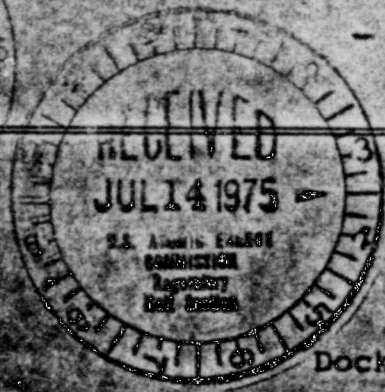


NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

**TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING
COMPANY
(Davis-Besse Nuclear Power Station)**

Docket Nos.
50-386A

**and
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, et al.
(Cleveland Electric Illuminating Station)**

**50-440A
50-441A**

DEPOSITION OF JOSEPH PANDY, JR.

Place - Bethesda, Maryland

Date - Wednesday, 9 July 1975

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Washington, D. C.

-----X

TOLEDO EDISON COMPANY and	:	Docket Nos.
CLEVELAND ELECTRIC ILLUMINATING	:	
COMPANY	:	50-346A
(Davis-Besse Nuclear Power Station)	:	
and	:	
CLEVELAND ELECTRIC ILLUMINATING	:	50-440A
COMPANY, et al.	:	50-441A
(Perry Nuclear Generating Station,	:	
Units 1 and 2)	:	

-----X

DEPOSITION OF JOSEPH PANDY, JR.

Bethesda, Maryland
Wednesday, 9 July 1975

Deposition of JOSEPH PANDY, called for examination by agreement of counsel, at Room P-114, Phillips Building, 7920 Norfolk Avenue, N. W., Bethesda, Maryland, at 9:30 a.m., before Linda J. Noeske, a notary public in and for the District of Columbia, when were present on behalf of the respective parties

WILLIAM BRADFORD REYNOLDS, Esq., Shaw, Pittman, Potts, & Trowbridge, 910 Seventeenth Street, N. W., Washington, D. C.; on behalf of the Toledo Edison Company and Cleveland Electric Illuminating, et al.

ro

1 DONALD H. HAUSER, Esq., Cleveland Electric Illuminating
2 Company, Illuminating Building, Public Square,
3 Cleveland, Ohio 44113; on behalf of Cleveland Electric
4 Illuminating Company.

5 ROY LESSY, Esq., Office of the Executive Legal Director,
6 U. S. Nuclear Regulatory Commission, Washington, D.C.,
7 on behalf of the Nuclear Regulatory staff.

8 MELVIN G. BERGER and ANTHONY G. AIUVALASIT, JR., Esqs.,
9 Antitrust Division, U. S. Department of Justice,
10 Washington, D. C. 20530; on behalf of the Department
11 of Justice.

12 WALLACE EDWARD BRAND, Esq., Pearce & Brand, Suite 1200,
13 1000 Connecticut Avenue, N. W., Washington, D. C.
14 20036; on behalf of the City of Cleveland.
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C O N T E N T S

<u>Witness</u>	Examination By Mr.			
	<u>Lessy</u>	<u>Brand</u>	<u>Berger</u>	<u>Reynolds</u>
Joseph Pandy, Jr.	3, 138	63, 148	109, 151	130

lmil 1

P R O C E E D I N G S

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MR. LESSY: Let's go on the record.

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This is a deposition by subpoena taken by the NRC staff in the combined Perry 1 and 2 and Davis-Besse 1 proceeding. Subpoenas were served by the Board on June 23 on Mr. Wayne Milburn and Mr. Joseph Pandy, both of the City of Painesville.

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I wonder if the reporter could swear the witness pursuant to a stipulation of counsel.

9

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Whereupon,

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JOSEPH PANDY, JR.,

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was called as a witness, and, having been first duly sworn, was examined and testified as follows:

13

14

EXAMINATION

15

BY MR. LESSY:

16

Q Your name is Joseph Pandy; is that correct?

17

A Joseph Pandy, Jr.

18

Q And you are appearing here pursuant to subpoena?

19

A Yes, I am.

20

Q Is Mr. Wayne Milburn with you at this time?

21

A No, he is not. I have a motion to quash his

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subpoena, which I would read to you if it is appropriate.

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Q Proceed.

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A. The United States of America Nuclear Regulatory Commission, in the matter of Toledo Edison Company, et al, NRC Docket 50-346A, 50-440A, 50-441A. Motion. The undersigned hereby moves this Commission to quash the subpoena to Wayne R. Milburn for attendance at the deposition July 9, 1975. Reason for support of this motion is that Joseph Pandy, Electric Power Superintendent, will be in attendance at said deposition, and will be in a position to furnish the information requested of Wayne R. Milburn, who is no longer Law Director of the City of Painesville. The undersigned has replaced him as said Law Director effective February 1, 1975. Signed, Charles E. Cannon, Law Director of the City of Painesville.

MR. LESSY: The staff would like to note, pursuant to 10 CFR, Section 2.720, subparagraph (f), the requirement of a motion to quash must be made "promptly and in any event at or before the time specified in the subpoena for the compliance by the person to whom the subpoena is directed."

Inasmuch as a hearing examiner is not present, staff suggests that the motion to quash be referred to the board or otherwise subjected to negotiations between the

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parties as to the attendance of Mr. Milburn.

Does anybody have any comments?

MR. EYBOLDS: Applicants take no position at this time on the motion to quash.

MR. LESSY: Okay. Staff will proceed on that basis, then.

BY MR. LESSY:

Q Mr. Pandy, are you familiar with the interconnection agreement between CEI and the City of Painesville, entered into on January 13, 1975?

A Yes, I am.

Q Did you participate in the negotiating history?

A Yes, I did.

Q How long have you been employed by the City of Painesville?

A Since July 27, 1971.

Q And at what position were you initially hired by the City of Painesville, in your present position or another one?

A In my present position as Electric Power Superintendent.

Q Before 1971 and your hiring by the City of

4mil

1 Painesville, could you give us a brief sketch of your
2 biographical background and employment history?

3 A. Prior to working for the City, I had been employed
4 by the Cleveland Electric Illuminating Company for approxi-
5 mately three years, one year of which was in their civil and
6 mechanical engineering, and for approximately two years as a
7 buyer in their purchasing department.

8 Currently I received a Master of Business
9 Administration degree from Ohio University, graduation date
10 in 1969, and prior to that I received a Bachelor of Science
11 in mechanical engineering degree from Illinois Institute of
12 Technology in Chicago, 1967.

13 Q Thank you.

14 Do you have with you a copy of the Painesville
15 CEI agreement?

16 A Yes, I do.

17 Q There is one provision that appears to run
18 through the agreement that I would like to call your attention
19 to; it is the special provision and an example of the special
20 provision is on Section 4, page 4, of the agreement.

21 MR. BRAND: There are some of us that don't have
22 copies of the agreement, Mr. Lessy. May we inspect the

5mil 1 document?

2 MR. LESSY: Certainly.

3 MR. BRAND: Would it be possible to obtain copies
4 of the entire agreement?

5 MR. LESSY: Yes, it would.

6 MR. REYNOLDS: Your reference was to what, what
7 portion of the agreement?

8 MR. LESSY: Page 4, Section 4, entitled, "Special
9 Provisions."

10 MR. BERGER: That is Schedule B, I believe.

11 MR. LESSY: Schedule B, that's right.

12 MR. REYNOLDS: Oh, it is page 4 of Schedule B.

13 MR. LESSY: Yes.

14 MR. BRAND: May I inquire, is this the only
15 provision that is going to be the subject of inquiry at this
16 time?

17 MR. LESSY: No, it is not.

18 MR. BRAND: May I take the time, then, to read the
19 entire document? I can do so in fairly short order.

20 MR. LESSY: Okay.

21 MR. REYNOLDS: Off the record.

22 (Discussion off the record.)

6mil

1 BY MR. LESSY:

2 Q. Mr. Pandy, this special provision runs through a
3 number of the express provisions of this agreement. I
4 wonder if you can interpret that provision for us. Perhaps
5 you would like to read it into the record first.

6 A. Section 4, special provision. "Each party to the
7 agreement recognizes that inflationary pressures and cumbersome
8 administrative procedures which are required under some
9 circumstances by statutory provisions and/or administrative
10 rule, may, unless special precautions are taken, inhibit
11 the parties from affecting interconnections and transactions
12 which might otherwise be affected pursuant to the provisions
13 of the agreement and this schedule. The parties accordingly
14 agree that particularly since the transactions contemplated
15 by this schedule are intended to be reciprocal in character
16 when it is in the interests of both parties so to be, either
17 party may at any time and from time to time in the future,
18 take such action under the agreement as such party shall
19 consider to be in the best interests of such party, including
20 action to file any tariff or rate schedule designed to super-
21 sede this schedule in its application to such party as a
22 supplier of electric service."

7mil

1 Basically, my knowledge of this provision is that
2 it was a provision that had been drafted by Cleveland
3 Electric Illuminating Company and which they desire to include
4 in the interconnection agreement to permit the filing, uni-
5 lateral filing of new rate schedules when they deemed it in
6 there proper and in their interests to do so.

7 It was not particularly a provision that the City
8 of Painesville was anxious to have included in the agreement,
9 but we did not see it as a serious enough concern to hold up
10 the interconnection agreement any longer than we had already.

11 Q Well, I focus now on the last sentence, particularly
12 the phrase, "Either party may at any time, and from time to time
13 in the future, take such action under the agreement as such
14 parties shall consider to be in the best interests of such
15 party, including action to file any tariff or rate schedule."
16 And it continues.

17 As I interpret that agreement, sir, either party
18 could take action above and beyond filing rate schedules,
19 could, for example, terminate the agreement or refuse to honor
20 a provision on the grounds that it was not in its best interests.

21 Do you read that that way also?

22 MR. REYNOLDS: Are you asking him whether that is

8mil 1 his understanding of the special provision?

2 MR. LESSY: That's correct.

3 THE WITNESS: I would say that my understanding of
4 the phrase, "in the future take such action under the agreement."
5 would qualify termination by the terms of the agreement that
6 discuss termination.

7 I believe there's a provision in the agreement
8 that addresses the subject of termination, and notice there-
9 upon. Perhaps I can find it.

10 BY MR. LESSY:

11 Q That would be helpful. Would Section 8.0 be help-
12 ful?

13 A 8.2A, page 15, states, "If either party hereto
14 breaches a material provision of this agreement, the party
15 adversely affected may, at its option, terminate this
16 agreement upon 90 days written notice of the intention to do
17 so, and the agreement shall so terminate unless during the 60-
18 day period immediately following such notice, the violation is
19 corrected."

20 Q If one were to read the phrase, "can take such
21 action, including action to file any tariff or rate schedule,"
22 to include action other than, or in addition to, changes

9mil

1 in rate schedule, then that party who read it that way would
2 not consider his action in terminating his provisions or a
3 service to be a breach, and, therefore, in my view, you
4 would not get to the termination clause.

5 My question is, then, couldn't the phrase, "to
6 take such action, including action to file any tariff or
7 rate schedule," in your view include action in addition to
8 filing a different tariff or rate schedule?

9 A Yes, I would interpret the phrase to mean that,
10 too.

11 Q Suppose a party took such additional action
12 and it was to cancel a service schedule or a service provided
13 in the agreement, such as economy energy, on the grounds
14 that based on its system capacity or some other technical
15 reason, it was no longer in its best interests; would that
16 appear to you to be a possible action within your reading
17 of that phrase?

18 MR. REYNOLDS: I object to the form of that ques-
19 tion.

20 THE WITNESS: Am I allowed to answer the question?

21 BY MR. LESSY:

22 Q Yes.

10mil 1 A Yes, I believe that would be a possibility under
2 the term of this special provision.

3 Q Since you were engaged in the negotiating history
4 to some extent, was the City of Painesville, to your knowledge,
5 aware of the open-ended cancellation as just described?

6 MR. REYNOLDS: I'm not sure I understand your
7 question. I believe the only open-ended cancellation you
8 have described is one which was a hypothetical situation that
9 you just formulated for purposes of asking a question as to
10 how one might possibly construe the language of the contract.
11 That is the only open-ended cancellation suggestion that I have
12 heard suggested here.

13 MR. LESSY: My question is, assuming that that is a
14 reasonable reading, and the witness said it could be read that
15 way.

16 MR. REYNOLDS: I don't believe that was what you
17 said.

18 MR. LESSY: Then I had another question.

19 MR. BRAND: Do you have an objection? If so,
20 what is the objection?

21 MR. REYNOLDS: The objection is that the question
22 as formulated assumes as a given, a hypothetical situation that

11mil 1 was addressed for purposes of the prior question.

2 MR. LESSY: Let me reestablish the point, then.

3 BY MR. LESSY:

4 Q In this special provision which appears throughout
5 the contract, doesn't, in your view, Mr. Pandy, this special
6 provision establish action to cancel or modify a provision
7 of the agreement or reasons other than and beyond filing
8 new tariff or rate schedules?

9 A I believe that this special provision provides a
10 basis for such an action to be initiated by either of the
11 parties.

12 Q Was the City of Painesville, to your knowledge,
13 or its negotiators, aware of that basis when the agreement
14 was signed?

15 MR. REYNOLDS: Of that basis or that possibility?

16 MR. LESSY: It is the same. The basis is the
17 possibility.

18 MR. REYNOLDS: I believe he said that the language
19 allows that possibility to be initiated by either party.
20 Is your question whether they were aware of that possibility?

21 MR. LESSY: My question is, are they aware of
22 that basis?

12mil 1 MR. REYNOLDS: I don't understand what the
2 reference is to, as far as basis. If you can define what you
3 mean by basis.

4 MR. LESSY: I wonder if the reporter could read
5 the answer to my last question.

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

8 BY MR. LESSY:

9 Q My question is, was the City of Painesville or
10 its negotiators aware of that basis as described in your last
11 answer?

12 A Yes, we were.

13 Q That would not be a particularly desirable
14 provision to have running through the agreement, would it?
15 Wouldn't you be happier without such a provision?

16 MR. REYNOLDS: Objection.

17 MR. BRAND: You may respond.

18 MR. REYNOLDS: I think the record ought to show that
19 the witness is not represented by counsel, so it is my
20 understanding that none of the counsel present would be in a
21 position to direct him not to answer, in any event.

22 MR. BRAND: That's correct.

13mil 1

MR. REYNOLDS: So, while there will be objections
2 by various counsel, you can respond to any of the questions
3 unless, in your own view, you take the position that you do
4 not feel you want to answer it. And perhaps we ought to
5 counsel the witness that in the event a question is unclear
6 to him, that he has the right to ask the interrogator for a
7 clarification of the question prior to answering it.

8 MR. LESSY: Would you like the question repeated?

9 THE WITNESS: No, I understand the question. In
10 my view, as I said, the City was not particularly anxious to
11 have this provision included, but weighing the inclusion
12 of this provision versus the consequences of continued opera-
13 tion as an isolated system without an interconnection, we
14 felt that our interests, the City's interests, were best
15 served by exclusion of an agreement and the effecting of an
16 interconnection on these terms, as opposed to a lengthier
17 delay to negotiate other terms.

18 BY MR. LESSY:

19 Q In your answer, sir, you referred to two things
20 which I'd like to pursue. One is the consequences of
21 operating in isolation or without an interconnection. Looking
22 down the road, what would those consequences have been, in your

14mil 1 view as a superintendent of power?

2 A. Well, as an isolated electric system, we have no
3 means of getting electrical energy onto our system, other than
4 our own generating plant's capability. And in the event
5 that we have a breakdown in that plant, some portion of its
6 generating capacity, it generally results in a lengthy
7 outage to our customers until we can bring reserve generating
8 equipment on line to replace the equipment that has suffered
9 a forced outage.

10 In general, it means up to a four- to six-hour
11 outage for potentially it could be all of the 8,000-plus
12 meters that we serve, could be without power for four to six
13 hours until we can light reserve boilers and bring on
14 additional capacity.

15 Q Can you tell me whether the Cleveland Electric
16 Illuminating Company, hereinafter referred to as CEI, serves
17 any customers of any category within the corporate limits of
18 the City of Painesville?

19 A. To the best of my knowledge, they do not serve
20 anyone within the corporate limits of Painesville.

21 Q But CEI does have transmission lines in the immediate
22 vicinity of the City of Painesville, do they not?

15mil 1

2 A That's correct. They have transmission lines
3 that, in part, occupy land in the City of Painesville. The
4 lines run through the City.

5 Q And those transmission lines are part of CEI's
6 large interconnected transmission system, are they not?

7 A I believe that's correct.

8 Q In your response to my question, two questions
9 ago, you indicated in addition to the consequences of not
10 reaching an interconnection agreement with the City of
11 Painesville, that you thought that it was necessary to go
12 forward with the agreement in its present state because you
13 did not want to "lengthen the delay with which to come to
14 terms with CEI."

15 How long did it take to come to terms with CEI?
16 What was the length of negotiating history, to your knowledge?

17 MR. REYNOLDS: Are you talking now about the
18 negotiations of this Painesville interconnection agreement?

19 MR. LESSY: Of this or any other interconnection
20 agreement. Of any interconnection agreement. There's only
21 been one.

22 How long did it take the City of Painesville to reach
an interconnection agreement with CEI? What was the span of

16mil 1 negotiations, to the witness' knowledge?

2 THE WITNESS: There had been some negotiations
3 and discussion of interconnection with CEI prior to my employ-
4 ment by the City of Painesville, and I became actively and
5 directly involved in those negotiations shortly after my
6 employment in July of 1971. So I have personal direct
7 knowledge of negotiations that lasted some three and a half
8 years, approximately. I also have knowledge of the City's
9 records that indicate discussion and negotiations relative
10 to interconnection with CEI that date back as far as December
11 of 1964.

12 BY MR. LESSY:

13 Q Have you produced, pursuant to the subpoena, any
14 documents indicating negotiations beginning in December of
15 1964?

16 A I have a letter dated December 3, 1964, to Honorable
17 Dale Helsel and to the City Council of Painesville, from Lee
18 C. Howley, Vice President and General Counsel of CEI,
19 relative to a 5,000 KVA interconnection.

20 MR. LESSY: I wonder if I might examine the
21 document.

22 MR. REYNOLDS: Wait a minute. I'm going to object

17mil 1 to the production and showing of that document to any counsel
2 because of the date of the document and the time period the
3 board has placed on discovery in this proceeding. That docu-
4 ment precedes a September 1, '65, date and unless there can
5 be a demonstration before the board of good cause shown, I'm
6 going to object to any circulation of that document at this
7 time.

