upon the
19 nature of those agreements. I would think this would probably
20 be a legal determination, whether it was or not. I would
21 think it would be apt to be.

22 Q Is the paragraph 3 that was in your wholesale
23 contracts for municipalities, would that have been reported
24 in these reports?

25 A No, it would not be.

1 Q Was your dissatisfaction with the Buckeye
2 wheeling agreement only a matter of rates?

3 A Yes.

4 Q Did you ever tell AMP-O that you would consider
5 wheeling if a better rate was proposed?

6 A We did not discuss dollars with AMP-O at any time.

7 Q Does that mean that you did not tell AMP-O
8 that at a better rate you would be willing to wheel?

9 A We told AMP-O that when they had a specific
10 proposition to make for delivery of power to AMP-O members
11 from some source, we would be willing to determine the
12 terms under which we would sell power or wheel power.

13 MR. HJELMFELT: I move to strike as unresponsive.

14 CHAIRMAN RICLER: Let me hear it.

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

17 CHAIRMAN RICLER: I will deny the motion, but
18 permit you to continue to try to get an answer to your
19 question.

20 Can you give him a more specific answer, Mr.
21 Moran? Like yes or no?

22 THE WITNESS: May I have the question, please?

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

25 THE WITNESS: The answer is yes, we did not tell

1 then that.

2 BY MR. HUELMFELT:

3 Q What are the terms of the oral agreement with
4 Bowling Green for use of Bowling Green's 69 KV transmission
5 line by Toledo Edison?

6 MR. BRILEY: I object. It is in the record,
7 Mr. Rigler, at least twice.

8 CHAIRMAN RIGLER: Let me hear it.

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

11 CHAIRMAN RIGLER: Sustained.

12 BY MR. HUELMFELT:

13 Q Under that agreement, what does Toledo Edison
14 have to do to make use of that line?

15 A The Toledo Edison use of that line is
16 automatic and results from inadvertent power flow under
17 certain operating conditions.

18 Q Does Bowling Green have any control over the use
19 of that line by Toledo Edison?

20 A No.

21 Q Is Toledo Edison under any obligation to notify
22 Bowling Green of any specific amounts of power to be
23 transmitted over that line at specific times to specific
24 points?

25 A No, it is not.

1 Q Is your system load dispatcher's office manned 24
2 hours a day?

3 A Yes, it is.

4 Q At the Napoleon substation, where does the safety
5 problem occur?

6 MR. BRILEY: I object. That has been fully
7 developed.

8 CHAIRMAN RIGLER: Overruled.

9 THE WITNESS: The safety concern that we had at
10 Napoleon was with an open disconnect, with Napoleon's
11 system generating power on one side of the switch and Toledo
12 Edison's power flowing on the other side of the switch.
13 Either one of these power flows might be interrupted due
14 to an emergency condition, and we were concerned with the
15 possibilities of that switch being reclosed without proper
16 safety precautions being followed.

17 BY MR. HJELMFELT:

18 Q Was there your concern that there might be an
19 outage on Toledo Edison's line leading into that substation
20 and that Napoleon would close the switch while that line was
21 out?

22 A This is one of the possibilities that could have
23 occurred.

24 MR. HJELMFELT: I have no further questions.

25 CHAIRMAN RIGLER: Is there redirect?

1 MR. BRILEY: I have a very short redirect.

2 CHAIRMAN RICLER: Okay.

3 Off the record.

4 (Discussion off the record.)

5 REDIRECT EXAMINATION

6 BY MR. BRILEY:

7 Q Mr. Moran, during your discussions with Mr.
8 Lewis, were you aware of any pending negotiations or offers
9 by Toledo Edison to purchase Napoleon's system?

10 A The Napoleon municipal government had requested
11 Toledo Edison to submit a bid on what the purchase or sale
12 price of that property might be some time before. Toledo
13 Edison had submitted a bid at that time.

14 Q This was submitted at the request of the City of
15 Napoleon?

16 A Yes.

17 Q Did your awareness of the pendency of what in any
18 way affect your thinking on the matters you discussed with
19 Mr. Lewis?

20 A No, it did not.

21 Q Why not?

22 A The reason that it did not was that it was our
23 understanding when the request was first made that the City
24 Council wanted some information as to what the value of
25 the system was in conjunction with their studies, and that

1 this was not a serious request for a bid for sale. And the
 2 fact that it had been pending for some time with no further
 3 action from them led us to believe that this was not a
 4 specific request, but rather just the indication of what
 5 sort of dollars we might be thinking of if we were to make
 6 an offer.

7 Q Mr. Moran, do you have with you a copy of NRC
 8 Exhibit 127, which is Mr. Lewis' affidavit?

9 A Yes, I do.

10 Q I would like you to look for a moment at page 5
 11 of that affidavit, if you would.

12 In the second full paragraph there on page 5,
 13 Mr. Lewis refers to the establishment of two alternative
 14 delivery points, does he not?

15 MR. MELVIN BERGER: Can you give a line reference,
 16 Mr. Briley?

17 MR. BRILEY: Let me count up from the bottom.
 18 It will be easier.

19 Lines 6 and 7, counting up from the bottom.

20 THE WITNESS: Are we on page 5, Mr. Briley?

21 BY MR. BRILEY:

22 Q Yes, sir, page 5, subparagraph (b).

23 CHAIRMAN RIGLER: Read him the line.

24 MR. BRILEY: All right.

25 CHAIRMAN RIGLER: Not the whole sentences.

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BY MR. BRILEY:

Q Whether or not Toledo Ed. Co. would agree to operate its system in parallel and continuous synchronism with Napoleon's generator, if they are receiving power from Tri-County through a delivery point established by Tri-County or through the already established delivery point to Tri-County at the New Liberty Substation?

A Yes. I have it.

Q What was your position as to each of these delivery points?

A The position of Toledo Edison in conjunction with these delivery points was if delivery were to be effected at the Napoleon Substation we would still have some concern, unless the contract provisions were specific, that there would not be an additional third source of power into the Napoleon system, and, of course, we were very much opposed to the 10-mile out delivery point.

Q Had you been able to resolve your problem with parallel operation, would you have been willing to provide a delivery point at the existing point, as opposed to the construction of the 10-mile line?

A Yes, we would have been willing to do so.

Q Would you now, Mr. Moran, please take a look at

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bw21 page 1 of Mr. Lewis' affidavit? Specifically, the 13th
2 line down, where he refers to a request to establish a
3 delivery point at the present interconnection. Do you see
4 that language?

5 A Yes.

6 Q Will you then please turn to the next page,
7 top of page 2, where Mr. Lewis quotes you as having
8 said with respect to that, you would not agree, "You would
9 not agree to the establishment of a delivery point."

10 See that language?

11 A Yes.

12 Q How do you reconcile that with your previous
13 testimony?

14 A I think if we are going to consider the matter,
15 we certainly have not closed the door to further
16 consideration. We, obviously, did not want to do it
17 immediately. However, it was our general feeling that we
18 would be willing to establish a delivery point at Napoleon,
19 but we were concerned about one 10 miles out and would
20 resist that.

21 Q Then is Mr. Lewis's affidavit incorrect where
22 he said he proposed the establishment of a delivery point
23 at Napoleon, and you said you were opposed to it. Isn't
24 the fact of the matter you were opposed to establishment of
25 a delivery point ten miles out?

1 MR. GOLDBERG: I object. It is a leading
2 question.

3 CHAIRMAN RICLER: Sustained.

4 BY MR. BRILEY:

5 Q Mr. Moran, what was your understanding of what
6 Mr. Lewis was asking you when you said you were opposed
7 to it?

8 A My understanding is that -- well, I believe there is
9 a possibility that Mr. Lewis has not been clear on what our
10 thinking was between those two points. I think he is
11 applying the same wording to both delivery points,
12 and we did have a different feeling about one than the
13 other.

14 Q All right. Mr. Moran, did you also tell
15 Mr. Lewis that Toledo Edison would not operate in
16 continuous synchronism with Napoleon if Napoleon
17 took Buckeye power?

18 A I am confident we did not make that statement
19 that definite.

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Q What then did you tell him?

A We told him that we would not operate in continuous synchronization and we were concerned about this third party and that was our sole concern in the context of the synchronous operation.

Q Did you refuse to operate in continuous synchronization?

MR. GOLDBERG: Objection; calls for a conclusion on the part of the witness.

CHAIRMAN RIGLER: Overruled.

You may answer.

THE WITNESS: We did not refuse to operate in continuous synchronization.

BY MR. BRILEY:

Q Mr. Moran, I believe that you testified pursuant to cross-examination that Mr. Cloer had made some what you referred to as injudicious, I believe, comments during the course of those meetings.

I also believe that you testified that you did not correct Mr. Cloer.

Could you tell us why you did not correct Mr. Cloer?

A I did not correct Mr. Cloer because he was in the presence of one of his customers with which he had regular relationships. I did not want to undermine his position with that customer; and in addition to that, Mr. Cloer

1 was not an employee of mine, so I would not have contacted him.

2 Q What do you mean when you say he was not an
3 employee of yours?

4 A He was not under my supervision.

5 Q All right.

6 Mr. Moran, can you describe generally where the
7 Bowling Green State University is located within the city,
8 geographically?

9 A Yes. The Bowling Green State University is at
10 the extreme eastern edge of the corporate limits of
11 Bowling Green. There is a north-south interstate road
12 and Bowling Green City has annexed property to the edge of
13 that road, considering that road as the eastern boundary
14 of the city, and the university is abutting that north-
15 south interstate road.

16 Q If Toledo Edison were to desire to provide
17 electrical service to the Bowling Green State University,
18 would a franchise be required from the city?

19 A I would not think a franchise would be required,
20 because it would be possible to deliver power to university
21 property without going through any streets or public ways of
22 the city. And the reason for this is that the state
23 university owns properties on both sides of this interstate
24 roadway, including some that are on the north part of town,
25 outside of the city limits, and also on the east side of the

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1 interstate way and the university has had built, when
2 the interstate way was constructed, a tunnel of some kind
3 going from one side of the expressway to the other with the
4 thinking that possible future expansion of the university
5 would make this tunnel a useful thing in preventing
6 splitting up the campus.

7 And the university felt that it would be
8 possible to obtain power from Toledo Edison without crossing
9 any streets.

10 Q Did the university ever approach the Toledo
11 Edison Company with the concept of Toledo Edison providing
12 power to the university?

13 A This was done on more than one occasion.

29 14 Q Was the Toledo Edison Company ever approached
15 by the Bowling Green State University during the period
16 from 1967 to 1972 with this proposal?

17 A I believe there was some discussion during that
18 period.

19 Q What was your response and why?

20 A At the time I believe we pointed out to them
21 the existence of paragraph 8 in the contract and said
22 that it would be necessary to develop either approval of the
23 city, or some other means, if we were to accomplish any power
24 delivery to them.

25 Q All right.

and

1 Mr. Moran, with respect to the energizing of lines,
2 I believe that you testified that there was some danger
3 involved in the opening and closing of switches. Does this
4 danger arise from the energizing or de-energizing of lines?

5 A Principally from the energizing of lines.

6 Q With respect to the substation that contained
7 the Napoleon switch, I believe you testified there were
8 also some other switches?

9 A Yes.

10 Q Under Mr. Dorsey's proposal, would Napoleon's
11 switch have been the only one opened in that substation?

12 A Yes, it would.

13 MR. BRILEY: I don't believe I have any further
14 questions, Chairman Rigler.

15 CHAIRMAN RIGLER: Mr. Reynolds.

16 RE-CROSS-EXAMINATION

17 BY MR. REYNOLDS:

18 Q Mr. Moran, is a ratchet clause a standard
19 clause in most wholesale contracts within the industry, as
20 far as you are aware?

