

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

CONSUMERS POWER COMPANY  
(Midland Units 1 and 2)

Docket Nos. 50-329  
50-330

THIS DOCUMENT CONTAINS  
POOR QUALITY PAGES

Place - Chicago, Illinois

Date - Tuesday, 8 February 1977

Pages 3345 - 3586

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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: In the matter of :  
: CONSUMERS POWER COMPANY :  
: (Midland Units 1 and 2) :  
: -----

Docket Nos. 80-338  
80-339

Room 2503  
Everett M. Dirksen Building  
219 South Dearborn Street  
Chicago, Illinois

Tuesday, 8 February 1977

Hearing in the above-entitled matter was convened pursuant to notice at 9:30 a.m.

BEFORE:

- FEDERIC J. COUFAL, Esq., Chairman
- DR. J. VENN LEBDS, Member
- DR. EMMETH LUEBKE, Member

APPEARANCES:

(As heretofore noted.)

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C O N T E N T S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Re-cross</u>	<u>Exam. on Board</u>	<u>Board Cross</u>
W. Jack Mosely (Resumed)						3359
			3359	3392		
			3453	3454		
Philip Bickel			3577			

E X H I B I T S

<u>No.</u>	<u>Identified</u>	<u>Received</u>
Board Exhibit No. 4 (Consumers Power ER Supplement, 10/26/76, as amended 11/19/76)	3363	

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P R O C E E D I N G S

CHAIRMAN COURER: Good morning, ladies and gentlemen.

Let the record show that Mr. Cherry is here for the intervenors other than Dow, Mr. Hoelling for the Staff, Mr. Rosso for the Licensee, Mr. Pribila and Mr. Duran for Dow.

I suppose you all noticed in the paper this morning that Judge Mastin, whose courtroom we're using, died either yesterday or last night. I've forgotten which. He was a very great and famous Chicago judge, and I'm sure he will be missed.

We got yesterday, Mr. Rosso, from Mr. Renfrow instead of two decisions, three copies of two decisions, we got six copies of one decision.

(Laughter.)

What we got was ALAB-327. I don't remember what the other one was that we were supposed to get.

MR. ROSSO: We'll just have to call him, sir.

You received ALAB-327?

DR. LEEDS: That's correct. That was the Appeal Board case in Wolf Creek.

Mr. Rosso, would you mind introducing to us the other gentlemen at your table? I don't know all their names.

MR. ROSSO: The other gentlemen at my table?

DR. LEEDS: I know Mr. Bickel and Mr. Mosaly.

MR. ROSSO: This is Mr. Zoryn Roberts of my office; Mr. Bickel, who has testified earlier; this is Mr. Gene Bernstein from my office.

DR. LEEDS: Pleased to meet you.

MR. ROSSO: Sorry I didn't do that earlier.

DR. LEEDS: I may have just forgotten that you did.

MR. ROSSO: No, I did not do that earlier.

MR. CHERRY: Mr. Chairman, if I may, I'd like to call attention to just two matters.

The Staff's and the Applicant's answers to interrogatories are incomplete. You will recall that at the beginning portion of my interrogatories it requires that there be a statement of each fact and basis upon which the answer is based plus a list of documents which relate to the answer, plus a list of persons who participated in or gave information in connection with the answer. I think it's even broader than that; it's people who have knowledge about the facts stated therein.

In the Applicant's answers, I do not have the first two requirements met at all. We had a discussion with Mr. Renfrow on the record, and he agreed to abide by those two requirements.

It's particularly important in the answer to

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the interrogatory in connection with the financial aspects of Consumers Power Company. I went over that last night, and it's fairly incomprehensible. It appears to be contrived that way.

In the middle of the answer, on construction cost, cost for the construction program, it says that the projections made by Mr. Borris and others are based upon many, many assumptions, and the Applicant doesn't necessarily represent that they'll be able to achieve the results from those assumptions.

That disclaimer is clearly put in there for the securities laws, among other reasons. What I'm concerned about are these many, many assumptions, and I would like an order asking that the interrogatories filed by the Licensee follow my request for interrogatories.

There's really no objection to that, and I need that information if I'm to have any approach to Mr. Borris in advance of his coming here.

CHAIRMAN COUFAL: What number is that, now?

MR. CHERRY: Well, it's true with respect to all of the most recent answers, but the one I just described is the answer to Interrogatory No. 3. And the particular paragraph that I'm talking about is on the second page of the answer. It says:

"Many assumptions have been made in preparing

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these projections. Since the determining factors in these assumptions are largely beyond control, Licensees cannot warrant these projections will be the actual result."

What I don't have are the assumptions that have been made, nor any of the documents that they're based upon

Another point, one of the critical elements of that answer is the request by the Applicant to change some of the accounting procedures as to how the Michigan Public Service Commission orders them to report, which has an effect on cash flow. They want a change in certain accounting procedures which increase their cash flow to account for their construction budget; and they rely upon the fact that these changes in accounting procedures which increase cash flow will be granted, because they state at the end of the interrogatory if they don't get those changes and they still have a rate increase of only 12.75 percent of return on equity they will not be able to finance the construction program.

They don't even describe what the changes in accounting practice is that they've asked for. Here's another situation where I get an answer. I've got to scream and yell for something more detailed, et cetera.

Mr. Chairman, I would just ask that you order them with that much discussion to answer the interrogatory complete and total or that Mr. Dorris or someone else is not

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going to be able to testify.

Secondly, the changes yesterday in the testimony with fuel cost. I have asked Mr. Rosso to tell me whether or not as the result of changing Mr. Heins' Exhibit 14 they did another run in the cost production model of Consumers or whether they changed it external of the computer code.

I don't have an answer to that question as of yet. If there are computer runs that have been rerun with this new input, I should have had those in connection with the testimony because that was the arrangement, that when testimony was filed the backup material was filed.

So I'm going to assume that there are no computer runs in connection with these changes, that they were just done externally. If there are such computer runs, I want them here by 10:00 o'clock.

MR. ROSSO: Mr. Chairman, on those two points: with regard to the computer run, I don't know the answer to that. We've called over to the office, and I think that Mr. Cherry should speak to Mr. Renfrow about that because he handled that part of it.

MR. CHERRY: I'm not speaking to anybody. I asked the Board to get me the information. I put it on the record, because I've asked Mr. Rosso and Mr. Renfrow numerous times off the record for things and I don't get anything. As you know, the Falahee Principle is you continue to delay



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this proceeding so they can continue to construct. They'll smile and be nice, but we won't get the information.

MR. ROSSO: Mr. Chairman, if there were computer runs run, I will find out from Mr. Renfrow and report back to the Board on that and to Mr. Cherry. I just don't know the answer at this point. We will certainly try to provide him with everything that he has asked for.

With regard to this answer to the interrogatory-- I think it's No. 3 -- with regard to the financing, Interrogatory No. 3 again asks for projections into the future, just as load forecasting does. What that is intended to say is that the company cannot guarantee what rate of return the Commission in Illinois will give it. It cannot guarantee what accounting changes the Commission in Michigan will give it; consequently, it has to say that we have run -- we have given the information on the basis of three assumptions:

Number 1, the rate of return that the company has asked for in a recent rates case -- in fact, the one that is pending now;

Number 2, the highest recent rate of return that the Commission has granted to an electric public utility in Michigan; and

Number 3, the old rate of return which the company was allowed to earn on the basis of its prior rate case.

And that's about all we can do, is to give runs

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on those three bases. We tried to select three bases which would be meaningful to the Board and to Mr. Cherry. Actually, one could run this computation for everything from a zero rate of return to 100 percent rate of return with increments of one-tenth of 1 percent in between if one were to try to answer it with every possible variation, and even then one wouldn't because there are other variables that come into play.

We have tried to answer the interrogatory which asks us to look into the future as fully as we can, as fully as possible, and I don't know that we can do much to amplify the answer except, I think, with regard to the accounting changes, which we can provide. We can let Mr. Cherry know what those accounting changes are that Consumers is seeking from the Commission.

MR. CHERRY: Mr. Chairman, page 5 -- I'm getting a little fed up with this -- page 6 of my interrogatories and a completion requirement that was asked for, it was not objected to. I specifically called Mr. Renfrow's attention to that, and he agreed. It says:

"In addition to answering each interrogatory set forth below, please identify--" which is the fine term of the interrogatory -- "in connection with each answer each fact, document or communication which you have relied upon or which you

believe supports your answer to this interrogatory."

Now, I don't even know the name of the utility whose highest rate was given to the State of Michigan. I have no idea what the computations were based upon. That's not an answer. That's the same kind of pap that a utility is used to giving to a regulatory agency, because they rarely ask questions.

Those are conclusions. There's no analysis there as to why, and that interrogatory answer I now move be stricken and that Consumers Power Company be asked to answer the interrogatory.

CHAIRMAN COUFAL: We get your position, Mr. Cherry. We'll look at the interrogatory and rule on it.

MR. CHERRY: The same is true with respect to the Staff's interrogatories. I would ask for you to look at the Regulatory Staff's interrogatories in light of the requirement that I ask for a listing of all documents.

The Regulatory Staff has listed a statement of how to resolve issues that are outstanding about the ACRS. There isn't the slightest mention of a document whatsoever. There is no way that I can ever do anything except believe the Regulatory Staff, and I've been around too long with the REC and the NRC to believe the Regulatory Staff.

MR. HODFLING: Mr. Chairman, with regard to the interrogatories that the Interveners posed to the Staff, we

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did object to the completeness requirement that Mr. Cherry raised.

We indicated some three weeks ago that we felt that request of completeness requirement was burdensome, that we would prepare a response by an individual who was most knowledgeable in the area and that response would refer-  
ence to the documents that that individual relied upon in preparing his response.

This is the first that Mr. Cherry has raised his concern over the completeness requirement. Again, I just note that it's been raised for some three weeks now and hasn't been mentioned in these proceedings until today.

CHAIRMAN COUFAL: Well, did you list the documents that you mentioned that you would list?

MR. CHERRY: No.

MR. NOEFLING: When we prepared our response, to the degree that a document was relied upon to a response it was referenced in the response.

CHAIRMAN COUFAL: You say there were no documents that were relied upon?

MR. NOEFLING: I said if a document was relied upon, such as the DES or a particular document supplying a piece of information, that reference was made in response to the interrogatory.

MR. CHERRY: Mr. Chairman, my interrogatory asked

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for each document which forms the basis or relates to the answer so that I can independently take that information and determine whether the conclusion inserted in the interrogatory is correct.

Now, they have listed a long series of interrogatory answers which say that a particular ACRS item won't cost very much or won't interfere with the schedule or won't interfere with safety and it's going to be resolved. When you resolve something you've got to talk to somebody, and when you talk to somebody you've got to generate paper. I want a statement that there are no such documents in existence so that the Regulatory Staff's answers can be viewed for what they really are, or I want to see those documents if there are documents that they're basing the turbine missile program analysis as resolved. I want to see those documents.

I'm not here to play games. This is not a child's toy.

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CHAIRMAN COUFAL: All right. We will look at the interrogatories.

MR. HOEPLING: Mr. Chairman, I think that the particular area that Mr. Cherry is referring to, the ACRS area, there is no specific number or well-identified number of documents that were relied on in making the judgments that were made in that interrogatory response.

I would think that it is fair to say that all the documents that the Commission has, in a sense, are incorporated into supplying that response, and this is basically a judgment on the part of the individual involved in making the response, as to what he estimates the impact on cost and schedule will be.

This is not an area such as used for power where there are well-defined documents that the Staff has relied on for response.

MR. CHERRY: That's incredible.

So we are supposed to cross-examine someone else's judgment we don't know. That is the most -- that's the kind of stuff we have gotten all the time, that the ACRS makes judgment in the Goddamned corner, we can't hear it --

CHAIRMAN COUFAL: Mr. Cherry?

MR. CHERRY: And now we are told --

CHAIRMAN COUFAL: Mr. Cherry, you know better than to use that kind of language in here.

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MR. CHERRY: I apologize.

And now we are told that the Commission made judgments on the basis of costs, based upon, I guess, every document in the Commission.

Mr. Coufal, you cannot permit this to go on, sir, and I beg of you, do not permit it to go on.

CHAIRMAN COUFAL: We will look at the interrogatories and we will look at the responses, Mr. Cherry, Mr. Hoefling, Mr. Rosso, and we will rule on it.

MR. CHERRY: Very well.

CHAIRMAN COUFAL: If you are entitled to a ruling, you will get it.

All right, now let's go with Mr. Mosely.

MR. CHERRY: Did the Board decide the proprietary aspect yet of the fuel costs?

CHAIRMAN COUFAL: No. Mr. Renfrow promised us a case to read, and we didn't get it, Mr. Cherry.

MR. ROSSO: We will call back on that.

CHAIRMAN COUFAL: Incidentally, we would like to hear a few words from the Staff on this before we rule on it.

MR. CHERRY: Here's what I got. You can have it. I read it.

(Mr. Cherry handing document to the Board.)

CHAIRMAN COUFAL: All right, we will read it.

Thank you.

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CHAIRMAN COUFAL: Mr. Mosely?

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W. JACK MOSLEY

resumed the stand on behalf of the Licensee, and having been previously duly sworn, was further examined and testified as follows:

CHAIRMAN COUFAL: Dr. Leeds has some questions.

DR. LEEDS: Mr. Mosely, before I ask you some questions, I want to kind of clear up with Mr. Rosso, your relationship, because I am still slightly confused.

I think in something you filed with us there was some question about, some hint that there was some problem with some employees saying something for the company. I presume I have no problem with any questions I ask Mr. Mosely? He is speaking for the company even though he is not an employee? He is now a consultant?

MR. ROSSO: Yes, sir. He was the chairman of the Load Forecasting Committee during this relevant period of time.

DR. LEEDS: Thank you, sir.

## EXAMINATION BY THE BOARD

BY DR. LEEDS:

Q Mr. Mosely, I want to try to get some questions answered. They would sort of try to help me understand. I am still slightly confused about what went on, and I have a couple here that may be sort of out of order, may be repetitious,



but I haven't had a chance to review the transcript. I apologize if I do go over a couple of things wrong.

Did I remember correctly that the committee that you were chairman of, furnished to the other officials in the company, a recommendation that the results of the probability encoding session be the long-range forecast for the Consumers Power Company?

A That is correct.

Q And did you furnish them a single number, or did you furnish them a whole curve?

A As I remember it, I believe we furnished them with five sets of numbers, which in effect represented five different points of the probability curve that was developed on a consensus basis.

Now the different sets of data were for different years throughout the period.

We converted these percentages into actual sales numbers by multiplying the 5.2 percent times the base, which is taken as the 1977 estimate. And then multiplying it by 5.2 each year we would get a sales estimate for each of the ten years. I believe we listed ten years.

Q So you really only gave them the 5.2 percent?

A No, sir.

We gave them 4.2 percent, and we gave them 3.2 percent, and we gave them 5.2 percent, and 7.2 percent.

In other words -- and then we indicated the probability of each of those sets of numbers of being realized.

Q Do you have that data?

A I believe it is here.

Q Okay.

A I could look at some --

Q Okay, we will get that at the end.

Essentially you gave them a curve, then?

A Yes, sir, that's correct.

MR. CHERRY: Dr. Leeds, the Midland Intervenor's Exhibit 11, which I passed out to the Board, has the document we are looking for.

DR. LEEDS: I apologize for not having read all the documents. Maybe Mr. Rosso ought to verify that that is the one that does have that and we will get Mr. Hosely to check it out and see --

MR. CHERRY: Item F, the thing that was referred to during Mr. Bickel's cross as Item F, supplied to Dr. Timm, that was all marked.

DR. LEEDS: -- because I don't want to stop the proceedings and chase for the paper.

MR. CHERRY: Sure. Sorry.

DR. LEEDS: Thank you, sir.

BY DR. LEEDS:

Q Now, with that curve there was a recommendation

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that 5.2 percent be the number.

A Yes.

Q Now do I understand correctly that that curve and that recommendation of a specific number, you could call that the long-range forecast of Consumers Power Company?

A Yes, sir.

Q Now do I understand correctly from your testimony yesterday about the ways the probability encoding worked, that detailed calculations based on projections of, say demand of a large user like General Motors and so forth do not explicitly come into that calculation.

Is that correct?

A They do not explicitly come in to the results of the encoding. They are part of the background information.

Q Of the person?

A Of the person from whom we are asking judgment.

Q Okay.

Let me sort of make sure I completely understand that process.

A person has background knowledge like an expert, he has read many documents?

A Yes, sir.

Q These people were in the same kind of position and they have read many documents?

A Yes, sir.

Q Did many organizations?

A Yes, sir.

Q Now you asked those questions about the possibility they thought certain things would happen as the growth went that would be associated with those growth patterns.

Is that correct?

A That is correct.

The reason I hesitate just a little bit, I attempted to get them to think about the needs which of their organizations on their input to them, and then I did not want to dwell on any part of that, but I did ask them, well, what is your balanced consensus that will be the eventualty.

Q So there was no question, like put to a person, what is your projection, say, of General Motors sales, something like that?

A At the meeting session, no, sir, that kind of question was not asked.

Q And then when you put together the final numbers, those questions were not asked?

A That is correct.

Q Let me ask you another question now.

Did I understand correctly yesterday that this process resulted in the final numbers in something like September?

A Yes, sir.

It was the latter part of September when the Committee came to its recommendations and I don't remember precisely, but I believe it was transmitted to our president and chairman of the board in October 4th, if I remember correctly.

Q So on October 4th it was transmitted to the board, chairman of the board.

A Yes, sir.

Q When was it adopted?

A Well, sir, I cannot tell you that precisely, by then.

I do know that they authorized that our budgeting and our planning go ahead on this basis. But they had some meetings that were in connection with budget for next year and the year after, and it was in the course of these meetings that I understand it was adopted.

But I don't have a precise report on it.

Q Okay.

Would it be correct to say it was adopted between, roughly, October 4th and when they authorized your budget?

A I believe so.

I am quite certain, yes. But I don't have any specific report on it.

Q But those are at least out of bounds, are they not?

A I think so, yes.

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Q Or if nothing else -- I will back off -- September to whatever the budget was approved?

A Yes, sir. I think there is no question about that.

Q And when was the budget approved?

A I don't know the exact date.

Q When did you hear about it?

A Well, these budget sessions -- and incidentally, I do not participate in them, but they go on over a period of a month, or months, and I think the objective is to have a budget finally approved before the end of the year.

That is, it is going to begin to be effective in the next year. And there are two main parts of the budget, one of which is construction and the other operations and they don't both fall at the same time.

So I guess, to be real positive, I would have to say that I have almost complete certainty that it was done before the end of December. But just when it finally had official status, I really don't know.

Q This forecast is of crucial importance to the company, is it not?

A Yes, sir.

Q And you were chairman of the committee that made the final recommendation?

A Yes, sir.

Q And you were vice president of the company?

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A Yes, sir.

Q And what is the title that goes with vice president?

A Energy.

Since January of 1976 I was Vice President of Energy Planning.

Q And you did not -- you were not informed of whether or not your recommendation was adopted?

A I had no formal statement to me that it had been adopted.

Q --Okay.

Well, then let me try informal. Do you know when it was -- somebody by gossip, or however else you got it, when did you find out as the Vice President in Charge of Planning, that that recommendation had been adopted?

A Well, sir, I happened to be in one of the meetings of the budget -- each of the vice presidents goes before the Budget Committee to -- in this case, for me to provide an operating budget for the next year for that department that I then headed.

And that was after there had been some budget meetings of the executive group, and after there had been a number of operating meetings of the executive group.

And in the course of that meeting there was some discussion about what we were going to do, and the matter came up about the forecast and someone on the committee -- I can't

will

remember just who, commented, well, we are operating on the forecast you fellows made.

Now I think that occurred -- to the best of my recollection, it was sometime towards the latter part of November.

DR. LEEDS: Mr. Rosso, I have a slight problem.

I would like to ask this gentleman a couple of questions about the ER report, but if I remember correctly, the ER supplement is not in the record as an exhibit. You have given us copies of all of it, and you have served us with supplements to it, I guess two supplements, in fact. So I don't have a numbering to refer to it or anything.

Do you want me to make it a Board exhibit so I can talk about it?

MR. ROSSO: I certainly have no objection to its being made a Board exhibit.

DR. LEEDS: Does anybody have any objections?

Mr. Cherry?

MR. CHERRY: No, sir, I don't have any objections to your marking it for identification for purposes of asking questions.

I might say, sir, that it isn't necessary for you to mark it because the Environmental Report is the underlying data of the summary the Applicant has asserted, and it is always permissible to ask about the summary.



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But I think under the circumstances if it is marked as a Board Exhibit, it will be readily identified. I have no objection.

DR. LEEDS: Staff?

MR. HOEFLING: No objection.

MR. PRIBILA: No objection.

MR. CHERRY: 4 would be the next Board exhibit.

DR. LEEDS: I would like to mark, as Board Exhibit 4, Consumers Power Company Environmental Report Supplement dated October 26, 1976 as amended November 19, 1976.

(Whereupon, the document referred to as Consumers Power Environmental Report Supplement, 10/26/76, as amended 11/19/76 was marked Board Exhibit No. 4 for identification.)

DR. LEEDS: Would you mind giving Dr. Mosely a copy so I can refer him to a line in it that I want to ask him a question about.

(Mr. Rosso handing document to the witness.)

BY DR. LEEDS:

Q Just as a preliminary, did you help with this document, sir?

A I really don't recognize the document yet.

Q Why don't you take a few minutes and look at it, sir.

MR. CHERRY: Dr. Leeds, I have one additional copy, if

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any Board member wants to look at it, or do you all have a copy.

DR. JONES: In fact, the section I want to look at is Phase I.1-15 marked at the bottom of the page. I have Amendment 3.

(Mr. Rosso indicating document to witness.)

end #2

1 DR. LEEDS: The page I am looking at is dated  
2 November 19, 1976.

3 MR. BRENNER: I realize that.

4 DR. LEEDS: And that is Amendment 1 and I had  
5 to insert the pages into it.

6 MR. BRENNER: As did I, Dr. Leeds. I am not cer-  
7 tain this is the copy I inserted the updated into.

8 DR. LEEDS: But that's all I know. I am not be-  
9 laboring the point. I am trying to describe to you what I  
10 have.

11 MR. BRENNER: I can tell if I find pages with  
12 marked marginal lines on it, which I haven't yet..

13 DR. LEEDS: Look on page 1.1-15 and look and see  
14 if it says Amendment 1, and that is the page I am talking about.

15 MR. BRENNER: This is not an updated one.

16 MR. ROSSO: Mr. Chairman, I have the updated pages  
17 and I will provide both the original and the updating to the  
18 witness.

19 Is that all right?

20 MR. BRENNER: That is not the best way to go be-  
21 cause you won't know which pages --

22 DR. LEEDS: Well, let me tell you this: The  
23 updated one I have does not have lines marked in the margins  
24 indicating Amendment 1 changed two sentences I want to talk  
25 about.

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1 MR. ROSSO. I think that's right, sir.

2 DR. LEEDS: The only thing on that page I guess  
3 was changed was the year 1993 which seems to be consistent  
4 marking.

5 BY DR. LEEDS:

6 Q Sir, do you see where it says "electrical sales  
7 projections" near the bottom of the page?

8 A I believe now I have the place, Dr. Leeds.

9 Q Fine.

10 I want to go to the paragraph immediately above  
11 that and it says:

12 "The projections of peak demand and energy  
13 requirements appearing in Tables 1.1-2 and 1.1-3  
14 are based on forecasted energy sales to customers."

15 And then I want to go to the paragraph that says:

16 "Electric sales projections; Consumers  
17 Power's electric sales forecast are developed to  
18 cover three periods. Each are done by class of ser-  
19 vice, but each by methodology and in a level of de-  
20 tail dictated by their ultimate use."

21 Now my question to you is: This seems to be dif-  
22 ferent than what you tell me was done for the long-range  
23 energy forecast. And yet I thought this was a discussion of  
24 long-range energy forecast, since it goes to the year 1995.

25 A I would like to inquire -- that talks about: Were

02rb4 1 developed for three periods, each done by class of service  
2 but each by a methodology or at a level of detail dictated  
3 by the ultimate use of.... Are you requesting whether we did  
4 any of this, or are there certain -- there are several dif-  
5 ferent items here referred to. Are you talking about the  
6 methodology or the period of time?

7 Q No, I am not talking about the methodology or  
8 the periods or anything. These two statements tended to give  
9 me the impression that what followed in the ER report was  
10 the way Consumers Power did their long-range forecast.

11 And you have testified that probability encoding  
12 was essentially the way it was done.

13 Now what I want to know is: What was done?

14 A Well -

15 Q This was background material, I gather from your  
16 other answers. This was merely background material to these  
17 six gentlemen deciding what the forecast was?

18 A That is quite correct, Dr. Leeds.

19 The basic method of having our forecast this year --  
20 and I am really speaking of 1976 -- was really no different  
21 than it had been for other years, maybe some slight varia-  
22 tions but really no different.

23 The only difference in the overall process was how  
24 we got the final judgment of the individuals on the committee.  
25 Before, we had always sat down in the room in two or three

1 sessions and come up with the consensus opinion that the most  
2 likely rates of growth would be some figure. Like the year  
3 before, we had come up with the figure 5.3 percent as the  
4 compound growth rate.

5 And we made no effort to find out the likelihood  
6 of some other rate of growth applying.

7 Now we had essentially the same kind of background  
8 information in '76 as we did in '75. But we decided that we  
9 wanted to be in a position to evaluate, not only a most  
10 likely but other levels of growth that might occur.

11 And we also wanted to have a record of what the  
12 individuals' thinking and judgment was. So that's the reasons  
13 that we went to this encoding thing.

14 It probably didn't improve our accuracy insofar  
15 as a single figure was concerned, but it did broaden our  
16 scope of consideration and gave us a record and a numerical  
17 measure of other numbers.

18 Q But between the time these people, these experts,  
19 got their data and the time you made your calculations based  
20 on the encoding sessions with them, there was, as I understand  
21 no direct numerical connection between forecasted sale and  
22 so forth, and the numbers, the responses they gave to you  
23 in the encoding sessions; right?

24 I asked you earlier -- you see, what I am looking  
25 for is -- you said that earlier, when I asked you whether

1 they were implicitly considered, and think you answered no,  
2 that they were not implicitly considered.

3 A That's correct.

4 Q So there was a break between the data -- between  
5 the two sets of data, were there not, by the judgment of  
6 these six people?

7 A Yes; if you choose to call it a break. I choose  
8 to think of it as a distillation of all of the information  
9 they had when we got to the encoding session.

10 Q But nobody just added up numbers and said: This  
11 is the result?

12 A No, sir?

13 Q Okay.

14 Now I would like to read you a sentence on page  
15 19, which is just one over. And I notice that there is no  
16 markings on that page, although it is a new page, and the  
17 markings are on the next page. So this is an old page out  
18 of the document.

19 A May I ask: Is that 1.1-19?

20 Q Yes, sir; it is just the next page over.

21 It says -- there is a line in the middle of the  
22 page:

23 "Energy requirements and peak load pro-  
24 jections" --

25 A Yes.

arb7

1 Q I want the sentence right above that.

2 "The above class-by-class projections re-  
3 sult in a total forecasted sales growth rate for  
4 Consumers Power of approximately 5.2 percent per  
5 year after 1977."

6 A Yes.

7 Q That sounds like an addition of numbers.

8 A Yes, sir.

9 Q But that's not the way it was done?

10 A What happened in this case is: After the judg-  
11 ment of the committee members had been assembled and decided  
12 upon, we then asked Mr. Bickel and possibly Mr. Carter be-  
13 cause he had something to do with the short-range aspects,  
14 but primarily Mr. Bickel, to go back and redo all of the in-  
15 puts that he had and extend them out and see how they matched  
16 with the inputs he then had with the result that we had come  
17 up with.

18 Now he came up with 5.2 and to me, that is amaz-  
19 ing. And I don't know; it is just extremely surprising. If  
20 it had come up 5.3 or 5. -- been off 2 or 3 fractions of  
21 our -- or decimals, I would have had equal confidence in it.  
22 Because this thing is not that exact.

23 The fact that it hit precisely on what we had  
24 projected is almost incredulous, that it would be exact. But  
25 anyway, he made -- he went through all of his process again



rb3

1 on a class-by-class basis and came up with a class-by-class  
2 answer.

3 Q But my problem is this -- and the thing I am  
4 trying to understand, and again, I am just trying to under-  
5 stand --

6 A Sure.

7 Q We have got some months that come -- sort of come  
8 together, and we have got some methods that sort of come to-  
9 gether, and I am trying to get my mind clear on what went on  
10 here.

11 I would read by this one, this statement here, and  
12 reading the other material in this document that there was a  
13 very careful calculation of these numbers to result in --  
14 after you had gone through class-by-class and over a period  
15 of years or whatever, that the above calculations result in  
16 a 5.2 percent growth rate per year.

