

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING CO.

Docket Nos.

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

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

and

CLEVELAND ELECTRIC ILLUMINATING
CO. et al.

(Derry Nuclear Power Plants, Units
1 & 2)

50-440A
50-441A

Place - Silver Spring, Maryland

Date - Wednesday, May 25, 1976

Pages 10,722-
10,781

THIS DOCUMENT CONTAINS
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UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

Petitioner Name	Docket No.
TRIPLEX ELECTRIC COMPANY and CLEVELAND ELECTRIC ILLUMINATING CO.	50-348A
(Davis-Besse Nuclear Power Station, Units 1, 2 and 3)	50-500A
	50-501A
and	
CLEVELAND ELECTRIC ILLUMINATING CO. et al.	50-440A
	50-441A
(Davis-Besse Nuclear Power Station, Units 1 & 2)	

First Floor Hearing Room
 7015 Eastern Avenue
 Silver Spring, Maryland

Wednesday, May 26, 1976

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

WITNES:

DENNIS RIGLER, Chairman

JOHN SENCEN, Member (Absent.)

IVAN SMITH, Member

ALLEGATIONS:

(As heretofore noted.)

CONFIDENTIAL

	<u>Volts</u>
<u>10,783</u>	<u>Wire</u>
10,783	
(Total)	

<u>Substance</u>	<u>For Identification</u>	<u>In Evidence</u>
Applicants (CFR) 161 (Signed prepared by Edward Hauser)	10,783	10,759

MEMORANDUM

TO : [Illegible]

FROM : [Illegible]

SUBJECT : [Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

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1 This was one of a number of investigations or hear-
2 ings of the utilities committee of council concerning the
3 municipal light plant. And they aren't see precisely in the
4 framing of issues. But they were exploring the physical con-
5 dition of the municipal light plant, the financial condition,
6 service to the customers of the municipal light plant.

7 Q Now, could I direct your attention now to Applicant's
8 Exhibit 134.

9 A All right.

10 Q From the data contained in that exhibit, could
11 one conclude that the municipal electric light plant had
12 sufficient installed reserves to be sufficient for reliable
13 operation?

14 A The municipal light plant has over 200 megawatts
15 of installed capacity with a load of around 100 megawatts.
16 On that basis they have sufficient installed capacity
17 that if operable could serve their own load reliably.

18 Q From the data contained in Applicant's Exhibit 134
19 would you conclude that that capacity is fully operable?

20 A It indicates to the contrary.

21 Q Now you aware of the data in Applicant's Exhibit
22 134 as it became available to CEI?

23 A Yes.

24 Q Mr. Hauser, we are handing you page CEI 23 and 24
25 of your Exhibit 135, which were the answers to the 20 questions

Q In the Perry proceeding, did I would direct your attention
 to the fact that the testimony that was taken under the hearing
 on the matter of the Perry proceeding specifically the witnesses which
 are in the Perry proceeding from the testimony that they in
 the Perry proceeding case involving check numbers 27631, 27633,
 and 27713 that no firm power is needed. The installed
 reserves are sufficient for reliable operation.

Q First let me ask you if these answers were sub-
 mitted in March of 1973.

A I don't know, but if you say they were, I will accept
 that.

Q Was there any reason at that time that you did not
 bring to the department's attention the existence of the
 data contained in Applicant's Exhibit 134?

MR. CORMIER: Is the representation made, Mr.
 Adams, that you asked for it? I object.

THE WITNESS: Overruled.

MR. CORMIER: Is there any reason? No.

MR. CORMIER:

Q Do you think the data contained in Applicant's
 Exhibit 134 has any impact upon the conclusion that the
 city's installed reserves are sufficient for reliable
 operation and that no firm power is needed by the city?

A I don't know, I would have the question read?

THE WITNESS: Yes, the reporter read the record, as

3411 1 QRS WYNESS: No.

2 BY MR. CHIRNO:

3 Q Is her no impact on that conclusion?

4 A No.

5 Q So what you would say, then, regardless of the data
6 contained in Applicant's Exhibit 134, that the city did not need
7 firm power and that their reserves were sufficient for
8 reliable operation?

9 MR. SUCHMANN: I object to that question.

10 MR. BRINCLOS: I object.

11 MR. SUCHMANN: The question was installed
12 reserves, which was a different thing. He has changed from
13 installed reserves to reserves and that is a big shift in this
14 question.

15 CHAIRMAN NIGLER: Do you have a response or do you
16 want to rephrase it?

17 MR. CHIRNO: I will withdraw the question.

18 BY MR. CHIRNO:

19 Q Would it be your testimony that the only factor
20 bearing upon the need for firm power is installed reserves
21 and that the availability of actual reserves is immaterial
22 to the need for firm power?

23 A There would be a number of factors involved. Again,
24 installed reserves of the municipal system are and have been
25 for a long time, sufficient to meet the load of its customers

1 restrooms were sufficient?

2 A. That and also the position of the representatives
3 of the petrological light plant before the Federal Power
4 Commission.