21 A Yes, it --

22 MR. GOLDBERG: I object. That is beyond the
23 scope of redirect. There is supposed to be a funneling
24 procedure followed here.

25 CHAIRMAN RIGLER: Overruled.

1 BY MR. REYNOLDS:

2 Q Why is it?

3 MR. HUBBARD: I move to strike on the basis there
4 is no basis for this witness to testify about the industry.
5 He is offered as a fact witness.

6 CHAIRMAN RIGLER: Granted.

7 MR. REYNOLDS: He is offered as a fact witness
8 as well as --

9 CHAIRMAN RIGLER: But the purpose of that testimony
10 would exceed the scope of the reason he is offered here.

11 MR. REYNOLDS: Are you saying he cannot testify
12 as to his awareness of matters brought up in testimony here?

13 CHAIRMAN RIGLER: Of industry practices, yes, I
14 am saying he cannot testify with respect to industry
15 practices.

16 MR. REYNOLDS: That wasn't the question. All
17 right. I won't quarrel with you.

18 BY MR. REYNOLDS:

19 Q Why is a ratchet clause inserted in a wholesale
20 contract, to your knowledge, Mr. Moran?

21 MR. GOLDBERG: Objection. Is that limited to
22 Toledo Edison Company or in general?

23 CHAIRMAN RIGLER: Overruled.

24 MR. RIGLER: His knowledge.

25 CHAIRMAN RIGLER: You may answer.

1 THE WITNESS: The purpose of ratchet clauses
2 is to protect the investment which is required to serve a
3 customer and to equal -- encourage the customer to
4 equalize his usage of power from month to month.

5 BY MR. REYNOLDS:

6 Q What is the effect of a ratchet clause in a
7 contract with a municipality in the Toledo Edison area?

8 A The ratchet clauses in the Toledo Edison
9 service area municipal contracts have, as I recall, been
10 invoked only once or twice in 15 or 20 years that I have
11 knowledge of, when those contracts were being built.

12 Q Why is that?

13 A This condition has existed because the variations
14 in load of a municipal system of the type that Toledo
15 Edison serves vary only slightly from month to month, the
16 variance being less than the ratchet factor clause, which we
17 put into the rates.

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1 Q I believe you have stated that Bowling Green
2 is being served by Toledo Edison as a customer with
3 a single delivery point, rather than two delivery points;
4 is that correct?

5 A Yes.

6 Q Can you give me some indication as to what the
7 rate differential is by virtue of serving Bowling
8 Green as a customer with a single delivery point, rather
9 than two delivery points?

10 A It would be a little difficult to give a very
11 precise answer. In fact, it would not be
12 possible unless we were able to determine the division
13 of power between their two substations where power is
14 received by them.

15 Q Can you give me an order of magnitude?

16 A We cannot determine that in any way, because
17 as part of this oral agreement that we have mentioned earlier,
18 there is a telemetering system, whereby the power from
19 each location is centralized at one point and Toledo Edison
20 meters it at that point.

21 As I think of the design of our rates, it would
22 seem to me that the increase which would come from billing
23 this usage as two customers rather than one, would be in
24 the magnitude, I would say, between five and ten percent.

25 In other words, the customer would pay perhaps

1 ten percent more than now is the case.

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2 Maybe only five percent. But it would be in
3 that magnitude.

4 Q You indicated in connection with a request
5 in 1970 by Southeastern Michigan Co-op, for power, that
6 Toledo Edison was concerned that its facilities in that
6 area at that time did not have the capacity; is that right?

7 A Yes.

8 Q Do you know whether prior to that request there
9 was any planning underway by Toledo Edison to increase
10 the capacity of those facilities?

11 A Oh, yes. The planning that goes forward is
12 continuous, and every transmission line in Toledo Edison's
13 service area has a plan for expansion as the need warrants.
14

15 Then those various lines, of course, are
16 coordinated into a system, and this line was in that
17 category and specific plans were at hand for rebuilding
18 that line and for extending the 138,000 volt system
19 into that area, our new subtransmission voltage.

20 Q And was that planning,-- strike that.

21 Was that what you had in mind when you suggested
22 there was a capacity problem in the 1970 discussion?

23 A The capacity problem was that the line was
24 operating at its capacity and even a small load at that
25 point would have been jeopardizing the reliability of

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1 our system in the Northwestern part of the territory.

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2 Q Do you know what the capacity of that line

3 was at that time.

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1 A The capacity would vary upon where you are. It
2 is a long line across the northern part of our system.

3 Q If Mr. Kozak testified that the plan for that
4 particular area included an upgrading of the 345
5 kV subtransmission to 138 kV, would you have any reason
6 to quarrel with that testimony?

7 A No. That is in line with my understanding.

8 Q Mr. Moran, if the district managers of Toledo
9 Edison were to be asked for their assessment as to the
10 competitive situation on the fringes of the Toledo Edison
11 area, would you have any reason to believe that they would
12 testify any differently than you have, sir?

13 MR. GOLDBERG: I object. That is speculation.
14 Mr. Moran doesn't supervise those district managers.

15 MR. REYNOLDS: Let me go about it another way.

16 BY MR. REYNOLDS:

17 Q Mr. Moran, did you have occasion to discuss on
18 any kind of a regular basis with the district managers
19 of Toledo Edison the competitive situation that they were
20 facing in the fringe areas of the Toledo Edison area?

21 A We had a regular basis for discussing such
22 matters in the form of our monthly staff meetings.

23 In addition to this, the district managers
24 would advise us of any unusual conditions which were
25 developing which might involve rate matters, so we had

1 rather continual and close contact with them, both on a
2 periodic formal reporting basis and on an informal basis.

3 Q Did you participate regularly in these discus-
4 sions?

5 A Yes.

6 Q On the basis of those discussions, would you have
7 any reason to believe that the district managers would
8 assess the competitive situations on the fringes of the
9 Toledo Edison area any differently from your assessment of it
10 in your testimony here?

11 MR. GOLDBERG: Objection. Speculation.

12 CHAIRMAN RIGLER: Overruled.

13 THE WITNESS: I believe they would make the same
14 statements that I have made.

15 BY MR. REYNOLDS:

16 Q And would that also include the matter of
17 competition on the fringe areas of the corporate limits
18 of municipalities?

19 A Yes, it would.

20 MR. REYNOLDS: I have no further questions.

21 MR. MELVIN BERGER: We have a few questions of
22 Mr. Moran.

23 RE-CROSS-EXAMINATION

24 BY MR. MELVIN BERGER:

25 Q I would like to show you a document, Mr. Moran,

1 known as DJ 166, and ask you if you have ever seen this
2 for the record. The document is, looks like a memorandum
3 from H. Dean Randolph to H. K. Birch. The subject is
4 AMA intercessions: municipality's competitive position.
5 It is DJ 166.

6 A I have seen this report before.

7 Q Mr. Moran, when Toledo Edison responded to
8 Southeast Michigan's 1971 request for the sale of power,
9 was the reason Toledo Edison gave in that response -- was
10 the reason Toledo Edison gave in that response that they had
11 capacity problems with their transmission system?

12 A I did not meet with Southeastern Michigan myself,
13 but it is my understanding that was the statement that was
14 made.

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Q Who informed you of that?

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A I do not recall. I know that the capacity

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problems were there.

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Q In response to Mr. Briley's first question, you

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referred to a bid on the Napoleon system. Is this the

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same bid that you were talking about yesterday in your

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testimony?

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A I don't recall what I said yesterday.

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Q Do you know of more than one bid that TE

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made with reference to Napoleon?

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A I believe there have been a number of them

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through the years, but it is a little bit vague.

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This is an area where the townspeople,

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some of them, have been interested in this for a long

15

time. It's been discussed for a long time, and I am

16

not positive how many times it reached the point of a formal
bid.

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Q Do you know how many times it has reached that

19

point since 1965?

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A No, I do not.

21

Q Mr. Moran, in response to some questions

22

yesterday, do you remember testifying that you didn't

23

remember exactly what you told Mr. Lewis or whether you

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even mentioned to him at all that Toledo Edison had a concern

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about a third party source of power for Napoleon?

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1 A I don't remember the sequence of those two
2 meetings. I thought that is what I was testifying to at
3 that time.

4 Q Is your testimony now that you did inform
5 Mr. Lewis of the concern over a third source of power for
6 Napoleon?

7 A My recollection is that at some time during
8 those meetings this concern was expressed to him.

9 Q Did you refresh your recollection overnight?

10 A No, I did not.

11 MR. MELVIN BERGER: That is all.

12 MR. GOLDBERG: No further questions.

13 MR. HJELMPFELT: No further questions.

14 CHAIRMAN RIGLER: Thank you, Mr. Moran.

(Witness excused.)

15 CHAIRMAN RIGLER: Off the record.

16 (Discussion off the record.)

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MR. BRILEY: I am calling Mr. Smart of
Toledo Edison.

Whereupon,

PAUL M. SMART

was called as a witness on behalf of Applicant The Toledo
Edison Company and, having been first duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRILEY:

Q Will you please state your name for the record?

A Paul M. Smart, S-m-a-r-t.

Q Would you please state your educational and
occupational background?

A I have an undergraduate degree from Capital Univer-
sity in Columbus, Ohio. Law degree from Ohio State College
of Law in 1953. After law school I immediately became
associated with the law firm which was the predecessor
of the present Fuller, Henry, Hodge and Snyder. . . .

I became a partner in 1959 in that firm and
remain a partner today. In 1974, August 1, I
became vice-president, legal, and secretary of Toledo Edison.

Q What is your present business address?

A 300 Madison Avenue, Toledo, Ohio.

Q You stated that you have been an officer of
Toledo Edison Company since 1974?

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1 A August 1, 1974.

2 Q Mr. Smart, what are your duties with The Toledo
3 Edison Company?

4 A My duties encompass the delivery of legal
5 services for Toledo Edison, both internally and
6 externally, overseeing the rate and rate tariff
7 operations of the company. Government relations, real
8 estate and claims.

9 Q Do your duties with respect to rates and
10 tariff include the preparation and presentation of rate
11 cases?

12 A Yes, the corporate staff that reports to me
13 actually does the detailed work in preparing rate
14 proceedings. Since I have been in my present capacity,
15 and even prior to that, as a partner in the law firm,
16 I have presented all of Toledo Edison's recent rate
17 proceedings, state, local and national.

18 Q All right. Were you present at a meeting
19 held on August 27, 1975, at the Ramada Inn on Reynolds
20 Road?

21 A I was.

22 Q Do you recall who was present at that meeting?

23 A It was a large gathering. On behalf of the
24 company, in addition to myself, were William Hugenbecker,
25 H-a-p-e-n-b-e-c-k-e-r, Director of Rates, together with two

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1 members of his staff, Larry King, staff attorney and three
2 district managers from the three outlying Toledo Edison
3 districts.

4 The four largest municipal customers were
5 represented. Bowling Green was represented by Mr. Hillwig,
6 H-i-l-l-w-i-g, and Mr. Sorgenfrei, S-o-r-g-e-n-f-r-e-i,
7 and the City of Napoleon was represented by Roy Dorsey.
8 The City of Cleveland was represented by Bob Radaizak,
9 R-a-d-a-i-z-a-k, or something like that, and a couple of
10 other people.

11 The village of Montpelier was represented by
12 Mr. Hutchinson and a couple of other representatives.

13 then the municipalities, as a group, were
14 represented by their counsel, Robert Jablon, J-a-b-l-o-n,
15 who is with the Washington firm of Spiegel and McDermott.

16 Q Do you recall what the purpose of the meeting
17 was?

18 A Yes. In the not too distant past, at that
19 time we had had a previous FPC rate increase case in which
20 we had gotten into a considerable controversy and went to
21 a lot of procedural disputes with them within the FPC
22 and ran up a lot of expenses on both sides.