17 A Yes.

18 Q That method and this number was Consumers Power's  
19 estimate of future load growth?

20 A Yes, sir; that is correct.

21 Q But that's not the way it actually was done for  
22 1976? You did it with the probability encoding method which  
23 came up with the same number? Is that right?

24 A But the probability encoding was simply the judg-  
25 ment that these men had placed on all of the input

1 information and it so happened that it coincided with what  
2 was produced by the arithmetic.

3 Q Now the arithmetic -- suppose we had interrupted  
4 six.

5 A Yes.

6 There was certain arithmetic done early, let's  
7 say in July, August and September, and certain of this information  
8 was made available to the members of the committee.

9 They didn't have a good idea of how it all added  
10 up, but a lot of their arithmetic was made available to them.  
11 They were asked, then asked, to come with their judgment of  
12 that. And I will call that the encoding method this time  
13 rather than just conferences. They came up with their judgment  
14 of it.

15 After they had come up with their judgment, I  
16 asked Mr. Bickel to go back now and take all of the inputs  
17 that you have and do the arithmetic and see what kind of an  
18 answer you get. And he came up with the same answer.

19 Q And when did you ask him to do that? after October?  
20 bar?

21 A Well, I can't recall precisely, but it was after  
22 September 27th, which is the date we had come to our conclusion.  
23

24 Q Do you remember when he finished checking it out?

25 A No, sir; I don't. We may be able to supply that

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1 date.

2 Q May I refer you to Appendix A to that, and let  
3 me try to help you find it, because I had -- I think it is --  
4 well, the easiest way is to find Section 2 and back up about  
5 three pages.

6 MR. CHERRY: This is in the original document?

7 DR. LEEDS: I have the amended one, is what I  
8 have, but there is no changes on Appendix A -- Exhibit A;  
9 it is Exhibit A. And it is marked A-1.

10 THE WITNESS: I have a page here with A-1 at the  
11 bottom, Exhibit A at the top.

12 BY DR. LEEDS:

13 Q Right, and it says, "Models for Projecting Long-  
14 Term Industrial Sales."

15 A Yes, sir.

16 Q My question is: Were these two models used in  
17 the final results; namely, the result of probability modeling  
18 session explicitly to calculate the load limit -- the load  
19 growth rate. Excuse me.

20 A Dr. Leeds, these models were used ahead of the en-  
21 coding and again, Mr. Sichel can't be certain about this,  
22 but I am quite certain they were used again in the confirma-  
23 tory, or a later study was made.

24 Q So let me try to summarize that:

25 Essentially I can take all of the information in

oarbl1

1 the ER with respect to load forecasts, like I have just been  
2 referring you to.

3 A Yes.

4 Q And say that that material was done prior to the  
5 encoding session, or it was later redone in a confirmatory  
6 method, but the actual load forecast used by Consumers Power  
7 was the probability encoding method, which only used this as  
8 input data to the group of people who determined the number.

9 A I believe that is essentially correct.

10 Q I have one more question and then I am finished:

11 When did you inform the Staff that Consumers Power  
12 Company was using probability encoding methods to make load  
13 forecasts?

14 A When you say the Staff, you --

15 Q NRC Staff. If you know.

16 A I personally didn't inform them at all.

17 Q Thank you.

18 CHAIRMAN SCUFAL: Dr. Luebke has a question.

19 BY MR. LUEBKE:

20 Q Yes, Mr. Hosely. Does the long-range forecast we  
21 have been talking about for this year, or for prior years,  
22 come up for scrutiny in other regulatory agencies like at  
23 the state level or at the federal level?

24 A Yes, sir. I would say that I have not engaged in  
25 the scrutiny as close as this at other places, but it has

1 been brought up in rate cases.

2 Q What agencies do you know that examined this?

3 A The Michigan Public Service Commission goes into  
4 our load forecasting methods. I had experience with some  
5 review of this in connection with periods before the SRC  
6 three or four years ago.

7 It is my understanding that it gets some consider-  
8 ation before the Federal Power Commission when we are in for  
9 rate matters concerning wholesale. But I have not participated  
10 so it is kind of hearsay.

11 End #3  
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Q That was my next question, whether you personally had attended any of these hearings?

A The ones that I personally have attended have been before the Michigan Public Service Commission and the NRC.

Q And would you say that any of these have been the adversary process, where people argued with your numbers?

A Well, certainly at the Michigan Public Service Commission there has been what I would call adversary, in which the Attorney General has taken issue with them.

We mentioned earlier that the Public Service Commission authorized their own independent study, when they then compared with ours -- not in a rate case, but as an outside activity. I'll call it that.

So there has been some criticism, yes.

Q Now, the thing that brought me into this line of questioning is my reading of the transcript of yesterday, at page 3227.

The question was:

"Can you describe for us Consumer Power Company's process for arriving at a long-term load forecast prior to implementation of the Public Utilities Encoding Technique in 1976?"

That's inferring that this may be something new.

And you answer:

"Well, I would like to make a point here that I

page 2

basically will be describing the same thing in both cases, because the process hasn't basically changed."

Meaning, I take it, that it's more or less been going on for several years, is that correct?

A . Yes, sir. The basic problem of providing input and having the Committee come to a consensus decision, those two principal features have not changed.

Q So, now, then, before you -- when you go before the Michigan agency and put your case, how has your case come out over a period of several years? Do they accept the validity and do you have a history of accuracy, if you will, that you can express?

A Well, sir, it's very hard for me to judge how the Commission -- as a matter of fact, I don't see all the orders that come down as the result of those rate cases, so I'm not in a position to say whether they single out load forecasting for an appraisal or evaluation, or not.

So I really just haven't any measure where I could say, yes, they say it's good, or, yes, they say it's bad, as part of their general conclusion on the rate case.

Q So you really don't know whether the teacher gave you an A or a B+ for that experience?

A That is quite right. I couldn't substantiate any position in there.

Q: ... also say in your testimony that you decided at any point by the market conditions, the actual experience -- can you give any indication, historical background of what experience, year or years, as to how far off or how close you've come to the target?

A: Yes. I can give some general responses to that.

With respect to forecasts -- well, I'd better break up. Of course, we start with the next year each time we make a new goal, and so that the short-range -- I'll call it that, the next year or two in advance -- has had really quite accurate, with one or two major exceptions.

And I believe that I am right in saying that for a period of five years before 1974, these short-range estimates didn't deviate from the actual load. I think the average was about half a percent.

Q: Excuse me -- half a percent? Out of the three we're talking about, or half a percent of --

A: No, half a percent of the total load.

Now, an exception I made, especially for 1974 or '75, when we did not anticipate the depression situation, and our estimates that had been made, even the year before, were cut by -- I don't remember the numbers, but 10 or 15 percent on a total load basis.

So we actually had reductions in our load those two years, rather than any increase. We had been anticipating



increases in the order of 6-plus percent.

The five-year forecasts have had greater variations in their accuracy -- or inaccuracy, I should say. We have missed some of those, and especially if you look at the five-year forecast that was made for '74-'75, I think we were as much as 35 percent off. That, again, reflected primarily the serious dip or decline in our load, which I would have to say we didn't anticipate.

There's never been a five-year forecast that's been precisely on, but as a general thing, having those big decreases that were unforeseen -- totally unforeseen -- we usually missed five . . . something in the order of five to ten percent.

Now, we've had just about as many pluses as we have minuses. That is to say, we overestimate just about as much as we underestimate.

Q This five or ten percent on a one-year forecast, or --

A On a five-year. I do not have in mind numbers on a one-year basis, but that's been the five-year.

Now, again, on the five-year basis we had a considerable overestimate for '74-'75. I think I mentioned that before.

One point I mentioned before is in 1974 we were estimating something like five or six percent increase in

'75, and '76 had still another decline. In other words, our general belief was that we were going to begin to get out of this low economic activity in '75, and it didn't really begin to materialize until late in '75 and early in '76.

Q Now, Mr. Mosaley, these economic recessions occur, or seem to occur, sort of periodically in recent times, like in a little over four-year intervals. Are you now making provisions for something which might happen, say four years from 1974, which would be in the 1978-79 area, in these present forecasts?

A Well, sir, we have considered that. And one bit of information we had when we last went through this, for the '76 period, was the results of the Chase macro econometric model, and they were at that time predicting or forecasting a depression type situation in '78, with a rebound in '79.

So that's one bit of information that we had.

Now, later, I'm told, the Chase outcome shows that that dip has been pushed back a year, that they now expect it in '79 with a rebound in '80.

But we tried to use that, and we haven't yet come up with a cycle, like you talk about maybe it's on a four-year cycle. We haven't adopted a cycle as yet. I'd just say that we really can't pinpoint what years these events are likely to happen.

Now, we are taking steps to -- I keep saying "we",

and I'm out of the business now -- but last December we hired a statistician who has a master's degree in statistics, and he also has a master's degree in mathematics, and is working on a Ph.D in statistics. And he is now full-time investigating these statistical backgrounds, and we're hopeful that we will have a more sophisticated set of information in the future.

Q And perhaps in your ten-year forecasts, since this happens every four or so years, the dip will happen twice in ten years, it doesn't really matter whether it happens in 1973 or 1979, just so long as it happens sometime?

A Well, that is right. These numbers that we have, as I mentioned, have two purposes. One is to tell us when we should start building a new power plant if we're going to need one. And these new power plants now -- all that have any real possibility of being built -- have a ten-year lead time. So we'll need to know what the average, or the cumulative effect, is out to that period for that purpose.

I don't want to neglect the other purposes. We need a breakdown between classes so we can study rates and other matters. But with respect to being able to meet the responsibility of meeting whatever demands our customers put on, the most important figure is the one that's furthest out, the ten-year or so number.

Q Realizing there are other factors that enter into

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the forecast besides this economic recession period, is there any mathematical way to isolate this and say that with regard to all the other factors, it comes out rather well?

A Well, it could certainly be done by analysis of the historical information. We can, through mathematics and solving the simultaneous equations or regression analysis, we can come up with the relative influence of other things such as population, such as disposable income, such as -- well, economic activity.

But these things can be analyzed, and they are analyzed, and that's part of what Mr. Bickel does, is to find these things out.

But where we get into the real problem is, are those relations going to continue in the future? With all the new concerns that we have about energy and conservation and reducing waste, and availability of the various fuels, will those things continue? That's the big thing that hits a load forecaster. He can have confidence in what has been the causal factors in the past, but since he's talking about the future he had to know, or has to have some confidence or lack thereof for the future.

DR. LUEBKE: Thank you, Mr. Mosely.

BY DR. LUEBKE:

Q Mr. Mosely, let me ask you one quick question. I said I was finished, but I just inadvertently forgot to ask

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you this one.

The methods of probability encoding applied to load forecasting in large utilities I gather is new at Consumers Power. Could you tell me the names of the other companies that use that method?

A Dr. Leeds, I don't know any other electric utilities that use this method today.

Q So would it be correct to say that it's new to the industry?

A Well, to my knowledge it is new, yes, sir.

DR. LEEDS: Thank you, sir.

CHAIRMAN COUFAL: Any cross on the Board's questions?

(No response.)

CHAIRMAN COUFAL: Mr. Rosso?

MR. ROSSO: I might have a couple of questions on redirect, but I'd like five minutes, if I might.

CHAIRMAN COUFAL: All right.

(Recess.)

end 4

CHAIRMAN COVENS: Do you have any more questions,

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Mr. Rosso?

MR. ROSSO: Yes, I have just a few.

REDIRECT EXAMINATION

BY MR. ROSSO:

Q Mr. Rosely, could you describe for us what the function of the Executive Energy Forecast Review Committee is?

A Well, its function is to accumulate from its staff all of the information it can that is pertinent to what the demand, what the uses of electric energy may be for the long-term future.

This information comes from two major general sources. One is from the staff, studies that they make of what the trends have been, what the causes of those trends have been, and then other information from business sources, from other organizations that analyze and project future situations that may impinge upon the use of electricity in the future.

And then, having accumulated and assimilated this material on an ongoing basis and on the basis of conversations, discussions, meetings of the committee, they finally review this material and come to an executive decision, if you will, as to what the future is likely to be in this area.

Q Was the function of the Energy Review Executive Forecast Committee, if I've got that right, in 1976 any

different than it was in prior years?

A. No, sir, there was no difference.

Q. Other than a specific ruling on the company's energy forecast or load forecast by the MPSC, have you had any other indication as to the MPSC's attitude toward the accuracy of the current long-term load forecast?

MR. CHERRY: Mr. Chairman, I want to object to that question. It calls for a conclusion.

It seems to me it is a totally unreliable answer. This gentleman has admitted he did not follow the orders carefully. He doesn't read them all. He hasn't been to all the hearings.

He further states that the MPSC makes a collective judgment on rates. It's very difficult, et cetera.

This answer is now asking for this witness, who has self-proclaimed himself as not privy to that information, to speculate on what the MPSC does. That's a totally improper way to get that in. It's extremely prejudicial.

CHAIRMAN COUPL: I agree with you in general principle. I don't know how much weight it's going to have, but I think Dr. Leads opened that up with his questions.

I think in view of that this is a proper question on cross, or on redirect.

BY MR. ROSSO:

Q. You may answer, Mr. Mosely.

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A. I'm aware and I saw the results of a study that the MPSC conducted. As I recall it, it was in late '74. I believe the report came out in early '75, in which they analyzed the load forecasting or made the forecast for Consumers Power Company on the basis of their techniques.

And I know that the result was that they projected that the loads on Consumers Power's system would grow on the long-term basis in the range between 5.3 percent and 6 percent.

So I believe that's the only specific incident I can refer to.

Q. During questioning, I believe by Dr. Luebke, you referred to a 5 to 10 percent deviation which related to something in your 5-year forecast. I was wondering if you could clarify exactly what it was you were addressing there.

A. I meant to answer that question in the same way I had answered his other specific question, but what it means is for an average period that the actual loads had deviated from the estimated loads by 5 to 10 percent.

Now, that's the total load. It's not a segment of the load, nor does it mean the growth rate. It means that the total load of the system was 5 to 10 percent greater or less than the total estimated load.

MR. ROSSO: I have no further questions.

MR. CHERRY: Mr. Chairman, the Board's questions



have prompted a few that I have. They won't be very long.

## RE-CROSS EXAMINATION

BY MR. CHERRY:

Q Mr. Mosely, Mr. Rosso asked you -- by the way, during the break you discussed these questions and answers with your counsel, did you not?

A Yes, sir.

Q Now, Mr. Mosely, Mr. Rosso asked you --

MR. CHERRY: I might suggest, Mr. Coufal, that it is improper to have a break to discuss with the witness his testimony on redirect. That is, in all court cases in which I have been the judges or administrative officers always direct the witness not to discuss his testimony with anyone while he is on the stand.

MR. ROSSO: Mr. Chairman, I guess I have to say something about that.

We were under no such direction, and I have never heard of such an application or such ruling in an administrative hearing.

I suggested to the witness what questions I might want to ask and asked him what answers he would give, and that's perfectly proper. It's the same thing you do when preparing written testimony.

BY MR. CHERRY:

Q Mr. Mosely, Mr. Rosso said to you that the function,

or asked you what the Energy Review Committee, Executive Committee's function was; and you said to assess these trends, et cetera, et cetera.

Do you remember the answer you gave?

A In a general way, yes.

Q But you also told Dr. Leads that the backup information was never tied to any of the judgments in a discernible way by the members of the Executive Review Committee, is that correct?

A I would like to know just what you mean by "discernible."

Q No one was ever asked to justify their conclusion or to tell you what it was based upon.

A No, sir, that is correct. They were not asked to justify their conclusion.

Q Right, or to explain it.

A Well, I guess that's right.

Q So that you have no real way of knowing whether the members of the Executive Review Committee considered any particular background data important or how they used it.

A Yes, I have a way of knowing. As I said during the questioning period, we had a list of items before us. We did indeed chat. I can't give you specifics, but we certainly had a free and open discussion about the information that had been provided to us by the staff; but they

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were never asked to evaluate exactly what weight they were giving to that.

Q So that no one really knows how each member of the Executive Review Committee believed each particular factor would either increase or decrease his feeling as to projected load. Only he knows, isn't that right?

A Well, sir, I'm not even sure that I know exactly how those things worked on my judgment. They were there, but I don't know just how they worked.

Q Now, Mr. Mosely, you would agree with me that in order to evaluate demand forecast into the future, particularly those ones which would have a tendency to either increase or decrease demand -- and we talked about some of those yesterday -- it's really impossible to evaluate the Executive Review Committee's probability encoding experience?

A I'll have to have that again. I lost the trail.

Q I say if we take some of the factors that would have a tendency to decrease or increase demand that we discussed yesterday -- do you remember those?

A Yes.

Q And we gave some importance to those factors and we wanted to find out how sensitive any one of those factors was to a particular judgment by a member of the Executive Review Committee, it's impossible to make that kind of analysis. Isn't that correct?

7  
A I think it's impossible to evaluate anyone's judgment process.

Q I didn't ask you about anyone's judgment process.

A Well, these gentlemen's process.

Q I asked you, and I'll repeat it again, that if we wanted to evaluate the sensitivity of any of the factors that we talked about yesterday that would have a tendency to increase or decrease demand it is impossible to do given the process you described as to how Consumers Power Company reached its load forecast on the probability encoding technique.

A I do not agree with that.

Q Okay.

How can you evaluate Mr. Simpson's sensitivity to any one of the factors?

A We can tell Mr. Simpson that we are going to go into this matter in some detail and ask him to prepare himself for it and give him some time and let him go through whatever he feels to get himself well acquainted and marshal all his thinking, and then we could sit down and talk with him about it. And I think we could come up with some kind of a measure as to what impact that had.

It will not be a precise measure, but it will be a general indication.

Q But that's something we could do after we got

another data base, if I had this conversation again with Mr. Simpson, or any of the others. I'm talking about today. Based upon your testimony and the information that we all know right now, you would agree with me that that is impossible today to assess the sensitivity of any of those factors to any of the gentlemen who made the ultimate judgment on Consumers Power load forecast, including yourself?

A I cannot say that.

Q Well, then what is Mr. Simpson's sensitivity to any one of the factors we discussed yesterday?

A I don't know.

Q Can you tell me what any one of those gentlemen's sensitivity was to any of those factors?

A No, sir.

Q How would I find out that information without going back and talking to the people?

A I don't believe you could.

Q Now, Mr. Mosely, why did Consumers just hire a statistician who is working on his Ph.D.?

A Because we feel that there is an extraordinary and growing need for expertise in these areas. Of course, we have other statistically qualified people, but we wanted to get a man who could spend full-time and with the best expertise that could be brought to bear in this area.

Q And prior to December 1976 Consumers Power Company

didn't have a full-time expert statistician working on forecasting?

A I believe that's a correct statement. I'm not sure.

For instance, Mr. Bickel's background -- I know he has a degree in mathematics, but I'm not sure how much of that was precisely in statistics.

Q Did you ever ask Mr. Bickel?

A No, I didn't.

Q Did the Executive Review Committee, when they received Mr. Bickel's 3- to 5-page report on the 1975 forecast, go into -- do you remember telling me what the Executive Review Committee looked at? They had a 3- to 5-page report on the 1975 forecast, and I think your exact words were at page 3234 of the transcript:

"We were provided a review statement of what had been put into the latest official forecast, which had been made in 1975.

"Mr. Bickel, I think at my request -- at any rate, he provided the whole committee with a 3- or 4- or 5-page review of the assumptions that had gone into the previous forecast.

"We discussed that, as to whether we needed to overhaul all of the studies that had been made, and we did not have what I would call a full-blown re-do

of all of the basic input data."

Do you recall that?

A. Yes, I recall that.

Q. So is it also true, Mr. Mosaly, that the Executive Review Committee, to whatever extent it did the probability encoding and backup data, was using 1975 information without any update of the specific inputs for at least the year 1976?

A. Well, we didn't have specific new runs of that data. We had information from various sources that certain minor changes were going on, but we didn't ask Mr. Bickel to go and re-do the whole thing. That is right, we did not develop a whole new set of data at that time.

Q. So that the 1975 data, which really is data that was compiled earlier -- '74, '73, '72, isn't that correct?

A. Well, that kind of data goes into any run.

Q. I appreciate that.

A. It's just the end year that gives the name to the data.

Q. But you would agree with me that the 1975 forecast was based primarily on pre-1975 information?

A. Well, and 1975 information.

Q. But it was impossible, and you did not assess any of the -- you did not assess the sensitivity of the '75 and pre-'75 information in any statistical way or mathematical

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way of any of the changes that came about in 1976?

A We did not go through the arithmetic of it.

Q Well, you didn't make any kind of a mathematical analysis.

A That is correct.

Q Now, were there any significant things that had occurred in 1976 to your knowledge which were not known in 1975 which could affect or have a tendency to affect a statistical sensitivity analysis?

A Well, I at the moment don't recall any major events. I know there were some things going on.

I know that one of the things that I was giving consideration to, and I know we were talking about it in our meetings, was what the new political climate would be following the election.

We, of course, made our conclusion before the actual voting, but we gave that considerable thought and discussion; and on balance we didn't see that we could project with any degree of certainty that there would be a major change as it affected the use of electricity.

Somewhat connected with that was whether or not there would be a return to what I'll call a rampant inflation. That was a general concern.

And there may have been some other concepts. I don't recall any others at this particular moment.



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Q But no statistical mathematical or sensitivity study was done, even about the changes you've just discussed?

A That is correct.

Q Now, you said that you couldn't assess whether or not there would be change in the energy policy as a result of the political climate.

Do you now agree with me, Mr. Mosely, that the current energy policy in the United States is different from the one which was pursued by the Ford and Nixon Administrations?

A I have to say that I don't know what the current energy policy is in the United States.

Q Do you think that would be important as a factor in analyzing any utility's projections?

A It would certainly be -- it could be important. It depends on what it was.

Q When you were discussing the possible change in energy because of a political climate, what were the alternatives that you looked at?

You know, you had the Carter alternative; you didn't know exactly what he was going to do yet. You had the Ford alternative. Did you have a pretty firm idea about what Mr. Ford's feelings were about the energy policy?

A No, sir.

Q You did not?

A No, sir.

Q Did the company?

A I don't know.

Q Now, you testified that the longer you're forecasting beyond the budget forecast, which is a 1- or 2-year period, the less mathematically accurate the company has been.

A Yes. I think I made some comment on that.

Q You have a 5 to 10 percent error band on that 5-year forecast. How about the 10-year forecast? Would it go up as much as 25 to 30 percent?

MR. ROSSO: Mr. Chairman, I don't think that's a fair question. The error band testified to was on a year-by-year basis and not for the 5-year forecast as a whole.

MR. CHERRY: That isn't the testimony of this witness.

CHAIRMAN COUFAL: I don't remember what the testimony was. Would you put your question so we don't have to make that decision?

MR. CHERRY: Well, he can correct whatever he said.

CHAIRMAN COUFAL: Do you understand the problem, Mr. Nosely?

THE WITNESS: Well, I'll tackle it.

The statement that I made with respect to the 5 to 10 percent was that in some years the actual load for

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that year would be off as much, plus or minus, as much as 5 to 10 percent deviation from the forecast, and so I was talking about a general condition for several individual years.

BY MR. CHERRY:

Q So that, Mr. Moseley, if I now understand, it is possible then that the amount you were off in your forecast over a 5-year period is greater than 5 or 10 percent, or could be greater, because of the cumulative impact of adding up the deviations in those independent years. Would you agree with that?

A No, sir.

Q You're saying that your 5-year forecasts are never off more than the yearly forecast of 5 to 10 percent?

A No. I still don't quite understand, or I'm confused.

Q Okay. Let me see -- if you take a 5-year period and you're off 5 or 10 percent each of the five years, and then you look at how much you're off for the full 5-year period, you will be off more than 5 percent or 10 percent?

A That isn't the intent that I meant to convey by my answer, is that each of those years would be in the band of 5 to 10 percent taken individually, not on a cumulative basis.

Q What about on a cumulative basis?

A I really don't have that number in mind.

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Q But wouldn't you agree with me if you were off 5 or 10 percent each year, if you took it on a cumulative basis you would be off more than 5 or 10 percent?

A It's a possibility but not a certainty.

Q You don't know?

A Because there are pluses and minuses here, Mr. Cherry, and if I'm off 5 percent in one direction one year and I'm off 5 percent in the opposite direction the next year, then I'm right back on.

Q Right. But the reason I'm asking this line of questions is that Dr. Luebke had asked you a series of questions which on their face seemed to be very reliable. I wanted to point out on cross-examination, at least for the benefit of the Board and Dr. Luebke, that you haven't made the analysis of how right or wrong you are over five years, at least you're not telling us.

A Yes, sir. Those analyses have been made, and I have seen them.

Q Okay. How far off have you been on a cumulative basis over a 5-year period?

A I don't know really what you mean by a cumulative basis.

Q Taking the whole period as a single unit and looking at it and saying, "We projected in the fifth year that our growth would be, by adding up all of the numbers,

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the escalation, it would be this particular amount," and the actual load was another amount. Have you compared those figures?

MR. ROSSO: Mr. Chairman, the problem here -- and I object to the question and the line of questioning is vague, because the problem here is that Mr. Cherry is talking about annual growth rates and the witness is talking about annual load projection, which are two totally different things. That's where the confusion arises.

Mr. Cherry is trying to get an annual load projection through an analysis of annual growth rate, and it just doesn't work that way.

He's just discombobulated because of that.

BY MR. CHERRY:

Q Mr. Mosely, do you want to answer my question?

MR. ROSSO: I have an objection pending.

MR. CHERRY: I don't understand what the objection is.

MR. ROSSO: The question is vague and incomprehensible because of the mistaken assumptions of counsel in asking it.

(The Board conferring.)

CHAIRMAN COUFAL: If you want to pursue that, Mr. Cherry, ask the witness questions that will give us some clue as to whether there is a confusion.

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MR. CHERRY: Well, I don't find any confusion. If you want to sustain the objection, then sustain it.

CHAIRMAN COUFAL: If you don't want to ask him those questions, then we'll sustain the objection.

MR. CHERRY: Okay, fine.

BY MR. CHERRY:

Q Mr. Mosely, you will agree with me that on a cumulative period the farther out Consumers Power projects, the more it is inaccurate in terms of actual results?

MR. ROSSO: I have to object again. We're getting into this cumulative period problem.

The question is again vague because it's unclear whether he's talking about an annual growth projection, average annual growth projection, or whether he's talking about the projection of the load in a given year.

I'll have to object again. It's the same basis.

CHAIRMAN COUFAL: All right. Sustained.

BY MR. CHERRY:

Q Mr. Mosely, if you project a 5 percent increase for each of five years you can mathematically determine what your projection of the load is in the fifth year, can you not?

A Yes, sir.

Q Do you understand what I mean?

A I understood the situation you just posed.

Q Okay. If you have a projection which projects an

average growth per year, and you look at your projections cumulatively over a 5-year period by adding up all of the projections for the period within that five years -- do you follow me so far?

Do you follow me? That's the only question I'm asking.

A. Not precisely.

Q. All right. What do you have difficulty in following?

A. Well, when you say "cumulative," do you want me to accumulate a 5 percent compounded each year? Is that what you want me to do? Or do you want me to accumulate the increase in load each year in terms of kilowatts?

A. I want you to do exactly what would be the result of adding up what you believe the load would be in five years for any particular period by virtue of how you do your load.

Now, you say you do a load forecast projection by making annual increased projections, isn't that right?

A. Yes, sir.

Q. So if you took the annual increases for a 5-year period we could find out what you believe your load will grow in five years?

A. Yes.

Q. Okay.

MR. ROSSO: I have to object to both of those questions. I was trying to get it in.

Again, there were some assumptions in the questions which were incorrect.

He said if you accumulate the load that you projected during those five years, and there is no testimony here that you accumulate load over five years.

The problem still exists there that counsel has a mistaken impression as to what this is about. Those answers are confusing because of that.

MR. CHERRY: They are not. He answered it for you. I'm talking about the effect of the annual increased projection in a particular year and then adding those results up.

Mr. Mosely has now told me that if you add up the increases each year and add them to what you started out with you will get what the projection is in the fifth year.

BY MR. CHERRY:

Q. Isn't that right, Mr. Mosely?

A. Yes, sir.

Q. Okay. So you explain it to your lawyer during the break, because he's the one who's confused.

What I want to know, Mr. Mosely, is what is the error band, i.e., the deviation, in that fifth year by going through the process I just stated, greater or lower, when you compare it with the actual result in that fifth



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year by adding up all of the loads?

MR. BOSSO: There we go again. We're adding up the loads instead of the increases in the loads.

End 5

Objection. Vague. Confusing.

CHAIRMAN COUFAL: Well I am confused. I don't know whether that is because I don't know much about what you are talking about, or because the question is confusing.

(Board conferring.)

CHAIRMAN COUFAL: Are you trying to get at this, Mr. Cherry, that there may be two ways of computing what the forecast is going to be in the fifth year?