5 Q. Could you give us a reference to the second ground
6 on pages FBI-23 and 24.

7 A. The transcript -- I don't think we have the
8 transcript here, but Mr. Kinchee's testimony before the
9 Federal Power Commission, which I think -- I mean it was filed
10 in witness Iowa and I think he was cross-examined in the
11 hearings during April of 1972.

12 MR. CHAMBER: I move to strike as nonresponsive.
13 I specifically requested the reference to his second ground
14 on pages FBI-23 and 24.

15 CHAIRMAN RIGLER: Granted.

16 MR. BUCHMANN: Could I please have the question
17 back?

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

20 MR. CHAMBER: I know you have ruled and I don't
21 want to argue something you have ruled on, but that was
22 precisely what he was doing.

23 CHAIRMAN RIGLER: Let me hear his answer.

24 MR. BUCHMANN: His second was the FPC by the City
25 of Cleveland. He asked for references to that and then we

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1 Q If you were aware that the City's installed
2 reserves were adequate or, if you were of that opinion,
3 is it correct to assume that you felt no obligation to
4 point this fact out in your answer to this question?

5 A MR. BUSHNELL: I object to this kind of question,
6 if your Honor please.

7 Q If the question isn't asked, I don't think we have
8 any obligation to answer it.

9 CHAIRMAN HENNER: Let us hear the question.

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

12 CHAIRMAN HENNER: Overruled.

13 MR. REYNOLDS: Could I, for clarification,
14 ask Mr. Chamo state for the record which question
15 he is referring to?

16 MR. CHAMO: I'm referring to his answer which
17 discusses --

18 MR. REYNOLDS: Answer to what?

19 MR. CHAMO: Pardon me, Mr. Reynolds.
20 I'm referring to his answer which discusses the fact that
21 no firm power is needed, because installed reserves are
22 sufficient for reliable operation, in response to Question
23 17.

24 MR. REYNOLDS: Of the Perry 1 and 2, 20 questions?

25 MR. CHAMO: That is correct.

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higher than I would have thought.

Q All, yes; when we were talking about the arrangements of power that had been suggested by the City of Cleveland, you indicated that one of the reasons you didn't consider that as all is because the City was taking power from you for the entire period.

A They wouldn't be in a position to exchange any power to you.

Q I didn't recall my testimony but --

A That was page 10, 294. I think we can get that for you.

Q Do you have a copy there?

A Yes, I have it.

MR. WATSON: I believe he interrupted in his testimony to give him a page reference. If we can get the question back, he will continue his answer.

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

THE WITNESS: It is still my testimony that they would not be able to provide power to us during that period.

BY MR. CHAMBER:

Q But the basis for that testimony would be because they were taking power from you for the entire period, would it?

1 over nine days from June 22 to July 17

2 Q. Yes.

3 Q. So, during that period, the City was not purchasing
4 power from OSI, is that correct?

5 A. That is correct.

6 Q. So, during that period they were not taking
7 power from you?

8 MR. WYNOLDS: Asked and answered.

9 MR. CHAFFO: I will withdraw the question.

10 BY MR. CHAFFO:

11 Q. In view of that specific single period, how could
12 it be your testimony that they were taking power from you for
13 the period of the entire strike or the entire period of
14 the strike.

15 A. We were providing power to the municipal
16 system when they requested it during the entire period of
17 the strike, except for those days in July when they
18 requested it, and we said, no, we will not provide it during
19 that period.

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Q Now, is it your testimony that you are saying that the city was taking power from you for the entire period and that you were willing to supply power also they called you for energy for that period during July?

A This is correct. Is it was true outside of the period of the strike.

Q How would your willingness to supply power upon demand affect the city's ability to exchange power with you?

MR. REYNOLDS: Let us hear that question back again.

MR. CHASE: I will withdraw that question.

BY MR. CHASE:

Q You testified yesterday that one of the reasons the city could not exchange power with you is because they were a net taker from you. Now if taking power from you were a net taker that you were willing to supply it and not that they were actually receiving power, what effect does that have on the city's ability to exchange?

A That would be a problem in joining those up.

Q Their ability to supply power, of course, was dependent on their capacity to generate power. And that would have been a net taker unless they were taking power from you.

Q Is it your testimony that they were unable to generate power during the period of the strike?

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1 A. No. They again, as exhibit 134 shows, were
2 generally power to carry out times all of their load and at
3 about at least part of their load.

4 Q. Mr. Huzar, you indicated that you were required
5 to make the reports which underlie Applicant's 134 to the
6 Federal Power Commission.

7 A. Yes.

8 Q. Can you tell us where that requirement
9 might be found?

10 A. I think it is in the order of May 30, 1972. If
11 not, it is in the earlier May order. It is in one of the two
12 May orders.

13 Q. Can you tell us the duration of that requirement?

14 A. My understanding is that we are still required to
15 file these reports and filed one on May 11, which is also an
16 exhibit.

17 Q. Could we whip now to Applicant's Exhibit 139.
18 Is there any reason that Exhibit 139 doesn't cover the period
19 from February, 1970, to January, 1971?

