

NUCLEAR REGULATORY COMMISSION

POOR ORIGINAL

IN THE MATTER OF:

THE TOLEDO EDISON COMPANY and

BUCKET NOB.  
10-346-A

THE CLEVELAND ELECTRIC ILLUMINATING CO.  
(Davis-Besse Nuclear Power Station,  
Unit 1)

THE CLEVELAND ELECTRIC ILLUMINATING CO.  
(Davis-Besse Nuclear Power Station,  
Unit 2)

50-441-1  
50-441-2

DEPOSITION OF WAYNE K. MILBURN

Place Fairport, Ohio

Date Wednesday, 17 August 1975

Pages 102

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before

The Atomic Safety and Licensing Board

- - -

In the Matter of:

THE TOLEDO EDISON COMPANY and ) Docket No.  
 ) 50-346 A

THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY )  
(Davis-Besse Nuclear Power )  
Station, Unit 1) )

THE CLEVELAND ELECTRIC ) Docket Nos.  
ILLUMINATING COMPANY et al., ) 50-440 A  
(Perry Nuclear Power Plant, ) 50-441 A  
Units 1 and 2) )

- - -

Deposition of Wayne R. Milburn, taken

before me, the undersigned, Dean A. Robinson, a Deputy  
Clerk in and for the County of Cuyahoga, State of Ohio,  
at 41 East Erie Street, Painesville, Ohio, on Wednesday,  
August 13, 1975, commencing at 12:30 p.m.

- - -

## 1 APPEARANCES:

2 On behalf of the U. S. Department of Justice:

3 Melvin G. Berger, Esq.  
4 Antitrust Division  
5 Washington, D. C. 20530

6 On behalf of the NRC Staff:

7 Roy P. Lessy, Jr., Esq.  
8 Office of the Legal Director  
9 U. S. Nuclear Regulatory Commission  
10 Washington, D. C. 20555

11 On behalf of the Applicant:

12 Shaw, Pittman, Potts & Trowbridge, by  
13 William Bradford Reynolds, Esq.  
14 910 - 17th Street, N.W.  
15 Washington, D. C. 2000616 On behalf of the Applicant The Cleveland Electric  
17 Illuminating Company:18 Donald H. Hauser, Esq.  
19 P.O. Box 5000  
20 55 Public Square  
21 Cleveland, Ohio 44113

22 On behalf of the Intervenor City of Cleveland:

23 Robert Hart, Esq.  
24 City Law Department  
25 City Hall  
Cleveland, Ohio 44114

PROCEEDINGS

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MR. LESSY:

Let's go on the

record.

This is a deposition in the combined Perry and Davis-Besse Nuclear License Applications and the antitrust aspects in front of the Nuclear Regulatory Commission.

The witness is Mr. Wayne Milburn who is appearing here pursuant to subpoena.

Would you swear the witness.

- - -



1 WAYNE R. MILBURN

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

4 DIRECT EXAMINATION

5 By Mr. Lessy:

6 Q Your name is Wayne Milburn?

7 A Right.

8 Q You are appearing here pursuant to a subpoena?

9 A I presume so.

10 Q How long have you served as the Law Director to the  
11 City of Painesville?

12 A From 1957 to June 31st of 1975.

13 Q How long have you known Lee Howley?

14 A Well, I have never known him well but I have known  
15 of him for 40 years.

16 Q Have you had dealings with him on a professional  
17 capacity level?

18 A Never on any level except in relation to the dealings  
19 between the City and CEI.

20 Q In that regard how long have you been dealing with  
21 Mr. Howley, or had you dealt with Mr. Howley with respect  
22 to that?

23 A Well, somebody may help me out.

24 Was the Hot Lincs case, was that in about '66?

25 MR. HAUSER:

The case was in

1 about, before the Hot Wires Act.

2 THE WITNESS: And I started dealing  
3 with Lee about 1964 or '3 then.

4 Q When is the last time you spoke with Lee Howley?

5 A It had to be a year or more ago I would think.

6 As I recall it, our final negotiations on the contract  
7 were with Mr. Hauser rather than Lee and I have never  
8 seen him since.

9 Q To the best of your knowledge have you spoken with  
10 him on the phone since that time?

11 A Have I what?

12 Q Have you spoken with him on the telephone since that  
13 time?

14 A No.

15 I think since that time I have had one letter from  
16 him. That is the only communication I have had.

17 Q Mr. Milburn, I show you a letter dated April 16,  
18 1975 from Lee Howley to you, and I'd like to quote for  
19 you the first sentence of the second paragraph:

20 "As we discussed the other day, I believe both  
21 of us agree that both you and the company fully understand  
22 the benefits of the tie and would have had no problem in  
23 coming to terms except for certain members of the  
24 Painesville Council."

25 I'd like to refresh your recollection --

1 A I know the letter. I have it in the file I gave  
2 you.

3 Q Is your testimony still you haven't spoken to him for  
4 a year?

5 A It sounds as though I have.

6 I have absolutely no recollection of ever having  
7 spoken to Lee.

8 Q You haven't spoken with him in the last month?

9 A No.

10 Q Is your relationship with Mr. Howley purely a  
11 professional one? You are not personal friends?

12 A No, purely professional.

13 Q In terms of the interconnection agreement that was  
14 finally negotiated between the City of Painesville and  
15 the Cleveland Electric Illuminating Company, were you satis-  
16 fied that you had negotiated a satisfactory agreement with  
17 CEI on behalf of your client, the City of Painesville?

18 A I was satisfied because Mr. Pandy indicated that  
19 technically it was a good agreement, and I satisfied  
20 myself that we had the same agreement that Ohio Power had  
21 and I insisted all along we had to have at least as good  
22 an agreement as Ohio Power.

23 As it now stands we now have everything that agreement  
24 has.

25 Q Was your client satisfied?

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A The City?

Q Yes, sir.

A Very much so.

Q Okay. We will explore the agreement in a moment.

I'd like to refresh your recollection of a letter dated September 16, 1974, signed by yourself as Law Director of the City of Painesville to Mr. Steven M. Charno.

It's in the files. Would you like to refresh your recollection by reading it?

(Counsel hands document to the witness.)

A I am familiar with that letter.

MR. REYNOLDS: Could you show the letter to counsel?

MR. LESSY: Okay.

(Brief pause.)

MR. LESSY: Let the record show that this letter was produced by the Department of Justice in discovery and it was used in the Pandy deposition.

MR. REYNOLDS: Off the record.

(Discussion off the record.)

MR. BERGER: I'd like to state something for the record about this letter:

Looking at the dates of the correspondence from the Department of Justice listed in the letter,



1 I believe that this letter was in response to  
2 inquiries made with regard to the Davis-Besse  
3 2 and 3 units, and I note that the letter lists  
4 two Department of Justice file numbers. I do  
5 not know what the correspondence of the Davis-Besse 1  
6 unit is but in any event it lists two nuclear  
7 power stations, one is the Davis-Besse Power Station  
8 and the other is the Erie Power Station.

9 Obviously the Erie Station is no longer, as  
10 far as we know, an active entity and I think that  
11 this letter which refers to Davis-Besse Power  
12 Station is referring to the investigation with regard  
13 to the Davis-Besse 2 and 3 rather than Besse 1.

14 THE WITNESS: Well, now, to make  
15 it clear: The letter was in response to two letters  
16 which I had from the Department of Justice. It  
17 doesn't really refer to any power station. It  
18 just refers to the lag in the negotiations with  
19 the CEI.

20 At that time I was really unhappy about the  
21 drag that was going on, that nothing was happening,  
22 but I wouldn't -- I didn't even know one power  
23 station from the other.

24 MR. BERGER: I am not suggesting  
25 that you did. I just thought perhaps I could state

1 that on the record and I believe the Davis-Besse  
2 Power Station referred to here is 2 and 3 rather  
3 than Davis-Besse 1.

4 I think the list of Department letters will  
5 bear that out.

6 By Mr. Lessy:

7 Q Returning to the letter, the last two sentences of  
8 the first paragraph of page 2 says, in which you say and  
9 I quote:

10 "At the end of five years I am forced to the conclusion  
11 that there is some reason why I get everything but the  
12 contract itself. My relationship with Mr. Howley is  
13 very good but he may be having trouble since for years  
14 it has been the avowed goal of CEI to take over the Paines-  
15 ville plant."

16 With that quote in mind, you speculated there may be  
17 reasons why after five years of negotiation you did not  
18 have an agreement with CEI. What are those reasons?

19 A Well, just it had been for five years and nothing had  
20 happened. It was always being dangled out in front of us.  
21 It was just one reason after the other.

22 They always seemed plausible but we have five years  
23 of negotiation.

24 Now, I have told you subsequently the first part of  
25 that time -- let me go back a little bit in history.

1 At the time of the Hot Wires Bill the CEI offered  
2 us a tie-in --

3 Q Wait a minute. Are you answering the question?

4 A Well, I am trying to --

5 Q Okay.

6 A -- but this is history.

7 Q Okay.

8 A That in effect, to answer directly -- had offered  
9 us a tie-in at extremely favorable rates in which they  
10 were going to pick up the entire cost of the tie-in if  
11 they could go through the city.

12 Q What was the approximate date of that?

13 A '64 or '5.

14 Q Okay.

15 A And for political reasons our council voted it down.  
16 Finally it was a 4 to 3 vote.

17 Q By "council," you refer --

18 A Council of the City of Painesville refused to agree  
19 to the agreement. But at that time we had a very favorable  
20 agreement because they wanted to go through the city  
21 and we were stopping them from going through, and Mr.  
22 Howley and I had worked out this agreement and were anxious  
23 for it to go through without litigation, so they made  
24 liberal concessions such as the entire cost of the tie-in;  
25 they even offered to give us economy power.

1 I had talked to members of Council and tried to sell  
2 them on it but the people in the north end of Painesville  
3 would be completely "murdered" if they voted for it.

4 They voted against it. They turned it down. We  
5 took them to the Supreme Court of Ohio on this before  
6 they were allowed to go through.

7 Immediately after that the City Manager told me  
8 I should start again the secret negotiations with the CEI  
9 to get a tie-in and I started quietly at that time clear  
10 back in '66 very quietly talking to Mr. Howley about  
11 what could be done.

12 He indicated to me at that time that in addition --

13 Q Go ahead.

14 A -- to the problem that I had with the Council of the  
15 City of Painesville, he had a problem with the Directors  
16 of the CEI because some of them, to use his words to me  
17 at that time "thought that the Painesville plant was  
18 going to fall like a plum into their lap; they had  
19 the Painesville plant."

20 He didn't agree. He thought they ought to negotiate  
21 a contract and I always dealt with Lee in good faith,  
22 that he did have that problem with some of the Directors  
23 who were trying to negotiate a contract and some who  
24 didn't.

25 So I think in the file there is a letter back in



1 1961 now where I sent a letter to Bill Kelly indicating  
2 that I had a memorandum from Mr. Howley outlining the  
3 minimum basis for an agreement and that's the first thing  
4 I have in writing about the five years that I have been  
5 talking about in this letter.

6 But from that time on, from '71, '72, '73 and '74,  
7 we had meetings. We had one or two meetings where the  
8 entire Council were present, but mostly they were meetings  
9 between myself and Mr. Howley or myself, the City Manager,  
10 and Mr. Howley, but literally nothing ever happened.  
11 It just seemed as though we didn't get off the ground.

12 I had come to the conclusion that I was getting  
13 worried there was a reason for it and I wrote the letter.  
14 I just figured I could no longer take a chance that I was  
15 being used.

16 Q Did you feel that you were going forward with a  
17 good faith effort on behalf of your clients to reach an  
18 agreement?

19 A Oh, I knew I was.

20 Q Well, your quote here talks about reasons.

21 "I am forced to the conclusion there is some reason  
22 why I get everything but the contract itself."

23 Now, you have outlined the negotiating history.

24 Can you --

25 A I don't know. I just said there must be some reason

1 on their part. I didn't know the reason.

2 There was no reason on my part. We wanted a contract.

3 I thought at that time I had the Council lined up  
4 where I could get it.

5 I wasn't sure yet in '74 -- I wasn't sure that  
6 I had the votes on Council to get this through, but I  
7 thought I did.

8 Q Now, you said back until 1965, it may have been '64 --  
9 and that date might be important for our purposes here --  
10 that CEI came forward with a, quote, very attractive  
11 contract to you.

12 Would you think that was a contract that was not  
13 attractive as the 1965 interconnection agreement?

14 A I don't have it in writing but I am sure it was  
15 more attractive. Yes, it was more attractive for one  
16 thing because they were putting up the entire cost of  
17 the tie-in. They were swapping now what was costing us  
18 \$750,000 in exchange for being allowed to go through the  
19 City of Painesville in exchange for a lawsuit that was  
20 going to hold them up for a year or so.

21 Q To use your words, quote, very attractive, why  
22 didn't you hold out for a very attractive contract in  
23 1975?

