

Regulatory Docket File

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and)
CLEVELAND ELECTRIC ILLUMINATING CO.)

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

-and-

CLEVELAND ELECTRIC ILLUMINATING)
CO., et al)

(Perry Nuclear Power Plants, Units)
1 and 2))

Docket Nos.

50-346A

50-500A

50-501A

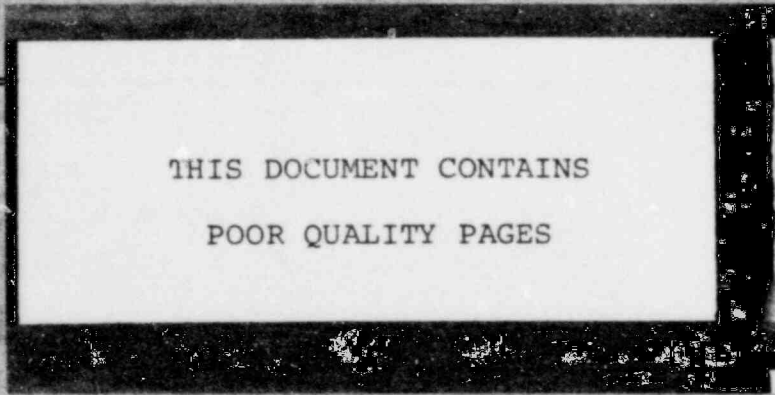
50-440A

50-441A

Place - Silver Spring, Maryland

Date - Tuesday, January 27, 1976

Pages 4166-4249



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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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 In the matter of:

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

and

CLEVELAND ELECTRIC ILLUMINATING CO.	:	50-440A
<u>et al.</u>	:	50-441A

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

-----X

First Floor Hearing Room
 7915 Eastern Avenue
 Silver Spring, Maryland

Tuesday, January 27, 1976

Hearing in the above-entitled matter.

was reconvened, pursuant to adjournment, at 9:30 a. m.,

BEFORE:

MR. DOUGLAS RIGLER, Chairman

MR. JOHN FRYSIK, Member

MR. IVAN SMITH, Member

APPEARANCES:

As heretofore noted.

C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECRO</u>
Robert F. McCabe, Jr. (Recalled)		4188	4234	4236
<u>EXHIBITS:</u>			<u>MARKED</u>	<u>RECEIVED</u>
Applicant's 48(DL), letter			4174	4181
Applicant's 49(DL), memorandum of understanding			4174	4161
Applicant's 50(DL), proceedings before the Pennsylvania Public Utilities Commission, Application of the Borough of Pitcairn.			4194	
Applicant's 51(DL), newspaper article, dated August 13, 1959, "Times-Express."			4194	
Applicant's 52 (OE-PP), letter dated January 11, 1968			4216	4223
Applicant's 53 (OE-PP), letter dated January 30, 1968			4217	4223
Applicant's 54 (OE-PP), letter dated February 6, 1968			4218	4223
Applicant's 55 (OE-PP), letter dated February 12, 1968			4220	

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	<u>EXHIBITS</u>	<u>MARKED</u>	<u>RECEIVED</u>
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2			
3	Applicant's Exhibit No. 56 (TE)	4225	4227
4	letter dated January 3, 1968, Internal Document No. B-0888		
5	Applicant's Exhibit No. 57 (TE)	4225	4227
6	letter dated January 25, 1968, from John D. Davis.		
7	Applicant's Exhibit No. 58 (TE)	4225	4227
8	letter dated February 29, 1968, Internal Document No. B-0897		
9	Applicant's Exhibit No. 59 (CEI)	4228	4233
10	Internal Document No. 11		
11	Applicant's Exhibit No. 60 (CEI)	4228	4233
12	Internal Document No. 12		
13	Staff Exhibit 208, report entitled "CAPCO Baseload Generating Capacity Requirements Following Perry No. 4, 1981 to 1984," Planning Committee Report No. 5, dated January 14, 1973	4242	4243
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16	Staff Exhibit 209, pages from deposition of William D. Masters	4242	
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1 PRO P R O C E E D I N G S

2 MR. LESSY: Mr. McCabe is present today to return
3 for the completion of his cross examination.

4 CHAIRMAN RIGLER: Mr. McCabe will you resume the
5 stand, and I remind you you are still under oath.
6 Whereupon,

7 ROBERT F. MC CABE, JR.,
8 was recalled and, having been previously duly sworn, was
9 examined and testified further as follows:

10 MR. LERACH: May I proceed, Mr. Chairman?

11 CHAIRMAN RIGLER: You may.

12 CROSS-EXAMINATION (Cont'd.)

13 BY MR. LERACH:

14 Q Mr. McCabe, we appreciate your coming back. It
15 has been some time since you testified.

16 If you find it necessary to look at exhibits
17 which were shown to you during the original portion of your
18 testimony, I'm sure you will speak up and let us know.

19 Now, Mr. McCabe, in October or November of 1970,
20 an emergency connection between Duquesne Light and the
21 Borough of Pitcairn was established shortly after Pitcairn
22 had suffered a brown-out.

23 A That is correct. I thought it was a little bit
24 later than that.

25 Q Early December, whatever, just by way of background.

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1 I won't hold you to the date. It is in the
2 late part of 1970.

3 A It is difficult to keep the years straight, but
4 I'm pretty sure it was 1970, yes.

5 Q About a year later, the differences between
6 Pittcairn and Duquesne were finally settled and a permanent
7 connection was established and power was sold to Pitcairn
8 from that time forward pursuant to an FPC-approved rate?

9 A That is correct.

10 Q Now, at the time that the differences between
11 Pitcairn and Duquesne were ultimate settled, is it true
12 that Pitcairn decided on its own to ease any further
13 generation of electricity?

14 A Even at the time of the settlement, Duquesne
15 refused to operate in parallel with us. For that reason,
16 it was foolish for us to continue to attempt to maintain
17 the generating equipment which had no use.

18 I believe that just to amplify that a little bit,
19 I believe that Duquesne insisted there be no connection
20 between our generating equipment and the line, so that if
21 Duquesne had an outage, it would require us to rewire or
22 reconnect our power to the bus, so that we could supply the
23 thing which I understand would amount to some substantial
24 delay. It couldn't be used under those circumstances as
25 emergency standby.

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1 Q Did you understand that for an electric system
2 the size of Pitcairn to operate in parallel with a system
3 the size of Duquesne system would require sophisticated
4 protective equipment, mostly to protect the smaller system
5 from damage?

6 A When you say "did I understand," I'm not an engineer.
7 I had heard those statements made. I had always somewhat
8 discounted them because I knew that Duquesne Light did run
9 in parallel with Westinghouse Electric Corporation at their
10 Trafford facility.

11 It was my understanding that Westinghouse
12 Electric generating facilities at Trafford
13 were not substantially larger than those at Pitcairn.

14 Q That was the basis of your conclusion that
15 Duquesne did not want to operate in parallel?

16 A They told us they didn't want to operate in
17 parallel. In fact, I think they told us they would not.

18 Q You discounted the statement regarding the
19 requirement for safety equipment on the basis of your own
20 judgment that the Westinghouse system at Trafford was a
21 similar size to Pitcairn's?

22 A Mr. Lerach, we had professional engineering
23 assistance at that time, and they also discounted the
24 seriousness or the major complications of providing
25 protective equipment. So that I want my answer to be

ar2

1 accurate. I wasn't really making the decision. In my
2 own determination the Trafford situation gave me the
3 feeling that it was not an impossible arrangement to make.

4 Q What steps did you undertake to determine the
5 size of the Westinghouse Electric generation capability
6 at its Trafford Plant?

7 A Nothing in a formal nature. I do know some of the
8 people at work in the power generating system there, and I
9 had discussed it with them.

10 Q So it was word of mouth?

11 A That's correct.

12 Q Now what studies did you have -- strike that.

13 I assume when you refer to the professional
14 engineering assistance available to the Borough of
15 Pitcairn at the time referenced in your prior answer, you
16 meant Mr. Lewis?

17 A That's correct.

18 Q What studies did Mr. Lewis perform for the
19 Borough to determine the practicality of the Borough
20 operating in parallel with Duquesne?

21 A I really at the present time don't recall what
22 studies he performed. He was in contact with us
23 through these negotiations and I relied on his advice, but
24 I really don't know what studies he performed.

25 Q Can you testify under oath that he made any

1 studies regarding the practicality of operating in
2 parallel with Duquesne Light Company?

3 A Just what do you mean by study?

4 Q Studies to determine the nature and cost of
5 the equipment that would be required to protect the respective
6 systems.

7 A I presume that from his engineering experience
8 he had a knowledge of the nature and cost of that type
9 of equipment. I do not know what studies he made specifically
10 for this purpose.

11 Q I move to strike all that part of the answer
12 prior to the last phrase where he said he did not know what
13 studies were made, as unresponsive.

14 CHAIRMAN RIGLER: Granted.

15 MR. MELVIN BERGER: Can I have the last question
16 and answer read back?

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

19 CHAIRMAN RIGLER: Is there any testimony that
20 any protective equipment was necessary already in the
21 record?

22 MR. LERACH: Having not been present every
23 day at the hearing, it is difficult for me to respond. I'm
24 not sure I can say that there are with respect to those
25 two systems.

ar4

1 BY MR. LERACH:

2 Q Is it true that the Borough of Pitcairn had never
3 operated in parallel with any other electric system?

4 A That is true.

5 Q Is it true, therefore, from your knowledge that
6 the people who were actually operating the Borough
7 electric system had no experience in operating in parallel?

8 A Mr. Lerach, to my knowledge, the people operating
9 the system had no experience, but I am not knowledgeable
10 on the background and qualifications of all of the people
11 we had working there, so I really can only answer it to my
12 knowledge.

13 Q How many people actually worked in the operations
14 end of the Pitcairn electric system?

15 A There again, I can give you an estimate, but I
16 don't know the exact number. There were probably about eight
17 or nine, something in that neighborhood.

18 Q In any event, you being the person that was in
19 charge of these negotiations, you are unable to tell us today
20 under oath whether anyone who worked for the Borough
21 electric system had knowledge and experience in the
22 problems of operating electric systems in parallel?

23 A I believe I answered that question.

24 Q In case you haven't, will you answer it again?

25 A I told you to my knowledge I was unaware.

1 Q Thank you.

2 Now there is a letter in the pile in front of
3 you, Mr. McCaba, dated November 23, 1971, and it bears a
4 document number 8068 from you to Mr. Stark.

5 Do you see that letter?

6 A Yes, I do.

7 Q And would you also look for a document in your
8 pile, styled "Memorandum of Understanding Between
9 Borough of Pitcairn and Duquesne Light Company," and it's
10 got a notation in the upper right-hand corner, item 10.

11 A Yes, I have that.

12 MR. LERACH: I would like to have both of
13 those documents marked for identification, Mr. Chairman, and
14 I will get the number for you in a moment.