20 A. Yes. Because we asked that it be done for a five-
21 year period.

22 Q. Did CEI maintain records of the length of time
23 involved in effecting a load transfer?

24 A. Yes.

25 Q. Did FSEP's records agree with CEI records?

Q: I don't always, no. The Exhibit 150 is taken from
 the report.

A: Would you conclude from examining Applicant's
 Exhibit 150 that the impact from the outages of load transfer
 was insignificant compared to the impact of outages due to
 outages in ILL's system?

A: For the most part the outages from load transfer
 switching or either connect or disconnect were in the nature
 of a minute, five or six seconds. On the first page
 we talked yesterday, Exhibit 150 was an outage of a feeder
 which reports indicated that no outages were affected.
 There were also other places in the report that outages
 for various other than load transfer service were in
 terms of a minute.

Q: I'm not sure whether your answer is an
 affirmative or a negative.

A: I'll say again.

A: Would you conclude from examining Applicant's
 Exhibit 150 that the impact of the outages from load transfer
 was insignificant compared to the impact of outages due to
 outages other than load transfer?

A: I suppose you could conclude that. I don't
 think it's really correct to be insignificant.

Q: Would your conclusion be a reason for the submission
 of this exhibit?

1 MR. REYNOLDS: What conclusion?

2 MR. CHASE: The conclusion he just supposed we
3 would make.

4 MR. REYNOLDS: What he doesn't consider any
5 charge to be insignificant.

6 MR. CHASE: Would you read back the last answer,
7 please.

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

10 MR. REYNOLDS: I think there was more than one
11 conclusion in the answer and I was asking for clarification
12 for you to specify the conclusion.

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

15 MR. REYNOLDS: I'm asking for clarification.

16 MR. CHASE: Well, I have an objection. If
17 your Honor please, I don't think it is proper to ask the
18 witness what the reason is for the submission of an exhibit.
19 This was not offered in this witness' direct testimony. It is
20 proper to ask him why the exhibit was prepared, but why Mr.
21 Reynolds loved it into evidence seems to be a question that
22 should be addressed to Mr. Reynolds.

23 CHIEF CLERK: I agree with that objection.

24 BY MR. CHASE:

25 MR. Chase, could you indicate to us why if that

1 request so I don't know if there were any outages omitted.

2 Q. WOULD YOU KNOW IF YOU WERE OF ANY OMISSIONS?

3 A. I DON'T KNOW. NO, I'D NOT.

4 Q. WOULD YOU KNOW?

5 A. WOULD IT BE YOUR TESTIMONY THAT IF THERE WERE
6 omissions, that by virtue of the instructions you gave for the
7 preparation of this exhibit, those would be inadvertent
8 omissions rather than intentional?

9 A. No. As I say, I don't know whether there were
10 omissions. I asked that utilizing the records provided by
11 SEBE to CEI, that they analyze those records to determine
12 what the length of time that was involved in -- length of
13 time was that was involved in effecting load transfer service.

14 Q. Let me try again, Mr. Hauser. Apparently I'm
15 not asking you'd agree. If there were outages omitted and
16 going from the City of Cleveland's documents listing outages
17 to Applicant's Exhibit 159 listing outages, would it be your
18 recollection that that omission was inadvertent rather than
19 intentional?

20 A. I couldn't verify either way because my request
21 was to examine and analyze the city's records to verify
22 or disapprove my personal knowledge that the length of time that
23 it took to effect a load transfer service was a short period
24 of time.

25 Q. Well, do you feel that omission of --

1 CHAIRMAN BROWER: Now a minute, now. What
 2 would be the purpose of this if this were the
 3 only purpose, it would not be to be the critical detailed
 4 length of time to affect the load transfer.

5 THE WITNESS: I agree with that.

6 CHAIRMAN BROWER: There must have been some further
 7 purpose.

8 THE WITNESS: I had no further purpose when I
 9 said that it is prepared.

10 CHAIRMAN BROWER: When why is all of the information
 11 in here relating to outages on the HPIV system that didn't
 12 require load transfer?

13 THE WITNESS: I would have to ask the people
 14 that prepared this for me, but the purpose was to determine
 15 from their records whether my personal knowledge was accurate.

16 BY MR. CHURCH:

17 Q Would it be possible to determine whether your
 18 personal knowledge was accurate if outages were omitted?
 19 A Yes.

20 MR. CHURCH: Thank you.

21 MR. SUGARMAN: Is there suggestion that there is
 22 any omission of data with respect to the load transfers?

23 MR. CHURCH: I'm not in a position to say because
 24 I haven't been able to examine all of the data underlying this
 25 matter. I'm not sure we have received all of it yet.

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1 MR. BUCHHEIM: When I object to the question.
2 If something has happened about which we don't know anything
3 about, would something be possible, I object to that type of
4 question.

5 MR. BUCHHEIM: I thought we furnished all of the
6 backup. I object to the question unless it's clear that
7 the question contemplated outages as a result of the load
8 transfer exchange. As opposed to some other outages.

9 CHAIRMAN MILLER: Do you have information at this
10 point or reason to believe that the summarization of outages
11 is less than complete?

