



NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and  
CLEVELAND ELECTRIC ILLUMINATING CO.

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

and

CLEVELAND ELECTRIC ILLUMINATING  
CO., et al.

(Perry Nuclear Power Plants, Units  
1 and 2)

Place - Silver Spring, Maryland

Date - Wednesday, 30 June 1976

Pages 12,115 - 12,200

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 -----  
4 In the matter of: :  
5 TOLEDO EDISON COMPANY and : Docket Nos.  
6 CLEVELAND ELECTRIC ILLUMINATING CO. :  
7 (Davis-Besse Nuclear Power : 50-346A  
8 Stations, Units 1, 2 and 3) : 50-550A  
9 and : 50-501A  
10 CLEVELAND ELECTRIC ILLUMINATING : 50-440A  
11 CO. et al. : 50-441A  
12 (Perry Nuclear Power Plants, Units :  
1 and 2) :  
13 -----

13 First Floor Hearing Room,  
14 7915 Eastern Avenue,  
15 Silver Spring, Maryland.  
Wednesday, June 30, 1976.

16 The hearing in the above-entitled matter was  
17 reconvened, pursuant to adjournment, at 12:00 p.m.

18 BEFORE:

19 DOUGLAS RIGLER, Esq., Chairman.  
20 JOHN FRYSIAK, Member.  
21 IVAN SMITH, Member. (Not present.)

22 APPEARANCES:

23 (As heretofore noted.)  
24  
25

C O N T E N T S

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
William Cheesman	12,147	12,183	12,272	
Ralph M. Besse	12,274	12,281	12,285	

<u>Exhibits</u>		<u>Iden.</u>	<u>Evi.</u>
C-167	FPC's order affirming initial decision		
	in Docket E-8746	12,144	12,145
C-166			12,145

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P R O C E E D I N G S

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2 CHAIRMAN RIGLER: On the record.

3 MR. CHARNO: One prefactory matter from the  
4 Department. We have an application for a subpoena. The  
5 date specified on the subpoena is the 2nd of July. Since  
6 having it typed we understand that Mayor Perk will not be  
7 available at any time during this week, so we would not  
8 expect him to be available on the 2nd.

9 CHAIRMAN RIGLER: Do you have an indication as to  
10 when he might be available?

11 MR. CHARNO: We have not been able to contact him.  
12 He's apparently at the conference for Mayors, and we're  
13 working with his Administrative Assistant.

14 MR. REYNOLDS: Mr. Chairman, I just received  
15 this application this morning, and I would request that the  
16 Chairman direct the Department to indicate in its applica-  
17 tion or in its subpoena as to what areas it intends to have  
18 Mr. Perk testify to in order that some kind of meaningful  
19 response can be made to the application or to the subpoena  
20 in the event anybody should deem it necessary to do so.

21 MR. CHARNO: The Department is calling Mayor Perk  
22 with respect to the testimony that Mr. Gaul will be putting  
23 into the record. It will be to rebut Mr. Gaul's testimony  
24 if it is necessary to have him after we've had Mr. Gaul.

25 CHAIRMAN RIGLER: The subpoena is for the purpose

eb2 1 of anticipatory rebuttal?

2 MR. CHARNO: Yes, sir. In view of the schedule  
3 we thought best to file it now rather than wait until we  
4 knew we were going to need him.

5 MR. REYNOLDS: I don't believe Mayor Perk was at  
6 the meeting Mr. Gaul is going to testify to but, quite  
7 apart from that, it would seem to me since Mayor Perk is  
8 the one that's going to receive the subpoena and a motion  
9 to quash is going to be made, he would certainly be a party  
10 available or able to do that, that the Department should  
11 have in the paper served on Mayor Perk some description so  
12 that he could be alerted to what it is that he's being  
13 called to testify to.

14 CHAIRMAN RIGLER: Well, Mr. Hjelmfelt, who  
15 represents the City, is sitting right here. Under those  
16 circumstances I don't see any great necessity.

17 Surely if Mayor Perk wants to find out what's  
18 going on at the hearing and why he is being called he could  
19 consult with Mr. Hjelmfelt on the matter.

20 MR. STEVEN BERGER: Your Honor, I have a pre-  
21 liminary matter to raise with the Board and it deals with  
22 the amendment to the response of the Department of Justice  
23 to Applicants' interrogatories which the Board may recall  
24 was distributed the last time we were in session.

25 If the Board wants to get their copies to see

eb3 1 just precisely what it is I'm referring to I'll certainly  
2 wait.

3 CHAIRMAN RIGLER: Why don't you tell us and then  
4 if we need to go get them we'll do so.

5 MR. STEVEN BERGER: The first amended charge  
6 states, and I'm quoting now:

7 "Beginning in at least 1965, Ohio Edison  
8 refused to wheel power from Buckeye Power, Inc.  
9 to Buckeye's member electric distribution coopera-  
10 tives. This refusal, together with Ohio Edison's  
11 failure until June 1968 to enter into a contract  
12 with Ohio Power Company which would allow the dis-  
13 tribution cooperatives to secure power from  
14 Buckeye resulted in the elimination of Buckeye  
15 as a source of bulk power supply for its member  
16 distribution cooperatives for a period of at least  
17 six months."

18 Further on in the filing of the Department the  
19 Department states as its basis for good cause for making  
20 the amendment at this time the documents which Applicants  
21 did not turn over to the Department until February 24th,  
22 1976.

23 After we concluded the last session I engaged  
24 in discussions with Mr. Charno in an effort to first  
25 determine the basis for the charge, that is, the good cause

eb4

1 and the document the Department was relying upon, and also  
2 to see if it was possible that the Department might withdraw  
3 the charge on a voluntary basis.

4 These discussions continued until yesterday when  
5 the Department informed me they had no intention to withdraw  
6 it.

7 The basis for the Department's amendment of the  
8 charges to include this new, if you will, Buckeye charge  
9 is a memorandum dated September 7th, 1965, from RJD to  
10 EFD, which is R. J. eisbach to Disskayer memorandum.

11 MR. CHARNO: For the record, that's DJ Exhibit  
12 532.

13 MR. STEVEN BERGER: Correct.

14 CHAIRMAN RIGLER: The "D" is for --?

15 MR. STEVEN BERGER: Which "D"?

16 CHAIRMAN RIGLER: "RJD."

17 MR. STEVEN BERGER: Dreisbach..

18 CHAIRMAN RIGLER: They must be Ohio Edison people.  
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mpbl 1 MR. STEVEN BERGER: The Department states in their  
2 filing that this document -- well, strike that.

3 The Department states that it was unaware of the  
4 facts underlying the amended answers, save the documents  
5 which were turned over in February of this year and more  
6 particularly upon inquiry of the Department they referred to  
7 this document as the basis for good cause to bring in this  
8 charge at this time.

9 First, I want to refer the Board to the Davis-  
10 Besse 2 and 3 advice letter.

11 In the Davis-Besse 2 and 3 advice letter there was  
12 a footnote. The footnote reads:

13 "In its original working out of the Buckeye  
14 arrangement in 1967 Ohio Edison alone among the  
15 major Ohio utilities had refused to wheel Buckeye  
16 power and it became necessary to devise a special  
17 purchase and resale arrangement in order to supply  
18 the cooperatives in Ohio Edison's area."

19 I think clearly from the Davis-Besse 2 and 3 letter  
20 the Department was aware that Ohio Edison refused to sign  
21 the Power Delivery Agreement and if the refusal to sign the  
22 Power Delivery Agreement was in the mind of the Department  
23 of Justice, in effect a refusal to wheel, then one would have  
24 expected in the September 5, 1975 filings of the Department  
25 of Justice to find included there a charge that is in



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1 substance similar to the charge included in the Department's  
2 most recent amendment to charges. Noticably absent from  
3 the September 5 filing was any charge that Ohio Edison had  
4 refused to wheel in connection with the Buckeye transaction.

5 In addition, there is other documentation and I  
6 won't belabor it beyond the point that the Board believes  
7 necessary to demonstrate that the Department was wholly aware  
8 of the fact that Ohio Edison refused to sign the Power  
9 Delivery Agreement.

10 Referring to a letter dated January 12, 1973  
11 from Mr. Howard A. Cummins of Buckeye to Mr. Kauper, Mr.  
12 Cummins states on page 2 of that letter, more particularly  
13 the third full paragraph:

14 "The situation with Ohio Edison is different.  
15 Ohio Edison refused to become a party to the Power  
16 Delivery Agreement."

17 The Department had full discovery in this proceed-  
18 ing and certainly had ample opportunity to question Ohio  
19 Edison with regard to its reasons for failing to sign the  
20 Power Delivery Agreement. It was part of the questioning  
21 of Mr. Mansfield at the time of his deposition and I don't  
22 think the Department can have it both ways.

23 Throughout this proceeding the question of whether  
24 or not Ohio Edison refused to wheel in connection with its  
25 decision not to sign the Power Delivery Agreement has been

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1 present. The Department at times has taken the position that  
2 Ohio Edison does wheel via the buy/sell arrangement that was  
3 worked out, that the Department now relies on for good cause  
4 to bring in this charge that this point in time is no more  
5 than to state that Ohio Edison refused to enter into the  
6 Power Delivery Agreement.

7 CHAIRMAN RIGLER: I read it a little more broadly  
8 than that. It indicates —

9 MR. STEVEN BERGER: Wheeling arrangement?

10 CHAIRMAN RIGLER: It indicates that on several  
11 occasions apparently the cooperatives felt they were denied  
12 wheeling. Even more, I pause on the sentence which states:

13 "Mr. Mansfield stated that under our proposal  
14 Ohio Edison Company might receive less revenue than  
15 under the wheeling agreement."

16 And that raises, in my mind anyway, a question of  
17 why they would opt for an agreement that lessened their  
18 revenues.

19 MR. STEVEN BERGER: Mr. Chairman, if I may, I have  
20 no reason to believe nor do I believe the Department has any  
21 reason to believe that this document does anything more than  
22 reflect discussions that were going on between Buckeye and  
23 the investor-owned systems, where the cooperatives were  
24 located and how it was they were going to get the power from  
25 the cardinal plant to those co-ops. That's all they were

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1 talking about. And the only two things that were being  
2 considered were the Power Delivery Agreement and Ohio Edison  
3 saying that something else had to be worked out, the buy/sell  
4 and what I'm saying is the Department knew about this at  
5 the time they wrote the Davis-Besse 2 and 3 letter and knew  
6 about it from documents that they had and conversations that  
7 they had and there is no basis on the eve of the close of  
8 this record to bring this charge in when they didn't include  
9 it in the September 5 filing.

10 MR. CHARNO: Can the Department reply?

11 The basis for the statement in the Davis-Besse  
12 letter of February 1975 is the statement in the Buckeye  
13 letter of January 12, 1973. At that time that was the only  
14 statement, the only evidence of which we were aware.  
15 Unfortunately there is a September 14, 1973 letter from  
16 Buckeye which treats the buy/sell agreement as an alternative  
17 form of wheeling so that we had conflicting data evidence as  
18 to the course of action taken by Ohio Edison.

19 Then we came to document discovery after the  
20 Davis-Besse 2 and 3 letter and we received no documents from  
21 Ohio Edison that would in any way resolve the issue of this  
22 document not being produced at that time. At the same time  
23 we had statements, numerous statements under oath that Ohio  
24 Edison had not at any time since at least 1965 refused to  
25 wheel. It's NRC 158 which is the Davis-Besse 20 questions,

mpb5 1 the answer to question 13 and those were signed under oath  
2 by Mr. Mansfield. The Ohio answers to the joint interroga-  
3 tories, again signed by Mr. Mansfield, where the answer to  
4 number 14 states under oath that they had never refused a  
5 request to wheel. DJ-507 signed by Mr. Zimmerman, which is  
6 Ohio Edison's answers to supplemental interrogatories states  
7 under oath that there had been no refusals to wheel.

8 CHAIRMAN RIGLER: What was the date of the supple-  
9 mental answer?

10 MR. CHARNO: March 20, 1975.

11 CHAIRMAN RIGLER: When was DJ Exhibit 532 obtained  
12 and from whom?

13 MR. CHARNO: DJ-532 was part of the document  
14 discovery that was turned over to us on February 24, 1976.

15 Basically we dropped from the September 5 filing  
16 any allegation concerning this agreement because we felt  
17 unable to prove it upon the basis of the evidence we had in  
18 hand which was conflicting and certainly not determinative  
19 in the Department's opinion. We also at that time dropped  
20 the Toledo Edison-Ohio Power Territorial agreement which on  
21 the basis of these documents that we received in February  
22 of this year were able to reinstate, then having sufficient  
23 evidence to prove it.

24 This document combined with Mr. White's testimony,  
25 which again was on May 13, his direct testimony concerning a

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refusal of a specific request for wheeling would be the basis for the amended allegation.

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2 MR. STEVEN BERGER: Mr. Chairman, I'm holding  
3 several documents in my hand. They are not by any means  
4 complete but they are part of the documents that were turned  
5 over to Applicants by the Department of Justice as what the  
6 Department received from the co-ops and the municipalities.  
7 Included in that are several resolutions of the co-ops dated  
8 in '65 and in '66.

9 I'm taking one at random here from the Holmes-  
10 Wayne Electric Cooperative and it is dated December 27th,  
11 1965. It states:

12 "The officers of Buckeye have informed  
13 us that to date they have been unable to negotiate  
14 an acceptable arrangement with Ohio Edison for the  
15 delivery of Cardinalpower and energy to the co-ops  
16 presently being served by that company.

17 "We were further advised that in view of  
18 the difficulty encountered in these negotiations  
19 that these co-ops should be prepared to construct  
20 the necessary transmission facilities for the de-  
21 livery of Cardinal power and energy so that in the  
22 event no arrangement is made with Ohio Edison,  
23 Cardinal power and energy may be otherwise made  
24 available.

25 "In view of this advice and after full  
discussion, Perry Meyers moved and John Ciaugue

eb2

1 seconded the following resolutions:

2 "Be it resolved that Holmes-Wayne  
3 Electric Cooperative, Inc. apply to RRA or such  
4 other sources of the co-ops as the co-ops may de-  
5 termine to finance the construction of transmis-  
6 sion facilities to be used in delivering Cardinal  
7 power and energy to the co-ops;

8 "Be it further resolved that Buckeye  
9 Power is hereby designated as agent for the co-ops  
10 to perform the necessary engineering, construction  
11 and other work that may be involved in the construc-  
12 tion of the facilities, subject, however, to the  
13 working out of a contract for these services be-  
14 tween the co-ops and Buckeye Power which is mutually  
15 satisfactory to both parties."

16 CHAIRMAN RIGLER: That's very good for a random  
17 selection.

18 (Laughter.)

19 MR. STEVEN BERGER: I think it is somewhat repre-  
20 sentative.

21 Let me just make one more comment.

22 The Department, for whatever reason I don't know,  
23 saw fit in April of this year to circulate amended charges  
24 which were, in every respect save one, identical to the  
25 amended charges that they did file.

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1 They thereafter, shortly thereafter, sent a letter  
2 asking that the amendment that they did serve be disregarded.

3 (Handing documents to the Board.)

4 CHAIRMAN RIGLER: This was never supplied to the  
5 Board.

6 MR. STEVEN BERGER: That's correct.

7 MR. CHARNO: This was never filed officially.

8 It was sent out inadvertently through clerical error. It was  
9 not final and it was not meant to go out. The signatures --  
10 I presume it was signed. The signatures were xeroxed on.

11 It is not identical in every respect. There are  
12 a number of differences. But this certainly is one of the  
13 differences.

14 MR. STEVEN BERGER: If you would like to point  
15 out differences other than this feel free to do so. But  
16 it seems to me pretty clear that the charges that are  
17 contained in the filing of April, '76, are substantially  
18 identical, save the Buckeye charge which we found included  
19 in the amendment which we circulated last Wednesday, I think  
20 it was.

21 MR. CHARNO: If we could just reply very briefly,  
22 Mr. Chairman:

23 First, I would note that the documents selected  
24 by Counsel from the Holmes-Wayne Electric Cooperative is  
25 representative of those in the possession of the Department.



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We further note that the language is very equivocal.

It states:

"The officers of Buckeye have informed us that to date they have been unable to negotiate an acceptable agreement with Ohio Edison. . . ."

That does not constitute a refusal to wheel. At least we felt that while it might contribute to supporting that allegation that it, standing alone, was not probative of such a charge.

Further, the prior set of amendments --

CHAIRMAN RIGLER: You mean "probative" or "determinative"?

MR. CHARNO: I'm sorry, I mean determinative. I misspoke.

The prior set of amendments which was not intended to be a filing preceded Mr. White's testimony on direct and we would note further that DJ-532 is copied to JRW.

CHAIRMAN RIGLER: To what portion of Mr. White's testimony are you referring?

MR. CHARNO: To his direct testimony appearing at pages 9554 and 55, and page 9607 where he testified concerning specific requests for wheeling.

CHAIRMAN RIGLER: Did he testify about the Company's policy at that portion of the record?

MR. CHARNO: No. This was specifically with

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1 respect to Buckeye.

2 MR. STEVEN BERGER: Mr. Chairman, the point really  
3 is that the Department was certainly on notice of the facts  
4 and circumstances which underlie this charge long before the  
5 Davis-Besse letter and certainly long before the September  
6 5th filing. Throughout discovery they had an opportunity  
7 to inquire into this matter as they saw fit. And this docu-  
8 ment, that is DJ-532, in my mind does not meet the good-  
9 cause standard that I think the Board would require at this  
10 point in the proceeding of including this charge against out  
11 company.

12 CHAIRMAN RIGLER: Okay. I think we're ready to  
13 rule.

14 We are not going to require the deletion of the  
15 charge. It seems to me that the Department's explanation  
16 as to the answers to interrogatories goes some distance  
17 toward explaining why they did not pursue this matter more  
18 vigorously. DJ-532 standing by itself I think does support  
19 their position, and if it was delivered late in and of itself  
20 it probably constitutes a basis for permitting the Department  
21 to amend its interrogatory answer.

22 Beyond that, this type of factual material I  
23 believe is important for the Board to consider in construing  
24 the record as a whole. And I think on even a close question  
25 of good cause that the Board's option should be to provide

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1 the most adequate record to enable us to reflect and to make  
2 the proper decision.

3 The effect of dismissing that particular amendment  
4 would be to in essence turn our back on some of the evidence  
5 that now is before us, and I don't think we'd be inclined to  
6 do that.

7 MR. PERI: May we have just one moment, your Honor?

8 (Pause.)

9 MR. STEVEN BERGER: Your Honor, I'm not going to  
10 argue with the Board. The statements made by the Department  
11 with regard to the answers to interrogatories, whether or not  
12 Ohio Edison improperly answered those interrogatories with  
13 regard to whether or not it was refusing to wheel, of course  
14 we take exception to that.

15 CHAIRMAN RIGLER: But that comes right back to his  
16 argument that there was a certain amount of equivocation.

17 MR. STEVEN BERGER: There is no doubt, Mr. Chairman,  
18 that the Department knew that Ohio Edison was refusing to  
19 sign the Power Delivery Agreement. This document does not  
20 add one whit to that. This document supports that. And they  
21 knew about that a long time ago.

22 And to the extent that they had evidence or indi-  
23 cations that were on both sides of the question of whether  
24 or not it was refusal to wheel or not, the Department had  
25 ample opportunity to probe that with Buckeye and to probe

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1 that with Ohio Edison.

2 This document does not establish good cause for  
3 including this charge at this time against our clients.  
4 We're supposed to close this record on Friday. We've had no  
5 chance whatsoever to put in direct evidence as to this.

6 CHAIRMAN RIGLER: On what date was 532 introduced?

7 MR. CIARNO: February 24th of this year.-- I'm  
8 sorry --

9 MR. STEVEN BERGER: I don't believe I asked for  
10 an offer of proof on the document if that's what the  
11 Chairman is directing himself to.

12 CHAIRMAN RIGLER: No, but even so, how else would  
13 you read it? Doesn't the introduction in February put you  
14 on notice that the Department is going to try to sustain that  
15 particular charge?

16 MR. STEVEN BERGER: Not quite, Mr. Chairman. If  
17 anything put me on notice it was the filing that the Department  
18 distributed but didn't file with the Board containing all  
19 of the charges save the Buckeye one. And there's a substan-  
20 tial amount of prejudice to the Board allowing this charge  
21 in the record at this time.

22 CHAIRMAN RIGLER: Explain the prejudice.

23 MR. STEVEN BERGER: The prejudice is between now  
24 and whenever the Board would choose to close this record  
25 not being a sufficient amount of time necessary for Ohio

eb8

1 Edison to go back and try to reconstruct the events leading  
2 up to the signing of the Power Delivery Agreement and the  
3 events leading up to the signing of the Buy/Sell for it to  
4 be probed.

5 CHAIRMAN RIGLER: I don't think that imposes any  
6 undue burden. Mr. White received a copy of this;  
7 Mr. Mansfield received a copy of this. They are immediately  
8 available to you.

9 MR. STEVEN BERGER: Mr. Chairman, what was Ohio  
10 Edison supposed to believe with regard to the preparation  
11 of its case when the Davis-Besse letter contained only two  
12 allegations of impropriety involving Ohio Edison's conduct  
13 in its own dealings with the small systems. One was the  
14 delivery points under the Buckeye arrangement that Ohio  
15 Edison did enter into, and the footnote to the Davis-Besse  
16 letter.

17 And then the September 5th filing said we have  
18 the delivery points in there as a charge but we don't have  
19 refusal to wheel with regard to Ohio Edison not signing the  
20 Power Delivery Agreement.

21 MR. CHARNO: I have some problem with the surprise  
22 point, Mr. Chairman.

23 MR. STEVEN BERGER: I haven't yet finished.

24 The other matter of course is that we have come  
25 now to the point where the Department put in no evidence on

eb9

1 the delivery points and now, in terms of the Davis-Besse  
2 letter, for the first time is coming in and making a charge  
3 as to what they said in the Davis-Besse letter. And we had  
4 every right in September 1975 to believe that the Department  
5 was not taking the position that Ohio Edison's dealing in  
6 the Buckeye arrangement was refusal to wheel.

7 CHAIRMAN RIGLER: But how is the Board to read  
8 this letter?

9 MR. STEVEN BERGER: The same way. The Board is  
10 to read that letter as nothing more or less than Ohio Edison  
11 refusing to enter into the Power Delivery Agreement and  
12 choosing the Buy/Sell Arrangement. And there is nothing to  
13 indicate otherwise in that document.

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mpbi 1 The Department has made the determination in this  
2 proceeding that the refusal to sign the Power Delivery  
3 Agreement is not a refusal to wheel. They made that deter-  
4 mination on September 5, 1975.

5 CHAIRMAN RIGLER: Now I gather they are telling  
6 you they came to a different determination, is that right?

7 MR. STEVEN BERGER: On the basis of that document,  
8 Mr. Chairman.

9 MR. CHARNO: On the basis of that document and  
10 Mr. White's testimony we now believe that we can prove what  
11 we did not believe we could prove and did not allege as a  
12 result on September 5. We did not have that document, we  
13 did not have Mr. White's testimony.

14 I want to direct myself just to the question of  
15 surprise.

16 The material which Applicants have put in evidence  
17 in this proceeding, Ohio Edison specifically, their supple-  
18 ments to the depositions of Mr. Mansfield, DJ-572 and Mr.  
19 Fredericks in DJ-573, they have red-lined and included in  
20 the record material going directly to the Buckeye contract  
21 and the Power Delivery Agreement and the buy/sell agreement.

22 Now it would seem strange if they believed that  
23 was not an issue, that some days back they should have  
24 placed that material in the record.

25 MR. STEVEN BERGER: Mr. Chairman, I am reading now

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1 from Mr. Mansfield's deposition which was taken in the summer  
2 of 1975:

3 "You did, however, join in the Buckeye arrange-  
4 ment with some modification, did you not?

5 "Answer: We made a contract with Ohio Power,  
6 yes; by the same token I guess we cancelled our  
7 contracts with the co-ops that we had.