23 We concluded and the municipalities agreed with
24 us, the next time we filed a rate case we ought to have
25 a pre-filing conference, so that we could eliminate as
many issues of potential controversy as possible and

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1 conceivably even present to the Federal Power Commission
2 and agreed upon rate increase, and thus avoid all of
3 the delay and expense of a protracted FPC proceeding.

4 This meeting was called pursuant to that
5 understanding and was to go over with them the new FPC
6 rate increase case that we were about to file.

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2 Q In what capacity did you represent
the Toledo Edison Company at that meeting?

3 A I was the spokesman for Toledo Edison. Mr.
4 Jablon was the spokesman for the intervenors.

5 Q Mr. Smart, do you recall during the course of that
6 meeting whether there were any discussions relating to the
7 participation by any municipality in any generating units?

8 A Yes. Mr. Jablon, in speaking on behalf of the
9 intervenors, said that they were interested, as I recall,
10 in three major items.

11 One was obviously the amount of any increase.

12 Second was they wanted to talk about participa-
13 tion in new generating facilities.

14 And third, they wanted to talk about wheeling.

15 Q What was your response with respect to the discus-
16 sions relating to participation in generating units?

17 A Well, I pointed out to them that at that particular
18 point in time where Toledo Edison did not own any new
19 generating facilities, where the generating facilities
20 which we were constructing through our CAPCO pool were not
21 to enter service for some time, that we were being forced,
22 because of the rulemaking procedures of the Federal Power
23 Commission to serve them at rates which are based upon our
24 existing plant in service, which is mostly older, lower cost
25 plant, and accordingly, with our rate structure being based

1 upon the older plant, our rates were so low that it would
2 be absolutely foolish for them, as a matter of fact, I did
3 use the word, the statement, that they would be crazy to want
4 to buy into high cost generation at a time when they could
5 buy from us on FPC rate tariffs at a cost which was so low
6 that they couldn't conceivably have as good a financial
7 break if they had a share of our newer, very high cost
8 generating capability.

9 I did point out to them that this situation
10 would begin to change in the future, as those higher priced
11 units came into service, and went into our rate base. That
12 they were going to have at that point dramatic increases in
13 their rates and the economics of that might change.

14 I said, as a matter of fact, I recall very well
15 saying that we may very well be coming to you in the future,
16 speaking to them as customers, if you have any financial
17 capability, because our ability to underwrite our construc-
18 tion program is becoming very strained, and we may be actually
19 coming to you, asking if you want to participate in the
20 ownership of some of our facilities just to assist us in
21 raising the capital we have to have.

22 I indicated any time they want to talk seriously
23 about that, we would be available, but I did think they were
24 crazy to talk about it under the present circumstances. They
25 were too good of businessmen to do it and at that point it

was dropped.

Q Were there any alternatives about that?

A Yes, we talked about it right about that time.

Q Mr. Board, were in your understanding of the functional meaning of wheeling?

A I think, the way I try to understand it, the basic functional description of it is quite a simple one. The concepts which we now talk about, what we talk about wheeling, are incredibly complex and have extensive financial implications, but the basic functional concept is that we have a transmission line running from point A to point B, and somebody has some generation close to point A, and somebody has some potential load close to point B, and we have the A to B line not fully loaded so that in the case capability to carry additional load, that we would then be called upon to wheel generation from point A to point B, for an appropriate charge.

Q How do you determine the appropriate charge?

A Well, that is obviously what the problem is. If in the illustration I used, their generating source at point A is a new generating source, with which we have no connection whatsoever, if the load they have at point B is a net load that we have no other connection with whatsoever, and if upon any interruption in their generating source at point A, their load at point B is automatically shifted to

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1 discontinued, then all we have is what is their
2 appropriate share of the cost of the line in between.

3 That oversimplification simply is not something
4 that we find in practical application of this concept of
5 so-called wheeling.

6 I went into a general discussion of wheeling
7 with these people largely because it seemed to me that,
8 particularly their spokesman, was trying to get them to
9 believe that this is a simple financial arrangement we can
10 readily agree to, and it is somehow unfair for us not to say,
11 gee, just tell us how much energy you want transferred
12 from where to where at any time, and we will concur in it.

13 I had to get into the basic economics of that.
14 It did get to be a long, protracted explanation. The sorts
15 of things I had to point out to them were in any particular
16 instance where they as an existing customer might come to us
17 and say, "We would like you to wheel," and I might say
18 what they were asking for, through their counsel, was what
19 they called postage stamp wheeling, where they would
20 presumably have the right to, in effect, go out and buy wherever
21 they could buy cheap capacity and energy, and expect us at a
22 predetermined, single, fixed rate to bring that across our
23 system to them.

24 This is not in any sense a realistic way to
25 price this from our point of view. We have to know what are

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1 the other impacts on our system, what are the other impacts
2 on our costs.

3 For example, if all of our customers were free to
4 go out and buy cheap power, which is available at night,
5 or on the weekends, and go shopping for the cheapest
6 energy on an hourly basis or weekly basis or even a monthly
7 basis, and pay us a very nominal charge just to in theory
8 bring that energy through our system, they can bankrupt us
9 very quickly, because we could find ourselves in the
10 situation where our capacity, which we must operate 24
11 hours a day, has no load at night, and therefore we
12 would have to say to them, well, gee, if what you want is
13 to go buy capacity at night and expect us to wheel it
14 through our system, then what you are asking us to do is to
15 serve you only on peak when you can't go buy that nighttime
16 energy, and we have baseload capacity which we are serving
17 you with, and to serve you with baseload capacity at peak
18 means we would have to increase that rate.

19 The wheeling, so-called wheeling aspects of
20 the transaction is only one segment of a very complex
21 pricing relationship and if it is anything other than
22 the most simplistic form of transaction, which I
23 previously identified, it is impossible to price it without
24 knowing precisely what the source of the generation is, what
25 our interrelationship with that source is, what the

1 destination is, what our interrelationship with that
2 destination is, we have to know if the source is a firm power
3 source, meaning that the source will supply the reserve
4 capacity, the back-up capacity, the emergency service,
5 the service during planned shutdown, the service during
6 unplanned shutdowns, or are they as an interconnected customer
7 of ours going to be calling upon us when that source fails.

36 8 CHAIRMAN RIGLER: Are you saying that you need
9 to have some of these specifics before you can agree
10 in principle to wheel?

11 THE WITNESS: Right. That's right. And this is
12 the point I made to them.

13 CHAIRMAN RIGLER: At what date was the CAPCO
14 memorandum of understanding signed?

15 THE WITNESS: The precise date, I do not know.
16 It was 1968, I believe.

17 CHAIRMAN RIGLER: Did that agree in principle
18 that the CAPCO companies would wheel for each other?

19 THE WITNESS: No.

20 CHAIRMAN RIGLER: It did not provide for transmis-
21 sion between and among the CAPCO companies?

22 THE WITNESS: Not to my knowledge, no.

23 CHAIRMAN RIGLER: As a principle to be completed
24 by a separate transmission agreement, that was not provided
25 for?

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1 THE WITNESS: I think now that you refresh my
2 recollection, it did call for the creation of a transmis-
3 sion agreement, but I think that that transmission agreement
4 related to the construction and operation of transmission
5 facilities jointly owned.

6 CHAIRMAN RIGLER: Didn't it include the use of
7 existing facilities prior to the time that additional
8 facilities were constructed?

9 THE WITNESS: I don't believe so. I was not
10 there. My understanding is that the intersystem operating
11 functions in CAPCO are covered by the CAPCO operating
12 agreement, which has various schedules in it, as to the
13 basis on which the companies will make transactions among
14 themselves or between themselves.

15 CHAIRMAN RIGLER: Would you say that the complexities
16 envisioned in an agreement, with the scope and magnitude of
17 the CAPCO agreement, would dwarf any problems of wheeling
18 for small municipalities if one considered or compared the
19 problems you just described in implementing such an agree-
20 ment?

21 THE WITNESS: I wouldn't say they would dwarf them.
22 I would say the CAPCO agreements -- which, incidentally, are
23 still not totally negotiated and signed -- I do know that.

24 CHAIRMAN RIGLER: Which ones are not?

25 THE WITNESS: There is no generating agreement
and no permanent operating agreement. It is being done on a

1 year-to-year basis.

2 CHAIRMAN RIGLER: But the parties are generating
3 jointly for each others' needs at this time, are they not?

4 THE WITNESS: Yes. Under unit arrangements and
5 various interpretations of the original memorandum of
6 understanding and under the so-called white paper, which
7 I am sure there has been testimony on here.

8 But a particular type of transaction with a
9 particular municipality could become extremely complex.
10 I certainly wouldn't think it would be as complex as those
11 CAPCO arrangements.

12 On the other hand, I would not say it was dwarfed
13 by comparison. It would be lesser complication, but not
14 dwarfed. It is very complex.

15 CHAIRMAN RIGLER: Assuming the CAPCO companies
16 had agreed in principle to wheel for one another, and it
17 did appear as a clause in the memorandum of understanding;
18 wouldn't that be inconsistent with your testimony that you
19 need to have all the details of generating transmission use
20 ironed out before one can agree to make this type of arrange-
21 ment?

22 THE WITNESS: I think that if the memorandum of
23 understanding contained any such provision on wheeling,
24 it would be that the parties would, among other things,
25 work out agreements on that.

1 To my knowledge, and I am reasonably confident
2 of this, there is no wheeling tariff or rate among the
3 CAPCO companies yet. That is where the problem comes.

4 I can agree in principle that I would wheel
5 subject to working out the details. There is where the
6 problem comes, working out the details, because it does
7 become so utterly complex.

8 One of the things, for example, that makes
9 this sort of thing very complex to analyze, is the fact
10 that all of these systems are interconnected, and we
11 could theoretically find ourselves in a transaction in
12 Toledo where Consumers Power in Michigan, with which we are
13 interconnected, could call upon Cincinnati Gas & Electric
14 Company to sell them some capacity and energy.

15 That would mean it would have to flow through Ohio
16 Power's system and our system on the so-called wheeling basis,
17 yet as a practical matter, if Cincinnati made a transaction
18 to sell 100 megawatts to Consumers, that 100 megawatts
19 obviously doesn't physically or electrically pass through
20 our area.

21 It simply means that Cincinnati puts an extra
22 100 megawatts into production and this goes into the flow
23 on the interconnected systems and may have some minor local
24 effect on the flow charts, because they put some extra
25 capacity on line, but who knows where it goes?

1 So the concept of pricing it on the basis of
2 so much of this is moving across our system is totally
3 unrealistic when you take the actual impact of it into
4 consideration.

5 CHAIRMAN RIGLER: Has Toledo Edison participated
6 in arrangements to supply power from outside sources to
7 Consumers Power?

8 THE WITNESS: To my knowledge, no. We sell
9 Consumers Power ourselves. Most of the transactions, because
10 of the difficulty of this pricing concept, are priced on
11 what we call our economy schedule, where if Michigan should
12 be short of some capacity, and call upon us, we might
13 conceivably be able to go to somebody else with whom we are
14 interconnected, such as Ohio Power, and say, "Can you sell
15 to us?"

16 Then we would buy from Ohio Power on an economy
17 basis and resell to Michigan on an economy basis.

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2 CHAIRMAN RIGLER: Has that happened, in your
3 knowledge?

4 THE WITNESS: I believe that has happened.
5 Here again, where the particular energy goes, I don't know.

6 CHAIRMAN RIGLER: I understand.

7 THE WITNESS: We could be selling to the
8 Michigan companies at the same time we are buying from
9 Ohio Power.

10 BY MR. BRILEY:

11 Q Mr. Smart, you used the term specific requests
12 for wheeling. Could you define for us what you mean by
13 specific request?