12 MR. CHERRY: Very definitely. I think the Applicant
13 exhibit --

14 CHAIRMAN MILLER: Then the objections are over-
15 ruled.

16 MR. BUCHHEIM: Not complete as to the load transfer.

17 CHAIRMAN MILLER: That is irrelevant. If the
18 Applicant has obligations with respect to the information
19 presented he's entitled to prove each and every column and
20 want for further evidence. The objections are overruled.

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

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and
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27

Q 1: Is it your testimony that -- is it then
your testimony that it is not possible to determine from the
reports the number of people who were affected by these
load transfers?

MR. PROBERT: If any, I suppose.

MR. NICHOLS: Now even in those instances
where there is a line

MR. CHARNO: That is correct.

MR. PROBERT: If there were numbers in the
municipal report, I assume that they would have been
placed there.

Since there are no numbers, I would guess
there weren't.

The people who prepared this --

BY MR. CHARNO:

Q 1: If we -- let me ask -- would a specific load
transfer point affect the same number of customers every
time it was activated and deactivated or -- pardon me --
deactivated and activated?

A 1: Not necessarily.

Q 2: Doesn't it affect an entire segment of the
MID system?

A 1: Not necessarily. Again, this would -- load
transfer) transfer, is a simple example, we cut over a

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in view of a transfer, does the one or the other or both of them
 and file in with a municipal engineer or utility.

That's only a substitution of 1918 from which
 distribution lines go.

So it could depend upon what distribution
 lines of 1918 are carrying what customers at the time of the
 load transfer.

Q Don't that the case with respect to a specific
 distribution for every load transfer?

A That's the case distribution lines serve the
 same customers for each load transfer?

A Not necessarily. Again the municipal system
 within its substation can serve customers from different
 lines.

Q So you have any reason to believe that that was
 done?

A I don't know.

Q Would it be indicative that that was not done, if
 we examined applicants 159 and the underlying documents, and
 to find out for later entries the number of customers
 affected for a specific substation always remained constant
 in a load transfer?

A Would you read that back?

(Excerpted, the reporter read the

reading question, as requested.)

1 THE WITNESS: It would be indicative of that,
2 yes.

3 BY MR. OSWALD:

4 Q Do you wish to speak to the first page, the
5 entry that reads Collinwood 3, we found later in 159,
6 Collinwood 3 was at the 4,000 customers, would it be safe
7 to assume that it would be 4,000 customers at this point?

8 A No.

9 Q It wouldn't, why?

10 A Again, I, too, don't know at this particular
11 time how many customers were being served from the
12 Collinwood substation with power supplied by CBT.

13 I just don't know.

14 Q Would it be possible under the load transfer
15 arrangement to serve less than all of the customers being
16 served from that substation?

17 A Certainly, from some substations, yes.

18 Q Could WSEP control the amount of power it was
19 receiving over a particular load transfer point, or did
20 it have to supply its entire load over that load transfer
21 point?

22 A It had a certain amount of control.

23 Q How was that control effected?

24 A Does anybody have a piece of chalk?

25 MR. BUCHHANN: No chalk.

trial

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1 MR. BERRI: Your Honor, during the break we were
2 informed by the Department of Justice that Mr. Lewis could
3 return to the stand on the 14th of June. We are a bit
4 disturbed by this. We think the better procedure would be
5 if Mr. Lewis were called on June 2 which would permit us
6 to complete our cross-examination of this man on the direct
7 case of the Department of Justice prior to having to go for-
8 ward on our direct case on those issues that were only raised
9 during the direct case of the Department of Justice.

10 If we have to go forward with this procedure
11 where our cross-examination has to wait until after the testi-
12 mony of Mr. Firestone, we might find it necessary to reserve
13 our rights to have Mr. Firestone return to testify on this
14 issue.

15 I think that is a cumbersome procedure and one
16 that could suggest having Mr. Lewis come early next week.

17 MR. CHAPMAN: Mr. Chairman, Mr. Lewis has indicated
18 that he does have to be in town in connection with Federal
19 Power Commission matters on the 15th and since that was in
20 accord with the original case of the Board, we suggested he
21 make himself available here on the 14th and he agreed to do so.

22 CHAIRMAN RIGLER: My recollection is that we en-
23 couraged Mr. Lewis to make his next appearance coincide with
24 another trip to Washington since he has already been called
25 away from his business twice. I think we will go along with

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1 CHAIRMAN PHELPS: I don't care which party
2 wants to identify this as an exhibit. If no party does,
3 the Court will.

4 MR. HANCOCK: It will do it.

5 It is our testimony.

6 MR. SUCHMAN: I will designate it Applicant
7 Exhibit 161 (GSE) and, as I say, Mr. Charno, is that
8 Exhibit 161, Mr. Hancock, the diagram to which you have
9 just been referring?

10 THE WITNESS: Yes, it is.

11 MR. SUCHMAN: I offer Exhibit 161.

12 CHAIRMAN PHELPS: It will be admitted.

13 (Whereupon, the document referred
14 to was marked Applicants Exhibit
15 161 (GSE) for identification, and
16 was received in evidence.)

17 (Heard conference.)