8 MR. BRAND: You may object, but I don't think the
9 document is in your possession and control. Do you represent
10 the City of Painesville, sir?

11 MR. REYNOLDS: I don't, but I have a right to
12 object to production or discovery in this proceeding that goes
13 prior to the time limits set by the board, and until that is
14 ruled on by the board, there should be no circulation of
15 material prior to that time period.

16 MR. BRAND: There's absolutely no legal foundation
17 for that objection whatsoever. Can you cite a case?

18 MR. REYNOLDS: There is a board order which sets
19 a time limit. There is a subpoena which calls for documents
20 that does not reverse the board order and the witness is not
21 aware of the ruling of the board.

22 MR. BRAND: The witness is entitled to be represented

18mil 1 by counsel. Are you representing the witness here?

2 MR. REYNOLDS: It is improper to require the
3 witness to furnish documents prior to the time period under a
4 subpoena that does not reference a time limit when the board
5 has set as a time limit September 1, '65. I have no
6 objection if the board requires this document to be turned
7 over, for it to be turned over, but prior to that time, I think
8 it is improper for the parties by this kind of an effort, to
9 go against the board order.

10 MR. BRAND: You made your objection. Do you have
11 any further comment?

12 BY MR. LESSY:

13 Q Mr. Pandy, what is the next document that shows
14 the negotiating history? This one is dated September 1,
15 1964. Do you have anyone that is dated after that in
16 approximately the same time period?

17 A I don't believe that I do.

18 MR. BRAND: May I note on the record that my
19 understanding of the board order is that it specifically
20 contemplates going outside those limitations in specific
21 narrow areas and I believe this to be one of those areas?

22 MR. REYNOLDS: I think if good cause is shown, that's

19mil 1 correct, and all I'm saying is I believe the subpoena is
2 limited by the board order and the direction to the witness
3 which should have been reference in this subpoena can only go
4 to showing those documents from September 1, '65, through to the
5 present time, and the witness should have been alerted to that,
6 and until we can get a ruling of the board as to documents
7 earlier in time, I think it is improper for any circulation
8 of earlier documents.

9 MR. LESSY: Staff would like to note that the
10 Chairman of the board signed the subpoena and that it would
11 interpret the signing of subpoena as an extension of the
12 discovery period. However, staff is willing to submit this
13 matter to the board and the only question, then, is, therefore,
14 the disposition of this document during the period of discus-
15 sion in front of the board. Staff would suggest unless the
16 Department of Justice or applicants have another suggestion,
17 that we take this document and send it by messenger to Mr.
18 Frysiak, who is across the street, and have him hold it
19 and staff would reserve the right to ask additional questions,
20 perhaps by written interrogatory.

21 MR. REYNOLDS: That would seem to me to be the
22 proper way to proceed.

20mil

1 MR. BRAND: I would object to proceeding on that
2 basis. I think the document ought to be used, and I would
3 object to proceeding without the use of the document.

4 MR. BERGER: Can I get a statement on the record.
5 I believe it is the department's understanding of the
6 discovery cut-off date, that it was applicable to applicants
7 because they were the ones who objected to a discovery cut-
8 off date that was somewhat farther back in time than the one
9 actually selected by the board and that with regard to the
10 September 1, '65, cut-off date, that it only applied to
11 requests made of applicants.

12 MR. REYNOLDS: That is incorrect.

13 MR. BRAND: This would seem to be logical, because
14 the underlying basis to the objections to a greater discovery
15 were those of burden on the applicant, and there's absolutely
16 no burden on the applicant when Mr. Pandy shows up here with a
17 document. Apparently the only objective of applicant is to
18 hide evidence that is relevant to this proceeding.

19 MR. REYNOLDS: If it is relevant to the proceeding
20 and good cause can be shown, then applicants can withdraw
21 their objection. Mr. Berger's reading of the order is
22 entirely incorrect. The board set as a cut-off date for

21mil 1 every and all parties September 1, '65.

2 MR. BERGER: I believe that is correct. I will
3 stand corrected. I believe that was all parties to the
4 proceeding. That did not include the City of Painesville,
5 but the NRC staff is a party to the proceeding.

6 MR. LESSY: Staff is going to proceed using the
7 suggestion it outlined. If, during an appropriate break, the
8 parties wish to proceed with a conference call to get a
9 clarification, it is willing to; but staff feels that it
10 would like to proceed, going forward with this deposition
11 as it now stands, and without the interruption of a con-
12 ference call at this time.

13 The answer, however, indicating that there was
14 a negotiating history pursuant to a document that began at
15 least in December of '74 still stands.

16 MR. REYNOLDS: I have not moved to strike that.
17 I just noted my objection.

18 MR. LESSY: Okay.

19 BY MR. LESSY:

20 Q So then, Mr. Pandy, we are looking at a negotiating
21 history that spans approximately 10 or 11 years. Do you have
22 any knowledge as to why all of a sudden, after 10 or 11 years,

22mil 1 an agreement as such as it is was reached?

2 MR. REYNOLDS: I would object to the characteriza-
3 tion as a negotiating history of 10 years. I don't believe
4 the testimony of Mr. Pandy supports that.

5 MR. BRAND: May I have a continuing objection to
6 each and every question that is asked until such time as the
7 City has an opportunity to inspect the first document.

8 MR. BERGER: Let the record note that Mr. Lessy
9 so nodded his head yes.

10 THE WITNESS: Well, I believe there were incentives
11 to both of the parties involved in the negotiations to
12 arrive at an agreement. I believe the incentive to CEI
13 included such things as recent court rulings on the Ottertail
14 Power case. And general actions on the part of the Federal
15 Power Commission seeking to permit interconnections of
16 municipal systems to investigate their own utilities. I
17 believe the incentive on the part of the City was outages,
18 lengthy outages to its customers who could not be served by
19 available capacity when we had breakdowns at our plant, and
20 the decision that the City experienced in 1974 in the form of
21 two strikes by operating personnel of its electric division,
22 which seriously jeopardized our ability to supply power to our

23mil 1 customers.

2 MR. BRAND: May I have a question on voir dire?

3 MR. LESSY: Yes.

4 MR. BRAND: Mr. Pandy, if I came to you in your
5 office in the City of Painesville and asked you voluntarily
6 to disclose to me the document that you just handed to Mr.
7 Lessy, would you have done so?

8 THE WITNESS: The letter of December, 1964?

9 MR. BRAND: Yes, sir. Is it a letter that you
10 believe should be kept confidential, or would you willingly
11 show it to counsel of the City of Cleveland?

12 THE WITNESS: I don't believe there's anything
13 particularly confidential about it.

14 MR. BRAND: And you're agreeable to disclosing it
15 voluntarily to the City of Cleveland?

16 THE WITNESS: Yes.

17 MR. BRAND: Under those circumstances, I'd like to
18 see the document, Mr. Lessy. Counsel can't claim any
19 privilege with respect to the document. It is in the protec-
20 tion and control of Mr. Pandy. He's agreeable to letting me
21 see it.

22 MR. REYNOLDS: I believe the question you asked Mr.

24mil 1 Pandy was whether it was a document of a confidential nature
2 that contained proprietary information which for that reason
3 would require him not to divulge it.

4 MR. BRAND: No, sir, I asked him whether he was
5 willing to let me see it, and I believe he indicated yes, and
6 I would like to see it.

7 MR. REYNOLDS: If you would ask him the question
8 of whether he would be willing to let you see it, now that he
9 has knowledge of the board order as to a September 1, 1965,
10 cut-off date for discovery, that would be, I think, a fair
11 question to ask the witness.

12 MR. BRAND: You may ask him that question on voir
13 dire. I think the witness has answered the question that I
14 think is appropriate.

15 MR. LESSY: I think, Mr. Brand, you're asking the
16 witness to come up with a legal interpretation of a board
17 order which can be interpreted in two days. You're interrupt-
18 ing the conduct of my deposition. I'd like to proceed on
19 another line if I may.

20 MR. BRAND: You may go right ahead. As I noted,
21 in the interim, if we take an appropriate break or at some
22 other time, once we get the bulk of this deposition behind

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1 us, perhaps we can consult with the Chairman as to the use
2 of the document. However, staff has reserved the right to
3 proffer questions to the witness by use of written
4 interrogatory.

5 The matter of Mr. Milburn is still in the air and
6 the appropriateness of his motion, and, therefore, we may have
7 an opportunity to pursue the contents of that document not
8 addressed to the witness, but Mr. Milburn.

9 I suggest that any other party will also reserve
10 the right to pursuant interrogation, if the board so indicates.

11 MR. BRAND: I believe the witness said I may see
12 the document. It is in his possession and custody until
13 the time he handed it to you.

14 Do you object to that?

15 MR. LESSY: I would object that you wait until your
16 cross-examination of the witness to see it. Is that objec-
17 tionable to you?

18 MR. BRAND: It is, but I'm willing to go forward
19 on that basis.

20 MR. REYNOLDS: I'm not sure the witness testified
21 the way you said. The witness testified if you had come to
22 his office and asked for the document on a voluntary basis,

26mil 1 that he would have at the time probably given you the docu-
2 ment.

3 MR. LESSY: My sole purpose to go ahead is to
4 avoid a time delay controversy. I think there is a good
5 argument that the subpoena modifies the board's order, but I'm
6 not certain of that and I'd like to put it on the Chairman.

7 MR. BRAND: But I have a continuing objection be-
8 cause the subpoena has nothing to do with the document that
9 is in the possession, custody, and control of the City of
10 Painesville, and apparently Mr. Reynolds has bootstrapped
11 himself into a position of CEI being able to assert a privi-
12 lege over a document they voluntarily gave to the City of
13 Painesville, and the City of Painesville has no objection to
14 showing it to the City of Cleveland.

15 MR. REYNOLDS: I'm not claiming privilege. I
16 agree with Mr. Lessy. This is something we should discuss
17 with the board.

18 BY MR. LESSY:

19 Q Mr. Pandy, we were looking at factors which may
20 have been incentive or stimulus on both parties to reaching
21 the CEI-Painesville agreement. You mentioned the Ottertail
22 case, FPC proceedings. Would, in your view, the present NRC

27mil 1 antitrust proceeding also have been a stimulus to CEI to
2 reach an agreement?

3 A Yes, I believe it would. I had so advised the City
4 Manager of Painesville during the course of the negotiations.

5 Q I don't know, Mr. Pandy, if you're aware of the
6 form and nature of these antitrust proceedings, but if a
7 situation inconsistent with the antitrust law is proven, the
8 board attaches conditions to the license, the nuclear power
9 plant operating license of the parties, which conditions
10 require of applicants at that point, licensees, certain --
11 requires applicants to engage in certain transactions and reach
12 certain agreements.

13 Are you aware of that?

14 A Yes, I am.

15 Q Are you aware that those license conditions would
16 serve or could serve to supersede or modify any private agree-
17 ments, such as a CEI-Painesville agreement, that are in
18 existence?

19 A Yes, I am aware of that also.

20 MR. LESSY: Off the record for a second.

21 (Discussion off the record.)
22

1 MR. LESSY: Let's go back on the record.

2 BY MR. LESSY:

3 Q I was talking about the type of license
4 conditions which may be appended to the license. Some of
5 those conditions may directly benefit entities such as the
6 City of Painesville. I would like to discuss with you
7 now or ask you questions about certain provisions that we
8 have been considering which may be appropriate in this case,
9 and I would like you to give me your reaction as to whether
10 or not the City of Painesville might benefit from that type
11 of provision.

12 First --

13 MR. REYNOLDS: This line of questioning is
14 based on the assumption that there is a finding of a situation
15 inconsistent and then that then the Board deems on the
16 relief portion of the hearing that the conditions you are
17 about to discuss are appropriate relief for correcting the
18 situation; is that correct?

19 MR. LESSY: There is no really relief portion of
20 the hearing, but that would not come into play unless there
21 is a finding of a situation.

22 MR. REYNOLDS: Is that correct, then, this line

1 of questioning is based on that assumption?

2 MR. LESSY: That's correct.

3 BY MR. LESSY:

4 Q First, sir, we might require applicants to offer
5 to entities in the area an opportunity to participate in
6 a particular applicant's or company's allocated share in any
7 particular nuclear generating unit, such participation
8 would be in reasonable amounts and may be, for example, by
9 ownership, interest, by a contractual prepurchase of power
10 or by unit power purchase as requested by the entity.

11 Would the City of Painesville in your view,
12 or could it benefit from such a provision?

13 A Yes, sir. In my view the city could most
14 definitely benefit from such an arrangement.

15 Q In what way, briefly, sir?

16 A It is my belief that such an arrangement would
17 afford the City of Painesville an opportunity to secure
18 generating capacity and in effect energy at a lower cost
19 than it could otherwise acquire such energy or generate such
20 energy with its own equipment.

21 Q Another provision which we have been considering
22 is transmission servides. That is that the licensee would

1 have the affirmative obligation to transmit bulk power
2 over its transmission facilities to, from, between or among
3 entities such as the City of Painesville in which it is
4 interconnected and between any such other entities engaging
5 in bulk power supply.

6 By this we mean a standard third-party wheeling
7 type arrangement.

8 Would that be beneficial to the City of
9 Painesville?

10 MR. REYNOLDS: Before he answers, would this
11 condition contemplate a charge being assessed for the use
12 of that transmission facility?

13 MR. LESSY: I haven't gotten to the question
14 of cost.

15 MR. REYNOLDS: You are asking him would it be
16 advantageous. I think you ought to indicate to the witness
17 that there would be a cost associated with whatever benefits
18 you suggest might be attached as license conditions.

19 It is hard to assess whether it would or would
20 not be advantageous without that kind of an input.

21 MR. LESSY: I think that is reasonable.

22 MR. REYNOLDS: All right.

1 BY MR. LESSY:

2 Q There would be an appropriate, a fair
3 transmission charge accompanying any transmission service
4 or any other service.

5 A I am aware of the notion that there are costs
6 associated with transmission and I believe in answer to
7 your question that such an arrangement or wheeling of
8 bulk power could also provide the city with benefits in terms
9 of lower cost energy.

10 Q Another possibility that we were considering is
11 ~~requiring licensees to sell full or partial requirements~~
12 power for resale to any requesting entity which would not
13 restrict the use or resale of any power.

14 Would the City of Painesville or could the
15 City of Painesville benefit by that?

16 A Yes, it could, most definitely.

17 Q In what way, sir?

18 A Well, the main interest in the City of
19 Painesville in the purchase of power would be to redistribute
20 that power to its citizens, to its customers on its electric
21 system and to offer them the lowest possible cost energy
22 that would be available at any given time, so I would think

1 that provision for resale would be consistent with the
2 previous question that you had directed regarding bulk
3 capacity.

4 Q You mentioned in describing one of the incentives
5 for the City of Painesville to reach an interconnection
6 agreement was that, as I interpreted it, was that you
7 didn't have spinning reserves, that there could be an
8 outage.

9 Consider the possibility of a licensee being
10 required to enter into a reserve sharing arrangement with
11 an entity such as the City of Painesville which would
12 jointly establish minimum reserve requirements to be
13 installed and/or provided under contractual arrangements.

14 The parties would jointly establish criteria
15 for apportioning such reserves among themselves, for
16 example.

17 Would such an arrangement benefit the City of
18 Painesville?

19 MR. REYNOLDS: Let me hear that again, please.

20 (The reporter read from the record as requested.)

21 MR. REYNOLDS: Thank you.

22 MR. BRAND: May I inquire, Mr. Lessy, is your

1 question directed to spinning reserves only in contrast to
2 installed reserves?

3 MR. LESSY: No, it is not. It would encompass
4 both, sir.

5 MR. BRAND: Both spinning and installed.

6 THE WITNESS: Yes, I believe it would be in the
7 city's interest to be able to jointly plan reserve capacity
8 with the utilities.

9 MR. BRAND: May I also inquire whether the
10 question contemplated that the determination of what was
11 an appropriate plan of reserve sharing would be left to the
12 parties or would be indicated in some way by the Commission?

13 MR. LESSY: It would be indicated in the
14 license conditions as to what alternatives were available
15 in the event that such an agreement could not be reached
16 it might become a subsequent matter in front of the
17 Commission involving enforcement or some other proceeding.

18 MR. BRAND: I see.

19 Is that how you understood the question,
20 Mr. Pandy?

21 THE WITNESS: Yes, it is.

22 MR. BRAND: Thank you.

1 BY MR. LESSY:

2 Q What advantages could inure to the City of
3 Painesville in having a reserve sharing arrangement,
4 specific advantages, as I have described, briefly, sir?

5 A Well, in reserve sharing arrangement, the city
6 would be given the advantage of having reserve capacity
7 available to it from other sources remote to its own
8 generating plant so that, for example, in the event of an
9 accident or other breakdown at our single generating
10 location that could possibly force out both our operating
11 capacity and what spinning reserve we might have available
12 to us, we would still have a remote source of reserve
13 capacity available to supply our system.

14 Q Thank you.

15 Another matter that we were considering relating
16 to this is requiring licensees to require emergency support
17 under appropriate circumstances to an entity such as the
18 City of Painesville.

19 Would that be beneficial, sir?

20 A Yes, it most definitely would.

21 Q Could you say briefly as to how?

22 A My notion of emergency support would be that

1 in the event that the City of Painesville, for example,
2 did not have generating capacity available or operable to
3 supply its system demands, that other entities would do
4 their utmost to provide generating capacity, to provide
5 energy to the City of Painesville by whatever means were
6 available to those entities, including all of the available
7 equipment on their own systems as well as energy that
8 they might acquire from other systems which are inter-
9 connected to such entities.

10 MR. KEYNOLDS: Let me just ask a clarifying
11 question.

12 Was your question addressed to what benefits or
13 advantages would inure to Painesville over and above the
14 benefits under the interconnection agreement?

15 MR. LESSY: No.

16 MR. REYNOLDS: I see.

17 Did you understand the question?

18 THE WITNESS: Yes, I did.

19 BY MR. LESSY:

20 Q Suppose that another requirement of licensees
21 would be that they coordinate maintenance schedules and
22 provide maintenance support with entities such as the City

1 of Painesville; would that be desirable to the city in your
2 view?

3 A Yes, I believe it would be.

4 Q Would the same also be true with requiring the
5 exchange of economy energy?

6 A Most definitely, yes.

7 Q These were just examples that I gave. I didn't
8 mean to be complete. But I think your responses have been
9 good.

10 Now I just would like to turn to, just ask you
11 generally, have any of the services as mentioned by me
12 been requested, to your knowledge, of CEI and -- that were
13 not in the Painesville interconnection agreement?