24 MR. REYNOLDS: Objection.

25 A The answer is obviously we no longer had anything to

1 bargain with. They had the route. The Court told them  
2 they could go. We didn't have a damn thing to offer any  
3 more. All we could say now was we want a tie-in which  
4 I am practical enough to know literally was one-sided,  
5 there was nothing we could give them in terms of contract  
6 reciprocity.

7 We can't buy back in kind, or we can put power into  
8 the system. I am practical enough to know our system can't  
9 do that, we can't produce power as cheap as they can.

10 Q What did you have to bargain with?

11 A Nothing. All we had is the fact that we knew that  
12 the Federal Power people in Washington had told us through  
13 the City Manager that they would help us hit them over  
14 the head with a hammer to make them give us a tie-in, and  
15 I told Lee, too, "You are going to give us a tie-in or  
16 we are going to court to make you do that."

17 Q What was his response?

18 A He said, "Let's not talk about making somebody doing  
19 something."

20 I think I quoted the Gainesville case. He said,  
21 "We are familiar with that."

22 Q You mentioned that Mr. Howley in this quote is having  
23 trouble with others. Who might those others be?

24 A The Directors of CEI.

25 Q How about CEI management, his bosses?

1 A I never assumed he would have trouble with them --  
2 assumed he didn't.

3 I didn't know.

4 Q When you say "trouble," Mr. Howley might be having  
5 quote trouble with others, what did you mean by that  
6 "trouble"?

7 A Just being unable to lane up to give Painesville any  
8 kind of a contract.

9 See, I was familiar -- there was -- we had a copy of a  
10 memorandum that went to Mr. Howley some time back in '73  
11 or '74 in which somebody in the firm had come out right  
12 point blank and said within a few years they thought that  
13 Cleveland and Painesville would both fail and they  
14 would be able to pick them up free, and I knew that  
15 some people felt all they had to do was wait.

16 Q Why did -- strike that.

17 Do you have any knowledge as to why they thought  
18 Painesville would fail?

19 A No. Painesville has always been on a pretty firm  
20 footing except in recent years, expansion requirements  
21 have been pretty rough.

22 Q Have you had to add new capacity in recent years?

23 A Yes, we are adding right now.

24 Q What are you adding? Do you know?

25 A No.



1 Q Would it be 25 megawatt fossil units, turbine?

2 A 22 -- we put in a new boiler and we are just completing  
3 a new addition to the plant, it's not on line yet.

4 Q Has the electrical system over the years in which  
5 you were counsel or Law Director, was it operating in  
6 the black?

7 A Oh, for years it's been a bonanza. When I first  
8 became Law Director we were rebating the December light  
9 bills. We were giving -- we were running City Hall off  
10 of our light plant. It was making all kinds of money.

11 In recent years it has been making money but it has  
12 been financing so many bills of the light plant it's  
13 hard to find any more.

14 Q How about to the local residents?

15 A Not that much.

16 Q Free lighting?

17 A It provides it free --

18 Q For the offices of the municipality?

19 A Yes.

20 It provides power to the pumping station, the Water  
21 Department, but I don't think it does it free. They make  
22 some kind of charge for that: For example, it pays a  
23 good big chunk of the Law Director's salary, of the City  
24 Manager's salary, and the operation of City Hall.

24 MR. BERGER: This is a clarifying  
25 question: Mr. Milburn, when you refer to, or when

1           you said the Muny has been financing bills outside  
2           the light plant --

3           THE WITNESS:                                 Yes?

4           MR. LESSY:                                     We did get into that  
5           a little bit.

6           By Mr. Lessy:

7           Q     I am continuing on in the second part: "Was the  
8           avowed goal of CEI to take over the Painesville -- for  
9           years it was the avowed goal of CEI to take over the  
10          Painesville plant."

11          What is your source for that statement? Is that  
12          general knowledge or something in particular?

13          A     It was general knowledge. We knew years ago they  
14          came in and offered to buy it. They have offered to buy  
15          it a couple of times in the last 30 years, but aside  
16          from that my main source was a personal memorandum  
17          internally to Mr. Howley.

18          MR. LESSY:                                 Let the record show  
19          that Mr. Pandy produced a part of that memorandum  
20          in his deposition.

21          MR. REYNOLDS:                             I object to that.

22          MR. BERGER:                                 I don't know that  
23          is the memorandum Mr. Milburn referred to.

24          MR. REYNOLDS:                             I object. I don't  
25          think that is a fair conclusion to draw.

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MR. LESSY:

I'd like to withdraw

that.

By Mr. Lessy:

Q I'd like to show you an internal CEI memorandum from R. H. Bridges to F. N. Fittapaldi dated February 8, 1966, and ask you to read it, sir.

MR. REYNOLDS:

Let's go off the

record for a minute.

(Discussion off the record.)

THE WITNESS:

I never saw it

before.

The memorandum I was talking about was much more recent than this.

MR. LESSY:

Okay. Does counsel

present have objection to questioning the witness with respect to this memorandum?

MR. REYNOLDS:

No, except to the

extent the witness has indicated he has never seen the memorandum before. For that reason I question what kind of question can be legitimately addressed to it, but I don't have any objection to the document.

Q This document indicates, does it not, that The Illuminating Company is interested in taking a public opinion survey as to the current information on Painesville and its light

1 plant, is that correct?

2 A That's right.

3 Q During the course of your negotiations with Mr.  
4 Howley, was there any disclosure by him to you that  
5 The Illuminating Company was interested in making such a  
6 study?

7 A As this?

8 Q Yes.

9 A No.

10 MR. REYNOLDS: Before you continue,  
11 I think it might for purposes of clarifying the  
12 record be helpful to identify the document which  
13 to my recollection has not yet been identified  
14 so far as date and subject matter and author and  
15 recipient.

16 MR. LESSY: My recollection is  
17 that before I showed it to him I did, but I will be  
18 happy to repeat it.

19 It is a memorandum from R. H. Bridges dated  
20 February 8, 1966, an internal CEI memorandum to  
21 F. N. Fittapaldi.

22 By Mr. Lessy:

23 Q Did you have an answer to my question?

24 A Yes. The answer is "No."

25 Q Okay. Were you aware as a resident and Law Director



1 that studies, public opinion surveys, and studies such as  
2 this were in fact conducted?

3 A Yes, because I suppose everybody in Lake County  
4 knew that CEI was interested in the Painesville plant.  
5 They didn't make any secret of it.

6 Q Okay.

7 A As a matter of fact, one of the things that Howley  
8 and I discussed during the course of our negotiations  
9 was the change of attitude by the Board of Directors  
10 towards the Painesville plant.

11 He had succeeded in convincing them that they were  
12 never going to be able to get the Painesville plant;  
13 they might as well go into a tie-in.

14 Q On page 2 of your September 16, 1974 letter to Mr.  
15 Charno, you state in the second paragraph you wrote to  
16 CEI and officially advised them that Painesville wished  
17 to participate in the ownership and operation of the Perry  
18 plant.

19 Did you realize at the time that you made that  
20 written request to CEI for participation for access to  
21 the plant that you had a legal right to request access?

22 A Yes, you have a legal right to request anything.

23 Q Did you have?

24 A Actually I wrote that letter because our power super-  
25 intendent, Mr. Pandy, was very interested in having it  
written. As a matter of fact he drafted the letter and

1 I put it on my letterhead and sent it out because he  
2 felt that five years from now we are going to have a real  
3 problem, and I told him -- I said: "Joe, how are we  
4 going to finance it? I will put it in the letter be-  
5 cause it doesn't hurt to put it on the record."

6 So I sent it out and I think there is a copy in the  
7 file.

8 Q "I get neither acceptance nor a refusal..." is that  
9 true today?

10 A I never got a definite yes or no. The answer from  
11 Mr. Howley is also in the file in which he indicated it  
12 would have to be taken up with four or five other people  
13 and if I was interested in pursuing it further he said  
14 he would do that.

15 Then at a subsequent occasion when he was out talking  
16 to me, he said, "You know, as a matter of fact this is  
17 going to cost you several million dollars to even get  
18 a small piece of it.

19 "The interconnection we will give you without a  
20 termination date on it," because the interconnection is  
21 what I was insisting on, on a long, long term or no termina-  
22 tion date at all.

23 He said, "If you have that, then you will get power  
24 from the nuclear plant or any source you have. You  
25 don't have to make the capital investment. If you want to

1 pursue it, I will take it up with the others but I don't  
2 know where you are ever going to get the money."

3 Q Did he mention to you the possibility of access of  
4 the nuclear plant other than the large purchase of the  
5 plant or other than the purchase of a piece of the plant?

6 A Only through a tie-in.

7 Q Did he mention to you that there were other methods  
8 whereby you could get access to nuclear power notwithstand-  
9 ing the tie-in, other than a large purchase of the plant?

10 A Well, I don't understand your question.

11 He said we could get access to it through a tie-in,  
12 yes.

13 Q Okay, and he was suggesting through the tie-in your  
14 sources of power could be other than nuclear once you got  
15 the tie-in?

16 A Once I got the tie-in it wasn't necessary to get  
17 the nuclear plant is what he was suggesting.

18 He was suggesting we would be tied into the nuclear.

19 Q When he was suggesting an interconnection, he was  
20 suggesting interconnection not to CEI System but to the  
21 nuclear plant, is that right, or was he suggesting a  
22 tie-in to the entire system?

23 A As we were talking, he was talking about just a  
24 general tie-in such as we have now.

25 Q The general tie-in now?

1 A With that source being whatever they were using at  
2 that time.

3 Q I see. He did not suggest a tie-in to the nuclear  
4 plant and a tie-in to the system?

5 MR. REYNOLDS: I object to the  
6 argumentative comment of counsel.

7 A Well, my point is at that time we were both thinking  
8 about 25 years from now they might not be using coal at  
9 all and the only source of supply they would have would be  
10 the nuclear plant.

11 By Mr. Lessy:

12 Q When you told Mr. Pandy that you got neither the  
13 acceptance or refusal or Mr. Howley said it would require  
14 a lot of front end money, what was his response?

15 A He agreed. He knew that before we sent the letter.

16 Q Well, if you thought the sending of the letter was  
17 a formality, why did you agree to send it? You were  
18 the Law Director and you signed it.

19 MR. REYNOLDS: I object as having  
20 been asked and answered.

21 THE WITNESS: Well, I am glad to  
22 answer any question.

23 MR. REYNOLDS: You may answer him.  
24 I am just noting the objection because I believe  
25 we already have a response to that.

1 A I believe it was agreed by Joe we go on the record  
2 formally to have it in. As a matter of fact, I wrote a  
3 letter to the Justice Department in which I told them  
4 specifically that I thought if they allowed this thing to  
5 go through without some provision for Painesville and  
6 Cleveland to be allowed to tie into the nuclear plant  
7 there would be very definitely an antitrust problem very  
8 clearly involved because they were going to be able to  
9 freeze us out completely.

10 Q Do you view your present interconnection between CEI  
11 and Painesville as the tie-in to the nuclear plant?

12 A Yes. That doesn't make it so but I have assumed it  
13 was because things tie in to anything they have.

14 Q Did they feel that the interconnection agreement is  
15 the equivalent to the tie-in to the nuclear plant?

16 A No.

17 Q I thought Mr. Howley said you could do the same thing  
18 but you couldn't afford the interconnection?

19 A He did.

20 Q Is that how you drew that conclusion?

21 A That is exactly how I drew the conclusion.

22 Q Now in the last paragraph of your 9/16/74 letter to  
23 Mr. Charno I quote:

24 "In summary I continue to receive assurance we will  
25 get the contract but I don't get one. I now believe it



1 would be even more difficult to obtain if they got the  
2 green light on the Perry plant in an okay from the  
3 Justice Department. It has taken me a long time to  
4 arrive at this conclusion."

5 My question to you is: Why in your view all of a  
6 sudden after years of negotiation as you have testified  
7 were you able to arrive at the contract?

8 MR. REYNOLDS: I object to that.

9 I think it is an improper characterization.

10 There has been no testimony that the contract was  
11 arrived at all of a sudden as opposed to an evolu-  
12 tionary process that developed over the period of  
13 years of negotiating a contract after a certain  
14 date.

15 MR. LESSY: He describes the five-  
16 year negotiation and describes his frustration.  
17 You can let your objection stand.

18 MR. REYNOLDS: I have no objection  
19 to your asking your question. I will object because  
20 I think you are ascribing a position to the witness.

21 You may answer.

22 THE WITNESS: Well, I am not sure  
23 I understand what the question is.

24 By Mr. Lessy:

25 Q Why do you feel that you were able to arrive at the

1 contract in April of 1975 if you had, as you have testi-  
2 fied, difficulty previously?

3 A Well, I wondered about that sometimes. It may have  
4 been just a culmination of five years of negotiations.  
5 It may have been the fact that I wrote that letter.