15 The letter will be Applicant's 48, and the
16 memorandum of understanding will be Applicant's 49 (DL)
17 on both of them.

18 (The documents referred to
19 were marked Applicant's
20 48(DL) and 49(DL) for
21 identification.)

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23

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1 MR. LERACH: The document number on
2 November 23, 1971, letter should be D-2068.

3 BY MR. LERACH:

4 Q Do you recognize Exhibit Number 48 to be a
5 letter you wrote to Mr. Stark of Duquesne Light Company
6 on the date indicated?

7 A Yes, I do.

8 Q This was the manner in which you informed the
9 Light Company that the Borough of Pitcairn did not plan
10 to generate any electricity call power after the inter-
11 connection?

12 A That is correct.

13 Q Notice, there is a reference there to the
14 protection equipment which would be required if we were
15 to continue generating should not be needed.

16 Can you tell us what protection equipment you
17 had in mind?

18 A I didn't have any protection equipment, any
19 specific protection equipment in mind. I had been told
20 in the course of the negotiations that protective equipment
21 would be needed. I'm not an engineer. It is completely
22 out of my line.

23 Q Did you investigate how much the protection
24 equipment would cost, regardless of what it was comprised
25 of?

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1 A. I don't recall, to the best of my recollection,
2 I would say no. I do not recall.

3 CHAIRMAN RIGLER: Mr. McCabe, who told you
4 protection equipment would be needed? Was it a representative
5 of Duquesne or one of the Borough's own people.

6 THE WITNESS: To try to answer that question
7 accurately, we met on two different occasions that I can
8 recall that the matter of protection equipment came up.

9 The first meeting that I recall was a meeting
10 held here in Washington under the auspices of the Federal
11 Power Power Commission at the time we interconnected with
12 Duquesne Light on an emergency basis, where they took over
13 one loop.

14 At that meeting, representatives of the Duquesne
15 Light Company, and I'm not absolutely sure which of Duquesne
16 Light's engineers was present at that time.

17 They said they could not run in parallel with
18 us, because of the great danger of the problems between
19 the systems, and it would require expensive protection
20 equipment to do this.

21 Subsequently, we met in my office in Pittsburgh,
22 when we negotiated the final resolution of our problems with
23 Duquesne Light, and at that time I believe Mr. Fitzpatrick
24 of Duquesne Light's engineering staff was present. We were
25 again told substantially the same thing. That was the basis

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1 of my understanding about this.

2 My recollection is that our engineer, Mr. Lewis,
3 indicated that less protection equipment was needed and
4 that it didn't have to be done in this elaborate fashion,
5 as Duquesne Light. But we were attempting to resolve this
6 matter, and we resolved it, by electing to proceed without
7 the protection equipment and without attempting to inter-
8 connect.

9 BY MR. LERACH: Did anyone from the Federal Power
10 Commission disagree with Duquesne Light statements regarding
11 the required protective equipment?

12 A The meeting at the Federal Power Commission was
13 an informal meeting. To the best of my recollection, and it
14 becomes difficult after this time, they did not take an
15 active part in those discussions. And, to the best of my
16 understanding, they had not -- that is the Federal Power
17 Commission Staff had not made any analysis of the many
18 problems that existed.

19 Q But your answer is, they did not, to your
20 recollection, disagree with the statements made?

21 A My answer is to the best of my recollection
22 they neither agreed nor disagreed.

23 Q Was Mr. Lewis present at that meeting?

24 A I believe he was.

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25

arl 1 Q Now, Applicant's Exhibit No. 49, which is
2 the memorandum of understanding, are you familiar with this
3 document, and are you aware that it was an amendment, if you
4 will, of the final settlement agreement between Duquesne and
5 Pitcairn regarding their ongoing difficulties?

6 A I have no present recollection of this piece of
7 paper. I can identify Mr. Myers' signature and Mr. Troy's
8 signature and Mr. Gilfillin's signature. I would have to assure
9 it is a correct document. It was not prepared on my type-
10 writer. I presume it was probably prepared by Duquesne
11 Light and I presume we in fact signed it at the time.

12 I have no independent recollection of it at
13 this point.

14 Q At the time of this document date, January
15 5, 1972, you were the Borough solicitor?

16 A That's correct.

17 Q You were actively involved in counseling them
18 regarding their Duquesne Light problems?

19 A That's correct. I'm sure this probably passed
20 through my hands.

21 Q I guess that would be my next question. Do
22 you have any reason to doubt that this is in fact an amendment
23 to the prior settlement understanding?

24 A I have no reason to doubt that, no.

25 MR. LERACH: I would offer into evidence

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1 Applicant No. 48 and Applicant No. 49.

2 MR. LESSEY: May I have one moment, please?

3 CHAIRMAN RIGLER: Everyone sit tight. I'm
4 going to look for my admission sheets which I don't
5 appear to have brought in.

6 (Pause.)

7 MR. LESSEY: With respect to the motion to
8 put Applicant's 48 and 49 into evidence, Staff is
9 curious as to why the letters in this packet and the
10 newspaper articles have a document number stamped on them.

11 48 has 3068 and all of the other ones appear
12 to, with the exception of the memorandum of understanding.
13 It does not have a document number. Why is that so?

14 MR. LERACH: I suspect that the answer to Mr.
15 Lessey's question is that the memorandum of understanding,
16 the one-page document was stapled to the back of the
17 original settlement agreement when the documents were
18 numbered and therefore the document number would appear
19 only on the full settlement agreement which may or may not be
20 in evidence.

21 I'm not sure.

22 MR. LESSEY: The settlement agreement is in
23 evidence. The copy of the settlement agreement from our
24 files which was from Duquesne's files did not have the
25 memorandum of understanding on it. Without --

1 MR. LERACH: Mr. Lessey, we have been down this
2 road once before now.

3 MR. LESSEY: My question is, can you tell me that
4 this document was produced on discovery? If you cannot
5 tell me that with certainty, we will have to review our
6 files.

7 MR. RIESLER: I found this document in the
8 documents in the central repository which were documents
9 copied by you, the Department of Justice, and the City of
10 Cleveland.

11 That is where this came from.

12 MR. LESSEY: Was it attached to the settlement
13 agreement?

14 MR. RIESLER: As I recall, it was, because I
15 was somewhat puzzled by the item 10 notation in the corner.
16 That seemed to be a series of items on the settlement
17 agreement itself. You are stretching my memory there
18 somewhat because that was several months ago.

19 MR. MELVIN BERGER: I would like to request we
20 be provided with the rest of these items, perhaps the
21 first nine, and cover letter that went with this. I have not
22 fully screened all Duquesne documents, but I do not recall
23 ever seeing this one before.

24 MR. LERACH: At least, in my documents that I have
25 in my notebook for the case, this item 10 does appear as

1 part of the settlement agreement.

2 CHAIRMAN RIGLER: Do you have the first nine
3 items?

4 MR. LERACH: I'm not sure it is numbered 1
5 through 9. I'm willing to show you its current form.

6 CHAIRMAN RIGLER: Show the Justice Department
7 during the first break, please.

8 In the meantime, we will admit 48 and 49
9 into evidence.

10 MR. REYNOLDS: I will note the continuing
11 objection on behalf of the other Applicants.

12 CHAIRMAN RIGLER: Overruled.

13 MR. MELVIN BERGER: You have admitted 49?

14 CHAIRMAN RIGLER: Yes.

15 MR. MELVIN BERGER: I hope our objection on
16 that was noted.

17 (The documents previously marked
18 Applicant's 48 (DL) and
19 Applicant's 49 (DL) for
20 identification, were received
21 in evidence.)

22 CHAIRMAN RIGLER: Mr. Lerach, the settlement
23 agreement we have has only seven items.

24 MR. LERACH: I can tell you what it is, Mr.
25 Rigler. You are familiar with it from your corporate

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1 practice. They had a closing and they numbered all of
2 the documents exchanged by numbers as part of the closing.
3 My copy of the settlement agreement has in the upper right-
4 hand column item 10(1). I suggest that they
5 were documents exchanged at the settlement. That does not
6 mean to say they are all one document.

7 CHAIRMAN RIGLER: The problem is Mr. Berger wants
8 to make sure he has all of the documents exchanged in
9 connection with this particular transaction.

10 MR. LERACH: I don't know that I have them all.
11 We produced everything called for by production. Whether
12 there was produced a bound settlement volume is another
13 question. If one exists and it wasn't produced and they
14 want to see it, we will get it for them.

15 I don't know whether such an item exists.

16 CHAIRMAN RIGLER: All right.

17 BY MR. LERACH:

18 Q Mr. McCabe, we had talked with you earlier
19 in your testimony regarding possible benefits to Duquesne
20 Light from being interconnected with the Pitcairn system
21 in the sense that there would be a two-way flow of energy.

22 I want to explore some of those in more detail
23 with you.

24 Do you recollect giving testimony generally to the
25 effect that you believe that the Pitcairn system could provide

ar 6

1 start-up capacity for the Duquesne Light System in the
2 event the Duquesne System had to be started from a dead
3 start or total outage.

4 A Yes.

5 Q Now, were you aware that Duquesne Light's --
6 first of all, at the time you were having your negotiations
7 with Duquesne Light, do you recollect that one of
8 Duquesne's power stations was known as the Coalfax Power
9 Station?

10 A I am familiar that one of their stations was called
11 Coalfax. I'm not much more familiar than that.

12 Q You knew it existed and it was the name of one?

13 A Yes.

14 Q Were you aware that that system was -- that
15 station was designed to be able to start up on its own?

16 A No, I was not aware of that.

17 Q Was the basis of your judgment that Duquesne
18 needed this capability to be started up from a dead start
19 from outside that Duquesne had all steam-fired stations?
20 Steam generators?

21 A That was one of my considerations in making that
22 statement. I believe in the answers to the interrogatories
23 filed in the antitrust case, they indicated only steam
24 generation.

25 Q Were you aware that Coalfax had the facility

1 for the boilers to be hand-fired and steam-driven pumps
2 that would enable that station to start up?

3 MR. MELVIN BERGER: Objection to that. I think
4 Mr. Lerach is stating a fact not in evidence.

5 MR. LERACH: In cross-examination, it is my
6 understanding you are always permitted to ask a witness
7 whether or not he was aware of a given fact. The burden is
8 on me to subsequently produce those facts to impeach his
9 testimony.

10 CHAIRMAN RIGLER: The Board has not taken any of
11 the assumptions contained in Mr. Lerach's past two questions.

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

14 THE WITNESS: I was not aware of that, but let me
15 amplify my answer a bit, if I might.

16 It is my understanding that no steam turbine
17 can be started from dead-out. You have to get steam in
18 them and take quite a bit of time before you get them up
19 to sufficient speed before you put them on line. Whereas
20 the diesel equipment we had could be started from dead-
21 out and be on the line in about five minutes.