8 "Question: Would it be fair to say that  
9 among the things you gave us was the right to  
10 serve these cooperatives as wholesale loads?

11 "Answer: We gave up selling or having any  
12 contractual relationship with the co-ops at all and  
13 as a substitute, therefore, we assumed a contract  
14 with Ohio Power to take "x" kilowatts from Ohio  
15 Power and deliver "x" kilowatts, redeliver "x"  
16 kilowatts to Ohio Power at the points from which  
17 we had been delivering to the co-ops directly.

18 "Question: Could, from a business point of  
19 view, the same thing have been carried out by  
20 wheeling arrangements?

21 "Answer: Why sure.

22 "Question: But you insisted that the other  
23 form be observed.

24 "Answer: I did.

25 "Question: What was your purpose in doing so?



mpb3

1 "Answer: Well, in the first place, I don't  
2 like wheeling, per se. I don't think it is a good  
3 concept in our business at all. In the second place,  
4 this was a method by which we could avoid wheeling.  
5 Number 2, it was also a method by which we could  
6 keep our revenues up, by including the amounts that  
7 we sold to Ohio Power with respect to growth revenue  
8 whereas had we agreed to wheel then our growth  
9 revenue would have taken a loss of the aggregate  
10 sales to the co-ops in addition to the fact that we  
11 would have been wheeling per se. That's if I under-  
12 stand what you understand by wheeling."

13 CHAIRMAN RIGLER: Read the last two sentences again,  
14 please.

15 MR. STEVEN BERGER: "In the Second place,  
16 this was a method by which we could avoid wheeling.  
17 Number 2, it was also a method by which we could  
18 keep our revenues up, by including the amounts that  
19 we sold to Ohio Power with respect to growth revenue  
20 whereas had we agreed to wheel then our growth  
21 revenue would have taken a loss of the aggregate sales  
22 to the co-ops in addition to the fact that we would  
23 have been wheeling per se."

24 CHAIRMAN RIGLER: Now, is that testimony of Mr.  
25 Mansfield's either contradicted or at least made ambiguous

mpb4 1 with reference to the sentence I read earlier which states:

2 "Mr. Mansfield stated that under our proposal  
3 Ohio Edison might receive less revenue than under the  
4 wheeling arrangement agreement."

5 MR. STEVEN BERGER: I don't think so.

6 Your Honor, the point is --

7 CHAIRMAN RIGLER: The point to me is that the  
8 burden really is going to be substantially higher on Ohio  
9 Edison in instances of late delivery of discovery documents  
10 under circumstances where Ohio Edison is the party coming in  
11 and saying here are some additional documents which should  
12 have been turned over in the first place which we now have  
13 discovered and which we are now making available. That  
14 certainly is going to give greater liberality to the other  
15 parties in reframing their answers to the interrogatories.

16 MR. STEVEN BERGER: Your Honor --

17 CHAIRMAN RIGLER: I really think we have gone  
18 about far enough on it. We're going around now on some  
19 points that --

20 MR. STEVEN BERGER: Let me make this statement  
21 just in the interest of protecting my client, if you will, Mr.  
22 Chairman.

23 CHAIRMAN RIGLER: All right.

24 MR. STEVEN BERGER: Not so much in terms of what  
25 ultimate conclusion may be reached in this proceeding, but

apb5

1 moreover in terms of what findings and conclusions this Board  
2 makes which may have effect outside of this proceeding, I  
3 find the inclusion of this charge in the record at this time  
4 a matter of substantial prejudice to my client and I take  
5 grave exception to it.

6 MR. REYNOLDS: Mr. Chairman, on behalf of all the  
7 other Applicants other than Ohio Edison, I just would like  
8 to make one or two brief comments, one being that I fail  
9 to understand why the Department waits until the end of June  
10 to amend its allegations when it received the document which  
11 it now feels is determinative of the issue that it wants to  
12 allege as early as February 4, 1976 and thereby deprive, if  
13 you will, the Ohio Edison people of an opportunity to come  
14 in and treat this as fully as it might have been able to do  
15 had it known about it when Mr. White came on the stand, or  
16 when any of the other Ohio Edison witnesses were on the stand.

17 The other point is that I think this is an  
18 example of sandbagging of the first order and I say that  
19 because we have heard from the Department of Justice and  
20 we have heard from the NRC Staff consistently throughout this  
21 proceeding that Ohio Edison does wheel and an example of its  
22 wheeling is its buy/sell contract with the Buckeye -- under  
23 the Buckeye arrangement. And now we're coming around full  
24 turn and I guess because they realized the absurdity of that  
25 argument, they are flipping it on its head and at the

mpb6

1           eleventh hour we are told we are going to have a different  
2           allegation, if you will, that is cast in a much different  
3           light and we're told now that we're going to look at that  
4           contract and we're going to treat it as a refusal to wheel  
5           and the Board asks us why it is we weren't alerted to it at  
6           the time that DJ Exhibit 532 was introduced and I think that  
7           is probably the simple answer to the whole thing.

8                        I would say that both the Staff and the Department  
9           have consistently maintained, and I can't begin to think how  
10          many times I have heard it in argument of counsel before  
11          this Board, that we have an example of wheeling by Ohio  
12          Edison by virtue of their Buckeye arrangement and it seems  
13          to me that we have clearly been sandbagged here.

14                       I guess at the eleventh hour I'm not sure exactly  
15          what course we can take or the Board will permit us to take  
16          in leaving this hearing open to provide us an opportunity  
17          to respond to it, but I went on record last time we were  
18          here indicating to the Board the nature of the additional  
19          evidence that I had to introduce and I would, for the record  
20          and to preserve what rights the Board feels are available  
21          to all the Applicants, I would like to state that I will  
22          need an opportunity to introduce additional evidence to  
23          respond to this new charge, if the Board is allowing it  
24          in -- I'm sorry, additional time to respond to it. We will  
25          undertake to do it as expeditiously as possible. I'm not

mpb7

1 sure at this juncture, since we have not had an opportunity  
2 to consult on it, how much time it will take and how much of  
3 an evidentiary case it will take. But it does seem to me  
4 that this is --

5 CHAIRMAN RIGLER: I think I have heard enough.  
6 We might be receptive to permitting Ohio Edison and other  
7 Applicants to respond to the charge.

8 MR. REYNOLDS: While I'm on my feet, let me just  
9 make one other point. The point is that I think this, again,  
10 exposes the difficulty that we have of not having any  
11 indication as to other matters of the allegations and having  
12 the Department and the Staff and the City conform their  
13 statement of allegations to the proof. We have a very  
14 slippery case and it seems now that every time one allegation  
15 runs into some difficulty we get it turned on its head and  
16 they come back in and they reformulate it. This is the  
17 type of thing that had we not had this kind of reformulation  
18 the Applicants would have addressed this issue as it has been  
19 presented heretofore and the other side apparently would  
20 have gone another way and with simultaneous briefing nobody  
21 meets anybody head on.

22 CHAIRMAN RIGLER: If the document had been produced  
23 in the original discovery we might well have ruled for you,  
24 so that's consideration.

25 MR. REYNOLDS: The document that was produced on

mpbs

1 February 4, 1967, the allegation was not amended until June  
2 25, 1976 and there is no explanation for that kind of --

3 CHAIRMAN RIGLER: We went over that.

4 MR. REYNOLDS: No, we haven't.

5 CHAIRMAN RIGLER: We have been over that. You  
6 just made that point and I don't want to belabor this issue  
7 any longer.

8 MR. REYNOLDS: I appreciate that.

9 MR. STEVEN BERGER: Could I just have one more  
10 word on this, Mr. Chairman?

11 I'm trying to determine now whether or not this  
12 document was turned over in a rough screening by going  
13 through the documents in the files of Messrs. Mansfield,  
14 Gould and White to see if they were tendered to the Department.  
15 It was not a document that was copied, that much I have been  
16 able to determine. If I do determine that it was turned  
17 over in a rough screen, would your Honor be prepared to  
18 consider this matter?

19 CHAIRMAN RIGLER: I don't know that I would be  
20 prepared to change my mind. I might hear your argument.  
21 We'll cross that bridge when we come to it.

22 MR. STEVEN BERGER: The second point I would like  
23 to have clear on the record is the basis for good cause.

24 The Department I have demonstrated before and  
25 maybe I should have it set forth as an exhibit in the record

mpb9

1 at this time, the earlier filing by the Department for  
2 purposes of preserving whatever position I may be taking  
3 with regard to this matter, but the failure of the Department  
4 to make that an amended charge until this point in time when  
5 they had circulated amended charges identical to the charges  
6 with the exception of the Buckeye charge is a matter I think  
7 the Board should be inquiring of the Department why it is  
8 they didn't include it. And if they didn't include it because  
9 it was only after Mr. White testified that they determined  
10 they should include it, then let that be the basis for good  
11 cause, that the Board is at this time allowing this charge to  
12 remain in this record and not the document itself.

13 MR. EJMELFELT: I have a couple of very short  
14 matters.

15 I've already passed out to the Reporter and the  
16 Board and the parties copies of the FPC's order affirming  
17 initial decision in Docket Number E-8746. I would ask that  
18 that be marked as Exhibit C-167. The red-lining appears on  
19 pages 1410, 11 and 17 and I would move the admission of  
20 C-167 at this time.

21 (Whereupon, the document  
22 referred to was marked  
23 as Exhibit C-167 for  
24 identification.)  
25

le ebl 1

CHAIRMAN RIGLER: Hearing no objection, we will  
admit C-167 into evidence.

(Whereupon, Exhibit C-167,  
having been previously  
marked for identification,  
was received in evidence.)

MR. HJELMFELT: With respect to C-166 which was  
offered on June 23rd, which was an agreement between AMF-O  
and Allegheny, and the ruling was deferred, I understand that  
the Applicants are now prepared to withdraw their objection  
to that document.

Is that correct, Mr. Reynolds?

MR. REYNOLDS: Correct.

CHAIRMAN RIGLER: With the objection withdrawn  
we will now admit City-166.

(Whereupon, Exhibit C-166,  
having been previously  
marked for identification,  
was received in evidence.)

MR. HJELMFELT: That concludes the matters I had.

MR. REYNOLDS: Let me just get out of the way two  
quick matters.

One is that we have conferred with other Counsel  
and have arranged for Mr. Besse to be here this afternoon  
following Mr. Cheesman and Mr. Mayben in order to give



eb2

1 testimony on Applicants' direct case.

2 In addition we have conferred with Counsel and  
3 have arranged for Mr. Gaul to be here tomorrow following the  
4 testimony given by the individuals from Pennsylvania Economy  
5 League to testify.

6 I would like to ask the Board-- My understanding  
7 is that we had earlier indicated we might be going late today  
8 in any event. Mr. Besse is quite an elderly gentleman and  
9 he has made the trip. He is going to be unavailable after  
10 today, until July 12th, so I would like very much to go as  
11 long as we need to in order to hear his testimony. I don't  
12 really expect it to take very long at all.

13 Similarly, Mr. Gaul's schedule is extremely tight.  
14 He will be here tomorrow but he then is unavailable after  
15 tomorrow, and I would therefore ask that in the event we do  
16 need to run over a little bit -- and I don't really anticipate  
17 we will, but in the event we do in order to complete Mr. Gaul  
18 I would like to see if we can arrange that so we can get him  
19 on and off tomorrow.

20 MR. LESSY: As the Staff's rebuttal witness, at  
21 this time we call Mr. William Cheesman.

22 Whereupon,

23 WILLIAM CHEESMAN

24 was called as a witness on behalf of the Nuclear Regulatory  
25 Commission Staff and, having been first duly sworn, was

eb3

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. LESSY:

4 Q Will you please state your name, sir?

5 A My name is William Cheesman, C-h-e-e-s-m-a-n.

6 Q And your business address?

7 A My business address is 6535 East 82nd Street,  
8 Suite 213, Indianapolis, Indiana; zip code 46250.

9 Q Would you also state your education and employment  
10 experience since high school?

11 A Since high school I went to the University of  
12 Missouri and graduated from the University School with a  
13 bachelor of science degree in electrical engineering.

14 After graduation from the University of Missouri  
15 at Columbia I went to work for Illinois Power Company in  
16 Illinois. Initially with them I was -- I went to work for  
17 them as an engineer in training. After the training process  
18 I worked for the company in the Electric Transmission Planning  
19 Section and then went into the company's service area opera-  
20 tions in which, in one service area, I was designated or  
21 given the title of Assistant Service Area Engineer, in which  
22 I was responsible for the distribution system planning within  
23 that particular service area.

24 Then I went from that area into another service  
25 area as Service Area Engineer in which I had the over-all

eb4

1 responsibility for distribution system planning, which  
2 happened to be both electric and gas systems. Within that  
3 service area I had responsibility for construction budgets,  
4 operation budgets and contact with customers on a local basis  
5 as far as questions concerning service conditions, rates,  
6 and also worked quite closely with the respective electric  
7 and gas operating superintendents.

8           When I left Illinois Power Company I went to work  
9 for R. W. Beck and Associates in their Columbus, Nebraska  
10 Office, and subsequently came to Indianapolis, Indiana to  
11 be the manager -- to open and be the manager of the firm's  
12 seventh office which is situated in Indianapolis.

13           My experience with R. W. Beck and Associates in  
14 Columbus and in Indianapolis has been along the lines of  
15 feasibility, engineering feasibility studies, management  
16 operations studies, power supply studies and planning studies.

17           Q     How many people do you supervise at the  
18 Indianapolis office of R. W. Beck?

19           A     At the present time in Indianapolis I have a  
20 staff of nine persons.

21           Q     And how many of those are professional engineers?

22           A     Of the staff of nine I have six engineers; five  
23 of them are professional engineers. And I have three  
24 secretary-stenographers.

25           Q     Are you a registered professional engineer?

eb5

1           A       Yes, sir, I'm a registered professional engineer  
2 in seven states. Those are Iowa, Nebraska, Michigan, Ohio,  
3 Kentucky, Illinois and Indiana.

4           Q       Mr. Cheesman, I show you a document which has been  
5 received in evidence in this proceeding as NRC Exhibit No.  
6 44. It's entitled "Power Supply Study for the Wholesale  
7 Consumers of Ohio Edison, Cuyahoga Falls, Ohio," by R. W.  
8 Beck and Associates. And on the cover it is dated July 1975.

9                   I ask you if you were primarily responsible for  
10 the preparation and supervision of this document?

11          A       This Power Supply Study was performed by people  
12 in my office and other offices of the firm, and it was my  
13 responsibility to coordinate their efforts and also to  
14 supervise and make sure that the project was consummated  
15 in the report you referred to.

16                   MR. STEVEN BERGER: Could I have the last part  
17 of the answer read?

18                   (Whereupon, the Reporter read from the record  
19 as requested.)

20                   BY MR. LESSY:

21          Q       With respect to the document that has been  
22 identified and received in evidence as NRC-44, the Beck  
23 study, were you free to study and evaluate the desirability  
24 of all power supply options for your client, the wholesale  
25 consumer of Ohio Edison?

eb6

1           A       No, I don't feel we were free to study all the  
2 possible alternatives that might have been or would have been  
3 available to the WCOE primarily because of restraints which  
4 I felt were put upon the study through a series of meetings  
5 that I attended as engineering consultant for the WCOE and  
6 in conjunction with -- or in meetings with the company, Ohio  
7 Edison.

8           Q       Were there particular power supply options which  
9 Ohio Edison said must be excluded from consideration in the  
10 study because Ohio Edison would not consider them?

11           MR. REYNOLDS: Objection.

12           MR. STEVEN BERGER: It's a little leading, your  
13 Honor.

14           MR. REYNOLDS: It is more than a little leading.

15           MR. LESSY: I don't believe it is in light of the  
16 last answer.

17           CHAIRMAN RIGLER: Let me hear the last answer.

18           (Whereupon, the Reporter read from the record  
19 as requested.)  
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eb1 1 CHAIRMAN RIGLER: It is a little leading. I'll  
2 caution you but I'll permit it.

3 MR. STEVEN BERGER: Could I have an indication  
4 what study we're talking about then?

5 MR. LESSY: NRC-44.

6 BY MR. LESSY:

7 Q You may answer, sir.

8 A Through the series of meetings there were some  
9 restrictions put upon us as far as what the company would  
10 consider as far as power supply alternatives between them-  
11 selves and the WCOE.

12 One particular item that I can recall came up in  
13 the first meeting that I attended in which it was stated  
14 by the company's representatives that they did not want to  
15 consider and should not consider and would not consider  
16 third-party wheeling.

17 Throughout this series of meetings which came  
18 about after that initial meeting up until the time that the  
19 report -- that we wrote the final report for our client there  
20 were other items that came out in subsequent meetings and  
21 in a couple of instances what I would call restrictions which  
22 were in the form of proposals, a couple of proposals that the  
23 company made.

24 Q Can you tell us what the other items were in  
25 addition to third-party wheeling?

eb2

1           A       Well, one item that came up was with reference to  
2 the company would not wheel power and/or energy, either  
3 excesses that the WCOE may have in their own generation or  
4 excesses that they might have in existing or contemplated  
5 peaking and standby units. This was both no wheeling as far  
6 as between municipal systems and no wheeling as far as from  
7 the municipal systems to another source outside.

8           Another item that came up in an initial meeting  
9 was to the effect that WCOE would not be able to pick and  
10 choose units. This meant in essence that the WCOE would not  
11 have access to existing generation and also that they could  
12 not have -- they could have only access to the units that  
13 Ohio Power said they could have access to as far as future  
14 scheduled generation.

15           One of the proposals that was put forth by the  
16 company was a 10 percent limit as far as capacity. In other  
17 words, on an annual basis the amount of capacity that the  
18 WCOE could participate in would be on the basis of 10 percent  
19 of their system load, and then that participation would only  
20 be for the unit that came on the line in that particular year.

21           I think I covered this earlier briefly. In case  
22 there was excess in capacity owned by the cities that excess  
23 would go to the company and would not be available -- could  
24 not go to outside parties.

25           Another item that I considered a restriction was

eb3 1 the fact that the company emphatically stated that the reserve  
2 capacity formula or the CAPCO reserve criteria, what is  
3 otherwise known as the P/N ratio, would have to apply to any  
4 of the capacity additions participated in by the WCOE.

5 Another item I can recall is the fact that the  
6 company said they would not do the financing, would not be  
7 a financial agent for the municipals of WCOE.

8 MR. REYNOLDS: I believe in the first part of the  
9 answer Mr. Cheesman made reference to Ohio Power. That may  
10 have been inadvertent. If so, it ought to be clear on the  
11 record.

12 When you talked about "pick and choose" you  
13 referred to Ohio Power. Did you mean Ohio Power or Ohio  
14 Edison?

15 THE WITNESS: I'm sorry, it should have been Ohio  
16 Edison. If I said Ohio Power it was inadvertent.

17 BY MR. LESSY:

18 Q Now with respect to the restriction, Mr. Cheesman,  
19 that you talked about with respect to limitation on 10 percent  
20 of the peak load, whose peak load was used as the base, 10  
21 percent of whose peak load?

22 A This was 10 percent of the WCOE system.

23 Q And how was that peak load determined in terms of  
24 time?

25 A Well, it was determined as our annual peak load



eb4

1 and it was also based on the non-coincident peaks of the  
2 municipal system which in this instance was the 20 municipal  
3 systems.

4 Q Now in addition to an annualized peak as a  
5 maximum restriction from these units, was there any restric-  
6 tion as to capacity available from each individual unit?

7 A The essential proposal by the company did limit  
8 that to 50 megawatts ceiling per unit, and this was new units  
9 only.

10 Q And the restrictions on the resale of power which  
11 you testified to, to what did the restrictions refer, to  
12 what power?

13 A Well, in essence, if there was excess -- if there  
14 might be excess at some point in time from the capacity owned  
15 by the WCOE, then that excess would be -- would have to go  
16 to the company and would not be available for export to  
17 other systems.

18 Another instance was with reference to the circum-  
19 stance or an alternative in which the utility -- and by  
20 "this" I mean the WCOE would utilize peaking generation,  
21 either existing generation or an alternative of installing  
22 peaking capacity, that that capacity if it was excess would  
23 not be available to outside systems.

24 Q When you say that there's a restriction on resale  
25 of capacity owned by WCOE, what specific units would you be

eb5 1 referring to?

2 MR. REYNOLDS: Objection. I don't believe the  
3 witness said there was a restriction.

4 MR. LESSY: Let's read back the last answer,  
5 please.

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

8 BY MR. LESSY:

9 Q In your answer, Mr. Cheesman, you referred to --  
10 discussed the resale on -- quote -- "capacity owned by  
11 WCOE." What does that refer to, "capacity owned by WCOE."

12 A The capacity owned by WCOE was the existing  
13 generation on the system which was generation at I believe  
14 Newton Falls and Oberlin.

15 Q That's why I only wanted the first part of the  
16 quote.

17 Mr. Cheesman, with respect to acquiring capacity  
18 in base load units of Ohio Edison such as Perry or Davis-  
19 Besse, was there any restriction on resale to WCOE of capacity  
20 from those units?

21 A That would be with reference to base load capacity  
22 and if there was any excess in that capacity owned by the  
23 WCOE that it would have to go to the company and not be  
24 available for export by the WCOE to an outside source.

25 Q With respect to the study, did Ohio Edison ask

eb6 1 you to make any assumptions with respect to load factors of  
2 particular units?

3 A Well, one instance that I can refer to is in the  
4 original proposal by the company in which they stated that  
5 the capacity that the WCOE could participate in would be on  
6 a basis of 10 percent of their annual peak.

7 And there was another item in that same proposal  
8 to the effect that the energy associated with that capacity,  
9 if it was not used by the WCOE, would have to go and would  
10 go to Ohio Edison. And I can illustrate that by an example  
11 by saying that if that capacity is assumed and it is indeed  
12 base load capacity, we could assume a 100 percent load factor  
13 for that capacity, and the WCOE load factor would be probably  
14 somewhere in the neighborhood of 55 percent.

15 This means that the difference between those two  
16 load factors, the 55 percent and the 100 percent, is excess  
17 energy which the WCOE would not have available to them but  
18 it would have to go to Ohio Edison.

19 MR. STEVEN BERGER: Can I have that read back,  
20 please?

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

23 MR. STEVEN BERGER: Your Honor, I move to strike  
24 that. It's non-responsive.

25 MR. REYNOLDS: I join in the motion.

eb7 1

MR. STEVEN BERGER: The question was with regard to load factors and the assumption to be made by WCOE in making the study, and the response was wholly with regard to a proposal made by Ohio Edison.

CHAIRMAN RIGLER: Granted.

BY MR. LESSY:

Q Mr. Cheesman, with respect to making the study, were there any assumptions that Ohio Edison required with respect to load factors of the units?

A With respect to the load factors of the units?

Q Yes.

A Well, this would be the instance in their initial proposal in which the excess energy not utilized by the WCOE, that is, the base load capacity, would have available energy and associated 100 percent load factor. The WCOE, for instance, their annual load factor would be approximately 55 percent; in that case the difference between the two load factors is an equivalent excess energy which would not be available to the WCOE and would go to the company under the terms of their proposal.

MR. STEVEN BERGER: Move to strike. Precisely the same question and substantially the same answer.

MR. REYNOLDS: Mr. Chairman, I'll join in that. The question goes to load factors of units and assumptions that were required to be made in connection with the study.

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The response doesn't even address itself to that.

CHAIRMAN RIGLER: Granted.

BY MR. LESSY:

Q Mr. Cheesman, did you apply the CAPCO P/N reserve formula to the possible purchases of base load capacity by WCOE to Ohio Edison?

MR. REYNOLDS: Objection.

MR. LESSY: The basis?

MR. REYNOLDS: You said "did you apply."

Mr. Cheesman already indicated his wealth of experience. You haven't indicated in what context or at what point in time. I would object to the question as framed unless we can have some specificity.

BY MR. LESSY:

Q In the context of the study.