6 It may have been the fact that pressure was put on  
7 the CEI from some other source.

8 You see, I have no way of knowing what made them do  
9 that. I have a letter from Mr. Howley in December of 1974  
10 where he wished me a Merry Christmas and he hoped to get  
11 the contract signed before he and I leave our respective  
12 positions as law directors.

13 Well, I just made it by about a week.

14 Q Well, your position as the negotiator for the City  
15 of Painesville didn't change; in other words, you didn't  
16 change your bargaining position all of a sudden. You  
17 were taking the same position and you are able to reach  
18 an agreement?

19 A The pieces started to fall into place but now, you  
20 see again, as I wrote a letter in '75 and this was the  
21 one that you talked about that in response to Mr. Howley's  
22 letter to me trying to explain some of these delays, I  
23 found out --

24 Q This is not responsive to the question and I would  
25 like to make a motion to strike.

1 You have answered.

2 You can finish the statement.

3 MR. REYNOLDS: It may be responsive,  
4 it may not be; unless you give the witness an oppor-  
5 tunity to complete it, we don't know.

6 MR. LESSY: He did complete it.  
7 I didn't ask him about a letter.

8 THE WITNESS: But my point is  
9 I found out that a lot of these delays were our  
10 delays.

11 I found out, for example, that Mr. Pandy for  
12 many -- for a couple of years did not want a tie-in.

13 I found out that our Engineers Gaus & Pyle in  
14 Akron did not want a tie-in. They were opposed to it.  
15 When I asked for information, they blocked it and  
16 I had to go to the City Manager and get an absolute  
17 order they furnish some information that I wanted.  
18 You have a letter in there.

19 You have a memorandum from Mr. Pandy in which  
20 he furnishes certain information about the lines  
21 that I had requested. It took me five months to  
22 get, and when I finally called the engineers in  
23 Akron and said, "What is the matter with this?" they  
24 said it would cost 12 or 15 thousand dollars to get  
25 that.

1 I said I can get it in an hour by calling  
2 "Hi" Ficker who was Joe Pandy's predecessor as the  
3 power superintendent, and so the following week I  
4 got the information I wanted, there was no \$20,000  
5 bill attached; we just got it.

6 MR. LESSY: Okay. That speech  
7 was in response to a question as to what your negotia-  
8 tion position was.

9 THE WITNESS: Not a particle.

10 MR. LESSY: I am saying for the  
11 record you have answered the question and made that  
12 statement and the staff would like to strike the  
13 answer as unresponsive.

14 I will make the appropriate motion to do so.

15 MR. REYNOLDS: Before we go on,  
16 would you please mark that spot in your shorthand  
17 notes, Mr. Reporter.

18 (The reporter complies.)

19 By Mr. Lessy:

20 Q My question is: Did your position -- not Mr. Pandy's  
21 -- did your position as negotiator for the City of Paines-  
22 ville change in April of 1975 so as an agreement was  
23 reached at that time?

24 A Mine never changed. Ever.

25 Q Was your client asking for, attempting for you to

1 reach an interconnection agreement during the ensuing  
2 years, during the years prior to that cost war and the  
3 stop and start situation? Were you constantly in  
4 negotiation for an interconnection agreement?

5 A Intermittently, yes, all the time.

6 Q Didn't you also -- by "you" I am referring to you  
7 individually -- and your client try to negotiate an inter-  
8 tie by Diamond Shamrock some years prior?

9 A I didn't. Ever.

10 Q Do you have knowledge of any attempts to do so?

11 A After I talked to you last night, I talked to Mr.  
12 Cannon who was chairman of the Council at one time and he  
13 said that a member of the Council at that time, Clinton  
14 Hall, was a stationary engineer, was a member of Council  
15 and was a stationary engineer at Diamond Shamrock.

16 He was bitterly opposed with any tie-in to CEI  
17 on any ground whatsoever. He just opposed it, period,  
18 and Mr. Cannon told me that any time a question of tie-in  
19 ever came up, Mr. Hall always raised the possibility  
20 "Why don't we get a tie-in with Diamond Shamrock and  
21 talk to Ralph Parsons about it?"

22 I wouldn't know Ralph Parsons if he walked in. I  
23 never met him, and I never met with Council when he met  
24 with him. They may have had discussions but I don't  
25 know of any. If they did have, it was many years ago.



1 Q When was Mr. Cannon Chairman of Council?

2 A Seven, eight years ago.

3 Q Is that what you mean by "many years ago," seven,  
4 eight years?

5 A Well, seven, eight years could be "many years ago,"  
6 and 15 could be "many years ago."

7 You asked me when he was the Chairman and I know  
8 he was the Chairman seven, eight years ago.

9 Q But you just testified that Mr. Cannon was Chairman  
10 and you said, "Many years ago."

11 A Are you trying to argue with me?

12 Q I am trying to get --

13 A Ask me a simple question, but don't argue with me  
14 about it.

15 Q The simple question, sir, was when do you remember  
16 those conversations taking place?

17 A I have no idea.

18 Q Then you don't know?

19 A That's right. I only know what he told me last night.  
20 I never heard of any conversation with Parsons.

21 Q You know of a conversation with Parsons?

22 A I don't.

23 Q Or any with Diamond Shamrock?

24 A I did not ever.

25 Q There was no correspondence?

1 A I did not know of any correspondence.

2 MR. REYNOLDS: When you say "no  
3 correspondence," there was no correspondence from  
4 or to Mr. Milburn, is that correct?

5 MR. LESSY: That's correct.

6 MR. BERGER: Is that how you  
7 understood that question?

8 THE WITNESS: Yes, I couldn't  
9 talk about correspondence for anybody else,  
10 of course. I know there was no correspondence in  
11 the file.

12 I went carefully through looking for some.

13 By Mr. Lessy:

14 Q Relating to the funding of the interconnection  
15 agreement --

16 MR. REYNOLDS: If we are starting  
17 on something else, it would be a good time to break,  
18 a five-minute break. We have been going about an  
19 hour.

20 MR. LESSY: Sure.

21 (Recess had.)

22 By Mr. Lessy:

23 Q Relating to the funding of an interconnection agree-  
24 ment, didn't CEI discuss the possibility of providing funds  
25 for the City of Painesville by means of a sale of all

1 Painesville customers in Perry Township, Perry Village,  
2 and North Perry Village together with the sale of all  
3 electric facilities in that area to CEI?

4 A Right.

5 Q And then pursuant to that proposal after that sale  
6 was completed --

7 A Now, wait a minute. It wasn't complete. We never --

8 Q Pursuant to the proposal, we are talking about the  
9 proposal -- I know you didn't.

10 I am asking, pursuant to the CEI proposal there was  
11 no evidence it was ever accepted after the sale?

12 A I made the proposal. They didn't make the proposal.  
13 Let's get this straight. We talked about it but I made  
14 the proposal.

15 Q That was your proposal?

16 A Yes. We had to find 750,000 bucks. We didn't know  
17 how to find it and I proposed to them they buy the  
18 Perry lines.

19 Q Did they in response to that --

20 A They jumped up and down in glee.

21 Q Why didn't it ever come off?

22 A Because we found out that -- we made an economic  
23 study, and if we let the Perry lines go, we didn't have  
24 enough money to finance our bonds. We had to have the  
25 Perry lines to pay our bonds.

1 Q As a response to the proposal, in addition to  
2 jumping up and down in glee, did they suggest that if  
3 that were to occur, Painesville was not to seek to serve  
4 future customers in the area?

5 A That was never discussed. Ever.

6 Q Painesville is not a member of AMP-O, is it?

7 A No.

8 Q Do you know why?

9 A Because I have always been opposed to it.

10 Q Why?

11 A I don't think there is any advantage to us.

12 Q Can you explain as to why you don't think there is  
13 any advantage?

14 A Well, they are a long ways away. I did go over  
15 the regulations with the City Manager and I talked about  
16 it. This is someone else telling you how to run your  
17 system. We don't need it. We have a real good system  
18 of our own. We don't need AMP-O.

19 MR. BERGER: Off the record.

20 (Discussion off the record.)

21 Q Mr. Pandy in his deposition in response to the same  
22 question testified that the City would first need the inter-  
23 connection with CEI to get the benefit of AMP-O.

24 Do you agree with that?

25 A No, I don't agree with it.

1           You see, Mr. Pandy up until about 1973 was vehemently  
2 opposed to interconnection. His predecessor was even  
3 more vehemently opposed, and Joe never really came around  
4 very much on the deal until we had our strike and he  
5 realized we had to have an interconnection to save the  
6 system.

7           Q    You have produced pursuant to the subpoena certain  
8 documents which I have had an opportunity to review and  
9 screen.

10           I am now going to ask you certain questions with  
11 respect to those documents. However, I will show them to  
12 you first to refresh your recollection.

13           I first show you a letter dated June 27, 1974,  
14 from Lee C. Howley, Vice President and General Counsel  
15 of CEI. Read it to yourself if you would like to refresh  
16 your recollection.

17           MR. REYNOLDS:                    Would you circulate  
18 it prior to the time of showing it to the witness  
19 so if counsel has any objection we can state it  
20 before he goes further?

21           MR. LESSY:                        I would be happy to.

22           THE WITNESS:                    Thank you.

23           MR. REYNOLDS:                    While we are stopped  
24 for a minute, can I ask a question of the witness  
25 that might expedite this?



1 MR. LESSY: Certainly.

2 MR. REYNOLDS: Mr. Milburn, do  
3 you have any objection to making available to counsel  
4 or to the other parties the documents that you have  
5 produced today pursuant to the subpoena?

6 THE WITNESS: No, no.

7 MR. REYNOLDS: All right.

8 I would like to make a request on the record  
9 for copies of those documents and the applicants  
10 will reimburse you for the cost of whatever Xeroxing  
11 is required and transmittal of that material.

12 Thank you, sir.

13 MR. HART: I'd like to make  
14 the same request on behalf of the City of Cleveland.

15 MR. BERGER: I'd like to make  
16 the same request for the Department of Justice.

17 (Brief pause.)

18 By Mr. Lessy:

19 Q During the negotiations which you conducted with  
20 Mr. Howley, did you ever request transmission services,  
21 that is, wheeling by CEI for the benefit of the City of  
22 Painesville?

23 MR. REYNOLDS: I will object  
24 unless you define the term "wheeling" so that we  
25 have a common understanding.

1 MR. LESSY: Do you have a  
2 definition, Mr. Reynolds?

3 MR. REYNOLDS: I have a definition  
4 but I am not noticed for testimony. You are using  
5 the term, and if you want to use the term, I  
6 think you ought to define it on the record for the  
7 witness so he understands your meaning, or you  
8 may ask the witness.

9 THE WITNESS: I can answer it real  
10 easy anyhow without any definition.

11 I never did any wheeling of any kind.

12 Now, the contract may have something about  
13 wheeling in it. If it does, it was something that  
14 Joe wanted in the contract and that would be so far  
15 over my head I wouldn't have concerned myself with  
16 it in any event but it was never talked about at  
17 any time.

18 By Mr. Lessy:

19 Q Then I direct your attention to the letter, June 27,  
20 1974 letter from Mr. Howley to you in which he says:  
21 "Further, we could not agree to the transmission service  
22 schedule which is third-party wheeling..."

23 In addition I would like to read into the record  
24 the first sentence: "It was nice talking to you on Tuesday..."  
25 and then the sentence in the first part of the next

1 paragraph:

2 "As I indicated to you, there are few proposals in  
3 your draft that we would like to suggest be changed and  
4 we are sure you will agree after our discussion..."

5 Now, with that recollection refreshed, do you still  
6 have no recollection of any requests made by --

7 A No, no request. There is just no question there was  
8 no question by me made for it in the file. This is the  
9 contract that I sent to them. You will find it in the  
10 papers I gave them. They sent us a draft of an agreement  
11 this way. They wanted it and Joe took it apart and  
12 then he sent it to our engineers in Toledo, they took it  
13 apart and Joe and the engineer drafted a new agreement  
14 which I then had typed up and sent it to them and that's  
15 the one that he is talking about.

16 Q I see. You mean you are not really the negotiator;  
17 you are really just the agent?

18 MR. REYNOLDS: I object to that.

19 THE WITNESS: Let's not worry about  
20 the words. I don't care what he says.

21 Q It was your proposal as prime negotiator, or was it  
22 Joe Pandy; is that what you are saying?

23 MR. REYNOLDS: I object.

24 A Joe Pandy and the engineer worked out the express  
25 terms of the agreement.

1 Q Joe Pandy and the engineer? I thought Joe Pandy was  
2 the engineer.

3 A I don't care what you think.

4 Q Who worked out the terms in addition to Joe Pandy?

5 A The engineers and Joe Pandy.

6 Q Which engineers?

7 A The consulting engineers in Toledo.

8 Q What is their name, sir?

9 A I don't know.

10 Q Do you know what third-party wheeling is?

11 A Frankly it has something to do with power, as I  
12 understand it. It would mean if we wanted to get power  
13 from Ohio Edison, we could get it from them, they would  
14 sell us power, and we could make C&I put it on the lines  
15 and bring it to Painesville. That is what the expression  
16 is, what it means.