14 A Well, as we have stated it, on several
15 occasions when we have discussed the subject of wheeling with
16 our customers, if they will bring to us the kind of specific
17 facts that we are talking about, they have a potential
18 transaction to buy so many megawatts on an annual basis,
19 monthly basis, whatever the basis is, they can tell us
20 what the provisions are in terms of providing reserve capa-
21 bility to back that up. Or in the alternative, are they
22 willing to have us drop their load whenever their source
23 dries up? In which event, we would have to put some
24 special control devices in, because the way things now stand,
25 if their source dried up, we would simply supplement that
automatically.

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Our system would automatically step up its production. We have to know what the effects are going to be on our system of the particular transaction that they are producing.

CHAIRMAN RIGLER: Wait a minute. Does Consumers Power tell you how much they are going to buy on an annual monthly or daily basis, the way you just described?

THE WITNESS: Yes, sir. We book daily, monthly and hourly transactions in --

CHAIRMAN RIGLER: In advance?

THE WITNESS: Yes.

CHAIRMAN RIGLER: So Consumers Power now is telling you, for example what their needs will be for June?

THE WITNESS: As a practical matter we don't sell to them on a monthly basis. It is on an economy basis. They would tell us what they would need.

CHAIRMAN RIGLER: That is different than what you said. You told me you would have practical problems, unless you could deal with the customer on a fixed advanced basis.

THE WITNESS: We are simply buying and reselling out of the present capacity. These are not firm load commitments.

CHAIRMAN RIGLER: I think we are running a little later.

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We will break for lunch here. How long do we want? 45 minutes?

Whereupon, at 1:15 p. m., the hearing was recessed, to be reconvened at 2:00 p. m., this same day.)

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AFTERNOON SESSION

(2:00 p.m.)

Whereupon,

PAUL M. SMART

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

DIRECT EXAMINATION (Continued)

BY MR. BRILEY:

Q Mr. Smart, when we broke for lunch, I believe you were in the process of explaining the nature of the relationship between Toledo Edison and Consumers in response to the Board's question.

Were you finished with that testimony or do you have anything further to add?

A I think I might just try to clarify. Perhaps I was overcomplicating the answer.

I was making the distinction between the pricing of any kind of a firm, long-term contract, such as the sort of transactions that the municipalities might refer to as wheeling transactions, as opposed to day-to-day intra-system transactions pursuant to filed rate schedules, where you can quickly analyze what the economics are of that day's transactions.

Q What would be the difference between the two?

A Well, any long-term arrangement obviously has to be

1 carefully analyzed, regardless whether it is a municipality,
2 interconnection system, or CPCC agreement, or anything of
3 the sort, because of the obvious long-term implications on
4 the company.

5 The short-term arrangements can be rather quickly
6 analyzed. The other company knows what your costs are going
7 to be the next day, and you know what yours are, and you make
8 a quick calculation --

9 CHAIRMAN RIGLER: Is that pursuant to the rate
10 schedule?

11 THE WITNESS: Yes, but that permits you to engage
12 in an economy transaction on a share of the savings basis.

13 CHAIRMAN RIGLER: But the amount of the savings
14 would not be known in advance?

15 THE WITNESS: The manner in which it is done, the
16 load dispatchers give each other an estimate of what their
17 costs are going to be at a production level the next day, for
18 example, and it is booked, and that does become the final
19 price, but there is an estimate element in it, but it is a
20 very promptly known situation that is going to occur the
21 next day or that night or the next hour, for that matter.

22 CHAIRMAN RIGLER: These rate schedules are
23 filed with the FPC?

24 THE WITNESS: Yes.

25 CHAIRMAN RIGLER: What is the duration of these

1 rate schedules?

2 THE WITNESS: They may contain a fixed term.
3 The practice these days is more common that they have an
4 indeterminate term, subject to either party filing for
5 a modification of them at any time. All of them now have an
6 indeterminate term.

7 CHAIRMAN RIGLER: But that does not enable you
8 to terminate the service --

9 THE WITNESS: Transaction is a discretionary
10 one, anyhow. They call us and say, "Do you have any
11 economy power," and we say, "No," that is the end of the
12 transaction.

13 BY MR. BRILEY:

14 Q What is the nature of your transactions with
15 Consumers?

16 A Almost exclusively nighttime and weekend economy,
17 because they happen to be short in baseload capacity to,
18 as they say, pump up their pump storage facility up in
19 Ludington, Michigan.

20 They can buy from us at night and on the weekend
21 cheaper than they can generate, in order to pump that
22 facility, and they do whenever they can save a dollar, and
23 we can make a dollar.

24 Q What would be the nature of any wheeling
25 transactions you might have with municipalities?

1 A Well, in theory, if they had facilities, you
2 could have a similar arrangement with them. None of our
3 municipalities have those facilities to make that kind of
4 an arrangement. If they had them, we would be delighted
5 to talk to them about it.

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CHAIRMAN RIGLER: What facilities?

THE WITNESS: Facilities to either use large amounts of peak, as is the case with the Michigan Companies or to provide us with energy at a lowest cost than we could generate.

BY MR. BRILEY:

Q Mr. Smart, after you discussed wheeling with these individuals at the meeting you were referring to, I believe it was Harrisburg, Ohio, what was their response?

A They asked through their counsel whether we would be willing to make some commitment that we would discuss specific wheeling transactions with them in the future, and we responded that we would enter into such commitment.

We subsequently did, in fact, enter into such a commitment.

Q What was the nature of that commitment?

A It was a general statement incorporated into the submission to the Federal Power Commission of and agreed-upon rate tariff that we had stipulated that we would discuss with them and negotiate with them in good faith, possible wheeling rates at their request.

Q Have they ever come to you with such a request since then?

A No, they have not.

Q Mr. Smart, was the commitment that you made

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1 consonant with the concept set forth in the memorandum
2 of understanding? Strike that.

3 Excuse me.

4 Was the commitment you made analogous to the
5 memorandum of understanding, as it embraced the concept
6 of wheeling?

7 CHAIRMAN RIGLER: Which memorandum of understanding?

8 MR. BRILEY: The 1967 CAPCO memorandum of
9 understanding.

10 THE WITNESS: As I testified earlier, I was not
11 sure, and I am still not sure of the extent to which
12 wheeling, as I have defined it, was actually encompassed
13 by the memorandum of understanding. I think I stated
14 that, inherent in the CAPCO arrangements, are the transfers
15 of energy back and forth.

16 I did not know, and I still do not know of any
17 specific so-called, either transmission or wheeling rate.

18 I don't believe there is one. I believe that
19 the pricing that has ensued under the CAPCO arrangements
20 have the ownership of facilities, the buy-sell assignments
21 out of generating facilities, the joint ownership of
22 transmission lines, and the various rate schedules which
23 exist under the CAPCO operating agreement in the aggregate
24 provided a mutually compensatory basis for those transfers
25 of energy, but it becomes not a separate item, but as I

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1 tried to explain earlier, this becomes deeply interrelated
2 with the other characteristics of the transaction.

3 And this would be true in the case
4 of CAPCO, as well as in the case of any special
5 transaction negotiated with a municipality or a group
6 of municipalities.

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1 ar1 MR. BRELEY: I don't have any further questions,
2 Chairman Rigler.

3 CROSS-EXAMINATION

4 BY MR. REYNOLDS:

5 Q Mr. Smart, so I am clear as to what your last
6 answer was, would you agree that the commitment that you
7 discussed as giving to the municipalities in connection
8 with your amenability to enter into wheeling transactions
9 at the time they came to you with specific transactions,
10 was not that commitment analogous to the sort of commit-
11 ment that is embodied in the memorandum of understanding
12 of 1967, to the extent that that memorandum embraces a
13 wheeling concept?

14 MR. GOLDBERG: Would you please read back that
15 question?

16 (Whereupon, the reporter read the pending
17 question, as requested.)

18 THE WITNESS: I think I previously testified now
19 twice that I am not personally at this time familiar with
20 what the memorandum of understanding said as to wheeling
21 commitments.

22 I suppose any general statement that there will
23 be transmi-sion service is analogous to any other statement
24 that there will be transmission service.

25 To that extent, I can find an analogy.

1 BY MR. REYNOLDS:

2 Q You discussed the complexities inherent in the
3 pricing of the transaction that involves the wheeling of
4 power.

5 Would it not be true that to the extent there
6 is some mutuality involved in the arrangement, so that
7 there is a return in kind, if you will, of power from one
8 system to another over a period of a contract, that that
9 mutuality would remove some of the complexities in the
10 pricing analysis?

11 MR. GOLDBERG: Would you please define what you
12 mean by "return in kind"?

13 BY MR. REYNOLDS:

14 Q Do you understand the question, Mr. Smart?

15 A I think I understand the question.

16 I think it is possible to pay for a service you
17 received in this kind of arrangement by providing a comparable
18 service in response and to the extent that these can be
19 evaluated to offset one another, then there is no
20 necessity for a financial transaction on top of that -- in a
21 dollar transaction or top of an exchange transaction.

22 That assumes both parties are equally capable or
23 proportionally capable, anyway, of helping one another.

24 If that should happen to be the case, here again
25 it wouldn't make any difference whether it were CRVCO or a

1 municipal system or systems, that would be one of the factors
2 that you would indeed look at in pricing, for evaluating,
3 analyzing that kind of an arrangement.

4 Q You use the term "postage stamp" rate. What did
5 you mean by that?

6 A The term was used by Mr. Jablon the first time I
7 heard it, or his senior partner, George Speigel, as their
8 means of stating that there would be a single rate, as I
9 recall, in cents or dollars per kilowatt or KVA, which
10 would entitle them, if, for example, they wanted to transmit
11 100 megawatts from any place on the periphery of your
12 system to any place either interior or on other periphery
13 of your system, that regardless of the source the destination,
14 they would pay you that flat amount, the same way when you
15 mail a letter, and put 13 cents on it, regardless whether
16 it is going from Washington to Baltimore or Washington to
17 Toledo.

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- 1 Q Did Mr. Jablon suggest to you how the postage
2 stamp rate would be determined?
- 3 A No.
- 4 Q Would there be any rational way to determine
5 a postage stamp rate for a wheeling transaction?
- 6 A None that I know of.
- 7 MR. REYNOLDS: I don't have anything further.
- 8 CHAIRMAN RIGLER: Do you recall what the
9 combined load for the municipalities present at the
10 1944 meeting is?
- 11 THE WITNESS: About 65 to 75 megawatts.
- 12 BY MR. GOLDBERG:
- 13 Q Mr. Smart, I believe you testified you were
14 a partner in the law firm of Fuller, Henry, Hodge and
15 Snyder; is that correct?
- 16 A That is correct.
- 17 Q What is the relationship in that law firm
18 between you and Mr. Briley?
- 19 A We are partners.
- 20 Q Mr. Briley, is a partner in that firm?
- 21 A That is right.
- 22 Q Would his status be a junior partner?
- 23 A No, sir.
- 24 Q He is a senior partner?
- 25 A That is correct.

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1 Q In your view, Mr. Smart, could a rate
2 schedule for wheeling be developed which would adequately
3 compensate Toledo Edison for wheeling specific blocks of
4 power to municipals in Toledo Edison's area?

5 A Given an adequately developed set of facts as
6 to precisely what all of the implications of the transaction
7 are, yes.

8 Q Did Bowling Green ever indicate that they
9 would not be willing to pay a wheeling charge to Toledo
10 Edison which would cover Toledo Edison's cost of wheeling?

