

Regulatory Docket File

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING CO.

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

and

CLEVELAND ELECTRIC ILLUMINATING
CO. et al.

(Perry Nuclear Power Plant, Unit
1 & 2)

Place - Silver Spring, Maryland

Date - MAY 13, 1976

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of

WOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING CO.
(Davis-Besse Nuclear Power Station
Units 1, 2 and 3)

and

CLEVELAND ELECTRIC ILLUMINATING CO.
et al.
(Perry Nuclear Power Plant
Units 1 and 2)

First Floor Hearing Room
7915 Eastern Avenue
Silver Spring, Maryland
Thursday, May 23, 1974.

The hearing in the above-entitled matter was reconvened, pursuant to adjournment, at 9:45 a.m.

BEFORE:

- DOUGLAS RIGLER, Reg., Chairman.
- MR. JOHN FRYSIK, Member. (Not present.)
- MR. IVAN SMITH, Member.

APPEARANCES:

(As heretofore noted.)

5/13/76

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C O N T E N T S

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>
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John White (Continued)	3532	3635		
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<u>Exhibits</u>		<u>Iden.</u>	<u>Int.</u>
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App. 127	6/12/73 memo of meeting of 6/11/73 by Lewis	3630	3644
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DJ 513	Memorandum, 2/3/71, to White	3672	3683
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PROCEEDINGS

CHARLES H. ...

Whitson,

JOHN ...

resumed the stand on behalf of Applicant Ohio Power Co. ...
having been previously duly sworn, was asked and answered as
further as follows:

DIRECT EXAMINATION (Continued)

BY MR. STEVEN BERGER:

Q Mr. White, what is your view regarding the
Buckeye arrangement?

A Well, the Buckeye arrangement is an arrangement
between essentially Ohio Power Company, Buckeye Power
Incorporated, and a number of the other utilities in the
State of Ohio.

Buckeye Power is a corporation of which
cooperatives or in which the cooperative members
in Ohio are the members.

Q How many member cooperatives are there?

A I think there are 27 or 28.

Some years ago Buckeye Power ...
ceived the idea that they would create a generating station
to be known as the Cardinal Station which would contain two
large-scale generating units, one to be owned by the cooperatives
through Buckeye, the other to be owned by Ohio Power.

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1 the station to be operated by Ohio Power -- both units, that
2 is to say -- and the energy then delivered to the cooperatives.
3

4 The unit owned by Buckeye was at the time at
5 least substantially larger than the total loads of the
6 co-ops and there are arrangements as I understand it whereby
7 during the period that the co-op load was growing to the
8 point at which they could use the full output of their
9 generating unit, Ohio Power would take the output not used
10 by the co-ops and, under some kind of an arrangement with
11 which I'm not familiar for a sort of payback of that by Ohio
12 Power.

13 They have I believe under construction now a
14 second unit at that station and subject to the same or very
15 similar arrangements.

16 The participation of the other investor-owned
17 utilities in Ohio is limited to providing transmission
18 service under one arrangement or another and essentially from
19 the interconnections with Ohio Power to the points at which
20 the cooperatives receive the energy.

21 Q Prior to the Buckeye arrangement how many cases
22 27 or 28 cooperatives receiving their bulk power supply?

23 A All of them were receiving at their -- were whole-
24 sale customers of investor-owned utilities, of one or more.
25 There were a couple of cases in which a single co-op was

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served by two investor-owned utilities.

Q How many of the contracts were signed by Ohio Power prior to the Buckeye agreement?

A I believe 16.

Q And by Ohio Edison?

A Seven.

Q And by the other investor-owned utilities?

A Well, 16 and seven is 23. As I say, that's 17 or 23 in total, so there would be four or five remaining.

Q Did the contractual arrangements with the investor-owned systems take the same general form?

A No, they did not.

Q What was the arrangement worked out by investor-owned systems? What was the contractual arrangement that worked out by investor-owned systems prior to the agreement?

A Each of them signed an agreement or contracts with an agreement with Buckeye Power and with Ohio Power. As far as I know I believe as the Power Delivery Agreement.

Q Ohio Edison did not sign the Power Delivery Agreement?

A No, sir.

Q Why is that?

A The Power Delivery Agreement contemplated as I say the transmission of energy over Ohio Power's transmission system to each of the other investor-owned utilities and then

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1 transmission by them from their points of interconnection
2 with Ohio Power to the points at which the energy would be
3 delivered to the co-ops.

4 Its theory was that the backbone transmission so
5 to speak would all be provided by Ohio Power and that the
6 function of the other investor-owned utilities party to the
7 agreement would be essentially just the provision of 69 Kv
8 transmission within their own areas.

9 The other arrangements between Buckeye and Ohio
10 Power and between Buckeye and its member co-ops contemplated
11 a flat charge per kilowatt-hour, the kind of thing that is
12 sometimes called a postage stamp rate. Included in that was
13 an amount for transmission service. That amount, under the
14 Power Delivery Agreement, was to be divided amongst Ohio
15 Power as the provider of backbone transmission plus some
16 amount of 69 Kv, that necessary to reach the co-ops within
17 its own service area and the other investor-owned utilities
18 party to the agreement, their share being upon the basis that
19 they were providing only the lower level of transmission
20 and not very much of that.