17 Q That is a very good definition. Do you think  
18 that would be a desirable thing for the City of Painesville  
19 to have?

20 MR. REYNOLDS: Objection.

21 A I don't see anything wrong with it myself.

22 Q Do you think it would be desirable?

23 MR. REYNOLDS: Objection.

24 A Well, it could be if we -- actually it wouldn't help  
25 us a particle as long as we have the interconnection



1 because under our interconnection agreement CEI has to  
2 give us power if we need it, and if they don't have the  
3 power on their own system, they have to get it from any  
4 other source that is available to them.

5 So we have the same thing I think anyhow. We have  
6 wheeling, as I understand it.

7 Q Suppose you had access to hydroelectric power,  
8 as an example, which is known to be inexpensive and the  
9 effect of requiring CEI to wheel it into or over its  
10 transmission lines, as you say, to the City of Painesville,  
11 would that mean that the City of Painesville's customers  
12 would pay a lower rate for that than they would for  
13 other power?

14 A That would be very desirable. No question.

15 Q Was not that mentioned as a, or discussed as a  
16 possibility during the negotiations?

17 A It was never discussed. Ever. No.

18 Q Are you familiar, sir -- you are an attorney -- with  
19 the Ottertail case, the Supreme Court case?

20 A Yes, I have read it.

21 Q Are you familiar with the holding of that case?

22 A Generally ~~that~~ they said something about wheeling.

23 Q Didn't the Ottertail case come down before this letter  
24 from Mr. Howley to yourself?

25 Why did you not suggest that that might be



1 appropriate to include in the interconnection agreement  
2 if the Ottertail case says what you just described?

3 MR. REYNOLDS: I object.

4 A Well, the answer would be maybe I am just dumb.

5 Q I don't believe that, sir.

6 A Well, actually I felt if we had interconnection  
7 and they had to furnish us power and they had to furnish  
8 it from any source whatever, I don't see what we could  
9 possibly do for that that we didn't get.

10 It just didn't occur to me that we weren't getting  
11 what I asked for except the lower rate.

12 Q But your power superintendent did suggest it might  
13 be beneficial to have it; isn't that what you just stated  
14 a few minutes ago?

15 A I don't know. It's in there. I say maybe in there.  
16 I don't know what's in that contract.

17 Q So what Mr. Howley said, that CEI would not agree  
18 in the letter to the transmission service schedule which  
19 is third-party wheeling and Painesville did not pursue  
20 it any further?

21 A No, never raised a question after that and Joe  
22 didn't neither.

23 Q I'd like to show counsel and you a letter from yourself  
24 to the Atomic Energy Commission, September 5, 1973,  
25 produced by you pursuant to subpoena.

1 A This is the letter I referred to a little while ago  
2 that I said I wrote.

3 Q I'd like to read into the record the first three  
4 paragraphs:

5 "The City of Painesville has been negotiating for  
6 couple of years with the Cleveland Electric Illuminating  
7 Company for a tie-in to provide stand-by power in the  
8 event of an outage.

9 "We have never been refused. In fact, we have been  
10 offered a tie-in at a cost of about seven hundred fifty  
11 thousand dollars which they know our small municipal plant  
12 cannot pay. It is possible that something will be worked  
13 out.

14 "Meantime the CEI uses its great economic power to  
15 compete with us for our customers while holding out the  
16 hope that 'something' can be worked out."

17 My question to you is, sir, with respect to the last  
18 sentence, I wonder if you would elaborate on the use of  
19 "great economic power" by CEI. To what were you referring?

20 A Well, just the fact that the CEI does have obviously  
21 enormous economic power.

22 It was nothing specific, just the fact that they  
23 actually are buying, they are powerful, they have all kinds  
24 -- they have lobbyists in Columbus. That is "powerful"  
25 beyond words. They have economic strength out here.

1 They can go out to compete for customers in ways we don't  
2 spend money for and they haven't always been too scrupulous  
3 about it.

4 Q What do you mean by that?

5 A I mean they will go out and tell a good customer of  
6 ours that if we break down that we won't be able to have  
7 power; that CEI, if anything breaks down they can get it  
8 from another source so they will always have power.

9 They have tried to take customers away from us  
10 that way. They haven't done it but they have tried.  
11 It's competition and it's rough competition.

12 Q The next to the last paragraph, sir, says:

13 "Unless they -- CEI -- are compelled to sell us power  
14 from the Perry Nuclear Plant they will, within a very few  
15 years, effectively monopolize the distribution of electric  
16 energy in this entire area. It is one of the company's  
17 declared objectives to 'eliminate' the Cleveland and  
18 Painesville plants."

19 Do you feel that CEI should be compelled to sell  
20 power from the Perry plant?

21 A Oh, I do, because eventually I don't think there is  
22 going to be any power produced from coal at all. They  
23 can already produce power cheaper than we can.

24 If they have nuclear power at Perry and we have to  
25 produce the other kind, they will have an absolute

1 monopoly on the whole area.

2 Q I'd like to now ask you a question about a letter  
3 from yourself dated February 12, 1974, to the Hon. John  
4 Famakides and show it to counsel first.

5 Does this letter refresh your recollection, sir,  
6 as to --

7 A I remember now writing it.

8 Q -- as to the writing of the letter?

9 A Yes. I didn't recognize that name but now I know  
10 who it was.

11 Q The letter says:

12 "The City of Painesville does not propose to inter-  
13 vene in the above captioned hearings but wishes to reserve  
14 its right to make an appearance..." and this is as of  
15 February 12, 1974.

16 What rights were you interested in preserving?

17 MR. REYNOLDS: I object. The  
18 letter speaks for itself. He says he is reserving  
19 his right to make a limited appearance.

20 Q You may answer.

21 A Actually I didn't have the faintest idea what rights  
22 I was preserving, any rights which we might have I was  
23 preserving. I wanted to preserve.

24 I had a letter from him that said we didn't have to  
25 intervene but we could preserve -- I just wrote a letter



1 quoting those words.

2 If I had any rights to preserve, I wanted them  
3 preserved.

4 MR. REYNOLDS: Off the record.

5 (Discussion off the record.)

6 Q Did you not consult with your client before you sent  
7 this letter?

8 A I talked to the City Manager and Joe Pandy.

9 Q What was their response?

10 A They agreed this letter should go out that way.

11 Q Had you ever taken any action or to your knowledge has  
12 anyone taken any action further in going forward with the  
13 preservation of your rights?

14 A I don't think so, not to my knowledge.

15 Q I also show you a letter from Lee Howley dated March  
16 14, 1974, to yourself which you produced. There is an  
17 enclosure to that which I am not going to address.

18 I show it to counsel first.

19 I will read the first two paragraphs of this letter  
20 into the record.

21 "Dear Wayne:

22 "You will find attached draft concerning an economy  
23 interchange and return in kind provisions for possible use  
24 in our proposed interconnection agreement.

25 "I am told by those in the company that are much more



1 familiar with interchange agreements than I that these  
2 proposals are in line with industry provisions including  
3 those of the Ohio Power contract."

4 My question to you, sir, is: Do you agree with the  
5 assumption in the second paragraph of this letter which is  
6 that the provisions of the Ohio Power contract are typical  
7 of industry provisions?

8 A I have --

9 MR. REYNOLDS: I object.

10 Let's hear the question again.

11 (Question read.)

12 MR. REYNOLDS: If you want to change  
13 it to "in line with industry provisions," I will  
14 withdraw my objection.

15 MR. LESSY: Okay, I will be  
16 happy --

17 MR. REYNOLDS: But I believe  
18 that is what the document states. I am not sure  
19 you have in mind a different connotation. I prefer  
20 to use the language of the contract.

21 MR. LESSY: I would be happy to  
22 change it to "in line with industry provisions."

23 THE WITNESS: What is the question  
24 now?

25 By Mr. Lessy:

1 Q Do you agree with the assumption in the second para-  
2 graph of this letter that the provisions of the Ohio Power  
3 contract that are in question here are in line with  
4 industry provisions?

5 MR. REYNOLDS: I object.

6 A I neither agree nor disagree. I have no knowledge  
7 whatever.

8 Q You felt you had, you said before, as a standard in  
9 the interchange connection agreement the provisions of  
10 the Ohio Power among other contracts?

11 A I felt that was the main contract, that CEI had to  
12 get their power from outside. I thought we had no chance  
13 of getting a better deal with them than they had with their  
14 source of supply.

15 Q You felt that the CEI contract with the Ohio Power  
16 was typical of their arrangements for an outside source  
17 of power supply before or beyond first generation?

18 A It was the best one. I was told it was their best one.

19 Q Who told you?

20 A Everyone we talked to.

21 Q When you say "outside," you mean outside of CEI's  
22 system?

23 A Yes.

24 Q Okay. And you felt, therefore, if you could get some-  
25 thing that was near to the Ohio Power contract, you would be

1 on equal footing?

2 A That's right.

3 Q Did you read the Ohio Power contract?

4 A I got a copy of all of those contracts but I didn't  
5 read it.

6 Q Did you read any other agreements between CEI and  
7 any other company?

8 A No, Mr. Pandy did. We got copies of all of them.

9 Q Was Mr. Pandy satisfied with the interconnection agree-  
10 ment that you got and the terms and provisions?

11 A If he isn't, he never said anything to the contrary.  
12 I assume he is very much satisfied.

13 MR. LESSY: That completes  
14 my direct examination of the witness.

15 MR. BERGER: I'd like to take a  
16 break for five or 10 minutes.

17 (Recess had.)

18 CROSS EXAMINATION

19 By Mr. Hart:

20 Q Mr. Milburn, may I ask you just a few questions:  
21 Are you represented by counsel here today?

22 A No.

23 Q You are appearing on your own behalf?

24 A Yes.

25 Q Okay. Can you give me a little bit of background,

1 Mr. Milburn, what is your educational background, where  
2 you went to school, et cetera?

3 A Well, I got an A.B. from Otterbein, Westerville,  
4 and a J.D. at Case Western Reserve.

5 Q When did you graduate from Case Western Reserve?

6 A '34.

7 Q Throughout your deposition, Mr. Milburn, you referred  
8 to the Ohio Power agreement, which Ohio Power agreement  
9 were you referring to? Are you referring to the same one  
10 or are there different ones?

11 A Whatever the current agreement with the CEI is.

12 Q In other words, what you are referring to is the  
13 most current agreement?

14 A The most current agreement.  
15 Between the CEI and the Ohio Power.

16 Q Do you happen to know of your own recollection what  
17 the terms of that agreement are?

18 A No, I don't.

19 Q You have also indicated in your testimony here that  
20 for a long period of time you were negotiating with CEI  
21 for an inter-tie?

22 A A long time.

23 Q Can you indicate to us approximately when that  
24 started?

25 A Well, it started back around about 1966, right after

1 the Hot Wires case was tried and we lost it. We still  
2 thought we had to have an interconnection.

3 We had a close vote in the Council, 4 to 3, and  
4 the City Manager was in favor of the tie-in and he told me  
5 to go ahead on my own to get something worked out so if  
6 the time were ever right when we had four votes on Council  
7 we could get it adopted.

8 Q During these early stages of thinking and talking about  
9 an interconnection with CEI, did you use an outside  
10 engineering firm?

11 A No. It was mostly political negotiation at that  
12 time.

13 Q What do you classify as political negotiation?

14 A Well, trying to get things to satisfy the Council  
15 and satisfy the Board of Directors.

16 Q You are speaking of the Council of the City of  
17 Painesville?

18 A Correct.

19 Q And the Board of Directors of CEI?

20 A CEI.

21 Q I notice that in one document that was introduced into  
22 the testimony this morning it was your opinion at that  
23 time, I believe it was the document 9/16/74, that it was  
24 your opinion that CEI wants the Painesville Light Plant  
25 out of business.



1           Would that be your present opinion?

2           A     I personally think they have given up.

3           I think they'd like to have the light plant but they  
4 know they can't get it.

5           Q     What makes you think they have given up on it?

6           A     Well, the fact that they finally came up with the  
7 interconnection, the fact that they know that our financial  
8 position is fairly sound, that the plant is in good  
9 operating condition, paying money, and I think they have --  
10 this attitude seems to have changed in the last five or  
11 six years.

12          Q     When you speak of the fact that the Painesville  
13 Light Plant is in a good financial position, are you familiar  
14 with its debt structure?

15          A     Not specifically.

16          Q     Do you know if they have a mortgage?

17          A     Oh, they have lots of mortgages. They are heavily in  
18 debt.

19          Q     Could you give me a fair estimate as to how much you  
20 think they are in debt?

21          A     I couldn't do that but I know the last time they put  
22 the 6105 turbine in, the Finance Director had told them  
23 they could use a 22 KV generator; I told them I didn't  
24 think the debt structure would permit it.