22 That was what I had in mind. I don't know what
23 their arrangements or system was at Coalfax. No one at
24 Duquesne ever brought that to my attention.

25

1 BY MR. LERACH:

2 Q Would it be of significance to you in
3 thinking about the testimony just given if I told you the
4 pumps at Coalfax were steam-driven?

5 A Well, they would have to get the steam from
6 some place. It would take time to generate the steam, and
7 I presume although I don't know, that it would take longer
8 for them to get on from dead-out than it would us.

9 Q I had not understood your testimony earlier
10 to indicate that it was the time differential in starting
11 up the system that was important in your mind, but rather
12 the fact that Duquesne could not start its system at all.

13 A Well, the original questions had to do with
14 what benefit we could be to Duquesne Light. One of the
15 possible areas of possible benefit was that we had the
16 facility to start up from dead-out and supply them emergency
17 start-up power.

18 Q If Duquesne had that capability on its own, then
19 that potential benefit was not much that you could give them,
20 was it?

21 A Well, I would still think the potential
22 benefit would exist. If they had other sources to be
23 obtain this, then, of course, perhaps we would not
24 giving them something unique. But it wouldn't change my
25 thinking, Mr. Lerach, that it would still be a potential

1 benefit to them.

2 Q Did you ever ask Mr. Lewis to perform any
3 calculations or studies to determine whether or not trans-
4 formers loss or line loss would eliminate the capability
5 of Pitcairn sending enough power to Duquesne to start up its
6 system?

7 A I did not know.

8 Q Do you know if he ever performed any such calcu-
9 lations?

10 A I do not know. I know that Duquesne indicated to
11 me that there would be a problem of line loss. I believe Mr.
12 Dempler made those indications.

13 Q Did you ever ask Mr. Lewis to perform any
14 studies regarding the type of equipment that would be
15 required for Pitcairn to interconnect through a 345 kV
16 transmission line network?

17 A I did not, and to the best of my knowledge, the
18 Borough did not.

19 Q Now, Mr. McCabe, I'm going to ask you some
20 questions that may be somewhat general and I hope you will
21 be able to explain, because I think they will be helpful to
22 the Board in understanding the Borough of Pitcairn better.

23 Is it true that the Borough is about a half a
24 square mile in area?

25 A I believe that is about right.

1 Q What is its current population, about?

2 A The present population, I believe, is slightly
3 under 5000.

4 Q Is it true that the population has been
5 basically stagnant or declining slightly over the last
6 decade?

7 A I would say that your statement is correct.
8 It has been about the same, or perhaps there
9 has been a slight decline.

10 Q Can you tell me whether the tax base of the
11 Borough, the real estate tax base, has increased
12 significantly in valuation in real terms in the last, let's
13 say, six or eight years?

14 A The real estate base tax base has not changed
15 significantly in real terms or any other terms. The
16 county did have a reassessment in Pitcairn a few years ago
17 which changed the figures. Even then it did not substantially
18 change the overall tax base.

19 The tax base, I believe, is about \$5,200,000.

20 Q Is it fair to say the Borough's financial
21 condition today, 1975-76, is generally the same as it
22 would have been in 1970?

23 A Yes, I think the Borough's financial condition
24 is pretty much the same as it was in 1970. We have not
25 increased our tax millage due to inflationary

1 pressures which have affected everybody.

2 We have had certain problems, revenue-sharing
3 has somewhat helped us out a little bit. We have found
4 it necessary to institute a charge for garbage service which
5 we did not make in the past; but overall, our financial
6 condition is quite comparable to 1970.

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55 1 Q Now, do you remember that at the time of the
2 November -- well, the late 1970 brownout which resulted in
3 the emergency interconnection that Pitcairn carefully
4 considered the possibility of purchasing additional
5 generation equipment for itself and rejected that
6 alternative as too expensive?

7 A In the summer of 1970, after the crank shaft
8 broke on Engine Number 7, we explored the possibility of
9 attempting to buy additional generating capacity. And
10 we went so far as to prepare specifications and take bids
11 on that.

12 The bids were rejected, partly because of the
13 cost and partly because we weren't satisfied with the bid
14 or the bids that we received.

15 Q I thought you testified earlier on cross, and it
16 may have been on direct, page 1837, that you rejected the
17 bids, because they were too expensive. Were they, in fact,
18 too expensive for the Borough to afford?

19 A I was making two different statements, I
20 believe, Mr. Lersch. Certainly we rejected the bids as
21 bids, because Counsel thought the bids were too high.

22 If the bids had been in a range that Counsel
23 thought was acceptable, I presume Counsel would have accepted
24 them, yes.

25 Q Now, was the size of the unit to be, I think you

1 said around 2,000 kilowatts?

2 A That is my recollection. I'm relatively sure
3 that that is what it was. I can't absolutely guarantee
4 that.

5 Q Best recollection is around 2,000 kilowatts?

6 A Yes

7 Q I have a newspaper article in the pile in front
8 of you. I want you to glance at it. It is the November 4,
9 1976 article, and I'm fairly certain it is from the
10 "Times-Express." It is entitled "Piccalin Rejects Bids
11 for Light Plant Engines."

12 I direct your specific attention to the information
13 contained therein in that the one bid was \$320,000 and
14 the other bid was \$199,000. Do you remember those figures
15 as being accurate for the bids that were submitted?

16 A I have no independent recollection, Mr. Latach.
17 I presume that the figures that appeared in the paper were
18 accurate, although knowing the "Times-Express," maybe that
19 is a rather brave assumption.

20 MR. LEESY: Excuse me, if I may. These haven't
21 been marked for identification. I would like to state
22 that they probably ought to be right now, and Staff will
23 object to the use of a newspaper article to be introduced
24 into evidence on the ground that it is hearsay, and we have
25 no way of cross-examining a newspaper to obtain the truth
of the statements contained therein.

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1 MR. LERACH: The motion is premature. I did not
2 attempt to introduce the newspaper article in evidence.
3 If the Board wants me to mark them for the record I will.
4 The Chairman indicated to me not to do that by a nod of
5 his head for the record.

6 BY MR. LERACH:

7 Q You cannot recall the amounts of the bids
8 you received for the generation equipment --

9 CHAIRMAN RIGLER: He just said that.

10 MR. LERACH: I want to test his recollection
11 and see if he might try for me.

12 MR. LESSY: This matter was gone into on cross
13 and not direct, this question of the bids.

14 CHAIRMAN RIGLER: Yes, we seem to be recovering
15 a lot of the ground we have been through, Mr. Lerach.
16 I was looking at page 1835, for example. We spent five
17 minutes going over an area where the questions and answers
18 are practically identical to something we covered a month
19 ago?

20 MR. LERACH: What area was that?

21 CHAIRMAN RIGLER: You look at 1835 and you find
22 out. It concerns the dead-out starts. It concerns the
23 subject matter you just spent five minutes going over.

24 MR. LERACH: I thought his testimony significantly
25 expanded on the prior evidence.

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1 BY MR. LERACH:

2 Q Mr. McCabe, are you aware that in 1959,
3 the Borough of Pitcairn ceased providing service to certain
4 customers located in the Monroeville area and sold the
5 equipment that the system had, to Duquesne Light Company?

6 MR. MELVIN BERGER: I would like to object to
7 that. That is six years prior to the cut-off date which was
8 September 1, 1965.

9 I don't believe this was even covered on direct
10 examination.

11 MR. LISSY: I would object on the ground as
12 beyond the scope of direct. There was a question we asked
13 the Witness that was answered in two paragraphs, as to the
14 general historical relationship between 1902 and lawsuit,
15 but I don't think that should open up the door for all moves of
16 the Pitcairn's electrical system during that time.

17 MR. LERACH: I would ask if there be any further
18 discussion that the Witness be excused from the room.

19 CHAIRMAN RIGLER: All right. Mr. McCabe?

20 (Witness temporarily excused.)

21 MR. LERACH: The Monroeville situation is directly
22 relevant to the possibility of Pitcairn ever competing with
23 Duquesne Light Company in the retail market for customers.
24 As I have explained to the Board, I think in my opening,
25 the Pennsylvania law does contemplate that under certain

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1 circumstances a borough may seek from the Pennsylvania
2 PUC a certificate of public convenience to provide electric
3 service outside of its boundaries. The fact that Pitcairn
4 at one time did this illegally, without authorization of the
5 PUC, was forced to cease doing it, admitted their service
6 was inadequate, admitted they could not afford to render
7 adequate service, indicates to me -- is probative to me on
8 the question of whether or not Pitcairn represents a potential
9 competitor of Duquesne Light in the retail market.

10 CHAIRMAN RIGLER: It is far too remote in time.
11 That line will not be permitted.

12 MR. LERACH: Okay.

13 For the record and prior to the Witness coming
14 back in, I would like to then mark for identification and
15 place in the record, certain evidence that we would have
16 put in on this matter, so that a subsequent review
17 will be intelligent.

18 In that regard, I would like marked and place
19 in the record the Pennsylvania Public Utility -- proceedings
20 before the Pennsylvania Public Utilities Commission, application
21 of the Borough of Pitcairn and if you want us to use an
22 Exhibit number on it, Mr. Chairman --

23 CHAIRMAN RIGLER: Yes, please.

24 MR. LEHRER: I will have to try to get better
25 copies for us. I realize this is a difficult copy to read.

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1 Perhaps -- I have a rather good copy that could
2 go in the official record.

3 We will attempt to procure a better original
4 to make a better copy from for everybody.

5 CHAIRMAN RIGLER: All right.

6 MR. LERACH: Do you want that marked Applicants
7 50 (DL)?

8 CHAIRMAN RIGLER: Yes.

9 (The document referred to was
10 marked Applicants Exhibit 50 (DL)
11 for identification.)

12 MR. LERACH: Also the "Times-Express" newspaper
13 article dated August 13, 1959, Document Number D-8081
14 which contains the opinion of Solicitor McCabe, which he
15 gave to the Borough of Pitcairn regarding the sale
16 and which contains admissions that the service was
17 inadequate, et cetera.

18 That would be Applicants 51 (DL) and we will ask
19 that they be in the record and we will not try to put them
20 in as exhibits obviously.

21 (The document referred to was
22 marked Applicants Exhibit 51 (DL)
23 for identification.)

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1 MR. IESSY: Staff objects on the ground
2 that the time of these occurrences being so remote, 1958
3 and 1959, that they would not be relevant.

4 Secondly, they are beyond the point cut-off of
5 discovery and were not available to Staff.

6 Thirdly, they are beyond the scope of direct
7 examination of the witness.

8 MR. MELVIN BERGER: The Department would concur
9 with those objections.

10 MR. IERACH: Is the objection that my
11 evidence is so remote in time that I would not be able to
12 argue them as relevant before an appellate court?