MR. CHERRY: No.

CHAIRMAN COUFAL: You are not trying to get at that. Well, I am confused. I don't know what you --

MR. CHERRY: Look, the witness has said that the way they arrive at the five-year forecast is to add up the increases each year within the five-year period.

And he said that they get a number, and therefore, you can take all those increases, add it to the base load, and get a number in the fifth year.

Okay.

Looking at the whole period as a unit, and I want to know if you look at the underlying data of actual load during that period, is he off more than 5 or 10 percent.

That is the same question.

MR. ROSSO: In the fifth year?

MR. CHERRY: In the whole period, not just the fifth year.

CHAIRMAN COUFAL: The question is whether he is

going to be old more than 5 or 10 percent using --

MR. CHERRY: The fifth year as a single point of comparison but comparing it on the increase over year in order to allow for the figures.

MR. ROSSO: Do you see what my problem is, Mr. Chairman.

First, if we were asking that question with regard to the fifth year, then it is an answerable question.

But if he is asking it as he put it, for the entire period, then it is not an answerable question.

MR. CHERRY: Yes it is.

MR. ROSSO: It is not.

I am sorry, but it just is -- the assumptions that you are making, sir, are just not right. You don't have the math right, the process, and the answer is unintelligible -- the question is unintelligible.

I object, vague.

CHAIRMAN COUNSEL: Mr. Rosso, are you following what counsel, Mr. Cherry, is saying?

THE WITNESS: Well, I am having trouble with talking about the fifth year as a measure, and then talking about the average over the period, or taking the whole five-year period as a measure. This confuses me.

If we were just talking about the fifth year --

MR. CHERRY: No, we aren't just talking about the

Q fifth year, we are talking about the whole period but taking the five-year period as a single unit, and only using the projections each year to arrive at what you think the increased growth will be at the end of the fifth year for all of the five years by looking at the individual years and adding them up.

BY MR. CHERRY:

Q Now you follow that, don't you, Mr. Mosely?

MR. ROSSO: I don't. I object.

I think again it contains mistaken assumptions, on the same basis that I objected before. Impossible mathematics.

CHAIRMAN COUFAL: Dr. Luabke says there is a problem here with the use of your word growth in the question, Mr. Cherry.

MR. CHERRY: Well, Dr. Luabke, with all due respect is just wrong, and I will do it on paper, because this is just high school mathematics.

BY MR. CHERRY:

Q I want you to do a couple of assumptions, Mr. Mosely, and you take a piece of paper and you follow me, okay?

Let us assume that in the first year of a five-year period, and let's call it year one, your base, actual base load is 100 megawatt, okay?

Are you with me.

A I has the number down.

and

Q Now for the first year you increase it 10 percent, that is your projection, you get 110.

A All right, sir.

Q Second year you increase that by 10 percent. How much will that give you?

A Well, 10 percent, that would be 121.

Q Okay.

Another 10 percent projection in the third year, what will that give you?

Of the total now, so far?

A It will give 12.1 percent increase in that year.

Q No, no. But what is the figure? What is 10 percent of the previous total?

A Is 12.1.

Q No, what is the actual megawatt figure?

A 10 percent of 121 is --

Q No, but it is not 10 percent of 121. It is 10 percent of 100, plus 110, plus 121, isn't it?

MR. ROSSO: No, it isn't, sir.

MR. CHERRY: Now wait a minute.

Are you telling me that when you make a projection in the third year out, that you are only talking about a 5 percent increase from this year, or from whatever happened to be at the end of the second year out?

THE WITNESS: From whatever happened to be the second

5 year out.

BY MR. CHERRY:

Q Okay.

Now, let's go back to my mathematics. We started with 100 megawatts, right. And in the first year you projected 10 percent increase, okay?

A Well, that's my assumption. Okay.

And we now have at the end of the first year, if the projection equals the load, we have got 110 megawatt, correct?

A Correct.

Q Now we project 10 percent increase on that in the second year.

What does that figure?

A 11.

Q 11. Okay.

And we add 11 to 110 and we get 121, right?

A Yes.

Q All right.

In the third year it is going to increase 10 percent.

What is 10 percent of 121?

A 12.1.

Q Okay.

And we add that on to the third year, and what do we get at the end, how much?

A 133.1.

Q Okay.

In the fourth year we have taken -- 10 percent was the figure at the end of the fourth year.

A Do you want me to add something?

Q I want you to add -- we want 10 percent is of 133.1, add the two figures together and give me a result.

A If I have done this right, I have 146.41.

Q Now do it for one more year, the fifth year, take 10 percent of the cumulative impact of your projections through the fourth year and add that and give me a final figure.

A 161.051.

Q 161.051. Okay.

Now we started out in the first year with 100 megawatts, right?

A Yes, sir.

Q And using a 10 percent cumulative increase each year, we arrived at 161.051 megawatts. Right?

A Yes, sir.

Q In effect we got a 60 percent increase over five years, correct?

A I don't see a 60 percent figure here.

Q Well the difference between -- well, it is more than 60 percent. The difference between 100 and 161 over five years is more than 60 percent increase, correct?

A Yes, sir.

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Q Okay.

Now let me ask you this question, Mr. Mossy.

Do you believe that over the next five years

Consumers' load as of today will increase in the aggregate by 50 percent?

A I would like to have the numbers again?

Q I just want to ask you if you believe that between now and the end of the fifth year, Consumers' load, the actual amount it has to give out, will increase by 50 percent?

A No.

Q Do you think it will increase by 25 percent?

A Yes.

Q You do.

Now, 25 percent is equivalent, on the basis of Consumers' load, to how many megawatts?

A You are talking about megawatts now, demand rather than energy?

Q I assumed that is what you were talking about.

Or were you talking about energy sales?

A I have been talking about energy sales.

Q Do you think your energy sales will increase by 25 percent over the next five years?

A Yes, I do.

Q Let me ask you a question.

Do you think that between now and the end of the



fifth year, that industry will increase its energy use by 15 percent over the next five years as a gross total?

A It is somewhere in that order, but I don't want to latch on to any number without doing some arithmetic.

Q But you do believe that industry in Michigan will increase its energy use by about 25 percent?

A I think it will be a little less than that.

Q How much less?

A Well, I don't know. 20 percent, maybe.

Q 20 percent?

A I am putting numbers, I ought to do some arithmetic to organize my thinking. But it is in that general ballpark.

Q Now, do you know how many of your major customers have committed to the Federal Energy Administration to reduce their use of energy from its present relationship to something like 10 to 13 percent?

A No.

Q You do not.

Now, if those companies included General Motors, Dow Chemical and other companies of that genre in your service area, that they all had committed to the Federal Energy Agency to reduce over the next five to ten-year period their energy consumption by 10 to 13 percent, taking that as a given, okay, would you then agree with me that it is incorrect to assume that industry energy consumption in Michigan

it would go up by 25 percent.

MR. J. ROSS: Objection.

The witness never testified that every steel mill by industry in Michigan would go up by 25 percent.

MR. CHERNY: Now, just a moment.

If you are going to say that he testified to that, let's get the witness out.

I have asked him if he would agree with me now. That is an appropriate question on cross-examination. And if he now wants to make an argument on the merits of that as to what this witness said, I want the witness to leave the room.

We have gone through this now for three weeks; I ask a proper question, do you agree with me, and he says I mischaracterized the testimony.

I have a right to ask those questions, you have said that a thousand times and I want an order now that any time Mr. Rosso wants to state that I am mischaracterizing testimony -- because you haven't sustained one of those objections -- before he does it he gets up and says I want the witness to leave, because that is the way we are going to try this hearing.

MR. ROSSE: We have done some research on that --

MR. CHERNY: Now I don't want another fact at all mentioned --

MR. ROSSE: This is not a fact. I am talking about Iowa now.

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CHAIRMAN COUFAL: Wait a minute.

MR. CHERRY: I ask the witness be removed from the room.

CHAIRMAN COUFAL: Wait a minute, are you through now Mr. Cherry? Mr. Rosso?

MR. ROSSO: We have done some research on this point as to whether it is proper on cross-examination to mischaracterize testimony.

The law goes back to the old English cases, that it is thoroughly improper, and that all such objections should be sustained. And we are prepared to provide the Board with that law and with those citations.

I have never heard the argument that it is proper to mischaracterize testimony on cross-examination in any other proceeding. Any other proceeding it is totally improper, and this Board should sustain those objections.

The words of the commentators are absolutely vehement about what an improper practice that is, and we are prepared to provide that to the Board.

MR. BOEFLING: Mr. Chairman, the Staff agrees with the license that this continual mischaracterization of the witness's testimony on cross-examination has got to stop.

MR. CHERRY: Mr. Chairman, I have not mischaracterized the witness's cross-examination, and if I ask a question which appears to be in conflict with his prior testimony, he

will

is the person that should tell me, not his lawyer, and not Mr. Woodling saying "no too."

I don't want another word stated about that testimony until Mr. Masoly has left the room.

MR. ROSSO: That is not so, sir. The law is clear that it is the duty of counsel to protect the witness in any situation in which opposing counsel on cross-examination mischaracterizes testimony.

The law is also clear that those objections should be sustained. And as I said before, we are prepared to prepare you with that -- to provide you with that -- prepared to provide you with it.

This is just unconscionable.

CHAIRMAN COUNSEL: Well, I don't know how your conscience works, Mr. Rosso, but there are several considerations I have in mind.

One is that you are dealing with an expert witness, you are not dealing with somebody off the street that saw an automobile accident. And an expert witness ought to be able to tell counsel whether or not he agrees that this is the situation.

Now if it isn't a situation that he can agree with, he ought to be able to say so.

If a question was put which had improper assumptions in it and the witness was not asked if he agreed with that, if

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they were just assumptions that were built into the question, then I say you have got a better point.

But when the witness is asked whether he agrees with a stated situation, then I am hard-pressed to find something wrong with the question.

MR. ROSSO: Mr. Chairman, it is my obligation to protect the witnesses admitted by Congress Power at this hearing. I will continue to do so.

CHAIRMAN COUFAL: I don't have an objection to that. We are not talking about that, we are talking about ruling on your objection.

MR. ROSSO: Okay.

Now if I think that either advertently or inadvertently opposition counsel in asking a question has eliminated a word or slipped a word in that the witness might not catch in the question because he is thinking about a substantive issue and he is not looking to the specific words, like the difference between electric energy use and --

MR. CHERRY: Just a moment now.

Do not mention any word to this witness. I won't --

CHAIRMAN COUFAL: Be still, Mr. Cherry.

MR. CHERRY: Mr. Chairman, this has gone on --

CHAIRMAN COUFAL: Now I don't think this is a cause to start World War III.

MR. CHERRY: Very well, but can we have the witness

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removed if we are going to have an argument on merits?

CHAIRMAN COUFAL: We are not going to do that.

I am going to overrule the objection, I am going to let the reporter restate the question. The witness can answer. I have heard enough about it.

Mr. Heafling, you don't like it either, I suspect?

MR. ZOMPELINS: Mr. Chairman, I just raise the problem, if the witness testifies as to a certain judgment or a certain opinion on his part, and then we have a question which contains a mischaracterization of that judgment, and the witness responds to the question, where are we in the record?

At that point is counsel to object that the implicit --

CHAIRMAN COUFAL: I am not barring the counsel from objecting or you from objecting, if you want to, Mr. Heafling.

I am just ruling on an objection that was made to the question. I am explaining to the counsel what my rationale was.

Now I may be dead wrong, but that is the way I see it. When you are dealing with expert witnesses, you have got a right to ask him questions and ask him if he agrees with that statement of fact, and the expert ought to be prepared to meet that kind of an interrogation.

MR. CHERNY: Ms. Reporter, will you please read back the prior question.

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Therefore, the reported leak from the record

is follows:

"Q You do not.

"Now, if those companies included General Motors, Dow Chemical and other companies of that genre in your service area, that they all had committed to the Federal Energy Agency to reduce over the next five to ten-year period their energy consumption by 10 to 13 percent, taking that as a given, okay, would you then agree with me that it is incorrect to assume that industry energy consumption in Michigan would go up by 25 percent."

BY MR. CHERRY:

Q That is the question, Mr. Mosely.

A Well, when you are talking about the energy consumption, I am sure that you are dealing with all types of energy and possibly more particularly with the petroleum products, since they are the ones that are in the shortest supply, greatest demand.

So I haven't analysed just what the impact would be on total energy if they indeed do accomplish those factors.

Q Did Consumers Power Company at any time in 1976 or today in connection with their forecast -- that is at any time in 1976 and through today in connection with the forecast you are supporting here, discuss the impact of

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reduction in the electric consumption usage by industry pursuant to commitment to the Federal Energy Administration?

MR. ROSSO: Objection.

There is nothing in the record to establish that any such commitment has been made.

CHAIRMAN COUFAL: Read the first part of the question, please?

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

MR. ROSSO: I have objected to that question on the basis that there was nothing in the record with regard to any commitment by industry in Michigan or elsewhere to the Federal government to reduce electric energy consumption.

I also wish to inform the Board that I intend to move to strike all of the questions that Mr. Cherry has asked with regard to any such assumed -- and I say assumed -- or purported commitment by industry in Michigan.

We have checked into the facts on that and I would like to see Mr. Cherry come in with some evidence on this because he can't establish these points. So I intend to move to strike all cross-examination with regard to these points.

MR. CHERRY: This is cross-examination.

MR. ROSSO: Unless he comes in and establishes that the industries in Michigan, specifically which he has referred to, have indeed committed to the federal government to reduce



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electric energy consumption by the percentages which he has been throwing around in this room, and he can't do that.

CHAIRMAN COUPAL: All right.

MR. CHERRY: Mr. Chairman, I must just state that Mr. Rosso is absolutely incorrect.

Dow Chemical testified with respect to their commitments to the FEA, General Motors load forecast which is one of the exhibits herein is evidence about their commitments to the FEA. But whether there is such evidence at all in the record is immaterial.

I am asking him if that subject was considered, that's all.

CHAIRMAN COUPAL: All right.

MR. ROSSO: Object.

No foundation. That is my objection.

CHAIRMAN COUPAL: I understand your objection, and I think on cross it is proper to ask the question with an assumption in it, that you ought to label it as an assumption.

So, would you restate the question?

MR. CHERRY: No, I will not restate the question.

Mr. Chairman. If you want to sustain it, fine.

CHAIRMAN COUPAL: All right. Sustained.

BY MR. CHERRY:

Q What consideration, Mr. Nosaky, if any, was given to the fact that industry in Michigan may have commitments with

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the Federal Energy Administration to decrease their electric energy consumption?

MR. ROSSO: Objection.

Again on the same basis.

CHAIRMAN COUFAL: Now he said may have.

MR. CHERRY: Are you overruling the objection.

CHAIRMAN COUFAL: Yes.

BY MR. CHERRY:

Q Mr. Mosely?

A There was certainly a discussion of this. And, as I remember it, some of the people in our energy consultant services, provided us with some information about these requests. I think they were at that time -- I don't believe to the best of my knowledge there were no directives in the firm commitments in September when we were concluding this.

Q You are aware though, that as a fact, the Federal Energy Administration has contacted major industrial sectors and asked them voluntarily to accept guidelines for energy reduction over the next period of years?

A I have read in the papers about some of that, yes.

Q Well, did you ever bother to call the Federal Energy Administration to determine what impact this would have in Michigan, if any?

A No, I did not.

Q Did anybody in connection with the forecast make that

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determination?

A I don't know.

Q And it hasn't been done since September 1975?

A I don't know.

Q Mr. Cassidy, in your judgment, do you agree or disagree that there will be a severe economic slowdown in '78, '79 or '80?

A I think there is some probability of it.

I can't give you an exact assessment of it, but I think it is a possibility.

Q Is it a 1 percent probability as opposed to a 75 percent probability in your judgment?

A In my judgment I would say that sometime '78 to '81 there is better than a 50 percent chance that there will be a rather significant decline -- decrease -- in economic activity.

Q Now in that year, whatever it is, do you believe that the lead growth will be 5 percent over whatever it was the previous year?

A In that particular year, probably not.

Q Now you actually believe that there probably will be a reduction in that particular year?

A Not from what we have estimated, necessarily.

Q There won't be any growth that year, and based upon your experience in '73-75, wouldn't you assume that there would

Q a reduction as opposed to an increase?

A No, sir.

Q Wasn't there a reduction in '74-'75 period as opposed to an increase or even a level?

A Yes, sir.

Q Well, how much was that reduction?

A About a half percent, as I recall.

Q And that was directly related to the economic conditions?

A That was a major factor.

Q Okay.

Now, do you also agree that this economic recession that we are going to have sometime, that the year proceeding -- exactly following it, that the recovery will be so quick that there will be a 5 percent growth on whatever the electric consumption was at the end of that year?

A It is altogether possible because in '76 we have had an 8 percent growth over the previous declined year, so that may repeat.

Q That may repeat?

A Yes.

Q But do you believe it will repeat?

A It is likely.

Q You say the increase after the recession in '78 or '79 is likely based on history but you won't agree that based

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on history in the recession years, there will be a decrease in growth.

Can you explain why you will accept one part of it but not all of it?

A Yes, I will explain my rationale.

Q Go ahead.

A The decline that we went through in '74 and '75 was a much more severe decline than I judge we are going to have in this '78 to '81 period simply because it was complicated by the oil embargo and by things that were happening in the automobile industry.

And the thing that I am visualizing, and I am certainly no seer, but the thing I am visualizing would not impact the Consumers Power Company as severely as the things we have been through. Therefore, I think the trough and the recovery both were steeper than I foresee in the future.

Q Now during the next eight years, do you foresee that there will be two such economic recessions?

A No, sir, I don't.

Q You don't agree with Dr. Luebke's suggestion that these are occurring in cycles of four years?

A Well, I am not sure that he was saying that was a reliable cycle.

Q At least you don't think so.

A I am not prejudging the gentleman in any way. It

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is my concept that we are not likely to have two more serious cycles within the next eight years.

Q How about ten years?

Look at the ten-year period.

A Kind of marginal.

Q Now, if I wanted to find out how many megawatts the net effect of your average increase projection per year would be over a five-year period, I could go through the computation you did just a little earlier, isn't that right?

A Using 5.2 percent?

Q 5.2 percent.

But if I wanted to account for your testimony today that it is unlikely there will be any growth of 5.2 percent during the year that you think is most ~~likely~~ is more likely than not to occur, I would take those total megawatts and in that year, say '79, and deduct from that after I have added them all up, 5.2 percent relative to the '79, isn't that correct?

A No.

Q Why not?

If you say there is not going to be any growth, wouldn't I omit calculating a 5.2 percent increase on the prior year's forecast in the year '79, i.e. the year of this economic downturn?

A I think the testimony -- I hope it is clear -- that this 5.2 is an average number not intended to be

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precise for each particular year.

Q You are saying that your forecast is that each year on the average it will grow 5.2 percent?

A That is essentially what I am saying.

Q And over how many years between now and 1995?

A Well we really didn't press this number out that far. At about 1986 to 1990 is the period which we currently think this may hold.

Q Is the greatest amount of growth going to come in the latter part of this period or the early part of this period?

A I don't know.

Q You have no idea?

A I think the average will be this -- and there will be some big years in the latter part and some lean years in the latter part; there will be some big years in the latter part and some lean years in the front part.

Q Yes.

But an average could mean that you have no growth for five of those years, and a 10.4 percent growth for the second five years if you are looking at a ten-year period. You would then have a 5.2 percent growth each year.

A Mathematics won't substantiate that.

Q It won't?

A No.

It appears as though the amount of the  
of the 1961 tax year was 2.3 percent  
between now and 1961

and to  
Bank file.



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A. As a theoretical, that can be posed.

Q. Do you agree with me that is a possibility, not an actual possibility on your level, but you agree that an average of 5.2 percent would allow for what I have just suggested?

A. No, sir; I don't. I guess --

Q. Let me back up.

Would you agree with me --

MR. ROSCO: Let him finish.

CHAIRMAN COSGROVE: Let him answer, Mr. Cherry.

MR. CHERRY: He says he doesn't. I am going to start it again.

THE WITNESS: I was about to say, Mr. Cherry, that another word has to be added. This is a compound growth, and that is the thing you had me do awhile ago, was a compound. I don't know what the perfect mathematical statement would be, but this is an average compound rate of growth. It depends on what you do your compounding in a series as to what the effect of it is.

And so that is the reason that I made the comment that you have to be careful with the mathematics when you begin dividing this thing up into chunks.

Q. Okay.

But what you are telling me is that this average figure, how ever arrived at, is an average between September

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1 1975 and some time in 1990, at the outside; isn't that cor-  
2 rect?

3 A. No, sir.

4 Q I thought you told us that it covered a period  
5 from today through 1986 to 1990?

6 A. I am not sure whether I --

7 MR. ROSSO: Excuse me.

8 Mr. Chairman, I am going to object to this line  
9 of questioning. It is going nowhere, and I think it is really  
10 irrelevant.

11 (Board conferring.)

12 CHAIRMAN COUFAL: What is your direction, Mr.  
13 Cherry?

14 MR. CHERRY: If the Board doesn't appreciate it;  
15 sustain it. I don't want to explain it to the witness. If  
16 the witness leaves, I will be glad to explain what I am doing.

17 CHAIRMAN COUFAL: Sustained.

18 MR. CHERRY: I would like to make an argument to  
19 the Board outside the presence of the witness.

20 CHAIRMAN COUFAL: You just told us if we didn't  
21 appreciate it on the face of it to sustain it, Mr. Cherry.

22 MR. CHERRY: That's correct. And now I want to  
23 make an argument so you can follow it. But I do  
24 make an argument in front of the witness. It is clear that  
25 you don't, so I will do it. I don't want to do it in front

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1 of the witness.

2 CHAIRMAN COUFAL: Okay.

3 Step out, will you, Mr. Mesely?

4 [Witness temporarily removed.]

5 MR. CHERRY: I would like Mr. Bickel out, too.  
6 please.

7 CHAIRMAN COUFAL: Okay; Mr. Bickel?

8 MR. CHERRY: This is a suspension proceeding, not  
9 a cancellation proceeding. We are not talking about Consumers  
10 Power's need for power in 1984, in '85, '86 or anything else,  
11 or cancelling the Midland plant.

12 We are talking about a suspension proceeding in  
13 connection with need for power, if it is relevant at all, and  
14 I don't think it is because of some legal arguments that I  
15 have made before, in the 1981-'82 period and whether or not  
16 this plant can be delayed for two years, or one year in order  
17 to have a remanded hearing, so that we can be fair about  
18 all the parties' interests in this proceeding.

19 Therefore, it is quite relevant to know whether  
20 or not the growth that the company forecasts is going to  
21 come at a particular point. An average of 5.2 percent, now  
22 ever figured, over a large period just means that if you  
23 look at the whole period you are going to increase each year,  
24 but it doesn't tell you when that load is going to come.  
25 And it doesn't tell you whether it is going to come in '78,

harb 3 1 '79, '80, '81, et cetera.

2 So that the figures that Consumers Power Company  
3 has placed in the record are average figures, but they are  
4 based upon timing. And I want to demonstrate that there is  
5 no --

6 CHAIRMEN CONFAL: On what?

7 MR. CHERRY: On timing. In other words, they are  
8 asserting to you that the 5.2 percent growth rate will in  
9 fact occur, in their best judgment, between now and 1981 to  
10 '82 to make it necessary for them to have the plant on-line  
11 at that particular time. That is the focal point of their  
12 forecast.

13 But if there has been no analysis done in connec-  
14 tion with the 5.2 percent average growth rate to determine  
15 whether it is going to come in low the first few years; the  
16 first few years are going to be on the low side and the  
17 back-end years on the high side, there is no support for  
18 the 1981-'82 schedule by Consumers.

19 Example: What if the actual increase, the actual  
20 projected increase between now and 1980 to '81 is something  
21 like two percent a year compounded?

22 That will cut in half their 5 percent average.  
23 They make pick it up later, but that doesn't support their  
24 case for suspension. That is where I am going.

25 MR. ROSSO: Mr. Chairman, it is clear from the

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1 testimony that has been given so far that Consumers is pro-  
2 jecting a 5.2 percent annual compound rate of growth in its  
3 load, to the year 1981 and '82. That is clear in the record.

4 Now I don't know what Mr. Cherry expects to get  
5 by asking: Could it be 15 percent in 1990 and three percent  
6 in 1979, or '77. I don't think that that is at all rele-  
7 vant. I think this is meaningless cross-examination and it  
8 is not getting us anywhere.

9 The testimony is that through 1981-82, there will  
10 be a 5.2 percent annual compound rate of growth on an average  
11 for those years. And that has been clearly testified to.

12 MR. CHERRY: That is not the testimony.

13 MR. ROSSO: It is too the testimony.

14 MR. CHERRY: You look at their ER. Their fore-  
15 cast is over a period and they just amended it from 19 --  
16 until 1995. That is what their forecast says in the ER. And  
17 that is the forecast. I will read it to you. Board Exhibit  
18 3 --

19 CHAIRMAN COUFAL: Wait; there's a five-year fore-  
20 cast in there somewhere. Where is that?

21 MR. ROSSO: That's also --

22 MR. CHERRY: That's just the same thing. They have  
23 just taken the same forecast and applied it to the next five  
24 years. But their forecast is based upon an average over a  
25 period and I will tell you exactly what it is, because

1     ... loads used is in connection with -- the projections of peak  
2     ... and energy requirements appearing in the tables and  
3     ... and projected rates to the various customers  
4     ... for the period 1981 through 1988.

5             And that 5.2 percent is an average through 1988.  
6     Now if it isn't, I will ask Mr. Messaly and he will tell me.  
7     And that is precisely why I asked the previous question to  
8     find if in fact what Mr. Russo says is correct.

9             And you can't bar an inquiry because Mr. Russo  
10    ... doesn't want -- I am going to ask that question to deter-  
11    ... mine whether the representation of Mr. Russo made to you is  
12    ... correct. Whether they looked at the period between 1976 and  
13    ... 1981, and that's an average. That ain't what happened. And  
14    ... that's why I want to ask the question.

15            MR. RUSSO: Mr. Chairman, with regard to load  
16    ... forecasting, you come with an average annual compound rate  
17    ... of growth and then you take that point work up what your  
18    ... forecast is for energy sales in a given year.

19            I invite your attention to Table 1.1-1 of the  
20    ... Environmental Report which indicates what they believe the  
21    ... load will be. Actually, this is the peak demand which is  
22    ... then derived from the load, for each of those years, 19 --

23            MR. CHERRY: It is not derived from the load. You  
24    ... don't even know what you are talking about.

25            CHERRYMAN COVALL: Mr. Cherry.

1 MR. CHERRY: Well, you are listening to a blind-  
2 man. He --

3 CHAIRMAN COUFAL: You can respond when he is  
4 finished.

5 MR. CHERRY: Okay.

6 MR. ROSSO: -- which is shown for the years 1976,  
7 '77, '78, '79, '80, '81 and '82.

8 Now I submit that the testimony is clear in this  
9 case that the 5.2 percent annual average rate of growth is  
10 projected for the period through 1981 and '82.

11 CHAIRMAN COUFAL: Period?

12 MR. ROSSO: It is also projected beyond that point  
13 in time, but it is projected through that point in time.  
14 That's my point.

15 He says because it is projected beyond that point  
16 in time, that means that it can't be projected for that  
17 period of time, and I am saying that is not true; it is pro-  
18 jected for that period of time and beyond that period of  
19 time.

20 MR. ROEFLING: Mr. Chairman?

21 CHAIRMAN COUFAL: Yes, Mr. Roebling?

22 MR. ROEFLING: It would appear that what Mr.  
23 Cherry is after is an examination of whether or not the  
24 average 5.2 growth rate will hold up for the period that he  
25 is inquiring about, which is through the early '80s.

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1 And I think the witness has testified that there  
2 are going to be some lean years and there are going to be  
3 some good years.

4 And I think Mr. Cherry is going into the basis for  
5 that judgment on the part of the witness. And to that ac-  
6 cent, as it bears on what the growth is going to be cumula-  
7 tively and through the early '80s, it would appear to be  
8 a relevant kind of inquiry.

9 CHAIRMAN COUFAL: Do you have anything further,  
10 Mr. Cherry?

11 MR. CHERRY: No.

12 CHAIRMAN COUFAL: Okay.

13 Get Mr. Mosely back.

14 Whereupon,

15 W. JACK ROSELY

16 resumed the stand on behalf of the Licensee and, having been  
17 previously sworn, was examined and testified further as  
18 follows:

19 REVERSE EXAMINATION (Continued)

20 MR. CHERRY: May I inquire, since I asked at  
21 9:30 whether we had found out whether Mr. Keeley's changes  
22 in fuel costs are based on a computer program and if so,  
23 where if not, can I have an answer?

24 Mr. Roscoe dispatched Mr. Roberts to make a  
25 telephone call. I saw him make the call. He came back here



1 10 minutes later, but no one told me anything.