25                They kicked it around for quite a while. They

1 finally found they couldn't on the 22 and they cut it  
2 back to 16-5. In order to finance the last bonds we  
3 had to pay off some of the old ones fully and refinance  
4 because we had some where you had to maintain a balance  
5 of some kind and we couldn't even finance the present  
6 bonds with those bonds in existence.

7 Q I see. Do you know who your bond counsel is?

8 A Squire, Sanders & Dempsey.

9 Q Did you ever talk to anybody about financing your  
10 participation in nuclear power?

11 A Well, we talked about it among ourselves.

12 We never talked to bond counsel about it because  
13 we are financing the 750,000, we are now paying, we went  
14 with bonds and I think we raised 750,000 that way and  
15 it was stretching it to the limit.

16 Q And these bonds that you presently issued, you --

17 A Emergency revenue bonds.

18 Q They were emergency revenue bonds?

19 A Yes.

20 Q All your financing is done with mortgage revenue  
21 bonds?

22 A Yes.

23 Q And is there an indenture?

24 A We had to raise the rate structure quite a bit to  
25 do it, too, then.

1 Q Is there an indenture of mortgage?

2 A Yes.

3 Q I wondered if I could have a copy of that, please,  
4 sir.

5 A The indenture?

6 Q Yes, sir.

7 A We don't have it. Squire, Sanders does.

8 Q Could I make the request?

9 A You contact them to get it. I wouldn't have it.  
10 I am not the law director.

11 Mr. Cannon might be able to get it for you, but  
12 it's a book (indicating).

13 Q Yes, sir, I am aware of what they are.

14 Mr. Milburn, you indicated earlier that CEI had made  
15 or had indicated to you that they wanted to acquire the  
16 Painesville Light Plant; isn't that true?

17 A That's right.

18 Q Did they ever make that request or communication to  
19 you in writing?

20 A I am sure that they did, not to me personally but  
21 to the City Manager, but they were out making presentations  
22 to Council. They appeared before Council.

23 Q When was the approximate time on this? Do you have  
24 any idea?

25 A I haven't any idea. It's been 10, 15 years ago.

1 Q 10, 15 years; about 1960 to 1965?

2 A You know, I really don't know the number of years  
3 but I was on the Council when it happened, I mean, I  
4 was Law Director when it happened so I know they were  
5 out there then.

6 Q You also indicated, Mr. Milburn, that your outside  
7 engineering consultant firm by the name of Gaus & Pyle  
8 and I forget the rest of the boys in the firm, were opposed  
9 to any intertie.

10 Did you ever ask anybody why they were opposed to it?

11 A I never asked them why. I always felt I knew why.

12 Q Why?

13 A They wanted a finger in the pie and the good contract  
14 with the City of Painesville.

15 Q In other words, it would be more beneficial to their  
16 firm if you did not?

17 A Did not have a tie-in. I read their alleged reasons  
18 and they just didn't make sense.

19 I read their report.

20 Q Do you have a copy of that in your files?

21 A I don't have it now, no.

22 Q Do you know if anybody in Painesville would have it?

23 A I don't know.

24 There is a copy in my file here of a report that  
25 Gaus & Pyle -- no, Gaus & Pyle didn't make the report,

1 but Mr. Pyle who was with another firm at the time had  
2 made a study for Cleveland, Orrville, and Painesville  
3 on a joint combination system. I have that in my file.

4 Q Just so the record is straight -- excuse me, please  
5 -- is this the report that you are referring to, Mr.  
6 Milburn? I happened to see it.

7 Is this it?

8 A Yes, that is the one.

9 Q That was not made by Gaus & Pyle?

10 A No, it was signed by Pyle. The signature on there  
11 is Mr. Pyle.

12 Q He worked for Beiswenger, Hoch & Associates?

13 A Yes.

14 Q Would you indicate to us perhaps, Mr. Milburn, how  
15 the firm of Gaus & Pyle would benefit if there was not  
16 an intertie?

17 A Well, if they were consulting engineers, they have  
18 their finger in the pie over here all the time. Until  
19 we fired them they were drawing a thousand dollars out  
20 of Painesville as consulting engineers.

21 They took us real bad. We fired them; had a lawsuit  
22 about it.

23 Q Going on to something else, Mr. Milburn, what is your  
24 concept of AMP-O? What is your concept of what AMP-O  
25 does?



1 A Well, really I don't know what it does. I understand  
2 it's a group of people or a group of cities that were  
3 getting together that were trying to get cheaper power  
4 for themselves and as I read their constitution and by-  
5 laws, it appeared to me that they were getting a job  
6 for a couple of people without much benefit to the cities.

7 Q Does the Cleveland Electric Illuminating Company have  
8 customers within the city limits of Painesville?

9 A None whatever.

10 Q But the City of Painesville has customers out of  
11 the city limits of Painesville, isn't that true?

12 A Yes.

13 Q Under the Painesville-CEI agreement, is there a  
14 schedule for economy energy?

15 A There is provision for economy power, yes.

16 Q Do you know what the terms are?

17 MR. REYNOLDS: Objection.

18 MR. HART: Of his own independent  
19 knowledge.

20 MR. REYNOLDS: The document speaks  
21 for itself.

22 Q What I was leading up to, if you have a copy of that  
23 document, I am going to refer to it.

24 MR. LESSY: I have a copy of it,  
25 I believe.

1 THE WITNESS: Actually it's  
2 just splitting the difference in cost.

3 Q That is what my question was addressed to, Mr.  
4 Milburn.

5 If I may, who makes the determination of your cost  
6 on that?

7 A Well, it's done by whoever has the mechanism or the  
8 equipment that measures the flow of energy and I under-  
9 stand it's all done by machinery or it's all done by  
10 machine.

11 Q Just so I understand this, what you did then is tell  
12 CEI what your costs are on this? I mean, you eventually  
13 come down to something like that, do you not?

14 A That's right.

15 Q Do they have any input as to what your costs are  
16 or should be or ought to be?

17 A No, and the economy power is not something that  
18 you can demand.

19 Q You don't happen to know offhand how much the City  
20 of Painesville is paying for economy power?

21 A They are not paying anything; they are not getting  
22 any.

23 Q I should address --

24 A I don't think there is any way of knowing in advance  
25 what it would cost.

1 Q Do you know if they have ever received any economy  
2 power?

3 A No, they never have. They have had a tie-in.

4 Q I guess I am a little bit behind the time. I didn't  
5 attend the prior deposition of Mr. Pandy as to the tie-in.

6 A That's right. We have never received any power  
7 from CEI.

8 Q When is the tie-in supposed to be completed?

9 A They are working on the engineering to get it done  
10 but they are several months away.

11 MR. HART: I am through with  
12 my cross examination.

13 CROSS EXAMINATION

14 By Mr. Berger:

15 Q Mr. Milburn, in response to one of Mr. Lessy's  
16 questions, excuse me, you indicated that --the first contact  
17 with CEI with regard to negotiations which eventually led  
18 up to the interconnection agreement which was recently  
19 signed occurred in 1971 in the form of a letter to a Mr.  
20 Kelly?

21 A I said the only written communication -- we had  
22 communications before that because I had talked informally  
23 with Mr. Howley prior to that but I noticed in my file  
24 there was a letter to a Mr. Kelly who was the Acting City  
25 Manager in 1971 enclosing a memorandum from Mr. Howley

1 giving the outline of a general agreement for a tie-in.

2 Q Do you recall what the earliest date of contact  
3 with CEI would have been with regard to discussion or  
4 consideration of interconnection with CEI?

5 A About 1963 or '64.

6 Q '53 or?

7 A '63 or '64.

8 Q '63 or '64?

9 A Yes.

10 Q And would that have been with regard to the high  
11 voltage transmission line they wanted to put through the  
12 City of Painesville?

13 A That's right.

14 Q After that matter was settled, did negotiations  
15 continue for an interconnection or was there a space  
16 of time when nothing was done?

17 A Well, there was big gaps in there but they continued,  
18 but on a very casual basis because the City Manager had  
19 directed me to pursue it because he felt the future of the  
20 plant depended on the interconnection and I felt that way,  
21 too.

22 So I started meeting with them to talk about getting an  
23 interconnection. But as I said, we no longer had very  
24 much to offer except to ask them to give us an inter-  
25 connection. Things went awfully slow.

1 Q Who did you speak to about the possible inter-  
2 connection at that time?

3 A Lee Howley.

4 Q Was there anyone else at CEI?

5 A No.

6 Q Was there anyone else from Painesville who was in-  
7 volved in those discussions?

8 A No. The City Manager just told me to take it on  
9 myself to try.

10 Q Who was the City Manager?

11 A I think Dale Helser was City Manager at that time.

12 Q Do you know if there were written communications?

13 A There were none.

14 Q Strictly oral?

15 A All oral.

16 Q Did you have meetings with Mr. Howley on the matter?

17 A Several.

18 Q Were these meetings specifically arranged for the  
19 purpose of discussing an interconnection?

20 A Yes.

21 Q How many meetings would you say you had with Mr.  
22 Howley?

23 MR. REYNOLDS: During what period  
of time?

24 MR. BERGER: Following the decision  
25



1 of the Ohio court with regard to the building of  
2 the transmission line but prior to this 1971 com-  
3 munication which Mr. Milburn has referred to earlier.

4 A You know, I no longer have a specific recollection  
5 of the meetings but a guess would be that there were at  
6 least a couple a year. At that time either I went into  
7 Cleveland or he came out here.

8 By Mr. Berger:

9 Q Can you recall what specifically was discussed at  
10 those meetings?

11 A Just how we could get the members of Council to  
12 agree on a tie-in; how we could get the Board of Directors  
13 of CEI to agree on the tie-in; what could we do in a  
14 contract to make it palatable to both.

15 Q Do you know which director of CEI was opposed to  
16 the tie-in?

17 A I haven't any idea. I don't really know that any did.  
18 You see, I am just quoting him.

19 Q Following this 1971 letter to Mr. Kelly did you  
20 have meetings with CEI personnel regarding the tie-in,  
21 the possibility of an interconnection agreement?

22 A Oh, they continued right up to '75.

23 Q And during that period of time, from 1971 to the  
24 present, who was involved in these discussions or meetings  
25 from CEI?

1 A There was just myself and Mr. Howley until about  
2 1973 or '74. At that time we had the new City Manager  
3 and he liked to be involved in it, so I started including  
4 him in a couple of meetings and then he felt it was  
5 getting over his head and he wanted Joe Pandy in some.

6 So he invited Joe Pandy to come to some. Joe sat  
7 in on a couple.

8 Some of his staff members --

9 Joe started making reports to the whole public.  
10 I told the City Manager if there is any more city reports,  
11 I would quit telling him about the meetings. I won't  
12 have public reports on the confidential meetings, and he  
13 agreed there would be no more public reports and we  
14 continued, Mr. McDonald and Mr. Pandy.

15 Q Mr. McDonald would be the City Manager you just  
16 referred to?

17 A Yes.

18 Q Who participated from CEI? I assume Mr. Howley?

19 A He was in most. Eventually, but he got rate people,  
20 and Mr. Hauser sat in on a number of them. They had  
21 their chief engineer there and the rate people. I don't  
22 know their names but they were in on quite a few.

23 Q Would Mr. Lester have sat in on some of the meetings?

24 A He could have but I don't know him by name.

25 Q I just thought I might try to refresh your recollect-

1 tion by mentioning his name.

2 I believe in response to one of Mr. Lessy's questions  
3 you indicated at one time you mentioned to Mr. Howley  
4 that a Federal, the Federal Power people might order  
5 an interconnection between CEI and Painesville Muny;  
6 is that an accurate statement?

7 A. That's correct. I thought things were going a little  
8 too slow and I thought Lee might as well know we had  
9 been talking to the Federal Power people about it and told  
10 us, they used the word -- used a hammer to help us out.

11 Q. By "Federal Power people," what Federal agency are  
12 you referring to?

13 A. I don't know. It was the City Manager they talked  
14 to at one of the national conventions of city managers,  
15 and he came back and said he had been talking to the  
16 Federal Power Commission.

17 He told them that and he discussed the Otter case.

18 Q. Do you know the person's name, the Federal Power offi-  
19 cial?

20 A. I haven't any idea. He told me at the time but I  
21 don't remember.

22 Q. What was Mr. Howley's response if you can recall  
23 to your statement that the Federal Power Commission might  
24 order an interconnection?

25 A. It was kind of a lighthearted comment: "Let's not  
talk about what we are going to make people do; let's

1 keep it going. We both wanted to do it that way."

2 Q Do you recall about what time this statement was  
3 made?

4 A I don't.

5 Q Would it have been after -- well, it would have been  
6 after the Ottertail case, is that correct?

7 A I am sure it would have been. It was some time  
8 in '73 or '74.

9 Q Do you recall if anyone else was present at that?

10 A There wasn't anybody else present.

11 Q Do you recall where that meeting was?

12 A I don't even know whether it was in Painesville or  
13 Cleveland.

14 Q I think in response to one of Mr. Lessy's questions  
15 earlier today you indicated there was a CEI memo which  
16 indicated that at least some people at CEI thought that  
17 the Painesville and Cleveland Municipal Systems would  
18 fail and CEI would be able to pick them up; is that a  
19 fairly accurate characterization?