14 MR. REYNOLDS: Maybe you could run through each
15 of the services to help the witness to recall exactly what
16 you did discuss.

17 MR. LESSY: Okay.

18 MR. BRAND: And may I inquire, when you are
19 referring to services, are you referring to services
20 completely divorced from the terms and conditions of those
21 services?

22 MR. LESSY: I am referring to services in the

1 general -- in general, yes.

2 I am not focusing on a particular term or
3 condition or commonly known as rate. I am assuming -- I am
4 not focusing on that.

5 BY MR. LESSY:

6 Q I am not sure that this is the same order that I
7 gave you the question, but I have mentioned transmission
8 services, access to nuclear power.--

9 MR. REYNOLDS: Maybe one at a time might be an
10 easier way to proceed.

11 MR. LESSY: Okay.

12 BY MR. LESSY:

13 Q Have transmission services been requested,
14 to your knowledge?

15 MR. REYNOLDS: Has it been requested by
16 Painesville of CEI.

17 BY MR. LESSY:

18 Q By Painesville to CEI?

19 A The subject of transmission services has been
20 discussed in our negotiations, but I don't believe we have
21 a record of a formal request for such services.

22 Q Do you have an indication of a --

1 MR. BRAND: Objection.

2 Excuse me. I move to strike the response as
3 not responding to the question. The question was was
4 there any request and Mr. Pandy responded there was no
5 formal request.

6 The question was not whether there was a
7 formal request, but whether there was any request at all.

8 THE WITNESS: Yes, I believe there has been a
9 request that such wheeling arrangements be included in the
10 provisions of the interconnection agreement.

11 BY MR. LESSY:

12 Q Do you know, sir, whether or not there has been
13 a response to that, either formal or informal?

14 A I would like to refresh my memory by looking at
15 the agreement, if I may.

16 (Witness examining document.)

17 A (Continuing) I believe that the interconnection
18 agreement in Section 5.35 addresses the concept of
19 transmission of power from third parties on page 13, wherein
20 it says purchase power, "All costs excluding demand charges
21 paid to third parties for power purchased."

22 MR. BRAND: Excuse me. May I have a moment to

1 find the place?

2 MR. LESSY: Yes.

3 MR. BRAND: It is page 13 of the main body of the
4 agreement?

5 THE WITNESS: That's correct.

6 MR. BERGER: What section is that?

7 THE WITNESS: 5.35.

8 MR. BERGER: Oh, 5.35.

9 THE WITNESS: It is included in the definition
10 of out-of-pocket costs of the party. It is included as one
11 of the components of out-of-pocket costs.

12 I don't believe that the agreement specifically
13 refers to transmission charges or wheeling charges in a
14 direct reference, other than in that notation I just
15 described.

16 BY MR. LESSY:

17 Q Is it your understanding of the agreement,
18 if you could arrange third-party power to be delivered to,
19 for example, to applicants or CEI transmission grid, would
20 pursuant to the agreement CEI have an affirmative
21 obligation to wheel it into the City of Painesville?

22 A No, that is not my understanding of the

1 agreement.

2 Q Now, I am going to refresh your recollection,
3 sir, with a -- give this to the witness, please -- with
4 a letter dated September 11, 1972, written by yourself as
5 Superintendent of Power to the City of Painesville, and I
6 am going to distribute copies to counsel.

7 Give these to Mr. Reynolds and Mr. Berger.

8 MR. BERGER: I believe Mr. Reynolds already
9 has a copy of this letter. It was produced to him in the
10 pile of documents produced by the Department of Justice in
11 response to the applicant's discovery request.

12 MR. REYNOLDS: That may well be, Mr. Berger.
13 I guess for the record I ought to explain. Mr. Lessy, in an
14 effort to accommodate the arrangement that the parties made
15 heretofore, called me yesterday afternoon and only at that
16 late time because he was unable to reach me earlier, to
17 indicate that he had some documents he wanted to use and
18 wondered whether there would be a need to designate them in
19 advance, and I indicated to him due to the late hour it would
20 be virtually impossible for me to pull the documents and
21 for that reason we agreed that the documents which Mr. Lessy
22 intended to use would be copied by him and furnished to all

1 counsel at the deposition so as to take care of the time
2 difficulties we had under the arrangement for designating
3 documents.

4 MR. LESSY: In addition, this document is also
5 used to refresh his recollection, which comes under an
6 exception to that.

7 But I appreciate counsel's statement.

8 BY MR. LESSY:

9 Q With this document in hand, Mr. Pandy, inasmuch
10 as some time has passed since September 11, 1972, I am going
11 to direct your attention to certain statements there and
12 ask you certain questions with respect thereto.

13 In answer to Question 1 you indicate that an
14 interconnection between CEI and City of Painesville would
15 involve use of Cleveland Electric Illuminating Company's
16 transmission lines, "which lines completely surround our
17 service area and are the only means open to us for bulk
18 power supply coordination with the applicants."

19 Is that still a true statement, sir?

20 A Yes, it is.

21 Q In answer to Question 2 you were describing the
22 expansion program in terms of the generating capacity of

1 Painesville electric system. I wonder if you could update
2 that information contained therein for us, please.

3 A All right. Paragraphs A and B, the equipment
4 so described is being installed as described. The cost which
5 I had shown in this letter at an estimate of \$5,429,000 is
6 now estimated to exceed \$6.5 million.

7 And the capital costs for this expansion is
8 now higher and it is approximately \$278 per kilowatt of
9 capacity. Approximately.

10 Q Okay --

11 MR. REYNOLDS: Excuse me. Could I have that
12 last figure again?

13 MR. SPAND: Yes, I think the witness should be
14 advised that if he considers those figures confidential
15 to Painesville, they can be given into the record under seal.

16 Unfortunately, the witness responded before
17 I had a chance to advise him, but I know counsel for CEI is
18 present and has already taken down the information, but you
19 do have the opportunity to further questions if there is
20 information that you consider confidential to the City of
21 Painesville to ask that it be put into the transcript under
22 seal and under present orders of the Board the information

1 would only be available to outside counsel for CEI and would
2 not be available to any representative of the CEI.

3 BY MR. LESSY:

4 Q Was this confidential information, sir?

5 A I don't believe it is because it has been
6 included as part of the prospectus for bonding on the
7 project.

8 MR. REYNOLDS: Could I have the last figure?

9 THE WITNESS: Approximately \$278 per kilowatt.

10 MR. PEYNOLDS: Thank you.

11 BY MR. LESSY:

12 Q In response to 3, you state here that CEI owns
13 and controls all the high voltage transmission surrounding
14 the Painesville service area and that this ownership is
15 a limiting factor in Painesville obtaining bulk power
16 or coordinating expansion with other electric entities.

17 Is that still correct, sir?

18 A Yes, it is.

19 Q You also mentioned in response to 3 that other
20 municipal electric systems in Ohio have incorporated
21 under the title of AMP-O, American Municipal Power-Ohio,
22 Inc., to be operated on a cooperative basis.

1 It is my understanding that Painesville is
2 not a member of AMP-O; is that correct?

3 A That's correct.

4 Q I wonder if you can tell me why, sir?

5 A At the time that AMP-Ohio was incorporated and
6 formed we explored the alternative of membership in AMP-O
7 and felt that without an interconnection to CEI that we
8 would have no means of gaining the benefits that AMP-Ohio
9 sought as its objectives, namely availability of the lowest
10 cost possible energy to its member systems.

11 It was our opinion that before we could get
12 such low cost energy from other sources, we would first have
13 to have an interconnection with the Cleveland Electric
14 Illuminating Company.

15 By AMP-O, I mean AMP-Ohio, as previously
16 described.

17 American Municipal Power of Ohio.

18 Q Returning now to the Painesville agreement,
19 interconnection agreement with CEI, I request your
20 attention to the last sentence of Section 2.11 of Service
21 Schedule E of that agreement.

22 This provision states as follows: "Delivery of

1 such energy subject to the provisions of this
2 subsection 21 may be taken -- 2.1 -- may be taken at
3 such times and at such rates of take as receiving party may
4 elect up to a maximum rate of take of 25,000 kilowatts."

5 As I read that provision, sir, Painesville
6 would be entitled to receive up to 25 megawatts, but it would
7 also be obligated to provide up to 25 megawatts.

8 Do you agree with that interpretation?

9 A Yes, I do.

10 Q Based on the facts and figures that we have gone
11 over today concerning your system, as updated by your
12 answer to Question 2 of your September '72 letter, isn't
13 a 25 megawatt requirement --

14 MR. BRAND: May we go off the record while
15 Mr. Reynolds is on the telephone?

16 (Discussion off the record.)

17 MR. BRAND: On the record.

18 I don't want to interrupt your question, but it
19 was interrupted because of a telephone call to
20 Mr. Reynolds.

21 But I would like to inquire when you use the
22 term requirement, are you referring to a requirement of

1 the nature and the extent that it is listed in the
2 Section 2.1 of Service Schedule A?

3 MR. LESSY: That's correct. Under the
4 provision services to be rendered.

5 MR. BRAND: In other words, the 25 megawatt
6 obligation you are referring to is the obligation to, in the
7 event of a breakdown or other emergency in or on the
8 system of either party involving either sources of power or
9 transmission facilities or both, impairing or jeopardizing
10 the ability of the party suffering the emergency to meet
11 the loads of its system, the other party -- and this is
12 the requirement -- shall deliver to such party electric
13 energy that it is requested to deliver with the proviso
14 that neither party shall be obligated to deliver such
15 energy which in its sole judgment it can't deliver without
16 interposing a hazard to its operations or without impairing
17 or jeopardizing the other load requirements of its system.
18 And provides further that neither party shall be obligated
19 to deliver electric energy to the other for a period in
20 excess of 48 consecutive hours subject to any emergency.

21 MR. LESSY: I believe it is E, Service Schedule
22 E maintenance power.

1 MR. BRAND: Oh, I see.
2 I will take a look at that.
3 Very good. Thank you.

4 BY MR. LESSY:

5 Q I hadn't finished my question, but my question
6 is based on the facts and circumstances that you have
7 described as updated today, isn't a 25 megawatt requirement
8 a lot for a system such as the City of Painesville?

9 A Yes, it is a lot. It is equivalent to the
10 capacity of our largest generating unit.

11 Q If that is the case, wouldn't a 25 megawatt
12 requirement constitute a tremendous burden on such a small
13 system?

14 A Yes, it would.

15 Q And obviously, the 25 megawatts would be in
16 many times a greater burden for a small system such as
17 Painesville as compared to a relatively large system such
18 as CEI?

19 A Many times it would, yes.

20 Q Then why would you agree to a provision that
21 would impose such a burden?

22 A Well, there are a couple of reasons associated

1 with that.

2 One was that we viewed the interconnection
3 agreement as a two-way street in that we believed there
4 would be times that we could contribute energy to CEI's
5 system as well as times that they could contribute energy
6 to ours.

7 Secondly, there would be times that we could
8 conceivably contribute that much power, times that were
9 off-peak conditions for us where we conceivably could have
10 that much generating capacity available to put on to the
11 CEI system and where it would be in our interest to do so.

12 Q That is a year-round obligation, isn't it, the
13 25 megawatts?

14 A I believe that this Schedule E contemplates,
15 under Section 2.12, an operating committee shall determine
16 and agree upon dates of the intervals referred to under
17 Subsection 2.11 and goes on to say, above during which CEI
18 shall deliver any such energy desired by or returnable to
19 City, and, conversely, the dates of such intervals during
20 which City shall deliver any such energy desired by or
21 returnable to CEI.

22 My understanding of the function of this

1 operating committee would be to coordinate schedules
2 to permit an equivalency of return and, further,
3 Section E provides for under Section 3 of Service Schedule
4 E provide for an annual settlement if there is an unbalance
5 in energy exchange for maintenance.

6 In effect, a cash type settlement as
7 opposed to a return in kind type of settlement.

8 I think that this schedule basically
9 contemplates a cooperative effort, a willing buyer and
10 seller type of arrangement.

11 Q Okay. I wonder if I could show you a document
12 from Mr. Milburn to Mr. Charno dated September 16, 1974.

13 Since you may have not seen that document,
14 why don't you take a few minutes to read it.

15 A I don't believe I have seen it.

16 Q Okay.

17 MR. BRAND: In an off-the-record colloquy
18 among counsel and Mr. Pandy, counsel for the City of
19 Cleveland stated that the controversy over the December 3,
20 1964 letter was as follows:

21 The counsel for CAPCO has contended that the
22 City of Painesville was not legally obligated to turn over

1 the letter of December 3, 1964.

2 MR. REYNOLDS: On the basis of the Board's --

3 MR. BRAND: Yes, on the basis of the Board's
4 order concerning dates for discovery which counsel for
5 CAPCO thought applied also in the City of Painesville.

6 Counsel for the City of Cleveland disputed the
7 contention. However, he suggested to Mr. Pandy, assuming
8 that the Board's order would not compel the City of
9 Painesville to turn over the document, the Board's order
10 in no way prohibited the City of Painesville from releasing
11 the document voluntarily if it chose to do so.

12 Counsel for CAPCO concurred in that conclusion
13 and following that Mr. Pandy graciously provided to the
14 counsel for the City of Cleveland a copy of the letter of
15 December 3, 1964 which obviates any need then to go to the
16 Board and will, I think, expedite the proceeding.

17 MR. REYNOLDS: I would like to ask Mr. Pandy
18 whether he has any objection to voluntarily turning a copy
19 of that document over to all of the other parties in this
20 proceeding.

21 THE WITNESS: No, I have no objection to that.

22 MR. REYNOLDS: If you have a xerox machine

1 available, could you perhaps copy the document so that
2 we could all have a copy of it?

3 MR. LESSY: Staff will undertake that.

4 MR. BRAND: Would you like to turn the original
5 over to Mr. Lessy, then?

6 MR. LESSY: It is not necessary. I have a
7 copy that we can xerox.

8 MR. BRAND: Thank you very much. I will return
9 this to you shortly.

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1 BY MR. LESSY:

2 Q Mr. Pandy, I direct your attention to the Septem-
3 ber 16, 1974 letter from Mr. Milburn to Mr. Charno. Spec-
4 fically, initially, the third paragraph at which time --
5 at which point Mr. Milburn says: "The last time we" -- that
6 is, the City of Painesville, Ohio -- "met with officials
7 of CEI, we submitted a contract which we felt correspond" --
8 (sic -- "in all their important respected" -- sic -- "with
9 their contracts with Ohio Power and Ohio Edison. . .

10 "They indicated general agreement, but said they
11 would have to study it. I requested that in the event of
12 changes, they use the form I had submitted so we wouldn't
13 have to start all over again. That meeting was four or five
14 months ago."

15 Did the City of Painesville feel that the con-
16 tracts between CEI and Ohio Power and Ohio Edison were
17 appropriate standards upon which to gauge an interconnection
18 agreement between CEI and Painesville? Is that why that
19 language is included in that paragraph, to your knowledge?

20 A No; I believe that was indicative of Mr. Milburn's
21 opinion on the subject. I did not personally share that
22 opinion.

b2
1 Q Okay.

2 A I don't know that Mr. Milburn was in a position
3 to speak for the City of Painesville in that regard.

4 Q Was he not at that time, law director?

5 A He was; yes.

6 Q Was he not prime negotiator with CEI with respect
7 to the contracts?

8 A Yes; he was.

9 Q Turning now to page 2 --

10 A I might qualify that by saying that he was
11 delegated to that negotiating position by the city manager,
12 who would have, in my view, the final authority as to what
13 the City of Painesville's position would be in regard to
14 this matter.

15 Q Okay.

16 Turning now to page 2, the 2 last sentences of the
17 initial paragraph on that page:

18 "At the end of five years, I am forced to the
19 conclusion that there is some reason why I get every-
20 thing but the contract itself. My relationship with
21 Mr. Howley is very good, but he may be having trouble
22 with others, since for years it was an avowed goal

1 of the CEI to take over the Painesville Plant."

2 Now, with respect to those two sentences, I would
3 like to ask you the following questions: Since you have
4 only been involved in the negotiation, Mr. Pandy, since
5 '71, were you at any time forced to the conclusion as was
6 Mr. Milburn, that there is some reason why Painesville
7 got everything but a contract itself? Would you, as of
8 September '74, be of the same view?

9 A. Yes; I would say it was accurate to say that my
10 view, as of September of '74 would have been that there was
11 some reason we were getting everything but a contract.

12 Q. The next sentence states that Mr. Howley is all
13 right, but that he might be having trouble with others.

14 Would you have any knowledge as to the nature of
15 that statement or who the others might be?

16 A. Well, I know that there were other people involved
17 in the negotiations with regard to an interconnection agree-
18 ment.

19 For example, people in the engineering and rates
20 department of CEI who potentially could have been a source
21 of trouble.

22 Q. How about CEI management? Were they involved;

b4
1 do you think? Do you think he may have been referring
2 to them?

3 A. That would also be a possibility; yes.

4 Q. And then he continues, "For years, it was an avowed
5 goal of CEI to take over the Painesville plant."

6 Are you aware of the source of that statement,
7 realizing you are not the best evidence, but since Mr.
8 Milburn is not here today, I would like to ask you that
9 question.

10 A. Well, I believe there might be two sources of
11 that statement, one being previous interest expressed
12 by the CEI Company, in the purchase of the Painesville
13 system, or parts of that system, and a second source of such
14 a statement might be CEI memorandum, an internal company
15 memorandum which referred to a five-year plan objective to
16 reduce and ultimately eliminate the tax-subsidized Cleveland
17 and Painesville electric system.

18 Q. Have you produced that memorandum pursuant to
19 the subpoena?

20 A. Yes; I have it with me.

21 Q. I wonder if we might have it for inspection and
22 copy, along with the '64 letter, the famous 1964 letter.

barb5 1

A. Yes.

2

Q. We will make copies for all parties present here today.

3

A. It consists of five pages.

4

Q. Could you identify the date and the bringer and the recipient for the record, please?

5

A. It is a memorandum on Cleveland Electric Illuminating Company memorandum paper from RH Bridges to E.C. Howley, dated October 9, 1970.

6

Q. Okay.

7

MR. REYNOLDS: Could I see that for a minute?

8

MR. BRAND: May the record show that I am returning the letter of December 31, 1964 to Mr. Pandy. I note that the letter refers to another letter of September 18th, I believe it is, in which the complete rates, terms and conditions are incorporated.

9

Would you have that letter with you, also, Mr. Pandy?

10

THE WITNESS: I don't have it with me, but I believe it is contained in the files of the City of Painesville.