11 A to me?

12 Q Yes.

13 A No.

14 Q Before you testified, "I can agree in principle
15 to wheel, subject to working out the details;" do
16 you recall that?

17 A No, I don't.

18 Q Do you recall in response to a question by
19 the Chairman, using the phrase which I just quoted, in your
20 answer to him as to how one goes about considering a
21 request for wheeling?

22 A Honestly, I don't specifically
23 recall whether I used those words or not.

24 Subject to them being verified in the record,
25 I have no objection to saying so.

1 Q Assuming you did use those words, couldn't
2 you do that with Bowling Green or any other municipal?

3 A Yes.

4 Q Can you see any advantages from a municipal
5 electric system's point of view to its owning part of a new
6 generating unit as opposed to being a mere wholesale customer
7 status?

8 A That depends upon many, many facts about size and
9 type and location and cost of fuel, and perhaps a hundred
10 variables.

11 It could be. It could be less economical.
12 It could be more economical.

13 Q In addition to being possibly economical,
14 do you see any other long-term advantages from a
15 municipal's point of view of having ownership in specific
16 units?

17 A I don't believe I can respond to that question.

18 MR. REYNOLDS: Let me have that question read
19 back.

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

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BY MR. GOLDBERG:

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Q Mr. Smart, wouldn't one advantage be that the municipal would be more independent of the utility, from the dominant utility from which it was purchasing under a wholesale contract?

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A I don't know anything about the term "dominant." That is new to me. I try to sense what you are asking.

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Ownership would be a considerable disadvantage in that it lacks the flexibility to go out and acquire lower cost sources.

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CHAIRMAN RIGLER: Where is he going to get these lower cost sources?

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THE WITNESS: Wherever he can find them.

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CHAIRMAN RIGLER: Then he needs wheeling, doesn't he?

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THE WITNESS: Not necessarily, no. If you want a specific, Bowling Green and Napoleon are talking about building a facility jointly, using to a large extent waste materials.

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CHAIRMAN RIGLER: But in the ordinary course of things, if the utility is to forego ownership, the small utilities, the municipality, is going to forego ownership so that it can shop among competing sources, then it would take wheeling to make that an attractive option.

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THE WITNESS: Wheeling, or if it wants to own

1 generating facilities, it can also own transmission
2 facilities, transmitting out or in, subject to legal
3 limitations.

4 It can build a transmission line and go find another
5 source. Wheeling is simply the means by which they can
6 put that cost off on somebody else. Theoretically the
7 cost ought to be the same.

8 CHAIRMAN RICLER: The cost of building and
9 paying for transmission lines to alternate sources should be
10 the same as the transaction costs for wheeling?

11 THE WITNESS: I don't think they should expect us
12 to provide a service for them at a cost lower than they
13 themselves could supply it.

14 CHAIRMAN RICLER: So your answer to my question
15 is yes?

16 THE WITNESS: I believe so. I am thinking in
17 terms of a specific feed into a municipal system. I think
18 in our experience with Bowling Green, the one we have
19 been talking about, our transmission lines feed into
20 Bowling Green from different directions and in practical
21 effect end there, so the cost of that transmission line in
22 our judgment is wholly attributable to service to Bowling
23 Green.

24 If they wanted wheeling and you could isolate all
25 these other cost elements so they weren't involved and they

1 wanted to wheel over that line and they were the only
2 customer on that line, they would have to pay the whole cost
3 of the line.

4 CHAIRMAN RIGLER: Now suppose that Bowling
5 Green wishes to obtain power from Detroit Edison or Consumers.

6 THE WITNESS: In my judgment, they would be free,
7 if they chose to do so, to build a transmission line up
8 to Consumers --

9 CHAIRMAN RIGLER: Or to Detroit Edison, and if
10 instead they decided to wheel through Toledo Edison, then
11 a fair and proper method of pricing that transmission
12 would be on the basis of what it would cost the Bowling
13 Green to build its own transmission lines ---

14 THE WITNESS: No, I am sorry, not under those
15 circumstances, no.

44 16 CHAIRMAN RIGLER: Well, that is what you led me
17 to believe earlier. Now straighten me out as to what the
18 proper basis would be.

19 THE WITNESS: I am sorry. We are talking
20 generalities in one instance and specifics in another.

21 In terms of specifics, their next to the most
22 available source would not be Detroit Edison or Consumers
23 Power. It would be Ohio Power to the south, I presume,
24 which is more like 10 miles from them. I don't think
25 that it would be economically feasible for them to build a

1 transmission line all the way through our system, in order
2 to obtain service.

3 On the other hand, the pricing of the transaction
4 by which they could buy from the Michigan companies and
5 ask us to in effect wheel that would have to take into
6 consideration all of these other factors that I mentioned
7 before, what kind of transaction do they have with the
8 Michigan company. Are they making a part-time transaction,
9 a full-time transaction; are the Michigan companies
10 providing all their reserve requirements and so forth?

11 CHAIRMAN RICLER: But we got onto this whole
12 line because we were talking about alternatives to
13 purchase unit power, and you were suggesting that
14 the municipalities should not go to specific unit power
15 sources because that would limit the sources they could
16 choose.

17 THE WITNESS: My recollection is, would it be
18 to their advantage or disadvantage to have their own
19 generating capacity. I said it could preclude them from
20 being able to go out and seek alternate sources, because
21 they would have to use their own assets, having made the
22 investment in it.

23 Whether under any particular circumstances that
24 was true or not would be a matter of speculation. I was
25 simply indicating that could happen to them.

1 I could also speculate that size and type of
2 units they could build by themselves would be operationally,
3 economically unattractive and would force their costs to be
4 higher than they could deal with -- I forget the term that
5 was used, but with the company that is serving that area.

6 I believe Napoleon found this to be the case.

7 BY MR. GOLDBERG:

8 Q Mr. Smart, over the last 10 years, what has
9 been the distribution of the Toledo Edison wholesale rates?

10 A For the 10-year period in segments, they were
11 unchanged, from the beginning of -- that would be 1966 until
12 1973, at which point they went up no more than 5 percent, and
13 they have subsequently had one other increase, no more
14 than about 6 percent, so in 10 years they have gone up 10 or
15 11 percent.

16 Plus the fuel adjustment clause, which auto-
17 matically increases them, to represent our increased cost
18 of fuel.

19 Q What has been the percentage increase under the
20 fuel adjustment clause in the wholesale rates?

21 A The fuel adjustment portion during that same
22 period of time has increased about three and a half times.

23 Q In other words, 350 percent?

24 A Yes.

25 Q What would you expect to happen to the wholesale

1 rates over the next 10 years?

2 A This becomes personal conjecture. I am willing
3 to give it to you on that basis.

4 As they are served out of higher-priced, newer
5 units, under the pricing system, they would automatically
6 be incurring significant increases.

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1 Q What about the fuel adjustment cost over the
2 next ten years?

3 A Fuel costs over the last year have been fairly
4 stable for Toledo Edison. Toledo Edison burns now 95
5 percent more coal and the rest oil, coal prices have
6 declined the last few months after tripling
7 in about a two or three year period.

8 The complicating factor here is moving into
9 nuclear, where the fuel component of the total cost is
10 anticipated to be much lower, but the fixed charges
11 attributable to the higher investment are expected to
12 be much higher.

13 The offset being that nuclear generation is
14 anticipated in the aggregate, prospectively, to be a
15 bit less expensive than fossil generation over that
16 period of time, but both of them are expected to be
17 higher than present costs out of fossil generation.

18 Q Therefore, over time, wouldn't unit ownership,
19 sat, in a nuclear plant be economically beneficial to
20 a municipal system?

21 A That would depend upon the particular economics
22 of the transaction,

23 It depends upon what they have to pay
24 for it, how efficiently it operates, what happens to
25 nuclear fuel. They would, in effect, if they committed

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1 their whole system to nuclear, if they committed their
2 whole load to nuclear, they would be making a very grave
3 mistake, because I don't know of anybody in a planning
4 capacity that wants to be 100 percent nuclear.

5 Q What about nuclear as part of their load??

6 A Well, it is Toledo Edison's own position that
7 something in the range of 50-55, maybe even 60 percent nuclear
8 is a worthwhile objective.

9 I think they would have to make their own
10 speculation and see whether such minimal loads as they have ---
11 I kind of quickly estimates 65 to 70 in the
12 aggregate, 20 to 30 megawatts for the largest of them,
13 individually, if they are only buying 55 percent of that out
14 of nuclear, they bought a mighty small piece of the
15 types of nuclear units which are being constructed these
16 days.

17 I don't know that it is practically feasible
18 to get into nuclear and bear the problems of owning
19 and operating and licensing nuclear units for that small
20 amount.

21 Q Then, it wouldn't be practically feasible for them
22 to get into nuclear on their own, would it?

23 A I wouldn't say that it isn't feasible,
24 practical, no. I would say it is very unlikely that it
25 would be feasible.

1 Q At the August 27th meeting between Toledo
2 Edison representatives and some of the municipals in your
3 service area, do you recall Mr. Jablon personally requesting
4 wheeling from Toledo Edison?

5 A I don't want to appear ridiculous, but he
6 didn't --- but he personally said that, as a
7 representative of the customers involved there, that they
8 would like us to file a transmission rate, or a wheeling
9 rate, with the Federal Power Commission.

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CHAIRMAN RIGLER: And you responded?

THE WITNESS: Well, first of all, that the Federal Power Commission itself cannot order us to establish a transmission rate.

Secondly, if we were going to offer a wheeling rate, we would have to know precisely what the transaction is --

CHAIRMAN RIGLER: And that was because wheeling might have a significant effect on your system?

THE WITNESS: That's right.

CHAIRMAN RIGLER: And this was in connection with the request of these four municipalities whose aggregate load was 85 MW, approximately?

THE WITNESS: Yes.

I do think I should say, it was said at that meeting that technically there was an uncertainty whether he was speaking for Napoleon.

Napoleon had other counsel, Bob White, from a firm in Cincinnati, Ohio, and I had talked with Bob by telephone and told him we were having this meeting, and he said, "I need not be there," so actually I think Mr. Jablon was speaking and he said so at the time, "I am speaking specifically on behalf of Bowling Green and Bryan."

There was uncertainty also at that time whether the other community, Montpelier, had retained him, but he was

1 speaking generally on behalf of the customers.

2 There was nobody else speaking up.

3 As a matter of fact, I don't recall any of the
4 rest of them saying anything.

5 CHAIRMAN RIGLER: Now, even if rates were to be
6 filed with the FPC, they would certainly be subject to the
7 ability of the total system to carry the load for which
8 wheeling was requested; is that correct?

9 THE WITNESS: I would certainly assure that
10 would be one of the very fundamental requirements, that
11 the capability would be there on our system, yes.

12 CHAIRMAN RIGLER: What is the load of the Village
13 of Montpelier?

14 THE WITNESS: That is the one that I was least
15 certain about. I think it is down in the five to eight
16 megawatt range.

17 CHAIRMAN RIGLER: But you were concerned that
18 agreeing to file a rate for wheeling on behalf of Montpelier
19 could have a significant effect on the Toledo Edison
20 system?

21 THE WITNESS: Yes, it could.

22 CHAIRMAN RIGLER: Well, conversely, does that mean
23 if Montpelier were to seek membership in CAPCO that it
24 could make a significant contribution to the CAPCO system?

25 THE WITNESS: The difference in size at that point

1 would cause me to say no, that they could not.

2 CHAIRMAN RIGLER: I don't understand why the
3 converse is not true.

4 THE WITNESS: Well, in our case, Toledo Edison's
5 load is about 1250 megawatts. CAPCO is around 11,000,
6 so that it is just a difference of five to eight against
7 a thousand versus five to eight against -- I mean, against
8 120 versus five to eight against 11,000.