2 CHAIRMAN COTTEL: Do you have any information,  
3 Mr. Rosso?

4 MR. ROSSO: I don't know what happened, sir, at  
5 this point in time?

6 MR. CHERRY: May I ask the Board to direct the  
7 Applicant to get me an answer before we resume, at the luncheon  
8 break?

9 MR. ROSSO: I will certainly have one for him  
10 at the end of the luncheon break.

11 DR. LEEDS: May I ask a question? Is he going to  
12 call Consumers Power?

13 MR. ROSSO: No. He is going to call the office,  
14 my office, and see whether we know exactly what was done.

15 DR. LEEDS: Because the Board is also interested  
16 in whether or not we are going to be able to get to the  
17 cross-examination of Dr. Tim. And we probably ought to  
18 talk about that. So that if there is some information you  
19 can gather on that same phone call, I just didn't want you  
20 to have to make two calls.

21 MR. ROSSO: You mean whether we are going to be  
22 able to get to him this week?

23 DR. LEEDS: That's right.

24 MR. ROSSO: Well, after lunch we are going to have  
25 a document request of Mr. Cherry. I guess we just don't

1 agree that we have everything we need in order to evaluate  
2 Mr. Mosely's testimony.

3 MR. TOLSON: We will handle it when we can.

4 CHAIRMAN COWLEY: All right.

5 I think to wait here while the reporter finds  
6 that question again is going to take an awful lot of time.  
7 Can you ask it again, Mr. Cherry.

8 MR. CHERRY: I really have to do that. I will ask  
9 it again, but I will ask the reporter when ever we break for  
10 lunch, whether I am finished or not with Mr. Mosely, I want  
11 that particular question asked again.

12 I take it you are overruling your sustaining the  
13 objection to that question?

14 CHAIRMAN COWLEY: I am permitting you to make that  
15 line of inquiry; yes.

16 MR. CHERRY: So that the record is --

17 CHAIRMAN COWLEY: I don't remember the specific  
18 question so I have a tough time ruling on that specific  
19 question. That is why I am asking you to state a new ques-  
20 tion.

21 I am telling you ahead of time that the line of  
22 inquiry will be permitted if the questions are proper.

23 BY MR. CHERRY:

24 Q Mr. Mosely, this forecast of 5.2 percent is based  
25 on an average over a period of time; is that correct?

1 A That is what I think is proper to call an average  
2 compound rate of growth per year.

3 Q And that means that in some years the growth would  
4 be lower than the average and in some years the growth would  
5 be higher than the average?

6 A Yes, sir.

7 Q Has Consumers Power Company, in connection with the  
8 forecast you participated in determined which years would  
9 be lower than the average and which would be higher than the  
10 average?

11 A No, sir.

12 Q Do you have an opinion as to whether those years ---  
13 as to which of those years would be based on something?

14 A Well, I referred earlier to some information from  
15 the Chase Econometric model. I have read certain economists'  
16 projections of cycles in the economy and certain other re-  
17 lated matters. And I certainly cannot pinpoint or say with  
18 any certainty there will be any such dips or rises. And so  
19 I really can't say.

20 I think I said earlier that I had a feeling there  
21 would be some kind of swells in the long growth over the  
22 next several years some time, but I certainly can't give you  
23 the year for it.

24 Q But from the testimony that you thought that it  
25 was more likely than not this economic problem would occur

ar512 1 some time in '78, '79?

2 A Well, that's -- other people have stated that.  
3 It has made some impression on me. I, of course, also think  
4 that there will be some extraordinary rises in the same  
5 period.

6 So I think that some time in the next four to  
7 five or six years, there will be unusual rises and unusual  
8 falls. Not unusual in the sense -- only in the sense that  
9 they are not average.

10 Q Yes.

11 What will the unusual rises come from?

12 A From -- one of the --

13 Q This is rises in electrical consumption; is that  
14 correct?

15 A Yes, sir; that's what I am thinking of.

16 Q Yes.

17 A I think that the stimulation that the new admin-  
18 istration may put into business, housing, industry, are  
19 very likely to cause one or two years of what I would call  
20 very high increases.

21 Q The administration is also making its national  
22 policy conservation and the elimination of waste. Do you  
23 think conservation and elimination of waste, along with this  
24 building, will have a tendency to either decrease electrical  
25 consumption or at least keep it at the same level?

rh13 1 A They will have counteracting effects. I really  
2 expect in my own mind that for one or two years, however,  
3 the stimulation will be greater than the retardation.

4 Q But the retardation -- you told me the stimula-  
5 tion would be balanced off by the conservation activities  
6 and elimination of waste activities; is that correct?

7 A I didn't say balanced off. I said --

8 Q Counteracted.

9 A I said they would work in opposite directions, but  
10 not necessarily offsetting.

11 Q What will work against the recession as a common  
12 prevailing factor to keep it from reducing the tendency  
13 of increased growth?

14 A I think there is --

15 Q In the year of recession, I mean, Mr. Mosely.

16 A Even in the year of the recession I think there  
17 could be a considerable amount of switching from one energy  
18 source to another.

19 Q Mr. Mosely, the 1975 forecast which formed an  
20 input to the 1976 encoding study; -- do you follow me?

21 A Yes.

22 Q What were the bounding years of that forecast?

23 A I can't remember precisely, but basically the  
24 bounding years are 10 years into the future.

25 Q And the same is true of the 1976 forecast?

1           A       That is the fundamental base, yes. We do some  
2 talking and say if we need something for a year or two after,  
3 why we will use this same approach. But fundamentally, they  
4 are a 10-year basis.

5           Q       Now there is a suggestion in the Environmental  
6 Report about a figure of 1990 or 1995. What is the purpose  
7 of that year being put in there, in the need for power sec-  
8 tion?

9           A       Sir, I didn't develop that section so I don't  
10 know the content of it.

11          Q       I will let you take a look at it and you tell me  
12 if the 1995 in Board Exhibit 4 is a suggestion of a bounding  
13 year in the forecast.

14                   (Handing document to witness.)

15                   (Pause.)

16          A       I have looked this reference over, Mr. Cherry.

17          Q       And would you agree with me that at least the ER  
18 talks about a bounding year of 1995 in the forecast?

19          A       What page is that again?

20          Q       Well, I mean, you are an energy planning expert.  
21 Look at the Board Exhibit 4 and tell me what you believe the  
22 representation is as to the bounding year of the long-range  
23 forecast?

24          A       Mr. Cherry, I am trying to see if the word bounding  
25 appears in here.

1 I don't know if it appears in there at all. I  
2 want to know if you as an energy expert can look at the ER  
3 illustration and tell me what the bounds are of the long-  
4 range forecast that is expected therein. Can you not?

5 MR. ROSSO: Objection.

6 CHAIRMAN COURAL: I think that's a good objection.  
7 Refer him to what you want him to --

8 MR. CHERRY: I don't know.

9 CHAIRMAN COURAL: All right, then.

10 MR. CHERRY: It is his exhibit.

11 CHAIRMAN COURAL: It is not his exhibit.

12 MR. CHERRY: The environmental --

13 BY MR. CHERRY:

14 Q You are an expert in energy planning? You have  
15 testified here about forecasts, part of which Dr. Leeds  
16 asked you questions about, that ER.

17 Can you tell me in what section of this ER I  
18 would find a description of what the beginning and end point  
19 is of the long-range forecast?

20 MR. ROSSO: Objection.

21 CHAIRMAN COURAL: Overruled.

22 BY MR. CHERRY:

23 Q Mr. Messly?

24 A I can't without studying it. Today is the first  
25 time that I have seen this report.

1           1       Well, where would you think by looking at the  
2 index you might find that "forecast"?

3                   (Pause.)

4           MR. ROSSO: Mr. Chairman, I think I have no ob-  
5 ject to this line of questioning; questioning this witness  
6 on a document the witness hasn't reviewed before. I suggest  
7 Mr. Cherry read the report and he will find out whether such  
8 a statement is in there or not.

9           CHAIRMAN COOPER: I think that's right, Mr. Rosso.

10          MR. CHERRY: What is not the purpose of my ex-  
11 amination. This witness has stated that there is a particular  
12 bounding period to his forecast. I am trying to impeach that  
13 on cross-examination.

14          CHAIRMAN COOPER: I will sustain the objection.

15          BY MR. CHERRY:

16          2       Would you look at pages 1.1-17 and following of  
17 Board Exhibit 4, Mr. Hecely; 1.1-17 and following.

18                   (Pause.)

19          Now here is the same updated section of Board  
20 Exhibit 4 and I want to know if you can tell me from 1.1-17  
21 and the following pages if you agree with me that Consumers  
22 Power's long-term forecast that is being described there has  
23 an outside bounding year of 1993?

24          A       Well, I find here a page that seems to be number 1  
25 at the top and has ERF Amendment 1 in the lower left-hand



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1 side, and it says Table 1.1-1. And I see there some summer  
2 and winter peak demands listed in megawatts, apparently for  
3 summer and winter for the years -- under the year column it  
4 goes from 1986 to 1995.

5 Q Now what I want to know is whether or not, to  
6 your knowledge, the projection of load forecast in the SR  
7 represents an average 5.2 percent growth rate compounded, as  
8 you explained, from 1976 through 1995?

9 A I believe it does not, but I haven't gone over  
10 these numbers so I can't be certain of that without checking  
11 these numbers.

12 Q Would it be fair to state that the November 1976  
13 forecast that you made was essentially that for the years  
14 beginning 1977 through 10 years following, or 1987, there  
15 would be an average annual compounded increase growth rate  
16 of 5.2 percent?

17 A Mr. Cherry, I believe that you have a misunder-  
18 standing. You keep saying from 1976 on. And the 5.2 begins  
19 after 1977.

20 Q All right, let's say from 1978 and 10 years into  
21 the future, 1988. I just want to find out what is the  
22 period of years that this 5.2 averages. Is it the period  
23 1978 through '88?

24 A Well, sir, in our discussions, we said this is  
25 a 10 -- a forecast that begins in 1977, after 1977, and runs

1 through 1986.

2 Q 1987?

3 A That is a fair certain period. We will say, if  
4 we have to have numbers for certain planning or other pur-  
5 poses, we will use that time coverage also out into the future.  
6 And we didn't say we were going to stop at 1988 or that we  
7 were going to stop at 1990.

8 Q Okay.

9 So that the 5.2 percent average is based on a  
10 period of time that begins 1970 and runs through roughly  
11 1986; is that correct?

12 A That was a fair certain period; yes.

13 Q How did you examine between 1970 specifically and  
14 say 1989, whether those years would be below or above the  
15 average?

16 A We did not evaluate each year on an individual  
17 basis.

18 Q So you cannot tell me if I asked you, within that  
19 period --

20 Let me withdraw the question and state:

21 I assume that since the study that you did didn't  
22 look at it, the question of which of the years would have a  
23 low or high increase, we don't --

24 MR. CHERRY: Could I have the last question and  
25 answer back, please?

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1 (Whereupon, the reporter read the previous ques-  
2 tion and answer as requested.)

3 BY MR. CHERRY:

4 Q If I asked you the same questions about any other  
5 year or two, like I did about 1970 to '86, i.e., will there  
6 be above or below the average, your answer would be the  
7 same; you cannot answer because you did not look at it?

8 A We did not evaluate each year in any specific  
9 year, as an individual entity.

10 Q And the only period you evaluated then, was this  
11 10-year period as a unit, and then you said that beyond 1986,  
12 you kind of used this figure until you made some changes?

13 A Well, I believe I testified that I think you  
14 fairly well characterized what I said.

15 Q Thank you.

16 While you were vice-president in charge of energy  
17 planning, Mr. Mosely, did Consumers adopt any specific  
18 program to decrease the amount of usage of electric consump-  
19 tion in any class of customers, with the intention of de-  
20 creasing the amount of electric consumption in any class of  
21 customers?

22 A I am having just a little trouble making this  
23 evaluation, but I believe that our company offered our elec-  
24 tric space heating customers a financial package assistance  
25 for increasing insulation. And I believe that would have the

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1 result of reducing the use of electricity.

2 Q Let me go about it a different way, Mr. Mosely.

3 CHAIRMAN COUFAL: Just a minute, Mr. Cherry.

4 MR. ROSSO: I think this goes way beyond the scope  
5 of any questions that the Board asked Mr. Mosely or that I  
6 asked Mr. Mosely on redirect.

7 Mr. Cherry finished his cross-examination earlier,  
8 and now he is on recross. And I suggest that he is limited  
9 to questions that were raised by the Board or by myself.

10 So I object to continuing this line of inquiry.

End#7

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So I object to continuing with this --

MR. CHERRY: These questions were prompted by Dr. Luebke's examination.

CHAIRMAN COUFAL: Relate that, please, to what Dr. Luebke asked.

MR. CHERRY: If you have the witness leave, I'll do it.

CHAIRMAN COUFAL: I'll sustain the objection. I don't remember the relationship.

MR. CHERRY: I find that incredible, Mr. Coufal. I have been sitting here trying to help the Board bring out information, and I really must say that I take offense at that ruling, just because I asked to have the witness out of the room while I explained.

But I'll abide by it.

CHAIRMAN COUFAL: Mr. Cherry, I asked you to --

MR. CHERRY: That's all right, Mr. Coufal, I'll abide by it. Don't worry about it.

CHAIRMAN COUFAL: May I say something?

MR. CHERRY: I have judgments to make about whether or not I should spend my time here to help the Board make a judgment on what I think is dishonesty going on here, and I'll make my judgments as to whether or not I want to make a judgment in connection with this Board or wait until I go to court.

wei 2

Now, I have one more question for Mr. Mosely.

BY MR. CHERRY:

Q Mr. Mosely, has Consumers Power Company ever sat down and decided, because of conservation techniques and everything else, over the next ten years, they would like to decrease energy consumption by a particular amount -- any amount -- on a year-by-year compounded basis, and then try to implement a program to achieve that predetermined goal?

A I am not personally aware of any specific undertaking that is just what you described.

I am aware that there are considerations given to the desirability of reducing all forms of energy consumption.

MR. CHERRY: I have nothing else for Mr. Mosely.

CHAIRMAN COUFAL: Anything further, Mr. Rosso?

MR. ROSSO: Yes, I've just got a few questions.

FURTHER REDIRECT EXAMINATION

BY MR. ROSSO:

Q Mr. Mosely, does Consumers Power Company's long-term load forecast project a 5.2 percent annual compound average rate of growth for the period through 1981?

MR. CHERRY: I object to that question.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: Yes, it does.

BY MR. ROSSO:

Q Does it also do it for the period through 1982?

Page 3

A Yes, it does.

MR. ROSSO: No further questions.

FURTHER RECROSS-EXAMINATION

BY MR. CHERRY:

Q Well, are you telling me that when you made your forecast you looked at the average annual growth between now and just 1981?

A No, sir.

MR. CHERRY: Okay.

You have to be quicker than that, Mr. Rosso.

I don't have anything else.

MR. ROSSO: If you think you cured my questions with that, you're less of a lawyer than I think.

I have no further questions of Mr. Mosely.

CHAIRMAN COUFAL: Do you have anything?

MR. BRENNER: No.

CHAIRMAN COUFAL: All right, Mr. Mosely, you're excused. Thank you very much.

THE WITNESS: Thank you, sir.

MR. CHERRY: Mr. Chairman, before we proceed to the next witness, I would like to call the Board's attention to another specific interrogatory of the licensee that I think is a sham answer, so that you can consider it.

Now, my remarks went to each and every answer, and this morning when I mentioned about the financial it was only

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to give you an example of what I mean.

But the very first interrogatory that's answered, Interrogatory 12, on page 2 of that answer, which is attachment to the verification, I asked some questions about the contract dispute. I quote the following paragraph:

"Licensee believes that Dow would not be excused from performing under the steam and electric service contracts by virtue of the units being placed on line sometime after, rather than on or before the current target date or estimated dates."

That's the 1980 or 81 or 82. They're saying that even if it goes beyond that, Dow wouldn't be excused, in their judgment.

Then they say:

"However, a court of last resort might not hold that Dow's obligation to perform continues forever. Rather, it's a possibility that a court of last resort would hold that Dow would at some point be relieved from performing in the event of unreasonable delay in initial operation. The point in time at which such relief might be afforded Dow is impossible to predict, since it would rest on a judicial analysis of the facts and circumstances at that time, as well as the vagaries of litigation."

Now, it seems to me that that is not a sufficient



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answer. I am entitled to know what they base that upon, what are these "vagaries" at column? Because now we have for the first time gotten Consumers Power to admit that there is commercial reality in this contract, and it seems to me that they have now got to answer that question a little more solidly than just saying they don't know what the answer is. I don't believe it. I think they have discussed it, and if they tell you otherwise, they're lying to you.

MR. ROSSO: I have no response to that.

The Board has indicated it's going to look at the interrogatories and the answers to them, and I assume that the Board will tell us if it believes that further answers are required or not.

We believe that we have completely answered the interrogatories to the best of our ability.

I've got no answer to that.

MR. CHERRY: Can we go on with Mr. Bickel now, or do you want to break for lunch?

MR. ROSSO: Well, we do have, I think, a report on the question of computer runs with regard to this production costing. Mr. Renfrow is here to go into it.

MR. RENFROW: I understand, first of all, that everybody got different copies of the appeal board decisions last night, and I apologize for that.

So what I've done is brought over six copies of

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the appeal board decision and six copies of the licensing board decision, and perhaps off the record when we get through everybody can tell me which one they're missing, because I think some have one and others have the other. I will give you corresponding copies.

DR. LEEDS: Mr. Cherry, I'm going to return your copy of what you gave us, the licensing board decision.

MR. CHERRY: Yes. Well, I've read it. I don't need it. Just toss them out. I don't have any particular need for it.

MR. RENNOW: Second of all, Mr. Chairman, I have -- but I do not intend to pass out on the record, but I will when we get off -- further trend reports which Mr. Cherry asked for last week. This is the second installment, and we should have the third and last installment late this evening, and I will deliver those. And that will complete the trend reports, and I will put into the record which copies we are now passing out, so that at the end it will be on the record, full and complete.

Now, with regard to the computer runs on the nuclear fuel costs, I would like to start first of all with the contracts.

Certain of the contracts have already been xeroxed. There will be contracts for yellowcake, contracts for fabrication, contracts for enrichment, and contracts for conversion.

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I'm having all of those copied. But indicated on this morning that they would not press their proprietary claim, and I'm therefore going to turn over the ESW contract without a proprietary claim.

I should have, within the hour, the remainder of the contracts removed. Once these contracts are removed -- I understand there was a question this morning on the computer runs. I have the computer runs that were used for the nuclear fuel cost to be removed. There are six computer runs which give you the output. Those are called CONFUCY. That's a --

MR. CHERRY: Now, wait a minute. My question, Mr. Renfrow, just so we're clear, is whether or not the new fuel costs were placed into the cost production model. And there was an output from the cost production model with respect to new costs. Those are the ones I'm interested in. Were they or were they not done -- was it done or not?

MR. RENFROW: Excuse me. Let me stop there.

There was no new computer run made. They were put in, there was a hand calculation done to revise Exhibit 14 of Mr. Heins' testimony --

MR. CHERRY: Just so we're clear, the cost calculations made with respect to the nuclear fuel cost changes were external in the sense that you did not rerun the cost production model by plugging in the new values, is that correct?

MR. REMFROW: That's correct. You can make that change by hand calculation, I believe, and we have those documents. And I would be glad to supply them to you so that you can see exactly what was done.

MR. CHERRY: I sure would like to see it.

MR. REMFROW: Now, the questions yesterday on the nuclear fuel costs, we do have those computer runs being xeroxed. And, as I said, there are six of them, plus a source document. And portions of these runs will be claimed to be proprietary to Consumers. They are based on their estimates in the future. We had part of this discussion as to what costs would be, and I have talked to my people about this, and with CONFUCY I do not believe we could back out those estimates for years to come, as you were suggesting to me. So I will let you talk to, if you wish, to the man who does the computer programs to tell you that.

The second problem is that some of the inputs for CONFUCY are calculated on a computer code known as NM square. The output and the program itself are approximately 10 to 12 inches high. I have that scheduled to be xeroxed after the CONFUCY runs are xeroxed.

That program is proprietary to Consumers Power Company. They're in the process of selling that particular program to other utilities and vendors. And I will submit you an affidavit this afternoon from Mr. Bayless as to those

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particular points.

I would expect that sometime by this evening we would have all of that done, so that everybody would have the up-to-date runs that have been made. And we will have a proprietary problem. Mr. Bayless is right now writing out the affidavit, taking the pages out, for example, of CONFUCY that will be claimed proprietary, and the ones that will not be claimed proprietary.

DR. LEEDS: Let me ask one question:

Are you planning to give us that 12-inch high stack?

(Laughter.)

MR. RENFROW: My answer to you, Dr. Leeds, is I understand it's been requested. I'm going to have it available if somebody wants it. We'll have it. If nobody wants it, no, I'd just as soon save the money and not have to rework all of it.

But you can't get into CONFUCY and understand the runs that were made for the fuel costs without having NM square.

DR. LEEDS: Mr. Cherry, what do you want?

MR. CHERRY: I'd like to see the work papers underlying the calculations of fuel cost changes that are involved in the computer runs, as I understand the production cost model was not done again in connection with costs. And

It's like to me at some point the contractor that I have with you. I have no need for the CONFUCY code or the Management code, or anything else that Consumers wants to try to sell. If a copy is available at some point I would ask Dr. Egan if he would want to look at it perhaps in connection with the remanded hearing, but I do not believe I would need it now. If there are any changes in my thinking I will let you know promptly.

But I do not want those computer runs. I don't think they're relevant to this inquiry.

MR. RENFROW: Dr. Egan, let me be sure now we understand each other.

The input to Exhibit 14 as to the change in nuclear fuel prices, and those changes came as an input which came out of CONFUCY. Once they received that input from CONFUCY, there was then a hand calculation done to change the exhibit. But the base number -- the base number -- which results in that change comes out of CONFUCY.

MR. CHERRY: Is CONFUCY the same computer code as the cost production model?

MR. RENFROW: No, sir.

MR. CHERRY: What are the inputs to CONFUCY?

MR. RENFROW: CONFUCY, Mr. Cherry, provides you with the nuclear fuel cycle costs; i.e., your costs to run it. Out of that comes an output that says, as I understand it, so

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many mills per kilowatt or so many dollars per year whatever that number is.

MR. CHERRY: How do you deal with nuclear fuel costs?

MR. RENTON: That is correct. For the nuclear units.

MR. CHERRY: So that it's just like changing the whole pricing? In other words, if you could change your nuclear fuel cost by just getting another number, if you could have derived it by making a calculation as opposed to a computer run, that number would be the same number you're putting into the exhibit that you've changed?

MR. RENTON: I didn't understand that.

MR. CHERRY: What I'm trying to suggest is that you're not representing, are you, that the CONFUCY and P4 equate computer codes simulate the activities of a nuclear fuel cost change in the cost production model?

MR. RENTON: No, that's exactly backwards. We're taking output from CONFUCY and make your change to your production costing runs that result in the exhibit change. In other words, as you know, the cost production model takes the cost to run a unit. It puts it in there. But all of the basis for those changes, including the changes in Mr. Keeley's testimony as to nuclear fuel costs, come out of the CONFUCY program. That is the basis for the change.

MR. CHERRE: All right. You'll hear more on this later, Dr. Leeds. I don't think I want the CONFUCI, or the 300 square codes, although I think the inputs to the nuclear fuel costs might at some time be useful. And if Dr. Wynn wants it, I'll let you know.

MR. REMFROW: I'm going to have those available so that if we get into a problem, Dr. Leeds, they will be here. That's what I'm working on this morning.

Now, with the Board's permission, I would like to go ahead and distribute these contracts on the record to the parties, since that was the requirement yesterday. And then after you break, I will put the other documents in and provide that information.

The first contract is the agreement between Hydrojet Services, Inc. and High Plains Minerals, Ltd., dated December 31, 1974 with Consumers Power Company.

(Documents distributed.)

The next document is an agreement for sale of uranium concentrate between Consumers Power Company and Nuclear Assurance Corporation.

(Documents distributed.)

CHAIRMAN CONTEL: Are any of these claimed proprietary?

MR. REMFROW: No, sir, we're not claiming any of these to be proprietary.



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Next are the contract change orders of varying dates, with the Nuclear Assurance Corporation contract.

(Documents distributed.)

Last, but not least, is an agreement of sale of uranium concentrate dated September 26, 1971, between Consumers and Nuclear Assurance Corporation. Attached to the front of that are various documents which relate to this contract.

(Documents distributed.)

The remainder of the material I'll pass out after the break and put it into the record when you complete.

I think the only other item I have will have to be covered by Ms. Bartelman, because I'm not up to date where she is.

So, with the Board's permission ---

CHAIRMAN COUFAL: Who's your next witness, Mr. Resso?

MR. RENFROW: Excuse me, Mr. Chairman, Miss Bartelman has something to cover first.

MS. BARTELMAN: I have a document request, Mr. Coufal.

Mr. Cherry, our witnesses have looked over Dr. Timm's testimony and we have none of the calculations, the worksheets or the papers referred to in the testimony.

MR. CHERRY: You'll have to be more specific than

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that.

MS. BARTELMAN: Mr. Cherry represented that he would provide us with all these, and he represented that he had provided us with all of them, and we don't have any of them.

I have a list of some of the papers. However, some of them are not referred to -- the documents are not referred to, and we don't know what assumptions were made or what documents were used. So we'll have to make a general request regarding the coal cost assumptions, the cost of replacement power which are changed, and we don't know how or why, the coal cost numbers.

Also, all the papers that are referred to are just not available to us here in Chicago, and given the time frame --

MR. CHERRY: Which papers are not available?

MS. BARTELMAN: Numerous papers. I can point them out page by --

MR. CHERRY: You mean the ones you produced?

MS. BARTELMAN: No, the studies that Dr. Timm used in determining what the coal costs were, for example.

MR. CHERRY: Those are EBASCO studies, and all these will be available when he's cross-examined. He's bringing them with him.

MR. BOSCO: Oh, Mr. Chairman --

MR. BARKER: We need the documents now.

MR. ROSSO: I'm not going to cross-examine on something that --

MR. CHERRY: Mr. Chairman, let me just --

CHAIRMAN CONRAD: Wait a minute, Mr. Cherry.

Mr. Rosso, go ahead.

MR. ROSSO: I am not going to be forced to cross-examine the man on that kind of basis, where the documents that he relied upon are brought in when he's going to be cross-examined.

We had a representation from Mr. Cherry that all of the background material relating to Dr. Timm's testimony was going to be produced on Monday, along with the testimony. That representation is obviously false.

We are asking that that material be produced now so that we can make a judgment on how long it's going to take to review it, so that we can know when we can cross-examine the man. And now he sits there and has the gall to say, "I'll give it to you when I put him on the stand."

Now, I submit that's hardly fair.

MR. CHERRY: What Mr. Rosso says is the most blatant, dishonest act I've ever heard from a lawyer before.

I will produce any document with respect to a page, if they tell me that on page 2 they want a document reference and they don't have it I'll give it to them in an

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hour.

Now, every single document that we've relied upon Consumers gave us on discovery, with the exception of the coal price studies. They have them. If they want to see them again, they can come over to my office and they can look at them again.

If I get a page number and a reference to a particular document I will give it to them, if they don't already have it.

Okay?

Now, with respect to the coal prices, what Mr. Timm did was take an average of the values from a study which he identified. That's not a calculated average at all. He's looked at the study, he's taken the number out of it, he's put the number in the testimony, and he's taken an average out.

We didn't calculate that coal price study. The only possible reason to determine -- to look at that study, is to look to find out if Dr. Timm copied the number right. That is why that'll be available during his cross-examination.

But the coal price calculation was made by taking predetermined numbers which are listed in the testimony, and averaging them up. And their source is listed. We didn't make the coal calculation.

Now, if Miss Bartalman has a discovery request I

want it in writing, and I will give you each and every document within the hour if it's referenced to a page.

Okay?

MR. ROEFELING: Mr. Chairman, the Staff has gone through Dr. Himm's testimony, and will also be requesting an opportunity to examine some of the documents referred to in that piece of testimony.

We'll have the specifics on that later today.

Mr. Cherry's insistence that this particular request be in writing should be placed in context. Mr. Cherry has made requests of the Staff, and he's made those requests on the record at the Midland proceedings and we accommodated that request.

I don't think that a request in writing is necessary if we can make a request on the record of what we need, and we think that would appear to be reasonable.

MR. CHERRY: The reason I was able to make the request on the record is because all of the experts that these groups were relying on were in the room. Dr. Timm isn't here, and I don't want to make any mistake at all about interpretation.

I will respond to a request if it's in hand, but I want it in writing so I can see exactly what it is that people are talking about. And I will produce the documents quickly if it isn't already in their possession.

Now, if Miss Bartelman wants to come over and look at everything I've gotten from her in discovery again she can come over. It's all in my office.