13 CHAIRMAN RIGLER: Do you want to move them into
14 evidence?

15 MR. IERACH: I will move them into evidence and you
16 may formally reject them.

17 CHAIRMAN RIGLER: Exhibit 50, which is an
18 unsigned application, which has no docket number before
19 the Pennsylvania Utility Commission by the Borough of
20 Pitcairn, will be marked as Applicant's 50(DL) and will be
21 rejected from admission into evidence.

22 Applicant's Exhibit No. 51, an August 13, 1959
23 article from the Times Express also will be rejected from
24 admission into evidence.

25 MR. MELVIN BERGER: I believe Mr. Lerach may have

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1 misspoke a moment ago. In referring to the Times Express
2 article, I believe he said it contained statements by Mr.
3 McCabe.

4 MR. LERACH: I meant to say Mr. McGinnis.

5 MR. MELVIN BERGER: Okay.

6 CHAIRMAN RIGLER: Mr. Reynolds?

7 MR. REYNOLDS: Mr. Chairman, I would like the record
8 to note as to both documents, Applicants make their continuing
9 objection, Applicants other than Duquesne Light.

10 CHAIRMAN RIGLER: Objection will be sustained, but
11 not on the ground by which the continuing objection has
12 been made.

13 MR. REYNOLDS: I want the record to be clear that
14 the continuing objection was made as to those.

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1 Whereupon,

2 ROBERT MC CABE

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

5 BY MR. LERRACH:

6 Q Mr. McCabe, during the time period 1966-1968,
7 did you ever review the Duquesne Light Company's
8 published tariff?

9 A Yes, I did.

10 Q Did you become familiar with a rule in the
11 tariff, Rule No. 19, relating to resale of electricity?

12 A I will tell you my recollection.

13 My recollection is that Duquesne Light's tariff
14 provided that they could not resell -- they could not sell
15 power to customers for resale without the company's
16 permission or something to that effect.

17 Q Your recollection was that it was in the company's
18 option to sell for resale or not sell for resale?

19 A Yes. I know there was a provision in the tariff.
20 I don't know exactly what it says. I do know they did
21 sell for resale at that time.

22 Q To municipalities?

23 A Not to municipalities, but to certain office
24 buildings in the Pittsburgh area.

25 Q Did you investigate the circumstances under

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1 which those sales for resale were made?

2 A I made some effort in that direction. I'm
3 not sure that my investigation was particularly fruitful.
4 But I was aware -- my office happened to be in the
5 Grant Building, and the Grant Building resold the electric
6 power to us. I believe that the Jenkins Arcade did the same
7 thing. There was a case in, I believe, the Superior
8 Court in Pennsylvania in which this fact was mentioned,
9 perhaps by way of a footnote.

10 Q Yes. Do you remember that case at all?

11 A I think I have it in my briefcase.

12 Q I don't think we need it read into the record.
13 The Board will be in a position to read that case also.

14 Did you assist in preparing the answers --
15 Pitcairn's answers to interrogatories filed by
16 Duquesne in the antitrust litigation?

17 A Yes, I did.

18 Q Do you have a recollection that questions were
19 asked requesting Pitcairn to provide information regarding
20 the hours per year that each one of its generating units
21 was unavailable for service due to maintenance, for
22 failures, and also the number of times that each unit failed
23 during a period of time?

24 MR. LESSY: I will object on two grounds:

25 One, it is beyond the scope of direct.

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1 Secondly, during the direct examination of
2 this witness, Staff attempted to put into the record
3 certain documents relating to the antitrust suit.

4 The only one, I believe, that got in was the
5 settlement. Accordingly, the actual document from the
6 lawsuit or matters read therefrom, we object to on the
7 ground of relevancy.

8 Excuse me. If matters relating to interroga-
9 tories answered by Pitcairn are going to be put in, we will
10 be forced on redirect to put in answers to interrogatories
11 by Duquesne and pretrial stipulations, and it will greatly
12 expand the scope of the testimony.

13 MR. LERACH: Of course, Mr. Lessy is entitled
14 to put into evidence Duquesne's answers to interrogatories,
15 as I should be entitled to put Pitcairn's in.

16 There are documents submitted under oath which
17 distinguish them from the statement of Pitcairn which
18 Mr. Lessy attempted to put in on his direct case.

19 The question I'm asking goes directly to the
20 reliability --

21 CHAIRMAN RIGLER: Fine. Ask about reliability.
22 It is not necessary to get there by way of answers to
23 interrogatories.

24 MR. LERACH: I will try another way, if the
25 Chairman please, reserving my right to come back this way

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1 if it appears necessary.

2 BY MR. LERACH:

3 Q Mr. McCabe, did the Borough of Pitcairn
4 retain records that would enable it in '68 and '69
5 to determine the hours per year that each of its generating
6 units was not available for service due to maintenance for
7 the time period in the preceding 10 years?

8 A To the best of my recollection, the light plant
9 kept a log on its operating equipment which I presume
10 would show the information you have reference to.

11 Q Now would that log also have shown the hours
12 per year that each unit was not available for service
13 due to failures during each of the preceding 10 years?

14 A Mr. Lerach, I have to say in all honesty, I
15 believe they kept a log. I have no direct knowledge of the
16 exact categories and details represented in that log.

17 I would presume that probably that information
18 would be available. I do not know that of my own knowledge.

19 Q Isn't it a fact that when you answered the
20 interrogatories and those questions were asked, you said
21 unknown, you couldn't answer it?

22 MR. LESSY: I object to reference to
23 interrogatories that are not in the record, for the
24 reasons stated previously.

25 MR. LERACH: If I --

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1 CHAIRMAN RIGLER: I'm going to permit that ques-
2 tion.

3 THE WITNESS: Mr. Lerach, I have to say that if
4 that was the answer in the interrogatory, then
5 apparently those categories did not appear in the log.

6 BY MR. LERACH:

7 Q So that our record is clear, then, another
8 question that was asked is the number of times each unit
9 had failed in each year in the preceding 10 years.

10 Do you know whether Pitcairn had records that
11 would have enabled it to answer that question in 1963?

12 A No, I do not.

13 Q Do you remember that when this question was
14 asked of Pitcairn in interrogatories, the answer was
15 "unknown"?

16 A I have no independent recollection of the
17 answers to those interrogatories. I will accept your
18 statement as being accurate.

19 Q I don't want you to accept it at the present
20 time. I want to show you a document now to refresh your
21 recollection, if it can.

22 Mr. McCabe, I have shown you what I believe
23 are copies of Duquesne interrogatories in the case, and
24 Pitcairn's answers, directing your attention to question 4,
25 XI, XII and XIII.

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1 Does that refresh your recollection that
2 the Borough of Pitcairn under oath answered "unknown" as to
3 the indicated questions?

4 A Mr. Lerach, I want to be accurate. I don't want
5 to testify to anything that I cannot be accurate to.
6 The answers appear to be the answers to the interrogatories
7 filed and that was the response to those.

8 I believe that to be correct. But I don't really
9 have any independent recollection of it.

10 Q And you were counsel of record for the Borough
11 of Pitcairn during that litigation?

12 MR. LESSY: That has already been established.
13 Objection.

14 CHAIRMAN RIGLER: Sustained.

15 BY MR. LERACH:

16 Q Was one of the concerns motivating you in
17 1967 in attempting to make power supply arrangements
18 for the Borough of Pitcairn the fear of a double contingency
19 outage occurring?

20 A That was one of the considerations.

21 Q Now leaving aside the question of cost per
22 kilowatt hour, isn't it a fact that rate M power from Duquesne
23 Light would have enabled you to plan for a double contingency
24 outage?

25 A Cost aside?

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1 Q Cost aside.

2 A Yes.

3 Q After the final settlement of your differences
4 with Duquesne, and when you had the FPC-approved tariff,
5 can you tell us whether the cost of electricity to Pitcairn
6 at that point from Duquesne was lower than Pitcairn's
7 generating costs would have been?

8 MR. MELVIN BERGER: I would like to object.
9 I'm not sure what Mr. Lerach means by FPC-approved tariff.

10 MR. LESSY: I would like to object to the
11 characterization as to final settlement of differences
12 with Duquesne. There was a settlement of a lawsuit.

13 Direct testimony indicates that Pitcairn got
14 certain things out of the settlement and it did not get certain
15 other things.

16 To the extent that that is a characterization
17 of testimony, I would object to it. If he says final
18 settlement of the lawsuit with Duquesne, if he says final
19 settlement of differences, I think the record is different
20 as to that.

21 MR. LERACH: I will withdraw the question.

22 BY MR. LERACH:

23 Q Tell us, Mr. McCabe, was the settlement
24 agreement signed between Duquesne and Pitcairn intended to
25 be a settlement of all of the existing differences between

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1 the Borough and the light company?

2 A Yes.

3 Q Leaving aside the FPC approval, which seems
4 to excite people, when Duquesne --

5 CHAIRMAN RIGLER: We can do without the
6 editorial comment, Mr. Lerach. Just ask questions.

7 BY MR. LERACH:

8 Q When Duquesne began to sell power to Pitcairn
9 at the agreed-upon rate in late 1971, was that rate
10 lower than what it would have cost Pitcairn to generate
11 the power through its own equipment?

12 A Yes.

13 Q What amount of that saving was passed along
14 to the residents of the Borough of Pitcairn?

15 A The Borough of Pitcairn has as a result of
16 this been able to very much limit any increases in the
17 cost of electricity to its customers and, in addition,
18 the Borough was able to use the revenues
19 generated from the electrical operation to defray general
20 Borough operating expenses.

21 Q Perhaps I was not specific enough.

22 Did you lower the rates, the electric rates
23 when you began to take power from Duquesne?

24 A We did not lower the electric rates when we
25 began to take power from Duquesne Light.

1 Perhaps I can explain that a little bit so that
2 you have a clear answer to the question.

3 During the period of time approximately 10
4 months, I believe, that we took part of our load from
5 Duquesne and generated part of our load, our expenses were
6 extremely out of line, because we had all of the fixed
7 costs of running our plant and yet we were paying -- required
8 to pay Duquesne Light for approximately a third of our
9 load which made our overall costs greatly higher, and it
10 took a while to adjust that and recoup that, and also
11 to pay the expenses, CAPCO expenses of the interconnection.

12 Q Have you ever lowered the rates of Pitcairn's
13 electric service to its residents since November 1972?

14 A We have changed the rate structure format which
15 did not have the effect of lowering the rates, but we have
16 not increased the electric rates other than for passing on a
17 fuel adjustment clause since we entered into the agreement
18 with Duquesne Light, and in comparison with other
19 utilities, this would indeed result in a substantial
20 reduction.

21 Q How much money did Duquesne Light pay the
22 Borough of Pitcairn when the antitrust case was settled?

23 A Duquesne Light did not pay the Borough of
24 Pitcairn any money. We paid Duquesne Light.

25 Q Thank you.

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MR. LERACH: I think if we took a five-minute break, it might enable me to complete more quickly. I'm getting relatively close to the end.

CHAIRMAN RIGLER: Fine.