9 I think there was some statement by somebody
10 some place that in the rounding out of the CAPCO assignments,
11 that small a load would get lost.

12 CHAIRMAN RIGLER: So that the Toledo Edison
13 load is about 1/10 more or less of the total CAPCO load?

14 THE WITNESS: Yes, it is a little more than 1/10
15 of the total CAPCO load.

16 CHAIRMAN RIGLER: So then if we took a 50 MW
17 system, that could make a significant contribution, or be a
18 significant factor in terms of CAPCO?

19 THE WITNESS: It would not be excluded just
20 by the operation of the CAPCO formula, and therefore I would
21 say it would make a significant impact if it were factored
22 in, yes.

23 MR. GOLDBERG: No further questions.

24 MR. REYNOLDS: Mr. Chairman, I believe that you
25 got sidetracked on his response to you when you were listening

1 to the response to the people -- the main in this meeting
2 on the question of whacking.

3 CHAIRMAN RIGLER: If you would like him to
4 complete it --

5 MR. REYNOLDS: I think his testimony is already
6 clear.

7 My referance was as to his testimony as to a
8 commitment made which was the third aspect of his response.

9 I don't believe that that was picked up. He
10 stopped at two, and you went off on this other line of
11 questioning.

12 CHAIRMAN RIGLER: He satisfied the open question
13 that existed in my mind, and he was responsive to my
14 question.

15 Now, if you would like to him complete his
16 answer to complete the record, or to develop his point
17 any further, certainly he is entitled to do so.

18 But it is not necessary on my account.

19 MR. REYNOLDS: I guess the record is clear.

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BY MR. CHAPNO:

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2 Q Mr. Smart, did you testify that you informed
3 Mr. Jablon that Toledo Edison might be coming to the
4 municipals to ask them to participate in the ownership
5 of generating facilities in the future?

6 A Yes. I thought that it could well be that we
7 might come to them in the future and ask them to participate.

8 Q What was the reason for your feeling that
9 you might be approaching them in the future?

10 A I indicated to him that we were having grave
11 difficulty raising the kind of capital that we have to
12 have to finance these major facilities, and we were
13 interested in sources of borrowing capacity and that
14 would be a reason why we might in the future come to them.

15 Q Would that same reason apply to the construction of
16 transmission facilities?

17 A We don't have any planned major transmission
18 additions.

19 The transmission grid basically necessary to
20 support the CAPCO pool is largely built. I think all we
21 have left to do is to sometime in the future add another
22 345 Kv circuit on the existing pole tower -- existing
23 steel tower line, so we don't anticipate a lot of our
24 construction budget being in transmission facilities in the
25 next few years.

Q Would there be any reason why you would prefer not

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1 to go to municipals to secure financing for construction
2 of transmission as opposed to generation?

3 A. We don't distinguish the source and use of
4 the dollars as such.

5 Q. Would it be possible for Toledo Edison to
6 commit in principle to the joint owning or joint payment
7 for transmission facilities without knowing the details
8 which would be required prior to committing to wholesale?

9 A. That is correct. And we also have, I am reason-
10 ably sure you are aware of, the standing constitutional
11 inhibition against joint ownership of facilities with
12 municipal corporations in Ohio, which I don't believe
13 was mentioned before, but it is one of the factors that
14 controls or influences our thinking.

15 Q. Sir, you mentioned a so-called white paper. What
16 was that in reference to?

17 A. This is a document which was initialed and
18 approved by the chief executives of the C&P&O companies
19 in 1973.

20 Q. At one point the Chairman asked you if you, you
21 you being Toledo Edison, if you transmitted power to
22 Consumers Power. Do you transmit power from Consumers
23 Power? Has that happened since the memorandum of
24 understanding was signed?

25 A. Yes.

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1 Q Was that firm power or was that transmission
2 based on the daily availability of your transmission
3 system?

4 A We made a 200 megawatt short-term purchase
5 transmission under our filed tariff with the Michigan
6 companies -- actually our tariff is with the
7 Michigan Power Pool, although technically it is with
8 Detroit Edison and Consumers Power, which are two members
9 of the Michigan Pool, because they dispatch their load
10 collectively through their power pool up by Ann Arbor.

11 Q How long did you transmit power under that
12 arrangement?

13 A We didn't transmit power. We bought from
14 them under a short-term rate, and resold part of the
15 energy that we purchased to other CAPCO companies.

16 Q Sir, you stated earlier, I believe, that you
17 don't know where the particular energy goes.

18 Is that the context of the transmission of
19 energy? Is that a correct statement of your testimony?

20 A I hope I didn't oversimplify it quite that
21 much. I think I indicated that an element, a measure
22 of generation which comes out of a particular source cannot
23 be directed through this transmission grid, to another
24 designation. It simply goes into the pool, in effect, into
25 the intertie and it flows wherever the demand is for it.

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Now, we know after the fact where it went,
because we meter it and we bill one another for this
flow, but you don't generate a specific unit of energy
and deliver it to a specific destination.

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ari I think the easiest way, it has been for me to
2 understand this, is to look at it as if it were an inter-
3 connected plumbing system with four or five wells feeding it.
4 If a spigot opens, the water comes out wherever the spigot
5 opens.

6 One pump kicks on, it fills some water in. If
7 another pump kicks in, it fills some water in, but this is
8 that kind of system that it supplies wherever the demand is,
9 irrespective of the source, our equipment operates to a
10 great extent automatically to make up that energy, and
11 generally speaking, from the closest and strongest source.

12 You have a very complex set of financial arrange-
13 ments then in accounting for and billing for the actual
14 consumption which we can read on our intersystem meters.

15 Q Your inability to determine where particular
16 energy goes, however, wouldn't vary by virtue of a transaction
17 being a wheeling transaction as opposed to a transaction
18 involving the joint ownership or joint payment for transmis-
19 sion lines?

20 A That is true. That is why it is essential that
21 you understand all of the implications of the transaction;
22 that you don't put simply a convenient label on it and say
23 we priced it because of the label.

24 You have to know what all of the operating
25 transactions are, and price it accordingly.

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1 Q When Mr. Jablon requested a wheeling rate at
2 the Ramada Inn meeting, did he specifically specify that
3 part of that rate should be the wheeling of long-term firm
4 power?

5 Pardon me, firm power on a long-term basis?

6 A He didn't have any specifics at all.

7 Q Did he disclaim interest in wheeling on
8 an if, as, and when available basis?

9 By that, I mean when Toledo Edison had
10 capacity available?

11 A I don't recall any such mention on his part, no.

12 Q So that -- well, let me ask you, then:

13 What was the basis for your statement that
14 the type of wheeling that municipal systems were asking for
15 at that meeting was long-term wheeling of firm power?

16 A Because he said what he wanted was the so-called
17 postage stamp rate, which didn't even have to do -- he didn't
18 even mention whether we would have the capacity available, nor
19 did he mention that there would be any limitations on it,
20 in terms of when it would be available.

21 These were the sorts of things we had to know,
22 because the implication from what he says is that we had a
23 rate which they can avail themselves of whenever
24 it is to their economic advantage, irrespective of what the
25 economic burden is, that that throws on us.

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1 It is fine from his point of view, but it could
2 be disastrous from our point of view.

3 Q Did you put that objection to him and explain
4 to him there was no objection to the use of Toledo Edison's
5 transmission system under the way he proposed it?

6 A I don't know whether I said that or not. It is
7 kind of fundamental that is the case.

8 Q But you don't recall whether you mentioned that
9 or not?

10 A He didn't get specific about what he wanted.
11 He wanted a wheeling rate, postage stamp wheeling rate.

12 Q Couldn't he be requesting a postage stamp
13 wheeling rate on an if, when, and if available basis?

14 A He didn't say. I couldn't price out that kind
15 of request.

16 Q You assumed then without his saying that he
17 wasn't requesting wheeling when you had capacity available,
18 he was requesting wheeling whether you had capacity
19 available or didn't have capacity available?

20 A He never became any more specific than I have
21 indicated, in spite of my stating to him that if we have a
22 specific transaction, that somebody is interested in, we can
23 price it out and give you an answer whether that
24 specific transaction is something that we can justify and
25 something that we can put a rate on, and something we could

1 operate under.

2 CHAIRMAN RIGLER: I don't think you responded
3 to Mr. Charno's question. He asked you if you made an
4 assumption, and you responded by repeating back what Mr.
5 Jablon said.

6 His question was whether you had made an
7 assumption based on Mr. Jablon's request.

8 Do you want to have the question repeated?

9 THE WITNESS: Yes. I am not sure what it is.

10 BY MR. CHARNO:

11 Q Let me rephrase the question.

12 Did you assume he was requesting capacity whether
13 or not Toledo Edison had capacity available or not, or did
14 he state that?

15 A I don't think I either assumed it, or that he
16 stated it. He did not address himself to that.

49 17 Q Well, then, why did you feel it was a problem?

18 A What was a problem?

19 Q That he might be requesting capacity which Toledo
20 Edison did not have available on a long-term basis.

21 A If we didn't have it, we couldn't deliver it. I
22 gave that as an illustration of the fact that he was being
23 extremely general in his request, and had not even dealt
24 with the most fundamental of considerations as to what an
25 actual transaction would have to reflect.

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1 Q But you didn't mention to him that he hadn't
2 dealt with that fundamental consideration?

3 A I don't recall whether I did or not. There were
4 a lot of them that he had not considered.

5 Q What were the ones you covered with him?

6 A All of these other economic implications of that
7 kind of a transaction, the source, the amount, the time of
8 day, who is providing the reserves, who is providing
9 spending capacity against this source, what happens in the
10 event of an emergency.

11 Are they prepared to have us dump their load in
12 the event their source is discontinued for some reason.

13 You can't take the simple expedient of saying this
14 is a transmission rate, or a wheeling rate, and put a price
15 on it generally without committing economic suicide.

16 CHAIRMAN RIGLER: On your wheeling of power
17 from Consumers, what reserves has Consumers agreed to
18 provide, wheeling to other CAPCO members you mentioned?

19 THE WITNESS: Technically that was not what they
20 would call a wheeling transaction. We bought from the
21 Michigan companies for resale in part to the Ohio
22 companies.

23 CHAIRMAN RIGLER: Aren't the considerations
24 the same? You told us that you went to Mr. Jablon, or that
25 one of your concerns with Mr. Jablon was who was providing

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1 the reserves and in the event the reserves failed, could
2 you dump the load.

3 Now, doesn't that apply equally well to the
4 Consumers -- to CAPCO transactions?

5 THE WITNESS: Yes. The transaction we had
6 with them required them to provide firm 200 megawatts out of
7 their system, at specified times, subject to them not
8 having to interrupt their own native load in order to supply
9 that. That's been priced out.

10 CHAIRMAN RIGLER: Suppose that Consumers was the
11 very source that Mr. Jablon had in mind when he was
12 asking if you were willing to wheel?

13 THE WITNESS: Then I would say to Mr. Jablon,
14 fine, we will price that out.

15 MR. SMITH: Mr. Smart, the difficulty I am
16 having is that you are describing what to me seems to be a
17 conversation between two rather inarticulate people. I
18 know the contrary is the case.

19 Could you cast the conversation in a more
20 understanding way for us?

21 THE WITNESS: The conversation between Mr. Jablon
22 and myself?

23 MR. SMITH: Yes. You never seem to meet in
24 your discussion on the problems that arise.

25 THE WITNESS: We were primarily concerned with

1 negotiating, because we had just one meeting to do it,
2 what our rate increase filing was going to be.

3 When the meeting started, Mr. Jablon said
4 they also wanted to talk about these other two items,
5 participation in generation and wheeling.