CHAIRMAN RIGLER: You may answer.

THE WITNESS: In the study, for purposes of the study, we did an analysis of the impact of applying the P/N ratio to capacity participation by the WCOE. As I recall the impact on this or the results of this analysis which is included in the study showed that in the first year of capacity -- or in the first year of the study period that the WCOE would have a capacity in an amount as compared to load of approximately, as near as I can recall, 280 percent.

This is a considerable amount of capacity in excess

eb9 1 over what their system requirements would be.

2 BY MR. LESSY:

3 Q Now with respect to these power supply options  
4 which you testified earlier Ohio Edison said must be excluded  
5 from consideration, was the study -- that is, NRC-44 -- the  
6 Beck study, premised or based on the limitations that you have  
7 just described?

8 MR. STEVEN BERGER: Your Honor, I object to the  
9 question on the basis of the first portion of Mr. Lessy's  
10 question which mischaracterizes the witness' testimony or  
11 isn't specific enough in terms of what he's talking about.

12 MR. LESSY: That's the exact question I asked.  
13 The question I asked was were there particular power supply  
14 options which Ohio Edison said must be excluded and he  
15 answered in a long answer.

16 Now I've asked-- If you read the question back  
17 it's exactly the same question.

18 MR. STEVEN BERGER: Mr. Cheesman is talking about  
19 proposals, your Honor. He's talked about proposals that Ohio  
20 Edison has made.

21 MR. LESSY: That's not his testimony, sir. He  
22 gave examples of proposals, and I think if we read back that  
23 answer we'll see that.

24 MR. STEVEN BERGER: I think he has mischaracterized  
the witness' --

eb10 1 MR. LESSY: You'll have an opportunity to cross-  
2 examine, Mr. Berger.

3 MR. STEVEN BERGER: I don't want him answering  
4 on the basis of his characterization of the question.

5 CHAIRMAN RIGLER: Let me hear the question.

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

8 CHAIRMAN RIGLER: Was it your testimony that those  
9 power supply options you discussed were excluded from con-  
10 sideration?

11 THE WITNESS: Yes, sir.

12 CHAIRMAN RIGLER: You may answer.

13 MR. REYNOLDS: Your question was substantially  
14 different from Mr. Lessy's question which indicated that  
15 Ohio Edison had required that they be excluded. All you  
16 asked is whether they were excluded. I would like Mr. Lessy  
17 to rephrase his question.

18 CHAIRMAN RIGLER: Go ahead.

19 BY MR. LESSY:

20 Q Were these power supply options required to be  
21 excluded from the study by Ohio Edison -- that is, NRC-44?

22 A In general, they were. The third-party wheeling  
23 that I referred to was excluded from the study.

24 However, included in the study is what we refer  
25 to as Alternative 5, which is actually the subsequent and

eb111  
1 last proposal made by the company, and it is in there for  
2 study purposes.

3 Q With respect to these items that you --

4 CHAIRMAN RIGLER: Wait a minute. I'm a little  
5 confused now.

6 Did Ohio Edison tell you you could not study these  
7 proposals because they weren't going to make the alternatives  
8 available, or did you conclude that there was no point in  
9 using your time and resources to study them because they had  
10 already informed you that they were not going to make certain  
11 options available?

12 MR. STEVEN BERGER: Are you talking about the  
13 proposals that were made and that he has testified to,  
14 Mr. Chairman?

15 CHAIRMAN RIGLER: He testified that at meetings  
16 certain options were denied by Ohio Edison.

17 MR. STEVEN BERGER: Mr. Chairman, that's not what  
18 the witness has testified.

19 MR. REYNOLDS: Absolutely not. The witness'  
20 testimony is to the extent that you might characterize what  
21 Ohio Edison said as restrictive, those kinds of statements  
22 were contained in proposals by Ohio Edison to the WCOE group.

23 I would like to ask the Chairman if he would  
24 direct the question directly to the witness to clarify it  
25 if there is some confusion.



eb12 1

CHAIRMAN RIGLER: That's a good suggestion.

2

Can you help us out on that, Mr. Cheesman?

3

THE WITNESS: I would like to have the question

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again, please, if we could.

5

CHAIRMAN RIGLER: I'll rephrase my question.

6

Tell me how it was and when it was that you became

7

aware that Ohio Edison did not wish to make available certain

8

of these options.

9

THE WITNESS: The third-party wheeling was deleted

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from consideration at the request of the company in our first

11

meeting between the WCOE as consultants and the management

12

of the company which occurred, as I remember, in August of

13

1974.

14

CHAIRMAN RIGLER: Now at that time were there any

15

proposals on the table as such?

16

THE WITNESS: There was an outline which had been

17

presented and sent to the management of the company by the

18

WCOE legal counsel giving an outline of general items,

19

general alternatives to be considered or which would be

20

considered as a basis for this, which at that time was a

21

joint study.

22

One of the items that was in this outline was

23

deleted at the request of the company, and that is the note

24

on the third-party wheeling.

25

CHAIRMAN RIGLER: And this deletion occurred as a

eb13 1 result of conversations at the first meeting?

2 THE WITNESS: Yes, sir.

3 CHAIRMAN RIGLER: So that the study did not go  
4 forward to consider that alternative?

5 THE WITNESS: That's correct.

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MR. REYNOLDS: What about the other alternatives?

MR. LESSY: It's my witness, Mr. Reynolds.

CHAIRMAN RIGLER: That's cross-examination.

MR. LESSY: It is, it's exactly what we've run into before.

CHAIRMAN RIGLER: I've just made that ruling.

Continue.

MR. REYNOLDS: There was a very serious mischaracterization of the testimony. The Board is clearly confused as to what the testimony was.

MR. LESSY: I have a right to ask questions of my witness, Mr. Reynolds, and I'm going to attempt to clarify it and I am not interested right now and I don't think it is fair to have Mr. Reynolds interrupt my examination of the witness.

MR. REYNOLDS: Mr. Chairman, I don't want to get into a heated debate. If Mr. Lessy will cool down for a minute, to me there is a procedural rule at this point as established from day one in this proceeding that we stand to be recognized and then when we're recognized we get an opportunity to speak without being interrupted by counsel who is seated to my left. I would appreciate it if I could simply conclude my remarks and then Mr. Lessy may respond.

The only point I'm making is that Mr. Lessy's questions at this stage characterize the witness' testimony

upb2  
1 as being to the effect that Ohio Edison imposed certain  
2 restrictions on the studies that WCOE could do and that  
3 those restrictions included other matters than the question  
4 of third party wheeling.

5 I believe the Board Chairman had asked the witness  
6 the question, whether those restrictions that he has listed  
7 -- he asked the question -- I'm sorry, let me amend that --  
8 as to how those restrictions that he had listed were communicat-  
9 ed by Ohio Edison to WCOE, whether they were in the form of  
10 proposals or whether they were directly stated in meetings,  
11 what the situation was.

12 I believe the witness answered the Board's question  
13 only with respect to third party wheeling and in fairness  
14 to this record he should be given the opportunity to complete  
15 his answer with respect to the other "restrictions" that he  
16 has listed heretofore in his testimony and explain to the  
17 Board how it is that he came about with the understanding  
18 that his study was to be restricted with respect to those  
19 matters.

20 That's all that I am trying to do. I am not  
21 trying to cross-examine, I'm trying to clarify so that maybe  
22 we can shorten it and avoid lengthy cross-examination of this  
23 witness.

24 MR. LESSY: This all came up in --

25 CHAIRMAN RIGLER: No response is necessary, Mr.

mpb3

1 Lessy. I think that's a good suggestion. You may handle  
2 it now in your questions and the Board will take it up.  
3 Let's develop the whole thing in a narrative chronological  
4 fashion so we know how those other restrictions affected the  
5 study, the input to the study. Let's do it now.

6 MR. LESSY: Okay.

7 BY MR. LESSY:

8 Q Mr. Cheesman, other than third party wheeling,  
9 you talked about restriction of wheeling out of excess for  
10 peaking and standby, I believe, is that correct?

11 A Yes, sir, that's correct.

12 Q Now, why did Ohio Edison tell you, if they did,  
13 that that would not be available for joint study and how?

14 A The initial meeting was attended, as I said, by  
15 representatives of the WCOE Steering Committee, their  
16 engineering legal consultants, also by management personnel  
17 of the Company. After that there was a series of meetings  
18 over a period of time at what I refer to or characterize as  
19 at the engineering level, which did not include the top  
20 management of the Company. It did not include, in some  
21 instances it did not include all the members of the WCOE  
22 Steering Committee.

23 It was at this level, at this engineering level  
24 and in subsequent meetings in which the question came up  
25 with reference to transmitting power from the existing

ob4  
1 generation of the WCOE to another member over Ohio Edison's  
2 system if that would be possible. And as I recall in that  
3 particular item it was stated that no, it would not be  
4 possible. The Company did not want to have anything to do  
5 with it.

6 Q All right.

7 Now, another restriction you testified to was that  
8 the WCOE could not pick and choose which base load units they  
9 want to participate in, is that correct?

10 A This is correct.

11 Q Can you tell us how and when that option or that  
12 was described to you?

13 A That was an option, as I recall, that came up in  
14 discussions at the first meeting, that is the August 1974  
15 meeting and that was with reference to the fact that the  
16 choice of units in which the WCOE might wish to participate  
17 would be limited by the Company.

18 Q For purposes of the study?

19 A For purposes of the study, yes, sir.

20 Q Now, another matter you testified to was that in  
21 picking and choosing units, I believe, that WCOE could not  
22 look at the present base load facilities that Ohio Edison had  
23 on line, is that correct?

24 A That is correct.

25 Q Would you tell us how and when Ohio Edison

1 communicated that that would not be available for study?

2 A That particular item was one that was also mentioned  
3 in the first meeting and also came up in subsequent meetings  
4 at the engineering level in which it was stated in a position  
5 taken by the Company that the existing generation would not  
6 be available to WCOE for participation.

7 Q Now another option that you testified was not  
8 available or to be considered, or that there was to be a  
9 50 megawatt ceiling on the units that were available. Can  
10 you tell us how and when that was communicated?

11 A That was communicated again in one of the engineer-  
12 ing meetings and then it was a basis of a proposal by the  
13 Company to the WCOE.

14 MR. REYNOLDS: Can I have the answer back, please?

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

17 BY MR. LESSY:

18 Q Now, another matter that you testified was not  
19 available for study with respect to the base load units,  
20 again, was that WCOE could take only ten percent of their  
21 peaks on an annual basis from those units, ten percent of  
22 their peak load. Can you tell us how and when that restric-  
23 tion or that option was made to WCOE?

24 A That was on the basis of a proposal, the first  
25 proposal received by the WCOE from the Company and I can't

mpb6  
1 recall that there was any preliminary or previous discussion  
2 of that in the engineering meeting.

3 Q Now, you also testified that there was a  
4 restriction on the purchase of excess capacity by WCOE from  
5 Ohio Edison from these units. Could you tell us how and when  
6 that restriction or that matter was made to WCOE?

7 A The excess energy from the WCOE participation and  
8 that capacity being made available to the Company was a part  
9 of the initial proposal.

10 Q You said "being made available to the Company."  
11 Did you mean WCOE?

12 A The excess energy -- the capacity which the WCOE  
13 could participate in in the initial proposal was based upon  
14 the ten percent of the annual peak. As a part of that  
15 same proposal the energy that was associated with that  
16 capacity which was base load capacity would go or would  
17 be available to the WCOE. However, if they did not use it  
18 then that energy which is in excess of what the WCOE needed  
19 would have to go to the Company. In other words, the excess  
20 energy which the WCOE was entitled to out of that capacity  
21 but could not use would have to go to the Company and as I  
22 recall there was no compensation for it.

23 Q All right.

24 Now, the requirement that in computing reserves  
25 for unit power that was purchased or capacity from these



mpb7

1 units that WCOE had utilized, the CAPCO P/N reserve formula,  
2 how and when was that communicated?

3 A The CAPCO reserve criteria, or the P/N formula,  
4 as I recall, came up in meetings at the engineering level  
5 when the discussion -- when we got into discussions of  
6 capacity, system load and reserves.

7 Q Now, a final one my notes reflect is Ohio Edison  
8 would not serve as banker, would not finance WCOE participa-  
9 tion in units, for example. How and when did that come  
10 along?

11 A As I recall, that came up in the first meeting in  
12 August of 1974.

13 Q Now, with respect to the three matters that you  
14 testified to that were contained in a proposal, that is  
15 my notes reflect that 50 megawatt ceiling per unit, ten  
16 percent of peak on an annual basis and no purchase of excess,  
17 since these were only included in the proposal, what is the  
18 reason that you did not review these alternatives in the  
19 Power Supply Study?

20 A Well, they were included in the proposal, but they  
21 would also have been the subject of discussions at these  
22 engineering level meetings in which, as far as I was concerned,  
23 the Company took a firm stand with reference to that, that  
24 this is what they would consider as far as this was concerned  
25 and then it was put into a proposal. But it was talked about

1 or discussed at the engineering -- at these engineering  
2 meetings.

3 Q Now, similarly, on the matter that any base load  
4 capacity could not be resold by WCOE, why didn't you review  
5 that alternative in the study?

6 A Well, again, this is based upon a proposal and  
7 also based upon the meetings that we had in which I -- the  
8 meetings that I attended. I felt this was a firm stand by  
9 the Company.

10 Q Now, categorizing these approximately ten matters  
11 as options that Ohio Edison said would not be available,  
12 was the Beck Study, that is NRC-44, the Power Supply Study  
13 premised or based on these options that Ohio Edison said  
14 would not be available?

15 A The only option that was included for study  
16 purposes in this Power Supply Study was, as I said, alternate  
17 number six, which was the last proposal, the last written  
18 proposal put forth by the Company. We did analyze the effects  
19 and the impact of the P/M ratio upon the reserve requirement  
20 of WCOE for their participation in Ohio Edison capacity.  
21 That's also in the study.

22 That's all I can recall.

23 MR. LESSY: There was some talk and I didn't hear.  
24 Would you read back the question and answer, please?

25 (Whereupon, the Reporter read from the record

mpb9 1 as requested.)

2 BY MR. LESSY:

3 Q And the other options were not included in the  
4 study?

5 A The other options were not included in the study,  
6 that's right.

7 Q Could you tell us why?

8 A Well, from the initial meeting in August of 1974  
9 at which the question of third party wheeling was eliminated  
10 from consideration it was felt by the WCOE Steering Committee  
11 and their consultants at that time that we could do one of  
12 two things. We could stop in our tracks negotiations right  
13 there and not proceed any further or the other alternative  
14 would be to go ahead and try to develop alternatives within  
15 the framework of what had been discussed at that initial  
16 meeting recognizing that a viable alternative, that is third  
17 party wheeling from another source would not be an alternative  
18 that could be considered or could be studied.

19 Subsequent meetings brought out what we felt ---  
20 what I felt was the Company's firm stand on these other items  
21 and, again, we proceeded with the study to try to develop  
22 the alternatives which would be agreeable which the Company  
23 had indicated that they would agree to and also which the  
24 WCOE would also be able to go along with.

25 Q Now you utilized 1972 data in the Beck study,

mpb 10

1 that is NRC-44A, did you not?

2 A 1972 data was one of several years of historical  
3 information that was utilized in the study. The historical  
4 load and the energy requirements of the WCOE members was  
5 based on a period as of the date of 1973 which included the  
6 year 1973. The costs with reference to the generation  
7 additions contemplated or scheduled by the Company and/or  
8 the CAPCO Pool was based upon information furnished to us  
9 by the Company which, as I recall, was updated in early  
10 1975.

11 The items used in developing the cost of service  
12 analysis, which is also in the Power Supply Study, was based  
13 upon the data and information contained in the Company's  
14 FPC Form 1 for the year 1974. The methodology utilized in  
15 the cost of service analysis was based upon the methodology  
16 used and put forth by the Company in their 1972 wholesale  
17 rate filing before the Federal Power Commission.

18 Q What was the date of the last meeting you attended  
19 between Ohio Edison and WCOE where NRC 44 power supply matter  
20 was discussed?

21 A That was in 1975 and as I recall it was August,  
22 August, 1975.

23 Q Now, at that August '75 meeting do you recall  
24 saying something to the effect that third party wheeling  
25 would be contradictory to the whole pre-payment concept

apt 11

1 presented in the study and would be just a senseless under-  
2 taking from the point of view of WCOE if that recommendation  
3 were to be put into operation?

4 A No, sir, I don't recall saying that. I think  
5 possibly what might have been said, if I said anything like  
6 that --

7 CHAIRMAN RIGLER: Wait a minute. You have answered  
8 the question.

9 BY MR. LESSY:

10 Q Did you mention or were you requested to comment  
11 upon third party wheeling, or did you mention anything like  
12 third party wheeling in a discussion at that meeting?

13 A At that particular meeting there was considerable  
14 discussion with reference to wheeling, trying to define  
15 wheeling, and with reference to third party wheeling, as I  
16 recall, the only comment I made with reference to third  
17 party wheeling would have been along the lines that third  
18 party wheeling would not necessarily be included in our  
19 recommendation which was a pre-payment concept. However,  
20 third party wheeling would be an alternative which, at some  
21 later point in time, could supplement and would supplement  
22 that basic concept of the pre-payment.

23 Q When the wheeling was -- well, it was said at the  
24 '74 meeting that there would be no -- when it was said at the  
25 '74 meeting that there would be no third party wheeling

mpb 12

1 in the study, did you protest the deletion of third party  
2 wheeling?

3 A As I recall, I did not. However, the person that  
4 had some discussion with reference to that was Mr. Mayben,  
5 who is my boss and who attended that meeting.

6 Q Did he tell you whether or not he protested the  
7 deletion?

8 A Well, I sat in at the meeting and yes, he did  
9 protest it.

10 Q At the August '75 meeting did you personally  
11 request a memorandum of understanding with respect to what  
12 had occurred at that meeting?

13 A At that particular meeting I did request a letter  
14 of intent or a memorandum of intent with reference to that  
15 meeting, yes.

16 Q Were you the first to request it, such a letter of  
17 intent?

18 A I don't recall if I was the first one to request  
19 it or if the initial request was made by Mr. Duncan, counsel  
20 for the WCOE and I joined in in asking for it or vice versa.

21 Q Well, why did you request such a letter of intent  
22 or memorandum of understanding?

23 A I felt that since the initial meeting in 1974  
24 with the subsequent meetings which were held by representatives  
25 of the WCOE, the Company and the WCOE consultants and what

mpb 13

1 came about or what transpired in those meetings and the  
2 resulting power supply study which was accumulated months  
3 of work and study and analysis that I felt it would be to  
4 the mutual benefit of the Company and to WCOE to have a  
5 memorandum of intent as to their understanding as to what  
6 came about at this last meeting, and by that I mean as I  
7 recall the Company agreed in principle to the pre-payment  
8 concept. The WCOE agreed in principle with the results of  
9 the study and I felt after everything that had transpired  
10 before that time, a memorandum of intent would be of value  
11 to set down on paper what had transpired, what had come  
12 about up to that point in time and give a basis for the next  
13 steps.

abl 1 Q Based on the meetings you attended, do you agree,  
2 or would you agree that WCOE's representatives could have  
3 concluded that Ohio Edison would in fact consider specific  
4 wheeling proposals outside the study?

5 MR. STEVEN BERGER: Objection, your Honor.

6 CHAIRMAN RIGLER: The basis?

7 MR. STEVEN BERGER: I think it's a leading  
8 question.

9 CHAIRMAN RIGLER: I agree. Sustained.

10 MR. LESSY: I didn't have a chance to answer the  
11 objection.

12 I was quoting an exact quote from one of the--

13 MR. STEVEN BERGER: I object, your Honor.

14 CHAIRMAN RIGLER: Let Mr. Lessy finish.

15 MR. STEVEN BERGER: I'm going to object to him  
16 doing this in front of the witness.

17 MR. LESSY: Well, let me do it so we do it in  
18 a general form.

19 I always thought a proper question would be to  
20 take -- on rebuttal -- would be to take a statement made in  
21 defense and ask the witness if he could reasonably agree  
22 with that.

23 Now if that's not a proper question.... That's  
24 exactly what I was doing. And I can give a transcript  
25 reference.



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1 CHAIRMAN RIGLER: All right.

2 MR. STEVEN BERGER: I think it's a leading  
3 question, your Honor.

4 CHAIRMAN RIGLER: Do you have a transcript  
5 reference?

6 MR. LESSY: Yes.

7 CHAIRMAN RIGLER: Don't give it to me; just  
8 tell me whether you do.

9 MR. LESSY: Yes. I have an exact transcript  
10 reference for the quote that I --

11 CHAIRMAN RIGLER: Let me hear your question  
12 again.

13 MR. LESSY: The question is: Do you agree  
14 that WCOE's representatives could have concluded that Ohio  
15 Edison would in fact consider specific wheeling proposals  
16 outside the study?

17 CHAIRMAN RIGLER: Mr. Reynolds?

18 MR. REYNOLDS: Mr. Chairman, there are proper  
19 ways to ask questions. That question can be gotten at  
20 properly. I think it's extremely leading. I don't think his  
21 explanation erases the leading nature of the question whatso-  
22 ever.

23 Certainly there's a way he can ask this if he  
24 wants to, in a proper fashion. I think we ought to adhere  
25 to those kinds of rules of evidence in terms of interrogating

wb3 1 witnesses.

2 MR. STEVEN BERGER: There was an earlier ques-  
3 tion that was put to the witness in terms of something in  
4 the way of a statement that was allegedly attributed to him.  
5 And I did not object to that. It's not every statement  
6 that's made by a witness of Ohio Edison that the Staff has  
7 a right to include within a leading question, and to over-  
8 come an objection based upon it being leading.

9 MR. LESSY: But this was a conclusion. In other  
10 words, the witness at this time -- I don't want to identify  
11 him for purpose of Mr. Cheesman being here. The witness  
12 concluded a certain thing that WCOE representatives could  
13 have concluded 'X'. I'm asking if he could have concluded  
14 'X.' And for that purpose I would rely on Rule 611(c) in  
15 the discretion of the Board. It's direct rebuttal of testimony  
16 that I'm familiar with. It's not the fact; it's a conclusion.

17 CHAIRMAN RIGLER: Let me hear your question one  
18 more time.

19 MR. LESSY: "Mr. Cheesman, do you agree that  
20 WCOE's representatives could have concluded that  
21 Ohio Edison would in fact consider specific wheeling  
22 proposals outside the study?"

23 MR. STEVEN BERGER: I still regard it to be a  
24 leading question and not permissible under 611(c). It's no  
25 different than what occurred earlier in this proceeding at a

wb4 1 time when questions were attempted to be put to a witness  
2 in terms of statements that were made by Applicants in their  
3 briefs. It makes no difference.

4 If he's referring to something that was said  
5 attributing a statement directly made by Mr. Cheeseman I  
6 have no difficulty with that.

7 It's not a proper form of examination.

8 CHAIRMAN RIGLER: I see a distinction between  
9 the brief example you cited. I do recall the testimony.

10 The objection will be overruled.

11 BY MR. LESSY:

12 Q Do you have my question in mind, Mr. Cheesman,  
13 or would you like me to repeat it?

14 A Would you repeat the question, please?

15 Q Yes, sir.

16 Do you agree that WCOE's representatives could  
17 have concluded that Ohio Edison would in fact consider  
18 specific wheeling proposals outside the context of the  
19 study? --and that's NRC 44.

20 A Do I agree- I'm sorry; I'm still not clear on  
21 the question.

22 Q Maybe I went too fast.

23 Do you agree that WCOE's representatives could  
24 have concluded that Ohio Edison would in fact consider  
25 specific wheeling proposals outside the scope of the study?

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A No, sir, I do not agree.

2

Q Were any specific wheeling --

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CHAIRMAN RIGLER: Wait a minute.

4

Mr. Reynolds?