11

MR. BRAND: Would you be agreeable to making it available voluntarily, to counsel for the City of Cleveland?

12

1 THE WITNESS: Yes; I would.

2 MR. REYNOLDS: Would you be agreeable to volun-
3 tarily making it available to counsel for all parties?

4 THE WITNESS: Yes; I would.

5 BY MR. LESSEY:

6 Q Nest two paragraphs --

7 MR. REYNOLDS: Could you wait just a minute?

8 MR. LESSEY: Oh, I am sorry.

9 MR. REYNOLDS: I haven't had a chance to look
10 this over.

11 I would note for the record that the document
12 which Mr. Pandy has handed to Mr. Lessey appears to be
13 rather than the complete document, five excerpted pages
14 from what apparently was a much more lengthy document;
15 page one, 4, 24, an unnumbered page, and 25, page number
16 25.

17 The intervening pages do not appear to be at-
18 tached and I would submit that this is but an excerpted por-
19 tion of several pages of what must be a more extensive docu-
20 ment.

21 MR. BRAND: May I inquire, Mr. Pandy, do you have
22 any other pages of that document with you at the present

b7
1 time?

2 THE WITNESS: No; I don't.

3 MR. LESSEY: I think we have seen this document
4 a number of times before and we can supplement the other
5 pages.

6 BY MR. LESSEY:

7 Q The next two paragraphs, that is the second and
8 third paragraphs of Mr. Milburn's letter to Mr. Charno,
9 September 16, '74, but notwithstanding the question of
10 cost, taking about requests for access to the Perry plants,
11 made by the City of Painesville, and Mr. Milburn's conclu-
12 sionat that time, and I quote:

13 "In short, I got neither acceptance nor
14 a refsual."

15 Do you know, Mr. Pandy, whether or not there has
16 been an acceptance or a refusal as of the time frame we
17 are in today?

18 A No; I am not aware of either an acceptance or
19 a refusal. I am aware of some discussion of the subject
20 between Mr. Milburn and Mr. Howley.

21 I might quality that by saying I am aware of it
22 by having copies of the correspondence between the parties

b8
1 relative to that matter.

2 Q Have you produced pursuant to the subpoena
3 any other documents other than those to which we have already
4 referred this morning?

5 A Yes; I have.

6 Q I wonder if staff may examine them for a moment?
7 Would the City of Painesville be amenable to
8 these documents being copied and distributed to the parties?

9 A Yes; I believe so.

10 MR. LESSEY: Off the record.

11 (Discussion off the record.)

12 MR. LESSEY: Back on the record.

13 BY MR. LESSEY:

14 Q Turning our attention to one of these documents,
15 the City of Painesville, Ohio system electric requirements.
16 Did you want to claim confidentiality -- for 1961 to
17 1981 -- did you want to claim confidential with respect to
18 the contents of any of this?

19 A No.

20 Q Well, then, staff will undertake to have copies
21 made and distributed to the parties.

22 MR. BRAND: If that could be done so that counsel

1 will have an opportunity to look over the documents at
2 lunchtime, it would be greatly appreciated, and would expedite the proceeding.

3
4 THE WITNESS: I might add that I brought information which I felt was pertinent and concise. My complete
5 files on the subject of interconnection between City and
6 CEI would fill two of those brief cases.

7
8 In the interest of conciseness, I tried to
9 select those things which I felt were most pertinent to
10 the matter. I have other things such as numerous drafts of
11 interconnection agreements that were revised and re-revised
12 in the negotiations. I have internal memoranda from myself
13 to the city manager, things of that ilk, that also relate
14 to the matter, but I don't believe have particular relevance
15 here.

16 MR. LESSEY: I think that will conclude staff's
17 examination at this point. We thank you for appearing and
18 for producing and the rest of the parties will have a right
19 to question.

20 Off the record.

21 (Discussion off the record.)
22

arbl0

EXAMINATION

1
2 BY MR. BRAND:

3 Q Mr. Pandy, are you familiar with the specific
4 unit generating capacity of the City of Painesvill system?

5 In other words --

6 A Yes; I am.

7 Q All right, sir; could you start unit-by-unit
8 and give me those capacities and the nature of the capacity
9 such as diesel or steam, or what have you?

10 A All right. We have under construction at present
11 a 25,000 kilowatt unit, which is fired by coal as a primary
12 fuel, with oil as alternate fuel, with a matching steam
13 turbine generator.

14 We have -- this is going to get a little compli-
15 cated. We have a 250,000 pound per hour coal fired boiler
16 that is capable of driving a 16,500 kilowatt steam turbine
17 generator, as well as additional steam turbine generators
18 that are connected by common headers.

19 Perhaps the simple way to do it would be to list
20 all the boilers and then all the turbine generators.

21 Q On a common header?

22 A Yes.

rbll 1 Q. Very good, sir.

2 A. All of these that follow are interconnected by
3 pipelines.

4 MR. REYNOLDS: Let me interrupt; you said capable
5 of driving?

6 THE WITNESS: 16,500 kilowatt turbine generator.
7 Additional boilers, one rated 160,000 pounds of steam per
8 hour, coal fired. Another boiler which is rated at
9 approximately 75,000 pounds per hour and a final boiler at
10 approximately 50,000 pounds per hour steam capacity, for
11 a total of 4 boilers that are commonly connected.

12 Turbine generators, I mentioned the 16,5000 kilo-
13 watt unit, two units that are 7,500 kilowatts each, one unit
14 that is 4,000 kilowatts, and one that is 2,500 kilowatts.

15 All of those turbo-generators are capable of
16 receiving steam from the four common boilers.

17 The unit under construction is set up as a
18 separate unit system.

19 I might also state that the four existing boilers
20 that are commonly connected do not fully comply with the
21 state of Ohio environmental protection regulations, with
22 regard to air pollution control facilities, and that we have

b12
1 signed a consent and abatement order with the state of Ohio
2 EPA, that limits our usage of those older units, those older
3 boilers to essentially emergency times.

4 BY MR. BRAND:

5 Q Apart from the unit now under construction, what
6 is the total rated capability of the -- continous capability
7 of the City of Painesville system?

8 A The total capability without the new unit is
9 35,000 kilowatts. Firm capability is 21,500 kilowatts,
10 which assumes the largest unit out of service.

11 Q And would that be the 16,500?

12 A Correct.

13 Q All right, sir.

14 Now, what is your present load, or what was your
15 last peak load?

16 A We have experienced loads this summer in excess
17 of 25,000 kilowatts. 25,500 approximately.

18 Q Is it correct then, that if you had at the time
19 of your peak load, lost your single largest unit, you would
20 have had to shed some of your customers at that time?

21 A That is correct.

22 Q Now, let's assume that you were going to continue

13
1 to be isolated, Mr. Pandey, and you installed a 25,000 kilo-
2 watt unit. Is it correct that in order to sell firm power
3 you would have to have a new reserve requirement of 25,000
4 megwatts -- kilowatts, excuse me -- in lieu of the 16,500
5 kilowatt reserve obligation you had before?

6 MR. REYNOLDS: Can I have that question read?

7 (The pending question was read as requested.)

8 THE WITNESS: I am not certain that I can answer
9 your question.

10 BY MR. BRAND:

11 Q Let me withdraw that one and rephrase it.

12 A I would just like to qualify by saying a consent
13 and abatement order shows or indicates a knowledge of the
14 interconnection agreement, as well as the old equipment
15 being operable on a emergency basis, so it is a rather com-
16 plicated answer and to assume no interconnection would --

17 Q I see. Let's assume for the moment the abate-
18 ment order doesn't exist.

19 A Okay.

20 Q To simplify the question and answer, I am asking
21 now very simple principles of system planning.

22 MR. LESSEY: Simple to you, Mr. Brand.

b14

1 BY MR. BRAND:

2 Q All right. Assume the abatement order doesn't
3 exist, and assume you change the size of your largest unit
4 from 16,500 to 25,000. In order to calculate the amount of
5 firm power you can sell under those conditions, wouldn't
6 you have to provide for reserves of 25,000, rather than
7 16,500?

8 A That is correct.

9 Q And let's assume instead of the 25,000 new unit
10 you wanted to use a 50,000 new unit; wouldn't your reserve
11 go up from 16,500 to 50,000?

12 A Assuming that your new unit was sized to match
13 your load. Our view in generating planning is to size re-
14 service capacity sufficient to handle our loads with the
15 largest unit out of service.

16 Q Yes, sir.

17 A So if that newest unit were sized to be equiva-
18 lent to your projected system load, then you would have to
19 provide reserve capacity also equivalent to the new unit.

20 Q Well, in order to determine up to how much loads
21 you could handle, suppose you wanted to calculate it that
22 way; wouldn't you have to add up all your generating capacity

barb15

1 and subtract the size of your largest generating unit?

2 A. That is how firm capacity planning is done; yes,
3 by all utilities.

4 Q. Yes, sir. Well, is it correct, then, that if you
5 have at the start of the planning period a largest unit
6 of 16,500, that no matter how big a unit you install, you
7 can only increase your firm capacity based on the installa-
8 tion of that first unit by an amount of 16,500?

9 A. That is correct. Subsequent units increase the
10 firm capacity by the size of the previous newest units.

11 Q. Yes, sir. Thank you.

12 Now, let's assume that you instead of being an
13 isolated system, have an opportunity to have an interconnec-
14 tion with another system on a basis that they will provide
15 emergency power to you if and when available, and surplus
16 to their own needs, and you will do the same for them; and
17 also on the condition that you maintain 15 percent reserve,
18 for example, as a condition of interconnection.

19 Under these conditions, are the same -- do the
20 same circumstances apply in calculating the amount of firm
21 power you will get from going to a larger unit size?

22 A. I believe that would depend on the conditions

16
1 of your interconnection agreement, the degree to which you
2 have a firm commitment for capacity, in that agreement.

3 Q Well, let me put the question this way: Assuming
4 your first response that no matter how big a new unit you
5 install you only get the amount of additional firm capacity
6 of your last largest unit, is that an economic disincentive
7 to install larger sized units?

8 In other words, does that tend to hold down the
9 size of the units that you would install?

10 A No, I would think not. I am not quite sure I
11 understand the question. Would you phrase it again?

12 A Well, if you put in a 50,000 megawatt unit; for
13 example, let's assume you have --

14 MR. LESSEY: 50,000 megawatt?

15 BY MR. BRAND:

16 Q Excuse me, 50,000 kilowatt unit, and only get
17 an additional 16,500 of firm capacity, aren't you paying a
18 lot of demand charges to get additional capacity of only
19 16,500?

20 A You are paying a lot of capital charges --

21 Q I mean at capacity costs.

22 A -- for a smaller increment of firm capacity.

barbl7

1 Q And in return, you are getting some economies
2 of scale are you not?

3 A Correct.

4 Q Now, let's assume that instead of being isolated
5 you had a responsibility for 15 percent of load as reserve.
6 Under those circumstances, in installing a larger sized unit,
7 isn't it correct that your reserve responsibility would not
8 be increased from 16,500 to 50,000, but would grow only
9 as your load grew?

10 A By reserve, you mean total reserves?

11 Q Install reserves; yes, sir.

12 A Yes; your statement is correct.

13 Q Well, under those circumstances, wouldn't it be
14 easier economically to justify a larger unit under those
15 circumstances because of the assurance that you could sell
16 a lot more firm power out of the unit?

17 A I believe that is correct.

18 Q When the City of Painesville made the decision
19 to go to a 25,000 megawatt unit -- excuse me, kilowatt
20 unit -- did it have any assurance that it would have
21 available to it an interconnection?

22 A No; it did not.

b18

1 Q If it had had an interconnection at the time,
2 would that have made it economically feasible for the City of
3 Painesville to look at somewhat larger units?

4 MR. LESSEY: Excuse me; has the record been
5 established as to when a decision was made to go to the
6 25,000 megawatt unit? You asked the question when a deci-
7 sion was made, and it went on from there. I don't think
8 we established if a point in time could be pinpointed.

9 BY MR. BRANDY:

10 Q Let me withdraw that earlier question and ask
11 you when a decision was made to commit to a 25 megawatt
12 unit.

13 A Well, a decision in that direction had been made
14 prior to my employment by the City, in approximately 1967,
15 when the City purchased a used turbine generator of that
16 capacity. The decision was further reaffirmed subsequent
17 to my employment when we retained consultants late in 1971,
18 and proceeded with development of specifications for the other
19 equipment to serve that used turbine generator.

20 Q Suppose you have an interconnection agreement of
21 the kind I described. Would that make it more economically
22 feasible to go to a somewhat larger generating unit size?

b19
1 MR. LESSEY: Is it clear to the witness what
2 type of interconnection agreement you described?

3 BY MR. BRAND:

4 Q Yes; is it clear, Mr. Pandy?

5 A I presume you mean the agreement you had previously
6 referred to where each company is required to maintain 15
7 percent of load capacity?

8 Q Yes, sir.

9 A It would probably make it more attractive.

10 Q Let's assume, sir, that in addition to such an
11 agreement, you had assurances that you could get wheeling
12 arrangement on fair terms so that if you wanted to go to a
13 larger unit, you could shop around and see if someone would
14 be interested in purchasing part of the temporary surplus
15 capacity.

16 What effect would that have on the economic
17 feasibility of your installing larger units?

18 A I would think that it would make it much more
19 feasible.

20 Q Would you have, if you were in on the decision
21 to commit to a particular unit size, have inquired of the
22 City of Cleveland for example, to determine if they were

20
1 interested in purchasing the output of one of your units
2 for a time?

3 A Possibly. That would be possible. That would be
4 a likely alternative that would be explored in a feasibility
5 study.

6 Q And would you explore other possible purchasers
7 that would be available to you if transmission services were
8 also available?

9 A Yes; I would think if you were prudently planning;
10 you would.

11 Q Could the City of Painesville feasibly on its own,
12 install a nuclear generating unit?

13 A In my opinion, with its present staffing levels,
14 no.

15 Q About what size is the smallest commercial nuclear
16 generating unit?

17 MR. LESSEY: Do you mean currently in use, or
18 that is being built today?

19 MR. BRAND: Well, I understand there are currently
20 in use some pilot models that are fairly small. I mean,
21 models that were built for commercial use.

22 THE WITNESS: I believe that the most current

1 units that are in commercial operation are generally in the
2 600 megawatt class. I believe that in the planning and con-
3 struction stages, there are numerous units in the 1200 mega-
4 watt class, and I am not fully aware of other commercial
5 sizes, but my guess would be around the 300 megawatt
6 class, would also be in operation.

7 Q With the load of 21,000 -- excuse me, with a
8 load of 25,000 kilowatts, or 25 megawatts, that is handy,
9 would it be feasible for the City of Painesville, as isolated
10 to install a 600 megawatt nuclear generator?

11 A No.

12 Q Would it be fair to say that the only opportunity
13 of the City of Painesville to obtain capacity and energy
14 from a generator would be if it had opportunity to engage
15 in a coordinated development of nuclear generating capacity,
16 with others?

17 A I believe that is a fair statement in view of
18 the present state of the art; or the technology, rather.

19 Q Now, with respect to the City of Painesville's
20 system, let's assume there comes a time when it has its
21 25 megawatt generator, on line. Would it be possible for the
22 City of Painesville -- or would it be economically feasible

b22 1 for the City of Painesville to maintain 25,000 megawatts of
2 spinning reserve?

3 A. Could you repeat your question. I am not sure
4 I understand it.

5 Q. I am sorry. I keep saying megawatts. Let's
6 assume the City of Painesville ultimately puts its 25 mega-
7 watt generating unit on line and loads it up to the full
8 25 megawatts of capacity, to serve load; would it be
9 economically feasible assuming the pollution order didn't
10 exist, would it be economically feasible to maintain con-
11 tinually 25,000 additional megawatts of spinning reserve --
12 I say 25,000 additional kilowatts of spinning reserve out
13 of its common header units?

14 A. In my opinion, it would not be economically
15 feasible, because it would involve operating at least two
16 additional boilers and turbine generators if the air pollu-
17 tion regulations were obviated.

18 Q. All right. Assuming then, that you operate ed
19 without 25,000 additional kilowatts of spinning reserve,
20 in the event of an outage of your largest unit, what
21 happens to -- oh, excuse me. Let's assume you operate
22 only with 15 percent, say, spinning reserve, such that

1 you had, oh, one-3,000 turbine generator on line. What would
2 happen to system frequency, if your largest generating
3 unit tripped off?

4 MR. LESSEY: Could you define "system frequency"
5 for me again?

6 MR. BRAND: Your system operates normally at a
7 frequency of 60 cycles per second.

8 THE WITNESS: That is correct.

9 MR. BRAND:

10 Q And is it correct that there is a certain amount
11 of stored energy in the rotating masses of generating
12 equipment?

13 A Inertia.

14 Q Yes, sir. Now, with respect to a situation, in
15 which you have only the two generators on-line, and you
16 suddenly have a trip off of the 25 megawatt unit, what
17 happens to system frequency at that time?

18 A If you are operating an isolated system, your
19 system frequency is pulled down to a level that is unaccept-
20 able for the continued service of load.

21 You drop below the tolerable frequency that el-
22 ectric devices can accept without burning up motors and

1 causing other failures in consumers' equipment so in the
2 event of such an instance, you have to shed load to maintain
3 frequency.

4 Q Is it correct, Mr. Pandy, that the larger the
5 imbalance between generating capacity and load, the quicker
6 the decline will be in frequency?

7 A Yes; I believe that is accurate.

8 Q So that if you had a synchronous interconnection
9 and were tied into all the generating capacity from Cleveland
10 to the Rocky Mountains, in the west, the Atlantic Ocean
11 in the east, the Gulf Coast on the south, and perhaps the
12 Canadian border on the north, is it correct that the conse-
13 quences of a trip-off of your largest unit perhaps wouldn't
14 even show up as a depression of frequency on a meter?

15 A That is correct; provided your system inter-
16 connection was equivalent or in excess of your load.

17 MR. BRAND: Why don't we break at this time?

18 MR. REYNOLDS: All right.

19 (Whereupon, the proceeding recessed at 12:00 noon,
20 to reconvene at 1:00 p.m. the same day.)

lmil

AFTERNOON SESSION

(2:10 p.m.)

Whereupon,

JOSEPH PANDY, JR.,

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

MR. LESSY: Let the record show that we're back on the record with the cross-examination by Mr. Brand of Mr. Pandy continuing.

EXAMINATION (cont'd.)

BY MR. BRAND:

Q Mr. Pandy, I asked you before the luncheon break about the consequences of a possible trip off of the largest unit.

Have you had such a trip off of a large unit?