6 I responded to both of those as I have testified
7 here, and there simply wasn't at that point any
8 extended conversation between Mr. Jablon and myself on
9 that subject, as I recall.

10 We went on to the negotiation of what the
11 rate increase was going to be, and rather quickly, as a
12 matter of fact, agreed that we would defer discussion of
13 wheeling, and he would ask us to give them a commitment
14 that we would discuss with them in specific detail, in the
15 future, at their request, which is what we did.

16 We really didn't have a lot of discussion
17 about it. I stated, as I think I said this morning, I
18 think more for the benefit of the other people who were
19 there than for Mr. Jablon, what our general philosophy
20 and analysis was of the economics of what they referred
21 to as wheeling.

22 And then we got that subject off the table.

23 On other occasions, I have had extended
24 discussion with Mr. Jablon and with others of his partners
25 on the philosophical and economic considerations involved

1 in the interrelationships between privately-owned and
2 publicly-owned electrical systems. But not at this
3 particular occasion.

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1 BY MR. CHASNO:

2 Q Mr. Smart, you mentioned a number of factors
3 that you feel should be supplied prior to Toledo Edison's
4 consideration of a request for wheeling. How many of those
5 would have to be supplied in order for Toledo Edison to
6 determine whether or not it had the capacity available
7 on its transmission system to transmit a certain amount of
8 power from point "A" to point "B"?

9 A That would be a relatively minor part of the
10 calculation.

11 Q What other factors would be necessary to make
12 that determination?

13 A Which determination?

14 Q Whether Toledo Edison had the capacity in its
15 transmission system to transmit power from point "A"
16 to point "B"?

17 A Well, that is an engineering determination which ---

18 Q That is true.

19 A -- I would ask the engineering people to tell me.
20 I don't know what they would -- it seems rather clear to
21 me, not as an engineer, that they would look at what
22 the existing load is on that particular line and they would ---
23 and they know what the installed capability of it is
24 and would say, therefore, this is this much excess load
25 capacity and this will leave so much available, and this

1 will leave so much available and this much less available
2 each year, and we will build up to the point we are
3 utilizing it fully.

4 I think that is the sort of thing they would
5 tell me. I don't; that would be a difficult thing for them to
6 calculate.

7 Q Going back to my question, how many of the
8 pieces of information you told Mr. Jebson at this meeting
9 you would need, prior to being able to commit to wheel,
10 would you need in order to make that determination
11 that we have just talked about and you described it as
12 a fairly simple one?

13 A Those are unrelated. Those are related to the
14 overall economic analysis of a transaction
15 involving us, participating in them, getting their
16 generation from some other source.

17 Q Now, could you answer my question, sir?

18 A If you can read it back, I will try.

19 MR. CHARNO: Please.

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

22 THE WITNESS: None of them.

23 BY MR. CHARNO:

24 Q So that the different pieces of information
25 you needed are necessary in order to set a price for
wheeling?

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1 A That is right.

2 Q So would it have been possible for you at
3 that meeting to commit Toledo Edison to wheel from point
4 "A" to point "B", if such capacity was available, subject
5 to working out the exact price at a subsequent time?

6 A It may have been.

7 Q Did you so commit Toledo Edison at that
8 meeting?

9 A I wasn't asked to.

10 Q If he requested that you file a wheeling rate,
11 the exact amount and nature of that rating being
12 unspecified, isn't Mr. Jablon requesting you commit
13 yourself to wheel if you have capacity available?

14 A No. He is asking me to agree to a concept
15 which would be financially catastrophic.

16 Q Have you ever heard of a postage stamp wheeling
17 rate before?

18 A Before what?

19 Q Before Mr. Jablon mentioned it?

20 A No.

21 Q Did Mr. Jablon mention the largest utility in
22 the country uses that system for determining wheeling
23 charges?

24 A I don't recall that he did.

25 Q Did he mention that that was a method utilized by

b7d 1 other investor-owned utilities, to determine wheeling
2 charges?

3 A I don't recall.

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axl¹ Q Do you at this time know whether or not the
2 postage stamp concept is utilized by other utilities?

3 A No, I do not.

4 Q Do you know whether such a concept implicitly
5 involved the availability of transmission to perform that
6 wheeling?

7 A If I don't know it exists, I don't know what
8 characteristics you are referring to.

9 Q Can you conceive of a cost allocation scheme
10 that would allow you to work out a postage stamp rate for
11 wheeling, or would you say it would be impossible to work out
12 a cost allocation scheme for a postage stamp wheeling rate?

13 A It is impossible.

14 Q It would be impossible?

15 A Yes.

16 Q So that if it had ever been done, it would either
17 be financially catastrophic --

18 A Potentially financially catastrophic.

19 Q So that any utility would be what, deluding
20 themselves that they were getting a fair return?

21 A I don't believe I said anybody was deluding
22 themselves or this pertained specifically to fair return.

23 Q So if it is not possible to devise a postage
24 stamp wheeling rate, through allocating the costs
25 utilized to perform the service for which the rate is

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1 being charged, how do you get a fair return on your invest-
2 ment?

3 A I wouldn't know.

4 Q Wouldn't it be impossible if you couldn't devise
5 the rate, that would be inadequate allocation of cost?

6 A You could devise a rate other than on cost alloca-
7 tion basis which would give you a fair return. I could forget
8 cost allocation and say I will take \$100 a kilowatt for all
9 the capacity you want on my system. That wouldn't be cost-
10 justified. I couldn't cost-justify it, but it wouldn't
11 put me out of business. What is the problem with it.

12 It is a very speculative approach to the problem.

13 Q Did Mr. Jablon insist on a postage stamp rate
14 when he asked you to file a rate?

15 A No, he didn't insist on anything.

16 Q Didn't he just suggest that as a possibility?

17 A That was his suggestion of the type of a wheeling
18 rate that he wanted, yes.

19 Q Did you offer any alternative types of wheeling
20 rates or suggestions?

21 A Yes, I said bring up a specific transaction, we
22 will price it out.

23 Q Am I correct that you testified that the concept
24 of a joint generating facility between Bowling Green and
25 Napoleon was an example of not needing wheeling?

1 A That --

2 Q Pardon me. In order to achieve a lower cost of
3 bulk power supply?

4 A I don't believe I said what you have characterized
5 my testimony as being. I think what I said was, in response
6 to a general question as to what alternate source might be
7 available, that that was one specific illustration of
8 generating capability that they had actually been
9 talking about.

10 Where it would be located as being a new
11 facility would have a lot to do how they got that energy
12 out of that unit transmitted into their system.

13 Q You don't recall giving that as an example of
14 being able to achieve that without wheeling? Being able
15 to achieve lower bulk power cost without wheeling?

16 A I don't recall specifically, but that could be
17 one which would not involve any wheeling at all, if they
18 built it inside their own territory.

19 Q Are those two cities contiguous?

20 A No.

21 Q Do they own any transmission?

22 A Bowling Green does.

23 Q Does it own any transmission outside the city
24 limits?

25 A Yes.

1 Q How far outside the city limits does that go?

2 A It's from Bowling Green to Tontogany.

3 Q How far would that be?

4 A Maybe five miles.

5 Q How far would that leave them from Napoleon?

6 A I don't know. You would have to refer to the map.

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1 Q In fact, haven't they, they being Bowling
2 Green and Napoleon, approached Toledo Edison and asked
3 Toledo Edison to wheel the power between the two
4 cities and the generating site?

5 A I think they approached us and asked us to
6 participate in the whole venture including the facilities
7 using the waste material as fuel.

8 And we are working with them on it, yes.

9 Q Aren't their proposal for participation
10 involving Toledo Edison wheeling that power between the
11 two cities and the plant?

12 A I honestly don't know. I think that it
13 does, but my own information is that they have asked us
14 to participate in the project and that our energy supply
15 officer was meeting with them.

16 Q I believe you testified that Montpelier's
17 load could have a significant effect on Toledo Edison's
18 system; is that correct?

19 A Yes.

20 Q Would the converse of that be true, that Montpelier's
21 load could have -- pardon me -- a system the size of
22 Montpelier could make a significant contribution to Toledo
23 Edison Company coordinated operation with Toledo Edison?

24 A I really don't know if from an operational
25

by2 1 point of view a unit that small is economically feasible.

2 I think it might be. They have no
3 generation now.

4 Q Earlier I believe that you testified that it was
5 possible to exchange services in kind. Is it
6 equally possible to pay for services received in cash?

7 A Yes.

8 Q And does Toledo Edison do this upon occasion?

9 A Oh, yes.

10 Q At one point you used the phrase "proportionally
11 capable of helping each other," in reference to electric
12 utility systems. Could you define for me how you use the
13 term "proportionally"?

14 A In one form or another, either their overall
15 size or overall system load.

16 Q Is it your understanding of the CAPCO memorandum
17 of understanding that it establishes the provision of
18 transmission for CAPCO purposes upon a financing basis to be
19 worked out subsequently?

20 That is to say, it provides for necessary
21 transmission facilities being provided. That is a
22 commitment and then the exact nature of that commitment
23 is to be given detail in the subsequently negotiated
24 transmission facilities agreement or transmission agreement?

25 A That is my best recollection, yes.

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MR. CHARNO: I have no further questions, thank you.

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CHAIRMAN RIGLER: Is there any redirect?

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REDIRECT EXAMINATION

4

BY MR. BRILEY:

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Q Mr. Smart, is it your impression at that

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meeting that Mr. Jablon understood your position?

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A Yes.

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Q And did you in fact subsequently commit to

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wheel if the specific request was made and that the rate

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could be determined?

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A Yes.

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MR. BRILEY: I have nothing further.

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MR. REYNOLDS: I have several questions.

14

CROSS EXAMINATION

15

BY MR. REYNOLDS:

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Q Mr. Smart, in the pricing of a wheeling

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transaction, are the costs of the facilities one of the

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factors that Toledo Edison takes into account?

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MR. GOLDBERG: I object. That is beyond the

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scope of redirect.

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MR. REYNOLDS: It is, but it is directly

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responsive to a number of questions by the Board and a

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number of questions that were asked on cross-examination.

24

CHAIRMAN RIGLER: Overruled.

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THE WITNESS: I am sorry. Can I have the

4
1 question again?

2 (Whereupon, the reporter read the
3 pending question, as requested.)

4 THE WITNESS: As stated, I have never priced
5 these kinds of transactions. I don't know what we
6 actually do.

7 BY MR. REYNOLDS:

8 Q Let me be more specific. If a municipality
9 were to come to you and ask you to wheel power from Detroit
10 Edison, let's take Bowling Green, asked you to wheel power
11 from Detroit Edison over your line, would an element of
12 the pricing take into account the capital costs of the line
13 between Bowling Green and Detroit Edison's system?

14 A At least part of it.
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1 Q All right.

2 Now, I thought I understood you to indicate
3 to the Chairman that in some situations it might be
4 more economical for a municipal system to build its own
5 transmission line to the power source than it was interested
6 in, as opposed to entering it in a transaction with Toledo
7 Edison that would require a payment of a wheeling charge
8 to Toledo Edison.

9 I am assuming that the power sources are the
10 same in both situations. Was I correct in that?

11 A I don't believe so.

12 CHAIRMAN RICLER: I don't, either.

13 BY MR. REYNOLDS:

14 Q If the power source that a municipality were
15 interested in was located 10 miles away from that municipal
16 system, and Toledo Edison had a line between the power
17 source and the municipal system, to what extent would a --
18 I am sorry. To what extent would the capital costs of that
19 line be included as one of the elements in pricing a
20 wheeling transaction for that municipal system?

21 MR. CHAPNO: Can I have that question back?

22 (Whereupon, the reporter read the pending
23 question, as requested.)