The other thing I'd like to do before the noon recess is to --

CHAIRMAN COUFAL: Wait a minute. Wait a minute, now, Mr. Cherry.

Go ahead, Miss Bartelman.

MS. BARTELMAN: Mr. Chairman, if Mr. Cherry represents that the number for coal cost was calculated based on these studies, is he saying that Dr. Timm did the number in his head? We don't have any worksheets of Dr. Timm's at all. I do not know exactly what number he used, on what basis, how much of each amount was assumed. I have no idea how he calculated his numbers. I don't have any of those worksheets.

MR. CHERRY: He took five numbers and divided by five.

CHAIRMAN COUFAL: What page is it on?

MS. BARTELMAN: On 75. There are 3 studies noted on page 75, a study on 76, a reference to the Wisconsin Public Service Commission filing, no reference to a particular filing, noting what the coal costs are for Wisconsin utilities.

We do not have the papers for this, Mr. Coufal,

and I do not know what Dr. Timm used when he talks about Michigan utilities' filings. We do not know which particular filings he's talking about.

DR. LEEDS: Miss Bartelman, let me try to get myself organized here. There's been so much discussion I may have lost track of part of the problem.

Are the coal cost data on '75 or thereafter -- is that the documents that you don't have, or are there other documents?

MS. BARTELMAN: There are others.

DR. LEEDS: Okay. Thank you.

MS. BARTELMAN: We do not have any of the calculation sheets or worksheets either. Also, our copies of some of the exhibits do not show what the scale is on the exhibits. We can't -- half of it has been cut off. We have a problem with that.

We also have a problem because Dr. Timm says that all of his information came off of our production costing runs, but he doesn't refer to which ones. We gave Dr. Timm on the order of 10 to 15 --

MR. CHERRY: They are identified as Exhibit 32 and 33. They're attached to the testimony.

MS. BARTELMAN: Well, our witnesses say that they cannot find all the references in 32 and 33, that he may have used other runs; for example, runs that were provided on

microfiche. They have the microfiche here, but they can't look at the --

MR. CHERRY: None of the runs --

CHAIRMAN COUFAL: Let her finish, Mr. Cherry.

MR. CHERRY: None of them were used. There were two exhibits showing the ones that were used.

CHAIRMAN COUFAL: Let her finish, please.

MS. BARTELMAN: Mr. Cherry, we believe that he used some of the output from the runs that are on microfiche. We do not have a microfiche reader here. We can't read the output to tell whether he used it or not. He doesn't give us specific references. If he could just refer to the number of the program that would be sufficient, but he doesn't do that.

MR. CHERRY: There is an exhibit attached -- two exhibits, which are computer run outputs. Those are the basis of the curve. It's all stated in the testimony. Those are the only runs that were used. They've been marked and identified and turned over.

DR. LEBDS: Mr. Cherry, do I remember correctly that yesterday you offered if there's a problem between experts with this -- and we have a time problem, a pressing time problem -- that you offered some way that maybe the experts could talk to each other?

MR. CHERRY: I said if someone wanted to talk to



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Dr. Timm at 10:00 o'clock in the morning or at night they could talk to him an hour later, yes, sir.

MS. BARTELMAN: Dr. Leeds, I don't think that solves the problem, because the papers that he refers to we would have to see. We'd like to see what the assumptions are for the papers.

DR. LEEDS: I'm sorry, I was trying to get at the heart of the problem. In other words, you had a question of not knowing what some things came from, or whether some other things --

MS. BARTELMAN: Well, that would help some, on some of it, a little of it.

DR. LEEDS: Well, every little bit helps. To use an old expression, you know. One step is the beginning,

MS. BARTELMAN: That's a step, maybe. Our real problem I think is with the papers used for the coal cost calculations. They refer to papers, reports, some of them are referred to by publication and others are just referred to as papers.

Those are not in our files, and certainly not in Chicago.

DR. LEEDS: Well, again, would a phone call perhaps help a little bit on that?

MS. BARTELMAN: We need to look at them. I don't think that's really a solution.

DR. LEEDS: Well, I'm sorry. I'm not saying that you don't need to get the things. What I'm trying to do is to make precise the identification, because I gather that's a problem also, is it not?

MS. BARTELMAN: It is not really a problem. You can go through and look. There are many papers cited in here. We could just check them off. And I assume that Dr. Timm has them available. They should be here. They should have come here already. The references to those are not difficult. They are --

DR. LEEDS: But what about the papers, the ones you said that sometimes a citation was incomplete on coal costs?

MS. BARTELMAN: It just refers to a paper, and we don't know whether it was published or how. Even if we could find it in Chicago, you know. . .

MR. ROSSO: Well, that's an identification problem.

MS. BARTELMAN: Well, no, not really.

DR. LEEDS: Well, it's an identification problem first, then to see whether or not you have it.

MS. BARTELMAN: We don't have the papers, and we don't think we can get them, is what I'm saying.

CHAIRMAN COUFAL: These coal cost estimates, Mr. Cherry, you say are not available in Chicago?

MR. CHERRY: They are not coal cost documents.

I want us to understand what we're talking about.

What they are is a document provided, for example, by Ebasco, which predicts a particular number. We are not vouching for the number except in the sense that that company has been doing that for a long time.

What Dr. Timm did was take a lot of these studies and averaged a price, and he has stated what number he used, from where he took it, and how it was arrived at. They are not coal cost documents.

The documents will be available on Thursday, but if someone feels they ought to be here before I'll try to get a messenger to bring them here tomorrow morning.

But I'm sure that Commonwealth Edison has got it, and I'm going to ask Mr. Rosso if he's checked the Commonwealth Edison library because I got some of this information at one time from Commonwealth Edison's library on energy when Dr. Timm told me to look for it.

But there hasn't been that kind of an effort made. And the coal cost documents are merely an indication to show why the price by Consumers Power is high. We can use the Dow example.

Now, if Dr. Timm wants to be telephoned by anybody, I'll arrange it during lunch and he will stay as long as he wants and answer specific questions. But I do

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not want, nor will I respond to, a statement that "I want all the backup papers." I very carefully explained yesterday that all of the calculations are done in the testimony, that all of the exhibits, the calculations are made on its face with the assumptions there.

Now, yes, there is not a piece of paper that says 2 plus 2 equals 4, but the assumption is there, the conclusion is there, and the answer is there.

I want to tell you what's happening, Mr. Coufal.

Today at about 11:00 o'clock I saw Mr. Brenner, and I said to Mr. Brenner, "Mr. Brenner, do you have any questions about Dr. Timm's testimony, because I want to make sure --" I didn't tell him I wanted to make sure, but that we could answer all of his questions, et cetera. But my purpose was to follow up on my request of yesterday.

Mr. Brenner said, yeah, he had some questions, he found all of the testimony vague. And I said, "Well, that disturbs me. Will you tell me the areas which you found vague so that I can move forward with it?"

He said, "No, I don't think it's appropriate. We'll wait until cross-examination."

I said, "Mr. Brenner, I just want you to know that I'm going to tell the Board at the very first available time that I asked if you had any questions about the testimony, and that you told me the testimony was vague, that I offered

to make Dr. Tamm available on the telephone, and you said it wasn't appropriate.'

Now, Dr. Leads, I think an effort is going on to create kind of a smoke screen to make it look like I'm doing the kinds of things that Consumers Power and the Regulatory Staff did when they forwarded their testimony. If you take a look over the noon hour at what you got in the Heins testimony, for example, and what you got from us in the Heins testimony, you will see that there is absolutely no difference.

I told Dr. Tamm, "Dick, if you don't have everything in that testimony I'm going to break your ball, because I don't want to run into this." And he told me over and over again, "Now, if they've got a question with respect to a particular page or a particular exhibit, I'll give them the information." I'll put them in touch with Dr. Tamm, but I'm not going to answer this broad-ranging request for all documents, because it's right there. If they can't read a graph without the original, all right, here, they can have my original, and they can see the scale.

MR. BRENNER: Mr. Chairman, without going into too much detail, Mr. Cherry mischaracterized the import of what I said. But instead of going back to that, I might as well use this as an opportunity to preliminarily state some of our concerns and problems.

We got 82 pages yesterday, Monday. Today is

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Tuesday. We've been here in the hearing room early in the mornings and running late into the nights. Some of my people who have to look at this also have to be in the hearing room. We've been reading it. We've gone through it several times. We're endeavoring our best efforts to get ready.

But we cannot state at this time that we'll get ready, for a number of reasons.

Number 1, after reading the testimony for the first time, seeing the level of detail in it which is cited in it -- and I have some other experts to look at it who we're flying in at the earliest opportunity, instead of standing on my rights and simply saying we got this too late and I should be spared the expense -- they're coming here, but they won't be here until tomorrow.

So, on that point, with respect to some of the testimony -- and you have to realize that Dr. Timm's testimony has just been seen for the first time and covers quite some areas, and not just focused on some of the narrow areas that were implied previously by Mr. Cherry.

When that expert comes in here he may tell me there are things he needs to know in order to help us prepare effectively for cross-examination.

Now, whether those things are additional documents that are not exactly referenced, but mentioned in passing,

or partially relied and not supplied, I may learn that for the first time tomorrow.

In addition to that, there may be other documents not referenced by Dr. Wynn, but nevertheless are pertinent for me to use in my cross-examination that I may learn about in literature for the first time when my expert is here.

I'm also bringing in another lawyer to help us, so we can endeavor to do as many things at once as possible. He will be here also.

But you've got to understand that I can't be in three places at once, Mr. Meffling can't be in three places at once, Mr. Fold can't be in three places at once.

Mr. Cherry had some reference, I'm not sure of the exact content, to the nature of the Staff's testimony and the way he was provided with the discovery.

Well, our testimony was served on November 9, and I didn't have word one from him until at least six weeks later. Then when he said he wanted things we supplied them, or else a list of that which was available. And his discovery request, notwithstanding the fact that we gave him plenty of time, was, "Give me all the backup." Simple as that. And we did it. And it wasn't easy.

And we may have much the same concern with this testimony. I'm going to endeavor to be as specific as possible with respect to the additional material we need, as

soon as possible. But you have to understand, Mr. Chairman, that I may not be able to be definitive until the proper people look at all of this.

And, as I said, we're not simply saying it's impossible to do, which we would have had every right to say. We are trying to get the people here, trying to be in two places at once.

But I just won't know for sure until after that point, and that point might not be until tomorrow.

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In that context, I realize we're trying to do as much as possible by running late, and normally we would have no problem; but I feel an obligation to be in the hearing room. I also need to go through preparation of Dr. Timm's testimony.

I'm not getting much time to do it. There is the evening. There is a short break. There is the morning. It's getting very, very difficult.

It would be helpful, and I think it would assist us in being ready for Dr. Timm or at least enhance our best efforts if we could break somewhat earlier this evening and perhaps Wednesday evening, also.

There are also other witnesses we have to go through first, and I understand that's going to be the function of how we proceed and the Board will be constantly adjusting. I appreciate that, also.

CHAIRMAN COUFAL: All right. Thank you.

The immediate problem, Mr. Brenner, I take it from what you say you're going to provide a list of whatever you need from Mr. Cherry, is that right, whenever?

MR. BRENNER: I'm going to try. I'd like to do it on the record in view of everything else we're doing, but I'm not going to represent that list is complete.

CHAIRMAN COUFAL: All right. I understand that. But, anyway, as far as you know now you can make a list by

2 dictating it to the Reporter, or however. You can make a list that will come out in print that will say to Mr. Cherry, "We need this and this and this," even if it is incomplete.

MR. BRENNER: That list will be based on my looking at it as a lawyer and Mr. Feld's having looked at it. There are other people with other areas of expertise.

CHAIRMAN COUFAL: Anyway, today you're going to do the best you can to get a list.

MR. BRENNER: Absolutely.

CHAIRMAN COUFAL: So it's set down so everybody knows what it is.

MR. BRENNER: Yes, sir.

CHAIRMAN COUFAL: Ms. Bartleman, can you approach that degree of definition?

MS. BARTLEMAN: We can provide a list of specific documents when those specific documents are noted in the testimony. When the specific documents are not noted and we do not know what he relies on, we just have to make a general request.

CHAIRMAN COUFAL: Can you point that out?

MS. BARTLEMAN: The areas of vagueness and the problems? Yes, I can.

But, as I said before --

CHAIRMAN COUFAL: IN other words, there's nothing

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for the Board to enforce if you just say, "Give us all the papers." If you can list what pages or what references you have, then that's a different situation.

MS. BARTLEMAN: We can list probably every page as a problem, but I think we can demand and we should have Dr. Timm's calculation sheets and on what he bases them. I think he should have some of those sheets, and I think they should be made available.

CHAIRMAN COUFAL: I'm not familiar enough with the testimony to follow everything you say now.

MS. BARTLEMAN: Well, for example, he says at the bottom of page 74: "The true picture would have shown a resulting reduction in purchase power cost of at least \$700 million."

That comes out of nowhere. I don't have any calculations for that.

MR. CHERRY: That is not a calculated figure. That's an order of magnitude by Dr. Timm.

MS. BARTLEMAN: Well, maybe that's an admission.

MR. CHERRY: You can ask him how he arrived at it on cross-examination.

You see, Mr. Coufal --

CHAIRMAN COUFAL: Wait a minute, Mr. Cherry.

MR. CHERRY: Every single calculation --

CHAIRMAN COUFAL: Mr. Cherry, would you just wait

a minute?

MR. CHERRY: Well, we're wasting time.

CHAIRMAN COUFAL: We've wasted a lot of it.

Go ahead.

MS. BARTELMAN: I also think that it's Mr. Cherry's responsibility to give us the documents when he refers to Commonwealth Edison or in our files or whatever.

We gave him all our backup documents. We did not say, "Go to Commonwealth Edison; do this or that." Given the time constraints that we have, I think he should make all of them available now.

We have a real problem. We have 80 pages of testimony and more to come, supposedly, at some point. We don't have the references.

DR. LEEDS: Mr. Cherry, if I may ask you a question before you leave.

MR. CHERRY: Sure.

DR. LEEDS: With respect to the coal documents with respect to these references -- I think they were in the 40 numbers or something like that -- reports that Dr. Timm did. They're not here, I think, for Oregon.

MR. CHERRY: I was just going to make a statement about that, but I thought I'd make it after lunch.

Those documents are on their way and will be here tomorrow morning, those 41, -2, -3 and -4. I have -- I beg

your pattern. Also numbers are all through 13.

I have one set of #1, #2 and #3. Yesterday and last night and up until this morning I made it available to Mr. Felt. I'm not going to make it available to Mr. Raso.

As I say, they don't have any substantive impact, but they're just an examination.

Dr. Fimm will bring -- he's arranging by messenger service to have ten copies of each of these here by tomorrow morning because they were printed yesterday morning. I couldn't get them any earlier than that.

Insofar as the coal documents are concerned, I'll call up Dr. Fimm and tell him to ship these in the same section.

If there's any other specific document, fine. I'll do that, which is why I asked for a list.

DR. REEDS: Why can't we get that list now and get you to talk to him so we can get it?

MR. CHERNY: That's what I asked for.

MS. BARREMAN: The list is included in the testimony. We can underline it, but he knows what studies he used and I think he should be able to provide them.

MR. CHERNY: Dr. Reeds, anything that is not identified in the testimony is not in existence, okay? Can I be that clear?

Dr. Fimm did not rely upon anything in the sense

6 that he looked at this document or used it if it isn't identified. So that when Ms. Bartleson says, "Give me everything," I'm not going to answer that question because the answer would be none. Everything is identified. If there is a particular document that she cannot find, because we got them all from her, I'll give her another copy of it if she tells me what it is.

CHAIRMAN COWAL: Now about these calculational sheets she's talking about?

MR. CHERRY: The calculational sheets are made on the basis of calculations on the exhibit itself. Dr. Sims did those calculations over the weekend with a computer and a number that had a memory recorded in it.

He said, "If I reduce the amount of sales in 1988 by 300 megawatts, what's my result going to be?" He got an answer, and he wrote it on the exhibit.

We prepared these exhibits in hand. Every one of the assumptions we used is on the face of the exhibit. It is impossible to suggest that you can calculate that.

DR. LEEDS: Let me show you -- I have not made an exhaustive study of this, because I didn't think it was my task to. But I skipped through a couple of these, and I noticed, just flipping a page open, that in Intervenor's Exhibit 39 it says, "NOTE: Underlying data taken from Consumers Power computer runs," and it stops.

MR. CHERRY: Just a moment, now. Let's examine this.

DR. LEEDS: Okay.

MR. CHERRY: What is a relationship to five separate cases, okay? And those cases are identified in the bottom footnote.

The only purpose of the reference to the computer run is to tell Consumers Power Company that the cases and the information was taken from the computer run.

That is sufficient information for Consumers Power to identify the computer run, because they did a run for Case 1, Case 2, Case 3, Case 4, and Case 5. We're only relying upon the conclusion.

DR. LEEDS: My problem is that I'm almost a novice in looking at this thing. I don't personally think that I would have understood that data reading what's on the face of this piece of paper.

MR. CHERRY: Maybe the testimony isn't as clear as it can be.

DR. LEEDS: It sounds like it needs some sort of expert at Consumers Power -- maybe a collection of experts at Consumers Power needs to talk to Dr. Egan.

MR. CHERRY: Yeah.

DR. LEEDS: It hasn't been done.

MR. CHERRY: Well, I'll do it. I offered to

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yesterday.

DR. LEEDS: That's the future tense.

MR. CHERRY: Okay.

DR. LEEDS: So it sounds like maybe by that we could "precise up" the questions. And, if he's going to ship out all these things tomorrow, could he also ship out all his work papers or whatever else?

MR. CHERRY: If he ships them tomorrow they'll arrive after him, so he'll just bring them with him.

DR. LEEDS: No, he's going to ship some stuff getting here tomorrow.

MR. CHERRY: That is correct.

DR. LEEDS: Could he put in a little package if necessary on that stuff if the experts get together?

MR. CHERRY: Yes.

DR. LEEDS: Can I get the other shortly?

MR. CHERRY: It's now 11:00 o'clock in Portland.  
I assume Dr. Timm is in his office. I'll call him.

DR. LEEDS: How about the other people? Are they available to talk, too?

MS. BARTLEMAN: Yes, if Dr. Timm calls them.  
We have a number that he can call them.

DR. LEEDS: Can the Staff go to the same phone in the same building somewhere and get a conference call or something?



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MR. BRENNER: Dr. Leeds, as I said, we'll try to use our best efforts, recognizing that some of our people aren't here.

I need some time. I would suggest that we take a slightly longer lunch since we can't be in three places at once. It's a little after 1:00 now. Say until 2:30.

At 2:30 our time we would perhaps be ready to get on the phone with Dr. Tamm. I don't think it's going to cure all the problems, but we'll try.

DR. LEEDS: The people in Washington could get on that same phone.

MR. BRENNER: They don't have the testimony, Dr. Leeds.

DR. LEEDS: Oh.

MR. CHERRY: You could messenger it out to them.

CHAIRMAN COUFAL: Could Miss Bartleman get involved in the conversation?

MS. BARTLEMAN: Pardon me? Could I get involved in the conversation?

CHAIRMAN COUFAL: Or whoever from Consumers.

MS. BARTLEMAN: Yes.

CHAIRMAN COUFAL: All right.

MR. CHERRY: Mr. Chairman, I don't want a conversation to start at 2:30, because that means we're not going to have any testimony this afternoon. I don't want that to

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happen.

MR. BRENNER: Miss Furlong can go ahead. We'll let our people talk to Mr. Sims, and we can go forward with Mr. Sichel.

MR. BRENNER: I suggested a break for lunch until 2:30. We will then endeavor to see if we can have some person on the phone that doesn't have to be in the hearing room at that time.

I might add that if it has to be Mr. Fald we might have a problem, but we'll try. We'll face that at 2:30 if it happens.

You've got to understand that I don't have the whole Staff here, nor am I obligated to have the whole Staff here in order to comply with the fact that somebody waits months and months to drop 85 pages on us. It's that simple.

CHIEFMAN COUNSEL: All right, if we take until 2:30, is it agreed by counsel that you can have someone on the conference call with Dr. Sims?

MR. BRENNER: Who is the Licensor's witness going to be?

MR. CHERRY: I'd better go call Dr. Sims. I have no idea where he is. I assume he's in his office.

If you'll just wait a minute, I'll find out.

DR. NEEDS: Let me also suggest, just for the remote chance, Mr. Brenner --

MR. CHERRY: May I go make that call?

DR. LEADS: Yes.

The guy in Washington might hear something on the conversation that might say to him, "Gee, I'd like to have that." Could we also get those people in on the phone call?

MR. BRENNEM: That's going to be difficult, Dr. Leads. The fellow in Washington happens to be a gentleman with the FPC.

I spoke to him yesterday as soon as I read the testimony and tried my best to relate my impression of the subject matter. I'm sure you appreciate that my relating my impression of the subject matter over the phone is a lot different than his looking at it.

I just don't think he'd be in a position to say, "I need this specific document," until he reads it.

I am not ignoring this subject area, however. I am attempting to look at it myself to see if as a lawyer I can figure out things that he might need that are referenced, that are referred to but not referenced.

We're going to try our best. I'm not trying to represent that there's going to be a whole bunch of last-minute things. I just out of caution don't know.

DR. LEADS: All I was trying to say was maybe by him being an expert in the first place just hearing this other conversation wander around he would say, "Hey, I think

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I'd like to see that piece of paper."

MR. BRENNER: I don't think that other conversation is going to be at his level of expertise, because that's why we need him.

(Laughter.)

Could I ask who the Licenses's next witness is going to be, because if Mr. Feld has to be in the room at that time I am going to have a problem.

MR. ROSSO: We're planning to put on Mr. Bichel.

MR. BRENNER: Well, here again Mr. Feld has done some superhuman things in a short amount of time, especially when we originally thought the hearing was going to be scheduled earlier. He just can't be in two places at once.

I'd be reluctant -- I do have other people here. I'd be reluctant to put them on the phone with Mr. Sims, because the whole purpose of the conversation is to try this give-and-take.

CHAIRMAN COUFAL: Can't we get this conversation on the phone going before 2:30? Can it take place at 2:00 o'clock, say, our time?

MR. BRENNER: I want to reread the testimony in order to be sure that I'm not getting on the phone with a lack of perception as much as possible of what we need. I want to discuss it with Mr. Feld. We're going to compare everything we think we need together.

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You know, I guess I'm a little upset that I sound like I'm giving excuses as to why I can't get ready, when frankly I'm amazed that we've been able to do as much in the last day with the testimony.

MR. ROSSO: I guess, Mr. Chairman, I've got a little bit of the same problem here. You know, we just got 35 pages of testimony. It's not 32. It's not even all here. The backup documentation hasn't been provided.

And you're pushing us in a situation where there is still several witnesses to be put on by the company, several by the Staff, to be ready to cross-examine this man by Friday or Monday or something like that.

Meanwhile, we're going to be in the hearing room all that time unable to prepare for cross-examination.

CHAIRMAN COUFAL: We started out, Mr. Rosso, by asking you when you would be ready to cross-examine. You haven't answered that yet. We're waiting for an answer.

We're trying to help you figure out a way that you can give us an answer.

MR. ROSSO: Okay, Mr. Chairman. All I'm saying is I sympathize with Mr. Brenner. He and I sound like we're making excuses here, and I don't think we have anything to be apologetic for.

Now, with regard to the time limit, we still don't know because we haven't had a chance to review that.

CHAIRMAN COUFAL: Fine. We're trying to find out.

MR. ROSSO: I would suggest that it looks like longer rather than shorter now.

CHAIRMAN COUFAL: The time is short. I agree with you.

DR. LUESKE: We don't even know that Dr. Tinn is available on the other end of the telephone.

CHAIRMAN COUFAL: We've got all sorts of time pressures. We'll just have to do the best that we can.

MR. WEMPROW: Perhaps I could hand out my documents and nobody would argue.

(Documents distributed.)

MR. BRENNER: Mr. Chairman, I have one other observation. I wish Mr. Cherry were here.

CHAIRMAN COUFAL: If you have something to observe while Mr. Cherry is not here --

MR. BRENNER: It's not about Mr. Cherry. His input might be helpful, but he can see it on the record if he wants.

I'm a little concerned about the fact that because I'm leaning over backwards not to have to tell the Board that we can't be ready on Thursday unless it's absolutely true. It's possible that I won't know until too close a time frame. I don't want to get into a situation of being

accused by anybody that I waited until Dr. Chou stopped on the plane before I decided that we weren't ready to start examining him.

MR. HENSON: I have the same concern, Mr. Chairman.

MR. BREWER: Just to emphasize what you've got to appreciate that I've got two other people who are practically essential in light of the time frame. If I had more time, the problem might be less. They won't be here until tomorrow.

They'll be here as early as possible tomorrow, but it will probably be mid-day. As I understand it, Dr. Timm is probably going to take a "red eye" based on Mr. Cherry's observation and will get here early Saturday morning.

That doesn't leave us much time to make that decision once these people are here. I don't understand why counsel can control the course of procedure by standing up and saying, "If you don't do it now I can't do it, and I'm pulling the testimony."

I don't want that to happen, either. I think Mr. Cherry has bandied Dr. Timm's name about in the proceeding for weeks now. I want to get his testimony in.

CHIEFMAN COUNSEL: We're all in agreement.

MR. BREWER: I don't see why we can't schedule the testimony any at a more reasonable time next week. That would frankly be the easiest thing, and I wish the Board

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would consider asking Mr. Cherry that question.

I'm not saying that you have to ask that question now because it would be impossible for me to be ready on Thursday, but I might come back tomorrow and have to tell you that. Maybe we ought to face that today.

CHAIRMAN COFFAL: Did you get Dr. Wain, Mr. Cherry?

MR. CHERRY: No, I did not, but I have the following reports:

He has just left Salem. He's on his way to a meeting in Portland, Oregon, which will begin at 1:00 o'clock Portland time, which is 3:00 o'clock our time.

His secretary informed me that Exhibits 40 through 41 -- 44 -- I've given three of those to the Applicant already for their examination -- will be on the plane this evening and will arrive at the airport sometime tonight. I'll pick them up and make them available either late tonight or tomorrow morning.

I have asked his secretary to see if she can get out on her own the studies that were listed in the coal section and place that in the same package. She's going to talk to Dr. Tinn, and I have asked her to do two things: to get a number where I can call him at approximately 1:15 his time, which is 3:15 our time, to find out when he would be available for a conversation. I suspect that that



conversation cannot take place until tonight, but it will not take place after tonight. I'll see to it that it will take place tonight.

Secondly, whether or not Dr. Timm can tell his secretary all of the other information that I have asked, like I specifically asked him for identification of those computer runs. If they can be, they'll also be placed in the same package at 4:30. That's the best I can do.

But by tomorrow morning at least the documents that Miss Bartleman has identified will be here.

Dr. Timm can get on a conversation tonight and talk to whomever he wishes -- or whoever wants to talk to him -- for as long as they want. He'll be available for four or five hours this evening.

MR. BRENNER: Mr. Chairman, I wonder if I could return to my theme just at the last moment when Mr. Cherry was walking in, because now that he's here I would like to go back to it.

I don't know what the Board's conception of the schedule is this week as it's unfolding, or Mr. Cherry's. It might be useful to discuss that briefly.

It appears to me that Mr. Cherry has an implicit understanding in his mind -- at least it seemed that way at the beginning of the week -- that he would complete his cross of the Licensee and the Staff's witnesses by close of

business Wednesday and that Dr. Ginn would take the stand on Thursday.

Mr. Cherry was concerned with the number of days he wanted to spend at this hearing.

CHAIRMAN COUFAL: I'm sorry. I didn't catch the tail end of that, Mr. Brenner.

MR. BRENNER: Mr. Cherry was concerned with the number of days he would continue spending at the hearing, and I believe he expressed that those five days would be it.

I don't understand the basis for that. I don't think it should be held up as some sort of threat to the Board or authorities.

But, be that as it may, if he's talking about five days of time, it seems to me it would be more reasonable to follow his assumption, finish his cross-examination of the Licensee's and the Staff's case by the close of business Wednesday, and then recess and come back with those two days that he's willing to spend as soon as possible thereafter -- ideally the following Tuesday.

I also want to mention so silence isn't construed as anything that the Staff has a right to put rebuttal on, and we are at the present contemplating some rebuttal testimony which is still taking shape.

CHAIRMAN COUFAL: Well, with regard to rebuttal, I'm not so sure. This is an off-breed sort of hearing we're

19 running here, and I don't know whether anybody ordered that the parties had the right to rebut or not the right to rebut. This is the kind of hearing that you could run on affidavits or whatever.

MR. BRENNER: Well --

CHAIRMAN COUFAL: Go ahead.

MR. BRENNER: I'm sorry for interrupting, Mr. Chairman.

CHAIRMAN COUFAL: I guess I finished my train of thought.