(Recess.)

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1 BY MR. LERACH:

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2 Q Mr. McCabe, since November 1972 there has not
3 been a reduction in real terms in the rates for electricity
4 within the Borough.

5 A That is correct.

6 Q The reason, is it not true, that one of the significant
7 reasons you have been able to maintain your rates relatively
8 constant, with the exception of the fuel cost adjustment
9 is because Duquesne Light has not raised the basic charge
10 for the power it sells you?

11 A That is correct.

12 Q Of course, you no longer have the capital costs
13 that you would have had with your own generation?

14 A That is correct. We have other capital costs
15 in connection with the substation, of course.

16 Q You have, in fact the -- the Borough of Pitcairn
17 has, in fact, sold its generation equipment?

18 A That is correct.

19 Q You currently have no generation capability
20 whatsoever?

21 A That is correct.

22 Q During your direct testimony you gave some
23 testimony regarding load growth for the Pitcairn system
24 and used a figure of five percent per year and rereading
25 that testimony it was not clear to me exactly what time period

kw2 1 you were referring to or what was growth. Let me
2 explore it with you by way of a couple of questions.

3 What was the growth rate of peak load for the
4 time period, let's say, '58 -- '60 to '67, or if you can use
5 a period you are aware of, give it to me.

6 MR. LESSY: I would prefer the period about
7 from '65 on.

8 CHAIRMAN RIGLER: Your period was 00

9 MR. LERACH: I said the period '60 to '67, because
10 that would have been time period prior to negotiations with
11 Duequesne. I said to the Witness, if that is a time period
12 not completely familiar to you, and you can give me a
13 growth rate in another time period, identify it and do so.

14 MR. RIGLER: I will permit it.

15 THE WITNESS: Mr. Lerach, let me try to answer
16 your questions, as best I can without seeming to know things
17 that I don't know. Mr. Lewis made some studies which you
18 previously made reference to. I believe that those
19 studies were made around 1967 or 1968, and indicated a growth
20 of about five percent a year.

21 Now, I believe that the growth in peak demand
22 and our overall growth were somewhat consistent. But that
23 is just my recollection based on his studies, and that is
24 the only accurate knowledge that I have of the growth.
25 I have some rather inaccurate knowledge from the billings

1 and things which go through Counsel, as to the fact that
2 I believe the amount of electricity we buy from Duquesne
3 has increased.

4 BY MR. LEPACH:

5 Q But it is fair to say that if we want to
6 know specifically the growth rates, we have to go to the
7 Lewis report. That was the source of your detailed information?

8 A That was the source of my information, yes.

9 Q In giving testimony as to the potential benefits
10 you thought that the Pitcairn system could provide to Duquesne
11 in the event of coordinated operations, you indicated that
12 you believed that Pitcairn might be able to provide an
13 alternative source of power to certain areas of Monroeville?

14 A That is correct.

15 Q Monroeville is contiguous to Pitcairn?

16 A Monroeville completely surrounds Pitcairn.

17 Q Is it not true, that to the extent there was a
18 need for alternative power into the Borough of Pitcairn
19 that the difficulty for Duquesne would be in its distribution
20 system and not its generation system?

21 A Your question isn't clear.

22 Q Did you have in mind a failure of service in
23 the Monroeville area?

24 A Yes.

25 Q Now, that would occur if there was a breakdown

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1 in some area in Pitcairn's distribution system in Monroeville,
2 would it not?

3 A Or their generating cables. For whatever
4 reason, specifically, I believe the schools require a dual
5 system of power, in case of an emergency outage. This is
6 sometimes, I believe, or in some other public buildings
7 which is provided by battery-powered lights in hallways and
8 so on.

9 It was my thought that we could perhaps provide
10 that in the event of any type of outage.

11 Q Was it your understanding that there was some
12 legal requirement in Pennsylvania for school buildings to
13 have alternative sources of power?

14 A It was my understanding that there was some
15 legal requirement in Pennsylvania for certain public buildings
16 to have some alternate power sources.

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Q Alternate power sources, or just a means
for emergency lighting?

A Just emergency lighting. I don't want to
speak more broadly than I intend to.

Q Your understanding is certain public buildings
are required to have emergency lighting?

A Right.

Q Is it your experience that public buildings
in our community, our large Pittsburgh community, normally
have an internal system for this function?

A I'm aware that some of them do have, yes.

Q Can you identify for me any public building in
Allegheny County that has an alternative power source
as opposed to emergency battery-operated lighting?

MR. LESSY: Objection. I think that question
really goes too far.

CHAIRMAN RIGLER: I will permit it.

THE WITNESS: Well, at the time before we
interconnected with Duquesne Light, the gymnasium, which
was part of Pittsairn School, had a line from Duquesne
Light to supply them with that type of power.

BY MR. LERACH:

Q Was there any other, other than that, that you
were aware of?

A That is all I was aware of.

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1 Q It was only the Pitcairn Gymnasium that you
2 were aware of?

3 A Yes.

4 Q Does that suggest to you that the Pitcairn
5 system was too unreliable, that the Gymnasium needed an
6 alternative power source?

7 MR. LESSY: I object to the characterization
8 of the question.

9 CHAIRMAN RIGLER: I will permit it.

10 THE WITNESS: No, Mr. Lerach, it did not suggest
11 that. I can truthfully and honestly advise you that
12 the Pitcairn system was more reliable than the Duquesne
13 system in the immediate area at the time we were discussing
14 this.

15 We had fewer outages than the people served
16 by Duquesne Light in the Monroeville area.

17 BY MR. LERACH:

18 Q That is the basis of comparison, the
19 Monroeville area, as compared to the Pitcairn area?

20 A That is my basis, yes.

21 Q Duquesne took over your distribution system
22 in Monroeville, isn't that right?

23 MR. LESSY: Objection. This is an area that
24 has been excluded here.

25 CHAIRMAN RIGLER: Sustained.

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1 You are referring to something that happened
2 in 1959, Mr. Lerach.

3 MR. LERACH: I was trying to probe a witness'
4 prior answer.

5 CHAIRMAN RIGLER: But in probing, you made a
6 fact assumption. Did that fact assumption occur in 1959?

7 MR. LERACH: I did not have a specific time
8 period in mind as to where I was going to go. The witness
9 brought up Monroeville and I wanted to explore it with him.
10 That was all.

11 CHAIRMAN RIGLER: All right. Sustained.

12 MR. LERACH: I will move to strike,
13 though, his prior answer then on the ground that I have
14 not been permitted to cross-examine him on it, on the
15 basis that he formed his conclusion.

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

18 CHAIRMAN RIGLER: Mr. Lerach, if the take-
19 over occurred in 1959, by the time you get to the late
20 '60s, I can't see the relevance of when the takeover
21 took place; moreover, the entire line of questioning
22 related to, as I understood it, future benefits. The
23 motion to strike will be denied.

24 Also your editorializing again about not being
25 allowed to ask questions about Monroeville is improper, because

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1 it would depend on the question.

2 CHAIRMAN RIGLER: For example, you inquired as
3 to whether Monroeville was contiguous to the Pitcairn
4 system. That was permissible.

5 BY MR. LERACH:

6 Q Did the Borough of Pitcairn at one time own
7 distribution, electric distribution facilities, located
8 within the Monroeville Township area?

9 A Yes.

10 Monroeville is a borough, by the way.

11 Q Borough. Fine. Thank you.

12 When you testified earlier on cross that there
13 had been a refusal to operate in parallel, you said "they,"
14 which obviously meant Duquesne in the context of your
15 answer.

16 Will you tell me the individuals that you have
17 in mind?

18 A Yes. The individuals that I have in mind were
19 Mr. David McNeil Olds of the law firm of Reid, Smith,
20 Shaw, McVay, that was actively involved in these discussions.

21 This matter came up at the FPC office in
22 Washington, D.C. I believe Mr. Giffillin was with Mr.
23 Olds at that time. I believe there was an engineer from
24 Duquesne who I do not recall. It may have been Mr. Dempler
25 or Mr. Onan. I don't really recall who was there.

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1 At the time of our settlement discussions at
2 our office in Pittsburgh, the discussions were with Mr.
3 Jack Stark of Duquesne Light and Mr. Mount Fitzpatrick.

4 Q Anyone else?

5 A Those are the only persons that I can recall
6 being present at those meetings when that matter was
7 discussed.

8 MR. LERACH: No further questions.

9 MR. BERGER: Your Honor, if you can give me three
10 minutes, I should be able to bring the documents I plan
11 to put in with Mr. McCabe into the room. I am having copies
12 made of them now.

13 MR. REYNOLDS: Mr. Chairman, so we can keep
14 things moving, I would like to introduce a couple of
15 documents on behalf of Toledo Edison Company, and I believe
16 that each of the other Applicants have a couple of
17 documents they also would like to introduce through Mr.
18 McCabe.

19 I think it would be fairly brief. I'm in a
20 position where I can go forward while we are waiting for Mr.
21 Berger, if you want.

22 CHAIRMAN RYGLER: Will any of the other Applicants
23 have cross-examination?

24 MR. REYNOLDS: The cross-examination of each of
25 the other Applicants will be directed to this particular

1 area. That will be the extent of the cross-examination
2 of the other Applicants.

3 CHAIRMAN RIGLER: Will you be conducting the cross-
4 examination on behalf of other Applicants once the documents
5 are in?

6 MR. REYNOLDS: There will be no additional
7 cross-examination except that relating to the documents
8 and each of the Applicants will do it. The counsel for
9 Toledo Edison was unable to get in this morning. I'm going
10 to, on behalf of Toledo Edison, play that particular role
11 for purposes of getting these documents in.

12 CHAIRMAN RIGLER: Fine.

13 I see that Mr. Berger is back and he is ready.

14 Why don't you proceed, since you are on your feet?

15 MR. STEVEN BERGER: Your Honor, I would like
16 to have marked for identification as Applicant's No. 52
17 Document No. OE-19, a letter dated January 11, 1968, from
18 Mr. McCabe to Mr. Mansfield.

19 (The document referred to
20 was marked Applicant's
21 52 (OE-PP) for
22 identification.)

23 BY MR. STEVEN BERGER:

24 Q Do you recall sending the letter dated
25 January 11, 1968 to Mr. Mansfield?

1 A Yes, I do.

2 Q Did you receive a response to that letter?

3 A Yes, I believe I did.

4 MR. STEVEN BERGER: I would like to have
5 marked for identification as Applicant's Exhibit No. 53
6 (OE-PP) Document No. OE-20, a letter dated January 30, 1968
7 from Mr. Mansfield to Mr. McCabe. Although the signature
8 doesn't appear on this copy, I would like to have it
9 marked.

10 (The document referred to
11 was marked Applicant's
12 53 (OE-PP) for
13 identification.)

14 BY MR. STEVEN BERGER:

15 Q Mr. McCabe, is Applicant's Exhibit No. 53
16 marked for identification a copy of the response you
17 received from Mr. Mansfield to your letter dated January
18 11, 1968?