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MR. REYNOLDS: I don't see that there is any foundation for that question at all. I think if he wants to ask Mr. Cheesman as to what knowledge he has about discussions that he might have overheard or he might have heard with regard to wheeling --

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MR. LESSY: Why didn't he object before I asked it?

11

12

MR. STEVEN BERGER: Why doesn't he object before you ask it?

13

14

MR. LESSY: The witness has already answered.

15

CHAIRMAN RIGLER: That's re-arguing I think.

16

At any rate, it's something you can approach on cross.

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MR. REYNOLDS: I gather you don't want me to finish.

19

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CHAIRMAN RIGLER: If you want to finish to complete the record you may.

21

22

MR. REYNOLDS: There is obviously no purpose in finishing so I'll go ahead and take it up on cross.

23

24

BY MR. LESSY:

25

Q Were any specific power sources for third-party

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1 wheeling in fact discussed in these meetings, Mr. Cheesman?

2 A As I recall, at the initial meeting there was  
3 mention made of the allocation of power and energy from the  
4 Federal Resources through PASNY.

5 MR. REYNOLDS: Off the record.

6 (Discussion off the record.)

7 MR. REYNOLDS: On the record.

8 BY MR. LESSY:

9 Q Had you finished your answer?

10 A As I recall, at the initial meeting there was  
11 reference made to the power availability from a federal  
12 project through PASNY to the Ohio municipals, and this  
13 would involve the concept of third-party wheeling.

14 Q Was the August '75 meeting left with any under-  
15 standing between Mr. Wilson of Ohio Edison and yourself?

16 CHAIRMAN RIGLER: With respect to what?

17 MR. LESSY: If I said that I'd get a "leading"  
18 objection.

19 CHAIRMAN RIGLER: This comes from the Board. I  
20 think it's too broad right now.

21 BY MR. LESSY:

22 Q With respect to following up the Joint Study  
23 after the August '75 meeting, was that meeting left with  
24 any understanding between Mr. Wilson of Ohio Edison and  
25 yourself?

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A During the meeting, it was indicated by the company that they would like to review the information and data which we had utilized in our analyses primarily with reference to the pre-payment concept. As I recall I stated something in essence that due to the fact that our files were quite voluminous that I suggested that they send a representative or representatives to our Indianapolis office and I would be glad, or I or one of my staff people would be glad to go through this information with them and review it with them.

During the meeting, as I recall, Mr. Wilson was designated that responsibility. After the meeting I talked to Mr. Wilson to try to determine from him when I could expect him in Indianapolis because I was under the impression that the company -- that this was one item that they did want to follow up on.

Mr. Wilson stated that it would be -- he would not be able to come to Indianapolis to review this background information and data that we had with reference to this recommendation in our Power Supply Study for a few weeks because he was at that time presently tied up in preparation for a rate hearing. However, after that time he would be in contact with me and would try to set up a time for him and/or his people to come to Indianapolis.

Q Pursuant to your understanding, was Mr. Wilson checking those figures first dependent upon the execution

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1 of the memorandum of understanding or letter of intent?

2 A It was my understanding that the review of the  
3 information and data was an item entirely separate from the  
4 memorandum of intent.

5 Q Has to this date anyone from Ohio Edison ever  
6 contacted you to question or check figures in the study or  
7 study data or underlying work sheets?

8 A No, sir, they have not.

9 Q Since the August '75 meeting, has anyone from  
10 Ohio Edison ever given you their views or questions relating  
11 to the substance of the study?

12 A No, sir.

13 Q Have your clients, the Wholesale Consumers of  
14 Ohio Edison, indicated to you their reaction to Ohio Edison's  
15 response to the study at the 3/75 meeting?

16 A The Steering Committee felt it was somewhat  
17 disappointed in the meeting because they felt there would be  
18 more -- at least more questions, more questions and answers,  
19 or at least more comments by the company with reference to  
20 the Power Supply Study than what there was.

21 They thought the company's response to that was --  
22 as best I can put it, would be minimal. In fact, they were  
23 disappointed.

24 MR. STEVEN BERGER: Can I have the last question  
25 and answer read back, please?

eb5

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

3 BY MR. LESSY:

4 Q With respect to the Appendix to the Power Supply  
5 Study, Mr. Cheesman, that you have in front of you I believe,  
6 the first item in the Appendix is a letter dated June 13th,  
7 1974, from Emerson Duncan to Mr. John R. White of Ohio Edison  
8 Company.

9 Now turning to the enclosure to that letter and  
10 looking at page 2, the language is:

11 ". . . that the parties will conduct  
12 studies and investigations of the engineering,  
13 financial and legal feasibility. . . ."

14 And I'm going to skip some language:

15 ". . . to be in a position to participate directly  
16 in the output of specific generating capacity."

17 Now with respect to the language, that language,  
18 can you tell us what WCOE's understanding was of the language  
19 "output of specific generating capacity"?

20 A Well, it was my understanding that they were  
21 contemplating participation in some form in the output of  
22 generating capacity on the Ohio Edison Company's system and/  
23 or generating capacity that might be available to the  
24 municipals somewhere else.

25 Q When you say "somewhere else" what do you mean?



eb6

1 A Well, outside of the company, outside of the  
2 CAPCO Pool.

3 Q Now you testified that there were meetings at the  
4 engineering level. Can you tell us, for example, who would  
5 participate in meetings at the engineering level on behalf  
6 of Ohio Edison?

7 A Well, the attendance varied but in general there  
8 was a representative from the Steering Committee of WCOE.  
9 There was a representative of their legal consultant. There  
10 was a representative of their engineering consultant. And  
11 there would be two or more representatives of the company.

2A 2B

12 Q Do you recall who, at some of those meetings, the  
13 engineering representatives may have been from Ohio Edison?

14 A Mr. Firestone, Bruno, and I cannot pronounce  
15 his last name.

16 Q Is that Codispoti?

17 A Yes.

18 Mr. Kayuha, who was counsel for Ohio Edison  
19 and was not an engineer representative but he just sat in  
20 on some of the meetings.

21 Q Is that K-a-y-u-h-a?

22 A I believe so.

23 Mr. -- I believe his name is Fredrickson, Manager  
24 of Operations.

25 And there were others, but those are the names I

eb7

1 can recall right now.

2 Q Keeping in mind now the alternatives that Ohio  
3 Edison did not want included in the study about which you  
4 testified earlier, do you feel that with those limitations  
5 Ohio Edison so structured the Beck study as to preclude a  
6 result other than all-requirements purchase or pre-payment?

7 MR. STEVEN BERGER: Objection, your Honor, leading,  
8 calling for a conclusion.

9 MR. REYNOLDS: Objection.

10 CHAIRMAN RIGLER: Sustained.

11 MR. LESSY: Let me change my question then.

12 BY MR. LESSY:

13 Q Mr. Cheesman, keeping in mind the alternatives  
14 that Ohio Edison did not want included in the study, do you  
15 feel that those deletions structured the Beck study to a  
16 certain end?

17 MR. REYNOLDS: Objection; also a leading question.

18 MR. LESSY: I don't believe it is.

19 MR. REYNOLDS: He also asked for a conclusion.

20 MR. LESSY: Lay witnesses can give conclusions,  
21 Mr. Reynolds, under the Federal Rules.

22 CHAIRMAN RIGLER: Overruled.

23 THE WITNESS: May I have the question?

24 MR. LESSY: Will the Reporter read back the re-  
25 phrased question?

eb8

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

3 THE WITNESS: I believe that the scope of the  
4 studies as originally contemplated were considerably narrowed  
5 with these restrictions to which-- We came to the logical  
6 conclusion of the pre-payment concept.

7 MR. REYNOLDS: May I have that back?

8 (Whereupon, the Reporter read from the record  
9 as requested.)

10 MR. LESSY: I have no further direct.

11 CHAIRMAN RIGLER: The Department of Justice.

12 MR. CHARNO: No examination.

13 MR. HJELMPFELT: The City has no examination.

14 MR. STEVEN BERGER: I'd like about a half hour,  
15 Mr. Chairman.

16 CHAIRMAN RIGLER: Why don't we try 15 minutes?  
17 Off the record.

18 (Discussion off the record.)

19 CHAIRMAN RIGLER: Back on the record.

20 We'll take a 20-minute recess.

21 (Recess.)

22 CHAIRMAN RIGLER: Back on the record.

23 CROSS-EXAMINATION

24 BY MR. STEVEN BERGER:

25 Q Mr. Cheesman, do you have a copy of the R. W. Beck

eb9 1 study in front of you?

2 A Yes, I do.

3 Q Would you turn, please, to Section 1, the first  
4 page of Section 1 which is labeled "Introduction and Summary  
5 of Report."

6 Do you see where I am?

7 A No, sir.

8 Q The last paragraph on the page says:

9 "Ensuing negotiations with the company  
10 resulted in a settlement of the case without a  
11 hearing."

12 We're talking now about the 1972 rate case before  
13 the Federal Power Commission; is that correct?

14 A Yes, sir.

15 Q And it goes on and says:

16 "The principal considerations of both  
17 parties to the settlement were as follows:"

18 Then if you turn the page over to I-2, numbered  
19 Item No. 5, and look with me if you will at the language  
20 there, it states:

21 "The company and WCOE will undertake a  
22 joint study of the engineering, financial and legal  
23 feasibility of an arrangement wharaby the municipals  
24 would be able to participate directly with the  
25 company in bulk power supply facilities."

eb10

1 My question, Mr. Cheesman, is what's the basis  
2 for your statement as to what the parties concluded with  
3 regard to the municipalities being able to participate  
4 directly with the company in bulk power supply facilities?

5 MR. LESSY: He wants to know the basis for the  
6 first sentence under 5?

7 I'm not sure what you're asking, Mr. Berger.

8 MR. STEVEN BERGER: The basis for that sentence.

9 MR. LESSY: Thank you.

10 THE WITNESS: That particular sentence was a part  
11 of the settlement agreement based upon negotiations after  
12 the 1972 wholesale rate filing. That's the basis for it.

13 BY MR. STEVEN BERGER:

14 Q So what was really contemplated was that WCOE  
15 and the company would engage in discussions whereby they  
16 would participate in a partnership arrangement?

17 A I believe a partnership arrangement was one of  
18 several alternatives that might possibly be discussed.

19 Q Well, explain to me then how it is that WCOE  
20 would be participating in any other generation when you  
21 specifically included in your understanding of the FPC  
22 settlement that it would be the municipals being able to  
23 participate directly with the company in bulk power supply  
24 facilities.

25 A The settlement agreement is something that was

eb11 1 negotiated by representatives, consulting representatives  
2 other than myself so that I cannot personally attest to any-  
3 thing that went on at that point in time or prior to that  
4 point in time.

5           However, what was contemplated as far as the  
6 Power Supply Study's alternatives to be discussed was the  
7 items that were sent by Mr. Duncan to Mr. White as attached  
8 to his letter of I believe it was June, and it's included  
9 in the Appendix to this report. And that was the general  
10 outlines of the items to be considered as far as alternatives  
11 for these studies, which was subsequent to the item in here.

12           The item in here on page 2 is for background  
13 information.

14           MR. STEVEN BERGER: I ask that everything be struck  
15 after his statement of his not being involved in the original  
16 settlement agreement.

17           MR. LESSY: I think it was a responsive answer  
18 to the question as posed. It might not have been the answer  
19 Mr. Berger wanted but I think it was responsive to the  
20 question.

21           CHAIRMAN RIGLER: Denied.

22           MR. STEVEN BERGER: Do you want to hear the ques-  
23 tion and answer again, Mr. Chairman?

24           CHAIRMAN RIGLER: All right.

25           (Whereupon, the Reporter read from the record

eb12

1

as requested.)

2

CHAIRMAN RIGLER: Denied.

3

BY MR. STEVEN BERGER:

4

Q Mr. Cheesman, do you know who was-- Well, let me ask you this:

5

6

Do you know that R. W. Beck and Associates represented WCOE in connection with the 1972 rate case?

7

8

A Yes, sir.

9

Q Who at R. W. Beck and Associates was principally involved on behalf of WCOE?

10

11

A There were two persons at R. W. Beck and Associates who were principally involved in that period of time and one was Mr. Edward Cecil who is now a partner in the firm, and the other gentleman was Mr. Bill Mayben, William R. Mayben.

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Q Did Mr. Mayben review this -- and I'm talking about NRC Exhibit No. 44 which is the Beck study of July '75 -- before it was sent to WCOE?

17

18

19

A Yes, sir.

20

Q Do you recall specifically any discussions with Mr. Mayben with regard to the understanding of the FPC settlement that you set forth in here?

21

22

23

A No, sir, I don't recall them.

24

Q Did Mr. Mayben offer some suggestions and corrections to the study before it went out in final form?

25

eb13

1           A       Mr. Mayben, which is his prerogative, being a  
2 partner in the firm and my supervisor, did offer some sug-  
3 gestions as far as revisions of the report which were mainly  
4 editorial changes; yes, sir.

5           Q       The meeting that took place-- The first meeting  
6 that took place between WCOE and Ohio Edison, was that a  
7 meeting to determine what objectives were to be achieved by  
8 the study?

9           MR. LESSY: Are you referring to the meeting in  
10 I believe it was October '74 when you say the first meeting?

11           MR. STEVEN BERGER: I think the witness testified  
12 the first meeting was in August of '74.

13           BY MR. STEVEN BERGER:

14           Q       Is that correct, Mr. Cheesman?

15           A       The first meeting-- If I said August that was  
16 inadvertent; it was October. The last meeting that we had  
17 was August. I did get the dates confused.

18           MR. STEVEN BERGER: Would you read my pending  
19 question?

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

22           THE WITNESS: I guess I would have to ask Counsel  
23 to define "objectives" because I'm not sure that I can answer  
24 the question based upon "objectives." Actually the meeting  
25 was based upon the information sent by Mr. Duncan, his



eb14 1 attachment to his letter to Mr. White which was an outline  
2 of a program of development.

3 BY MR. STEVEN BERGER:

4 Q Let's approach it this way, Mr. Cheesman:

5 You conducted bulk power supply studies before, have  
6 you not?

7 A Yes, sir.

8 Q Would you tell us what, when you first started to  
9 develop a bulk power supply study, what are the things that  
10 you set out to do right at the outset?

11 A I think one of the first things that has to be  
12 established is you have to determine where you are at that  
13 point in time and what you have. I think that's one of the  
14 very initial items.

15 Q Do you also determine where you're going?

16 A I think that a goal as to where you would like to  
17 be or what you would like to accomplish and the methods or  
18 analyses or studies necessary to develop those alternatives  
19 to arrive at that goal are also another consideration, yes.

20 Q Was one of the goals that was sought to be  
21 achieved by the parties the development of a new bulk power  
22 supply arrangement between Ohio Edison and WCOE which would  
23 be to the mutual advantage of WCOE and Ohio Edison?

24 A That would be one of the objectives, yes.

25 Q What other objectives?

eb15

1           A       Well, I believe also from the standpoint of WCCE  
2       that they would like to develop a power supply program over  
3       which they would be able to -- I would characterize it by  
4       saying maintain some degree of control or at least have some  
5       degree of input into the implementation and operation of that  
6       power supply program, even if it meant the possibility of them  
7       going on an independent basis which would be included -- which  
8       would include generation on their own as their own system.

9           Q       Is that what WCCE came to the first meeting to  
10       achieve?

11          A       That was one possibility. I think that the Power  
12       Supply Plan -- a Power Supply Plan was a goal of the WCCE,  
13       a Power Supply Plan other than being a total-requirements  
14       customer of the company. Except for the two utilities we  
15       were a partial-requirements now.

16          Q       Did you expect when you came to the table for  
17       negotiations with Ohio Edison for the first time for them to  
18       be discussing with you things that they would be -- that  
19       they would believe to be disadvantageous to them and that  
20       they wouldn't raise that as just part of the first round of  
21       negotiations?

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

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

eb16 1

MR. CHARNO: I'd object to the question as calling  
for speculation and being very confusing in form.

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CHAIRMAN RIGLER: Overruled.

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1 THE WITNESS: I would anticipate and I did antici-  
2 pate, prior to going to the meeting that the discussions  
3 would ensue as to how to accomplish the items as outlined in  
4 the attachment that Mr. Duncan had in his letter to Mr. White.

5 BY MR. STEVEN BERGER:

6 Q Weren't these discussions taking place solely  
7 under the agreement that was reached by the parties pursuant  
8 to the FPC settlement?

9 A I would say that that was the basis.

10 Q Mutual advantage was something that was contemplat-  
11 ed by that agreement, was it not?

12 A Mutual advantage is something that would definitel-  
13 ly be considered in any alternatives, yes.

14 Q Well, I'm not asking you whether it would be  
15 considered if the plan could not be -- if a plan pursuant  
16 to these discussions could not be developed between WCOE and  
17 Ohio Edison which would be to the mutual advantage of WCOE  
18 and Ohio Edison, then the joint study would have failed in  
19 its objective, would it not?

20 A If you want to classify as an objective the fact  
21 that they have to have mutual cooperation and it would be  
22 mutually convenient for both entities, then the answer to your  
23 question is yes.

24 Q Isn't that what WCOE agreed to?

25 A I think that the WCOE in my understanding is that

mpb2  
1 the WCOE agreed to a power supply -- the development of a  
2 power supply plan for their member municipals.

3 Q I'm talking about what they agreed to with Ohio  
4 Edison in 1972.

5 A You're asking me a question that the only thing  
6 I can refer you to is what I have knowledge of, which is in  
7 the item you just pointed out in the Power Supply Study.

8 Q Well, let's ask it this way, Mr. Cheesman:

9 You have negotiated on behalf of electric utilities  
10 in the past, have you not, in effectuating new bulk power  
11 supply arrangements with other utilities?

12 A Yes, sir.

13 Q Do you expect when you go and sit down at a  
14 negotiating table that somebody on the other side -- that  
15 that person on the other side is just going to exceed every  
16 demand that you make?

17 A No, sir, I do not.

18 Q Did you feel that you had an absolute right to  
19 certain things and whether or not it was advantageous to  
20 Ohio Edison or not you were entitled to it?

21 MR. LESSY: I would object to that question as  
22 argumentative.

23 CHAIRMAN RIGLER: Overruled.

24 THE WITNESS: No, sir, I would not.

25 BY MR. STEVEN BERGER:

mpb3  
1 Q So you would agree that what you are there for  
2 and what the discussions were trying to pursue was a plan of  
3 action that would be to the mutual advantage of both the  
4 Company and WCOE, is that not right?

5 A Yes, sir.

6 Q And wouldn't you expect in the context of those  
7 kinds of negotiations that matters would be raised by one  
8 party which they believed to be to its advantage and the  
9 other party would object to it because they could see problems  
10 and disadvantages to the proposals that might be made?

11 A I believe that would come in the form of give and  
12 take, yes, sir.

13 Q Do you think there was give and take in the WCOE  
14 negotiations with Ohio Edison?

15 A No, sir.

16 Q What's the basis for that, Mr. Cheesman?

17 A Because I do not feel that the request for third  
18 party wheeling was an unreasonable request and this was a  
19 part of the outline which was attached for consideration and  
20 discussion from Mr. Duncan to Mr. White and that was one  
21 item that was deleted at the request of the Company.

22 Q Does that complete your answer?

23 A Yes, sir.

24 Q Well, assume with me for the moment, Mr. Cheesman,  
25 I know you weren't involved in the FPC settlement and the

mpb4  
1 memorandum of agreement that was reached between WCOE and  
2 Ohio Edison as to what would be studied, but assume with me  
3 for the moment that what the parties really contemplated was  
4 a partnership in generating facilities to be owned by Ohio  
5 Edison and WCOE or for WCOE to participate on some kind of  
6 a contractual basis. Assume with me that that was really  
7 what was contemplated in terms of changing WCOE's bulk power  
8 supply situation. What part would third party wheeling play  
9 if that was what was contemplated?

10 MR. LESSY: I would object on the basis that there  
11 is an assumption contrary to the fact of record in this  
12 proceeding.

13 MR. STEVEN BERGER: I don't think I have to respond  
14 to that.

15 MR. LESSY: He's asking hypothetical questions of  
16 a man who is a fact witness. I'm not going to object to it  
17 at this point but giving him assumptions which I feel are  
18 contrary to what has been presented in the evidence, I am  
19 going to object to.

20 CHAIRMAN RIGLER: Overruled.

21 BY MR. STEVEN BERGER:

22 Q You can respond, Mr. Cheesman.

23 A Okay.

24 On the basis of your assumption: in that respect  
25 which rather is a narrow scope of a partnership arrangement

mpb5

1 between Ohio Edison and WCOE, in that context in that assump-  
2 tion there would not be third party wheeling.

3 CHAIRMAN RIGLER: I don't mean to interrupt your  
4 examination, but even taking your assumption as true I would  
5 have a further problem that in this generating partnership  
6 there are limitations on the use that WCOE might be able to  
7 make of its share of the jointly owned generating facility  
8 if we take Mr. Choesman's earlier comments about the restric-  
9 tions on resale and what has to be done with the excess  
10 capacity, so you might want to explore that because that's  
11 a question that's before the Board.

12 BY MR. STEVEN BERGER:

13 Q Mr. Cheesman, let's talk about mutual advantage.  
14 I'll try to pursue this further.

15 When you came to the negotiating table and you  
16 tell me now it's October of 1974 is the first meeting, is  
17 that correct?

18 A Yes, sir.

19 Q Did you know that Ohio Edison was part of the CAPCO  
20 Pool?

21 A Yes, sir.

22 Q Did you know that Ohio Edison had obligated itself  
23 in a contractual arrangement that it entered into with the  
24 other CAPCO companies?

25 A At that point in time I was not familiar with



mpb6  
1 Ohio Edison's obligations and/or contractual arrangements  
2 with the other member companies of the CAPCO Pool.

3 Q Did you familiarize yourself with those contractual  
4 arrangements?

5 A I became familiar with them as a result of meetings  
6 with the Company people, primarily at the engineering level.

7 Q Assume with me for a moment that something which  
8 WCOE might have suggested as a possible concept to be developed  
9 in the joint study with Ohio Edison, Ohio Edison took excep-  
10 tion to because it would impair their right to perform their  
11 contractual arrangements with the other CAPCO companies and  
12 therefore would be disadvantageous to them. Would you  
13 expect that Ohio Edison would enter into an arrangement with  
14 WCOE in light of the mutual advantage agreement?

15 MR. LESSY: Objection, speculation on behalf of  
16 the witness. His anticipation of what Ohio Edison might or  
17 might not object to given certain assumptions, that's really  
18 kind of far from his direct.

19 CHAIRMAN RIGLER: I think I would be interested  
20 in hearing his answer to the question, which leads me to  
21 another question.

22 I'm going to permit you to answer that but my  
23 follow-up question is --

24 MR. STEVEN BERGER: Could he answer first?

25 MR. LESSY: Could you read the question back for us,

mpb7

1 please?

2 (Whereupon, the Reporter read from the record  
3 as requested.)

4 THE WITNESS: Under the terms and conditions of  
5 the assumption set forth, my answer is no.

6 BY MR. STEVEN BERGER:

7 Q Your answer is no, you would not expect them to  
8 enter into it?

9 A No.

10 CHAIRMAN RIGLER: No, I would not expect them to  
11 enter into it.

12 You see the problem I have with that approach  
13 is that if the Board and the Commission determined that  
14 these people are entitled to access to nuclear plants, we're  
15 certainly not going to permit a private contractual agreement  
16 to be raised as a barrier to carrying out the intention of  
17 the Commission.

18 MR. STEVEN BERGER: Mr. Chairman, I know this is  
19 a concern of the Board and the thing that is probably most  
20 important from Ohio Edison's standpoint, for the Board's  
21 understanding, is the nature of the discussions that were  
22 taking place between WCOE and Ohio Edison. These were not  
23 discussions that were taking place with WCOE coming to Ohio  
24 Edison and saying, Ohio Edison, we're here to get our rights  
25 to nuclear power that we're entitled to, we're here, on the

mpb8 1 contrary, to discuss with you what we agreed to in 1972.