MR. BRENNER: We previously addressed the question of whether it could be done on affidavits and reached the conclusion that it couldn't.

There is a lot of testimony that's unfolding, a lot of implications in the way cross-examination has been allowed to be conducted, with all due respect. I recognize that boards allow a lot of latitude on cross and that boards have made their rulings, but sometimes the results of those rulings are that in order to have a complete and accurate record -- and that is the Staff's role -- we deem it essential to bring in some experts in that area who can bring together some of these loose ends. If I could perceive a proceeding with loose ends, this is it.

I would note that one reason I have been objecting to Dr. Timm's testimony on the basis of late filing, among

what reasons. In fact I think it is kind of in the nature of rebuttal, anyway, and it would be permitted under that rule.

I would certainly have great, great problems with the Board ruling that the Staff isn't allowed to put rebuttal testimony on. We've been working consciously as the testimony unfolds so that we've had kind of wandering thoughts on rebuttal. We're still not sure in all areas, but we've seen enough to believe we need it in core areas.

I think that for the Board to close this record without having the benefit of the Staff's rebuttal would be just horrendous. Certainly before we put the rebuttal on, that is, at the conclusion of all the direct cases, we would be prepared to outline for the Board the specific areas of rebuttal, the witnesses, and the content of that rebuttal in order for the Board to make a more reasoned judgment on the subject.

But I certainly hope that you're not approaching it with a mind that this proceeding is somehow different procedurally so that rebuttal shouldn't be allowed.

I would add one other observation. The Staff way back in November had argued that this proceeding should perhaps be tried more in the nature of a USC type procedure, and it wasn't. Since the other parties, including Mr. Chewy, were permitted to try procedurally much the same as

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a broader proceeding in terms of discovery and testimony - certainly that in itself should give us the right to rebuttal.

If the Board had called it as a temporary restraining order type proceeding, on that kind of timely schedule, then our request for rebuttal certainly could have been viewed a lot harsher; but that is not the situation.

CHAIRMAN COWLEY: What do you think, Mr. Cherry, about that next week idea?

MR. CHERRY: Mr. Chairman, as I indicated to the Board and to the parties, the limiting factor that I have is the question of both time and finances.

I have made representations to Judge Hewitt in the United States District Court in Philadelphia that I would begin working on a pretrial order on February 14, 1977, in time to submit it on March 1 in draft form. If I don't start on February 14, I will not be able to do it.

I am presently scheduled to begin a hearing on February 14 which was continued three times before the Wisconsin Public Service Commission. I told them there was a possibility I would need a day or so based on my review; but, you know, I suppose if this Board goes on and I'm held to trial here that might be a sufficient reason for those other courts to change their schedule because trial has a first priority. I'm aware of that.

But I've been scheduled for a trial beginning

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April 6th in Philadelphia, and in the following month the Southern District of New York on an unrelated case, and Tim volunteered his services on a test case before the Public Service Commission in Wisconsin.

I have had to make a judgment now because of the limitations of finance. I have been donating my time for well more than a week now, and that's a complete donation. Prior to that time I was donating my time in connection with the rate I normally charge for the public interest litigation. In other words, I reduced it below what is my reduced rate for public interest litigation.

I have been bankrolling the expenses in connection with this case, because I didn't think it was fair to have Dr. Timm, who has no relationship with my clients or to the issues, to pay it out of his pocket. I've been guaranteeing out of my own funds Dr. Timm's salary. I haven't been able to keep what. I owe him a substantial amount of money. He told me that he thought the issues were important enough that he'd either wait or understand or not get paid. So I'm dealing with all of these.

Now, if I have to make a judgment at this point in terms of my commitments to other clients and the fact that I've essentially worked the whole month of January without real hopes of getting paid and now I'm working into February with an express statement that I will not get paid.

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I can't let that go on forever.

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In my judgment -- I will readily admit that this was the situation that was discussed by the Consumers Board of Directors when they decided how to analyze this proceeding. You know, there were plenty of alternatives, maybe Cherry will run out of money and he won't show up.

If I were Consumers Power Company's lawyers, I would seriously consider the leverage that they would have in extending this proceeding. So I have made a determination.

I thought Dr. Timm's testimony, which, by the way, could not have been filed directly because we didn't see any of the information, and if you read the testimony you will see that it is testimony which brings together the cross-examination that we have pursued, and the calculations in our testimony are no different than the ones we got from Consumers Power and from Mr. Heins and Mr. Bichel.

So, you know, I'm going to have the Board consider that fact, too. If -- I believe that the current record right now is sufficient for me to be comfortable in being able to reverse any decision which does not suspend the license. Since the Board's decision would be in the nature of a final order because it would permit an action ongoing under the rules. I don't have to go to the Appeal Board or the Commission, and I don't, I will go right to the District Court of Appeals in Columbia with respect to any final order of this Board in the event that it is not suspension.



So I have to look at that kind of continuing commitment that's my responsibility as a lawyer and as a scientist.

Now I'm doing a job and I think I have done a job that has been effective in this proceeding. Mr. Social testified that he likes interviews in a proceeding. It is clear that I brought out information.

Now what are the limiting factors in my information? The Nuclear Regulatory Commission refusing to accept my financial assistance; the Consumers Power Company hasn't offered to put my fees into the rate base like their fees are; Dow Chemical, which in a sense and I have a similar position hasn't offered to say, you know, we will help you out by some foundation donation, et cetera; the Regulatory Staff hasn't suggested.

So I think the Board is faced with a much broader issue, that if my continued participation beyond Friday or Saturday and Sunday is important to the Board, then you help me figure out a way how I do it.

Now if you feel that is beyond your province, then I have to say to you then you got to recognize the kind of a hearing that will take place without the kind of probing that at least I have been able to bring to the proceeding.

I am not suggesting that you, Mr. Social, or you Dr. Luebke, or you, Dr. Leeds, are incapable of doing that. I am not suggesting that at all. I am not suggesting that the

Regulatory staff is incapable of doing it. But, if you look at the record -- and I am not talking about you three gentlemen -- Board members' tone that sort of thing indicates they relied heavily on the Regulatory Staff. Whether it is right or wrong is a question of value judgment.

The Regulatory Staff hasn't done what kind of thing.

So, you know, I am not going to commit the rest of my life to making inquiries in connection with this plant, unless they are really not wanted. And I look at, in terms of really not wanted -- I mean, the issues are much broader than what we are dealing with here and what we are dealing with on the Midland facility.

I am interested in making sure that regulation is self-motivated, self-affected and self-enclosed. These are my real important reasons, and that is why I make these comments as I go forward to try to have someone who someday will read this record, including the Board, to realize the problems that are ongoing in a hearing of this sort without really doing that kind of work.

CHAIRMAN COWELL: What happens, Mr. Cherry, suppose we get Dr. View on on Friday, as a day, and we finish with him on Saturday, as a day, what happens to you with regard to leftover License witnesses and leftover Staff witnesses that haven't been on?

MR. CHERRY: Well, Mr. Chairman, I am willing to accord some accommodation to the amount of time that Dr. Timm is cross-examined, if it is a realistic accommodation.

For example, if there is a day of cross-examination which is what I regard objectively as delaying or baloney, I will make a motion to the Board.

If I really believe in what I believe in about that, then I would say I can't go on. And then I would be faced with the choice of whether I would withdraw Dr. Timm's testimony.

CHAIRMAN COOPER: Don't you think it is highly likely that you will have quite a few days of cross-examination of Dr. Timm?

MR. CHERRY: In my judgment, I could see that there might be -- you say ten days of cross-examination?

Well, Dr. Luebke, it is beyond my belief that the Board would permit ten days of cross-examination to find out the bases of what Dr. Timm stated.

If this Board does believe that Dr. Timm's testimony is worth ten days, then it seems to me no cross-examination ought to be had of Dr. Timm's testimony because that suggests that the issues are serious enough that we ought to expand him at a resumed hearing, and we can't make the kind of snap judgment at the suspension hearing of permitting this construction plant to continue.

It is a two-edged sword. If these issues are --

DR. GIBBINS: Dr. Henry, how many days have you cross-examined?

DR. CHESTNUT: Well, Mr. Justice, let us do that first.

I have cross-examined -- I do wish the case had been taken up in the record, but I have cross-examined a multiplicity of witnesses. I have also cross-examined in a way that I think is rather effective.

Now if the cross-examination of Dr. Gibbins were as effective as mine and it lasted for ten days, then I would not make a motion to cut off cross-examination as I said I would based on balance cross-examination. I would then be faced with the issue if there really had to be cross-examination for ten days, can I afford to continue.

DR. LUBKE: But your cross-examination has been more than ten days.

DR. CHESTNUT: Okay. If you want to make a simplistic addup you can, Dr. Lubke. That isn't facing up to the problem.

The problem is, that it was my job, I believed, to make sure that this Board understood that the conclusions they were getting from the Regulatory Staff and Consumers Power Company, were not supported.

Now if I haven't done that now, there is no need for me to put on Dr. Gibbins' testimony because I will fall in my back if I haven't done that now.

If I have done it now, it seems to me that the Board

and a responsibility to say, what is it they feel they need with respect to the suspension proceedings.

And if the suspension proceedings are to find out if the issues are complicated so that decisions would foreclose interests protected by NEPA and all the others, that is all really that is necessary.

I made that assertion at the beginning of the hearing just based on the fact that you had to do a new cost-benefit analysis and you had to look at energy conservation.

In light of the complication of the issues we have right now, including finances, at present, this board can't come to a judgment as to whether or not Midland can be cancelled or not.

The only judgment it can come to is whether or not we ought to have a hearing and one year is going to be a sufficient discomobalation of that. Those facts are already record.

Dow Chemical says it will stick around until 1984; they can get Campbell on line by 1983. That solves all their real problems.

Now whether Dow will back out --

CHAIRMAN COUFAL: Mr. Cherry, you are making an argument as to the ultimate merits.

MR. CHERRY: I am telling you how I look at the situation. And if Dr. Luckke says to me that there is going

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to be the suggestion of ten days of cross-examination of Dr. Wimm and then there is going to be some more witnesses, and we are looking at a three to four-week more hearing, you will not have me here. Under no circumstances will I do that, unless there is some financial assistance. I will not donate a month to the Nuclear Regulatory Commission. I won't do it.

MR. BRENNER: Mr. Chairman?

CHAIRMAN COOPER: Yes, sir?

MR. BRENNER: I think this is an example of time being taken up, this time by Mr. Cherry going beyond a specific concern.

I raised a point, and I don't think it has been addressed in terms of that schedule. As I understood Mr. Cherry's concern, it was the days devoted to this hearing.

My suggestion was to give him two of those days, only a little earlier than he thought he would get them. That is this Thursday and Friday and this weekend.

I see no reason why we should be squeezed, and my having to tell you at the last minute whether I can cross or not, the Board and all the parties having to be squeezed here over the weekend; and ease the time to prepare the trial brief. As I understand he had intended in his mind to commence that brief on Monday, as I understand his statement before, and prepare the trial brief Thursday through Sunday or through

Monday. We will come back here on Tuesday.

That is with respect to his immediate problem in terms of getting Dr. Tison on and so on.

MR. CHERRY: That is impossible, because it is not a trial brief, it is a statement of uncontested facts. It involves the shipping of documents that would fill this room, from Philadelphia, which have already been scheduled. It involves four people who have already been scheduled. I can't switch around my schedule like that.

But my schedule isn't the limiting factor. I am not suggesting that --

CHAIRMAN COUFAL: Let Mr Brenner finish.

MR. CHERRY: This is important. I want to tell --

CHAIRMAN COUFAL: I know it is important and I want to listen.

Go ahead, Mr. Brenner.

MR. BRENNER: Thank you, Mr. Chairman. And I will shorten it up so you can listen to Mr. Cherry again.

The other point is the implication that we have to be under some sort of pressure to limit our case in this, after Mr. Cherry has taken X number of weeks, and I am not counting the productivity or absence of productivity. But neither does he have that right to make us save comments as to our case.

You can't have it both ways. You can't take extra

am?

minute of time when you think you are providing the witness in the record that you want in, and then suddenly say, I'm leaving because I'm not interested in this whole staff and so what? The Board and the Parties should find badly about things when we are putting our case in, and when we are putting a rebuttal on and when we are cross-examining his witnesses.

CHAIRMAN COUFAL: What I don't want to get into is this situation, what we don't want, I suggest some of us want to get into this:

We get into Dr. Timm on Day 7, the cross-examination goes for 11 days, and Mr. Cherry says I can't give any more time to this proceeding, I want to withdraw the evidence of the testimony of Dr. Timm.

All right. Take it from there. Where are we then?

MR. BRENNER: I think this Board --

MR. CHERRY: I have a suggestion to make as to where we are.

MR. BRENNER: Are you addressing me with your question?

CHAIRMAN COUFAL: Yes.

Just a minute, Mr. Cherry.

MR. BRENNER: I don't think this Board should allow itself to be bamboozled or blackmailed into that kind of situation. When a witness is put on --

CHAIRMAN COUFAL: I am not talking about being



bamboozled or blackmailed.

But, does a party have a right to withhold its testimony when the cross-examination is incomplete?

MR. BRENNER: If the Board thinks cross-examination is proper, it has the right to continue to permit that cross-examination when the witness is on.

If the Board further thinks that this witness is helpful to the Board's view, I would submit that the Board has the right to subpoena that witness as the Board's witness.

MR. ROSSO: Exactly.

MR. BRENNER: If Mr. Cherry chooses to not participate and somehow thinks that the record will be woefully inadequate because of his absence, that record will be there, nevertheless for appeals purposes by the other parties.

You know, I can't deal with a situation where an attorney stands up and says, you be here when I want to be here, and if you go beyond this point I am leaving and you guys are stuck.

I don't know what to do with that, but I don't think it is a dilemma for the Board.

MR. CHERRY: Mr. Chairman, I sort of agree with Mr. Brenner. I assume that the Board could issue a subpoena and if it is disobeyed, enforce it. But there is no way in the world that you can get an expert to testify without paying him. You try to enforce a subpoena to bring an expert

will

have without paying him, and you will see how far you get.

If you want to have Mr. Stine be here for 30 days and pay him an expert rate, I don't want to know. I don't have to protect Mr. Stine. He will answer all your questions.

But one point to be made is that a public interest intervenor cannot, on the one hand be told that he is not going to get any financial assistance, and then, after having been informed, the Board and the Commission informed that the public interest intervenor doesn't have the money, force him to participate at the peril of that when you don't give him any consideration in the first place.

There is no court in the world that would countenance such a suggestion.

What I am really dealing with is the question of whether or not -- and it seems to me the Board ought to really sit down over the noon hour, if we are going to take an hour or whatever, and say to themselves, is this issue of this suspension proceeding sufficiently complicated that it ought to be looked at in a remanded hearing, and will we have close alternatives if we continue construction.

If you really believe -- if the Board at this point really believes that Consumers Power Company has made out or can repair and make out a sufficient case for suspension, then I would like to know that. I don't even put on Dr. Stine's testimony. Because to me, that question is not relevant.

I am suggesting I want to discuss the issue of suspension  
 might not be the same thing as suspension of work on the  
 the whole of a suspension hearing. I am not going to argue  
 it to be on a different basis. This would have been a  
 very poor decision hearing if we were to have a hearing by the  
 Board.

I made the oral argument, I offered to make an  
 oral argument on the suspension this week end. I wrote a letter  
 to the Board telling them the words of the evidence that were  
 eye. The last week in December I had a motion for immediate  
 decision based on the facts we have then.

None of that has ever been considered by the --  
 at least I don't know of any result of the Board's consideration.

So it is not true that this is the first time that  
 I am suggesting I have got problems. I made the motion at the  
 beginning and I have been telling this Board to look at the  
 facts in the suspension hearing almost on a weekly basis. And  
 I tried to sum it up in my letter.

I think the Board has a sufficient record right now  
 to suspend construction and it must suspend construction. If  
 the Board doesn't believe that the issues are complicated  
 enough so you can't get an honest answer with respect to  
 suspension then tell me that, because then I will leave the  
 hearing and I won't even produce Mr. Sims's testimony and I  
 will go right to the Board, because I am entitled as a lawyer,

will

to make that kind of a judgment.

It is being more constrained by my financial situation. I cannot permit myself to be destroyed by Consumers Power and Dow Chemical. And if I now go ahead and tell all my clients for the next two months that I can't handle your services, some of which I am going to get paid for, where am I? I have donated a quarter of my year to the Nuclear Regulatory Commission.

I spent the EUCS hearings and gave up \$30,000 of my own money -- \$30,000 of my own money -- just think about that. That is a commitment I made to the emergency core cooling system hearings, \$30,000. And I am not about to make that kind of a contribution any more in these proceedings.

If the Regulatory Commission wants to have a public hearing and they believe that the public ought to be there, then they ought to help pay for responsible public.

CHAIRMAN COUFAL: Supposing we agree with you, Mr. Cherry, what are we going to do about that?

MR. CHERRY: Then it seems to me you could do a lot of things about it.

What you can do is issue an order that Consumers Power Company's license fee is automatically amended to include the cost of financial assistance.

Or, you can say that in light of these circumstances the Regulatory Staff ought to get a contract with Mire

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Cherry as a consultant like they do with Oak Ridge.

There are a lot of things you can do.

Clay.

Now the Appeals Board will probably tell you you are crazy, and the Commission will probably say how in the hell is that true. But if one Board does that, I will change the law. One Board does that, I will change the law and we can do it together.

CHAIRMAN COWLEY: Mr. Rosso?

MR. ROSO: I am not going to take a lot of time. First of all, I am hungry. It is 1:32 or 33 now, we are going to have to go later than before.

But I don't remember what case you mentioned yesterday in overruling an objection of mine with regard to providing notes of Mr. Siskel's to Mr. Cherry. But as I understood that case as you recited it to me, I have a right to have adequate time to prepare to cross-examine Dr. Tinn, and to cross-examine him. Okay?

Now I think I have made my position clear on what I think of the importance and the quality of the cross-examination that has been done by Mr. Cherry both in my objections and in my letter of January -- I believe it was 27th, to this Board. And I particularly made it clear yesterday in an objection.

I think a great deal of time has been wasted,

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in this proceeding asking questions that really don't belong in this type of a personal administrative proceeding.

As I indicated previously, it is a different kind of proceeding that gets into who saw what, and who owns who, and I think if there has been a lot of wasting of time, that I need not continue in whose company that lay.

I have nothing further to say except that I will do my best to be ready as soon as I can to cross-examine Dr. Timm. I don't know yet how much time I will need. It is evident with, you know, 92 pages of testimony, 4 more pages coming, more documents coming, backup papers not provided to us, that it is not going to be Thursday, and it is not likely to be Friday, and it is probably not going to be Saturday, and I doubt it is going to be Monday, either.

I mean, I need some time. And that is as far as I can go. I am being as honest as I can. I will do my best, just as I have done throughout this hearing.

And I really do think we ought to go eat lunch.

DR. LEEDS: Let's go to eat lunch, because I think we are not going to get very far on this.

The only thing I would like to say on this is, what was the time you said the experts could talk to each other?

MR. CHERRY: Any time -- I assume Dr. Timm's meeting, I was told would be finished by sometime this evening.

I would think any time after 7:00 o'clock Chicago

time.

MR. RENTFROW: We will wait to hear from him based on his representation. We will, as usual, have our people available and we will work it out.

DR. LEEDS: Fine.

MR. BRENNER: Mr. Chairman, one thing before lunch.

I would ask you to consider over the noon recess, I guess -- maybe I should put it in the form of a motion to protect Mr. Cherry and Dr. Timm as well as the Staff -- I don't want to be in a position again by my endeavoring not to say now that I can't cross-examine -- of waiting and talking to all these other people and then finding out when it is too late that I can't cross-examine.

I certainly don't want Dr. Timm to have to get on a plane, if I am not going to be ready. And I am sure Mr. Cherry would agree with that.

The Board might just consider the fact that the tradeoff is to give Mr. Cherry the days to do whatever else he wants to do in this world on Thursday through Monday, and reconvene here next Tuesday. And that is on the understanding which is implicit in all the scheduling for Dr. Timm anyway, that somehow the Licensee's and Staff's direct case would be concluded by the close of business Wednesday, which is getting tight also.

CHAIRMAN COUFAL: Quite tight.

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MR. BRENNER: I suppose we would want to continue with the Licensee's case and get some other people on. We have been waiting around here awhile. So the sooner I get them out of the ballgame of being prospective witnesses, the sooner I can see, that in the hearing room will be together and that is another concern.

CHAIRMAN JOURNAL: All right.

We will be adjourned until 3:00 o'clock. Oh, wait a minute, 2:30, make it 2:30.

MR. BRENNER: I think until 3:00 would be sufficient, if the Board wouldn't mind.

CHAIRMAN JOURNAL: Be sufficient, it would be an hour and a half.

MR. BRENNER: It would be an hour and twenty minutes.

CHAIRMAN JOURNAL: All right, so an hour and twenty minutes. What do you need all that time for?

MR. BRENNER: I am going to go through Dr. Glass's testimony with Mr. Fold so that we can pull out that which we need and be ready for this phone call whenever it takes place.

CHAIRMAN JOURNAL: All right, 3:00 o'clock.

(Whereupon, at 1:40 p.m., the hearing was recessed, to resume at 3:00 p.m. this same day.)



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MR. BENTON: The following documents have been distributed to the parties and the Board.

Medical Trend Reports dated:

November 11, 1973

January 11, 1977

November 9, 1975

February 10, 1976

December 13, 1976

September 16, 1975

June 17, 1976

June 1, 1976

July 8, 1975

August 16, 1975.

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 10:01  
 10:01

AFTERNOON SESSION

(3:20 p.m.)

CHAIRMAN COUFAL: Good afternoon, ladies and gentlemen.

For the balance of the afternoon, probably, we will operate on the quorum rule. Dr. Lewis is absent.

Yes, Mr. Fribilla?

MR. FRIBILLA: Just a second before we get started; last Friday, I believe it was, the Board reviewed the documents on Dow Exhibit Number 1 and ordered us to produce two documents from that list. One is a letter dated October 6, 1976 from Nute to Wessel, and another is a letter dated September 21, 1976 from Nute to Friedman.

I have copies of those documents here with me today and I will pass them out to the parties.

CHAIRMAN COUFAL: All right.

(Counsel distributing documents.)

MR. CHERRY: Mr. Chairman, about the matters you spoke about before lunch, I have just served on the Regulatory Staff and Consumers Power Company and Dow Chemical and each of the members of the Board the remaining pages of Dr. Timm's testimony, plus Midland Intervenor's Exhibit 46 which relates to that testimony.

That completes our submission.

DR. LUBKE: Exhibit 46?

MR. GIBSON: It is marked on it.

What completes our submission.

I spoke with Dr. Timm and told him of the discussion that we had. Dr. Timm's reaction was one of surprise and he issued a few more illustrative words which indicated to me both directly and what he said, that he did not believe that it was a fair comment, that all of the assumptions and calculations were not set forth in the testimony.

There is arriving on a late plane tonight Exhibits 41 through 45. The remainder of the exhibits, those coal studies that Dr. Timm averaged the cost from, which has set forth the exact cost and escalation value, is set forth in this section; the average price and escalation value, which is Dr. Timm's opinion, is set forth there.

And so the coal studies are just placed among others that he bases his opinion on. But the calculations are set out expressly in this section of the testimony which I just served.

In any event, Dr. Timm tells me that all the documents are at his home and they cannot be placed in the package that comes out today.

Dr. Timm told me that it was his recollection that these documents are served generally on all utilities. He thinks he remembers that Consumers Power Company was on the service list for the -- all the documents which he is talking

He believes in the authenticity of the documents which Consumers has not yet been identified and probably in the same probability that it is not the Commonwealth Edison's Library in Chicago which is available to me sometimes and it is available to Clarence Faxon, since they share the same lawyer or the same law firm. I really believe that if Consumers Power Company wants to get a hold of these oral studies, to the extent that they are really significant, they can.

If not, in any event, those documents will be here whenever Dr. Sims arrives, which at the moment is Thursday. It won't make any sense for him to get them on the plane tomorrow morning, or so.

Insofar as Dr. Sims being available for a conversation, he is due at his home tonight at approximately 6:00 o'clock Portland time, which is 3:00 o'clock Chicago time. He told me that by 9:00 o'clock Chicago time, one hour later, he can have a list of the couple of memorandums which are referred to as Consumers work papers, which are not expressly identified with Consumers' G number on them.

So if anyone wants to call Dr. Sims at his home tonight, they can get what ever information that they want to get from Dr. Sims. Dr. Sims has stated to me again, that there is no document upon which he relied which is not expressly identified in the testimony and which he did not get from

Convince with the exception of the coal studies.

And as you can see in the last section of his testimony, he has only taken a price from them. And he has adopted that as his opinion on what coal prices will be. And he has given the escalation factors.

So there is sufficient for anyone to ask him questions on what he bases his opinion on. But he is vouching for that number. That is his opinion based upon information he has set forth.

Dr. Timm will also be available this evening to answer any other questions that anyone might want to ask him about for as long as will take. And if you call me, I will telephone him and make sure that he is available. I cannot reach him, however, before 6:00 Portland which is 3:00 this time, and I have already instructed him to do the things that I have identified. And he will be available at 9:00.

I mentioned to Dr. Timm about the suggestion by one of the Board members that it might take 10 days to cross-examine Dr. Timm. Dr. Timm's reaction to that was he did not honestly believe that it was possible, and he is not available in the near-term for 10 days of cross-examination, even if that were necessary.

So if that is a realistic estimate by anybody, that it is going to take 10 days, straight days, to cross-examine Dr. Timm, he can't just do it. I won't file the

testimony. He just cannot do it. He has other duties. He is a consultant. He cannot take the time off. He is in other hearings. He is in the Skagit-Cobler and representing the Department of Oregon. He is just beside himself now at having made a commitment to help do some analysis and he is now in the position that I am in.

However, Dr. Timm did say that he would try to arrange some flexibility and he is perfectly willing to add on to Thursday and Friday, Saturday and Sunday. And he is willing to consider, although I have not yet made the judgment that I am willing also to consider it, Monday. That would give five days for cross-examination.

Now in terms of the direct case of -- or if you didn't want to work the weekend, three days of cross-examination. But in light of the nature of this hearing, I would think that everybody considered, weekends ought not to be exempted at this stage of the proceedings.

It also seems to me that because the weekend really picks up an additional day because we leave early on Friday and we come back late on Monday, so we really have elapsed three full working days.

The other point that I want to make about the cross-examination is that I have considered the possibility of putting Dr. Timm on out of turn. That is, before the Regulatory Staff and Consumers has rested. I have chosen not

no to read. I think it is important for the Regulatory Staff and Consumer Board to conclude these cases.

Now I will state this so that we might be able to conclude all of the direct cases by tomorrow:

On the basis of having read Mr. Mitchell's presentation, I would be willing to let it go into the record as it read, together with his statement that this is an explanation of what he did. And I will have no questions. It seems to me that if he is going to rely upon this as his background it is meaningful in the sense that it is understandable. And I think that I would have no objection, since he is going to read from it anyway, to have it go in.

Mr. Keeley's changes in dual assets in his revised testimony on the basis of what I am about to say, I will have no questions of Mr. Keeley.

CHAIRMAN COOPER: Wait, there are questions on parts one and two that we ruled were not germane to the direct, and you said you wanted to ask about parts three and four.

MR. CHERRY: I now will not have any questions of Mr. Keeley.

So that insofar as my examination is concerned, since I have no cross, there can be any "redirect," although there may be some things on the other staff.

I would assume if we move forward with this

back, we could put in all of Consumers Union's questions this afternoon.

That leaves the entire day tomorrow now pending in all of the Regulatory Staff testimony. And the only time I will ask a question of a Regulatory Staff witness is if the day isn't used up by the Board, or Consumers Power Company or Dow.

In other words, I will state now that I will waive my cross-examination of the Regulatory Staff so that we can complete both Consumers and the Regulatory Staff's direct cases by tomorrow.

I don't know if Dow has any direct case. I assume it does not.

That will entitle us to start the cross-examination of Dr. Timm on Thursday.

CHAIRMAN COUFAL: All right.

Now can you people get together and figure out your telephone calls for this evening without any intervention by the Board?

MR. SPENNER: I guess I would like to address that subject before the close of the record today. We are still in the midst of going through everything. And our lunch hour was not enough. We are going to continue working while the hearing is going on to the extent we can.

Presumably, if we have questions of Dr. Timm, all



159 we need do is let Mr. Cherry know. Mr. Cherry mentioned that we call Dr. Timm to get a list of the documents which we received from Consource that he did not expressly list, but he used and relied on in his testimony.

I don't see why I have to call Dr. Timm to get that. Presumably Mr. Cherry could call Dr. Timm and give us that list.

MR. CHERRY: It is all in the testimony. All the documents that are not expressly identified in the sense that the name is given, are all in Item F, which was given by Mr. -- whatever, to Dr. Timm, a copy of which went to the Regulatory Staff.