A Yes, we did. We have had a few of them in my tenure with the City. Most recently, we had a failure of our largest boiler, the 250,000-pound-per-hour unit in April of 1975.

I believe it was April 13 or 14, a Friday afternoon.

The induced draft fan of that boiler failed and

2mil 1 forced the complete unit out of service. And we had better
2 than half of our system out for approximately four hours
3 on that day while we proceeded to light up reserve boilers.

4 Q What impact does this have on your customers and
5 customer relations?

6 A It makes them irate.

7 Q Is there some portion of your service area outside
8 the City of Painesville where you compete door to door
9 and block to block with the CEI system?

10 A Yes, in a large portion of our service area out-
11 side the City of Painesville's corporate limits. We have
12 approximately 100 miles of line and we are in direct competi-
13 tion with CEI in probably something over half of that mileage
14 where we're on one side of the street and they're on the
15 other, and we compete for customers directly.

16 Q Do you have any view as to how such outages would
17 affect that competition?

18 A Yes, we usually lose a couple of people after an
19 outage like that, a couple of customers.

20 Q Under your interconnection, do you have in mind
21 what the period of billing demand is? In other words, is it
22 a 15-minute demand meter that you use in establishing demands,

3mil 1 or a 30-minute, or an hourly demand?

2 A I'd like to refer to the agreement, if I may.
3 I believe it is 15 minutes, but I'd like to check that.

4 (Witness examining documents.)

5 THE WITNESS: Well, in Service Schedule B, Section
6 2.4, which is short-term power, the short-term power of
7 billing demand for any week shall be taken as equal to the
8 number of kilowatts reserved for such week as short-term power
9 or the number of kilowatts delivered, whichever is greater.
10 I believe your question is relative to delivery of kilowatts
11 and I don't see a reference in the agreement to such, but if
12 memory serves me, CEI's standard is a 15-minute interval.
13 I believe that is the metering that is contemplated for this
14 application.

15 BY MR. BRAND:

16 Q Do you ever have emergency forced outages on your
17 system that can be repaired in approximately 20 minutes, Mr.
18 Pandey, 20 minutes to 30 minutes or so?

19 A Forced outages of generating equipment, no, I am
20 not aware of any that have been reparable in 20 minutes in my
21 tenure there.

22 Q I see.

4mil 1 Did you ever have an outage due to an operator
2 error that can be corrected in 15 to 20 minutes?

3 A Yes, we did. We had one in the first year of
4 my service with the City. An operator had adjusted a valve
5 that served to maintain vacuum on the condenser of one of
6 our turbo-generators, and the valve wasn't properly
7 positioned. The machine lost its vacuum and tripped off the
8 line on a low vacuum trip relay, and one of the supervisory
9 personnel caught the problem and repositioned the valve, got
10 the vacuum on again and that outage was solved in a
11 relatively short period of time, it seems to me on the order of
12 20 minutes or a half an hour, something like that.

13 Q Can you recall the size of the unit, sir?

14 A That was the 16,500 kilowatt unit.

15 Q Assuming that the provisions of Schedule A were
16 applied to that, and let's assume that the billing was at 20
17 mills per kilowatt hour for the incremental cost plus 10
18 percent, could you, without carrying out the multiplication,
19 indicate briefly how such an outage would be billed? I mean
20 what the costs would be to the City incident to such an outage
21 if it received replacement power or emergency power to replace
22 the forced outage amount under Schedule A.

5mil 1 A At 20 mills per kilowatt hour?

2 Q Yes, sir.

3 A Let's assume that the outage lasted for one-half
4 hour. That would be 8,250 kilowatt hours at two cents, or
5 about \$165.

6 Q All right, sir.

7 Now, is it correct that there's a provision in
8 Schedule A that says the CEI company or your company can
9 unilaterally change the schedule if it deems it to be in its
10 best interests, or words to that effect? I believe you were
11 asked about that by Mr. Lessy.

12 A I believe the article called Special Provision No.
13 4, I believe, has a statement to that effect. Special
14 Provision 4 of -- special provision, which is Section 4 of
15 each of the Service Schedules A, B, C, I believe.

16 Q All right, sir.

17 Now, let's assume that CEI decided that the load
18 characteristics of your system were very much like the load
19 characteristics of an industrial load, and it decided that it
20 would be appropriate and in CEI's best interests to bill you
21 a demand charge for emergency power under Schedule A and
22 they would bill you at the rate of, let's say, \$2.50 a kilowatt

6mil 1 month with a 100 percent ratchet for five years. And let's
2 say that that was in effect at the time you had that operator
3 error.

4 Could you, without necessarily carrying through all
5 the multiplication, but you can if you can do so in a short
6 time, indicate the rate consequences of exactly the same out-
7 age and your receipt of emergency power over the inter-
8 connection for a 30-minute interval?

9 MR. LESSY: Staff would like to note an objection
10 for the record on the subject, the matter of rate consequences
11 but you may answer the question.

12 MR. REYNOLDS: I will also note an objection as
13 cross-examination is reaching far beyond any area that was
14 covered on direct examination.

15 THE WITNESS: 250 per kilowatt month. By kilowatt
16 month, you mean a kilowatt used for a period of one month?

17 MR. BRAND: This is just as a matter of billing,
18 not used. But if peak demand was established at any time
19 during the month, and I believe you said they used a 15-minute
20 billing interval, then the demand would be payable for the
21 whole month.

22 THE WITNESS: Okay.

7mil

1 BY MR. BRAND:

2 Q And then with a five-year ratchet at 100 percent.

3 MR. REYNOLDS: I would only interject that I have
4 no problem if you want to assume a 15-minute billing inter-
5 val. I don't believe it's been established that that is the
6 interval in the contract.

7 MR. BRAND: Mr. Pandy looked for it and said he
8 couldn't find it, but he thought that that was the billing
9 demand that would be utilized since it was CEI's normal billing
10 demand.

11 MR. REYNOLDS: Well, the contract will speak for
12 itself. If you want to assume that, that is fine.

13 MR. BRAND: Yes. Well, I do want to assume that.

14 THE WITNESS: Okay. At the billing demand rate
15 that you have suggested, the charges would be \$49,500 per
16 month. Rounding that just for figuring to \$50,000 a month,
17 that is \$600,000 per year; for five years, would be \$3 million.

18 BY MR. BRAND:

19 Q And --

20 MR. REYNOLDS: I will move to strike the answer
21 on the ground that the examination is not at all related to
22 any area of direct examination and is impermissible cross.

8mil

1 MR. BRAND: All right, and I indicate that, while
2 I believe it is within the area of direct examination, and I
3 propose to, if there's any possible doubt about it, connect
4 it up still further in subsequent questions, I am agreeable
5 to making Mr. Pandy my own witness on direct examination at
6 the present time.

7 MR. REYNOLDS:. Well, you have not noticed him
8 for deposition. He's here under subpoena. I think that you
9 are permitted to interrogate him within the bounds of the
10 direct examination by the interrogator who subpoenaed the wit-
11 ness and until you notice the witness for deposition, I don't
12 believe you're permitted to go beyond the area of direct
13 examination in your cross-examination.

14 MR. BRAND: All right, sir. You have your own
15 view of the matter and it's been recorded on the transcript.

16 BY MR. BRAND:

17 Q Now, Mr. Pandy, if that were the only outage for
18 which the emergency interconnection were used, would it be
19 correct that -- and the incremental costs at that time were
20 20 mills per kilowatt hour, would it be correct that the
21 energy charge associated with that outage would also be
22 \$165?

9mil

1 A. That's correct.

2 Q. So there would be a bill for approximately \$3
3 million for demand charges, and \$165 for energy charges
4 associated with a 30-minute use of emergency power; isn't
5 that correct?

6 A. \$3 million demand charge would accrue over five
7 years of ratcheted billing demand under the circumstances
8 that you assumed.

9 Q. Yes, sir.

10 MR. REYNOLDS: I believe to strike the answer
11 on the grounds I did before. I also will object on grounds
12 of relevancy, not being established that there's any basis
13 whatsoever for the assumptions that have been made by the
14 interrogator.

15 BY MR. BRAND:

16 Q. Now, let me ask that question, Mr. Pandy: In your
17 earlier negotiations with CEI, did they ever seek, to your
18 understanding, a demand ratchet in the various rate schedules
19 under this agreement?

20 A. I believe that they did. I don't have, as I said,
21 I don't have the draft copies that were used in earlier stages
22 of the negotiation, but I believe that my files would indicate

10mil

1 that at one time CEI submitted a proposed agreement that
2 included a ratcheted demand charge.

3 Q Let's assume that the alternative of the City, in
4 the event of a ratcheted demand charge were either to take the
5 energy and subject itself to a five-year ratched demand
6 billing on the order of \$3 million for demand and \$165 for
7 energy, or shed the customers, and take the consequences of
8 the irate customers.

9 Which would you recommend, Mr. Pandy?

10 MR. REYNOLDS: I object.

11 THE WITNESS: I'm sure it would have been a deci-
12 sion that probably would have come at my level and had I been
13 cognizant of that type of demand charge, I believe I would
14 have decided to keep the customers out for half an hour.

15 MR. REYNOLDS: I'll move to strike the answer as
16 being in an area of interrogation that is outside any of the
17 direct examination that was conducted this morning.

18 MR. BRAND: Well, I believe it was related to a
19 discussion concerning offers of interconnection or a
20 discussion of interconnection that was opened up by Mr. Lessy.

21 BY MR. BRAND:

22 Q Now, Mr. Pandy, let's assume that CEI decided it

11mil 1 was in its best interests to change in accordance with the
2 terms of that special provision, the rates, terms, and
3 conditions of emergency Schedule A to the kind of rate, term,
4 and condition that I have indicated. Would that, in effect, for
5 all practical purposes, terminate the provisions of the
6 emergency Schedule A so far as your system is concerned?

7 A It would severely limit my ability to utilize
8 an interconnection under the provisions of Schedule A. It
9 would require, I believe, a lengthy outage affecting a major
10 part of the system to make the decision favorable to use
11 the interconnection under those energy provisions that you
12 have described.

13 MR. REYNOLDS: I will object on grounds of
14 relevance to the question, and move to strike the answer as
15 being outside the permissible scope of cross-examination.

16 BY MR. BRAND:

17 Q Do you know a Mr. Sackl, S-a-c-k-l?

18 A John Sackl. If that's who you are referring to.
19 I know a John Sackl who is a sales supervisor. I believe
20 he's Eastern Sales Supervisor for CEI in their Painesville
21 office. I'm not sure of the exact title, but he is in sales
22 supervision in Painesville.

12mil 1 Q Did he attend any of the negotiating sessions
2 between CEI and Painesville, in terms of the negotiation for
3 the interconnection?

4 A Not that I can recall. I talked to him on a
5 number of occasions, but I don't believe it's ever been
6 related to the interconnection.

7 Q Are there any other sources, possible sources of
8 emergency power so reasonably close to Painesville that the
9 possible costs of interconnection might not be insurmountable?
10 In other words, sources so that you wouldn't be thinking of
11 connecting out to a system in California, but some system
12 that is physically close enough so when you consider the
13 costs of transmission construction, it might possibly be
14 feasible to interconnect with those sources?

15 MR. LESSY: Alternatives other than what, Mr.
16 Brand?

17 MR. BRAND: Other than CEI.

18 THE WITNESS: Yes, there are several. There are
19 two municipal systems, Cleveland and Orrville, Ohio, which
20 have generating stations within -- Cleveland is about 30
21 miles away and I believe Orrville is about 60 miles from our
22 plant. There is also a generating station owned by the

13mil 1 Diamond Shamrock Rocporation, which is about three miles
2 from our plant. It is a private industry that generates
3 part of its own requirements.

4 BY MR. BRAND:

5 Q Have you had any discussions with Diamond Shamrock
6 concerning possible interconnection?

7 MR. REYNOLDS:, I object.

8 THE WITNESS: Yes, we have.

9 MR. REYNOLDS: I move to strike that answer, on
10 the ground that it is outside the permissible scope of cross-
11 examination.

12 BY MR. BRAND:

13 Q Do you know whether CEI made any attempts to block
14 an interconnection between Diamond Shamrock and Painesville?

15 MR. REYNOLDS: Objection.

16 THE WITNESS: I have been told that they have made
17 such moves by the gentleman from Diamond Shamrock that I
18 was negotiating with who was Diamond Shamrock's Fairport Works
19 manager, Mr. Ralph Parsons.

20 MR. REYNOLDS: I move to strike on the same
21 grounds as before.

22 THE WITNESS: Yes.

14mil

1 BY MR. BRAND:

2 Q Do you have any knowledge as to early negotiations
3 between Cleveland and Painesville concerning an inter-
4 connection?

5 MR. REYNOLDS: I object to that. May I have a
6 continuing objection to this line of questioning and a
7 standing motion to strike the responses as opposed to inter-
8 jecting it after each question and answer?

9 MR. BRAND: Yes. That is agreeable. I would
10 point out, however, that Mr. Lessy asked the witness a question
11 concerning the sources of interconnection, directing his
12 attention to a response in a letter addressed to the Department
13 of Justice, and that response had to do with lines -- CEI's
14 lines surrounding the City of Painesville, and I believe
15 that that is sufficient entry into the line so that I am
16 permitted to inquire into these other sources.

17 MR. REYNOLDS: If I may have a standing objection
18 and a standing motion to strike, then. I disagree with your
19 interpretation and we can settle it before the board.

20 MR. BRAND: Now, just to determine the extent
21 of your standing objection, would it go to other questions
22 as to other possible sources of power exchange services?

15mil

1 MR. REYNOLDS: Well, I will have to wait to hear
2 the question. I will indicate my standing objection after
3 each question without repeating the whole reason for it.

4 MR. BRAND: That is agreeable. I just want to
5 know when your standing objection ends.

6 MR. REYNOLDS: I will indicate after each question
7 and answer that it is the standing objection and I want to be
8 clear on the record what the objection was to.

9 MR. LESSY: I believe that's an unanswered question.

10 THE WITNESS: Yes.

11 I believe -- would you like to repeat it?

12 MR. LESSY: Would you like the reporter to read
13 back the question?

14 BY MR. BRAND:

15 Q In the interests of expedition, let me restate
16 the question.

17 Do you have any knowledge of any discussions or plans
18 of an interconnection at any time between Cleveland and
19 Painesville?

20 A Yes, at one time in, I believe it was the early
21 1960s, '61 or '62, there was a study made by a consulting
22 engineering firm. I think the name is Beiswinger Hoch and

16mil 1 Associates, of Akron, Ohio. That was the name of the firm at
2 that time. They are now called Glaus, Pyle, Schomer, Burns
3 and DeHaven.

4 The study was relative to interconnection of the
5 municipal systems of the City of Cleveland, Painesville, and
6 Orrville, Ohio.

7 Q Do you know whether CEI took any action to block
8 that interconnection?

9 MR. REYNOLDS: My standing objection.

10 THE WITNESS: I don't have direct knowledge of
11 any such action other than the letter in my files of December,
12 '64, that related to an offer from CEI to interconnect
13 to the City of Painesville.

14 MR. REYNOLDS: When I indicate standing objection,
15 it will go both to the question and to the motion to strike
16 the answer.

17 MR. BRAND: Yes, that is agreeable.

18 MR. REYNOLDS: Do we have the documents?

19 MR. LESSY: Off the record.

20 (Discussion off the record.)

21 BY MR. BRAND:

22 Q Mr. Pandy, are you familiar with the term

17mil

1 "preemptive coordination"?

2 A I have heard the term. I'm not certain that I
3 would understand it in exactly the same context that you
4 might.

5 Q Let me explain it to you as I understand it,
6 and then if you will accept that, I want to use it for the
7 basis of further questioning.

8 As I understand preemptive coordination, it
9 would pertain to a situation where, for example, there was
10 one large utility, A, in an area, quite a large one, on the
11 order of two or three thousand megawatts of capacity or
12 load. And, two small ones, B and C. And B and C are
13 isolated, but they would like to have the advantages of
14 coordination and so they ask A for an interconnection,
15 A's transmission lines being close by, and their requests
16 are to no avail. Or they decide it would be futile to make
17 such requests of A because its reputation is such that they
18 don't believe their requests would be honored. It would be
19 like kicking a sponge five miles long.

20 So they start exploring the advantages of an inter-
21 connection between each other. They are some distance apart,
22 but they make studies showing that despite the distance and

18mil

1 their size, that interconnection would be justified. A learns
2 of this and immediately offers B an interconnection, but
3 withholds interconnection from C on the notion that C badly
4 needs an interconnection, but without the interconnection will
5 not survive.

6 Ultimately when C fails, B will not have any
7 further alternative and A can then make use of contractual
8 provisions in its contract with B to change the terms and
9 conditions so they are more onerous to B.

10 I'd like to call this preemptive coordination. Is
11 that what is in accordance with your understanding of pre-
12 emptive coordination?

13 A. Yes.

14 Q. The first question I'd like to ask is if a system,
15 a large system such as A, is interested in preemptive coordina-
16 tion, from a physical standpoint, does he have more to offer
17 in the way of interconnection to a system such as B before
18 he let's, say 26 megawatts, than could a system such as C
19 which has a generation or load of about 125 megawatts?

20 MR. REYNOLDS: Let the record show my standing
21 objection and motion to strike.

22 THE WITNESS: It is likely that the larger entity

19mil

1 would have more to offer than a medium-sized one, but it
2 would depend on the location of facilities, generating faci-
3 lities, the efficiencies of those generating facilities,
4 on a number of variables, so it is difficult to answer the
5 question on a general basis other than to say that generally
6 larger systems have greater economies of scale which would be
7 advantageous to a smaller system.

8 BY MR. BRAND:

9 Q If the larger system had a transmission line that
10 went right through the service area of the smaller system,
11 would that be advantageous in that it would obviate the
12 need for expensive interconnection facilities?

13 MR. REYNOLDS: Note my objection.

14 BY MR. BRAND:

15 Q In terms of length of line, in addition to sub-
16 station facilities, is what I meant.

17 A Yes, it would.

18 Q Now, would the -- if A wanted to woo B away from
19 C, is it correct that all he would have to offer B is just
20 enough to make it more attractive for B to interconnect with A
21 than it would be for B to interconnect with C?

22 MR. REYNOLDS: Note my objection.

20mil

1 MR. LESSY: Staff doesn't recall on direct
2 examination opening up the subject of wooing.

3 THE WITNESS: I think the question is too general
4 to be answered.

5 BY MR. BRAND:

6 Q Well, if A wanted to offer a contract with terms
7 and conditions to B with the anticipated effect that B would
8 have an incentive to interconnect with A rather than C,
9 would he have to give him all the benefits that could be
10 available or just enough of the benefits so that B would think
11 he was getting a better deal by interconnecting with A than by
12 interconnecting with C?