18 BY MR. CHARNO:

19 Q Mr. Hancock, what significance would you attribute
20 to the listing in Applicants 159 of outages which affect no

21
22 A I wouldn't attribute any significance to it, at
23 least at this time.

24 Q I'm sorry, could I have that answer back? I didn't
25 hear the last part of it. Your voice is dropping.

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THE WITNESS: Would you read the question.

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

THE WITNESS: And C is the transmitting company?

MR. CHAMBO: Yes, sir.

THE WITNESS: If I understand the question, I think the answer is no.

BY MR. CHAMBO:

Q Would it be fair to say that focusing solely on the right of first refusal that the existence of that right of first refusal would eliminate mutuality and the ability to reciprocate for utilities A and B?

A And there is a right of first refusal of the use of transmission facilities.

Q On the part of C. Would that frustrate mutuality and the ability to reciprocate for A and B?

A I would think so.

Q Does CMI share reserves with the municipal electric light plant? Do you have a reserve sharing agreement with them?

A We have the interconnection agreement that has certain provisions relating to reserves, but other than that, there is no reserve sharing.

Q Was the offer of participation of February 7, 1974, to the City of Cleveland conditioned upon the city's

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1 agreeing not to make sales below cost?

2 A. First of all the offer of participation in February
3 was February 27. The offer of February 27 was not so con-
4 ditioned.

5 Q. I'm sorry. What offer was made on the 7th of
6 February?

7 A. That was the draft interconnection agreement.

8 Q. And was that conditioned upon the city agreeing not
9 to make sales below cost?

10 A. No, that condition was contained in a letter of
11 December 13th that was handed to representatives of the City
12 of Cleveland at a meeting on that date.

13 Q. Was that condition precedent withdrawn after
14 December 13th?

15 A. No. Immediately after, but sometime between then
16 and February 27. I think there was also an exchange of
17 correspondence between Mr. Howley and Mr. Whiting intervening
18 and some conversations.

19 Q. Do you know whether it was explicitly withdrawn?
20 Do you know whether it was explicitly withdrawn?

21 A. By explicitly --

22 Q. By explicitly that CEI informed MBLP that they
23 would not require such a precondition.

24 A. I don't recall that we did that. As I say, it
25 was not contained in the February 27th offer of participation

3411 1 had has not been a condition in any of the negotiations that
2 have taken place that we have talked about at length.

3 Q Can you tell us --

4 CRAWFORD-BACKER: What was this now? What was not
5 contained?

6 MR. CRAWFORD: The precondition that the City not
7 sell below cost; is that correct?

8 THE WITNESS: Yes.

9 BY MR. CRAWFORD:

10 Q In the context of that precondition, who was to
11 determine what constituted cost?

12 A The cost would be determined as costs are deter-
13 mined. Certainly you would have to have cost information
14 from the municipal light plant.

15 Q Who would make the determination? Was it
16 contemplated that the light plant would determine that it was
17 selling below cost and inform CBI, or CBI would get the informa-
18 tion and inform MHP?

19 A We didn't get into who would do what. It was the
20 concept that was advanced as a condition precedent.

21 Q Would it have been acceptable to CBI if MHP had
22 made that determination and just informed you of the outcome?

23 A Probably not.

24 Q Wouldn't it be necessary -- well, what was the
25 purpose of that precondition?

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1 A. The purpose of that condition was to bring into
2 being the principles of at least Ohio law that are applicable
3 to private utilities and to get the municipal system on even
4 terms with CEI in regard to that legal principle.

5 Q. Wouldn't it be necessary in order to assure your-
6 selves that that was taking place for you to make the
7 determination of cost?

8 A. Not necessarily.

9 Q. Why wouldn't it necessarily be up to you to make
10 that determination?

11 A. As I say, we really didn't get involved in the
12 details as to how this was to be done. It was a concept.
13 I suppose the parties could agree on an arbitrator or a spe-
14 cial master.

15 Q. Would it be the function of such an individual to
16 review all of NRELP's rates and then continually review them
17 in terms of its power costs?

18 MR. REYNOLDS: I object.

19 MR. CHARNO: I will withdraw that.

20 BY MR. CHARNO:

21 Q. Is such an operation or such a suggestion really
22 feasible?

23 MR. REYNOLDS: I will object to that, too.

24 THE WITNESS: I would think so.

25 CHAIRMAN RIGLER: Overruled.

Encl

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RE MR. CERRO:

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Q Did CBI have a policy with respect to third-party wheeling in late 1973?

3

A Yes.

4

Q What was that policy?

5

A That we would not make a general commitment to wheel for third parties.

6

Q When was that policy formed, sir?

7

A Well, we have never wheeled for third parties. The first request for third-party wheeling was the general question we received from AMP Ohio in late 1973.

8

Q Would the CBI policy have been formed at that time? Is that your testimony? I'm not sure from your answer.

9

10

A As I say, we had never wheeled for third parties and upon the first request that we had received to my knowledge with the AMP-O it was decided that we would not agree to third party, general third party wheeling as requested, and also that we would not wheel past any power.

11

12

Q Did you you inform AMP Ohio in response to their request, that you were not willing to engage in general third party wheeling or to commit yourselves generally to engage in third party wheeling?