2 CHAIRMAN RIGLER: But you're telling us that the  
3 OE version of that agreement is a partnership in generation  
4 and then Mr. Cheesman says, Yes, but our partnership rights  
5 are limited because we can't dispose of the excess, and your  
6 comeback to that is, Well, the CAPCO agreement requires us  
7 not to give away certain rights, and my answer to that is  
8 that the Commission simply won't hear that as a matter of  
9 law. If we determine they are entitled to access, then  
10 you can not raise as a barrier private contractual agreements  
11 and say that those supersede the determinations of the  
12 Commission.

13 MR. STEVEN BERGER: It's too important for us to  
14 discuss at this point in time in front of the witness and  
15 it's too important for us not to discuss it at this point in  
16 time and I would like the witness excused.

17 CHAIRMAN RIGLER: All right, will you step out of  
18 the room, please?

19 (Witness temporarily excused.)

20 MR. STEVEN BERGER: Mr. Chairman, the point of  
21 distinction that Ohio Edison would urge upon the Board in  
22 consideration of the discussions that took place between  
23 WCOE and Ohio Edison is as follows:

24 All of the discussions that took place in that  
25 context had to do with arriving at a new bulk power supply

mpb9

1 arrangement with WCOE, not just involving WCOE's participa-  
2 tion in nuclear, but everything else that would be involved  
3 and it was pursuant to an understanding between WCOE and Ohio  
4 Edison that whatever would be worked out would be worked out  
5 to the mutual advantage of the Company and WCOE, and in addi-  
6 tion it's our contention and we think we have demonstrated  
7 it in this record that what was contemplated was a partner-  
8 ship arrangement and that what was not contemplated was that  
9 Ohio Edison would open up its transmission facilities and let  
10 WCOE change its bulk power supply by taking firm power from  
11 some distant third party. That was not what was agreed to.  
12 That was not what was discussed. That was not Mr. Duncan's  
13 understanding. That was not Mr. White's understanding and  
14 that wasn't what was agreed to.

15 When the question of wheeling was discussed Mr.  
16 White has already addressed himself to their proposition.

17 As to what access to nuclear would be on a request  
18 for access to nuclear under the umbrella of whatever that  
19 means, we have the policy statement of the Company which is  
20 similar to the policy statement of the other Companies set  
21 forth in Applicants' Exhibit number 44. If anybody wanted  
22 to come and just talk about access to nuclear, that's what  
23 the policy of the Company is, but we were in the context of  
24 negotiation for a change in the entire bulk power supply  
25 relationship, not involving only nuclear and not involving--

mpb 10 1 CHAIRMAN RIGLER: Well, bypassing our other  
2 problems with the policy statement, when was it first announc-  
3 ed?

4 MR. STEVEN BERGER: March of '75.

5 CHAIRMAN RIGLER: Right, and here the witness is  
6 testifying about what he felt the limitations were on discuss-  
7 ing the partnership agreement, again taking your term, the  
8 partnership agreement in October of '74.

9 MR. STEVEN BERGER: But nobody came to Ohio Edison  
10 and said, What are you willing to do as far as Davis-Besse  
11 1 and 2 is concerned. No one came and said, We want access  
12 to Perry -- Davis-Besse 2 and 3, excuse me. No one came and  
13 said, We want our rights of access to Perry 1 and 2, what are  
14 you willing to do for us. There was no request for access  
15 to nuclear facilities by any small system in Ohio Edison's  
16 area.

17 The only discussions that have been had have  
18 been had pursuant to the FPC settlement and what was contem-  
19 plated by the parties to be discussed under the FPC settlement.  
20 It is difficult for me and I have trouble with the fact  
21 that we have gone through seven months of hearings and we  
22 are perhaps two days away from the close of this record and  
23 the Chairman still looks upon it in terms of these discussions  
24 involving what the Company was doing in terms of restricting  
25 WCCE to access to nuclear generation and that's not what was

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involved in those discussions. It was a change in the bulk power supply relationship contemplated by the parties, by the memorandum of understanding set forth as Exhibit C to the settlement agreement which contemplated mutual advantage.

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eb4

1 CHAIRMAN RIGLER: And the on-coming nuclear units  
2 were part of the bulk power in those discussions? They were  
3 an element of those discussions, were they not?

4 MR. STEVEN BERGER: Yes, sir, they were an element  
5 in those discussions.

6 CHAIRMAN RIGLER: Well, I don't know that we're  
7 really helping each other. I told you what my problem is.  
8 I understand your position. I think it falls into the cate-  
9 gory of argument, something for us to consider.

10 I'm inclined to give you fairly wide latitude  
11 with the witness on examination. There is no pending objec-  
12 tion. There is no pending question, is there?

13 MR. STEVEN BERGER: Not that I recall.

14 CHAIRMAN RIGLER: If you want to explore the type  
15 of relationship that was contemplated you're welcome to do  
16 so. I just alerted you to our concern.

17 MR. STEVEN BERGER: But just understand,  
18 Mr. Chairman, that we will take the position that through  
19 all the letters of advice, through all of the negotiations  
20 with WCOE up until the present time there has not been a  
21 single entity that has come and asked for participation in  
22 Ohio Edison's share of Davis-Besse 2 and 3 and Perry 1 and 2.  
23 It's not that way, your Honor.

24 MR. LESSY: Mr. Chairman, I would like to make  
25 four very brief comments.

eb2

1 CHAIRMAN RIGLER: Mr. Lessy, I'll let you go ahead  
2 if you want. Do you want to hear all the Applicants' objec-  
3 tions together? I see Mr. Reynolds also wishes to speak.

4 MR. LESSY: I yield to Mr. Reynolds.

5 MR. REYNOLDS: I want to make just a brief comment  
6 to your remarks concerning the fact that a request for  
7 participation which may be treated in a certain way because  
8 of a private contractual relationship is in the Board's view  
9 as a matter of law not sufficient response to restrict in  
10 any way that request for participation.

11 CHAIRMAN RIGLER: That is all countenanced on the  
12 assumption that one has the right to access --

13 MR. REYNOLDS: I appreciate that.

14 CHAIRMAN RIGLER: -- which is something to be  
15 established here in the hearing.

16 MR. REYNOLDS: I understood your remark to be  
17 directed in that vein.

18 My only point, and the one that I would like to  
19 state at this time because I think it's important that the  
20 Board have it in mind, is that it seems to me that even  
21 assuming a right to access is established, there is another  
22 factor which goes to the timing of the request for access.  
23 And it seems to me that the Board should not lose sight of  
24 the fact that a request that comes in at a time after a  
25 nuclear facility has been fully planned by the Applicants



eb3

1 and the capacity has been determined and allocated for a  
2 particular unit in accordance with that planning, that that  
3 request insofar as it's directed to a committed unit, if you  
4 will, may well be entitled as a matter of law to different  
5 treatment than a request which is directed to a unit which  
6 is still in the planning stages and with respect to which  
7 the capacity allocations are still to be made.

8 I think there is certainly a different basis for  
9 responding to a request if the request is directed to parti-  
10 cipation in a unit which has been fully planned and, for  
11 example, is in the stages that Davis-Besse 1 is in the stages  
12 of, and Perry 1 and 2 and I would submit Perry 2 and 3 --  
13 I'm sorry, Davis-Besse 2 and 3, given the planning that goes  
14 into these kinds of facilities.

15 And I think a response to -- quote -- "a late  
16 request" -- close quote -- if you will, in that context,  
17 which is different from the response that you might give to  
18 a request that is directed to units still in the planning  
19 stages may well be justified. And I think that that's some-  
20 thing I would like the Board to bear in mind in light of  
21 its earlier comment that assuming access is determined you  
22 can't indicate that a private contractual relationship or  
23 obligations, if you will, under a private contractual  
24 relationship would have no impact on the nature of the  
25 response that you're going to make.

eb4

1 CHAIRMAN RIGLER: The Licensing Board in Waterford  
2 took a contrary view.

3 MR. REYNOLDS: Well, I guess that's the legal  
4 argument. I think it is a factor I would like you to con-  
5 sider.

6 MR. LESSY: I would just like to make my four brief  
7 points.

8 In quoting, Mr. Berger in his argument said some  
9 things that we would dispute. The first is that a partner-  
10 ship agreement was contemplated. I think the language in  
11 the attachment to Mr. Duncan's letter quoted from the  
12 settlement agreement in which it said "municipalities  
13 would, by ownership in whole or in part, or by special  
14 contractual arrangement." It's not limited to a partnership.

15 Secondly, it continues, ". . . be in a position  
16 to participate directly in the output of specific generating  
17 capacity." Nowhere in any document does it limit that out-  
18 put to output solely of Ohio Edison.

19 Thirdly, Mr. Berger indicated that Mr. Duncan  
20 did not contemplate wheeling. His outline of what was to be  
21 studied specifically included wheeling and that was deleted  
22 by Ohio Edison.

23 Fourth, as a matter of law, the NRC Staff takes  
24 the position that 105-A of the Atomic Energy Act impacts on  
25 this FPC settlement because the parties are contemplating

eb5

1 and discussing policies in relation to access to nuclear  
2 facilities along with certain others and that governs --  
3 105-A governs that settlement to the extent that we're talk-  
4 ing about access to nuclear facilities.

5 That is, that because any settlement, whether  
6 it be by private or by any other governmental agency, to  
7 the extent to which we're talking about access to nuclear  
8 facilities, this statute comes into play. And we're going  
9 to brief that position, obviously, in our findings.

10 MR. STEVEN BERGER: I won't prolong it and I  
11 won't respond to what Mr. Lassy said. I know the Board  
12 doesn't want any more argument. I would just note that I  
13 take exception to many things he said.

14 I'm on my feet though because I want to pursue  
15 with the Board if I may just a little further what the Board  
16 said about private contracts and how it impacts upon access  
17 to nuclear.

18 Is it the Board's opinion that if an entity which  
19 would have rights under conditions attached to licenses  
20 at the end of this proceeding, possible conditions, chooses  
21 at this point in time to enter into a private arrangement  
22 whereby they are given access to nuclear in a way that would  
23 be different than would be set forth possibly in proposed  
24 conditions -- or in conditions somewhere down the line,  
25 that that contract is a nullity, that it has no force and

eb6 1 effect?

2 CHAIRMAN RIGLER: Obviously the Board is not going  
3 to answer your question. Moreover, the Board has not formed  
4 its final opinion and conclusions.

5 MR. STEVEN BERGER: I understand.

6 If what the Board was saying was just for the  
7 purpose of trying to stimulate discussion, I understand it,  
8 but it certainly refers to the quandary that Mr. White stated  
9 he was in at the end of his testimony with regard to how do  
10 I proceed with somebody in negotiating for a change in a bulk  
11 power supply relationship that would include nuclear power  
12 when, at a later point in time, I may find myself -- that  
13 what I agreed to I haven't agreed to. That's apart of the  
14 quandary.

15 And then you're anticompetitive because you didn't  
16 agree to it.

17 I think we can have the witness back unless some-  
18 body wants to say something else.

19 Whereupon,

20 WILLIAM CHEESMAN

21 resumed the stand on behalf of the Nuclear Regulatory  
22 Commission Staff and, having been previously duly sworn, was  
23 examined and testified further as follows:

24 BY MR. STEVEN BERGER:

25 Q Mr. Cheesman, in your discussions with Ohio Edison,

eb7 1 was the subject of nuclear power ever discussed in isolation?

2 A I can't recall that it was; no, sir.

3 Q When you set forth your list of -- quote -- "res-  
4 trictions" -- close quote -- if you will, do you consider  
5 any of those restrictions to be inconsistent with each other?

6 A I don't follow your question, sir.

7 Q Let me try to get at it another way.

8 I point of time, when was it that Ohio Edison  
9 proposed that WCOE participate in base load to the tune of  
10 10 percent of their peak load in any given year?

11 A As I recall, the subject was initially discussed  
12 at one of the engineering meetings prior to the formal initial  
13 proposal from Mr. Firestone and then there were discussions  
14 concerning it at subsequent meetings.

15 Q And was this 10 percent talked about just as a  
16 concept that possibly should be considered by WCOE in order  
17 to gradually change their bulk power supply from that of an  
18 all-requirements to ultimately a self-generator?

19 A It was a concept that was-- It was a proposal or  
20 concept that was put forth at that time, yes, as a possible  
21 way for the WCOE to become owners in generation.

22 Q Was there an advantage to WCOE not going to self-  
23 generation the next year?

24 A I can't say that it would be an advantage. There  
25 would be an impact upon the WCOE from the standpoint of the

eb8

1 financial considerations. The other would be from the stand-  
2 point of the WCOE being able to consummate the necessary  
3 contracts both among themselves with Ohio Edison, securing  
4 the necessary advice from legal counsel, financial advice,  
5 this type of thing, to look at what would be considered the  
6 next phase or the next step.

7 Q So it was possible that the 10 percent of peak  
8 load suggested by Ohio Edison was going to be to the mutual  
9 advantage of Ohio Edison and WCOE; isn't that correct?

10 A No, sir, I can't see that it would be to the  
11 mutual advantage of Ohio Edison and WCOE.

12 Q Well, if WCOE couldn't raise all the money for  
13 100 percent of their peak self-generation in the first year  
14 and what they needed was a gradual taking on of their own  
15 requirements, wouldn't it be to their advantage from a  
16 feasibility standpoint to do it on a gradual basis?

17 MR. LESSY: I'm going to object to that. That  
18 question assumes facts not in the record and facts not based  
19 on any previous answer, for example, what WCOE could or could  
20 not raise in terms of money.

21 MR. STEVEN BERGER: The witness just testified that  
22 it may not have been possible for WCOE to have raised the  
23 amount of money necessary in order to finance all of the  
24 self-generation in one given year.

25 MR. LESSY: That's not his testimony.

eb9

1 CHAIRMAN RIGLER: The witness is shaking his head  
2 disagreeing with that.

3 You had better go back to your foundation on that,  
4 and I'll let you try it again.

5 BY MR. STEVEN BERGER:

6 Q Mr. Cheesman, in terms of what was communicated to  
7 you by WCOE as to what they were financially capable of  
8 doing in terms of taking on their own bulk power supply, what  
9 was said about the ability to finance numbers of megawatts?

10 MR. LESSY: Said by whom to whom?

11 BY MR. STEVEN BERGER:

12 Q WCOE to you?

13 A As I stated, financial considerations for the  
14 implementation of any power supply program by the WCOE would  
15 have to be the next step or phase two or what we would con-  
16 sider as phase two. I cannot tell you myself personally  
17 that they were not capable of financing this. This is some-  
18 thing I have no knowledge of, and that's something that would  
19 have to be determined as far as necessary studies and upon  
20 competent advice from the appropriate financial advisors  
21 to the WCOE as a part of phase two.

22 Q Did you go to New York to talk to financial  
23 advisors?

24 A No, sir, I did not go to New York to talk to  
25 financial advisors. However, we have six financial advisors

eb10 1 in our Indianapolis office meeting with the representatives  
2 of the WCOE Steering Committee on this project.

3 Q Isn't it really the practicalities involved that  
4 would dictate what alternative and what objectives you were  
5 really trying to accomplish? Wouldn't you have to know how  
6 much money was available, and how much WCOE could finance in  
7 order to determine what alternative was available to them?

8 A The alternatives that were available to them as  
9 far as power supply were studied and reported upon in our  
10 Power Supply Study.

11 As far as financial considerations or any other  
12 considerations that you just enumerated, that would be part  
13 of the phase two studies which we did not get into.

14 Q When Ohio Edison suggested this 10 percent of peak  
15 load concept, what was WCOE's reaction?

16 A The basic reaction was they thought it was ridicu-  
17 lous and the reason they thought it was ridiculous was that  
18 based upon that concept, it would take them in excess of 30  
19 years to achieve completion of self-sufficiency in generation.

20 Q Was that your initial reaction at the meeting?

21 A Sir?

22 Q Was that your initial reaction at the meeting  
23 when it was first discussed?

24 A That was not the initial reaction; that was the  
25 reaction to the written proposal. The initial reaction was



eb11 1 that it was an alternative that we would analyze and this is  
2 what we did on behalf of WCOE.

3 You asked me what my reaction was.

4 Q Did you indicate at that time that it looked good  
5 and that it was an alternative which should be studied?

6 MR. LESSY: At what time?

7 BY MR. STEVEN BERGER:

8 Q At the time it was initially raised?

9 A I cannot recall that I commented upon the fact  
10 that it looked good or looked bad. As I remember, I think  
11 it was an item which was to be formalized in writing which  
12 was done by Mr. Firestone, and it was analyzed.

13 Q And WCOE ultimately rejected the 10 percent con-  
14 cept?

15 A Yes, sir.

16 Q How did it do that?

17 A As I recall, in subsequent meetings at the engineer-  
18 ing level, the discussions, after receiving Mr. Firestone's  
19 written proposal, the discussions centered around the 10  
20 percent, the disadvantages to the WCOE with reference to  
21 that 10 percent item that was contained in the proposal, one  
22 of which was them obtaining their self-sufficiency as far  
23 as generation in a period of in excess of 30 years.

24 The other was the item in there that I referred  
25 to earlier about the energy associated with that capacity in

eb12

1 excess of the needs of WCOE would have to go to Ohio Edison  
2 and as an alternate there was discussed -- and this was an  
3 analysis we made on behalf of WCOE -- of increasing that  
4 percentage to 15 percent, which would reduce that period of  
5 time to achieve self-sufficiency in generation from 30 years  
6 to approximately 13 to 15 years; I forget the exact number.

7 Q You studied 15 percent?

8 A Yes, sir.

9 Q You studied it after you rejected 10 percent?

10 A We studied it after we received the proposal and  
11 prior to the meeting in which we went back to discuss other  
12 items and this was one on the agenda.

13 Q Did Ohio Edison say, after you indicated to them  
14 that 10 percent wasn't good, did they say it's either 10  
15 percent or nothing?

16 A I believe after that is when they came -- when the  
17 second proposal was brought forth with respect to the fixed  
18 capacity, the fixed amount of capacity in designated generating  
19 units which wound up being 50 megawatts. And I think this  
20 came about as a result of our discussions which we had at  
21 the engineering level with reference to the 10 percent or  
22 15 percent.

23 And other-- I think we presented at that time for  
24 consideration at least two more alternatives with reference  
25 to capacity other than the 15 percent. They were in units

eb13 1 or blocks of capacity from units.

2 Q Was this a substitute proposal, the second pro-  
3 posal?

4 MR. LESSY: By whom?

5 BY MR. STEVEN BERGER:

6 Q The 50 megawatts?

7 A The 50 megawatts by the company I would interpret  
8 as a substitute proposal, yes.

9 Q And at that point in time the 10 percent was no  
10 longer being considered?

11 A That's my understanding.

12 Q That was part of the give-and-take?

13 A Well, I think that the 10 percent would have been  
14 -- I can't say was completely discarded by the company, no.  
15 As far as WCOE is concerned I think they felt that we should  
16 not proceed on that basis.

17 As far as the company was concerned, I can't  
18 testify as to what their intent was. I would assume that the  
19 second proposal was an alternate proposal, but I can't  
20 testify whether or not it was in lieu of or in substitution  
21 of the original one, or if it was just another one to toss  
22 onto the conference table for negotiation.

23 Q Did the 10 percent proposal preclude you from  
24 studying anything?

25 A I think the 10 percent proposal precluded us from

eb14 1 studying greater amounts of capacity as an alternative source  
2 of power, as a possible alternate power supply item, yes.

3 Q But you just stated you studied 15 percent.

4 A We did an analysis based on 15 percent to see  
5 what effect this would have as far as the WCOE was concerned.

6 We also did an analysis with reference to the 10  
7 percent.

8 We also, as a part of our studies, did some very  
9 preliminary analysis on other forms of power supply alter-  
10 natives.

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wbl 1 Q Is 50 Mw about 25 percent of the WCOE load?

2 A I don't recall the exact figures. That would

3 have to be checked.

4 Q Do you have a problem with 200?

5 A 200 what?

6 Q Megawatts. --as the total WCOE peak load.

7 A For what period of time?

8 Q The time the study was prepared, the time the

9 negotiations were going on.

10 A If you're telling me that's factual I'll accept

11 that. At this point in time I don't know. I can't recall

12 the exact figures.

13 Q Does that indicate to you that the Company, at

14 least at the time they offered the 50 Mw of capacity were

15 departing from the 10 percent?

16 A At that point in time, yes. But as load growth

17 comes about with Ohio's system and also WCOE's system,

18 that would be different.

19 Q But, Mr. Cheesman, you don't seem to under-

20 stand. You've testified here today that Ohio Edison placed

21 restrictions upon R. W. Beck's ability to study alternatives

22 for CWOE, and one of the items you set forth was 10 percent

23 of peak load for CWOE in any given year. Is that still

24 your testimony?

25 A Yes, sir.

wb2

1 Q All right.

2 Let me ask you this, Mr. Cheesman:

3 Do you recall discussions with Ohio Edison  
4 where representatives of Ohio Edison -- more particularly,  
5 perhaps, Mr. Firestone -- indicated to you that when we're  
6 talking about WCOE participating in Ohio Edison generation  
7 out through 1986 we have to talk in one context because  
8 that's already committed, but after 1986 that's a different  
9 story? Do you recall anything about that?

10 A I'm not clear, in your question, as to who  
11 committed what.

12 Q Well let me put it to you this way:

13 Is it not true from your understanding of CAPCO  
14 and what CAPCO capacity is, that CAPCO presently is planning  
15 capacity out to the year 1986?

16 A Yes. As I recall, yes.

17 Q Prior to the time that WCOE came to Ohio  
18 Edison and asked them for anything, didn't Ohio Edison  
19 enter into certain contractual relationships with other  
20 CAPCO companies?

21 A I recall that being discussed. I have no know-  
22 ledge of the contract, but I recall it being discussed, yes.

23 Q You have no knowledge of those contracts today,  
24 or at no time when you were negotiating?

25 A Well I have not read, and have not had access to

b3  
1 and did not read in detail the contracts between Ohio Edison  
2 and CAPCO. The information that was provided to us  
3 with reference to the Ohio Edison's participation in the  
4 pool was provided to us by the Company. And I personally  
5 did not delve into all, and read in detail all the contracts  
6 between Ohio Edison and CAPCO.

7 Now as far as the amounts of capacity in which  
8 Ohio Edison would be participating in the CAPCO units for  
9 the time period, that information was supplied to us by the  
10 Company and was utilized in our study.

11 Q Mr. Cheesman, before the time that WCOE came to  
12 Ohio Edison, didn't Ohio Edison have to plan their system  
13 to meet their loads?

14 A Yes, I would assume so.

15 Q If Ohio Edison had planned their system to meet  
16 their loads out to 1936, and in doing so had committed  
17 themselves, financially and otherwise, to certain capacity,  
18 wouldn't you agree that if Ohio Edison were to take some of  
19 that capacity that was committed, not for WCOE but for  
20 other purposes, and gave it to WCOE, that it would result  
21 in a degradation of Ohio Edison's own reliability?

22 MR. LESSY: I'm going to ask two things: One,  
23 since it is a hypothetical question, because there's an  
24 assumption--

25 MR. STEVEN BERGER: It's not a hypothetical

wb4 1 question.

2 MR. LESSY: --that it be phrased as a hypothetical  
3 question, that is, "Assume, Mr. Cheesman, that...." et cetera.  
4 And that the question be restated for purposes of clarity,  
5 because I'm not sure exactly as to the question itself.

6 He's asking him "if," and "if" to me means  
7 "assume," and "assume" is a hypothetical question. And in  
8 order to protect the integrity of the record I think if that's  
9 what's being asked it ought to be clear on the record by the  
10 form of the question. Because the last answer to the ques-  
11 tion didn't give any basis for assuming what was assumed in  
12 that question, in the "if" part of.

13 I think it ought to be phrased as a proper  
14 hypothetical question. And, secondly, that it ought to be  
15 clarified.