19 A I believe that it is, yes.

20 Q In that letter Mr. Mansfield suggested that
21 you arrange to meet with Mr. White.

22 Did you contact Mr. White for the purpose of
23 arranging for such a meeting?

24 A No, I did not.

25 Q Did you contact Mr. White at all?

1 A I believe that I did. I met with Duquesne
2 Light and I believe that I advised Mr. White that I would
3 be meeting with Duquesne Light and would not request
4 any meeting with him until after I had met with Duquesne
5 Light.

6 MR. STEVEN BERGER: I would like to have marked
7 for identification a document dated February 6, 1968, a
8 letter from Mr. McCabe to Mr. White.

9 CHAIRMAN RIGLER: Applicant 54, Document OE-21.

10 (The document referred to
11 was marked Applicant's
12 54 (OE-PP) for
13 identification.)

14 MR. LESSY: Does counsel want to move in 52
15 and 53?

16 MR. STEVEN BERGER: I have one more, and I will
17 move them all in together.

18 BY MR. STEVEN BERGER:

19 Q Mr. McCabe, have you had opportunity to --

20 CHAIRMAN RIGLER: Wait a minute.

21 MR. STEVEN BERGER: I have marked as
22 Applicant's Exhibit 54, the letter dated February 6, 1968
23 from Mr. McCabe to Mr. White.

24 CHAIRMAN RIGLER: Is that Document OE-21?

25 MR. STEVEN BERGER: Yes, sir.

1 MR. SMITH: I think we have confusion on the
2 document numbers.

3 MR. STEVEN BERGER: Confused as to where we
4 started today.

5 MR. SMITH: Confused in answer to the
6 Chairman's question, you said document 21, which I under-
7 stood to be 22.

8 CHAIRMAN RIGLER: Let's clear this up on the
9 record.

10 I have Applicant's Exhibit 52 as OE-19.

11 MR. STEVEN BERGER: Correct.

12 CHAIRMAN RIGLER: Applicant's Exhibit 53 is
13 document OE-20.

14 MR. STEVEN BERGER: Correct.

15 CHAIRMAN RIGLER: Applicant's 54 is OE-21.

16 MR. STEVEN BERGER: I haven't marked as yet the
17 last document in the series.

18 BY MR. STEVEN BERGER:

19 Q Mr. McCabe, in answer to a prior question, you
20 indicated to me you did not contact Mr. White. After
21 having read Applicant's Exhibit No. 53, would you like to
22 reconsider that answer?

23 A My papers aren't marked.

24 Q That is your letter of February 6, 1963 to Mr.
25 White?

1 A I don't believe that I did contact Mr. White after
2 I wrote to him on February 6, 1968. That is my recollec-
3 tion.

4 Q You did contact him February 6, 1968 for
5 purposes of arranging a meeting with him, did you not?

6 A Yes. Isn't that what I said before?

7 Q I didn't think so. I thought I asked the question
8 more generally as to whether or not you contacted Mr. White
9 at all pursuant to Mr. Mansfield's suggestion.

10 A I said I had.

11 Q I'm sorry.

12 MR. STEVEN BERGER: I would like to have marked
13 for identification as Applicant's Exhibit 55, Document OE-22,
14 the letter dated February 12, 1968, from Mr. White to Mr.
15 McCabe.

16 CHAIRMAN RIGLER: Well, identify it Applicant's
17 55(OE-PP), Document OE-22.

18 (The document referred to
19 was marked Applicant's
20 55 (OE-PP) for
21 identification.)

22 BY MR. BERGER:

23 Q Mr. McCabe, can you identify Applicant's 55
24 as a response from Mr. White to you of your letter of
25 February 6, 1968?

1 A That appears to be a copy of his response, yes.

2 Q Did you contact Mr. White any further after
3 the February 12, 1968 response from him?

4 A To the best of my recollection, I did not.

5 MR. STEVEN BERGER: I have no further questions,
6 Your Honor.

7 At this time I would like to move into evidence
8 Applicant's Exhibits Nos. 52, 53, 54, 55.

9 MR. LESSY: Staff has no objection to
10 Applicant's 52, 53, 54.

11 With respect to Applicant's 55, there are initialed
12 copies at the bottom of that with the indication not shown
13 on the original -- that wasn't shown on the original.
14 Presumably Mr. McCabe didn't receive that.

15 Could counsel identify whose the initials are
16 so we will have a complete record as to the document?

17 MR. STEVEN BERGER: I can give -- make the
18 record more clear just by putting in -- substituting
19 for this a copy of the document as originally received and
20 as testified to by Mr. McCabe.

21 CHAIRMAN RIGLER: Mr. Lessy's request is a fair
22 one. He wasn't objecting to the admission of the
23 document. He is just asking for identification of the
24 people shown as receiving carbon copies.

25

1 MR. STEVEN BERGER:

2 Q Mr. McCabe, do you know who these initials are?

3 A I have no idea.

4 Q Were they on the letter when you received them?

5 A I do not believe they were. I have the original
6 of the letter, if you want me to get it.

7 CHAIRMAN RIGLER: Do you know who they are,
8 Mr. Berger?

9 MR. STEVEN BERGER: No, I don't, your Honor.

10 CHAIRMAN RIGLER: Do you have any knowledge as
11 to whether any of the initials are non-Ohio Edison personnel?

12 MR. STEVEN BERGER: I'm not prepared to respond
13 to that, your Honor.

14 CHAIRMAN RIGLER: Maybe, you can supply us the
15 list.

16 MR. STEVEN BERGER: I will try to do that.

17 MR. LESSY: I ask that the Board -- that the record
18 note that this is being received into evidence, subject to
19 the obligation of Counsel to supply a list as to who the
20 individuals are.

21 MR. STEVEN BERGER: I will withdraw the
22 document and submit another document which is the document
23 received by Mr. McCabe as he testified to it.

24 MR. LESSY: I don't think this is a proper way
25 to proceed. I think it is important to identify who the

1 persons are.

2 CHAIRMAN RIGLER: You have the right to withdraw
3 the document, but the net result is going to be-- and
4 you may. The net result will be that Mr. Jessy will
5 introduce this one into evidence and come back to you and
6 ask those questions.

7 The Board is interested in the answer, and the
8 Board is going to ask you to supply the information, in
9 any event.

10 MR. STEVEN BERGER: Your Honor, that is fine.

11 CHAIRMAN RIGLER: Number 55 is withdrawn.

12 There being no objections to number 52, 53, 54,
13 they will be received into evidence at this time.

14 (The documents heretofore marked
15 Applicants Exhibits 52, (OE-PP),
16 53 (OE-PP) and 54 (OE-PP) were
17 received in evidence.)

18 MR. REYNOLDS: Mr. Chairman, just for clarification
19 with respect to this document that was withdrawn and the
20 colloquy on the identity of the signatures. Mr. John White
21 is designated as a witness in this proceeding. To the extent
22 it should be determined on the record who the initials belong
23 to, that that would be the person through whom that should
24 be done.

25 I don't think there is any problem with doing

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1 it that way. If Mr. Lessy wants to reintroduce it, you
2 suggested that the Applicants provide a list or Mr. Berger
3 provide a list. It was Mr. John White, and he will be
4 called as a witness, that would be something he can provide
5 to us. Unless Mr. Lessy has objection to doing it that
6 way.

7 If it is going to be fact evidence, it should
8 come through a fact witness and not Counsel. That is what
9 I'm suggesting.

10 CHAIRMAN RIGLER: That seems sensible to me,
11 even though Mr. White will not be a Staff witness. I
12 think your suggestion has merit.

13 MR. STEVEN BERGER: Lest the Board should infer
14 I was trying to withhold information from them, that is
15 not the case. When I said I was not prepared to respond to
16 the Board's question, I was not prepared to respond to the
17 Board's question.

18 CHAIRMAN RIGLER: No, we understood that,
19 Mr. Berger.

20 MR. REYNOLDS: Mr. McCabe, let me -- perhaps
21 the easiest way to do this is to mark for identification
22 and show you all at one time three different letters.

23 the first one is a letter from yourself to
24 Mr. John K. Davis, president of the Toledo Edison Company,
25 dated January 2, 1968, which I will mark as Applicants

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1 Exhibit 56 (TE). The document number, internal document
2 number is B-0888.

3 (The document referred to
4 was marked Applicants Exhibit
5 No. 56 (TE), for identification.)

6 MR. REYNOLDS: The second document is dated
7 January 25, 1968, and it is a letter from John D. Davis
8 to yourself, Mr. McCabe. I will mark this for identification
9 as Applicants Exhibit Number 57 (TE), and I don't have an
10 internal document number for this one.

11 (The document referred to was
12 marked Applicants Exhibit
13 No. 57 (TE) for identification.)

14 MR. REYNOLDS: The third document, a letter
15 dated February 29, 1968, and I will mark this as Applicants
16 Exhibit 58 (TE) and the internal document number is
17 B-0897.

18 (The document referred to was
19 marked Applicants Exhibit No.
20 58 (TE) for identification.)

21 BY MR. REYNOLDS:

22 Q While we have been marking the letters, have
23 you had opportunity to review them?

24 A Yes.

25 Q Do these letters represent correspondence you had

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1 with Toledo Edison Company concerning the matter of possible
2 membership by the Borough of Pittcairn in the CAPCO Power
3 Pool?

4 A They represent part of that correspondence, yes.

5 Q Was there additional correspondence to your
6 recollection?

7 A I had originally written to Mr. Davis under date
8 of December 5, 1967, and had had an original reply to that
9 under date of December 19, 1967.

10 Q And other than those two communications, did you
11 have any other correspondence with Mr. Davis?

12 A I had no other correspondence that I can recall.

13 Q Did you have any other correspondence or communi-
14 cations with anybody else at Toledo Edison Company regarding
15 this matter?

16 A I do not believe I did.

17 MR. REYNOLDS: I don't have any further questions
18 on behalf of Toledo Edison Company. I would like to
19 move the admission of the three documents I have identified,
20 Applicants Exhibits 56, 57, 58 into evidence on behalf of
21 Toledo Edison.

22 MR. LESSY: No objection.

23 CHAIRMAN RIGLER: Applicants Exhibits 56, 57, 58
24 will be received into evidence at this time.

25

1 (The documents heretofore
2 marked Applicants Exhibits
3 No. 55(TE), 57(TE) and 58(TE)
4 for identification, were
5 received in evidence.)

6 MR. GREENSLADE: I would like to have two
7 documents introduced into evidence.

8 The first document being a letter from Robert F.
9 McCabe, addressed to Carl H. Rudolph, President, Cleveland
10 Electric Illuminating Company, dated January 2, 1968, and
11 I would like to have that document marked for identification
12 as Applicants Number 59(CEI). It is internal document
13 number 11.