13

14

A The letter of August 30 only refers to wheeling past any power.

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1 CHAIRMAN RIEDEL: So what is the
2 answer to the question?

3 THE WITNESS: I don't recall that we ever specifically
4 advised AMP-0 that we would not agree to general third party
5 wheeling.

6 BY MR. CHARNICK:

7 Q Now, would the request that you had previously
8 received to form AMP Ohio to CEI in November of 1972
9 be a request in November 27, 1972, from Mr. Engle, president
10 of AMP Ohio, to Mr. Rudolph, president of CEI?

11 A That was the time frame and the request was
12 made to Mr. Rudolph, and whether it was Mr. Engle or
13 Mr. Dunson, I'm not sure.

14 Q Sir, I would like to show you a copy of a
15 document which is contained in Exhibit DG-505 and is
16 labeled Exhibit B, and ask you if that is the letter in
17 question?

18 A Yes, it is.

19 Q Now, let me ask you further if that letter
20 requires a general commitment to engage in third party
21 wheeling, rather than specifically to wheel power for
22 AMP Ohio from PMSWY to the municipal electric light plant?

23 A I consider it does, yes.

24 Q In response to that letter, did you inform
25 AMP Ohio that you had adopted a policy which prevented you

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...giving a general comment to say, in kind
...?

I think I just answered that question. But to
... of the Chairman.

CHAIRMAN: Yes, did.

MR. WILSON: I think your question was to
... wheeling.

MR. WILSON: Let's say it again.

We had a number of discussions with
... as I recall, back in meetings and over the
... and he advised them in the August 30, 1973, letter
... that we would not deal with power.

I didn't say, as I answered to the Chairman,
... specifically advised that we would not
... wheeling. They might
... from our discussions, but we did not
... specifically say, no, we wouldn't.

By MR. WILSON:

Do you recall a reply to the November 23 ---
... the November 27, 1973 letter in January of
1974

No, I don't recall that.

Mr. Wilson, are you handing me another letter
... dated January 15, 1974. Does
... as to a January letter?

204

Q. ... third party ...
 A. ...
 Q. ...
 A. ...

Q. ...
 A. ...
 Q. ...
 A. ...

Q. ...
 A. ...
 Q. ...
 A. ...

Q. ...
 A. ...
 Q. ...
 A. ...

Q. ...
 A. ...
 Q. ...
 A. ...

Q. ...
 A. ...
 Q. ...
 A. ...

MR. PERKINS: Could I have that read back, please?

(The reporter read the preceding

question, as requested.)

MR. PERKINS:

Let me change that slightly and put governmental

lmil 7

1 A If we could have access to power under equal terms
2 and conditions, we would wheel that power. We do not have
3 access to past any power and that is the only source of
4 preference power that I am aware of.

5 Q Would you wheel preference power if it was more
6 expensive than your average system costs?

7 A Again, we would not wheel power to which we did
8 not have access to under equal terms and conditions. The
9 price doesn't enter into that. As I explained in my letter
10 of August 30, the business reason for refusing to wheel past
11 any power was the fact that that was low-cost power. It was
12 cheaper than anything that we had available to us.

13 Q Is it your testimony that it is only now your
14 ability to purchase the power and not the price of the
15 power which would determine whether or not you would be
16 willing to wheel it?

17 MR. BUCHHEIM: May I have that back?

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

20 MR. BUCHHEIM: I object to the use of the word
21 "now" in the question.

22 MR. CHIRNO: I would strike the word "now" from the
23 place in that question. I will try again.

24 BY MR. CHIRNO:

25 Q Is it your testimony that CBI's present policy is

2411 based solely upon your ability to gain access to power
 2412 and that the cost of that power is immaterial to a determination
 2413 under what policy?

2414 A. The policy is to wheel it. The -- one of the
 2415 fundamentals in formulating that policy and the commitment was
 2416 the specific request to wheel past any power which in
 2417 fact would be cheaper than anything that we could produce.

2418 Q. Well, is the element of the cost of power to be
 2419 wheeled immaterial in your willingness to wheel it today as
 2420 opposed to PASNY?

2421 A. The cost of power delivered in Cleveland from
 2422 PASNY was an important -- was a basic reason for the
 2423 formulation of that policy and our response to the specific
 2424 request.

2425 MR. CHAMBO: Could you read back the question,
 2426 please?

2427 (Whereupon, the reporter read from the record, as
 2428 requested.)

2429 MR. NEWSOM: I don't understand that.

2430 MR. CHAMBO: I'm not interested in whether the cost
 2431 of power was material to your decision of whether or not to
 2432 wheel PASNY power. Is the cost of the power to be wheeled
 2433 immaterial to your decision today of whether or not you will
 2434 wheel power?

2435 THE WITNESS: In our policy as we have stated it,

3m11 1 we would wheel any power to which we would have had access.
2 In the statement of that policy it does not refer to price.