13 MR. REYNOLDS: Note my standing objection.

14 THE WITNESS: Again, it would depend on who at system
15 B had authority to make a decision and how easily they were
16 wooed, to use your term. Again, I think the question is a
17 little too general for me to give you a specific answer on it.

18 MR. LESSY: Off the record.

19 (Discussion off the record.)

20 BY MR. BRAND:

21 Q Well, let me ask you, Mr. Pandy, right now, isn't
22 the situation I have described from a standpoint of the bargaining

21mil

1 alternatives available to each, very close to the situation
2 that existed between the CEI system, on the one hand, as
3 system A, the City of Painesville system as system B, and the
4 City of Cleveland system as system C?

5 MR. REYNOLDS: I will note my standing objection.
6 I will also object on the ground that Mr. Pandy's testimony
7 is established that he was not employed by the City of
8 Painesville until 1971 which was a time subsequent to the time
9 frame that the question addresses itself to.

10 MR. BRAND: On voir dire, I will ask the question.

11 Mr. Pandy, when you were preparing for discussions
12 or negotiations with CEI concerning interconnection, did you
13 review materials in your files which gave you knowledge of the
14 status or situation as to earlier discussions and negotiations
15 between CEI and the City of Painesville?

16 THE WITNESS: Yes, I did.

17 BY MR. BRAND:

18 Q. Based on that review, do you have some knowledge
19 of the earlier situation?

20 A. Yes, I do.

21 Q. Now, let's go back to the original question.

22 MR. BRAND: Can the reporter get that from the

22mil 1 transcript?

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

4 MR. REYNOLDS: I have a continuing motion to
5 strike.

6 THE WITNESS: Yes, there are some similarities
7 between the situation of the City of Painesville and CEI
8 and Cleveland, and the hypothetical situation that you
9 have outlined.

10 BY MR. BRAND:

11 Q. If the City of Cleveland went out of business
12 tomorrow and the Diamond Alkali Company was sewed up by a long-
13 term contract with CEI, and CEI then invoked the provisions
14 of special provision No. 4, I believe it was, unilateral right
15 to change the terms and conditions of the agreement, would
16 CEI still have other sources of power other than Painesville
17 from which it could obtain emergency power and economy
18 energy and the like?

19 MR. REYNOLDS: Note my standing objection.

20 THE WITNESS: According to their last annual report
21 that I saw, they would, unless things have changed since then.

22

23mil 1

BY MR. BRAND:

2

Q All right, sir.

3

With respect to the City of Painesville, assuming the unavailability of Cleveland city municipal system or Diamond Alkali and the invoking of special provision No. 4, what would Painesville's alternative be?

7

MR. REYNOLDS: Note my continuing objection.

8

THE WITNESS: Alternative to what?

9

BY MR. BRAND:

10

Q Alternative to agreeing to whatever rate CEI

11

indicated it thought appropriate for the service.

12

A It would have the alternatives of generating the

13

power itself if it could; the second alternative of having

14

customers curtailed in usage; or a third alternative of

15

obtaining power from another system remote to it if it could

16

secure wheeling of that power over an interconnection.

17

MR. BRAND: I think that completes the amount of

18

cross that I have prior to the time I examine the documents.

19

MR. LESSY: Let's go off the record.

20

(Discussion off the record.)

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BY MR. BRAND:

Q I refer you, sir, to the contract of interconnection and the schedule concerning maintenance power.

A. Yes. Schedule E?

Q Yes, sir.

Now, would it be possible to tailor section 2.11 so that you could deliver 20 million kilowatt hours each to the other, but at a lower rate, such as at a maximum rate of, say, 5 megawatts, or 10 megawatts?

MR. REYNOLDS: You say, sould it be possible to tailor it? Do you mean to redraft the contract to provide that?

MR. BRAND: No; from an engineering standpoint, would it be something that would be physically feasible to do?

MR. REYNOLDS: I still don't understand your question. Would what be; something physically feasible to do?

MR. BRAND: To have a provision calling for 20 million kilowatt hours, but at a maximum rate of somewhat lower than the 25 megawatts.

THE WITNESS: Yes. Yes; it could.

1 BY MR. BRAND:

2 Q In other words, would it be possible for the
3 energy to be delivered in blocks that would more nearly fit
4 the availability of surplus generating capacity on the
5 Painesville system?

6 MR. REYNOLDS: Objection.

7 THE WITNESS Yes, it would be possible.

8 BY MR. BRAND:

9 Q All right, sir. From the standpoint of Painesville,
10 would that be preferable?

11 MR. REYNOLDS: Preferable to what?

12 MR. BRAND: To the existing provisions.

13 BY MR. BRAND:

14 Q In other words, suppose you change the term of
15 provision 2.11 so it says, "May be taken at such times and
16 at such rates of take, as the receiving party may elect,
17 up to a maximum of, and instead of 25,000 kilowatts," say,
18 up to a maximum percent of the capacity of the other party's
19 system.

20 Now, let's say -- let's assume for the moment
21 that CEI has a capacity of 25 -- excuse me around 3,000.
22 let's make it 2,500, so the numbers come out right.

1 Let's assume for the moment that CEI has a system
2 capacity of 2,500 megawatts and your system has a capacity
3 of 25 megawatts. Would it be agreeable to you to have a
4 provision that says a receiving party may elect up to a maxi-
5 mum of one percent of the capacity of the supplying party?

6 MR. HAUSER: Would you read the question again,
7 please?

8 MR. BRAND: I think it probably would be better
9 if I restated it.

10 BY MR. BRAND:

11 Q. Would it be preferable to you in lieu of the
12 provision of 2.11, the sentence starting with, "Delivery
13 of such energy," to have a sentence stating, "Delivery of
14 such energy, subject to the provisions of this subsection
15 2.1, may be taken at such times and at such rates of take,
16 as the receiving party may elect, up to a maximum rate of
17 take of one percent of the capacity of the supply party,"
18 assuming that CEI's capacity was 25,000 megawatts and yours
19 was 25 megawatts?

20 A. Not; it would not.

21 MR. BERGER: Mr. Brand, I believe you just said
22 CEI's capacity was 25,000 megawatts; is that what you meant

b4
1 to say?

2 MR. BRAND: I am sorry; I meant 25,000 megawatts.

3 MR. BERGER: No, you meant 2,500.

4 MR. BRAND: Excuse me; I did mean 2,500.

5 THE WITNESS: The answer is still no.

6 BY MR. BRAND:

7 Q All right, sir. Under those circumstances, could
8 not you take up to a maximum rate of 25 megawatts?

9 A Under the conditions you have outlined, yes,
10 I believe I could.

11 Q Then under those conditions would you be obligated
12 to supply only up to a maximum of 250 kilowatts?

13 A I believe that is right.

14 Q All right sir. Why would such a provision be
15 unacceptable to you?

16 A Because it would preclude me from -- it would
17 possibly preclude me from having the ability to return all
18 of the energy that I might have drawn during the calendar
19 year maintenance period. I would end up a debit balance
20 of energy owed back to CEI, for which I would have to pay
21 cash.

22 Q I see. Well, sir, if you had a supplementary

b5
1 provision permitting you at your option, when surplus capacity
2 was available to you, to deliver maintenance energy at a
3 greater rate, would you have the same objection?

4 A. No; I wouldn't.

5 Q. Now, with respect to the latter type of arrange-
6 ment to which you have no objection, would that be an arrange-
7 ment that would be more preferable to you than the arrange-
8 ment that appears in 2.11 of service schedule E?

9 A. Yes; I believe it would.

10 Q. And would it relieve Painesville of the burden
11 that you referred to in response to Mr. Lessey's question?

12 MR. REYNOLDS: I am sorry. I am going to object,
13 unless you can be more specific as to what burden was referred
14 to in connection with what question.

15 MR. BRAND: I believe in a question of Mr.
16 Lessey, he asked if the 25 megawatt obligation would be a
17 burden to the City of Painesville in view of the size of
18 the city's system, as compared to the size of CEI's system

19 I believe his answer was yes, and that is
20 the burden I am referring to.

21 MR. REYNOLDS: I guess I have a different recollec-
22 tion of the answer than you do. I think that it was a follow

b6
1 on to his answer which qualified to a large extent what you
2 are indicating.

3 Perhaps it would be better if you first asked
4 the question as to burden, that you are referring to, and then
5 your question.

6 BY MR. BRAND:

7 Q In dealing -- excuse me, in negotiating a reserve
8 arrangement between two systems, systems of vastly different
9 size, Mr. Pandy, is it correct that obligations of the
10 participating systems can be stated either in some specific
11 amount in terms of a reciprocal obligation or else in terms
12 of some specific percentage of capacity, or load of the
13 respective parties?

14 A It could be stated either way, I would think.

15 Q Isn't it more useful to a city such as Painesville
16 in dealing with a much larger system to have those obliga-
17 tions stated as a percentage of capacity or load than as
18 a percentage of -- excuse me -- than as absolute amount?

19 A Generally it would be.

20 Q Now, sir, in responding to a question of Mr.
21 Lessey, did you use -- did you indicate that the 25 megawatt
22 rate of take obligation as a reciprocal obligation would be

1 a burden to the City of Painesville?

2 A. Yes; I did.

3 Q And would that burden be relieved if the recip-
4 cal obligation were stated in terms of percentage of
5 capacity or load in contrast to a specific kilowatt or mega-
6 watt amount, with the other assumptions that we said
7 before, of your having the right to give more, so you could
8 return all the kilowatt hours involved?

9 A. Yes, subject to those assumptions, that is correct.

10 MR. BRAND: If I could have just a minute to
11 look over my notes, I may be done with my cross-examination
12 now, subject to that one other line that I would like to use
13 that volume in connection with.

14 Oh, I believe that Mr. Lessey's question at
15 one time, he listed a response that there had been some
16 attempts by CEI to purchase part of the Painesville system;
17 is that correct?

18 THE WITNESS: Yes.

19 BY MR. BRAND:

20 Q And did CEI ever condition interconnection with
21 Painesville to Painesville selling a part of its system
22 to CEI?

barb8
1 A At one point in time, in these most recent inter-
2 connection negotiations, CEI estimated the cost of the inter-
3 connection at approximately 15,000 and discussed the possi-
4 bility of providing funding for the city to accomplish
5 this interconnection by means of a sale of city customers
6 in the area of Perry, Ohio.

7 We serve customers in the Perry township, Perry
8 Village, and North Perry Village. The discussions centered
9 around the sale of all of those customers to CEI to result
10 in a cash flow to the City of Dolores, which would be applied
11 toward purchase of interconnection facilities.

12 Q Was the sale mentioned as the only -- as only to
13 assist the City of Painesville in funding the interconnection
14 or did CEI indicate that such a sale to it of customers
15 outside the City of Painesville would make it a more in-
16 teresting transaction for CEI, if such sale were consummated?

17 In other words, were they interested in obtaining
18 the customers outside the City of Painesville, apart from
19 a motive of supplying you with a method of having funds
20 for an interconnection?

21 A Yes; I believe that they were.

22 Q Did they ever suggest to you that there would

barb9 1 be no interconnection unless such sale were consummated?

2 A. Not to me directly.

3 Q. Did they make it to anyone, to your knowledge?

4 A. Not to my knowledge.

5 MR. BRAND: That concludes my examination,
6 with the exception of that one line that I would like to
7 reserve.

8 Do the other parties have objection to that?

9 MR. BERGER: The department has no objection
10 to that.

11 MR. REYNOLDS: I have no objection to give you
12 an opportunity to ask the question; whether the question
13 will be objectionable is no other matter.

14 MR. BRAND: All right, sir.

15 BY MR. BERGER.

16 Q. Mr. Pandy, I would like to ask you a few brief
17 questions. Who do you report to in the City?

18 A. The City Manager.

19 Q. What is his name right now?

20 A. Lester N. Nero.

21 Q. How long has he been City Manager?

22 A. I believe about one year now.

1 Q And who preceded him as city manager?

2 A Kennth P. McDonald.

3 Q And how long was he city manager?

4 A For approximately three years, he was the city
5 manager, who hired me.

6 Q Do you know who preceded Mr. McDonald as city
7 manager?

8 A On a permanent basis, I believe it was Dale F.
9 Helsel.

10 Q And do you know how long he was city manager?

11 A Something on the order of 7 or 8 years, I believe,
12 possible a little bit more than that.

13 Q Is there presently any rate differential between
14 the CEI rates and the Painesville rates, in the areas
15 outside the city where there is competition?

16 MR. LESSEY: Staff would note an objection to the
17 matter of rates.

18 THE WITNESS: There is a differential in rates
19 by virtue of clause charges, which vary from month-to-month
20 for both the city and for CEI, and by virtue of some
21 small differences in some rate schedules.

22 Essentially, the basic rates are duplicates of

rb11
1 one another, other than the fuel clause differences and
2 some minor differences in sub-schedules, except for -- I have
3 to qualify my answer by stating that I am aware of a recent
4 court ruling which modified the PUCO approval of CEI's
5 present rates. My understanding of it is that the court
6 ordered PUCO to review said rates and grant a larger magni-
7 tude of requests than had been previously granted.

8 Q To your knowlege, has there been a time in the
9 last 10 years or so when there was some differential in the
10 rates between those charged by the Painesville system and
11 CEI?

12 MR. LESSEY: Same objection.

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

14 MR. BRAND: I would like to note for the city
15 that the question goes not to the appropriate magnitude
16 of rates but whether or not there is price competition
17 and I think that is relevant to this proceeding.

18 MR. REYNOLDS: I would note that this is an area
19 of cross-examination that is outside the area of direct
20 examination.

21 I think, therefore, it is impermissible interro-
22 gation.

1 MR. BERGER: It is so noted.

2 THE WITNESS: My answer was yes.

3 BY MR. BERGER:

4 Q At what time or times during the last 10 years
5 do you know of any rate differential existing?

6 A There would have been several differentials at
7 different points in time, in the past 10 years. The city
8 changed rates in June of 1974. CEI changed rates in, I be-
9 lieve, January of 1974. The city's previous rate change had
10 been approximately June of 1971. I am not certain of CEI's
11 modifications to rates prior to that, but there would have
12 been a number of times when there was a differential between
13 the two systems.

14 Q Referring back to the two most recent changes,
15 which you just mentioned in June '74 and January '74,
16 were the rates about equal?

17 MR. REYNOLDS: Objection. As being outside the
18 permissible scope of cross-examination.

19 THE WITNESS: They were fairly close.

20 BY MR. BERGER:

21 Q And the change in January of '74 by CEI, what
22 did that do to the differential?

b13
1 MR. REYNOLDS: Objection.

2 THE WITNESS: It increased the differential.

3 BY MR. BERGER:

4 Q And whose rates were higher at that time?

5 A CEI's.

6 Q Mr. Pandy, do you or does the Painesvill municipi-
7 pal electrical system keep records on the number of custo-
8 mers who convert from Painesville service to CEI or from
9 CEI service to Painesville?

10 MR. REYNOLDS: Objection. As beyond the scope
11 of permissible cross.

12 THE WITNESS: Not in such a concise form as you
13 have described it. Our records would indicate that informa-
14 tion, but there is not a separate tabulation to indicate
15 only that information.

16 BY MR. BERGER:

17 Q Is the Painesville municipal sysstem aware of
18 why people change services from one company to the other?

19 MR. REYNOLDS: Continuing objection.

20 THE WITNESS: Some times.

21 BY MR. BERGER:

22 Q Do you know what reasons have been given by

b 14 1 customers who have changed from CEI service to Painesville
2 service as a reason for changing?

3 A From CEI service to Painesville service?

4 Q Yes, sir.

5 MR. REYNOLDS: Note my continuing objection.

6 THE WITNESS: A number of opinions are expressed.
7 Some state they believe their costs will be lower. Some
8 state they believe their service will be better. People
9 who have previously been employed by the city or enjoyed
10 a favorable relationship with the city, or other utility
11 services. Anger with CEI over some customer service type
12 of dispute.

13 MR. BERGER:

14 Q Do you know which of these reasons or if any
15 of these reasons, would be responsible for the most shift-
16 ing of customers from CEI to Painesville?

17 MR. REYNOLDS: Note my continuing objection.

18 THE WITNESS: I believe the cost factor has
19 been the factor most often cited.

20 BY MR. BERGER:

21 Q Are you aware of reasons given by customers
22 who switch from Painesville service to CEI service?

b15
1 MR. REYNOLDS: Objection.

2 THE WITNESS: Sometimes.

3 BY MR. BERGER:

4 Q Can you tell me some of the reason that have been
5 given, if you know them, for switching from Painesville
6 to CEI service?

7 MR. REYNOLDS: Objection. The same grounds.

8 THE WITNESS: Basically, the same types of
9 reasons that are given by people who switch from CEI to
10 the city. Some have the notion that their costs will be
11 lower. Some have the notion that their service will be
12 better. Some are CEI employees. Some have enjoyed some
13 favorable working relationship with CEI.

14 BY MR. BERGER:

15 Q Since you have been superintendent; I believe
16 that is your present title.

17 A Electric power superintendent.

18 Q Yes. Has Painesville had any outages on its
19 system?

20 A Oh, yes.

21 Q From the tone of your voice, it appears that
22 there have been quite a few outages; is that correct?

1 A. There have been several a year.

2 Q. Perhaps starting with your first year, can you
3 give us an idea as to how many have occurred and perhaps
4 the duration of these outages?

5 A. Okay. I presume you are referring to major out-
6 ages of large numbers of customers?

7 Q. Yes.

8 A. Because we have -- every utility has outages
9 practically every month affecting numbers of customers, due
10 to lightening strikes, and cars hitting poles, and that
11 sort of thing.

12 Q. Yes; I would be referring to outages that affect
13 more than just a few customers.

14 A. Okay.

15 I would say we have had an average of three,
16 possible as many as four per year generating station outages
17 due to a boiler break down, or a turbine tripping off
18 the line.

19 By major outages, I am referring to several hours
20 duration, up to four. I think we had one that was as long
21 as about 8 hours, with some customers, and by major, I mean
22 also referring to thousands of customers, like half of our

Orbl7
1 system at one time, which would be 4,000 meters.

2 Q Whem was that outage?

3 A The most recent one was, I believe it was April
4 14th.

5 Q That was the one that affected the 4,000 customers?

6 A Yes. We had a similar occurrence in, I believe
7 it was January of this year, where we had an economizer tube
8 failure on our main unit. We had a couple of them in '73.