24 MR. CHAPNO: I will object to the question on the
25 grounds the witness just testified he has not been involved

1 in the pricing of a wheeling transaction per se, unless some
2 other foundation is established.

3 MR. REYNOLDS: I believe the witness has testified
4 quite extensively as to the different pricing factors that
5 are relevant to a wheeling transaction in his view, and
6 based on his experience, rate experience with Toledo Edison.

7 CHAIRMAN RIGLER: I do not recall anything in
8 the witness' testimony that established he had any knowledge
9 in the area of the question.

10 However, since you have asked the question
11 dependent upon his knowledge, I will permit him to tell you
12 whether or not that is within his sphere of competence. If
13 he can answer, I suppose he will.

14 THE WITNESS: I think under those circumstances,
15 assuming that there was to be wheeling over that line and
16 that line served a sole purpose of supplying that
17 municipality, as I think I indicated before, 100 percent of
18 that would be allocated to the cost of supplying that
19 service.

20 BY MR. REYNOLDS:

21 Q All right.

22 What -- at this August meeting, August 27th, '75,
23 what advantages, if any, did the municipal representatives
24 represent to you that they saw participation -- joint
25 participation in the units?

1 A I think that they anticipated -- I think I
 2 recall correctly that they indicated they anticipated they
 3 could make some financial benefit out of being able to
 4 participate in a generating unit.

5 Q Did you receive any response after you indicated
 6 that you thought this was, I believe you said, a crazy idea
 7 for the municipalities to be entertaining at this particular
 8 time?

9 MR. GOLDBERG: Objection; asked and answered.

10 CHAIRMAN RIGLER: Overruled.

54 11 MR. CEARNO: I would like to object as well beyond
 12 the scope, and we are following an entire line here, not just
 13 asking questions clarifying what the Board asked.

14 CHAIRMAN RIGLER: I am going to permit the
 15 question.

16 However, I think the observation is well taken.
 17 If it continues, you can renew your objection.

18 MR. CEARNO: Thank you, sir.

19 THE WITNESS: The answer is no.

20 BY MR. REYNOLDS:

21 Q All right.

22 When you indicated that Toledo Edison had some
 23 concern over the effect on Toledo Edison's system, if it
 24 were to enter into a postage stamp wheeling rate with the
 25 Village of Montpelier, did you have in mind a physical

1 concern or a compensatory concern?

2 MR. CHARNO: I will object to that question as a
3 mischaracterization of the witness' testimony on cross-
4 examination, although it may be a correct statement of his
5 testimony originally on direct.

6 If that is true, then I would object as beyond
7 the scope of redirect. Indeed, something not even mentioned
8 on cross.

9 MR. GOLDBERG: I would join in that objection.

10 MR. REYNOLDS: It was specifically mentioned in
11 response to the Chairman's questions and also on cross-
12 examination.

13 MR. CHARNO: I don't believe what you have just
14 asked the witness was so mentioned. I noticed you put
15 Montpelier in there, which came up in the context of the
16 Chairman's question, but not that answer. Not that question.

17 MR. REYNOLDS: All right. Let me go about it
18 this way:

19 BY MR. REYNOLDS:

20 Q I had thought you testified there was some concern
21 on the part of Toledo Edison as to the effect on the Toledo
22 Edison system that would result in its entering into a
23 postage stamp wheeling rate with the Village of Montpelier.

24 Did you give that kind of testimony, or do you
25 recall that?

1 A What I recall is simply indicating whether
2 Montpelier's load, which I think was in the range of five
3 to eight megawatts, was a significant element of load on the
4 Toledo Edison system.

5 Q All right.

6 You indicated you thought it was a significant
7 element of load?

8 A Yes.

9 Q Was your response in that regard addressed to a
10 physical concern that you had insofar as that load affected
11 the Toledo Edison system or a compensatory concern, or both?

12 MR. CHAFFO: I will object to that unless we have
13 a definition. It seems to me the two concepts are
14 sufficiently interrelated that unless they are defined by
15 counsel or by the witness in his answer, I know substantial
16 trouble with the state the record will be in.

17 MR. REYNOLDS: I would be responsive to Mr.
18 Smart telling me the relationship, if it is both.

19 MR. CHAFFO: Or if it is one or the other, I
20 would like to know how they are distinguished.

21 THE WITNESS: I was thinking of a monetary impact.
22 I don't think that I understand what the other branch of the
23 question was after.

24 BY MR. REYNOLDS:

25 Q What do you mean by monetary impact?

1 A If we lost that much load, lose revenues from
2 that much load, it would have a significant effect on our
3 revenues.

4 Q Was that the context in which you were speaking
5 with respect to your testimony as to the significant effect
6 of a small load on the Toledo Edison system?

7 A Yes.

8 Q Even if a request for wheeling were qualified
9 to contemplate that the wheeling would be performed on an
10 if, as, and when basis, could you price that transaction
11 without any more specific information?

12 A No.

13 Q Do you consider the Buckeye wheeling arrangement
14 which Toledo Edison is a party to, was to be based on a
15 postage stamp wheeling rate?

16 A No.

17 Q Is Toledo Edison being adequately compensated
18 under that Buckeye arrangement?

19 A No.

20 Q Does the Village of Montpelier have any of its own
21 generation?

22 A They have not had any generation in service for
23 several years. I wouldn't say that they don't own some
24 generating -- some small unit generating capability, but I
25 think it was gas-operated. There aren't many gas --

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1 Q That being the case, can you think of any
2 benefit that the Village of Montpelier might be able to
3 confer on Toledo Edison if a coordination arrangement
4 were entered into between the two?

5 MR. GOLDBERG: I object. There is absolutely
6 no basis on which the witness can answer that question.

7 MR. REYNOLDS: I believe the witness already
8 gave some testimony to that effect in response to Mr.
9 Charno's questions.

10 MR. GOLDBERG: That was with respect to analyzing
11 the municipal systems.

12 MR. REYNOLDS: My question went to Toledo Edison.

13 MR. GOLDBERG: It is also well beyond the scope
14 of redirect.

15 CHAIRMAN RIGLER: Mr. Charno, was your question ---

16 MR. CHARNO: Off the record.

17 (Discussion off the record.)

18 CHAIRMAN RIGLER: Was your question confined to
19 the specifics of Montpelier or was your question posed in
20 terms of a load, the size of the Montpelier load? Or do
21 you recall?

22 MR. CHARNO: I am sorry; I do not recall.

23 MR. REYNOLDS: I can generalize my question a
24 little more, if that is the Board's concern.

25

1 BY MR. REYNOLDS:

2 Q Mr. Smart, if we are talking of a load the size of
3 the Montpelier load, which I think is five megawatts, and that
4 load has no self-generation supplying it, but rather that that
5 whole load is supplied by a full requirement -- for
6 requirements purchased from an outside source, could a
7 coordination arrangement between the municipality with
8 that load and Toledo Edison supply any benefits in your view
9 to Toledo Edison?

10 MR. GOLDBERG: I object. It is beyond the
11 scope of direct, beyond the scope of records, and it is
12 beyond the expertise of this witness who is a vice president
13 for legal matters.

14 CHAIRMAN RIGLER: Overruled.

15 MR. CHARNO: I would like to ask one clarifying
16 question. Is that under any possible circumstances? Is that
17 what you are asking him? Can he conceive under any possible
18 circumstances how that could be?

19 Or are you going to limit the circumstances in
20 some way?

21 MR. REYNOLDS: I think to the extent
22 I have put parameters on it by my question.

23 MR. CHARNO: But that --

24 MR. REYNOLDS: If he can conceive of circumstances,
25 then, yes, I would like him to suggest that to me.

1 THE WITNESS: A two-party arrangement between
2 Montpelier and Toledo Edison?

3 BY MR. REYNOLDS:

4 Q Well, I was a little more general. That is the
5 thrust of the question.

6 It would be between Toledo Edison and a municipality
7 with a load the size of Montpelier, which municipality has
8 none of its own generation.

9 A I am not sure I understand the question, either,
10 but unless they had a contractual right to some other
11 capacity, from some other party, obviously they can't
12 contribute anything to a coordination arrangement, if they
13 don't own it or have a contractual license with somebody else
14 they can't coordinate with us.

15 MR. REYNOLDS: Thank you.

16 I don't have anything further.

17 MR. CHARNO: I have two very brief questions.
18 I have forgotten the order.

19 MR. GOLDBERG: I don't have any questions.

20 BY MR. CHARNO:

21 Q Mr. Shart, was it your testimony in response
22 to Mr. Reynolds' question, that the loss of eight megawatts
23 of load would have a significant effect financially upon the
24 Toledo Edison system?

25 A Yes.

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Q Was that a factor to be considered in the setting
of a wheeling rate?

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1 A No.

2 Q Why would the loss of that much load or the
3 significant effect, be of any relevance then?

4 A Because of the utilization of our capability
5 in order to supply that service.

6 Q Is it your testimony you would not be
7 utilizing the same transmission capability?

8 A In theory, to that extent we would be overbuilt
9 in generation. We would be overbuilt in transmission.

10 We would be overbuilt in distribution and we
11 would have other facilities online which were no longer
12 necessary, that we paid for.

13 Q Now, as I understand this, we are talking about
14 a city that you serve at wholesale; is that correct?

15 A That is correct.

16 Q What would be the distribution facilities that
17 would be overbuilt, if you started wheeling to that
18 city instead of selling to that city?

19 A I will take that back. There were no distribution
20 facilities. We are delivering to them at very low transmission
21 voltage; that is right.

22 Q What would be the transmission facilities that
23 would be overbuilt, if you started using those facilities
24 to wheel instead of sell directly?

25 A For example, we are currently rebuilding from
34.5 Kv standard to 138 Kv standards, the transmission

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1 line that feeds that area. We are doing that because the
2 load growth in that area, including the wholesale load
3 growth, tells us that we don't need 138 Kv right now.

4 We need 69. But we are building 138, because
5 we are preparing to carry that load on in the future.

6 Even the elimination of 3 megawatts, in terms,
7 if we were losing the assurance we were going to serve that,
8 might have influenced us to leave that system at 69 Kv.

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9 Q Now, if you are transmitting power over that system
10 as part of a wheeling transaction, instead as part of a sale,
11 does it make any difference in terms of determinations in the
12 future on transmission capacity?

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13 A It depends on the terms and prices of the
14 transaction. It is conceivable it wouldn't make any
15 difference as to the need - it is conceivable it would.

16 We couldn't afford to build it if we only knew
17 they were going to use it once a month.

18 We couldn't justify building it.

19 CHAIRMAN RIGLER: Mr. Reynolds, too many times
20 you have been nodding and indicating to other counsel
21 you agreed with the Witness' answer. Try to just sit
22 passively as he gives answers, please.

23 MR. CHARNO: Can I have the last answer
24 read back, please?

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

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1 BY MR. CHARNO:

2 Q Sir, wasn't the premise you had been operating
3 on, we had been talking about. long-term firm power
4 wheeling.

5 A The premise was we can't price it until we know
6 what the term is, as well as the other elements in the
7 transaction.

8 Q With respect to long-term firm power wheeling
9 would there be any difference in the transmission facilities
10 that the company would be able to utilize, (a) wheeling
11 or (b) selling firm power?

12 A For the same amount of capacity or load on the
13 transmission line?

14 Q Isn't that the same amount that would be lost?

15 In other words, if you got an all requirements
16 customer and you are going to start wheeling parts of
17 their requirements instead of selling it, it seems would
18 be the same.

19 A Firm and all requirements are two different
20 things. If it is a firm all requirements customer, it
21 shouldn't make any difference.

22 Q And to the extent that Toledo Edison is short
23 of generation, could you say that you have been overbuilt?
24 That this gave you additional generation on peak, couldn't
25 it be a benefit to you to wheel?