14 The second document I would like marked for
15 identification is a letter from Carl H. Rudolph, President,
16 addressed to Mr. Robert F. McCabe, Jr., Solicitor, dated
17 January 30, 1968.

18 I would like that marked Applicants Exhibit 60(CEI).
19 It is Internal Document 12.

20 CHAIRMAN RIGLER: Do you want us to mark Document
21 Number CEI-11 and 12 designations? The document you handed
22 as 59 bears the stamp 6477. Should we ignore that?

23 MR. GREENSLADE: Yes, sir.

24 CHAIRMAN RIGLER: These will be marked as
25 Applicants 59 and 60, and we will give them the internal
document numbers 11 and 12.

bw7

1 (The documents referred to
2 were marked Applicants
3 Exhibits 59 (CEX) and 60 (CEX)
4 for identification.)

5 BY MR. GREENSLADE:

6 Q Mr. McCabe, I am Victor Greenslade, representing
7 CEX in this proceeding.

8 Have you had a chance to identify the documents?

9 A Yes, I have.

10 Q Calling your attention to Applicants Exhibit
11 59, which is a letter dated January 2, 1968, do you recall
12 writing that letter?

13 A Yes.

14 Q And did you receive a reply to that letter?

15 A Yes, I did.

16 Q Would Applicants Exhibit Number 60 constitute
17 the reply you received to that letter?

18 A Yes, it would.

19 Q Calling your attention to the last paragraph
20 in Applicant's Exhibit Number 60, do recall calling or
21 writing Victor F. Greenslade, Jr., as follow-up to the letter?

22 A My recollection is I did. I wrote to him.

23

24

25

1 Q Do you have a copy of the response that you
2 wrote -- or do you recall writing it -- with you, by any
3 chance?

4 A I was just looking through the papers I have
5 here. I don't seem to have the correspondence.

6 If you wait a second, I will try to double-
7 check.

8 I find I have a copy of a letter I wrote to you
9 on February 29, 1968, and it makes reference to a letter
10 that you wrote to me on February 21, 1968.

11 I don't think I am going to be able to locate the
12 originals of your correspondence, but if we can take a
13 second, I will look.

14 I had made some separations in my files, and I
15 thought I had them with me here today, but apparently I do
16 not.

17 I don't appear to have any correspondence with
18 you or your company other than this copy of a February 29
19 letter.

20 Q Did I understand, Mr. McCabe, that you have a
21 copy of a letter you wrote to Mr. Greenslade dated February
22 29, 1968?

23 A That's correct.

24 Q Which refers to an earlier letter to you from Mr.
25 Greenslade dated February 21, 1968?

1 A That's correct.

2 Q Mr. McCabe, the letter is a rather short
3 letter. Might I ask you if you would read it into the
4 record, please?

5 A Yes, I would be pleased to. This is my copy.
6 It was obviously on Pitcairn Borough stationery, I recall
7 that to be the case. It was dated February 29, 1968,
8 addressed to Mr. Victor F. Greenslade, Jr., principal
9 Corporate Counsel, Cleveland Illuminating Company,
10 Cleveland, Ohio.

11 "Dear Mr. Greenslade:

12 "Thank you very much for your letter of
13 February 21. I have discussed the matter of the
14 Borough of Pitcairn's membership in the CAPCO Sower Pool
15 with the Duquesne Light Company on a preliminary basis.
16 I feel that the most beneficial approach would be to complete
17 my discussions with them before imposing upon your time.
18 As soon as I have had an opportunity to complete these
19 discussions I will be in touch with you if it appears that
20 the discussion with the other members of the CAPCO Pool
21 would be fruitful.

22 "Very truly yours, Robert F. McCabe, Jr."

23 Q Thank you, Mr. McCabe.

24 Mr. McCabe, could I call your attention, sir,
25 to Applicant's Exhibit No. 59 for a moment?

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1 A Will you give me other identification?

2 Q It is a letter from you addressed to Mr.
3 Rudolph, dated January 2, 1968.

4 A Yes.

5 Q Did you send copies of this letter, duplicate
6 copies or carbon copies of this letter, to any of the
7 other CAPCO companies?

8 A No, I did not. I sent similar letters to
9 other members of the CAPCO companies in response to their
10 letters to me, which all said it was impractical for us
11 to join, but I didn't send carbon copies to anyone.

12 Q Could I direct your attention, sir, to Applicant's
13 Exhibit No. 58 (IE) which is the letter from you to Mr. John
14 K. Davis, president, of the Toledo Edison Company,
15 dated February 29, 1968.

16 A Yes.

17 Q Would you explain to me, sir, the difference
18 in the letterhead between Applicant's 58 and Applicant's
19 Exhibit 59?

20 A Oh, now, I don't have the Applicant's numbers,
21 so please excuse me. 59 is the letter of January 3, 1968.

22 Q Yes, sir, and 58 is the letter of February 29, 1968

23 A The copy which you supplied to me of the letter
24 of January 2, 1968 is a copy of my carbon from my file. It
25 has not letterhead on it at all. I would presume that this

ar4

1 was obtained either from the Justice Department or from
2 the Commission Staff, both of which had access to my files and
3 made copies of these.

4 Q Mr. McCabe, if I were to tell you that your
5 letter of January 2, 1968 was obtained from the files of
6 the Duquesne Light Company, could you explain to me how they
7 obtained a carbon of your letter to Mr. Rudolph?

8 A Yes. We were engaged in litigation with the
9 Duquesne Light Company, and my letters were, I believe,
10 marked as exhibits or at least made available as exhibits
11 in this case.

12 Of course, any copy would have had to have been a
13 copy from my file.

14 Q It was my understanding from the transcript
15 that it had been your testimony that there was no document
16 discovery in the earlier antitrust proceeding to which you
17 just referred.

18 Is it now your testimony that this material
19 was produced as a result of discovery?

20 A I don't recall testifying that there was no
21 document discovery. I do recall that there were certain
22 proceedings in connection with the antitrust suit where I --
23 my recollection is I planned to use some of these letters
24 as some evidence.

25 I have to confess that my exact recollection of all

ar5

1 of the procedural matters that took place in the antitrust
2 suit is not as acute as I would like it to be.

3 I have some recollection that there may have been
4 a motion -- a question for admissions which well could
5 have included copies of these documents. But to sort of sum
6 up, I think it would have been highly likely that they
7 could have obtained it at that time.

8 I do know that Duguesne Light had access to the
9 Pitcairn Borough files, sent people to our office who
10 made copies of those files.

11 If I had said there was no discovery at some
12 prior time, I misspoke because there was at least some
13 document discovery.

14 MR. GREENSLADE: Thank you. I have no further
15 questions.

16 At this time I would like to move for
17 introduction into evidence Applicant's No. 59 (CEI) and
18 Applicant's Exhibit No. 60 (CEI), on behalf of CEI.

19 MR. LESSY: No objection.

20 CHAIRMAN RYGLER: Applicant's 59 and 60
21 will be admitted into evidence at this time.

22 (The documents previously
23 marked Applicant's 59
24 (CEI) and Applicant's 60
25 (CEI) for identification, were
received in evidence.)

ar6

1 CHAIRMAN RIGLER: Mr. Lessy?

2 MR. LESSY: If we can have 15 minutes with
3 the witness, we can have a short redirect.

4 CHAIRMAN RIGLER: All right.

5 MR. LERACH: With the witness, did you say?

6 MR. LESSY: Yes.

7 (Recess.)

8 CHAIRMAN RIGLER: Mr. Greenslade?

9 MR. GREENSLADE: Mr. Chairman, before Mr. Lessy
10 begins his redirect, Mr. McCabe in his testimony on
11 cross-examination referred to a letter which he had
12 written -- I'm sorry -- a letter which Mr. Greenslade had
13 written to Mr. McCabe dated February 21, 1968.

14 I would like to now make a request of Mr. Lessy
15 or Mr. McCabe that a copy of that letter be provided to
16 the Cleveland Electric Illuminating Company.

17 MR. LESSY: We would be happy to.

18 REDIRECT EXAMINATION

19 BY MR. LESSY:

20 Q Mr. McCabe, does the Duquesne Light Company
21 serve any customers within the corporate limits of the
22 Borough of Pitcairn at present?

23 A Yes, it does.

24 Q Have you ever discussed those customers with the
25 Duquesne Light Company?

1 A In 1947, shortly after I became solicitor, I
2 requested Duquesne Light Company to discontinue their
3 service and permit the Borough of Pitcairn to serve the
4 customers.

5 Q What was the response of Duquesne to that request?

6 A They refused to do so unless requested by their
7 customer.

8 Q Did they state a ground for their refusal?

9 A They stated -- that was the basis of their
10 refusal. They stated that it was their legal position
11 that they had a franchise to serve customers in the
12 Borough of Pitcairn. The basis of that franchise went back,
13 I think, to -- maybe I'm not correct -- the Valley Electric
14 Company which had a franchise in Pauton Township before
15 the Borough of Pitcairn was incorporated.

16 Q Approximately how many -- how many customers does
17 Duquesne Light approximately serve within the corporate
18 limits of the Borough of Pitcairn?

19 A I believe it was four.

20 Q Now the current contract between the Borough
21 of Pitcairn and the Duquesne Light Company, in effect
22 does that have a fuel cost adjustment in it?

23 A Yes, it does.

24 Q What has been the result of the fuel cost
25 adjustment to the cost of service for resale provided by

1 Duquesne to the Borough of Pitcairn?

2 MR. REYNOLDS: Could I hear the question
3 before you answer, please?

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

6 THE WITNESS: The fuel adjustment clause has
7 steadily increased since the contract was initiated.
8 The last time I examined a bill with reference to this,
9 which was several months ago, I believe the fuel cost
10 adjustment represented about one-third of the total
11 charge or approximately a 50 percent increase in the cost
12 of power.

13 MR. LESSY: Staff has no further questions.

14 MR. MELVIN BERGER: The Department has one
15 additional question.

16 RECROSS-EXAMINATION

17 BY MR. MELVIN BERGER:

18 Q Mr. McCabe, in regard to the letters you sent at
19 various times to the different CAPCO companies, do you ever
20 recall sending carbon copies of that correspondence to CAPCO
21 companies other than the addressee?

22 MR. REYNOLDS: I will object on behalf of all
23 Applicants to any recross by the Department of Justice of
24 this witness.

25 CHAIRMAN RIGLER: Overruled.

1 THE WITNESS: I have a very specific recollection --

2 CHAIRMAN RIGLER: This goes, by the way, to documents
3 which the Applicants put into evidence as part of their
4 cross-examination. There was no opportunity for Justice
5 to examine with respect to those documents.

6 Go ahead.

7 THE WITNESS: I have very specific recollection
8 with respect to the correspondence I had with the various
9 CAPCO members. In that I did not on any occasion ever send
10 carbon copies of that correspondence to anyone.