3 BY MR. CHAMBERLAIN:

4 Q In your answer yes or no? Is it material or non-
5 material?

6 A The price is not a part or not material in the
7 statement of the policy.

8 Q But it was material in the --

9 A In the formulation of the policy, yes.

10 Q Let us go back to my prior question then, and
11 modify it slightly. Would CEI be willing to wheel preference
12 power that was more expensive than its incremental costs of gen-
13 eration?

14 MR. BUCHHEIM: I object. Is there any suggestion
15 that there is high-priced preference power or preference power
16 other than PASM involved in this case or anywhere else in
17 the country as far as I know? I object.

18 CHAMBERLAIN: Well, I will overrule that
19 objection. When you are talking about a general policy, I
20 think he is entitled to explore it as a policy.

21 MR. BUCHHEIM: I'm sorry, Mr. Miller, but as to
22 impossibilities as to things that really we all sitting in
23 this room know do not exist. This is my objection. We all
24 know there is no such thing. To go on and on about it is
25 chewing up a record for no point at all.

1 MR. CIARRO: I asked him previously if
 2 their position will not apply simply to preference power.
 3 I believe as indicated that it was not confined to preference
 4 power. If you prefer I phrase the question without using the
 5 term preference power, I will do it that way. I'm trying to
 6 explore the extent to which cost of power supply represents a
 7 factor in the application and determination of this policy.

8 CHAIRMAN BROWN: Hasn't he answered that?

9 MR. SWINOLEW: I believe it has been answered.
 10 I think that is what you just said.

11 CHAIRMAN BROWN: I think the Board is of the
 12 opinion that the questions have been asked and answered maybe
 13 several times over.

14 MR. CIARRO: Let me withdraw it, then, and we will
 15 move on.

16 BY MR. CIARRO:

17 Q Mr. Hansen, is the December 1975 transmission
 18 schedule which is contained in Applicant's 97 intended to
 19 be an implementation of your July 1975 wheeling offer?

20 A I will have to look at it.

21 Q I think you have it before you, but if you don't,
 22 we will certainly supply you with a copy.

23 A Answer is yes.

24 Q Can we go to page 2 of the service schedule for
 25 transmission service which is the last attachment to

Smith

1 Applicant's 97.

2 A Yes.

3 Q Does that provide for -- again for lack of a better
4 word, wheeling in and wheeling out?

5 A That primarily -- which is wheeling in and wheeling
6 out? I think this only provides for wheeling to the City of
7 Cleveland.

8 Q And where would the power be wheeled from?

9 A From any source to which -- well, it would be
10 wheeled from a point on our system, whether an interconnect
11 point or -- well, and from any source again which sub 5
12 provides that the power and energy would have been available
13 to CBI on equal terms and conditions.

14 Q Now is -- is that what was requested from you
15 by the municipal electric light plant?

16 A Most of their requests were wheeling in, if you
17 will, wheeling to them.

18 Q Sir, let me refer you to the first page of
19 Applicant 97 and the first sentence after the caption trans-
20 mission schedule. That states, "There is a revision of the
21 MSP Ohio-Chio power schedule for such service which the
22 city submitted as a proposal."

23 Q Do you recall whether the city's proposal of the
24 MSP Chio or Chio Power schedule encompassed wheeling in and
25 wheeling out?

1 A As I recall, it did.

2 Q Can you tell us why the Cleveland Electric
3 Illuminating Company revised a proposal requesting wheeling
4 out so that it only provided for one of those?

5 A As I say, most of our discussions with regard to the
6 City of Cleveland have been for wheeling power to the City of
7 Cleveland.

8 Q Is that the only basis for the revision?

9 A There were a number of other revisions. There were
10 different special provisions contained in this proposed
11 schedule and also the -- yes, the compensation provided in
12 the schedule, this proposed schedule, was lower than the
13 AMP Ohio - Ohio Power rate and I might say that the more
14 recently we have been talking about a much lower rate than the
15 90-cent rate shown on page 3.

16 Q Now is the only basis for your revision of
17 NEEP's proposal which narrowed the scope of wheeling which
18 would be performed by CEI the fact that most of NEEP's re-
19 quests for wheeling will be for wheeling in?

20 A No.

21 Q What are the other bases for your revision
22 which narrowed the scope of wheeling which CEI would perform?

23 A Maybe I didn't listen to the previous question.
24 I was considering the other changes that we had just
25 talked about. The only explanation I have is that we --

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the city and ourselves had only been talking about wheeling to the City of Cleveland. As I explained yesterday, our policy would provide for wheeling in and out. As Mr. Buchman said, up and down as well.

Q Isn't it true that they had previously requested a transmission schedule that provided for wheeling in and out?

A Yes.

Q Isn't it true that you didn't give them that? You revised wheeling out of it and gave them something narrower than that?

A Yes.

Q Didn't you testify that this transmission schedule was intended to effectuate your wheeling policy at that time or partly intended to implement your wheeling policy at the time of the December 29, 1975, letter?

A Yes.

bw2

1 I don't have the correspondence file with
2 Palmesville, the entire file with me.

3 Q In terms of the materials that we have
4 available -- in terms of the materials which you have
5 discussed during your testimony, would your April 13, 1976,
6 letter to Mr. Cannon be the company's most recent policy
7 statement with respect to wheeling, or the company's
8 most recent implementation of its policy with respect
9 to wheeling?