16 MR. STEVEN BERGER: Let's say the basis is  
17 Mr. Cheesman's own statements about excess capacity.

18 MR. LESSY: I object to the form of the question.

19 CHAIRMAN RIGLER: Overruled.

20 BY MR. STEVEN BERGER:

21 Q Do you have the question in mind?

22 A May I have it again?

23 MR. STEVEN BERGER: Will you read the question,  
24 please, Mr. Bloom?

25 (Whereupon the Reporter read from the record



wb4

1 as follows:

2 "If Ohio Edison had planned their  
3 system to meet their loads out to 1986, and in  
4 doing so had committed themselves, financially  
5 and otherwise, to certain capacity, wouldn't you  
6 agree that if Ohio Edison were to take some of  
7 that capacity that was committed, not for WCOE  
8 but for other purposes, and give it to WCOE,  
9 that it would result in a degradation of Ohio  
10 Edison's own reliability?")

11 MR. CHARNO: I would like to object and ask for  
12 a bit of clarification as to what is the assumption being  
13 made in the context of this question with respect to capacity  
14 committed to WCOE by Ohio Edison, capacity previously committed  
15 by Ohio Edison that was going to go to WCOE when you're  
16 giving them capacity that was not previously committed to  
17 them?

18 CHAIRMAN RIGLER: That's something that can be  
19 brought out on redirect.

20 MR. LESSY: I have another objection. It's  
21 "and gave that capacity to WCOE." I don't think Mr. Berger  
22 meant "gave" in the last part of the question. He either  
23 means sold or allocated, or he means something other than  
24 "gave."

25 CHAIRMAN RIGLER: I think he will accept an

wb5

1 amendment.

2 MR. STEVEN BERGER: Yes, I will accept it.

3 MR. LESSY: Which do you mean, for the record?

4 MR. STEVEN BERGER: Allocate.

5 CHAIRMAN RIGLER: You may answer.

6 THE WITNESS: I have some problems in trying  
7 to answer that one.

8 I have to assume that the Company did do the  
9 planning for future capacity, generating capacity, and  
10 capacity through interconnections to meet its system load.

11 The other problem that I have with that is, if  
12 they did do the planning -- which I assume they did -- then  
13 the load that they were planning for included the WCOE  
14 out through 1986. So, consequently, the capacity that was  
15 being planned for by Ohio Edison included the WCOE, or at  
16 least the projection of that WCOE.

17 So I'm not quite sure within the framework of  
18 your question that I can answer it.

19 MR. STEVEN BERGER: I don't think he answered  
20 the question.

21 CHAIRMAN RIGLER: The question was whether you  
22 expect that to affect the integrity of the OE system. And  
23 I gather your answer is "not necessarily."

24 MR. STEVEN BERGER: Mr. Chairman, I don't think  
25 you, then, have the question in mind. I don't think on the

wb6

1 basis of your clarification that you have the question in  
2 mind.

3 I'm not talking about WCOE's load and what's  
4 allocated to WCOE and what's planned for WCOE; I'm talking  
5 about WCOE coming to Ohio Edison --and I will direct this  
6 to Mr. Cheesman.

7 BY MR. STEVEN BERGER:

8 Q WCOE comes to Ohio Edison and it says "We know  
9 that you've planned out to 1986 maybe four or five hundred  
10 megawatts with WCOE. We, WCOE, have got somebody in  
11 Illinois that we'd like to see 500 Mw of capacity to. We  
12 want it from you over and above the 500 that WCOE needs  
13 for its own needs."

14 Now if Ohio Edison were to sell WCOE --or allocate  
15 to WCOE that additional 500 Mw of capacity, would it not  
16 result in a degradation of reliability of Ohio Edison's  
17 system?

18 MR. LESSY: I want to just comment. The witness'  
19 answer to the last question which asked him to assume certain  
20 things, which was based on the assumption that he was asked  
21 to me, he couldn't answer it. My understanding is it's a  
22 perfectly legitimate answer to a question where he's asked  
23 to assume something.

24 CHAIRMAN RIGLER: This is a different question.

25 MR. LESSY: This is now a different question; yes,

aa

wb7 1 sir. But I just wish to make that comment.

2 MR. STEVEN BERGER: I guess he needs it reread.  
3 He doesn't have it in mind now because Mr. Leszy stood up  
4 and we've lost the continuity.

5 CHAIRMAN RIGLER: Maybe he still has it in mind.

6 BY MR. STEVEN BERGER:

7 Q Do you have it in mind?

8 A I'll try to answer it.

9 Based upon your assumption and the example that  
10 you gave in your question -- that is, assume that in  
11 this planning period the load requirements of WCOE would be  
12 500 Mw, and Ohio Edison did plan in their capacity resources  
13 for that load, ultimate load of 500 Mw, and if -- again,  
14 according to your assumption and your statement, WCOE came to  
15 Ohio Edison and say "Hey, we need another 500 Mw" -- which  
16 my interpretation means they are now asking for 1000 Mw  
17 because they're going to sell that 500 Mw someplace else:--  
18 personally I think it is ridiculous because I don't think  
19 WCOE would be in a position, or would want to be in a  
20 position of coming up with that much excess capacity.

21 I think it would be poor planning on their part  
22 to try to make a determination like this.

23 So I think, therefore, your question based upon  
24 your assumptions I think is kind of far-out as far as the  
25 numbers are concerned. But within the context of your

wb8 1 question, if it did come about and Ohio Edison did supply  
2 the total 1000 Mw, then I think that they would have some  
3 concern as far as the capacity is concerned on their system  
4 and the impact it would have on the CAPCO pool.

5 Q Just for purposes of-- Strike that.

6 In your discussion of excess capacity of Ohio  
7 Edison, as you testified to, when you talked about excess  
8 capacity what did you mean?

9 A Well it would be that amount of total capacity  
10 that the WCOE would participate in, plus the existing genera-  
11 tion on their system. Or, looking at-- This would be one  
12 of the alternatives, which would be that total capacity as  
13 compared to their system load: if that was in excess of  
14 their system load, then that is excess capacity. If their  
15 load-- If that capacity is equal to their system load,  
16 peak load plus reserves, then there is no excess capacity.

17 However, at some point in time where you are  
18 dealing, or where capacity-- WCOE participates in a certain  
19 given amount of capacity, and, for instance, in one given  
20 month if they do not need that full capacity, then that is  
21 also excess capacity which would be available, and could be  
22 available for short term sales or something of this nature  
23 elsewhere.

24 Q Who was responsible for supplying you with what  
25 the WCOE load was, and what their projections were for the

wb9 1 future?

2 A You say who was responsible?

3 Q Yes.

4 A The members of the WCOE did provide us with  
5 historical information on their system peak loads and kilo-  
6 watt hours. And we utilized this in developing trends for  
7 projections of their system loads and usage, or kilowatt  
8 hour requirements for each municipality. And we also  
9 factored into it known loads which would be of a large enough  
10 impact that would influence the trend lines based upon the  
11 historical information.

12 In other words, we trended, or we projected  
13 that these municipal system load, or peak demand and energy  
14 on the basis of historical factors was the best known  
15 information as far as future loads.

16 Q Ohio Edison didn't play any part in that, did  
17 they?

18 A Ohio Edison requested information from us,  
19 and also utilized information of their own to come up with  
20 an analysis of Kw and kilowatt hours for use in applying  
21 the P/N factor.

22 Q But Ohio Edison in no way influenced what loads  
23 were projected by WCOE?

24 MR. LESSY : I think that is--

25 MR. STEVEN BERGER: --is what?

1                   MR. LESSY: I think that that question is going  
2 to be misleading if it is left the way it's stated.

3                   There has been a contention here that Ohio Edison--  
4 aside from this witness, that Ohio Edison has seriously  
5 impacted the loads. Now if he wants to restrict it to the  
6 data that they used I won't object. As as a general question  
7 as to whether Ohio Edison influenced the load figures, or  
8 whatever the question was precisely, I think the limitation  
9 should be Ohio Edison-- Did Ohio Edison influence the  
10 actual figures used as given to your by the Municipalities?  
11 But to get into the question of whether or not Ohio Edison  
12 had any impact on the loads or the load growth, that's an  
13 issue in this proceeding.

14                   MR. STEVEN BERGER: I take exception to Mr. Lessy  
15 even making that objection in the presence of this witness.  
16 The damage has already been done, as far as I'm concerned,  
17 whatever your ruling is.

18                   MR. HJELMFELT: I join in Mr. Lessy's objection.

19                   MR. CHARNO: The Department also.

20                   CHAIRMAN RIGLER: Let me hear the question.

21                   (Whereupon the Reporter read from the record  
22 as follows:

23                   "But Ohio Edison in no way influenced  
24 what loads were projected by WCOE?")

25                   MR. LESSY: Influence the figures, the data or--

wb11

1 Did Ohio Edison have any input into the figures turned over  
2 to you? --that's the question; not the other question.  
3 Because if you let the other question in we may get citations  
4 to an answer that the witness didn't give.

5 MR. STEVEN BERGER: If that's what he had said  
6 originally it would have been terrific. But what he said  
7 about contentions in this proceeding with regard to Ohio  
8 Edison, the suggestion that that gives to the witness is  
9 something that I can't cure now, can I?

10 MR. LESSY: You asked the question, Mr. Berger.  
11 I didn't.

12 CHAIRMAN RIGLER: I'm going to sustain the  
13 objection.

14 MR. REYNOLDS: Mr. Chairman, I would like to  
15 request with all due respect that you direct Mr. Lessy to  
16 confine his objections to a form that is proper in this  
17 proceeding or any other proceeding.

18 I agree with Mr. Berger's comment that his last  
19 objection was highly offensive. And, to be very frank, I  
20 question that the Board has not commented before this on the  
21 nature of Mr. Lessy's objections. It's inexcusable.

22 BY MR. STEVEN BERGER:

23 Q Mr. Chairman, the figures you used in the  
24 development of your study as far as the projections of the  
25 WCOE load, were they affected by Ohio Edison?



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MR. LESSY: I object to that question. I think that's the same question.

CHAIRMAN RIGLER: Let me hear it again.

(Whereupon the Reporter read from the record as requested.)

MR. HJELMFELT: I join in the objection.

MR. CHARNO: As does the Department.

MR. STEVEN BERGER: If the witness has difficulty with the use of the word "affected," he's free to so answer.

CHAIRMAN RIGLER: I think in light of the discussion he can clarify it.

I'm going to permit him to answer.

THE WITNESS: I guess I need clarification from counsel as to what he means by "affected." I'm not sure what you're trying to say.

BY MR. STEVEN BERGER:

Q Influenced by.

CHAIRMAN RIGLER: Lock: we're going to get a continuing series of objections. I will permit him to ask you if they had any input into the figures that caused you to accept their version of the figures.

What I will not permit is the assumption, any assumptions with respect to whether Ohio Edison's actions over previous years had had an effect upon the present size of the WCOE load.

wb13

1 Is that distinction clear?

2 THE WITNESS: If I may, let me try to answer  
3 the question this way:

4 As I stated, the load projections utilized in  
5 this study for the WCOE municipal members were based upon  
6 historical data furnished to us by them. These projections  
7 were based on trend analysis, including known large loads,  
8 and was approved by the municipal systems as far as load  
9 projections were concerned.

10 I would just as soon leave the answer at that,  
11 if it will please the Commission.

12 MR. STEVEN BERGER: Could I have a little break?

13 CHAIRMAN RIGLER: We'll take a five-minute recess  
14 at this time.

15 (Recess)

16 End 2E  
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mpbl

1 CHAIRMAN RIGLER: On the record.

2 MR. CHARNO: There was apparently an off the  
3 record discussion concerning scheduling of witnesses and we  
4 would like to note that we received Mr. Besse's minute book  
5 or diary for the first time at the break and are presently  
6 engaged in examining it. I'm not prepared to say when we  
7 will be ready to go ahead with Mr. Besse's cross-examination,  
8 Mr. Chairman.

9 MR. HJELMFELT: The City would like to join in  
10 those comments. There is only one copy of the diary and I  
11 have not had a chance to look at it at all.

12 MR. REYNOLDS: I've made copies and offered them.  
13 They wanted to look at the original of the diary book. I  
14 have now made that available. I would point out I believe  
15 we're talking about one page, but if they want to look  
16 through the entire book I have not problem with them doing  
17 it. I think it can easily be accomplished within the time  
18 frame we're talking about and still proceed with Mr. Besse  
19 on schedule.

20 CHAIRMAN RIGLER: When were the copies made  
21 available?

22 MR. REYNOLDS: I offered to make the copies  
23 available and that was just at this last break. Mr. Besse  
24 brought it with him as the Board directed and they wanted to  
25 look at the original and I have now given the original. I

mpb2

1 believe Mr. Mel Berger is looking at it. I gave a xerox to  
2 Mr. Goldberg and if Mr. Hjelmfelt wants a xerox I can give  
3 that to him.

4 MR. HJELMFELT: I apparently wasn't present when  
5 the offer of a xeroxed portion of it was made and I have  
6 not received one. If I had that now, of course, that would  
7 speed things up.

8 MR. CHARGO: The xerox is not of the entire book,  
9 is that right?

10 MR. REYNOLDS: That's right.

11 MR. HJELMFELT: That's what I understand.

12 MR. REYNOLDS: The month before July, the month of  
13 July and the month after July and to the extent they want  
14 any other pages xeroxed, I'll be perfectly happy to do it for  
15 them.

16 BY MR. STEVEN BERGER:

17 Q Mr. Cheesman, you indicated this morning, it seems  
18 like this morning, you indicated in response to questioning  
19 by Mr. Lesse that you thought there was a restriction placed  
20 upon WCOE by virtue of the CAPCO P/N reserve sharing formula,  
21 is that correct?

22 A Yes, sir.

23 Q Could you tell me what that restriction is?

24 A The application of the P/N ratio to capacity which  
25 WCOE would participate in would be in considerable excess as

apb3

1 compared to their system demand plus normal reserve require-  
2 ments. And this is brought out in the Power Supply Study  
3 analysis and as I recall in my earlier testimony I said  
4 for the first year this is something like 283 percent.

5 CHAIRMAN RIGLER: Where did WCOE obtain these  
6 reserves?

7 THE WITNESS: Under the concept offered by the  
8 Company, they would have to purchase excess capacity, in other  
9 words, the capacity for that to make up or for that reserve  
10 component would have to be purchased from the Company or  
11 would have to be purchased by WCOE. It would be purchased  
12 as part of the capacity participation.

13 BY MR. STEVEN BERGER:

14 Q Mr. Cheesman, are you suggesting there was a  
15 reserve obligation placed upon WCOE by Ohio Edison's second  
16 proposal involving the 50 megawatts?

17 A Yes, sir, it's my understanding that the second  
18 proposal of 50 megawatts did include the P/W.

19 Q Mr. Cheesman, would you take a look at an  
20 attachment to the Power Supply Study which is the June 17,  
21 1975 letter from Mr. Firestone.

22 A All right, sir.

23 Q Do you have it?

24 A I have the first page. Which page are you referring  
25 to?

mpb4

1 Q Is that the proposal we're talking about? Is that  
2 the second proposal of Ohio Edison?

3 A Yes, sir, this is the second written proposal of  
4 Ohio Edison.

5 Q And that includes the 50 megawatts?

6 A Yes, sir.

7 Q Will you find for me, please, where the proposal  
8 -- where in the proposal it imposes the P/N formula on the  
9 50 megawatt that WCOE would be taking under this proposal?

10 A Well, in general I would say that the reference  
11 to the P/N ratio is proclaimed in the bottom paragraph on  
12 page 1 and continues through that paragraph on the top of  
13 page 2. It's indirectly referred to as, in the next para-  
14 graph, the one sentence which says:

15 "The same concept with respect to reliability  
16 exists between OE and its CAPCO partners as a matter  
17 of contract."

18 Q Is there any reference to P/N in this letter?

19 MR. LESSY: Asked and answered.

20 CHAIRMAN RIGLER: Overruled.

21 THE WITNESS: The ratio P/N is not found in this  
22 letter, no, sir.

23 BY MR. STEVEN BERGER:

24 Q Mr. Cheesman, isn't it a fact that the second  
25 proposal with regard to the 50 megawatts contained in this

mpb5

1 letter imposed absolutely no reserve requirement upon the  
2 WCOE?

3 A Not according to my recollection, no, sir.

4 Q And your recollection is based upon the portions  
5 of a letter that --

6 A My recollection is based upon the portions -- based  
7 upon the letter which was received after this item was  
8 discussed in engineering meetings and in those meetings at  
9 no time was the deletion of the requirement of P/N being  
10 applied to the WCOE mentioned by the Company representatives.

11 Q Wasn't Ohio Edison going to take care of your  
12 reserve responsibility under the second proposal in exchange  
13 for what was proposed in terms of Ohio Edison's sharing in  
14 the benefits which WCOE would enjoy?

15 A That's not my interpretation, no, sir, and I can  
16 not get that out of the letter, no, sir.

17 Q Is it possible you misunderstood the letter, Mr.  
18 Cheesman?

19 A Well, I don't think it would be possible, particular-  
20 ly since I feel that the letter, the second proposal was  
21 brought about as a result of discussions that we had had as  
22 an ongoing thing between the WCOE representatives and the  
23 Company at the engineering level.

24 Q Isn't it a fact that after you received the second  
25 proposal, that is the proposal contained in the June 17, 1975

mpb6

1 letter, that a meeting was established for purposes of discuss-  
2 sing this proposal?

3 A I do not recall the exact date. I do not recall  
4 the meeting that you refer to.

5 Q Wasn't the meeting that you had to discuss the  
6 Beck proposal originally established as the meeting to  
7 discuss OE's second proposal?

8 A Not to my recollection, no, sir.

9 Q You don't recall the opening of the second meeting  
10 or rather the opening of the meeting on the Beck proposal  
11 discussing the fact that Ohio Edison had a proposal outstand-  
12 ing?

13 A Which meeting are you referring to, sir?

14 Q I am referring to the meeting you spoke of in  
15 August of 1975 when Ohio Edison and WCOE sat down and talked  
16 about the Beck proposal.

17 A That meeting did discuss the Power Supply Study  
18 which we have here as an exhibit and the proposal, the second  
19 proposal, the second written proposal by the Company was  
20 included in that study as alternats 6.

21 I do not recall specifically the discussion of  
22 that proposal other than any minor discussion that might have  
23 occurred with reference to the other alternatives in that  
24 meeting. As I indicated earlier in my testimony, the response  
25 from the Company with reference to the Power Supply Study was



mpb7

1 best characterized by myself as minimal.

2 Q Did you reject Ohio Edison's second proposal?

3 A The proposal was analyzed and was in the Power  
4 Supply Study and the recommendation which is a pre-payment  
5 concept is included in there. As to whether or not I  
6 officially sat down and wrote an official letter to the  
7 Company officials rejecting it, the answer is no. It was  
8 considered as one of the alternatives and the alternatives  
9 were discussed in detail in the Power Supply Study and  
10 the recommendations contained therein.

11 Q Was there any discussion of reserves in alternative  
12 number 6 in the Beck report?

13 A Yes, sir.

14 Q Would you find them for me, please?

15 A Section 1, page 10, Section 1 is a summary of the  
16 report, essentially a summary of the report, conclusions,  
17 recommendations; there is a summary of alternative 6 on  
18 page 10 of Section 1.

19 Q Can you tell me where it talks about reserves  
20 there?

21 A Let me finish the first question you asked me.  
22 You asked me for other references, or whether it's described  
23 in the report and I referred to Section 1.

24 Starting in Section 5 on this subsection D Power  
25 Supply Alternative Studies, we start on page 4 with

mpb8

1 alternative 1 and we follow on through to page 7, toward the  
2 bottom of the page, item 6, alternative 6, Ohio Edison  
3 proposal. It starts on that page and goes through page 8 and  
4 then at the end of Section 5 are tables referring to results  
5 of the analysis and calculations for the study period of  
6 that alternative 6.

7 Q Does that complete your answer?

8 A It completes that answer, yes, sir.

9 Q Now can you tell me where the P/W formula or  
10 reserves at all are discussed --

11 A All right, sir, I'll refer you to that.

12 Q -- in connection with alternative 6?

13 A All right, sir. Just a minute, please.

14 (Pause.)

15 Q Let me withdraw the question.

16 A Let me answer the question because I have found the  
17 answer.

18 On Section 5, page 3, at the top I state, and if  
19 I might read from the report:

20 "In subsequent analyses with the exception  
21 of the Power Supply relationship proposed by the  
22 Company, WCOE capacity requirements were deter-  
23 mined on an equalized reserve basis, that is,  
24 WCOE capacity in proportion to the load it is to  
25 serve would equal the Company's ratio of generating

mpb9

1 capacity to system load it is to serve."

2 The important item in that paragraph is the item  
3 proposed -- the proposal by the Company which included in  
4 this report is alternative 6, in which case the R/N ratio  
5 was applied.

6 Q Mr. Cheesman, isn't it a fact the reason you  
7 wrote in that page:

8 "In subsequent analyses with the exception  
9 of the Power Supply relationship proposed by the  
10 Company...."

11 that you applied equal percent reserve to all the others  
12 was because there was no reserves required under the Company's  
13 proposal?

14 A No, sir.

15 Q Wasn't it the Company's proposal that what you  
16 would do is WCOE would take 50 megawatts, you would split  
17 with the Company the savings on your fixed charges and  
18 everything would operate as if it never happened?

19 A I'd like to have that question rephrased because  
20 I think there's about three in one and I will try to answer  
21 it --

22 Q Isn't it true that what you were really involved  
23 with in proposal number two from the Company was that WCOE  
24 would get 50 megawatts, and own 50 megawatts, that WCOE and  
25 Ohio Edison would, then, split the savings on the fixed

mpb 10 1

charges of that 50 megawatts and that everything else would operate as it had operated before, with WCOE as a wholesale customer of Ohio Edison?

4           A       No, sir, that in total is not true because the 50  
5 megawatts did require the P/N determination of reserve  
6 capacity and the other fact is you say 50 percent, or split  
7 the savings, which wound up being a cost to WCOE and a direct  
8 give-away by WCOE to the Company. So I do not agree with the  
9 question.

10           Q       So it is your understanding of proposal number 6  
11 that you set forth as -- the Company's second proposal that  
12 you set forth as Alternative 6 in the Power Supply Study  
13 that it required P/N to be applied?

14           A       Yes, sir.

15           Q       And that's the basis of your -- you made calcula-  
16 tions on that basis?

17           A       Yes, sir.

18           Q       All right.

19                    Now tell me how you applied P/N?

20                    MR. LESSY: I'm going to object to that. The P/N  
21 formula we've had expert testimony on is a very complex  
22 computer run and if we're going to ask this witness to apply  
23 P/N, I think we're going to have to bring out calculators  
24 and give him a good deal of time. I have been very lenient  
25 here, I think, about objecting beyond the scope of the direct,

p 11

1 but that kind of detail certainly was not contemplated by my  
2 direct rebuttal examination.

3 CHAIRMAN RIGLER: Overruled.

4 THE WITNESS: In answer to the question, I am  
5 not prepared to apply the P/N ratio to those calculations  
6 at this state. I can say that the P/N ratio was considered  
7 in the calculations, the results of which are shown in this  
8 Power Supply Report.

9 CHAIRMAN RIGLER: The question is how did you  
10 consider it.

11 THE WITNESS: As I recall the P/N ratio, it was  
12 considered on a basis of the P/N ratio as explained to us by  
13 the Company personnel. It was also applied on the same basis  
14 as what the analysis of the impact of that P/N ratio on  
15 other capacity would be, which is also included in the report,  
16 in which case I pointed out that it would impact WOCB about  
17 283 percent of reserve requirements over peak load.

18 CHAIRMAN RIGLER: But that 283 percent figure was  
19 obtained by using the P/N method?

20 THE WITNESS: Yes, sir.

21 CHAIRMAN RIGLER: And the inputs for the P/N  
22 method which you used were those which were explained as  
23 proper inputs by a representative of Ohio Edison?