So what I am really saying is that there is a package of documents called Item F which was marked as Midland Intervenor's 11 which has been turned over the parties a second time.

And those contain the remainder of the working papers that Dr. Timm relied upon.

What I am asking Dr. Timm now expressly to do is just write a list out of what everybody has got already, and he will do that at 9:00. If anyone wants to call him at 9:15 to get that list or to ask him any questions, that's fine.

If the Regulatory Staff suggests that they need tomorrow morning to talk to Dr. Timm, I will have Dr. Timm

available tomorrow morning at 7:00 Portland time, or 9:00 Chicago time for as long as someone wants to talk to him. I will just tell him to get up early and call us the next day, so long as he isn't up all night. Now that is as much as I can do.

He had a meeting this afternoon and it was in progress when I reached him and there wasn't anything I could do about them.

MR. BREWSTER: As I said, we will talk to Mr. Cherry if we need to talk to Dr. Wism, as soon as I can.

With respect to Consumers' documents, I think I understood what Mr. Cherry meant. But I am not alleging that the documents aren't here in Chicago. But I would like to get the list of those documents that are not expressly listed to make it easy.

Presumably, Mr. Cherry can get that from him tonight; give it to us as soon as possible. We will then take that list and get the documents.

I understood that the documents, as to those, are here, and I wasn't asking for the documents per se; merely the list.

MR. CHERRY: Let me be as clear as I can:

In addition to those documents expressly listed in the testimony, there will be one additional document of about one paragraph long. I want to make it clear that it is

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my position that everything of relevance is set forth and identified in the testimony. I have asked Dr. Wynn to double check and to prepare yet again another list, both from the testimony and from what he has.

And he has told me that it is incredible that we can't get it from that, but he will do it again and he will answer any question anybody wants beginning at 6:00 o'clock tonight or 7:00 o'clock tomorrow morning.

MR. BRENNER: In addition to talking to Dr. Wynn,-- which I don't know if I need to do or not; as I said, that would be to clarify minor ambiguities and things like that -- I would be prepared to put on the record today at the end of the day any specific items that we think we need that we don't have. And after I put that list forth, Mr. Cherry can say why we are not entitled to it, if that is his view.

CHAIRMAN COUFAL: Mr. Rosso, do you have any comments?

MR. ROSSO: Well, I don't know whether I can be ready to cross-examine Dr. Wynn on Thursday even if we do adopt this procedure that Mr. Cherry has because that still doesn't give me any time to sit down and prepare the cross-examination. I am still going to be in the hearing room for the next two days. He wants me to start cross-examining on Thursday, and I am still going to be here this afternoon at any rate, completing my case, as I understand this proposal.

Well

And tomorrow is the Staff's case and the next day is Thursday.

With regard to his offer to stipulate in Mr. Bickel's outline as his testimony, I don't know what the other parties think of that; whether they have any questions based on the outline, or any questions of Mr. Bickel.

I would like to sit down -- I honestly have never read this. Mr. Bickel put this together in Jackson while I was down here trying this case last week. I would like to have a little bit of time to look it over, and maybe we could do that.

There may be one or two other questions unrelated to this area that we would want to ask Mr. Bickel on redirect, as I say, unrelated to this specific material that he has provided here.

With regard to our other witnesses, we can't put them all on today. They are not all here. But we could put on Mr. Heins for redirect, if there is no further cross-examination. I think we could put on the witnesses with regard to the Palisades steam generator tubes some time later today to support the testimony that was initially offered. We now have experts on all of the various categories that we believe are needed to support that testimony.

Let's see what else we have got here; I will try to report as fully as I can.

There are two additional pieces of testimony which

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I do not think -- one of them may be ready today. I am not sure. The other is not, I believe, and we are not even sure that we are going ahead with that.

We have coal cost figures to support the escalation factors that we put in which we might want to offer some testimony on, and the question of backup for our computation of the Dow alternative to the Midland plant for process steam and electricity, which is in the Environmental Report Supplement.

So I guess I don't think we could finish up our case today, although with an expedited procedure like that, we could probably finish it up a lot quicker, perhaps even by tomorrow noon. And then I don't know how much longer everyone would have to go with the Staff.

But I am prepared to do that at any rate, if I could have some time to look at -- through this outline. I don't know what questions the Board has or the other parties.

MR. CHEERY: Mr. Chairman, let me suggest this, that I think -- Mr. Rosso should estimate his cross-examination on the Staff testimony and I would like to hear the Board indicate the length of cross-examination of the remaining witnesses. And then we could get an idea.

But Consumers Power Company now has nine lawyers who have made appearances in this proceeding. And I don't sympathize with Mr. Rosso at all, that he can't be in two

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places at once.

We have seen Mr. Renfrow and Mr. Rosso divide up responsibility in terms of first sharing the litigation and the remainder of the lawyers who appeared obviously have something to contribute to the proceedings or Consumers wouldn't be paying their hourly rates.

So it is a lot of baloney to suggest that Mr. Rosso has to be the one who does all of the examination, et cetera. Clearly, it is the experts who support Mr. Rosso who would be preparing cross-examination for what ever lawyer asks the questions, just as it was true in large part for some of the questions I asked. That work can be going on while the lawyer is in the room.

The Board is going to have to, it seems to me, make some hard judgments as to whether we are going to drift or do it.

I have to make these statements because of the reasons I explained earlier and I would just be interested.

By the way, in terms of the steam generator tube question, I am going to object to that evidence. If you let it in; you let it in. But I don't think that that belongs in this hearing. I think that the only inquiry to be made is whether or not Consumers Power Company has taken the position in its Environmental Impact Statements in Palisades that they can operate at full power. And it seems to me if that

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is true, it stands a better chance of being done separate from our Palisades Environmental Impact Statement. It's not the kind of thing we ought to do in an expedited procedure.

CHAIRMAN COWAL: Mr. Cherry --

MR. ROSSO: Excuse me, Mr. Chairman. It seems to me that if we are going to get into stuff like that, continued characterizations, that we are just wasting our time and we might as well go ahead, but that isn't what the situation is with regard to the Palisades Environmental Statement.

I am sure that Mr. Cherry has a better idea of what the situation is there than he is letting on here, but let's not waste time arguing about things like that. If we are trying to adopt a streamline procedure, let's do it and not --

CHAIRMAN COWAL: All right. Here is what may happen:

If Mr. Cherry foregoes his cross-examination on the expedited procedure, we get done tomorrow night and you people say: Well, we can't go with -- we are not going to be ready to go with Dr. Timm on Thursday morning. What is going to be your position, then, Mr. Cherry?

MR. CHERRY: Well, the only reason that I am doing this expedited procedure is on the assumption that someone is going to start Thursday morning.

Now it is beyond belief to me that someone can't

start on something Thursday.

CHAIRMAN COWFAL: Well, all right.

MR. CHERRY: If you want to start on Thursday at 11:00 or 12:00, I will be agreeable to do that.

CHAIRMAN COWFAL: Suppose it gets belled up so that they don't start on Thursday --

MR. CHERRY: Well --

CHAIRMAN COWFAL: What is going to be your position about the expedited procedure we went through to get there? I am not criticizing you for making that; I think it is a good idea, but I am just wondering where we are going.

MR. CHERRY: I am not going to waive cross-examination if it doesn't satisfy my other needs in this proceeding. Does that answer your question?

CHAIRMAN COWFAL: Yes, sir.

(Pause.)

MR. BREWER: Mr. Chairman, one problem I have is this implication that Mr. Cherry has all kinds of cross-examination of Staff's witnesses that he is going to give up just to get to his witness and his testimony which we just get on Monday.

If he has got cross-examination of the Staff that he thinks is relevant to this record, he better go ahead and do it. You know, his grant of saying he won't cross-examine just doesn't mean anything in terms of waiver, which I think



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was the term he used and I don't like that term. If he does not have cross, I assume and one could only assume, that he had no points that he thought were worthwhile making. And if he does have points that are worthwhile asking on cross, then he ought to cross-examine the Staff's witnesses.

In addition, I still have not heard any good reason, if I understood Mr. Cherry's concern, as to total days in the hearing as to why giving him days at the end of this week and the weekend to do what ever else he wants to do, and coming back as soon as possible next week, doesn't meet his concern.

I am trying to be reasonable. I do recognize that he does have other things he wants to do, and I honestly don't see why that doesn't meet that concern to a large extent.

If he is concerned about five total days that he wanted to spend in hearing, commencing -- at four and a half, commencing Monday afternoon, we can get him that four and a half days by the means I have outlined.

There are an awful lot of things in Dr. Tamm's testimony that we have got questions about, and I am not talking about sitting down on the phone with Dr. Tamm and saying: Hey; what do you mean by that?

CHAIRMAN COUFAL: Well, supposing we did that, are you going to be ready to go, Monday of next week?

MR. BRENNER: I think I could be ready Tuesday of

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next week.

CHAIRMAN COUFAL: Mr. Rosso, would you?

MR. ROSSO: I just don't know, sir. I haven't had a chance to sit down and read that testimony in its entirety yet.

It was delivered yesterday at noon. I have been in this hearing room until 6:30 last night. I had meetings with my witnesses, went home and had dinner, and went to bed at midnight, and I got up this morning in time to get here at 9:30 and I have been here in this hearing room all day. I mean, how can I sit down and read 86 pages of testimony, part of which I just found on my desk when I came back in this afternoon.

CHAIRMAN COUFAL: Mr. Cherry, would you have a reason for not buying that means of procedure?

MR. CHERRY: Well, I have discussed carefully with Dr. Timm his schedule and I have made my suggestion on the basis of Dr. Timm's schedule as well as my schedule, all of which is also encompassed by financing.

The Board does not have to, in my judgment, give Consumers Power Company or the Regulatory Staff, on the basis of Dr. Timm's -- which is just a pulling together essentially of what has already taken place -- any more than a reasonable time. I think a reasonable time is Thursday, and so long as the time of cross-examination goes beyond the

five days from the time the testimony was taken, there can be no practical argument under the Board's rule.

Under my schedule, I have permitted cross-examination to go three days beyond that five-day period.

So I don't think you have to ask in terms of procedure, Mr. Risco and the Regulatory Staff when they will be ready.

On the other hand, because of the expedited nature of this proceeding, for Mr. Risco to say at this point that he doesn't know whether he will be ready Tuesday, is an indication to me that all the Board is going to get from Consumer Power is to delay this as long as possible.

Now if I told you that your worst enemy in the world couldn't be here past Monday, wouldn't you try to make the cross-examination start Tuesday?

Now I have already told them. Okay? And I am their worst enemy in the world in terms of what they have done to the public interest, that there's a limitation to my being here. Wouldn't your natural reaction be, if I said that to you, that you would try to wait until Tuesday?

I want you to understand what I think is going on and I think that when a lawyer who has eight other lawyers representing him and 50 or 70 people on a regulatory staff, representing him and another 30 back home at Consumer Power representing him, it is unbelievable to me.

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IF you were Chairman of the Board at Consumers  
Power Company and you asked for some questions to be answered  
in three days, what do you think the people who worked for  
you would do? What do you think lawyers do?

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What do you think the lawyers would do when they ask the Court of Appeals for an extension of 10 days and they don't get it? They write the brief. You've got to decide what you want to do, in light of what everybody says. When you set a schedule. And then we determine whether people can meet it, and if they can't meet it as we go along, then you assess the argument of prejudice.

But if you just permit people to say in light of my statements -- you know, whatever -- et cetera, the reason I am not cross-examining the Staff is because Dr. Tinn can handle those much more efficiently in direct testimony. It is not true, as Mr. Brennan says, that I have nothing to cross-examine Staff about.

But in the balancing of what I want to bring out, it will be clear after Dr. Tinn's testimony, that the Regulatory Staff's testimony isn't worth any more than Consumers' testimony, without my asking them questions.

That's why I proposed the situation I did.

MR. ROSSO: Mr. Chairman, I'm not going to comment on what I consider to be outrageous statements. For somebody to walk in and dump 86 pages of testimony on you and then say you have to be ready to cross-examine in a day or two, is really . . . it's just -- I don't have to answer that, because I think this Board knows enough about this kind of a situation to realize that.

I would suggest this:

I am perfectly willing to try to work out some sort of an expedited procedure for the completion of this case and the Staff's case this week.

I think what we ought to be looking at is a practical, reasonable schedule that we can get to any further matters in this case in a way where we won't be sitting here wasting time arguing like this.

It seems to me that what we ought to try to do -- and I don't have any definite date in mind or anything like that -- we all want to get rid of this thing fast and want to get it over with.

Let's see if we can work out an expedited schedule this week, and let's break the proceedings for a period of time, depending on what the Staff considers necessary and what I consider necessary and what the Board is willing to give us in order to get ready to cross-examine Dr. Timm; try to work it in with Mr. Cherry's schedule and Dr. Timm's schedule, so that we can -- you know, if he's got an important appointment next Tuesday and can't be here, then we'll try to schedule it next Thursday or whatever it is -- and this Board too, and everybody, try to set something up so that we can get to that cross-examination, make it meaningful, and not have a lot of baloney questions and get to the heart of the thing and just go right down on the substance, without

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wasting a lot of time in the hearing room. Some of these things can really be counter-productive, it really can be. You know, an hour spent preparing at times can be better than three hours in the hearing room. It's the old story about the fact that I never had the time to write the brief any shorter, you know, because you just keep rambling.

And I would think that that's what we ought to be pointing for. I don't know what that time schedule is, but I'm willing to try to work it out.

But I think we're spinning wheels right now.

CHAIRMAN COUFAL: I'll agree with you.

MR. CHERRY: I'll make this offer, Mr. Chairman.

If the direct case of the Regulatory Staff and Consumers Power Company are completed by Wednesday, I will agree to a one-day recess, Thursday. Then we'll start Friday, and we'll work Friday, Saturday and Sunday, and I'll get Dr. Timm to work on Monday and I'll work on Monday.

MR. ROSSO: That, I don't think, would be acceptable. I don't even know for sure -- I hesitate to say, because I haven't had a chance to go through all this, but I don't think that's a reasonable amount of time in this instance. Hopefully it wouldn't take too much longer than that, but I just don't know at this point.

It seems to me we'd be a lot more on the money if we were talking about starting up next Thursday, or something

like that, or perhaps the following Monday. Take a week break, and let's get it done. Let's get prepared and come in here and do it right.

CHAIRMAN COUFAL: Well, everybody make your last statement, because we're going to do something. I don't know what we're going to do, but we're going to do something.

Have you got something to say, Mr. Brenner?

MR. BRENNER: Yes, sir. I want to emphasize that when I said I could be ready Tuesday, number one, I went out a little bit on a limb by committing myself to work day and night if it takes it, for four days, five days. That assumed that I would be not tied up in this hearing after the close of business Wednesday. If I'm here Thursday and Friday, I can't say that Tuesday is good.

I also want to be perfectly candid, for Mr. Rosso's benefit, I suppose, when I said Tuesday I also had in my mind that it would be the Applicant -- licensee, rather, that would be starting to cross-examine first, and --

(Laughter.)

MR. ROSSO: Gee, thanks.

MR. BRENNER: Well, I expected to be in a position to be ready Tuesday if it got to me.

But I also assumed that I would be here listening to what went on, and that obviously cuts down on some of your own cross-examination because some of it becomes



duplicative.

But I would still support breaking Wednesday and coming back next Tuesday. The reason I'm supporting that most strongly is trying to accommodate Mr. Cherry's concern about not being in hearing too many days. If we drag out this week on all the other stuff and still want to get to Dr. Timm, presumably that does run afoul of his concern.

I'm not addressing whether his concern is so valid as to overbalance everything else, but I am trying to work it into the balance. I still also want to remind the Board that Staff does have rebuttal -- or is presently planning to put on rebuttal, and we can tell you definitely what subject area and what witnesses at the conclusion.

CHAIRMAN COUFAL: How long do you think it would take to cross-examine Dr. Timm?

MR. BRENNER: I'm not going to be able to commit to that right now. I need to --

CHAIRMAN COUFAL: Well, a week, a month, or what? What do you think, a couple days?

MR. BRENNER: I just can't tell you. It's not going to be an hour, I can tell you that. I need to go through it with other people in other expert areas yet.

It may be that -- one reason I can't tell you is that it may be we can handle some of that stuff better on rebuttal than in lengthy cross, and we're going to look into

that also.

MR. CHERNY: Mr. Chairman, I can tell you right now that for my own purposes two things are clear:

Three days this week versus three days next week doesn't solve my problem. I have people and documents coming. I cannot ask them to come unless I can have the long period.

They're all set to come to my office on Monday. Maybe I can get them to come Tuesday. But I can't ask them to come Friday and then hang around for five days while we do something else. That's impossible.

We're talking about people from universities, et cetera -- not that they're any more important. I made those plans, and I may even have to cancel them entirely. But I can't -- I told you my problems about cancelling.

Number 2, I think the Board should rule on rebuttal testimony right now, by asking the areas of testimony that are being considered, and make a determination. I don't think you should permit any rebuttal testimony. I think any redirect of witnesses that have been on is appropriate, and that can be done. It's already planned for. Since I'm not going to have any cross-examination of the Regulatory Staff they're not going to have any need for redirect.

You've got to make that hard decision, and I

would hope in the situation of your hearing room that you take a look at that rule that says that you and the Board have a right to control the conduct of the proceedings.

This Board said, way back in December, that this was a public interest matter that had to be decided quickly. It's quite one thing if we're talking about nobody's ox being gored. But my ox, in terms of my interest, is being gored every single day.

I'll tell you flat out, I do not trust the Nuclear Regulatory Commission. I'm not talking about this Board, okay, but I'm talking about the Appeal Board and the Commissioners now. I do not believe that they will do the honest and fair thing, because of my experience.

Therefore, I have to assume that I'm going to have to go to court at some point. I have to make that judgment in my own mind.

Now, if you ask me whether or not I'd like to go to court tomorrow on the basis of this record, or whether I want to sit around for another week or ten days without being paid and listen to a lot of other stuff that I think only goes further to emphasize the enormity of the dispute, and, ergo, there should be a suspension, I'm going to go to court.

I mean I'm not getting paid at all. I've got to make a legal judgment. I think right now I can go to court

on the basis of the rulings that this Board has done. And when I say that I will withdraw Dick Timm's testimony if we're going to have this open-and-proceeding, without any limits on it whatsoever, with the suggestion of rebuttal, that's what I'll do.

I'll work this weekend, and I'll put together a petition for a stay of construction to the Court of Appeals for the District of Columbia, and say, "Look, you said to have a hearing. They're not having a hearing. What they're doing is having a circus down there. Everybody says the dispute is all over the place, Dow is going to sue them and everything. Stop that Goddam plant."

They may not, but I think they will.

CHAIRMAN COUFAL: All right. You're telling me - you're re-stating your position now that if Dr. Timm's cross-examination is not started so it'll be finished by next Monday, that you're withdrawing his testimony? Is that what you're telling us?

Before you answer that, let me say this:

We're interested in Dr. Timm's testimony on the basis of his qualifications, which is the part I've read most carefully. I think it's going to be worthwhile.

If you withdraw it, we'll make every effort we can to subpoena him, or whatever, pay him or whatever we've got to do to get him, whether you're here or not.

Now, with that background, --

MR. CHERRY: Let me say this, Mr. Chairman.

I'm not trying to pull any kind of power plays. There is an alternative schedule which I might be able to accommodate with Dr. Timm.

It doesn't give us a whole lot of leeway, but it's a day or so. But before I'm willing to commit to that, I want to know what this rebuttal is, and whether the Board is going to have rebuttal. Because if we say go with Dr. Timm through next Tuesday, for example, and start on Friday, which is five days, and then I'm faced with more rebuttal, et cetera, I just can't do it.

So if there's to be any consideration in going past Monday, I have to know what rebuttal testimony is going on, why can't it be handled in redirect, is the Board interested, et cetera, before I can give you the final answer.

MR. BRENNER: Mr. Chairman, I guess a not unfair offer would be to give me five minutes of rebuttal time for every ten minutes Mr. Cherry has wasted here making speeches in the last five months.

CHAIRMAN COUFAL: I asked you a question, Mr. Brenner, and you can respond to it. Go ahead and respond.

MR. BRENNER: I understood, Mr. Chairman. I thought the response went a little bit broader than the

question.

I think it's kind of outrageous, and I'm trying to control myself, for Mr. Cherry to imply a delay on the part of the Staff, by its trying to make a complete record, as is not only our right but our obligation, by means of rebuttal.

After analyzing everything as it's coming in, we're not going to sit back and say give me four weeks for rebuttal. We're working every time something comes in, and we'll be ready.

CHAIRMAN COUFAL: Well, how much time are you talking about for rebuttal?

MR. BREDNER: I just did want to finish one point, Mr. Chairman.

But at the same time, this proceeding has been scheduled since early October, and Mr. Cherry, time and time again, has delayed it -- not a couple of days, not a couple of weeks, but months.

And then we hear him saying that under this expedited procedure, somebody wanting to put substantive material on the record, instead of just saying I can't show up, is delaying the proceeding.

It's just outrageous.

I don't know if I can estimate the rebuttal time at this moment. We're putting things together for various people. I will do my best to be able to give you an estimate

tomorrow, although I can't even promise that.

I want to emphasize that the rebuttal may change, depending on our analysis of Dr. Timm's testimony. I want to get Dr. Timm's testimony on too, because we want to cross-examine him, and I'm anxious to do it. There's a lot of stuff in here that needs to be questioned.

But if we think we could shorten up the cross-examination -- which presumably would assist Dr. Timm in his not having to be here too long -- by doing it in the nature of rebuttal instead, I may just do that.

I also may need rebuttal if I'm not getting forthright answers on cross-examination, because the way to handle that is by putting in rebuttal.

CHAIRMAN COUFAL: Do you think under the rules you're entitled in a suspension hearing to rebuttal time?

MR. BRENNER: Absolutely. I think it would be a violation of the Administrative --

CHAIRMAN COUFAL: Tell me the rule that you're talking about.

MR. BRENNER: If you'll give me five minutes, I'll come back at you with that, or we could take a five-minute recess.

MR. CHERRY: Perhaps I could help, sir, and refer both the Board and Mr. Brenner to two rules:

One is 2.743(b) and (c). Subparagraph (b) says

that five days advance notice has to be given for written testimony except that a presiding officer may permit the introduction of written testimony not served five days in advance either with the consent of the parties or after they have had reasonable opportunity to examine it.

This means you can make a judgment based upon all of the circumstances to cut back on that five-day period.

I would suggest that with nine lawyers, that would not be unreasonable.

Then I would go on to subparagraph (c) which says:

"Only relevant, material and reliable evidence which is not unduly repetitious will be admitted."

If you get the rebuttal identified now you can say that's going to be, in our judgment, repetitious.

And, finally, section 2.757 says that to prevent unnecessary delays or an unnecessarily large record, the presiding officer may limit the number of witnesses, strike repetitious, cumulative or irrelevant evidence, take necessary and proper measures to prevent cumulative cross-examination.

In other words, you can tell the Staff and Consumers Power Company to have one cross-examination, and you can impose such time limitations as you believe is just, having regard for the volume of the evidence and the importance and complexity of the issues involved.



In short, you can do what you want to, so long as it's based upon some reasonable reason.

MR. ROSSO: Mr. Chairman, I've got some problems with that kind of analysis.

You know we're here to make a complete record and get to the truth and accuracy of this thing, and I think the parties have to be entitled to put in rebuttal.

I think it's impossible to make decisions as an attorney on rebuttal until you know what has happened on cross-examination of the other side's direct case. That's when you always make your decision on rebuttal.

It's impossible to do it beforehand. For all we know, Dr. Timm may get up there and say, well, none of this is stuff that he's worked on as his own personal knowledge, and he's really not an expert in any of it at all. And it may all go away, in which case there wouldn't be any rebuttal.

On the other hand, if he has some points that we don't feel we've gotten to enough in cross-examination, or that we feel that we could get at better in rebuttal, then we might want to put on some rebuttal.

I don't plan any rebuttal. I don't know what's in Dr. Timm's testimony in detail, and I don't know how the cross-examination of it is going to be.

But you know this Board has to look at this a

little equitably too. Mr. Cherry has had 16 days of cross-examination of Company witnesses up to now -- 16 days. And now he's complaining. And it's gone on over a period. He's had the testimony since November 5th, as I recall. And now it's February something -- I don't even remember the date anymore. I can't keep track of it.

And now he's screaming because he put in 86 pages of testimony, some of which we got today -- okay? The rest of it we got yesterday. He's screaming because we say we'd like some time to look it over.

Now, if that isn't a naked attempt to pressure everybody in this room, so that we have inadequate time to prepare for that cross-examination, then frankly I don't know what it is.

I can only read it that way. That's the only way I can read it.

Now, this kind of game is something that we've been going through in this proceeding for a long time. He's had his time. And if he wants more, this Board seems to be willing to give it to him, and we're going to have to be entitled to our time to get ready and to do an adequate job of representing our client in cross-examining Dr. Timm.

That's my only position.

I will try to be ready as soon as I can. I will try to restrict my cross-examination to substantive material,

and I will try to give this Board an estimate as to how long I need to get ready and how long I'll need to cross-examine, as soon as I can.

But I can't do it while I'm standing here arguing with Mr. Cherry about what we're going to do next. That argument started 15 minutes ago, almost. And I think we're just spinning wheels, sir, and I think that we ought to just get back to my original suggestion of trying to set a reasonable schedule, and get all of the parties to go with that schedule, and not try to do something that's impossible to do, within a few days.

CHAIRMAN COUFAL: All right. We'll be back in a few minutes.

MR. CHERRY: One other point, Mr. Chairman. If you let the Regulatory Staff begin its cross-examination first, then the Applicant has a burden of proof, and would have an additional day or so to the extent they have to prepare for cross-examination. So, even under the schedule I've given, you can give Mr. Rosse a little more time that way.

MR. BRENNER: Mr. Chairman, if I might, Mr. Cherry's reference to the five-day rule is particularly surprising in light of his service of 86 pages of testimony on Monday.

I would point the Board to the fact that that says written direct testimony. If you go back to some of

The papers in this proceeding, you'll see. That is, Cherry himself, made a letter by which he advised the Board he would have no further direct testimony, and they decided to use the words "direct testimony," presumably with a rebuttal in mind in case he had an argument that his direct testimony was rebuttal, and everybody objected to it -- which is ridiculous.

In addition, the Board has the right to rule direct testimony, whether it be direct or rebuttal, that is proposed to be put in, should not be put in because it runs afoul of any regulations, including being cumulative, repetitious, or whatever.

And certainly any rebuttal that we put in would have to withstand that scrutiny by the Board.

There is a section that expressly reinforces the right to put in rebuttal, which I have not found in this short amount of time, 2.742, and if the Board is, for some reason that I can't fathom, on the verge of ruling that we can't put rebuttal in, I'd certainly like the time to find that section.

MR. CHERRY: Mr. Chairman, I don't know if you have a copy of 10 CFR -- oh, you do? There is no section that Mr. Brennan mentions about the right to rebuttal. There's a reference to 10 in one of the appendix A's to Part 2, which was overruled.

But I'm talking about 2.742(b) and (c), and 2.757.

CHAIRMAN COUFAL: All right.

MR. BRENNER: Mr. Chairman, I want to say to you that there is a section which expressly references the words "substantial testimony." I'm not sure of the full context, but we'll find it.

CHAIRMAN COUFAL: If you find it while we're out, send somebody in with the citation.

MR. BRENNER: You're not giving me much time, but I'll try.

(Recess.)

CHAIRMAN COUFAL: I don't know whether the Reporter was able to note when Dr. Leeds got back in the room. I announced earlier that he was out and we were going to operate on the quorum rule, but he's been back for some time.

MR. CHERRY: It was about five minutes after you said that that he returned. So he was here for the entire session.

CHAIRMAN COUFAL: I think that's right.

All right. Now, we think that under the Hartsville case it's unfair, and it's also unrealistic to expect the Licensee and the Staff to prepare for and be ready for and be through with cross-examination of Dr. Timm by Monday, or at the close of Monday.

We therefore are going to do this -- but let me

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repeat something I said earlier.

We are interested in getting Dr. Timm. We've read his qualifications. And my technical people have read some of his testimony. We want to get it, one way or another.

If that causes you to withdraw, Mr. Cherry, I'm sorry. But if you do withdraw, we are still going to try to get Dr. Timm's testimony, through whatever means we can manage.

We're going to run through Friday, or until some time Friday, with whatever case the Applicant and the Staff have to put on. And obviously we don't expect your offer, Mr. Cherry, to lay off on the cross-examination to stand.

We then, after Friday -- on Friday we're going to ask you, Mr. Cherry, and the other parties, when we can get Dr. Timm. We're going to ask you at 11:00 o'clock in the morning. If I don't ask you at 11:00, well, wake me up.

We're going to ask you on Friday if you've been able to agree on a time that we can have Dr. Timm, and you're going to say yes or no. And if it's no, then we're going to have to do something. If it's yes, why then we can plan.