10 A The letter of April 13, 1976?

11 Q Yes, sir.

12 A It doesn't refer to wheeling.

13 Q Doesn't it indicate that you are enclosing a copy
14 of a draft participation agreement which might provide
15 some assistance to him.

16 A Yes.

17 Q Doesn't that contain a statement of the
18 company's wheeling position as of the time of April 13, 1976.

19 A No.

20 Q Can you tell us why that was submitted to him,
21 if Cannon's correctly state the company's policy at
22 that time?

23 MR. BUCHHEIM: The inquiry, as the evidence shows, was
24 with respect to participation. And if the question is, why
25 don't you give him an answer about wheeling, seems to be

b7d

1 City of Cleveland, on February 27, 1974, which was the
 2 case was submitted to the City ofainesville on April 13,
 3 1976, does have a reference to wheeling that we discussed
 4 yesterday.

5 In case you -- that participation agreement, there
 6 were changes in OBI policies with regard to wheeling from
 7 February 27th of 1974, to April 13 of 1976, and those
 8 changes are not reflected in the draft participation that
 9 was sent to Mr. Cannon on April 13, 1976.

10 Q Did OBI inform Mr. Cannon of those
 11 changes in policy?

12 A Not in this letter, but they have been advised
 13 of our changes in policy with regard to wheeling.

14 Q Do you have -- was that advice written or
 15 oral?

16 A It was oral for sure in several meetings.

17 As I referred to before, I recall in one letter
 18 in connection with some -- perfecting some of the 138 kV
 19 interconnection I said were working on a transmission
 20 schedule. I will send it to you later or something to that
 21 effect.

22 CHAIRMAN WIGLER: But that was the Cleveland
 23 schedule?

24 THE WITNESS: We were working on the Cleveland
 25 schedule.

MR. HANCOCK: What is what you were indicating to the committee and what was the result?

MR. HANCOCK: Yes.

MR. HANCOCK: But the Cleveland committee would not necessarily reflect the company's general position with respect to marketing?

MR. HANCOCK: That is correct.

MR. HANCOCK: I had earlier advised Mr. Cannon in a meeting in his office as to what our policy was.

MR. HANCOCK:

Q. Did you give us the approximate date of that meeting?

A. There have been several meetings.

I wish to say the first part of this year and also towards the end of last year.

Q. Would these meetings be before or after April 15, 1937?

A. Before. I don't meet with Mr. Cannon since, or Mr. Pindy.

Q. Mr. Hancock, you testified at first that you were indicated that you would not have POWER power to the City of Cleveland and that your position on that subject has since changed.

MR. HANCOCK: Of course, CLE. Is that a correct statement of your position?

b7d

1 2. Not.

3 3. It is more than that you have never offered under
4 any circumstances to what kind of power to the City of
5 Cleveland?

6 MR. BUCKLE: My object unless you limit it
7 as to time.

8 I think this would be getting into
9 separate negotiations.

10 MR. CHAIRMAN: I would like the Witness excused
11 so we can go into this.

12 CHAIRMAN BUCKLE: He would be willing to do
13 that.

14 On the other hand, is it necessary, given
15 Mr. Hauser's position in the company? That is --

16 MR. CHAIRMAN: I think I would prefer it under
17 the circumstances, because our argument may go down
18 certain channels.

19 CHAIRMAN BUCKLE: All right.

20 You are excused.

21 (Witness temporarily excused.)

22 (Thereupon, at 12:15 p.m., the hearing was
23 adjourned, to reconvene in camera at 12:16 p.m., this same
24 day.)
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SS14

UNITED STATES OF AMERICA
MILITARY APPEALS COMMISSION

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LAUREN WARD, JR.

Bucket No.

YOUNG, WALTER ALBERT, JR.
LAWSON, FREDERICK EDWARD, JR.

50-308A
50-508A
51-301A

(Daily-Range No. 1 and 2)
Parsons, James H. G. and P.

and

CLARK, JAMES EARL, JR.
CLARK, JAMES EARL, JR.

50-403A
50-401A

(Daily-Range No. 1 and 2)
Parsons, James H. G. and P.

Witness Floor Hearing Room
7915 Eastern Avenue
Silver Spring, Maryland

Wednesday, May 25, 1976

The hearing in the above-captioned matter was
conducted by the undersigned at approximately 9:30 a. m.,

at which:

WALTER W. WILSON, Chairman

JOHN W. WILSON, Member (Absent)

IVAN S. WILSON, Member

WITNESSES:

(As hereinafter recited)

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Q. Now, I have...

...draft... of which... larger... of...
...this... will
...you... over the
...supply from...

...the... that in
...a... in a
...big block labeled "MIX."

A. Let's say the big block is a...
...the... or either one of the outside
...the... would
...be...

Q. And so I correctly understood your prior
...to you to
...from
...being the...
...?

A. That is correct.

Q. Now, let's get some kind of
...the... will
...it.

A. ... I asked the last question and
...that before we do this?

(Whereupon, the reporter read the last...

...answer, as requested.)