9 Q How many customers were affected in January of
10 this year? Approximately?

11 A If my memory serves me, about half of our system
12 again, about 4,000. I am a little bit vague about dates on
13 it because it is the type of thing I try to forget. My re-
14 cords would indicate the exact time of duration and the
15 number of customers affected and the cause.

16 Q You had indicated in response to some of Mr.
17 Lessey's questions that you are aware of interest having been
18 expressed by CEI to purchase a portion or all of the
19 Painesville municipal system; is that correct?

20 A Yes.

21 Q How were you aware of this interest?

22 A There are letters in my files, correspondence,
23

b18
1 from CEI to the city, relative to such a purchase.

2 Q Apparently there is more than one letter; is that
3 correct?

4 A I believe there a couple, possibly several. They
5 are not of particular recent vintage, so my memory is not
6 particularly fresh on them.

7 Q To whom were they addressed, if you know?

8 A I believe generally to the city manager and the
9 city council members who were in office at that time of
10 the letters being written.

11 Q Do you know who signed them on behalf of CEI?

12 A A vice president in the one that is best in my
13 memory. I believe it is Ralph Besse or Elmer Lindseth.
14 I am not sure which of those gentlemen, but his title at
15 the time was vice president.

16 Q Do you know what conditions were or what terms
17 were contained in those letters?

18 A The one thing that stands out is a discussion
19 of the possible capital improvements type of project that
20 might be accomplished by a city through use of revenue
21 from a sale of the utility.

22 Q Were those then offers to purchase with cash?

1 A. My general recollection is that they suggested
2 a cash type sale. I don't recall that a specific price
3 was mentioned. I believe there was also a discussion of
4 the tax revenue that would accrue to the city.

5 Q. Are you aware of any offers by CEI to discuss
6 interconnection or to offer interconnections to the City
7 of Painesville other than the one we referred to in 1964,
8 with regard to the building of the transmission line through
9 the city, and the negotiations which resulted in the present
10 interconnection agreement?

11 MR. BRAND: May I have the question?

12 (The pending question was read.)

13 THE WITNESS: No; I am not.

14 BY MR. BERGER:

15 Q. I believe in response to some earlier questioning
16 you mentioned a Painesville bond offering; is that correct?
17 Do you recall mentioning that?

18 A. I don't exactly.

19 MR. LESSEY: I believe the witness, in response
20 to one of Mr. Brand's questions, indicated that certain
21 provisions were contained in the draft of the prospectus.

22 THE WITNESS: Oh, yes.

b20
1 MR. LESSEY: But he made no reference to actual
2 offering pursuant to a prospectus.

3 MR. BERGER: I think you are correct, Mr. Lessey.

4 THE WITNESS: Now that he as mentioned that, I
5 recall making a statement about certain information that
6 might be confidential, having already been presented in a
7 bond prospectus.

8 BY MR. BERGER:

9 Q Does the city have a bond counsel?

10 A Yes.

11 Q Who is that bond counsel?

12 A There are two firms that have been used by the
13 city in my tenure. I am not sure which firm is most
14 appropriate called the bond counsel, because I believe they
15 both have offered financial assistance relative to bonding
16 and other financial matters.

17 One is McDonald and Company of Cleveland, Ohio,
18 and the other is Squire Sanders and Company of Cleveland,
19 Ohio.

20 MR. BRAND: For the record, I believe the latter
21 company is a firm known as Squire, Sanders, Dempsey.

22 MR. LESSEY: Attorneys at Law, not company.

1 MR. BRAND: I believe they are a firm of attorneys
2 that also do bond work.

3 BY MR. BERGER:

4 Q In response to one of Mr. Brand's questions I
5 think you indicated that there are areas outside the City
6 of Painesville where the Painesville municipal system competes
7 with CEI. I have one clarifying question on that: You
8 mentioned 100 miles of line in some respects. Is that
9 100 miles of line your estimate of the amount of transmission
10 line that Painesville has outside the city?

11 MR. BRAND: I believe you said transmission
12 line; do you misspeak?

13 MR. BERGER: Yes; I think I misspoke. It should
14 be line.

15 MR. REYNOLDS: Distribution.

16 THE WITNESS: We have about 100 miles of distri-
17 bution lines outside the city. We have no transmission
18 lines, as such. Transmission voltage being 33,000, or
19 above.

1mil

1 BY MR. BERGER:

2 Q Is that how you define transmission lines?

3 A Yes.

4 Q And anything below 33,000 volts is --

5 A Subtransmission or distribution.

6 Q So this 100 miles of distribution line would
7 be outside the city; is that right?

8 A Yes. That comes from measurements of our system
9 maps.

10 Q I think you had also mentioned in response to
11 one of Mr. Brand's questions that you had been informed
12 by Mr. Ralph Parsons of Diamon Shamrock that CEI had
13 attempted in some manner or other to stop the possible inter-
14 connection between Painesville municipal system and
15 Diamond Shamrock. Is that an accurate statement of your
16 testimony?

17 A Yes.

18 MR. REYNOLDS: I will object. That is my
19 standing objection, including the motion to strike.

20 BY MR. BERGER:

21 Q Did Mr. Parsons tell you this directly?

22 A Yes.

2mil

1 MR. REYNOLDS: Continuing objection.

2 BY MR. BERGER:

3 Q What did he tell you specifically?

4 A Well, directly, I mean in telephone conversations
5 directly to me.

6 Q Yes.

7 A I don't believe it was always in face-to-face
8 meetings although there were some face-to-face discussions
9 of it. I can't quote him exactly, but in essence his
10 remarks were such that during the course of our negotiations
11 with Diamond Shamrock regarding the possibility of inter-
12 connection, we reached a point where locally, the local
13 Diamond Shamrock management and the City had essentially
14 agreed on terms and provisions for their connection, and
15 he had submitted it to Cleveland corporate office for
16 review and approval. During that time period Diamond
17 Shamrock had suffered an outage of one of their pieces of
18 generating equipment, a rather large piece, and they were
19 without power that they required for certain of their pro-
20 cesses. And they contacted CEI relative to getting
21 additional bulk power requirement to tide them over until
22 they could repair their own equipment. CEI responded to that

3mil

1 request despite the fact that they were having a strike
2 at the time of their hourly union employees by using super-
3 visory personnel to bring in a mobile substation to
4 Diamond Shamrock, hooking it up to the CEI system and pro-
5 viding them with an additional block of power that helped
6 them in this critical time for them, and that in subsequent
7 discussion CEI had indicated to Diamond that they did not,
8 they were not certain that they could provide as timely a
9 response in an emergency situation in the future if the
10 Diamond Shamrock system was interconnected to the City of
11 Painesville.

12 I believe there was some mention of a possi-
13 bility that if CEI gave power to Diamond that that power
14 might end up on Painesville's system via the Diamond-
15 Painesville interconnection and that in effect CEI power
16 would be on Painesville's system going to customers in an
17 area that CEI was capable of serving directly.

18 That is the essence of Mr. Parson's explanation
19 to me of why we were not able to conclude our agreement.

20 MR. REYNOLDS: You have my standing objection and
21 motion to strike.
22

4mil

1 BY MR. BERGER:

2 Q Do you know who at Diamond Shamrock had contacted
3 CEI and obtained this information which you have just
4 related to us?

5 A Not by direct name. It was indicated to me that
6 it was someone at a higher corporate management level than
7 Mr. Parson's level of authority.

8 Q But you wouldn't know who that was?

9 A No, I don't.

10 Q I think in earlier questioning you had also
11 indicated that at one time Painesville was considering
12 paying for an interconnection with CEI by selling certain
13 customers in Perry Township; is that correct?

14 A Yes.

15 Q Has this, in fact, occurred?

16 A No, it has not.

17 Q Has -- what is your understanding with regard to
18 how Painesville is to pay for the interconnection with CEI?

19 MR. LESSY: Objection.

20 THE WITNESS: The City issued three-quarters of
21 a million dollars' worth of electric revenue bonds for the
22 purpose of paying for the interconnection.

5mil

1 MR. REYNOLDS: Could I have that answer back?

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

4 MR. REYNOLDS: Thank you.

5 BY MR. BERGER:

6 Q. Have those bonds been issued already?

7 A. Yes.

8 Q. Is the interconnection presently under construc-
9 tion?

10 A. Physical construction, no. Engineering and
11 procurement of the materials, yes. We're moving towards
12 the construction.

13 Q. What is the anticipated date of completion of
14 the physical work before the interconnection?

15 A. Sometime in 1976. Hopefully early 1976.
16 That is a fairly vague answer, but one of the conditions
17 is securing of property from a third party that is difficult
18 to estimate a time frame on.

19 Q. To the best of your knowledge during the
20 negotiations which led to the present interconnection
21 agreement, did CEI ever ask Painesville to agree not to
22 compete for customers in certain areas as a condition to the

6mil

1 agreement?

2 A. I believe that was one of the considerations
3 involved in the sale of Perry customers, that the City would
4 sell all of its customers and lines and facilities in Perry,
5 Perry Village and North Perry Village, and would agree not
6 to build new lines or attempt to serve the area again or
7 to try to regain the customers in some other fashion.

8 Q. Did it apply only to the customers that were to
9 be sold or did it apply to other customers in the vicinity
10 of Painesville municipal system?

11 A. My understanding was that it applied to all
12 customers in the areas of Perry Village, Perry Township,
13 and North Perry Village, some of which were City
14 customers to be sold and some of which were presently-existing
15 CEI customers.

16 Q. Was this proposal discussed at meetings between
17 Painesville employees and CEI people?

18 A. It was discussed by the City of Painesville's
19 Law Director and personnel from CEI, I believe their
20 General Counsel.

21 Q. Would that be Mr. Howley?

22 A. Mr. Howley, yes.

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Q. H-o-w-l-e y?

A. Lee Howley.

It was also discussed in my presence on at least one occasion with CEI people in attendance and Mr. Howley.

Q. Can you tell us what occasion that was?

A. One of our meetings during the course of negotiations to secure an interconnection.

Q. Who else was present at that meeting, if you recall?

A. Wayne Milburn, Law Director of the city. I believe Kenneth McDonald was City Manager at that time. And some other CEI people, possibly Don Jankura and Bill Bingham, I believe were the other parties in attendance at that meeting. I'm a little vague on the specific meetings because we had a number of them with different parties.

MR. BERGER: Can we take a five-minute break?

(Recess.)

lmil

1 BY MR. LESSY: Back on the record.

2 BY MR. BERGER:

3 Q Mr. Pandy, you had indicated a few moments ago
4 that at one time there was consideration of selling approxi-
5 mately 750 customers in the Perry Township area served by
6 Painesville MUNY to CEI as payment for the interconnection, but
7 that has not occurred. Do you know why Painesville decided
8 not to do that?

9 A Yes, I do. Because at the time that that alterna-
10 tive was being explored, I was directed to estimate the --
11 well, to get an exact count of the number of customers in
12 those three communities and to estimate the annual revenue
13 derived from sale of electricity to them. And in so doing, we
14 analyzed the revenue on an annual basis with a mind toward
15 our own financial obligations in terms of bonded indebtedness
16 which is paid off by revenues from the electric system,
17 and we found that to live up to our obligations under our
18 bonded indebtedness, we could not afford to be without those
19 customers, the revenue that we would derive from them. In
20 other words, we have debt service on existing bond issues
21 that have to be paid out of revenues and if we would decrease
22 the revenue by the proportion of 750 customers, the revenue

2mil

1 would have been adequate to cover our debt service.

2 Q Would not have been adequate?

3 A Would not have been adequate, right.

4 So it was mainly a financial consideration --
5 evaluation, rather.

6 MR. BERGER: I don't think we have any more
7 questions.

8 BY MR. REYNOLDS:

9 Q Mr. Pandy, I have a few questions.

10 You indicated, I believe in response to Mr.
11 Lessy's interrogation, that a request had been made by the
12 City of Painesville to participate in the Davis-Besse and
13 Perry nuclear units; is that correct?

14 A I believe our request was in relation to the Perry
15 nuclear unit, not the Davis-Besse.

16 Q I see.

17 And is that request still pending today?

18 A Yes, I believe it is.

19 Q And in what amounts of power, megawatts, does the
20 City of Painesville now contemplate participating in the Perry
21 unit?

22 MR. BRAND: Objection. It hasn't been established

3mil

1 that the Painesville system has contemplated a specific
2 number of megawatts.

3 BY MR. REYNOLDS:

4 Q All right.

5 I will withdraw my question, in light of that, and
6 ask you if Painesville has contemplated participating in
7 specific quantities of megawatt power.

8 A We have never formally stated that objective to
9 CEI.

10 Q Has Painesville --

11 A It's been contemplated at my level and in discus-
12 sions by me with consultants to the City who I worked
13 directly with for the electric division.

14 Q And has Painesville arrived at the present time at
15 an amount of power that it intends to request from CEI for
16 participation in the unit?

17 A I think as a basis for discussion, the City would
18 be prepared to identify size range, a limited range of capacity
19 that we would be interested in and would then be able to make
20 a decision based on the economics of the situation.

21 Q I see.

22 What is the range that you have in mind?

4mil

1 MR. BERGER: If I might interrupt here, perhaps
2 this is the type of information that Painesville would prefer
3 to keep on a confidential basis rather than disclose it to
4 everyone.

5 MR. REYNOLDS: Would you prefer that we put this
6 portion under seal and ask Mr. Hauser to leave?

7 MR. HAUSER: If they're going to ask us to
8 participate in the plant, how is that confidential?

9 MR. REYNOLDS: I don't see how it is, either.

10 THE WITNESS: I don't consider it confidential,
11 and basically any utility planner who looks at our projections
12 of future loads would recognize that it is going to be some-
13 thing slightly larger than the unit we are putting in
14 presently. I envision something on the order of, for
15 Painesville's direct usage, of something on the order of 30 to
16 50 megawatts.

17 BY MR. REYNOLDS:

18 Q And would that request be for 30 or 50 megawatts
19 out of one of the Perry units or some portion out of the two
20 Perry units?

21 A I would qualify my response to that by lack of
22 knowledge of the schedule of completion of those units,

5mil

1 whether they're scheduled to be completed concurrently or
2 in a staggered manner.

3 Q. I see.

4 And that would have an impact on the manner in
5 which the request is made?

6 A. I believe it would, yes.

7 Q. And I believe you stated that at the present time
8 the City of Painesville has not made a formal request for
9 specific amounts of nuclear power cut of the Perry unit; is
10 that correct?

11 A. I'd like to refresh my memory by referring to our
12 request letter on the subject.

13 Q. All right.

14 A. The letter of request relative to Perry that I am
15 familiar with did not state a specific megawatt objective.

16 Q. And is it your understanding that the negotiations
17 with respect to participation by the City of Painesville
18 and the nuclear units are still ongoing at the present time?

19 A. That our request is still --

20 Q. That your request -- all right, that your request
21 is still open.

22 A. Yes, that is my understanding.

6mil

1 Q And is it your understanding that CEI has not
2 refused that request as of the present date?

3 A I am not aware of any direct refusal.

4 Q Are you aware of any indirect refusal?

5 A No.

6 Q Now I believe you indicated also in response to an
7 earlier question by Mr. Lessy as modified by Mr. Brand, that
8 while you had made no formal requests for transmission ser-
9 vices in connection with some sort of wheeling arrangement,
10 that there had been informal requests made by the City of
11 Painesville to CEI in that regard; is that correct?

12 A Yes.

13 Q Would you explain for me what your understanding
14 is of the term "wheeling"?

15 A Transmitting of power from source remote to CEI;
16 to be specific, over transmission facilities owned by CEI, in
17 our case. Wheeling in general being the transmission of power
18 from one bulk supplier to a user by a third party.

19 Q All right.

20 Now, what was the nature of the City of Painesville's
21 informal requests for wheeling services of the sort you
22 described?

7mil

1 A. As I recall, we talked about CEI responding to
2 our needs for power via the interconnection by obtaining
3 power for us at the lowest possible cost from any and all
4 sources that CEI would have access to via its interconnections
5 and other pooling arrangements.

6 Q. Were those discussions any more specific than that
7 in terms of identifying possible sources of supply and power
8 which the City of Painesville might be interested in obtaining?

9 A. I believe companies like Ohio Edison and Ohio Power
10 were mentioned and I believe that at some point in the
11 discussion we talked about CEI's interconnection to the
12 northeast grid involving ties to other utilities as far away
13 as New Jersey on the PJM system and as far west as Minnesota
14 and the Dakotas, as I recall, as areas which CEI had access
15 to power.

16 Q. Had the City of Cleveland, at the time of these
17 discussions, had any conversations with Ohio Edison or Ohio
18 Power, or any of the other utilities that you have mentioned,
19 about supplying power to the City of Painesville?

20 MR. LESSY: Does the City of Cleveland?

21 MR. REYNOLDS: I'm sorry. The City of Painesville.
22 Had the City of Painesville had any discussions with Ohio

8mil

1 Power or Ohio Edison or any of the others you have mentioned
2 about supplying power to the City of Painesville, to your
3 knowledge?

4 THE WITNESS: Not with any of the private utilities
5 that I mentioned and you repeated but we had had discussions
6 with some of the other municipal operations such as Cleveland
7 and Orrville.

8 BY MR. REYNOLDS:

9 Q When did you have discussions with the Cities of
10 Cleveland and Orrville in connection with supplying power
11 to the City of Painesville?

12 A I'd like to refer to my notes here. Approximately
13 the last quarter of 1971, we discussed the prospect with the
14 superintendent of the Cleveland system. That would have
15 been around November of '71, late October or November. And I
16 believe that it was at some time during 1973 that I discussed
17 the possibility of it with the superintendent of Orrville.

18 Q Now on either of those occasions or both of them
19 did the City of Painesville contemplate a completed inter-
20 connection with CEI as a basis for transmitting that power
21 to the City of Painesville?

22 A I personally contemplated it as a necessity for

9mil

1 the completion of those transactions.

2 Q And in connection with what you have characterized
3 as your wheeling discussions with CEI, was the possibility
4 of wheeling power from the City of Orrville and the City of
5 Cleveland a part of that discussion, or those discussions?

6 MR. BRAND: May I inquire, are you requesting of
7 the witness whether the City of Cleveland and the City of
8 Orrville were specifically discussed?

9 MR. REYNOLDS: That's correct.

10 THE WITNESS: I don't recall that either the Cities
11 of Cleveland or Orrville were specifically discussed as
12 possible remote sources from which CEI might wheel power
13 because at the time we were not aware of any interconnections
14 that would enable Orville or CEI -- or Cleveland to put power
15 onto the grid onto which CEI is connected.