20 A That is about what the memorandum said and that should  
21 be their goal for that year; that was part of the plan  
22 for that year, was to acquire the systems.

23 Q Do you recall anything else?

24 A I talked to Lee about it and he denied to me he had  
25 ever seen the memorandum. Of course, I didn't believe that.

1 Q Did you see the memorandum?

2 A Oh, yes.

3 Q How did you become aware of it?

4 A There was some lawsuit which involved the CEI,  
5 and it may have been the one that Cleveland filed against  
6 the CEI where it was used in evidence. I think that  
7 was maybe the place it first turned up.

8 Q Do you recall who wrote that memorandum?

9 A No, it was a PR man.

10 Q Was it Mr. R. H. Bridges?

11 A I wouldn't have any idea. I don't know anybody by  
12 that name.

13 Q Do you know to whom the memorandum was addressed?

14 A To Lee Howley.

15 Q Did Mr. Howley have any other comments regarding  
16 the memorandum?

17 A No. He just said, "Don't pay any attention to it.  
18 That really isn't our position." He pointed out the man  
19 who wrote it didn't have any influence in CEI --

20 Q Do you recall --

21 A -- and I thought to myself he was probably right  
22 because he was not a high official.

23 Q Do you recall if anyone else was present at that  
24 meeting or when that discussion with Mr. Howley took  
25 place?



1 A There was nobody else.

2 Q Do you recall what you were discussing at the time  
3 that memorandum was brought up?

4 A Just interconnection. I usually brought those  
5 things up just to let Lee know that he wasn't taking  
6 advantage of me.

7 Q Did he tend to take advantage of you?

8 A I didn't know but I just wanted to be sure.

9 Q I believe in response to one of Mr. Lessy's questions  
10 early today you indicated there have been offers by  
11 CEI within the past 30 years to acquire the Painesville  
12 Municipal System, is that correct?

13 A That's correct.

14 Q What offers are you aware of?

15 A I don't have any ideas as to the amount, but there  
16 were, as I recall, there were two actual offers in terms  
17 of money and they offered to buy them.

18 Q Do you recall when the offers were made?

19 A I haven't the faintest idea. It was years and years  
20 ago, was the first one.

21 Q Do you recall if there was anything else involved  
22 aside from a straight purchase for money?

23 A Just a straight purchase, out and out purchase.

24 Q Do you recall who made the offer on behalf of CEI?

25 A No idea.

1 Q Were these offers in writing?

2 A I don't know. They could have been.

3 See, this was long before I was with the city.

4 Q From the time you became Law Director of the city,  
5 were there any offers by CEI to purchase the Painesville  
6 system?

7 A No.

8 Q No?

9 A Nothing in writing.

10 Q Were there discussions about a possible purchase of the  
11 system that you were aware of?

12 A Nothing except just so general that you never could  
13 call it an offer.

14 Q Were you involved in such discussions?

15 A Only as we talked about interconnection.

16 Q So that would it be fair to say that in the meetings  
17 that you had with regard to interconnections you at various  
18 times at least touched upon the subject of possible  
19 acquisition?

20 A Well, let's put it this way: There was never any doubt  
21 in my mind if we would have sold the system, they would have  
22 bought it the next day.

23 Q With whom would you have had these discussions relating  
24 to a possible acquisition?

25 A All of my discussions were with Mr. Howley, all of  
them.

1 Q Do you recall the last time you had a discussion  
2 with Mr. Howley with regard to the possible acquisition  
3 of the Painesville system by CEI?

4 MR. REYNOLDS: Objection.

5 A It would have been years and years and years ago.  
6 I am saying 10 or more years ago.

7 Q I believe you mentioned at one point earlier today  
8 that everyone in Lake County knew that CEI was interested  
9 in the Painesville plant. Just for the record, is Paines-  
10 ville located in Lake County?

11 A Yes.

12 Q Was the statement I made an accurate statement?

13 A What was your question?

14 Q That you had indicated that everyone in Lake County  
15 knew that CEI was interested in the Painesville plant.

16 A That was your question?

17 Q Is that an accurate characterization?

18 A When I said everyone in Lake County, everyone in  
19 Painesville. See, for probably 25 years here anyone  
20 could get elected to Council by just using the slogan:  
21 "Don't sell the light plant." That was all you had to say.  
22 "Don't sell the light plant."

23 You could get elected to Council because they were so  
24 violently anti CEI.

25 Q Is this still the case today?

1 A No.

2 Q When did this public attitude directed to CEI  
3 change?

4 A A lot of people have come into the county in recent  
5 years so some of that attitude was changed, but the biggest  
6 thing that changed it was a year ago or a year and a half  
7 ago, was when they had the strike down at the light plant  
8 and just put us right over the barrel.

9 We were just a few days away from not being able to  
10 operate and that solidified Council. We got seven  
11 votes from that moment on.

12 We had seven votes to do whatever had to be done to  
13 solve that problem.

14 MR. REYNOLDS: May I ask a clarifying  
15 question?

16 MR. BERGER: Yes.

17 MR. REYNOLDS: When you say, "They  
18 put us over the barrel," who was the "they"?

19 THE WITNESS: Strikers.

20 MR. REYNOLDS: All right. Thank you.

21 THE WITNESS: We tried to get help  
22 from CEI. They very graciously refused.

23 By Mr. Berger:

24 Q How did you try to get help from CEI?

25 A We asked for emergency generation power, and the

1 answer was they would have had a strike with their own  
2 people if they tried to do it.

3 The fact remained we didn't get any help. I thought  
4 this was fairly reasonable. I think their people would  
5 probably have struck if they had furnished power to the  
6 striking employees.

7 Q Who for Painesville contacted CEI to request this  
8 help?

9 A I don't know whether it was the City Manager or  
10 Mr. Pandy.

11 Q Do you know whom they contacted at CEI?

12 A Who would be contacted? I don't know who they con-  
13 tacted.

14 Q Do you know --

15 A I think the answer came back from Mr. Hauser.

16 THE WITNESS: Didn't it?

17 MR. HAUSER: I don't recall.

18 THE WITNESS: I don't know whether  
19 they contacted the power plant or who they contacted.  
20 I think Mr. Hauser gave us the answer.

21 MR. LESSY: Mr. Hauser is not  
22 sworn.

23 By Mr. Berger:

24 Q Do you know how long it took to receive a reply from  
25 CEI with regard to your request for aid?



1 A About two days.

2 Q How long did your strike last?

3 A I don't remember. I don't believe too long.

4 Q In response to one of Mr. Lessy's questions today  
5 you indicated at one time there was a proposal that  
6 Painesville pay for the interconnection by the trade of  
7 customers in the Perry area; is that correct?

8 A Yes.

9 MR. REYNOLDS: I believe you  
10 misspoke on a trade of customers. I believe the  
11 customers was proposed on the basis of sale.

12 MR. BERGER: Yes, it was a sale.  
13 If I said "trade," I misspoke.

14 See, my notes say "trade." That is why I  
15 said "trade."

16 Q Do you recall when you first heard of this proposal?

17 MR. REYNOLDS: I object.

18 A I made the proposal.

19 MR. REYNOLDS: The witness testified  
20 he made the proposal.

21 THE WITNESS: See, to get back to  
22 this thing, we were trying to get this tie-in. It  
23 came about, it was going to cost \$750,000. There  
24 was no hope of their going to pay for it themselves.

25 They started getting the figures, it would cost

1 \$750,000 and we didn't have \$750,000. We didn't  
2 know where to get it.

3 At that time our rates were low enough we  
4 couldn't increase our bonding capacity. I was  
5 grasping around for ways to handle a tie-in, how  
6 could we finance it, and I finally came up with the  
7 idea because I knew that they would be glad to  
8 have any part of the system they could get, that  
9 we could unload the Perry lines because I didn't  
10 feel that they were a real big asset to us and didn't  
11 realize at the time what percentage of the system  
12 they were, and I suggested that they buy Perry  
13 customers and we were talking about, I think, 1200  
14 bucks a customer which was a pretty good price,  
15 as customers -- somewhere, a thousand, 1200 bucks.

16 We kicked it around. No formal agreement was  
17 reached because, when we finally made the financial  
18 study, where it left us on money for the bonds, we  
19 didn't have enough left to finance the bonds without  
20 the Perry income.

21 Q With whom was this proposal discussed?

22 A Mr. Howley.

23 Q Was it discussed on more than one occasion?

24 A Oh, yes. I am sure he discussed it with people in  
25 Cleveland because I think a number of people knew about it.

Q Do you recall who would have been at meetings at

1 which this proposal was discussed?

2 A You see, I am not able at this time to -- at the  
3 different meetings that we had at the end of '74 and '75,  
4 Mr. Hauser was at most of them. They had their engineer  
5 and rate man at most of those meetings, but I don't know  
6 their names and I couldn't tell you at this particular  
7 meeting we discussed a particular thing.

8 We were just discussing interconnection generally.

9 Q Do you know when you first made your proposal to  
10 sell the customers for the interconnection?

11 A It was probably back in '73.

12 Q And do you know when it was finally determined that  
13 Painesville would not be able to do this because of the  
14 revenue problem you just mentioned?

15 A Probably late in '74 because when we got the final  
16 draft whereby we had taken out the part about the sale  
17 of the customers, they were unhappy about it but there  
18 was nothing they could do about it because we just couldn't  
19 finance it.

20 Q With regard to the financing problem, was a report  
21 written on this problem?

22 A No.

23 Q Was a study --

24 A Yes.

25 Q -- go ahead.

1 A A study was made by the Finance Director.

2 Q Was there anything in writing with regard to the  
3 study?

4 A No, he reported to the City Manager and myself that  
5 we couldn't do it.

6 Q Did Mr. Pandy take part at all in this study?

7 A He wasn't in on the study but he may have been told  
8 what the result of it was. I am sure he would have been  
9 told and that would have made him very happy because he  
10 didn't want to sell them anyhow.

11 Q Do you know if there was any written correspondence  
12 between Painesville and CEI with regard to this proposal  
13 to purchase the interconnection by sale of customers?

14 A It never got that formal. There was nothing in writing  
15 on that.

16 I shouldn't say it never got into writing. It did  
17 get into one draft of their contract. They had written  
18 in the contract that was the way it would be financed.  
19 We answered, "There ain't no way." That is when we found  
20 out we couldn't do it. So that was dropped right then.

21 Q Do you recall what led you to think of that method  
22 of paying for the interconnection?

23 MR. REYNOLDS: Objection.

24 THE WITNESS: I beg your pardon?

25 Q Do you know what events led you to think of paying for

1 this interconnection?

2 A There wasn't any interconnection. It was just the  
3 fact we had to raise the money somewhere. That is the  
4 only thing that I could think of that we had that they  
5 could conceivably want.

6 Q This would have been some time in '73, I believe  
7 you said?

8 A Somewhere around there.

9 Q I think also with regard to one of the questions  
10 asked by Mr. Lessy you said everyone we talked to said  
11 that the CEI-Ohio Power contract was the best of CEI's  
12 contracts. Is that an accurate statement of your testimony  
13 earlier today?

14 A Say that again.

15 MR. BERGER: Could you read the  
16 question back, please?

17 (Question read.)

18 A That very definitely is. We were led to believe that  
19 was the best contract they had and the cheapest.

20 Q And who led you to believe this?

21 A Everybody.

22 Q Could you name individuals who might have led you to  
23 believe this?

24 A Mr. Howley. Mr. Hauser.

25 Q Is there anyone else you can think of outside of



1 CEI who might have told you this?

2 A Nobody outside. No.

3 Q Do you know if anyone associated with Painesville Muny  
4 System made a study of CEI's contracts with other electric  
5 utilities to determine if the Ohio Power contract was  
6 in fact the best one?

7 A Mr. Pandy made his study and got copies of them  
8 and examined them, and I understood from him, I never  
9 asked him the point blank question if that was the best  
10 because he never raised a question and sat in on all the  
11 meetings and never questioned it; I assume that he agreed  
12 with that but he had copies of all of them.

I think he sent to Columbus and got all the rates.

13 Q All of CEI's rates?

14 A I think all the power company rates.

15 Q You indicated that Squire, Sanders & Dempsey is bond  
16 counsel to the City of Painesville, is that correct?

17 A Yes.

18 Q What attorney at Squire Sanders & Dempsey is your  
19 contact, is Painesville's contact?

20 A I haven't any idea. They deal directly with the  
21 Finance Director.

22 Q Who is the Finance Director at the present time?

23 A I will think of it in just a second.

24 I can't think of it. I will think of it in a minute.

1 Bob Wooten.

2 Q Bob Wooten?

3 A Yes.

4 Q Do you know how long he has been the Finance Director?

5 A He has been three or four years.

6 Q Who preceded him as Finance Director?

7 A Well, we had a guy for about six months whose name  
8 I don't recall and it wouldn't be fair to call him a  
9 finance director. He called himself that. He was around  
10 only a short while.