24 THE WITNESS: Yes, sir.  
25

3A

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BY MR. STEVEN BERGER:

2

Q Mr. Cheesman, where in the figures and the other materials set forth in your report on Alternative No. 6, which is the company's proposal, is the impact and the application of P/N reflected either in the figures or in the language? Show me where it's reflected in Alternative 6.

3

4

5

6

7

A In general answer to your question it would be reflected in the cost figures shown on the tables which are at the end of Section 5.

8

9

10

Q Would you show me which cost figures reflect the application of the P/N formula and the fact that reserves at all were being considered in computing the costs to WCOE of Alternative No. 6?

11

12

13

14

A The application of the P/N is summarized for Alternative 6 on page 10 of Section 1 which I previously referenced.

15

16

17

Alternative 6 is also described on page 4 on Table 1-1 at the end of that section.

18

19

Q Does that go to reserves?

20

A It does not specifically have a line item in there pertaining to reserves; no, sir.

21

22

Q Nor a discussion of it?

23

A The discussion is as I pointed out to you before.

24

25

MR. STEVEN BERGER: The Board doesn't have the study in front of it, does it?

eb2

1 CHAIRMAN RIGLER: No.

2 BY MR. STEVEN BERGER:

3 Q Is the word "reserves" used anywhere in the  
4 citations you've just given me, Mr. Cheesman?

5 MR. CHARNO: Is the witness finished with his  
6 answer? I believe from watching him go through the study  
7 that he hasn't had an opportunity to complete his answer to  
8 the last question.

9 THE WITNESS: I'm looking for one other item, one  
10 other table. Excuse me. I'm sorry for taking so long.

11 On Table 5-10 which is in Section 10 toward the  
12 end of the section there's a table entitled "Ohio Edison  
13 Proposal, WCOE Acquire Capital Capacity." This is for the  
14 study period 1976 through 1985 and it discusses and shows  
15 in there in the table the various items of expenditures, both  
16 capital and annual costs coming up with an equivalent cost  
17 of energy in mills per kilowatt-hour for the study period.

18 The reserve P/N ratio is not set out as a separate  
19 item in that table.

20 I might point out that in our last August meeting,  
21 and as I recall in August, that I invited representatives of  
22 the company to come and look at the backup information and  
23 detailed data on this report, and to date nobody has come.

24 It was not only with reference to the pre-payment  
25 concept but for any other information that they thought they

eb3 1 wanted to get into. If there was a question on this P/N  
2 application I feel it should have been pointed out long before  
3 now.

4 MR. STEVEN BERGER: I move to strike that.

5 CHAIRMAN RIGLER: We'll strike the portion "If  
6 there was a question on this P/N application I feel it should  
7 have been pointed out long before now."

8 MR. STEVEN BERGER: That's all I wanted to strike.

9 BY MR. STEVEN BERGER:

10 Q You talked about a restriction precluding WCOE  
11 from participating in existing generation; is that correct?

12 A Yes, sir.

13 Q Does the pre-payment concept contemplate parti-  
14 cipation by WCOE in existing generation of Ohio Edison?

15 A I think I have to qualify my answer to the question  
16 by stating that the pre-payment concept does not -- is not  
17 based upon participation in generation. Rather, it is based  
18 upon pre-payment of the equivalent fixed charges associated  
19 with generation which would normally be allocated to the  
20 wholesale consumer in a rate case or rate hearing before the  
21 FPC. So therefore it is not participation in generation  
22 as compared to ownership.

23 Q So that existing generation restriction you were  
24 talking about is ownership?

25 A When I say "existing generation of ownership" --



eb4

1 or "existing generation" I was talking about power supply  
2 alternatives which would include ownership and even the  
3 possibility of a fixed contract term of power sales from  
4 designated generation.

5 Q Do you have any reason to believe that WCOE could  
6 obtain a lower cost bulk power supply than what would be  
7 available to WCOE if WCOE accepted the pre-payment concept?

8 A That question is not clear. I'm sorry.

9 MR. STEVEN BERGER: May I have it read back?

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

12 THE WITNESS: It seems to me there's a contradic-  
13 tion in the question the way I interpret that.

14 If there is a pre-payment concept -- and this is  
15 our recommendation in our Power Supply Study -- at that point  
16 in time, based on the information available that was our  
17 recommendation to the WCOE.

18 If at some point in time there becomes available  
19 to them other sources of power supply then I would be  
20 derelict in my duties if I did not recommend to my client  
21 that they should at least make a study analysis of what those  
22 power supply resources would be to determine if they indeed  
23 would be more advantageous to them than the pre-payment  
24 concept.

25 BY MR. STEVEN BERGER:

eb5

1 Q Are you aware of any other alternative power supply  
2 available to them?

3 A Well, I'm aware of two which WCOE was aware of  
4 and which were also mentioned in the engineering meetings.  
5 One was, as I earlier testified to, the availability of an  
6 allocation of power from the Federal Project.

7 The other was the availability of all peak power  
8 from Buckeye, both of which were discussed in the engineering  
9 meetings and both of which were declined by the company on  
10 the basis that it would involve third-party wheeling.

11 MR. REYNOLDS: Excuse me. Could I for clarifica-  
12 tion just ask the witness whether when he referred to  
13 "Federal Project" he had reference to the PASNY Project?  
14 I believe that was his earlier reference.

15 Is that what you had in mind?

16 THE WITNESS: Yes, sir.

17 MR. REYNOLDS: Thank you.

18 BY MR. STEVEN BERGER:

19 Q Did you ever contact those people?

20 MR. LESSY: Did who ever contact whom?

21 MR. STEVEN BERGER: Did Mr. Cheesman ever contact  
22 the people at PASNY?

23 THE WITNESS: I personally did not contact the  
24 people at PASNY.

25 BY MR. STEVEN BERGER:

eb6

1 Q Were you aware if anybody else did?

2 A I was aware that some people from the WCOE had  
3 talked to somebody from PASNY but I cannot give you the names  
4 or dates or the exact conversations that took place.

5 Q Are you aware that Mayor Quirk of Cuyahoga Falls  
6 contacted the New York State Power Authority as to the  
7 availability of PASNY power and was told that no power was  
8 available?

9 MR. LESSY: I think we need a date, Mr. Berger.

10 MR. STEVEN BERGER: At any time.

11 MR. LESSY: He said he wasn't aware of any. I  
12 think if you want to say are you aware that Mayor Quirk  
13 did, I think it's proper to put a time frame on it. Mayor  
14 Quirk I don't think was Mayor during the entire period, is  
15 my understanding.

16 CHAIRMAN RIGLER: Overruled.

17 MR. REYNOLDS: Mr. Chairman, if Mr. Lessy has an  
18 objection would you please direct him to make it in the form  
19 of an objection rather than this running commentary on his  
20 interpretation of what may or may not be in this record?

21 MR. LESSY: Mr. Chairman, --

22 CHAIRMAN RIGLER: I didn't have any trouble with  
23 the form of the last objection.

24 MR. REYNOLDS: There was no objection.

25 CHAIRMAN RIGLER: Mr. Lessy, it's not necessary

eb7

1 to prolong this on either side. The Board will regulate  
2 objections which it feels are not couched in the proper terms.

3 THE WITNESS: I'm sorry, but may I have the question  
4 read back?

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

7 CHAIRMAN RIGLER: And the time frame on that is  
8 ever, or at any time.

9 THE WITNESS: No, sir, I was not aware of that.

10 BY MR. STEVEN BERGER:

11 Q Will you restate for me what the financing res-  
12 triction was that you expressed this morning?

13 A The restriction was what was dictated by the com-  
14 pany in the initial meeting, to the effect that Ohio Edison  
15 Company would not be a financial agent nor a banker nor  
16 become involved in any way with any of the financing of the  
17 WCOE for any of the power supply alternatives.

18 Q What would you have hoped that Ohio Edison would  
19 have done with regard to financing?

20 A Well, there would have been the possibility that for  
21 participation in units which would have extended over a  
22 period of time such as, for example, five years that WCOE  
23 possibly would have been given the opportunity or had the  
24 opportunity to participate in that generation at the point  
25 in time that it went into commercial operation rather than

eb8

1 continuing progress payments, so to speak, in that time  
2 period. That was one possibility.

3 Q What advantage to OE would that provide?

4 A Well, there would be less bookkeeping, less paper  
5 work also. There would be the fact that they would have all  
6 their costs on their property books at the time that the unit  
7 went into commercial operation.

8 It also involved the fact that there would not be  
9 progress payments and keeping track of this type of thing.  
10 I think it could possibly even be some simplification of  
11 legal problems, but I'm not sure of that. I'm thinking  
12 primarily of financial.

13 Q How about the interest on the money used during  
14 construction?

15 A Interest on the money used during construction  
16 is included as I recall as a part of the capitalization and  
17 that would be included at the time the unit went on the  
18 books, so WCOE would be paying that at the time.

19 Q If all the interest had to be recognized, what was  
20 the benefit to WCOE?

21 A Just the fact that WCOE would be able to finance  
22 an issue, a revenue bond issue or something equivalent in  
23 one designated period of time rather than trying to designate  
24 a financial program over a period of time.

25 Q Is there a financial restriction imposed upon Back

eb9

1 in this study in terms of how much money you can expand on  
2 behalf of WCOE? I'm not talking about disbursements now.

3 A You mean with reference to our fee for professional  
4 services?

5 Q Exactly.

6 A There was an estimate given when the project was  
7 initiated and we have billed the client based upon labor and  
8 salary, including a personnel-benefits multiplier plus  
9 reimbursement of out-of-pocket expenses. There was no maxi-  
10 mum established on our work order for rendering professional  
11 services to the client.

12 Q Have you been paid?

13 A Not entirely, no, sir.

14 Q Mr. Cheesman, would you take a look at the  
15 attachment to the Beck study which you talked about before,  
16 Mr. Duncan's letter with the attachment that had all of the  
17 items set forth in it?

18 A It that the one that's included in the Appendix?

19 Q Yes.

20 A All right, sir.

21 Q At the bottom of page 3 do you have some hand-  
22 written notations there?

23 A At the bottom of page 3?

24 Q Yes.

25 A No, sir.

ab10 1 Q Since August '75, Mr. Choesman, what work have you  
2 done for WCOE?

3 A Well, at the present time we're consulting  
4 engineer for the WCOE involved in the present Ohio Edison  
5 rate filing before the FPC. We're consulting engineer for  
6 the group.

7 Q Have you done anything further with regard to the  
8 discussions that were had pursuant to the FPC settlement?

9 A I'm not clear on your question. Do you mean have  
10 I --

11 Q The study.

12 A Have we done anything subsequent? Yes, sir. I  
13 had in my office members of the WCOE Steering Committee  
14 and representatives of six financial firms to discuss the  
15 Power Supply Study itself and also to discuss in broad  
16 terms the phase two -- the phase next step of the project  
17 which WCOE would proceed to implement which would be basically,  
18 if necessary, a financing study.

19 Q You're talking about phase two. Wasn't it con-  
20 templated that at the end of phase one there would be this  
21 letter of intent?

22 A The letter of intent came about as a result, as  
23 I previously testified, of the meeting in August which, for  
24 all practical purposes, was phase one, the Power Supply  
25 Study; yes, sir.

eb11

1 Q Was it left in August of 1975 that Mr. Duncan  
2 would prepare a letter of intent on the pre-payment plan?

3 A It's my understanding that he would prepare a  
4 draft of a letter of intent which would be reviewed by the  
5 company people.

6 Q A draft of a letter of intent on the pre-payment  
7 plan?

8 A It would be a draft of a letter of intent with  
9 reference to our recommendation in the Power Supply Study  
10 which in this instance was the pre-payment concept.

11 Q Didn't the negotiations proceed in August of  
12 1975 with the representation by Mr. Duncan to assure CE  
13 that the Beck proposal is acceptable to WCOE and we are here  
14 to get your response to it?

15 A Yes, sir.

16 Q And what was Ohio Edison's response to it?

17 A As I testified before, minimal.

18 Q Did Ohio Edison agree that it would sign a letter  
19 of intent to go forward on a joint study basis in the  
20 development of the pre-payment plan?

21 A They said, as I understand it they said that they  
22 would consider a draft of a memorandum of intent with refer-  
23 ence to what transpired at the meeting, primarily in regard  
24 to the pre-payment concept as recommended in the study.

25 Q Well, don't you reach a point where the parties



eb12

1 have a meeting of the minds and you have to get down to  
2 specifics?

3 A Yes, sir.

4 Q Do you know why Mr. Duncan has not prepared the  
5 letter of intent?

6 A No, sir, I do not.

7 Q That wasn't part of your discussions with the WCOE  
8 people that you just spoke about?

9 A No, sir. The discussion I just spoke about was --

10 Q I didn't ask you that.

11 Let me show you a document, Mr. Cheesman. This  
12 is Staff Exhibit No. 32, which is the attachment to  
13 Mr. Duncan's letter.

14 Turning to page 3 there's a handwritten notation  
15 on the bottom that says "Delete by OEC."

16 Do you recognize that handwriting?

17 A I believe it says delete by "OECO."

18 Q Yes.

19 A The handwriting is that of Mr. Mayben.

20 Q Thank you.

21 As to your agreement or understanding of what was  
22 to take place between you and Mr. Wilson after the August  
23 1975 meeting, did you communicate with Mr. Wilson after that  
24 meeting?

25 A Yes, sir.

eb13

- 1 Q In what form?
- 2 A I wrote him a letter asking him as to what the  
3 status was and when he planned on coming to Indianapolis.
- 4 Q Did he write you back?
- 5 A Yes, sir.
- 6 Q What did he say?
- 7 A Well, he had a completely different understanding  
8 of the meeting than what I did, and he did not commit him-  
9 self as to when he would come to Indianapolis.
- 10 Q Didn't he say that he felt no need to come to  
11 Indianapolis?
- 12 A I don't recall that specifically. However, if you  
13 have a document, an exhibit, I'd be glad to refer to it.
- 14 Q Wasn't it left in August of 1975 that Mr. Wilson  
15 would come if he found it necessary to come?
- 16 A No, sir.
- 17 Q Is that the way it was left after you got  
18 your letter from him in response to yours?
- 19 A After I got the letter from him in response to  
20 mine I got the indication that he wasn't coming.
- 21 Q Well, then you did get the indication that he  
22 wasn't coming?
- 23 A He didn't give me a time as to when he was going  
24 to be in the office so I would assume from that he was not  
25 coming.

eb14 1 Q Didn't he tell you in fact that he saw no need to  
2 come to Indianapolis because the only reason he reserved the  
3 right to do that was that if he checked and found out that  
4 the procedures used by you in the preparation of your study  
5 did not comport with Ohio Edison's that they would come out  
6 and verify that, but as far as the data is concerned that  
7 he didn't have to go to Indianapolis for it?

8 A You essentially asked me that question earlier  
9 and I beg your pardon, I would be glad to comment upon that --  
10 if you would provide me with a document that is an exhibit  
11 already in this session I would be glad to acknowledge it.

12 If you're asking me based on my recollection, I  
13 do not recall that; no, sir.

14 Q I show you Applicants' Exhibit No.170 and ask you  
15 if that's the letter you received from Mr. Wilson?

16 A The letter, which is three pages, is the letter  
17 that I received; yes, sir.

18 Q Thank you.

19 Mr. Cheesman, if WCOE came to Ohio Edison and asked  
20 to participate in generation that the company owned to a  
21 greater extent than the projected load of WCOE, and if, for  
22 purposes of example, we want to go back to the 500 and  
23 instead of another 500 let's just talk about 100 because I  
24 know you had difficulty with the 500. I think you said it  
25 was ridiculous even to assume that.

eb15

1           Let's make it 500 projected load and 100 in addi-  
2           tion to that which WCCE wanted to use for purposes of selling  
3           to somebody outside of the Ohio Edison area.

4           If Ohio Edison had already committed that capacity,  
5           that extra 100 megawatts for purposes of serving their retail  
6           customers and that was an inexpensive 100 megawatts, and Ohio  
7           Edison, in order to meet WCCE's request, had to go out and  
8           build or buy that additional 100 megawatts of capacity in  
9           order not to suffer a degradation on the Ohio Edison system  
10          reliability, wouldn't that represent a disadvantage to the  
11          company if what they went out to build or buy in its place  
12          was more expensive?

13          A       Well, that's a hypothetical situation which is  
14          based upon the fact that they are coming and asking for a  
15          considerable amount of excess capacity. So if I could say  
16          based upon the hypothesis that you've extended in your  
17          question then I would say that the company should at least  
18          look at it and analyze it and see if it will really and truly  
19          cause them some problems as far as their system operations  
20          are concerned and also as far as serving their other  
21          customers.

22          Q       Did WCCE ever ask Ohio Edison for capacity in  
23          excess of their own load?

24          A       As as part of the initial Power Supply Study or  
25          alternatives there were times in which excess capacity was

eb16 1 asked for, and also the example which I gave you earlier this  
2 afternoon is that the capacity is based upon the system peak  
3 plus reserves and at some time other than system peak, there  
4 is going to be excess capacity.

5 So in that context the excess capacity would also  
6 and should also be available by WCOE to another party.

7 So I think you have to define what you're talking  
8 about when you're talking about excess capacity; at what  
9 point in time or what period of time.

10 Q My question was: Did WCOE come to Ohio Edison  
11 at any point in the negotiations and say we want capacity  
12 in excess of our own load, a specific amount of capacity  
13 or a shift unit power purchase or any other arrangement?

14 MR. LESSY: Objection; asked and answered. I  
15 think it's the same question.

16 MR. STEVEN BERGER: I don't think I got an answer.  
17 Rather than have it struck as not responsive I just kept  
18 going.

19 CHAIRMAN RIGLER: You may answer.

20 THE WITNESS: Well, I give the same answer I  
21 gave before and that is a fact-- If you want to know  
22 specifically did WCOE or a representative of WCOE come to  
23 somebody in a responsible position with the company and say  
24 Hey, I need an extra 100 megawatts tomorrow for one week,  
25 then the answer to your question is No.

eb17

1           However, within the context of the study and with-  
2 in the context of the power supply alternatives which were  
3 looked at and analyzed, there were times and there would be  
4 times under normal system operation in which there would be  
5 excess capacity which should be available to WCOE.

6           BY MR. STEVEN BERGER:

7           Q       What's the basis for your saying at some point in  
8 time there would be excess capacity available to WCOE?

9           A       Because you do not have 12 months of peak in a  
10 year; you have one system peak one time a year.

11          Q       What's the present load of WCOE approximately?

12          A       Well, on page 2 of Section 2 of WCOE historical  
13 load data-- Strike that.

14                 There is a table in the report which summarizes  
15 the historical data, load data, of the WCOE.

16          Q       How much generation does WCOE presently have?

17          A       They have diesel generation at Newton Falls and  
18 Oberlin.

19          Q       How much?

20          A       I cannot recall. However, it is in the study.

21          Q       Less than 200 megawatts?

22          A       I would refer to the study for a specific refer-  
23 ence.

24          Q       How about your recollection?

25                 CHAIRMAN RIGLER: We've been over that earlier.

eb18

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MR. STEVEN BERGER: We haven't even touched upon the--

CHAIRMAN RIGLER: You represented to him at some point earlier that--

MR. STEVEN BERGER: I represented to him what the load was. I'm asking him now how much generation WCOE has.

BY MR. STEVEN BERGER:

Q Ten megawatts?

MR. LESSY: Mr. Berger, my view of the witness is he is looking through the study to get that figure. I think he ought to be given a reasonable opportunity to look for it, since it's a thick volume.

MR. STEVEN BERGER: Let the record reflect the witness is looking for a figure in order to respond to whether or not there is less than 200 megawatts of capacity owned presently by Newton Falls and --

THE WITNESS: No, sir, I'm looking for the load figure you asked me for in the previous question.

MR. STEVEN BERGER: That wasn't my latest question, and that's what I thought you were looking for.

BY MR. STEVEN BERGER:

Q Mr. Cheesman, can you give me your recollection of whether or not presently WCOE has less than 200 megawatts of self-generation?

MR. LESSY: Mr. Chairman, excuse me. I think the

eb19

1 witness is entitled to answer a question asked. He has indi-  
2 cated that he'd like to consult the study to get that figure  
3 and I think he ought to reasonably have the opportunity to  
4 do so before subsequent questions continue.

5 CHAIRMAN RIGLER: I agree, unless you're going to  
6 withdraw your question. You've been asking him rapid-fire  
7 questions, and he struggles to get one response for you by  
8 consulting his table and you've gone on to something else.  
9 Either withdraw it or let him find it.

10 MR. STEVEN BERGER: Let him find it.

11 MR. REYNOLDS: I would only observe Mr. Lessy  
12 on numerous occasions made the point that Counsel was en-  
13 titled to a response with respect to the witness' present  
14 independent recollection prior to the time that he consults  
15 his documents, and that point was made on numerous occasions  
16 with respect to witnesses that the Applicants called, who  
17 indicated they could not recall and made reference to docu-  
18 ments and they were cut off from doing so.

19 CHAIRMAN RIGLER: That's a very valid point, but  
20 it is not the point in issue right now. The point in issue  
21 right now is whether the witness can answer the previous  
22 question by consulting the table.

23 MR. LESSY: I think the record will show that he  
24 already has answered that he would like to consult his notes.  
25 He has done it twice. And if Mr. Reynolds had been listening



eb20

1 he's know it.

2 THE WITNESS: The load for each of the members for  
3 the study period 1975 to 1985 is shown in Table 3-1 toward  
4 the end of Section 3.

5 Following Table 3-2, WCOE monthly peak load fore-  
6 cast does show the loads by month of the WCOE composite  
7 or aggregate for the period 1975 to 1993 for each of the 12  
8 months.

9 Now these are projections.

10 Going through our projections for 1976 it seems  
11 like that the load as projected for the aggregate was 219,300  
12 Kw.

13 BY MR. STEVEN BERGER:

14 Q Now can you give me your recollection of how much  
15 self-generation members of WCOE have?

16 A According to my best recollection it is less than  
17 200 megawatts.

18 Q Is it less than 100?

19 A That I do not know, sir.

20 Q Is it less than 30?

21 CHAIRMAN RIGLER: Look, we're not here to attack  
22 the validity of the study. That was not the issue presented  
23 in direct. Let's not play games at this point. Give him  
24 the figures and ask your question.

25 BY MR. STEVEN BERGER:

eb21 1 Q Mr. Cheesman, are you prepared to go forward into  
2 phase two with Ohio Edison on behalf of WCOE in the develop-  
3 ment of the pre-payment plan?

4 A When I'm given the approval by our client, yes,  
5 sir.

6 Q And you haven't been given that approval?

7 A No, sir.

8 Q Are you waiting for that approval?

9 A Yes, sir.

10 Q Would they all have to agree?

11 A No, sir.

12 Q Have any of them agreed?

13 A To my knowledge, they have all agreed to it but  
14 this is information that has been given to me by the Steering  
15 Committee. I have not personally talked to each of the  
16 representatives of the municipal systems.

17 Q The Steering Committee told you that they've all  
18 agreed to it?

19 A They've agreed with the results of the Power Supply  
20 Study, yes.

21 Q Do they agree with going forward on the recommended  
22 plan?

23 A Well, I would assume if they agreed with that that  
24 they would have told us to start implementing phase two,  
25 and this they have not done. So on that basis I would

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draw the conclusion that they have not given full approval for proceeding with phase two even though they are in agreement with the concept and the results of the Power Supply Study.

3b

wbl 1

Q Do you recall at the August 1975 meeting  
2 Mayor Quirk raising the question of third-party wheeling  
3 and, in effect, asking Ohio Edison for a response? And  
4 rather than Ohio Edison responding you jumped in and you  
5 says that the prepayment plan really avoids the necessity  
6 for wheeling, or words to that effect.

7 A No, sir, I don't recall Mayor Quirk's comment.  
8 As I recall, Mayor Quirk had a question with  
9 reference to wheeling, as well as did one or two other  
10 people. And as I recall there was some discussion, a  
11 considerable amount of discussion primarily on the part of  
12 people from Ohio Edison with reference to trying to define  
13 and describe wheeling.