16 BY MR. REYNOLDS:

17 Q I see.

18 A So, in effect, my view is that they would also have
19 to effect interconnections in order for such a wheeling
20 transaction to take place.

21 MR. REYNOLDS: I don't believe I have anything
22 further. Thank you.

10mil

1 MR. LESSY: I have a few questions on redirect.

2 MR. BRAND: Mr. Lessy, I have one question or two
3 prompted by Mr. Reynolds' questions. Would you like to be
4 the last one, or would you like to go forward now?

5 MR. LESSY: I'll go forward now. Maybe I'll cover
6 it.

7 MR. BRAND: I didn't want to deprive you of your
8 right of being the very last person.

9 MR. LESSY: Thank you.

10 BY MR. LESSY:

11 Q In response to a question by Mr. Brand concerning
12 possible excess capacity that the City of Painesville might
13 have pursuant to one or another projected arrangements, you
14 indicated that the City of Cleveland might be a likely source
15 as a purchaser of any excess capacity that Painesville might
16 have.

17 Can you tell me why that is so or why you feel
18 that would be true?

19 A Because to my knowledge, the City of Cleveland
20 has been purchasing power from CEI on a semi-regular basis
21 in recent months.

22 Q Your answer, then, therefore, is that the City of

11mil 1 Cleveland has a need for power?

2 A Right.

3 Q And that the City of Painesville might be another
4 prospective seller of that power if it had excess capacity; is
5 that correct?

6 A That's right. And I would qualify by saying if
7 the City of Cleveland had a full synchronous interconnection,
8 that would permit them to receive power from other inter-
9 connected utilities. It is my understanding that the power
10 they have been purchasing has been on non-synchronous switched
11 load positions that require the position to go through an
12 outage before energy from another system can be put on them.

13 Q I don't have the agreement with me today, but there
14 may be -- there is a more recent interconnection agreement
15 between the City and the City of Cleveland that may modify
16 that, but your answer, I understand.

17 In addition, in a response to another question
18 posed by Mr. Brand, there was talk of, at one point in time
19 when CEI had submitted what was characterized as a ratcheted
20 demand charge. Do you have any idea as to the approximate
21 point in time when that package or proposal was submitted
22 by CEI to the City of Painesville? It wasn't identified in the

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1 direct examination. You just said it was your recollection
2 that at a point in time a ratcheted demand charge was sub-
3 mitted.

4 Can we pin it down any closer with any more degree
5 of certainty?

6 A. My two big thick files would pin it down precisely
7 as to date. My memory tells me it was probably sometime
8 in 1973, probably late in '73.

9 Q Turning now to the documents that you did produce,
10 there is a handwritten memorandum from yourself to, I believe
11 it is Les Nero-CM. Would that stand for council member?

12 A. City Manager.

13 Q. Okay.

14 The second paragraph of that memorandum says, "My
15 basis for this thinking has been that nuclear generating
16 capacity is one of the alternatives for the future which
17 we should be considering now [underscored] because of the long
18 lead times involved in construction, be it for fossil fuel
19 plants or nuclear."

20 And then in the last paragraph, you say, "CEI
21 and the other CAPCO companies have obviously determined that
22 the most economical generation alternative for the future is

13mil

1 the nuclear unit. Therefore, I believe it will be in the
2 best interests of the City to explore their reasoning and to
3 participate in the development if it is feasible."

4 Now, based on those provisions, I gather from your
5 testimony --

6 MR. REYNOLDS: Based on those statements?

7 MR. LESSY: Based on those statements. Thank you.

8 BY MR. LESSY:

9 Q I gather from your testimony earlier that it would
10 not be feasible for Painesville to participate alone in the
11 operation and the planning of a nuclear unit by itself; is
12 that correct?

13 A No, it would not be feasible.

14 MR. REYNOLDS: Do you mean economically feasible
15 or engineeringwise?

16 MR. LESSY: I mean the whole gamut of feasibility:
17 economic, engineeringwise, and personnelwise.

18 MR. REYNOLDS: Did you understand the question that
19 way?

20 THE WITNESS: Yes, I did.

21 MR. BRAND: Off the record.

22 (Discussion off the record.)

1 BY MR. LESSY:

2 Q Keeping these same provisions in mind,
3 also in response to Mr. Brand's questions you indicated that
4 alternative power sources might be Cleveland, Orville or
5 Diamond Shamrock.

6 Now, to your knowledge, would any of those two
7 municipality systems and one industrial system be
8 capable alone of nuclear generation, nuclear generation and
9 emergency?

10 A Not to my knowledge they would not.

11 Q Then would it be fair to conclude that the
12 Cleveland Electric Illuminating Company or CAPCO would be
13 the gateway to Painesville's access to nuclear generation?

14 A It was my view as stated in the memo that I had
15 prepared that that was our gateway, yes, sir.

16 Q Now --

17 MR. BRAND: I object to the characterization
18 as gateway. The evidence thus far establishes that it is
19 not a gateway, that it is only a bottleneck.

20 MR. REYNOLDS: I am going to object to that.

21 THE WITNESS: Perhaps we could call it the proper
22 planning group.

1 MR. LESSY: Okay.

2 BY MR. LESSY:

3 Q You also testified in response to questions
4 by Mr. Berger that there are approximately 160 miles of
5 transmission lines of the City of Painesville which are
6 outside the city limits.

7 A One hundred miles.

8 Q Right.

9 A And I believe they were distribution lines.

10 Q Distribution lines?

11 A Correct. We have no transmission lines.

12 Q Are you familiar with the plant location of
13 the Perry Nuclear Plants?

14 A Yes, I am.

15 Q Are any of those distribution lines near the
16 Perry Plant sites?

17 A Yes. We have distribution lines, or had, Some
18 have been dismantled due to the plant construction that has
19 proceeded on Lockwood Road, Antioch Road.

20 We had some one Center Road in Perry, Route 20.

21 Q So you can say that they are in very close
22 proximity. You have distribution lines in very close

1 proximity to the Perry sites?

2 A I would say we had it surrounded before it
3 started to build.

4 (Laughter.)

5 Q Now, you also testified with Mr. Berger that in
6 response to questions by Mr. Berger that at one point in
7 time there were conversations with Mr. Howley and others
8 in which with respect to the Perry Township, the Perry
9 Village and the North Perry Village customers, that there
10 was mention of agreements not to compete for future loads;
11 is that correct?

12 A Yes.

13 Q That was your general recollection?

14 A Yes.

15 Q Can you document any requests by CEI or Mr. Howley
16 requesting that you agree to an agreement not to compete or
17 is this a recollection of conversations?

18 A I don't believe I could personally document
19 it from my own files. It might be documented in the files
20 of the city's law director.

21 Q Okay. And that would be the current or the
22 past law director?

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1 A The past and the current. They are partners.
2 They occupy the same offices. So the files will be in the
3 offices of Milburn, Cannon and Stern.

4 Q Now, you have also produced a letter dated
5 April 11, 1973 signed by Wayne Milburn, Law Director, City
6 of Painesville, addressed to Cleveland Electric
7 Illuminating Company, attention Honorable Lee C. Howley,
8 Vice President and General Counsel.

9 I would like to enter a copy of that letter
10 into the record, and I will give the reporter one.

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1 BY MR. LESSY:

2 Q Pursuant to the terms of that letter the City
3 of Painesville expressed its interest in participating in
4 the development of the Perry Plants on a shoared capacity
5 basis similar to the arrangements for other units by the
6 CAPCO pool.

7 My question is, subsequent to the sending of
8 that letter to CEI and/or in the context of subsequent
9 negotiations for the interconnection agreement, has CEI
10 asked the City of Painesville to your knowledge how many
11 megawatts Painesville would require in the units?

12 A Not that I recall.

13 Q Have they given you the impression that they
14 desire you to come up with an intention to use or buy a
15 specific number of range of megawatts?

16 A Not before today.

17 You asked in the previous negotiations. No,
18 they have not.

19 Q Well, today they haven't; have they not? You
20 are talking simply about the questions by Mr. Reynolds?

21 A Yes.

22 Q Also in response to questions by Mr. Berger you

1 refer to the possibility of letters in your files of CEI's
2 desirability of purchasing Painesville's systems.

3 Would those letters be from the period of time
4 1965 to present?

5 A Not that I recall.

6 Q Okay. If there are any such letters, they
7 should have been produced.

8 I wonder if you could check your files to see
9 if there are and if you send them to me I will be happy to
10 distribute them to counsel here.

11 A Fine. I don't believe that any such letters
12 exist subsequent to '65.

13 MR. LESSY: Okay. Fine. Thank you very much.

14 MR. BRAND: I have one or two additional questions.

15 MR. BERGER: I have one clarifying remark.

16 The letters -- I guess we are getting back to
17 the problem of the cutoff date and if there is one with
18 regard to production by Painesville, but at any rate, if
19 there is a cutoff date and the NRC issued the subpoena, I
20 assume they can elect to select the cutoff date.

21 I believe the date would be anything after
22 September 1, 1965.

1 MR. BRAND: Without regard to compulsion,
2 Mr. Pandy, would you be agreeable to voluntarily supplying
3 a document indicating an earlier intent to purchase or offer
4 to purchase the Painesville system prior to whatever cutoff
5 date there may be for compulsory production of documents?

6 THE WITNESS: Yes. I think it was documents
7 submitted to the public representatives of Painesville, so
8 I don't think it is particularly confidential.

9 MR. BRAND: All right, sir.

10 MR. LESSY: Is it agreeable to the City if such
11 documents exist they will be sent to staff and I will
12 distribute it to counsel who is present here today?

13 MR. BRAND: That is certainly agreeable.

14 THE WITNESS: Regardless of date.

15 MR. BERGER: It is agreeable to the Department
16 as well.

17 MR. BRAND: I have a couple of questions which
18 were prompted by the cross-examination of other parties.

19 BY MR. BRAND:

20 Q One is, in connection with a question of
21 Mr. Reynolds regarding the specific amount of kilowatts or
22 megawatts out of a nuclear unit, I believe you mentioned

1 that you would probably want to have some studies carried
2 out before you gave a specific figure.

3 Are you familiar with the term generation and
4 transmission expansion program or generation expansion
5 program?

6 A Yes, we have one.

7 Q Are you familiar with engineering studies used
8 to evaluate and compare expansion programs with a view toward
9 achieving the lowest cost expansion program?

10 A Yes. We had such a study done for our unit
11 which is under construction onw.

12 Q Are these studies different in nature than
13 design studies?

14 A Yes, I believe they are. They incorporate a
15 preliminary design concept but they are not a detailed
16 engineering design by any means.

17 Q Do they calculate -- do they incorporate in
18 them future loads and then the costs of alternative
19 possibilities of future resources to supply the loads?

20 A The ones that I am familiar with do.

21 Q Now, are these studies in which the manager of a
22 small system such as yourself would prepare yourself or

1 would you hire outside engineering consultants to carry
2 these out?

3 A We have hired consultants and would continue
4 to do so.

5 Q Are these studies costly studies in terms of
6 perhaps, \$5000, \$10,000, \$15,000, \$20,000 or more?

7 A Well, the most recent one I am familiar with was
8 done in late 1971 and it cost \$2500, I believe, \$2500 or
9 \$3000, in that range.

10 Q Would the city want to spend that much money
11 for a study of its optimum nuclear power supply if it
12 didn't have reasonable assurance that it would be able to
13 secure the nuclear power?

14 In other words, that no nuclear power would be
15 forthcoming?

16 A No, it would not.

17 Q Do you at the present time have any reasonable
18 assurance that the nuclear power will be forthcoming?

19 A No, I don't believe that I do.

20 Q Mr. Pandy, let's assume that you are
21 interested in negotiating for power supply arrangements --

22 MR. LESSY: Is this recross, Mr. Brand?

1 MR. BRAND: Yes, sir. I believe all of the
2 preceding examination relates to Mr. Reynolds' earlier
3 question.

4 I believe that concludes my examination of
5 Mr. Pandy.

6 MR. BERGER: I believe I would have one or two
7 questions.

8 BY MR. BERGER:

9 Q Mr. Pandy, in response to one of Mr. Reynolds'
10 questions I believe you indicated that consideration was
11 given at one time to possibly arranging some type of
12 coordinated activity with the Orville and the City of
13 Cleveland municipal systems; is that correct?

14 A Yes.

15 Q At the time that consideration was being given
16 was the Orville Municipal System interconnected with any
17 other electric utility?

18 A No, not to my knowledge.

19 Q Are you aware of any attempts to expressions of
20 interest by Orville to any electric utilities to inter-
21 connect with them?

22 A I believe their superintendent, Mr. Ray Williams,

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1 had indicated that they were considering interconnection
2 to Ohio Edison, but had not effected any agreement.

3 I don't even recall whether they were in active
4 negotiations at the time.

5 Q What time frame would this activity fit into?

6 A That would have been about in 1973. I had
7 occasion to see him at an American Public Power Association
8 seminar that we were both attending.

9 Q With regard to a question asked by Mr. Lessy you
10 indicated that certain documents relating to CEI's request
11 or expression of interest in getting Painesville Municipality
12 to agree not to compete for customers which could be sold
13 in exchange for the interconnection that certain notes
14 existed.

15 Are any of these notes or letters in your own
16 files?

17 A The notes and records that would be in my files
18 consist basically of analysis of customers by type and
19 quantity and their electric consumption presently and
20 projected into the future, their revenues presently and
21 projected into the future, and a report to the city manager
22 about the data that I had compiled relative to those

1 customers and I believe my report to the city management
2 probably indicate in response to CEI's request forwarded
3 by Mr. Milburn or brought out by Mr. Milburn, our law
4 director, this is the data that has been requested, something
5 to that effect.

6 Q Would there be any indication in these
7 documents as to whether or not CEI had suggested that
8 Painesville agree not to compete for these customers?

9 A I think not. Not in any documents that I hold.

10 Q Would you be willing to check these documents
11 and if certain documents do reflect that voluntarily
12 send them to the NRC, Mr. Lessy, for distribution to the
13 other parties?

14 A Yes, I would.

15 MR. BERGER: I have no further questions.

16 MR. BRAND: In a discussion among counsel it was
17 agreed that it would be unfair to Mr. Pandy, who has
18 graciously agreed to supply a number of documents, to
19 require him to go forward and file those documents until he
20 has had an opportunity to examine the transcript so that
21 under an agreement of counsel, following Mr. Pandy's
22 receipt of the transcript, he will have an opportunity to

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1 read it and see exactly what is demanded of him or requested
2 of him and he will then have a reasonable opportunity to go
3 through the city's files and collect the documents and
4 mail them to the NRC staff.

5 MR. LESSY: Did you mean the city's files or
6 his own files?

7 MR. BRAND: Well, whatever files are available
8 to him.

9 MR. REYNOLDS: I think if we are now finished
10 we ought to advise Mr. Pandy, since he does not have
11 counsel present, that if he chooses to review the transcript
12 and make corrections in it and sign the transcript, ne
13 has that option available to him and he would be entitled to
14 do so.

15 And if you choose not to, you need not, but you
16 ought to be aware of the fact that you do have that as an
17 option.

18 THE WITNESS: Thank you.

19 MR. REYNOLDS: Would you like to exercise that
20 option?

21 THE WITNESS: I would plan to read it and
22 if I find what I consider to be errors in transcription of

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1 what I said I would so note.

2 MR. REYNOLDS: No -- right. That is the
3 limitation.

4 THE WITNESS: If I think I misquoted, I would so
5 mark the transcript and return it.

6 MR. REYNOLDS: Let me, before we go off the
7 record, make one further statement, because I am not
8 sure Mr. Pandy is aware of it.

9 The Board has ordered that there is not to be
10 any discussion of the testimony given by a witness on
11 deposition with any other individual who is noticed for
12 deposition prior to the time that his deposition has been
13 taken.

14 In view of the fact that Mr. Milburn has moved
15 to quash the subpoena but is still under a notice of
16 deposition, I would caution you in accordance with the
17 Board's order that you do not discuss your testimony today
18 with Mr. Milburn until such time as that matter is resolved
19 and if it is resolved in a fashion that would require him
20 to attend and be deposed, then it would be after the time
21 that his deposition has been taken.

22 MR. LESSY: We have a unique circumstance here

1 in that Mr. Milburn's successor and law partner is counsel
2 to the City of Painesville, Mr. Cannon.

3 The question arises as to whether or not
4 Mr. Pandy should not, pursuant to the same terms, discuss
5 his testimony with Mr. Cannon.

6 MR. REYNOLDS: He could do that. Mr. Cannon
7 has not been noticed.

8 MR. BRAND: I would say this for the City: I a
9 am not sure that the Board's order applies to non-parties.
10 However, I think it is better practice to refrain from
11 doing so unless you consider it will produce some burden on
12 you, but I can't envision any such burden.

13 In other words, what I am suggesting is if for
14 some reason that is going to work a hardship on you, then
15 it may be that as a non-party it doesn't apply to you.

16 However, unless it causes some burden, it would
17 be the better practice to abide by that.

18 MR. LESSY: Staff very much appreciates your
19 appearance today and thanks you for your cooperation.

20 (Whereupon, at 4:00 p.m., the taking of the
21 deposition in the above-entitled matter was concluded.)
22

Joseph Pandy, Jr.

CERTIFICATE OF NOTARY PUBLIC AND REPORTER

I, LINDA J. NOESKE, the officer before whom

the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Linda J. Noeske

Notary Public in and for the
DISTRICT OF COLUMBIA

My commission expires
AUGUST ~~XX~~ 14, 1977.

CITY OF PAINESVILLE

7 RICHMOND STREET
PAINESVILLE, OHIO 44077
TELEPHONE (216) 352-9301

April 11, 1973

Cleveland Electric Illuminating Company
P. O. Box 5000
55 Public Square
Cleveland, Ohio

Attention: Hon. Lee S. Howley - Vice President - General Counsel

Gentlemen:

It is our understanding that you are planning the construction of a nuclear power plant in Perry, Ohio, in an area which is presently served by the City of Painesville's Electric Division.

It is our intent, by means of this letter, to express our interest in participating in the development of this plant on a shared capacity basis, similar to the arrangements for other units by the CAPCO pool.

Please advise at your earliest convenience as to how we may proceed to make such an arrangement.

Very truly yours,

Wayne Hilburn

Law Director
City of Painesville

cc: R. McDonald, City Manager
J. Pandey, Electric Power Superintendent

WTH:mb