11 But the man was bad. He was unbelievable. He didn't  
12 know about bonding. He didn't know municipal financing.  
13 He didn't know anything about municipal finances.

14 He showed the City Manager, he came up with a budget  
15 at the one meeting I missed and they adopted the budget  
16 for the City of Painesville in excess of the amount  
17 that the Auditor's certificate said we had in available  
18 funds, and he said he didn't know he couldn't do that.

19 Q Who preceded this gentleman as Finance Director,  
20 if you can recall?

21 A What?

22 Q Who preceded this gentleman as Finance Director?

23 A Bill Kelly.

24 Q Who was a Finance Director?

25 A He was here many years.

1 Q Do you know how long Painesville has used Squire,  
2 Sanders & Dempsey?

3 A For every -- there ain't nobody else in northern  
4 Ohio or in Ohio. You either use them or go down to  
5 Cincinnati. There is a firm down there and there isn't  
6 anybody else.

7 Q Has Painesville to your knowledge had trouble selling  
8 its bonds?

9 A None whatever. Sell real good, and they get a good  
10 rate.

11 Q I believe you indicated earlier there was some  
12 controversy in the City of Painesville in at least the  
13 early or middle '60s with regard to whether an inter-  
14 connection with CEI should be sought, is that correct?

15 A That's correct.

16 Q Is it also correct that you were one of those who  
17 felt that such an interconnection was something to be  
18 sought?

19 A That's right.

20 Q What did you envision at the time as the reasons for  
21 wanting that interconnection?

22 A Well, there were two reasons. I mean, when you are  
23 real small, they follow the rule of thumb: Your generating  
24 capacity is half the capacity of standby, equal to your  
25 largest unit. We could do that when we were small but

1 every time we got bigger and had to put a new unit on,  
2 it was getting to the point that standby was getting to be  
3 an exorbitant thing to pay for just to have it sit there.

4 We were getting eventually to the point that our  
5 bonding capacity was just getting too great to have that  
6 kind of unit standing there for standby capacity. You  
7 had to have it for an emergency, if you had a breakdown,  
8 you had to have the thing to take care of; plus I  
9 looked all around the country, I saw all the big ones  
10 tying in to the one next to them.

11 There were tie-ins that would go clear out to the  
12 middlewest, so it looked as though it was sensible: If  
13 the big ones thought they had to have tie-ins, the little  
14 ones would have a hard time providing if they didn't  
15 have some kind of tie-in.

16 Q Would it be fair to characterize your opinion at  
17 that time that it was not only desirable but necessary  
18 for Painesville?

19 A I felt it was absolutely necessary for survival.

20 Q What was your opinion as to what would happen to  
21 Painesville Muny if you did not obtain that interconnec-  
22 tion?

23 A Well, eventually it would just drift away or would  
24 have to sell out. I couldn't see any other answer.

25 Right now if we had to provide standby capacity equal

1 to the formula or rule of thumb, I don't know how we'd do  
2 it because we are at our absolute limit for bonding right  
3 now.

4 When our units have to go on repair or emergency, we  
5 use the tie-in in place of the standby.

6 Q By using the word "tie-in" as you have used it  
7 today, are you referring to interconnection?

8 A Tie-in and interconnection are interchangeable to me.

9 Q With regard to the importance which you apparently  
10 and other people in the City of Painesville placed on an  
11 interchange, were your views known to the general public  
12 on this matter? Was it discussed at the City Council?

13 A Not the general public; they were known to Council.

14 Q Were these ever discussed at the Council meetings?

15 A Oh, yes.

16 Q Were those views known to CEI, to the people at CEI?

17 MR. REYNOLDS: "Those views," Mr.  
18 Milburn's personal views?

19 MR. BERGER: Yes, the views that  
20 the interconnection was important for the Painesville  
21 system.

22 A Well, they have been since '63 or '64. I don't know.  
23 I never told them. I was careful to tell them how  
24 important I thought it was, I wouldn't go in and tell them  
25 that but in fact I acted in their behalf.



1 We wanted a little insurance in case of a strike, but  
2 I thought it was vital and I was careful never to use  
3 those words to them.

4 MR. BERGER: I don't think I have  
5 any more questions.

6 MR. REYNOLDS: Okay.

7 Mr. Milburn, I just have one or two questions.

8 CROSS EXAMINATION

9 By Mr. Reynolds:

10 Q At the outset of your deposition you were shown a  
11 letter which you had written to Mr. Charno of the Justice  
12 Department dated September 6, 1974, which made reference  
13 to five years of negotiations, and I believe you indicated  
14 that you thought there were reasons why you thought it had  
15 taken five years.

16 Do you recall that letter?

17 A Yes.

18 Q Now, do you recall subsequent to that September '74  
19 letter writing a letter to Mr. Howard Shapar of the  
20 Nuclear Regulatory Commission in Washington, D. C. which  
21 discussed the matter of the delay or the time frame of  
22 negotiation?

23 A That was the one Mr. Howley asked me to write?

24 Q I believe that's correct.

25 A Yes, I remember that one. Yes.

1 Q Let me show you the letter dated April 18, 1975,  
2 just to make sure that we are all talking about the same  
3 letter. It is from you to Mr. Shapar, and I show it to  
4 counsel first.

5 A Yes.

6 Q All right. Let me also show you a letter that is  
7 addressed to you, was written by Mr. Howley, dated April  
8 16, 1975, and ask if this is the request that you were  
9 referring to when you wrote your April 18 letter?

10 A I think this letter is where he referred to the conver-  
11 sation that I didn't remember.

12 Q I believe that's right. Mr. Lessy referred to a  
13 conversation.

14 A Yes.

15 Q All right, sir.

16 Now, in the April 18 letter you stated in the second  
17 paragraph and I quote: "I was Law Director of the City  
18 of Painesville during the entire period of time of our  
19 negotiations for interconnection. During the first three  
20 years there were a number of long delays but these were  
21 probably as much our doing as the CEI. We had two problems:  
22 One, financing, and second, political."

23 Would you explain to me the indication in the letter  
24 that seems to be somewhat inconsistent with the September  
25 '74 letter regarding who was responsible for the delays  
during the first three years of the five-year negotiation

1 period?

2 MR. BERGER:

Objection.

3 A Well, as far as I am concerned there isn't any incon-  
4 sistency. The former letter was written because I was  
5 trying to protect myself. There had been a long period  
6 of negotiations and they were not coming to a head. I  
7 was trying to make certain that I was protected on this  
8 if there was a deliberate stall on anybody's part to  
9 keep us from getting an interconnection.

10 I had no way of knowing that it wasn't deliberate,  
11 but subsequent to the time I wrote this letter, we now  
12 had our contract, things had moved along rapidly, we had  
13 gotten that. I had looked back and I could see a lot  
14 of times during the early years, as I testified earlier,  
15 we didn't in the Council have enough votes in '71, I  
16 didn't have the votes in '72 plus the fact I didn't have  
17 the money to put it through.

18 So all of those things were there. Plus I have  
19 a memorandum that is in the file that you have asked for  
20 copies of whereby I had requested information that the  
21 CEI requested and I had waited for five months, and I  
22 finally had to go to the City Manager and ask him to  
23 order Mr. Pandy to get the information and he did order  
24 him to, and in the memorandum it refers to the fact that  
25 Joe had objected to it and hadn't given it to me because

1 he didn't want to give CEI the information.

2 So some of the delays I found out later were not  
3 exclusively the fault of CEI.

4 I was just simply trying to recite that some of the  
5 delays had to be our fault.

6 I didn't know how much of them.

7 Q All right, sir, and in connection with the --

8 MR. BERGER: Can I have the last  
9 answer read back, please?

10 (Answer read.)

11 By Mr. Reynolds:

12 Q All right. Now, as to the matter that you alluded  
13 to of some withholding of information from you, is that  
14 the same matter that you discussed in your earlier testi-  
15 mony this morning which was objected to as being unrespon-  
16 sive to a question?

17 MR. LESSY: Would you repeat  
18 the question?

19 (Question read.)

20 A No, I think that was a different delay; that is  
21 information that I wanted from our consulting engineers,  
22 Gaus & Pyle, and they hadn't furnished it.

23 Q I see. Was their failure to furnish that information  
24 a factor in the delay in negotiations?

25 A Oh, yes. All of those things were factors.

1 Q All right. Do you believe today that the assessment  
2 that you have made in the April 18th letter of the negotia-  
3 tions over the period of time we are discussing is a true  
4 and accurate assessment of the situation?

5 I will show you again the April 18th letter so  
6 you can review.

7 A Now, what is your question again?

8 Q Whether the matters that are set forth in that letter  
9 are a true and accurate assessment of the --

10 A Everything in the letter is completely true.

11 MR. REYNOLDS: All right. I don't  
12 have anything further.

13 MR. LESSY: I have.

14 MR. BERGER: I have.

15 MR. HART: I have one question.

16 By Mr. Hart:

17 Q Just for my own edification, Mr. Milburn, can you  
18 describe the Painesville system of boilers and turbines,  
19 and tell me about total loads on line?

20 A I couldn't even come close.

21 MR. REYNOLDS: I believe that  
22 Mr. Pandy testified to that in the earlier deposti-  
23 tion.

24 MR. HART: I wasn't there.

25 MR. REYNOLDS: But I think you do



1           have it in the record.

2           By Mr. Berger:

3           Q     Mr. Milburn, I believe you said earlier today that  
4           the time leading up to the interconnection agreement,  
5           there was I understand between CEI and Painesville Muny,  
6           that there were very few written communications between  
7           yourself and CEI, is that correct?

8           A     Very few.

9           Q     Do you know if there are any drafts of interconnec-  
10          tion agreements which were circulated and sent?

11          A     Oh, yes, and you have copies of them.

12          Q     Were any of those drafts presented to the City  
13          Council for approval?

14          A     No.

15          Q     Was the final interconnection agreement signed by  
16          CEI and Painesville submitted to the City Council for  
17          approval?

18          A     Sure.

19          Q     Was that the only one that has ever been submitted  
20          to the City Council?

21          A     In other words, that is the only one seen by me,  
22          Pandy, and the City Manager. Until we had an agreement,  
23          Council wouldn't see it.

24          Q     Let me get the procedure.

25                 Before the interconnection agreement such as this

1 one signed by CEI and Painesville, before that would be  
2 approved, who would have to see it, approve it, in what  
3 order?

4 MR. REYNOLDS: Who at the City  
5 of Painesville?

6 MR. BERGER: Yes.

7 A This isn't any order that would have to be approved;  
8 practically it wasn't going to be approved unless I okayed  
9 it.

10 Q Who are the --

11 A Nobody else had to approve it. I think Council  
12 would have adopted it had I told them to without anybody  
13 else seeing it. I don't think they would have -- I think  
14 they would have overridden the City Manager and Joe Pandy  
15 if I asked them to, but it didn't go to that because  
16 the City Manager and Joe approved it. We were all in  
17 agreement that this was the best agreement we could get  
18 and it did everything we wanted it to do.

19 Q If the City Council was never shown or never asked  
20 to pass on an interconnection agreement or draft of  
21 agreement between CEI and Painesville Muniy prior to the  
22 one they did approve, how would the fact that your  
23 estimate there was not enough Council votes to pass an  
24 agreement, how would that have affected your negotiation  
25 with CEI?

1 A I don't understand the question.

2 Q Let me approach it in this manner:

3 You indicated that the only interconnection agreement  
4 that was submitted for City Council approval was the one  
5 that was actually passed by the Council, is that  
6 correct?

7 A The only one that we had agreed on and the only one  
8 that Council had agreed on, that's correct.

9 Q And I think in response to one of Mr. Reynolds'  
10 questions you said in 1971 and '72 you didn't feel  
11 you had enough City Council votes to pass an interconnection  
12 agreement.

13 A That's right, we didn't.

14 Q Did you state that as a reason in your April 18, 1975  
15 letter to Mr. Shapar, did you state that fact as a  
16 reason as to why negotiations for the interconnection  
17 were --

18 A I don't remember whether I did or not.

19 MR. REYNOLDS: The document  
20 speaks for itself.

21 Q I believe in your testimony just before to Mr.  
22 Reynolds, in response to Mr. Reynolds' question, you  
23 indicated there were two problems and elaborated.

24 Let me read from the document the specific paragraph,  
25 the last sentence.

1           You said, "We have two problems: One, finances, and  
2 two, political."

3           Mr. Reynolds asked you to elaborate on what you  
4 meant in the letter by financing and political.

5           Do you recall what you said with respect to the  
6 meaning of the term political in the letter?

7           A     We didn't have the votes.

8           Q     How did the fact that you didn't have the votes slow  
9 down the negotiations if you never submitted the agreement  
10 to the Council to vote on it?

11                   MR. REYNOLDS:                   Object.

12          A     How would that slow down negotiations?

13                   There would be no reason to hurry up to get a con-  
14 tract signed if I couldn't get it by Council after I had  
15 it signed.