14 As far as my comment, I think I testified to  
15 that earlier.

16 MR. STEVEN BERGER: I have nothing further,  
17 your Honor.

18 MR. REYNOLDS: I have just one or two questions.

19 BY MR. REYNOLDS:

20 Q Mr. Cheasman, you indicated earlier that it was  
21 your understanding that there was an alternative power supply  
22 available to WCOE from the Federal project known as PASHY;  
23 is that correct?

24 A Yes, sir.

25 Q Do you have any idea how much power was available

wb2 1 from PASNY?

2 A At the time of the study I had the figure in  
3 my notes, but I don't recall the exact amount now, no.

4 Q If I indicate to you 30 Mw would that refresh  
5 your recollection?

6 A That sounds reasonable, yes, sir.

7 Q Do you know whether it was WCOE's intention to  
8 negotiate with PASNY for that 30 Mw?

9 A It's my understanding that if it proved to be a  
10 viable alternative as far as power supply they definitely  
11 would try to negotiate for it, yes, sir.

12 Q Have you ever heard of an organization called  
13 AMP-O, American Municipal Power - Ohio?

14 A Yes, sir.

15 Q Were you aware that during the time of your  
16 negotiation, and indeed at the present time, the AMP-Ohio  
17 organization was designated as the authorized bargaining  
18 agent for the State of Ohio with respect to the PASNY power?

19 A Yes, sir. And I'm also aware of the fact that  
20 the municipal members of WCOE are members of AMP-Ohio.

21 Q Are all of them?

22 A That I do not know.

23 Q Are you aware that only one bargaining agent  
24 can be designated from each state to negotiate with PASNY  
25 for PASNY power?

wb3

1 A No, sir, I was not aware of that.

2 Q Were you aware that AMP-Ohio had entered into  
3 an arrangement with the Municipal Light Plant of the  
4 City of Cleveland which committed 30 Mw of the PASNY power  
5 to the Municipal Electric Light Plant of the City of  
6 Cleveland?

7 MR. CHARNO: I'll object to that unless we have  
8 a time frame. I think it becomes significant in the context  
9 of this question.

10 BY MR. REYNOLDS:

11 Q In the time frame of the negotiations we've  
12 been talking about in your testimony.

13 MR. CHARNO: Is that 1974-75; is that what you're  
14 saying? October '74 through August '75?

15 MR. REYNOLDS: 1972 through 1975. I'll put that  
16 time frame on it.

17 MR. CHARNO: Ah, I see.

18 BY MR. REYNOLDS:

19 Q Within that period, 1972 to 1975.

20 A May I have the question again, please?

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

23 THE WITNESS: Within the time frame of 1972  
24 to 1975 I was not aware of the fact that AMP-Ohio had com-  
25 pleted and had signed a formal agreement for this power, PASNY

wb4 1 power, to the Municipal Light Department of the City of  
2 Cleveland. I understood they were negotiating this.

3 BY MR. REYNOLDS:

4 Q Mr. Lessy asked you a little earlier whether you  
5 could agree that WCOE representatives could have concluded  
6 that Ohio Edison would in fact consider specific wheeling  
7 proposals outside the scope of this study. And you indicated  
8 "No, sir, I do not agree."

9 Do you recall that?

10 A Yes, sir.

11 Q Were you aware at the end of the August 1975  
12 meeting that Mr. White of Ohio Edison informed Mr. Stout  
13 of WCOE that if WCOE came to Ohio Edison with a specific  
14 wheeling proposal that Ohio Edison would indeed consider  
15 that proposal outside the scope of the study?

16 MR. LESSY: Objection. I think the appropriate  
17 question is "Do you know whether such-and-such was said,"  
18 not that question. I think it is misleading to ask the  
19 question "Do you know," as Mr. Reynolds asked it.

20 CHAIRMAN RIGLER: Let me hear the question.

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

23 CHAIRMAN RIGLER: Rephrase it.

24 BY MR. REYNOLDS:

25 Q Mr. Cheesman, did you hear Mr. White, at the end

wb5 1 of the meeting of August 1975 state to Mr. Stout of WCOE  
2 that if Mr. Stout would come to Ohio Edison with a specific  
3 wheeling proposal that Ohio Edison would be willing to consider  
4 that proposal outside the scope of the study?

5 A I did not hear that statement made within the  
6 confines of what I would interpret as a regular meeting.

7 Q Did you hear that statement made at any time by  
8 Mr. White?

9 A No, sir.

10 Q And your basis of disagreement with respect to  
11 the earlier statement by Mr. Lessy was without knowledge  
12 of such a statement made by Mr. White; is that correct?

13 A That's correct.

14 MR. REYNOLDS: I don't have anything further.

15 MR. LESSY: Mr. Chairman, we would like if we  
16 could have ten minutes to look at redirect and also to look  
17 at the scope of Mr. Mayben's testimony.

18 CHAIRMAN RIGLER: All right.

19 (Recess)

20 CHAIRMAN RIGLER: Back on the record.

21 MR. LESSY: I have very brief redirect.

22 REDIRECT EXAMINATION

23 BY MR. LESSY:

24 Q With respect to NRC-32 that I've placed in front  
25 of you that Mr. Berger questioned you about, do you know

XZXXZ



wb6

1 upon whose copy of that letter Mr. Maybe wrote his notes?

2 A As I recall, when Mr. Maybe got to the meeting  
3 he found out that he had not brought with him a copy of  
4 this outline, and he reached over and grabbed a copy from  
5 Mr. Duncan. So I believe the copy he was referring to and  
6 making notes on was actually the copy he obtained from  
7 Mr. Duncan.

8 Q Have you talked with Mr. Stout of Cuyahoga Falls  
9 subsequent to the August 1975 meeting between WOOD and Ohio  
10 Edison?

11 A Yes, sir, I have.

12 Q In those conversations, or conversation, did  
13 Mr. Stout mention to you that John White had told him that  
14 he was willing to discuss the specific request for third  
15 party wheeling?

16 A No, sir, he did not.

17 MR. LESSY: No further questions.

18 CHAIRMAN RIGLER: Justice?

19 MR. CHARNO: Nothing.

20 CHAIRMAN RIGLER: The City?

21 MR. HJELMFELT: Nothing.

22 CHAIRMAN RIGLER: Thank you very much,

23 Mr. Cheesman.

24 THE WITNESS: Thank you, sir.

25

(Witness excused)

wb7

1 MR. LESSY: Mr. Chairman, we have elected not  
2 to call Mr. Mayben, and we'll go right on with Mr. Besse.

3 CHAIRMAN RIGLER: All right. Fine.

4 MR. REYNOLDS: Mr. Chairman, Applicants at this  
5 time have arranged to have Mr. Besse available.

6 CHAIRMAN RIGLER: All right.

7 MR. REYNOLDS: He's here. And we call Mr. Besse.

8 Whereupon,

9 RALPH M. BESSE

10 was called as a witness for and on behalf of the Applicants  
11 and, having been first duly sworn, was examined and testified  
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. REYNOLDS:

15 Q Would you state your name and address, please?

16 A Ralph M. Besse, 2701 Ashley Road, Shaker Heights,  
17 Ohio.

18 Q Mr. Besse, what is your present occupation?

19 A I'm a partner in the law firm of Squire, Sanders  
20 and Dempsey in Cleveland, Ohio.

21 Q And during the period 1960 to 1967 were you the  
22 president of Cleveland Electric Illuminating Company?

23 A Yes, sir.

24 MR. HJELMFELT: The City would object to  
25 Mr. Besse, a partner in Squire, Sanders and Dempsey, testifying

wb8

1 against its former client, the City of Cleveland.

2 CHAIRMAN RIGLER: Overruled.

3 BY MR. REYNOLDS:

4 Q Are you at the present time employed in any  
5 capacity by the Cleveland Electric Illuminating Company?

6 A I'm a director.

7 Q All right.

8 Let me ask you if you will, Mr. Basse, to focus  
9 on the time period of the year 1966 for a minute.

10 Do you know who a Mr. DeMalto was who was  
11 associated with the City of Cleveland?

12 A Yes, I do.

13 Q Will you please indicate for us who Mr. DeMalto  
14 was and what position he held at the time talked about, 1966?

15 A He was the man in the City's Utility Department  
16 who was responsible for the Municipal Light Plant. I think  
17 he was the Commissioner of the Municipal Light Plant, and  
18 reported to the Director of Utilities in the Mayor's cabinet.

19 Q Do you know who the Director of Utilities was at  
20 that time? Would it have been Mr. Knuth?

21 A Well I would have thought Knuth was the Director  
22 of Finance, but....

23 Q All right.

24 Do you have any recollection who the Director of  
25 Utilities might have been?

wb9 1 A No, I don't. I can't recall.

2 Q Now do you have any recollection, Mr. Besse, of  
3 meeting with Mr. DeMelto of the City of Cleveland at any  
4 time in the year 1966?

5 A No, I do not.

6 Q What about a recollection with respect to any  
7 meetings with Director Knuth during that time period?

8 A Yes. I think I had some meetings which Mr. Knuth  
9 at least attended in 1966. They had nothing to do with the  
10 Illuminating Company, however.

11 Q Could you tell us just generally what the nature  
12 of those meetings were?

13 A Yes. We had some riots in Cleveland in the  
14 summer of 1966, in July. And very shortly after the occurrence  
15 of those riots Mayor Locher asked me to head a civic committee  
16 which became known as the Intercity Action Committee, to do  
17 what we could to prevent further riots in the city.

18 It's my recollection that Mr. Knuth came to some  
19 of the meetings of those committee, perhaps as the Mayor's  
20 representative.

21 Q Mr. Besse, do you have any recollection of  
22 meeting with Director Knuth and with Mr. DeMelto on July 19th,  
23 1966 to discuss the matter of a possible interconnection  
24 between the Cleveland Electric Illuminating Company and the  
25 Municipal Electric Light Plant?

wb10 1 A No, I do not.

2 Q If such a meeting took place during the time that  
3 I indicated, would you believe that you would recall it?

4 A Well I would think so.

5 Q Will you explain to us why it is you believe  
6 you would have such a recollection?

7 A Because that was just a few day after I had  
8 written a letter to the Mayor of Cleveland suggesting that we  
9 negotiate in connection with the Municipal Light Plant.

10 Q Let me show you what is Department of Justice  
11 Exhibit 299. It's a letter from you to Mayor Locher dated  
12 July 14th, 1966.

13 I ask you if that's the letter that you have  
14 reference to?

15 (Handing document to the witness)

16 A Yes. This is apparently a copy of it.

17 Q Did you ever receive a response to that letter,  
18 Mr. Besse?

19 A Not directly.

20 Q Did you ever receive any indirect response?

21 A Well I was told that the Mayor had rejected  
22 this.

23 Q And who told you that?

24 A Well I have difficulty remembering that.

25 I presume it would have been Mr. Howley, who was the person

.1  
1 chiefly responsible for contacts with people at City Hall.  
2 It might have been in the newspapers.

3 Q Let me show you what has been marked as  
4 Department of Justice Exhibit 621, which is a memorandum by  
5 Mr. DeMelto to a Mr. Andrew Sarisky, which reports on a  
6 meeting on July 19th which you attended.

7 (Handing document to the witness)

8 Does that refresh your recollection that such a  
9 meeting took place which you attended on July 19th, 1966?

10 A No.

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mpbl 1 Q Now, Mr. Besse, did you, at my request, examine  
2 your desk diary for the year 1966 to determine whether you  
3 attended a meeting during the month of July at which Mr.  
4 DeMelto and Director Knuth were present?

5 A Yes, I did.

6 Q And in your examination of that diary, did that  
7 confirm your recollection that there was no such meeting  
8 which you attended in that month?

9 A There was no entry in the diary of any such meeting.

10 Q If such a meeting had taken place would you have  
11 expected an entry to appear in the diary?

12 A Well, that was the procedure that I had with my  
13 secretaries. They made most of the entries and they were  
14 instructed to make a record of all the meetings I had with  
15 outside people and many with inside people.

16 MR. REYNOLDS: I have nothing further at this time.  
17 Mr. Chairman.

18 MR. HJELMFELT: The City would like an opportunity  
19 to examine the diary for 1966 prior to commencing cross-  
20 examination.

21 CHAIRMAN RIGLER: Where is the diary book?

22 MR. REYNOLDS: The diary was just returned to me  
23 by the Department of Justice. The xeroxed copies have been  
24 distributed, pages of the diary.

25 CHAIRMAN RIGLER: Give it to Mr. Hjelmfelt while

mpb2

1 the Department is conducting its examination.

2 MR. CHARNO: The Department is not intending to  
3 conduct any examination based upon the direct.

4 CHAIRMAN RIGLER: I'll give you a minute, Mr.  
5 Hjelmfelt. This is a situation where I think the Board is  
6 fully justified in requiring coordination of all the  
7 parties. Justice, Mr. Melvin Berger has spent a couple of  
8 hours looking at diary entries for the July '66 period and  
9 I think it would be proper to require other parties to  
10 coordinate through him.

11 MR. CHARNO: Can we confer with Mr. Hjelmfelt?

12 CHAIRMAN RIGLER: You certainly may.

13 (Pause.)

14 CHAIRMAN RIGLER: Mr. Lessy, I take it the Staff  
15 will have no examination?

16 MR. LESSY: That's correct.

17 (Pause.)

18 CHAIRMAN RIGLER: Back on the record.

19 Mr. Hjelmfelt?

20 MR. HJELMFELT: The City objects to the ruling  
21 of the Board and without any way intending to waive its  
22 objection to conduct such cross-examination as it's able  
23 to, based upon its review of the three months of diary pages  
24 that were handed out --

25 CHAIRMAN RIGLER: May I see the diary?



ppb3

(Document handed to the Chairman.)

1  
2 CHAIRMAN RIGLER: The Board will adhere to its  
3 ruling.

4 CROSS-EXAMINATION

5 BY MR. BJERLMFELT:

6 Q Mr. Besse, At what point in time was the diary  
7 book filled out?

8 A It would have been filled out when we learned  
9 of any appointment concurrent with the situation, sometimes  
10 it was far in advance of a meeting, other times it was at the  
11 time of the meeting.

12 Q How many different people would participate in  
13 filling out the diary book?

14 A Three, largely my secretaries, but once in a while  
15 I would make an entry myself.

16 Q Did you undertake to check to see if your secre-  
17 taries had filled it out completely on each occasion?

18 A No. I would know if they didn't because I would  
19 run into conflicts.

20 Q That's only if they made an error in scheduling  
21 something at a time when something else had been scheduled,  
22 is that right?

23 A Yes.

24 Q So that if you had an unscheduled time period and  
25 someone came in and they didn't fill it out, that situation

mpb4  
1 would not have arisen, would it?

2 A Well, it would not be very serious if there were  
3 no conflict but they were instructed to make records of such  
4 things.

5 Q Now, on the left hand side of your diary book  
6 where there are the hours given in half hour increments -- is  
7 that correct?

8 Would you like to see the book while I'm questioning  
9 you?

10 (Handing document to the witness.)

11 A Yes, they are half hour increments.

12 Q And in some situations there is a line drawn on  
13 the left hand side. Could you tell me what that line is  
14 indicating?

15 A You mean this diagonal line down the page?

16 Q No, on the left hand side. For example, looking  
17 at June 1st, there is a line, or brackets from 9:00 to 10:00,  
18 right?

19 A Yes, that would be an estimated time of a meeting.

20 Q And those would be put on in advance of a meeting,  
21 is that correct?

22 A Normally that would be true, yes.

23 Q And if the meeting didn't take that long, would  
24 that line be erased to show the appropriate duration?

25 A No, I would think not.

mpb5

1 Q Incidentally, were entries ever erased?

2 A Yes, meetings were changed.

3 Q Now, on each occasion when a change was made was  
4 the diary book corrected to show that change?

5 A Sometimes meetings were cancelled and the only  
6 correction you would need would be an erasure.

7 If a meeting were changed in order to make way for  
8 some prior meeting, you would erase the first one, usually  
9 reschedule it at some other time and then insert whatever  
10 the new meeting was.

11 Q Were those changes always made?

12 A Oh, probably not. That is, we were really keeping  
13 this to remind me of my appointments and to avoid conflicts  
14 and if something happened and there were no consequences, I  
15 suspect there would have been no corrections.

16 Q In other words, the purpose of this book was to  
17 make sure you were at the right place at the right time and  
18 not necessarily to preserve a record of all your meetings, is  
19 that correct?

20 A For people outside the Company, a purpose was to  
21 preserve a record of meetings also. The majority of meetings  
22 that I had that did not get into this book would have been  
23 quickies with people inside the Company.

24 Q What do the diagonal lines across the page mean?

25 A Normally that meant to reserve the day for something.

mpb6

1 If I were going out of town my secretary would draw a diagonal  
2 line across the page to prevent scheduling meetings at any  
3 time on that date.

4 Q Would you look at the entries for, for example,  
5 Wednesday, August 10.

6 A Yes.

7 Q Am I correct that on that day you were in Stratford,  
8 Canada?

9 A Yes, I was either there or on my way there.

10 Q Okay.

11 What does the entry showing from 2:00 to 3:00,  
12 KHR Coordination, or Coord.?

13 A Those are Karl E. Rudolph's initials and that would  
14 have been a meeting scheduled, an internal meeting scheduled  
15 before we knew about the trip to Stratford.

16 Q And was that meeting, then, cancelled?

17 A Yes.

18 Q Does that show on your date book?

19 A That it was cancelled?

20 Q Yes.

21 A It shows in the sense that I was in Stratford,  
22 Canada all day, or on my way there, and therefore could not  
23 have had the meeting with Karl.

24 Q Either that or your trip to Stratford was cancelled?

25 A That's a remote possibility.

mpb7

1 Q On June 28 can you say now that the entries on  
2 that page are the only meetings you had on that day?

3 A No, I can't.

4 Q So the same would be true with respect to any of  
5 these pages?

6 A Yes, it would because, as I said earlier, people  
7 within the organization dropped in for short meetings, some-  
8 times lunch. And if I was free and they had a priority kind  
9 of action I would have talked to them, of course, but the  
10 rule was if anybody dropped in from the outside for meetings  
11 the secretaries were supposed to record it.

12 Q Looking at July 19, 1966, what is the earliest  
13 entry in your book?

14 A There was an 11:00 entry that was erased apparent-  
15 ly because the meeting was postponed until the afternoon.  
16 There was a 12:15 -- well, 12:15 is the earliest entry  
17 remaining.

18 Do you want me to describe it or just the time?

19 Q No, that's fine.

20 MR. EJELFELT: No other questions of this witness.

21 REDIRECT EXAMINATION

22 BY MR. REYNOLDS:

23 Q Let me ask you just to look at your entry for  
24 July 19. You indicate that the initial entry had been erased  
25 and the meeting had been rescheduled to the afternoon. Are

mpb8 1 you able to ascertain from your original diary what meeting  
2 it is that we are talking about in the afternoon?

3 A Yes, it was a meeting with representatives of the  
4 Church Federation of Cleveland.

5 Q And does that -- and that shows through in the  
6 portion that has been erased, is that correct?

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1           A       Yes, it does. I had to have a magnifying glass  
2 in order for it to be apparent what it was.

3           Q       And is it your recollection that no other  
4 meeting was slotted into that time frame on July 19th?

5           A       Well I have no recollection of any other meeting.

6           Q       Mr. Besse, would you normally have met with  
7 Mr. DeMalto on business matters?

8           A       No.

9           Q       Why is that?

10          A       Well we had people at lower echelons in the organi-  
11 zation who meet with--

12               MR. HJELMFELT: I object, and would move to  
13 strike the answer given. This wasn't covered on cross.

14               MR. CHARNO: I would join in that objection.

15               CHAIRMAN RIGLER: Sustained.

16               MR. REYNOLDS: The cross-examination raised the  
17 suggestion, or tried to raise the suggestion that just be-  
18 cause we have a blank space in the time frame of the entry  
19 that that does not indicate that there was no such meeting.  
20 It seems to me that this question goes, again, directly to  
21 the erased portion on July 19th and Mr. Besse's statement  
22 that he has no recollection of a meeting then.

23               I think his testimony relative to the basis for  
24 his recollection, why he's so positive with respect to this  
25 matter, I think is directly relevant to the cross-examination

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1 and the suggestion I believe Mr. Hjelmfelt was trying to  
2 raise by his cross-examination.

3 I don't intend to probe it any further or go  
4 with it any further than the one question.

5 CHAIRMAN RIGLER: The objection is sustained.

6 MR. CHARNO: Did the Chairman rule on the  
7 motion to strike the portion of the witness' answer that  
8 was completed prior to the objection?

9 CHAIRMAN RIGLER: Granted.

10 MR. REYNOLDS: I don't have anything further.

11 CHAIRMAN RIGLER: Thank you, Mr. Bosue.

12 (Witness excused)

13 CHAIRMAN RIGLER: My suggestion is we reconvene  
14 tomorrow morning at nine-thirty, rather than take the  
15 argument on the Staff's last documents now.

16 MR. HJELMFELT: Can we get some indication of  
17 what will be going on Friday?

18 CHAIRMAN RIGLER: All right.

19 MR. REYNOLDS: Well, at the moment I don't know  
20 that there has been any determination on the Applicant's  
21 part as to what might be going on. There are matters that  
22 obviously we want to consider addressing, specifically the  
23 testimony that we heard today, and the extent to which response  
24 to that testimony is necessary.

25 I don't have any idea at this juncture whether we



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1 could schedule it Friday, or we may have to schedule it  
2 some time next week.

3 In addition, the matter of the Buckeye allegation  
4 which is going to require some further consideration. And  
5 I can't determine that.

6 I would think at this point that at most Friday,  
7 from what I can tell now, would be involved with whatever  
8 additional documentation we haven't finished up on Thursday,  
9 if that's necessary.

10 I would ask the board that we proceed directly  
11 with the examination of the witnesses that are scheduled  
12 tomorrow. They're on very tight schedules, and I really am  
13 afraid if we start doing the documents first we're going to  
14 run into some kind of difficulty in completing the schedule  
15 so that they can meet their other commitments.

16 CHAIRMAN RIGLER: Is the Staff agreeable to  
17 that?

18 MR. LESSY: Yes, sir. My only request is,  
19 if there are going to be witnesses of Applicants on Friday  
20 that they let us know first thing tomorrow morning. For  
21 example, we may want to have Mr. Mayben here. He's available  
22 to assist in cross-examination of an expert. Say, if  
23 Mr. Firestone comes on surrebuttal and Mr. Mayben is available  
24 we would like to know so we can let him know first thing  
25 tomorrow morning, if that's possible.

wb4

1 CHAIRMAN RIGLER: All right.

2 MR. LESSY: We'll put our documents in at the  
3 convenience of the parties and the Board.

4 MR. HJELMFELT: Is it safe to assume, then,  
5 that if I find it necessary to call a witness in rebuttal  
6 to any additional materials that Applicants put on, I would  
7 not be expected to do that on Friday?

8 CHAIRMAN RIGLER: Well, let's see: You'd be refer-  
9 ring to Mr. Gaul?

10 MR. HJELMFELT: Yes, sir.

11 CHAIRMAN RIGLER: I think it would be difficult.  
12 Because we're not going to complete Mr. Gaul until tomorrow  
13 afternoon. I think logistically it simply would not work.

14 MR. STEVEN BERGER: Mr. Chairman, I was led to  
15 believe that there's a possibility of conflict with the  
16 Board in the scheduling of next week.

17 MR. LESSY: Perhaps we ought to be off the record  
18 if we're talking about scheduling.

19 CHAIRMAN RIGLER: Off the record.

20 (Discussion off the record)

21 CHAIRMAN RIGLER: On the record.

22 We'll reconvene at nine-thirty tomorrow.

23 (Whereupon the hearing in the above-entitled  
24 matter was recessed, to reconvene at 9:30 a.m.,  
25 Thursday, 1 July 1976.)