DR. LEEDS: We'd like times -- not just a time -- times, if there's more than one.

CHAIRMAN COUPAL: Now, we don't like this. We

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feel under time binds on this, because if this thing is going to be suspended, God knows it ought to be suspended. On the other hand, we're in a situation, one of which is . . . well, we're in a situation.

That's the way we see it. And you can govern yourselves accordingly.

After Friday, if you don't, among you, come up with a time when we can have Dr. Timm, we're just going to have to go on our own devices and figure out how and when we can get him.

MR. CHERRY: May I make one inquiry, Mr. Chairman?

Let me assume that Dr. Timm has, for the moment, unlimited availability, which isn't true, but I want to focus on one point.

What is, under your version of Hartsville, et cetera, the earliest day that you would insist that the cross-examination start, on the assumption that we might conclude the direct case of the Regulatory Staff and the Applicant by the close of business tomorrow?

With that assumption -- or at the latest, Friday, what is the first day you would insist -- one point, I'm not going to negotiate with the Staff, because -- and Consumers Power -- because I do not believe they will do so fairly. What I want to know is what is the earliest date you believe, under whatever your rules are, it is fair

to impose a beginning date for cross-examination? I need to know that before I can talk to Dr. Timm.

CHAIRMAN COUFAL: I don't think we can answer you in those terms, Mr. Cherry. I think that assuming an unlimited availability, and assuming we didn't have anything else to worry about, that would be a very short time, indeed.

But I think there are going to be other considerations. For example, I don't know when the Staff and the Licensee are going to finish their direct cases. I don't know whether they're going to be finished by Friday.

MR. CHERRY: Well, then, can I ask by 10:00 o'clock, or by the close of business Thursday, which will give me some time to talk to Dr. Timm, that you insist that the other parties indicate to you what their estimates of cross-examination are?

CHAIRMAN COUFAL: Oh, when they'll be ready to go?

MR. CHERRY: Yes, when they'll be ready to go, and how long they think it will take.

CHAIRMAN COUFAL: All right, that's fair. By the close of business Thursday.

MR. ROSSO: Mr. Chairman, I guess I'm a little bit confused with Mr. Cherry's statements at this point.

As I understood Mr. Cherry's assumption in his question to you, it was that we would go on an expedited schedule this week, and be through with the case. This



would include presentation of direct and cross-examination by Licensee and the Staff by Wednesday or Thursday night, and then I think what he said was that he would not propose to negotiate with us as to what amount of time we needed in order to get ready, and when Dr. Timm can get out. And he asked the Board a question as to what would be the earliest date, or what the Board would consider would be a reasonable date, upon which to start cross-examination of Dr. Timm on the basis of the assumptions contained in that question.

CHAIRMAN COUFAL: No, that's not the way I followed it. He asked -- the rules have changed now. We don't have an expedited hearing. We've got a knock-down, drag-out hearing, and I suspect that your people are going to get cross-examined until Friday.

He asked if we would require the other parties -- that is, Dow, the Licensee and the Staff, to tell us by Thursday night what you think is the earliest possible day that we can go with Dr. Timm. And I said --

MR. CHERRY: And how long it would take.

CHAIRMAN COUFAL: Yes, and how long it would take. Right.

MR. ROSSO: Okay. But what about the other question, assuming we could -- you know, has everybody else abandoned the idea of an expedited schedule? Mr. Cherry offered it, and I just didn't realize we'd --

CHAIRMAN COFFEE: His offer was contingent -- I don't care whether he expedites the schedule or not. That's up to him. If he doesn't want to ask any questions the rest of the week, that's fine.

But I don't think it's fair to him to stick him to --

MR. ROSSO: No, I'm not trying to stick him to anything. I'm just saying -- I'm asking him, through the Board, whether that offer is still open, on the basis of them trying to work out a date not too far in the future to work with Dr. Timm. I mean I think it's still a good idea, and get this thing over with. I'm just trying to expedite it.

CHAIRMAN COFFEE: All right. Mr. Cherry has told us he can't be here next week, except for Monday. So that week is out.

Dr. Leads is going to be somewhere else the next week. So that's going to be two weeks.

MR. CHERRY: Let me be very clear. If we get a firm date of Dr. Timm's cross-examination, I will try to get Dr. Timm here within the time limits. But let me state right off, in no event can either of us participate in this proceeding if it's on the assumption that next week is off. I want to make that clear.

My problem is with finances and working around

schedules.

If the end of this case is beyond some portion of next week, when I'm done. I mean I'm right back --

CHAIRMAN COUFAL: Well, I thought you told us, Mr. Cherry -- and that was the basis for what we said -- that you couldn't be here next week after Monday.

MR. CHERRY: I said I can't be here because of financial and other problems, but there is no way that I can tell a court that I want more time after the hearing is recessed. The only way that I can ever possibly get another court to give me any more time on other matters is if I am in hearing. If this Board makes a recess, I'm done.

CHAIRMAN COUFAL: All right. I didn't understand you. What you want to do is start next week --

MR. CHERRY: I want to know when the Board will impose the earliest starting point on the licensees, and then, in light of your comments, I'll take that up with Dr. Timm. But I am not countenancing any recesses.

CHAIRMAN COUFAL: I understand.

(The Board conferring.)

MR. BRENNER: Mr. Chairman, I wonder if I might make a point with respect to Mr. Cherry's comments?

CHAIRMAN COUFAL: Well, just give us a second here, so we don't get sidetracked.

(The Board conferring.)

CHAIRMAN COUFAL: This won't change anything that I've said.

Before the week is out -- well, let me back up.

We expect the parties to get the problem with documents solved just as we were speaking of earlier today, whatever you've got to do to solve those problems, so we'll know by the end of this week if there are any remaining documents.

On Friday we will determine whether or not we will go next week, and if so, on what day we will start.

Now, Mr. Brenner?

MR. BRENNER: I'd like to respond to the Board's indication that they thought it was fair to ask the parties certain questions with respect to when they would be ready to cross-examine Dr. Tamm, and how long the cross-examination might take by, I believe, the end of this week, I believe you indicated is when you'd like that answer.

I can give you one consideration. I think it's fair to ask when we think we can start, and right now I can tell you Staff needs five days in between hearing time. That's the problem.

DR. LEEDS: Clear days, you mean?

MR. BRENNER: Clear days, yes. As to how long the cross would take, that I wouldn't be able to tell you until we got into it. It's going to depend on some of the work

I'm going to do during those five days, which work I won't have a chance to do before the five days starts.

And it's also going to depend upon a lot of other considerations, what my experts think in terms of whether we should do it by cross or rebuttal, how the answers come in, and so on.

I also think it prudent that we start with Dr. Timm near the beginning of a week, so -- you know, I don't want to -- if we can avoid running over more than that week with him I certainly want to avoid that.

CHAIRMAN COUTAL: All right. We understand everybody's got a lot of considerations, Mr. Brenner, and we'll listen to them all.

MR. BRENNER: I thought that would be helpful. In other words, I can answer one of your questions today, and the other one I just won't be able to answer.

CHAIRMAN COUTAL: All right. We'll hear much of this, I suspect, on Friday.

MR. CHERRY: Thursday the parties are to report both as to time of beginning and how long it would take. That's what you said.

MR. BRENNER: I guess I would ask you to modify that somewhat, in that I won't be able to say how long it would take.

CHAIRMAN COUTAL: Well, of course you never know

how long any cross-examination is going to take.

DR. FRISHER: Well, until I do more than just a preliminary look-see, which is all that I'll be able to do while the hearing is going on, I won't be able to have written out all my questions.

MR. CHERRY: Mr. Chairman, under the rules you don't have to give anybody more than five days, so I don't understand why this Board doesn't . . . well, I'm not going to say that.

I'm just suggesting that I think we're going far afield. Another input that I need, if you want an answer from me on Friday at 11:00 o'clock -- and I need this by 5:00 o'clock -- is an understanding of how long and when it would start, plus some understanding about the Board's feelings on rebuttal testimony.

Because if we're talking about next week and then another week, I just can't afford it. I've got to know.

CHAIRMAN COUFAL: Realistically, Mr. Cherry, if we were to start next week with Dr. Timm, I don't see how we'd get through next week, the way it looks now. I just don't see how we would.

MR. CHERRY: You think there'll be rebuttal testimony as well?

CHAIRMAN COUFAL: I don't know if there'll be rebuttal testimony. I doubt if we get through with Dr. Timm

next week.

MR. CHERRY: Well, when is the Board available?

CHILDSMAN COOPER: The Board is available next week.

MR. CHERRY: The whole week?

CHILDSMAN COOPER: Yes.

MR. CHERRY: Would the Board entertain working next weekend?

DR. LEEDS: Mr. Cherry, let me try to say one of the things I feel is the problem, in trying to speak for myself:

I think part of the problem we're all faced with today is we're being pushed to make some decisions which are very tough decisions in terms of weighing of interests. And I understand that. This Board, as long as I've been on the Board, has been faced with that very same problem, starting back in September of last year.

When I say that, I don't mean to say that we've been lax in some instances in making decisions, but in some cases we have very deliberately decided not to make a decision.

What I'm trying to say to you is that I am very concerned about having a complete and a fair record, and I'm very concerned about the parties being present, including yourself and Dow. I think we wrote, with respect to Dow, some words about that, why we thought the parties ought to

be here. And I understand the value of an intervenor.

So I'm not trying to knock anybody here. But what we're being faced with is having to make some decisions in which no decision is going to be perfect. And I think that what we're trying to do in this instance is to make sure that we get Dr. Timm's testimony in whenever it may come in, and that when it's finished being brought in, after everybody has had a fair shot at cross-examination, then there'll be a record on which this Board could make a decision.

MR. CHERRY: Could I ask another question, as long as -- because I'm going to try to make an effort to work it out. But there are a couple of other considerations.

Could I inquire: If the Board made Dr. Timm its witness, if there was some way that they could sign a contract to pay for that, pay for his appearance here? I just ask you to make that inquiry, make a call to the General Counsel's office.



CHAIRMAN COURAL: I think we can work this out.

DR. LEEDS: I will say this. I have been at one other hearing in which the Board called witnesses. They were local witnesses.

MR. CHERRY: The next question that I would ask is, would the Board rule or consider ruling at the conclusion of all of the testimony on the basis of oral argument, since you have all set through here, it is an emergency junction, in effect, matter.

See, what I am trying to prevent is for us to get into receiving a 20-day finding and all that.

The Party who you rule in favor may have the obligation to write findings, if that meets with your approval, but I would ask if the Board would consider entertaining one day at maximum, maybe even half a day, for oral argument at the conclusion of all of the evidence, and rule from the Bench on the question of suspension.

If that kind of consideration can be given so I am not faced with another 20, 30-day period and write more paper that I can't afford to do -- and that doesn't mean no party files. Anybody can file whatever they want. But I am saying if anybody wants to file anything it ought to be done by the last day of the hearing and the Board will rule. Or, say three days before the hearing so the Board can at least read what anybody wants to find.

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I mean it is normal and traditional that way. When you write a post-trial brief you rarely have a transcript. No litigant can afford daily copy unless you are IBM or General Motors or a utility putting on a rate case. And what normally happens is, you have a post-trial brief which refers to the testimony of somebody without any particulars because it is fresh in the Board's minds, it can be made.

I think this is the kind of case that can be decided -- I just ask you to consider it.

CHAIRMAN COUFAL: Well, I have been concerned about the amount of time it would take under the normal rules getting in findings and conclusions.

I agree with you it isn't something that should apply to this case. It will slow down things too much. I agree with you that it should be shortened up somewhat, Mr. Cherry.

But you are inquiring into things that we haven't even --

MR. CHERRY: I am only asking you between now and Friday to consider that, because if the Board rules it will make an oral ruling from the Bench subject to whatever the decision is, that party having the obligation within ten or fifteen days to put in sufficient findings to support that ruling, that would make my decisions a lot easier.

CHAIRMAN COUFAL: All right, we will consider that, Mr. Cherry.

MR. BREWSTER: Mr. Chairman?

CHIEFMAN CUNYAN: Yes, Mr. Brewster?

MR. BREWSTER: We would like an opportunity to respond to that later in the week.

But before you rule on it, we would like to think about it. We have, in fact, been thinking about it all along and we would like to --

CHIEFMAN CUNYAN: I am not sure that this case lends itself to 140 pages of findings of fact and conclusions. I hope it doesn't, because I hate them.

If this thing would lend itself to a much truncated, simpler order, I would be tickled to death.

MR. BREWSTER: Mr. Chairman, I would like to, rather than just throw off the top of my head, we can collect our views more concisely and give them on the record.

DR. LEMUS: Let me throw out another suggestion to you.

Suppose the Board by some way, through the aid of the parties, were to come to a conclusion so we could limit the length of the documents that came in? In other words, oral argument is one thing. Another possibility is to have an oral argument supplemented by a very brief brief set of proposed findings.

So I throw that out as something for you to consider because it seems to me there are four possibilities:

Oral argument alone, short brief alone, regular proposed findings, or -- I guess there are also -- short brief and oral argument, or long proposed findings and oral argument. And so -- but that is the five possibilities. It seems to me if you are going to think about that, you ought to think about that.

MR. BRENNER: We will, Dr. Needs.

CHAIRMAN COUFAL: Okay, Mr. Rosco, do you want to go?

MR. BRENNER: I just want to finish with one point. I wasn't quite finished, although I thought was when Mr. Cherry jumped in.

If we run this proceeding -- we are anxious to get to Dr. Timm next week if at all possible -- but if this proceeding runs through Friday, I don't see how we can realistically be ready for Dr. Timm next week.

Mr. Cherry pointed you to five days. I would remind you that it left out the important words, "at least five days." Also, there are other provisions to talk about at such time that the Boards may think just in the circumstances.

I think you have to take a look at whether you have a five-page piece of paper or an 85-page piece of paper.

CHAIRMAN COUFAL: I think we understand the views of the Parties.

Now, Mr. Rosco, do you have a witness that you can call?

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MR. ROSSO: Yes, sir, but I am a little puzzled as to whether I have a stipulation now to put this in as -- well, I am just asking the question. Dr. Leeds -- or whether I should put him on there and go through the whole thing.

DR. LEEDS: I thought there were no stipulations left, everything was wiped clean.

Am I misunderstanding the situation?

MR. ROSSO: I am just trying to find out.

CHAIRMAN COUFAL: If the parties want to stipulate they can stipulate.

MR. ROSSO: Well there was an offer made. I am just asking which way they want to go.

MR. CHERRY: Well let me ask this:

Does the Board have any questions of Mr. Bichel on the basis of anything they have heard so far?

And if the Board doesn't and the Staff doesn't, and the only thing that will happen, that we stipulate in this document, whatever it is as if read, I will have one decision.

(Board conferring.)

MR. CHERRY: You are at a little disadvantage, I assume, since you haven't seen this, have you?

CHAIRMAN COUFAL: Yes, we have.

The Board has no questions.

DR. LEEDS: I have not read it.

MR. ROSSO: I am just trying to save time. You can

take a look at it and see if you have any questions. And if not, we may be able to work it out that way.

And if you do, we will put him on.

MR. CHERRY: Does the Staff have any questions?

MR. HOEPLING: The Staff has no questions.

MR. CHERRY: Do you have another witness ready to move forward right now?

MR. ROSSO: We can get another witness to come over.

MR. CHERRY: Do you have any other questions, Mr. Rosso?

MR. ROSSO: Other than putting this in?

MR. CHERRY: Yes.

MR. ROSSO: No, I think I can ask another witness the questions.

MR. CHERRY: Who is your next witness?

DR. LEEDS: I have scanned this and I have no questions.

CHAIRMAN COUFAL: All right, the Board has no questions.

MR. ROSSO: Mr. Cherry asked me whether I had any other questions of Mr. Bickel besides this material if it is stipulated in.

I have two other questions which do not relate directly to this material.

MR. CHERRY: Well, I would like to hear the

question first. Why doesn't he ask those questions direct and then I will make a judgment.

MR. ROSSO: No problem with that.

CHAIRMAN COURSE: All right.

Mr. Dickel, you have been sworn.

Whereupon,

PHILIP DICKEL

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

MR. CHERBY: Do we have another witness ready to go, I take it?

MR. ROSSO: He is not here now.

MR. CHERBY: Well, I suggest you get him on the phone and get him over here, because I am not going to do this only to have another recess.

Who is coming?

MR. ROSSO: Mr. Heins.

MR. BRENNER: Is Mr. Noble ready to go today also, Mr. Rosso?

MR. ROSSO: Tomorrow morning, I think.

CHAIRMAN COURSE: All right.

We intend to shut this down at 3:30 today, so you have got time to work on your troubles, that you are going to take up with Dr. Wynn.

MR. BRENNER: Mr. Chairman, I wonder if we could get some very slight relief on one of my commitments.

I have committed to put on the record as close of business today, the -- all the specific documents, as specific as we could get it, that we would want based on Mr. Wynn's testimony. I have not been able to complete going through that because I thought I would be able to leave the hearing room this afternoon. But, because of the nature of the arguments, I stayed.

I would commit to do that as early as possible tomorrow morning on the record.

CHAIRMAN COUFAL: You are going to talk to Dr. Wynn tonight, aren't you?

MR. BRENNER: I am not sure if we have to.

CHAIRMAN COUFAL: Well, if you talk to him at all --

MR. ROSSO: Could I just interject for one second. I am sorry to interrupt you.

Did I understand you to say that you are going to cut off at 5:00? I just had someone call another witness and it is 17 -- well, I better go out --

CHAIRMAN COUFAL: We just told you that.

MR. ROSSO: Well, I better go out and call.

MR. BRENNER: I am not sure we have to, Mr. Chairman, but more importantly I am not sure that I have to make that decision in the next two hours, because I was originally,



probably, very pushed to do so.

Presumably Dr. Tinn will be somewhere where a phone exists tomorrow, and this will give me the time to go through it with the people.

CHAIRMAN COUFAL: Well, did Mr. Cherry say he was available tomorrow morning at 7:00 o'clock his time, or 9:00 o'clock?

MR. BRENNER: Well, you know Mr. Cherry can set a lot of deadlines, with all due respect, Mr. Chairman, but it gets very difficult to meet them all.

I never stand up and say something is impossible until we make the attempt. And we have been making the attempt all day to go through what we have to go through, which is why I didn't say we couldn't do it this morning.

Now that it is a quarter of five, I guess --

CHAIRMAN COUFAL: What are you asking us to do, Mr. Brenner?

MR. BRENNER: Well, I had committed on the record that I would list the documents that we needed from Dr. Tinn's testimony by close of business today.

I haven't been able to go through all of that.

What I would like to do is be able to do that on the record as soon as possible tomorrow.

CHAIRMAN COUFAL: All right.

MR. BRENNER: Whether or not I need to talk to

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Dr. Timm I assume I can work out with Mr. Cherry.

CHAIRMAN COUFAL: Fine.

MR. ROSSO: Are we ready?

CHAIRMAN COUFAL: Yes, sir.

Go ahead, Mr. Rosso.

REDIRECT EXAMINATION (Continued.)

BY MR. ROSSO:

Q Mr. Bickel, at transcript pages 1991 and 1993 on cross-examination, Mr. Cherry asked you several questions regarding your projection of electrical consumption by General Motors.

Do you have any comments you would like to make regarding your projections of GH consumption?

MR. CHERRY: I object to the form of the question.

That is highly improper to ask the witness to say whatever he wants, calling for a narrative with no way that I can object as to relevance or to anything else.

That is an improper question.

CHAIRMAN COUFAL: I agree.

Aim him in the right direction, Mr. Rosso.

BY MR. ROSSO:

Q Have you made any inquiries with regard to General Motors' commitments to the FEA with regard to energy consumption?

A Yes, I have, Mr. Rosso.

Q What did those inquiries review?

MR. CHERRY: I object to that, unless we know before any substance comes in what did he do, who did he talk to, at what time, so I have an opportunity to object on the merits.

CHAIRMAN COUTAL: I think that is right, Mr. Rosso.

BY MR. ROSSO:

Q What did you do, Mr. Bickel?

A I had a consultation with William Vaughn, who is the General Motors director of energy management, and also with Mr. Ned Poor, who is GM's manager of utility relations, energy management.

Q And what did those gentlemen tell you with regard to their commitments to the FEA on energy consumption?

MR. CHERRY: Just a moment, Mr. Chairman.

I want to know when this occurred, who called who, what were the circumstances, because I am going to object to this and I want it very clear what it is first.

He just called a couple of people.

CHAIRMAN COUTAL: Can you pin it down, Mr. Rosso.

MR. ROSSO: I will, Mr. Chairman, but let's not forget that Mr. Cherry asked questions on cross-examination where he made representations and allegations as to what these commitments were by General Motors.

CHAIRMAN COUTAL: You are on direct, Mr. Rosso.

male

MR. ROSSCO: Okay.

BY MR. ROSSCO:

Q When did you call these gentlemen?

A I called them at approximately 10:00 a.m. Chicago time, February 7th of this year.

Q And for what purpose did you call them?

A I called them to read pages 1882 through 1883 and determine what their reaction was as they understood their commitment to the FEA.

Q And what did they tell you?

MR. CHEVY: Mr. Chairman, I am going to object to that. I think that is -- he called them up and read transcript portions and asked them what their reaction was.

That is a highly improper way to get that evidence in.

I think that if he believes that it is necessary to get that evidence in it has got to come in in some other fashion, one of which would be an offer of testimony from General Motors people or FEA people. To read a transcript to someone, now we have several problems with it. Was it read right; did they hear it right; what their reaction was.

I am not going to rely on Mr. Bickel's reaction about anything. I think that is an objectionable question and procedure, sir, and I ask that you sustain my objection.

CHAIRMAN SCOFFER: Well, I think it is how would

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hearing, and I will sustain it on that grounds.

MR. ROSSO: Okay, Mr. Chairman.

Then you know we get to the point where we may have to bring in General Motors' witnesses to show that what Mr. Cherry said or assumed on cross-examination wasn't so.

CHAIRMAN COUFAL: What Mr. Cherry assumed on cross-examination is not evidence in this record, Mr. Rosso.

MR. BRENNER: Mr. Chairman, I would like to make one observation.

I have seen findings and allegations in other proceedings, not necessarily by Mr. Cherry, but by parties writing findings wherein they allege, cite portions of the transcript that include their question and allege that this statement was made and never rebutted by the party with the burden of proof.

I certainly agree with your statement that anything Mr. Cherry said isn't evidence.

CHAIRMAN COUFAL: Well, if you ever see anything like that coming out of this Board, I will loan you my gun, Mr. Brenner.

MR. BRENNER: Okay, thank you, Mr. Chairman.

CHAIRMAN COUFAL: That is as it pertains to representation of counsel. Obviously for a witness it is something else.

MR. BRENNER: I understand, Mr. Chairman.

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While there is a pause, I might add it has taught me a lesson to be careful with transcript cites and findings as to who was citing who.

CHAIRMAN COUFAL: Mr. Pribila, you haven't said anything all afternoon. I am a little disappointed.

You haven't said anything for a couple of days.

MR. PRIBILA: Were you really looking for more comments this afternoon?

(Laughter.)

MR. BRENNER: Note the cringing of the Board.

MR. ROSSO: In view of the fact that hearsay is quite often allowed in administrative hearings, I would like to make an offer of proof as to what this witness would have testified to had he been allowed to -- to relate this conversation.

CHAIRMAN COUFAL: Make your offer of proof.

MR. ROSSO: This witness would have testified substantially as follows:

That he, Mr. Bickel, read Mr. Cherry's comments concerning an alleged agreement by General Motors to reduce the per vehicle energy consumption, which comments are found on pages 1991 to 1993.

That Mr. Vaughn responded that Mr. Cherry's assertions were absurd, that he further indicated that Mr. Cherry's characterization of the agreement was not even

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in the ballpark by several orders of magnitude.

That Mr. Poer stated that Mr. Cherry's comments did not even make sense.

Mr. Vaughn indicated that the correct information could be found in "GM to FEA on proposed energy efficiency improvement target for SIC 37," dated December 2nd, 1975.

Mr. Vaughn indicated that the target for the entire transportation industry was a 16 percent improvement in energy efficiency.

Mr. Vaughn further stated that this did not imply a lower kilowatt hour per vehicle use. On the contrary, Mr. Vaughn indicated that there may well be substantial conversion to electric from existing fuels.

He also indicated that the 16 percent target would be difficult to meet.

Mr. Vaughn indicated that Mr. Cherry's implications that there would be a lower per vehicle electric energy use have no basis in fact.

So would the witness testify.

MR. BRENNER: Mr. Chairman, for the sake of the record, if I understood a portion of that there was a submission from GM to the FEA which is apparently labelled a response to their request. If such a submission exists, that might be admissible.

CHAIRMAN COUFAL: It might be, Mr. Brenner. I don't

mail

know.

MR. ROSSO: I'm sorry, sir, I didn't hear you.

CHAIRMAN COUFAL: I said maybe it is, sir, we don't have one here.

MR. BRENNER: Licenses might have one.

MR. ROSSO: We might be able to get one.

CHAIRMAN COUFAL: Well, they have got a problem then, Mr. Rosso, if they can solve it or not solve it, whatever.

Go ahead, Mr. Rosso.

BY MR. ROSSO:

Q Again on cross-examination, Mr. Bickel, Mr. Cherry asked you several questions regarding your projection of electrical consumption at Dow's Midland plant.

Do you have any comments you would like to make regarding your projection of Dow's consumption?

MR. CHERRY: Objection to the form of the question.

CHAIRMAN COUFAL: I didn't get the tail end.

Mr. Rosso?

MR. ROSSO: I asked him if he had any comments he would like to add to the record regarding his projections of Dow's consumption?

CHAIRMAN COUFAL: I think Mr. Cherry is right.

Narrow it down somewhat.



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BY MR. ROSSO:

Q Have you reviewed, Mr. Michel, the questions which Mr. Cherry asked you and the responses you gave him?

A Yes, I have.

Q Is there anything you would like to add at this time to the responses that you made?

MR. CHERRY: I will object to the form of that question.

Mr. Chairman, I cannot meaningfully analyze a question unless an appropriate question or direct is asked. You cannot ask the witness to give you narrative or to tell you what he would like.

If he wants to supplement the transcript it is done in writing because if there was an error or a correction, there is a procedure for that. Not on oral examination.

CHAIRMAN COOPER: I agree, Mr. Cherry.

Can't you ask him some questions that will get this in, Mr. Rosso?

BY MR. ROSSO:

Q Have you reviewed your projection as against the exhibit that Mr. Cherry showed you on cross-examination?

MR. CHERRY: Objection.

What exhibit, what projection?

MR. ROSSO: May I have a moment, Mr. Chairman?

CHAIRMAN COUNTEL: Yes.

(Pause.)

MR. CHERRY: Mr. Chairman, may I suggest we adjourn and give Mr. Rosso the evening to find out how he can ask these questions?

MR. ROSSO: Well, Mr. Cherry, it is just that I don't have the transcript site. I would be glad to adjourn, or look for it now. If we can't get it in with a broader question, we will just have to do it the technical way.

CHAIRMAN COUNTEL: How long will it take you to find it, Mr. Rosso?

MR. ROSSO: I don't know, sir. I am looking through it right now.

MR. CHERRY: Mr. Chairman, may I suggest we adjourn. It is going to take us longer than 3:00 o'clock to get rid of this stuff.

CHAIRMAN COUNTEL: All right.

We will be adjourned until 9:00 o'clock.

MR. ROSSO: Can we have 9:30, Mr. Chairman, again.

Let me explain why, I have a real problem of taking care of the phonecalls that I have to make, to get other people to make, getting the mail taken care of and everything, if I have to be here at 9. I have to leave the office at a quarter of 9; I don't have a chance to distribute the material, I don't have a chance to return calls to other clients who are wondering

where the heck I am. And that is why the extra half hour makes a big difference to me, to conduct my regular practice.

CHAIRMAN COUFAL: Well you know when you start trying cases there are things you have got to do, like start and end so that you can get a full day in, Mr. Rosso.

MR. ROSSO: Well 9:30 to 6:30, which is what we traditionally have been doing is a fairly full day, sir.

Well, I am not going to argue the point. I will come when the Board tells me to. I would appreciate if we can start at 9:30.

CHAIRMAN COUFAL: All right.

But then we will run to 5:30.

MR. BRENNER: One point, Mr. Chairman.

It is not a bad idea to start a little later and run a little later based on the way we have been getting the transcripts. In other proceedings we sometimes get the transcripts a little earlier. Staff has been using the morning to cover the transcript.

CHAIRMAN COUFAL: Think how much more we would accomplish if we started earlier and ended at the same time.

Okay, 9:30.

MR. BRENNER: Either way is okay.

(Whereupon, at 5:00 p.m., the hearing in the above-entitled matter was adjourned, to resume at 9:30 a.m. on Wednesday, 9 February 1977.)