16          Q     Did you have an agreement in writing you could  
17 submit to the Council?

18          A     No, no, never had the agreement in writing until  
19 1975, never even had a draft until 1974.

20          Q     Well, why, if you felt you couldn't get anything  
21 through Council, why were you negotiating with CEI?

22                   MR. REYNOLDS:                   Objection.

23          A     As I told you earlier, in my own mind we had to have  
24 for survival an interconnection agreement, and I had  
25 worked out the -- the City Manager had instructed me to

1 try to get something worked out so if we ever had the  
2 votes, we could get it through.

3 He didn't even tell Council that he had me working.  
4 Council for three years didn't know I was working on this,  
5 I think, from '66 to '70 they didn't have any idea of it.

6 Q During that time period was CEI aware of the fact  
7 that Council would not approve any interconnection  
8 agreement?

9 A Well, they were real suspicious of it because we had  
10 turned the one down already on real good terms. They  
11 had voted it down, so they had to know it. They knew.

12 Mr. Howley is the former Law Director of the City  
13 of Cleveland, so he was real conscious of my problem  
14 that I had to get votes. He knew that we had to line up  
15 votes and some of the things that are in the contract now  
16 were put in there solely for the purpose of getting votes.

17 There is a provision in the current contract, for  
18 example, if we take power we can repay in kind.

19 Now, they didn't want that in the contract, but they  
20 finally agreed to put it in for political reasons, to  
21 make that palatable to Council. It sounds good. You  
22 don't have to pay for the power, you can use all, put it  
23 back in the line, and call it even, one hand washes the  
24 other.

25 As a practical matter I know there is no way we can



1 pay it back in kind but it reads awfully good on paper.

2 Q In negotiating with Mr. Howley, was it your opinion  
3 that he took advantage of the fact that he did not believe  
4 you had sufficient votes in Council to pass an interconn-  
5 ection agreement in the early '70s?

6 A Well, I didn't feel he was taking advantage of us,  
7 no. I don't know what was in his mind. It could have  
8 been, but I never thought he was doing -- I always felt  
9 Lee was in good faith, that he had a problem with his  
10 Board and wanted a bona fide, legitimate contract with  
11 the City of Painesville; he was convinced personally  
12 there was no way they were going to be able to buy it  
13 and that they had bona fide wanted a contract.

14 There was no other way they were going to get it.

15 I think he's a good enough lawyer to know I was  
16 going to hammer our way in one way or the other if he  
17 didn't agree to it.

18 Q With regard to the September 16, 1974 letter which  
19 you wrote to Mr. Charno in the Department of Justice,  
20 this was referred to earlier, at the time it was written,  
21 did you believe it to be true and correct to the best  
22 of your knowledge?

23 A Yes. I indicate in this I was doubtful, I don't know  
24 what their problem is. I am just getting to the point  
25 I am disturbed nothing is happening, I am just trying to

1 protect myself. I am real concerned at that point  
2 that a long time has gone by and absolutely nothing is  
3 happening and I don't know what's in their mind in  
4 Cleveland, they could be playing me for a patsy and  
5 I was just trying to make sure that they didn't.

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

8 MR. LESSY: I have got some  
9 redirect.

10 Off the record.

11 (Discussion off the record.)

12 REDIRECT EXAMINATION

13 By Mr. Lessy:

14 Q Mr. Milburn, why did you object to the power superinten-  
15 dent making statements, public statements regarding the  
16 meetings on possible interconnection negotiations between  
17 yourself and CEI?

18 A Because at that time they were supposed to be confiden-  
19 tial. They were supposed to be strictly confidential.  
20 He was making them out in public, I mean -- I don't mean  
21 the public was present because it was, oh, maybe 30 or 40  
22 staff people of the City of Painesville; so the word gets  
around real fast.

23 Q Which staff people, sir?

24 A All department heads of the city.

25 McDonald had a habit of calling every department

1 head to the office at 10:00 o'clock on Tuesday morning  
2 and holding what he called a staff conference and called  
3 on everybody to make a report and everybody thinks they  
4 have to tell something, and so when it comes Joe's  
5 turn, of course, it was if we had a meeting that was  
6 something to talk about.

7 Q Does Mr. Pandy to your knowledge report to the  
8 City Manager?

9 A Sure. .

10 Q Do you know, then, whether he made those reports on  
11 his own or because he is required to by his superior?

12 A Well, he was just called upon. He wouldn't be  
13 required to. He was just asked for a weekly report, and  
14 so he would report.

15 They let everybody talk.

16 Q Were there any reporters or press or anybody else  
17 present?

18 A The press was not present.

19 Q Were there any leaks into the local press of  
20 these negotiations?

21 A I'd have no way of knowing that.

22 Q Were there any newspaper accounts of negotiations  
23 when they were still confidential?

24 A As I recall it there were, yes.

25 Q Would you tell me again what the reasons of

1 confidentiality were of these negotiations?

2 A Well, the main reason was at least three members  
3 of Council being bitterly opposed and the City Manager  
4 hadn't felt it was wise to get on their toes.

5 He had ordered negotiations to continue.

6 Q It was the City Manager then who imposed the con-  
7 fidentiality?

8 A Oh, yes.

9 Q Yet he was the same person who called the monthly  
10 staff meetings?

11 A See, the confidentiality started before this City  
12 Manager was here. We had had two City Managers. This  
13 McDonald didn't impose confidentiality on anybody.

14 Q If he didn't impose it, why was it still on?

15 MR. REYNOLDS: I object.

16 A Because it had never come off.

17 Q At one point in time you said that the people in  
18 the county, particularly in Painesville, had been violently  
19 anti-CEI?

20 A Yes.

21 Q Are you violently anti-CEI?

22 A No.

23 Q Are you pro-CEI?

24 A No.

25 Q I gather you are independent?

1 A I couldn't care whether they come or go.

2 Q What were the issues in the strike at the Paines-  
3 ville Municipal Electric Plant?

4 A They wanted more money and we didn't have it.

5 Q Are the workers in the Painesville Electric Light  
6 Plant municipal employees?

7 A Yes.

8 Q Do you know if they are members of a union?

9 A They are now.

10 Q Which union is that? Is it the Municipal?

11 A No, not Municipal.

12 Q The Electric Union?

13 A Yes.

14 Q Okay.

15 Also in testifying about the possibility of a sale  
16 of part of the Painesville system to CEI, you stated that  
17 CEI was, of course, glad to get any part of the system  
18 they could. Why is that?

19 A Apparently they wanted to expand. They seemed to be  
20 hungry for more customers.

21 Q Is it your view they were interested in expanding  
22 customers or they also wanted your facilities, electric  
23 facilities?

24 MR. REYNOLDS: I object.

25 A They'd tear our facilities down in a minute.



1           How could they use our facilities? They'd close  
2 them.

3           They wanted customers.

4           Q    One thing I didn't follow was that I believe you testi-  
5 fied that Mr. Pandy didn't want a tie with CEI.

6                   Was it because he was a former CEI employee?

7           A    I didn't say because of that; because he is the boss  
8 of the plant. He kind of has a little empire. He has  
9 a good job. He might not have it if we'd tie in or they  
10 bought the plant or something like that.

11                   It wouldn't be because he was formerly with CEI.  
12 That wouldn't have anything to do with it.

13           Q    You are saying any ties with CEI wouldn't jeopardize  
14 his position?

15           A    It wouldn't to me, but you have to ask those people  
16 that.

17                   All I know, you can't conceive of how people are  
18 bitter. Mr. Ficker was as anti-CEI as you want.

19           Q    Who is Mr. Ficker?

20           A    He was Pandy's predecessor as superintendent of the  
21 light and power.

22                   I wasn't exaggerating. Anybody could be elected to  
23 Council by simply running on the slogan: "Don't sell the  
24 light plant." That's all it took.

25                   MR. REYNOLDS:                   I think for the  
  record we ought to state for clarification purposes

1 Mr. Lessy's reference to the comment by Mr. Milburn  
2 regarding prior employment by Mr. Pandy at CEI  
3 was during the off-the-record colloquy and therefore  
4 is not going to be something that we would be able  
5 to be referenced to in the transcript by somebody  
6 who might be reading.

7 MR. LESSY: Except Mr. Pandy  
8 testified in his deposition he wasn't an ex-CEI  
9 employee.

10 MR. REYNOLDS: I agree, but I  
11 believe your question to Mr. Milburn referenced a  
12 statement he had made, and all I am doing for clari-  
13 fication purposes is making it clear on the record  
14 that the statement he made was in an off-the-record  
15 statement so that somebody who might be trying to  
16 refer back won't be confused. That is all I was  
17 saying.

18 Q Had the bonds been floated related to financing of the  
19 \$750,000 for interconnection?

20 A Yes.

21 Q Did you buy any?

22 A Did I?

23 MR. REYNOLDS: Mr. Milburn?

24 MR. LESSY: Yes.

25 MR. REYNOLDS: I object.

1 A I sure didn't.

2 MR. LESSY: I have no further  
3 questions.

4 MR. REYNOLDS: I don't have any-  
5 thing further.

6 MR. BERGER: I have one more  
7 question.

8 RE-CROSS EXAMINATION

9 By Mr. Berger:

10 Q You indicated that the people in the town have been  
11 or were at one time very anti-CEI.

12 Do you know why that is true?

13 A Well, historically, again I touched upon this briefly,  
14 years ago the light plant when it was small and the city  
15 was small made so much money that it financed a lot of  
16 things:

17 For example, when December came, we waived light  
18 bills, they just canceled them, and people liked that  
19 and they knew that CEI didn't do that.

20 They furnished free street lighting. They furnished  
21 cheap power for the Water Department. They furnished,  
22 I think, about 40 per cent of the cost of operating City  
23 Hall and the Law Director. All of those things. It  
24 wasn't so much that they hated CEI, they just liked  
25 the light plant because it has done so much for the City.

1 It made so much money and just became a real popular thing  
2 to have a light plant of your own.

3 MR. BERGER: I have no further  
4 questions.

5 MR. HAUSER: We have no further  
6 questions.

7 Thank you very much.

8 MR. HART: I'd like for the  
9 record to show that when we took the deposition of  
10 Warren Hinchee, we referred to a report of inter-  
11 connection between the Cities of Cleveland, Orrville,  
12 and Painesville, and I made the offer to the Department  
13 of Justice and the staff that if they did not have a  
14 copy of the interconnection study that I would pro-  
15 vide them with a copy, and I want the record to show  
16 that opposing counsel and staff and Justice have  
17 access to this copy here and I guess they will make  
18 copies of it so that will be the same report that  
19 I would have provided.

20 MR. HAUSER: Let the record show  
21 Mr. Milburn has offered to give counsel for CEI  
22 the report referred to by Mr. Hart and if the Justice  
23 and staff will wish copies that we will provide them  
24 at their expense, whatever that expense be which  
25 has been agreed to previously.

1 (Discussion off the record.)

2 MR. BERGER: The Department would  
3 like to make a request to receive a copy of the re-  
4 port given to Mr. Hauser.

5 As far as arrangements for paying for it, I  
6 know there has been a point of contention all along.  
7 I am not sure what the arrangement is, that is the  
8 one you had with Mr. Reynolds.

9 MR. HART: I would like to  
10 make a request for a copy of the report, also, and  
11 staff would also like to have a copy.

12 THE WITNESS: Which report? I  
13 don't have a report.

14 MR. BERGER: That paper.

15 THE WITNESS: This is the contract  
16 that they turned down. This has Joe's notes. I  
17 am not going to give it to them.

18 MR. HART: You are not going  
19 to give it to whom?

20 THE WITNESS: Anybody. This wasn't  
21 in evidence. This is just Joe's notes as to what  
22 he thought should be changed on this original draft.  
23 This is just a draft agreement that Joe made notes  
24 on that he wanted things, he thought we --

25 Here, I will show you what it is.



1 MR. HART: I understand what  
2 it is.

3 It is our understanding that you wouldn't give  
4 it to CEI, to give to Staff or to the Department of  
5 Justice?

6 THE WITNESS: I won't give it to  
7 anybody as long as it wasn't in the record.

8 If anybody wants to sit here and read it --

9 MR. BERGER: Would you copy it  
10 for the different parties?

11 THE WITNESS: The only question is,  
12 what would anybody want with it? It's not the  
13 final agreement. It's one we threw out. All it  
14 has on it are the notes of what Joe wanted and he  
15 didn't get it because I overruled him on a lot of  
16 those things.

17 MR. BERGER: I would still like  
18 to make a request it be copied and the Department  
19 would be willing to pay for copying it.

20 THE WITNESS: I will have her make  
21 copies.

22 Do you want a copy?

23 MR. LESSY: A copy.

24 MR. HART: We had better get a  
25 copy.

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MR. BERGER: Can this material  
be made available to me?

THE WITNESS: Yes.

Give me a card or something.

(Further deponent sayeth not.)

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