11 MR. MELVIN BERGER: We have no more questions.

12 MR. REYNOLDS: Mr. Chairman, I owe the Board
13 and Department of Justice an apology. I just learned that that
14 was -- I just learned that Mr. McCabe was on the
15 witness list by the Department of Justice, and therefore
16 the Department's interrogation was in the nature of
17 redirect and not recross.

18 I misspoke in terms of my objection.

19 MR. HJELMFELT: The City of Cleveland has
20 no questions.

21 BY MR. LERACH:

22 Q Mr. McCabe, is it not a fact that regarding these
23 four customers that were being served by Duquesne
24 that Duquesne terminate its service to something called
25 the Kennecott Club when the club so requested?

1 A The Pennacott Club was not located within
2 the Borough of Pitcairn at that time.

3 Q Was that one of the areas that there was
4 argument on that Duquesne was serving within the Borough
5 at this time?

6 A I don't think so, because that club was not within
7 the corporate limits at that time. The Pennacott Club used a
8 building in an area in Monroeville immediately adjacent
9 to the Borough of Pitcairn which had been rented for
10 many years from the Pennsylvania Railroad and then was
11 acquired by the Borough for purposes of condemnation of
12 the Pennsylvania Railroad.

13 A I know the Pennacott wanted to and we subsequently
14 did supply them with free electric power, but they
15 certainly were not a paying customer.

16 Q Did you receive a letter from a Mr. Heisley
17 from Duquesne Light Company explaining to you the evolution
18 of the various franchises by which Duquesne believed itself
19 entitled to serve these four customers?

20 A Yes, the response to my request came from Mr.
21 Heisley and he did reiterate his understanding of the
22 franchise.

23 Q Did you disagree with that?

24 A Mr. Lerach, at the time I had some slight reserva-
25 tions. I was aware of some of those old franchises having

1 looked -- I believe they appear in the Pennsylvania Public
2 Utility Commission files or at least in some of the
3 Pennsylvania records which I had looked at.

4 Considering that there were only four
5 customers involved, it was Pitcairn's or my recommendation
6 that the matter not be pursued.

7 Q Has Duquesne, since the time of this exchange
8 of the correspondence that was referred to, made any
9 attempt to serve any other people within the Borough of
10 Pitcairn?

11 A Not to the best of my knowledge.

12 Q Would it be your position as Borough solicitor
13 that they cannot introduce electric service into the
14 Borough without your permission?

15 A That would be my position, yes, sir.

16 Q Are you aware of any discrimination
17 whatsoever in the manner in which the fuel cost adjustment
18 clause has been applied to Pitcairn as opposed to any other
19 Duquesne customer?

20 MR. LESSY: Could we have a -- what does counsel
21 mean by discrimination? Does he mean economic discrimination?

22 MR. LERBACH: I mean discrimination in the normal,
23 accepted terminology and use in the English language.

24 THE WITNESS: The fuel adjustment clause which
25 is charged to the Borough of Pitcairn by Duquesne Light, to

1 my knowledge, is different from the fuel adjustment charge
2 made to any of Duquesne Light's other customers.

3 That is, it is my understanding that this was because
4 the Federal Power Commission, which regulates this contract
5 between Pitcairn and Duquesne Light, would not permit
6 certain items of expense which the Pennsylvania Public
7 Utility Commission does permit, and therefore the fuel
8 adjustment clause formula was established differently
9 for the Borough of Pitcairn.

10 BY MR. LERACH:

11 Q Have you complained to any governmental
12 agency about the manner in which the fuel cost adjustment
13 clause has been administered?

14 A No.

15 MR. LERACH: Nothing further.

16 CHAIRMAN RIGLER: Does that conclude the
17 Staff's case, Mr. Lessy?

18 MR. LESSY: We have two documents we would
19 like to put in now. After that there are a couple of -- I
20 want to review the transcript to make sure there are no loose
21 ends. For example, Chapter 4096 of the Ohio Code we were to
22 bring up to date.

23 There are a few little things like that. This
24 does conclude our case subject to that.

25 CHAIRMAN RIGLER: Thank you, Mr. McCabe.

(Witness Excused.)

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1 MR. LESSY: Mr. Chairman, we would like to have
2 marked for identification as Staff Exhibit 208, a report
3 entitled "CAPCO Base-load Generating Capacity Requirements
4 Following Perry Number 4, 1981 to 1984," Planning Committee
5 Report Number 5, dated January 14, 1973; and we would like
6 to have marked for identification as Staff Exhibit
7 Number 209, the front page of the deposition of
8 William D. Masters, and pages 26, 27, 28. Both of these
9 documents were referred to explicitly in the direct
10 testimony of Dr. William Hughes.

11 I would like to treat them differently for
12 purposes of the motion.

13 The deposition of Masters was footnoted on page
14 24 of Dr. Hughes' testimony, and the CAPCO Report on Page 31.
15 I understood from Counsel for Applicant that there is no
16 objection to 208, the CAPCO Report and, accordingly, would
17 like to move it into evidence.

18 (The documents referred to
19 were marked Staff Exhibits
20 No. 208 and 209 for
21 identification.)

22 CHAIRMAN RIGLER: 208 will be received into
23 evidence.

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(The document heretofore
marked Staff Exhibit No. 209
for identification was
received in evidence.)

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5 MR. LESSY: With respect to 209, we would like to
6 offer it pursuant to Federal Rule 703, which is entitled,
7 "Basis of Opinion, Expert Testimony by Experts," and
8 provides that the facts or data in the particular case on
9 which an expert bases an opinion or inference may be those
10 perceived by or made known to him at or before the
11 hearing.

12 If of a type reasonably relied upon by experience
13 in a particular field in forming opinions or inferences
14 on a particular subject, the fact or data need not be
15 admissible into evidence.

16 We were aware of the Board's position with
17 respect to depositions in certain contentions. We would
18 like to indicate with respect to these particular pages that
19 the prepared direct testimony of Dr. Hughes was filed with
20 the Board on October 17, and it was relied upon, and it is the
21 type of thing that can be taken consideration of and accordingly
22 pursuant to Rule 703, we would like to offer those exer
23cerpted pages into evidence that we referenced.

24 CHAIRMAN RIGLER: Give me a minute to study
25 the pages.

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1 MR. REYNOLDS: Mr. Chairman, I'm going to
2 object to the introduction into evidence of Staff Exhibit
3 209, which is the excerpt of the testimony from Mr. Masters'
4 deposition.

5 I don't think that 703 cures the problem that is
6 raised by trying to introduce into evidence material that
7 was contained in transcripts of depositions under the
8 guideline with which we undertook discovery and undertook
9 depositions in this case.

10 I find it a little curious that Mr. Lessy
11 is introducing this into evidence in light of the fact
12 that at an earlier point in the proceeding when he was
13 cross-examining Mr. Pandey and made effort to introduce
14 deposition material for purpose of impeachment, Mr. Lessy
15 vehemently objected and indicated that it was his under-
16 standing that we were excluding all evidence relating to
17 depositions. That objection was sustained.

18 I don't see that there is any difference either
19 in terms of form or substance with respect to the material
20 that has been introduced here. The deposition material
21 that has been introduced here, and the deposition material
22 that Applicants had attempted to use earlier for purposes
23 of impeachment. I think that Mr. Masters is scheduled as
24 a witness to be called and to the extent that the Staff --

25 CHAIRMAN RIGLER: Who is Mr. Masters?

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1 MR. REYNOLDS: Mr. Masters is an employee of
2 the Cleveland Electrical Illuminating Company. To the
3 extent that Mr. Less wishes to introduce into evidence,
4 statements by Mr. Masters on any points, it seems to me he
5 can do it at the time Mr. Masters comes on the stand, and
6 there is full opportunity for cross-examination.

7 CHAIRMAN RIGLER: On whose witness list does
8 Mr. Masters appear?

9 MR. REYNOLDS: He is on CEI list.

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As I read Rule 703, the fact that the expert witness may have read Mr. Masters' deposition could not provide a sufficient basis for introducing this as evidence under 703, and I think that clearly it would be improper to take this course after the witness has left the stand, and when there is no opportunity now to interrogate the witness as to his opinion on the accuracies of the statements that were contained or the extent to which he may or may not have relied on it.

CHAIRMAN RIGLER: Mr. Lessy, are you seeking to introduce this for the truth of the matters contained on these pages? By that, I suppose we would be talking about whether or not there is a major advantage by aggregating the loads of all parties into a single load, or are you introducing it merely to show that Mr. Hughes was relying upon it -- this testimony as he formed his expert conclusions?

MR. LESSY: It is the latter. Not for the truth of the matter. This is the matter Dr. Hughes used in his footnote and he relied on it. The rule provides that if relied on, the fact or evidence need not be in evidence.

Also with respect to -- I will have to read the record on the Pandy problem. I feel deposes can be used for impeachment purposes.

CHAIRMAN RIGLER: That is correct.

1 direct case of the Staff.

2 CHAIRMAN RIGLER: Off the record.

3 (Discussion off the record.)

4 CHAIRMAN RIGLER: We will start, then, on the
5 morning of February 9.

6 MR. REYNOLDS: I just wanted to inquire whether
7 the parties might be able to expect a ruling by the Board
8 on Applicant's motion on procedural matters before
9 February 9.

10 CHAIRMAN RIGLER: I hope this unfortunate delay
11 will give us an opportunity to get that ruling out.

12 MR. MELVIN BERGER: Would the same be true on
13 Department's motion for production of certain documents,
14 CEI documents?

15 CHAIRMAN RIGLER: Yes.

16 We will reconvene on the morning of the 9th,
17 to take the Department of Justice's case, and we will
18 reconvene at 9:30.

19 (Whereupon, at 12:50 p.m., the hearing
20 was adjourned, to reconvene February 9, 1976,
21 at 9:30 a.m.)

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1 MR. LESSY: I want to offer it pursuant to 703
2 as a matter relied on by the expert for the basis of his
3 opinion and not the truth of the matters.

4 MR. RHYNOBBS: With respect to the situation
5 with Mr. Pandy and the reason I reference it, the use of
6 depositions was deposition of testimony other than Mr.
7 Pandy which is very much akin to what we are getting into
8 here.

9 That is why I did highlight it. I wasn't
10 trying to suggest if it had been Mr. Pandy's deposition
11 that the Board had ruled it could not be used for
12 impeachment purposes.

13 I have difficulty differentiating that
14 situation from the present one where deposition was referenced
15 other than the witness on the stand.

16 CHAIRMAN RIGLER: What was the Hughes reference
17 to the Masters testimony?

18 MR. LESSY: On page 24.

19 CHAIRMAN RIGLER: Would you read it into the
20 record, please?

21 MR. LESSY: The first paragraph is footnoted as a
22 whole. The paragraph provides in the direct testimony, at
23 lines 4 through 12, there is ample evidence in the record
24 that access to the benefits of efficient large-scale bulk
25 power supply by systems in the CAPCO area generally requires