21 In our situation we found ourselves the only
22 investor-owned utility other than Ohio Power serving more
23 than one or two of the co-ops. We found ourselves in a
24 situation in which it was clear to us at least that our
25 transmission system at 345 Kv and at 138 Kv would be involved

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in the service they decided up to provide that service to us that the proceeds of the Power Delivery Agreement would not provide us any compensation or anything like that. It is clear compensation for the investment that we were necessarily be providing at those higher voltages.

I say we would necessarily be providing it because our only interconnection with Ohio Edison at the time were at those higher voltages with a couple of cables.

So the matter seemed to us to be of great importance. We advised Ohio Edison and Buckeye and considered the Power Delivery Agreement as a consequence from our point of view and we said to them that if they desired us to participate in the arrangement, some other different would have to be worked out.

Something different was worked out. We were to make a satisfactory agreement with Ohio Edison which was satisfactory to that company and to Buckeye. We signed it and we have since been providing interconnection which effectuates the purposes of the Buckeye agreement.

Q Approximately at what point in time did the cooperatives in Ohio Edison's service area cease supplying customers of Ohio Edison and commence taking their power from Buckeye?

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1 A. I believe the agreement was signed and became
2 effective by its terms in 1930.

3 They encountered difficulties in getting the unit
4 ing the unit and there were several extensions, one of these
5 extensions of, I believe, six months were of the old contracts
6 the wholesale contracts with the co-ops until the unit was
7 completed and in operation and it was possible for the Buckeye
8 arrangements to commence to operate.

9 I may have misspoken, Mr. Berger. I believe that
10 the actual operation commenced in 1930 and the regular three
11 extensions of six months or so each had occurred prior to
12 that.

13 Q Mr. White, does Ohio Edison have any agreements,
14 contract or understanding with Ohio Power Company which if
15 Buckeye is for any reason dissolved that the Cooperatives
16 which were served by Ohio Edison prior to the effectiveness of
17 the Buckeye arrangement would revert to become customers
18 again of Ohio Edison?

19 A. No, sir.

20 Q In fact, if that ever did take place, that is if
21 Buckeye were dissolved, and the Cooperatives came to Ohio Edison
22 and asked to become wholesale customers of Ohio Edison once
23 again, can you now state what Ohio Edison's position would be
24 if that were to take place?

25 A. It's hard for me to visualize that occurring, Mr.

1 Berger. I should think that if it was not in the past, it is
 2 likely to be as a result of some form of...
 3 cardinal units. In these instances, as...
 4 we have done in the past in similar...
 5 all the assistance we could to the...
 6 short term basis.

7 At the moment we have no plans...
 8 suppliers for these co-ops. If they can...
 9 term service from us I suppose that...
 10 the loads, our own loads, as the...
 11 capability at the time, we might...
 12 them on.

13 I guess I can't give you any...
 14 that.

15 Q Mr. White, if the...
 16 present facilities is required in...
 17 a new customer, does Ohio Edison...
 18 who shall incur the costs of these...
 19 facilities?

19 MR. BESSER: Would you repeat the...
 20 question?

20 (Whereupon, the reporter read...
 21 as requested.)

22 MR. STEVEN BERGER: Let me...
 23 BY MR. STEVEN BERGER:

24 Q If, in order to extend service...
 25 it's necessary to expand Ohio Edison's...
 26 present facilities, does...

mpb3

1 Ohio Edison have a policy with regard to who shall bear the
2 burden of the additional cost of installing the facilities to
3 that new retail customer?

4 A In most instances, of course, Mr. Langer, a new
5 retail customer will be located close enough to our facilities
6 so that extension is not a serious problem and the amount of
7 money involved is not large.

8 As you know I am sure, we are under a public utility
9 responsibility to serve all the customers who apply within
10 our area. In rural areas there is a policy of the Public
11 Utilities Commission of Ohio which governs. It's embodied in
12 Administrative Order Number 110 of that Commission and has
13 been in effect for many years. I think since some time in
14 the '20's probably.

15 That order provides in substance that when the cost
16 of an extension is unreasonably high in relation to the
17 revenue expected to be derived, a utility may, or Ohio Edison
18 Company may require the customer to guarantee a minimum
19 monthly bill, and there are formulae that have been developed
20 from time to time to establish what the amount of the
21 guarantee ought to be.

22 We have, on occasion, had other policies such as
23 a policy whereby we would ask a real estate developer, for
24 instance, who was proposing to open a large allotment and
25 wanted us to install facilities, to deposit with us a part of

1 the cost of these facilities subject to a certain limit a period
2 of years as he completed his service and then he is retired.

3 In some instances, we asked a large individual
4 customer, for example, to make a contribution to the
5 construction.

6 In all of these instances the question which, of course,
7 of course, is what is the amount of service which is required
8 and how does that relate to the cost of the facilities which
9 required.

10 Q Has the policy of the Company with respect to the
11 bearing of the cost for the extension of the facilities at
12 retail remained relatively constant during the period in
13 date?

14 A No, it has not.

15 Starting with the year 1955 there was a relaxation
16 of a relaxation by us of the application of the policies of
17 this kind. We were in the fortunate situation of being in a
18 rapidly growing economy. We were in a position to be expanding
19 our retail rates and our wholesale rates as well. It was
20 was easier to come by. We were less insistent and were
21 less insistent that these policies which required in some way
22 or another some participation by new customers in the cost
23 of extensions that those policies be applied and enforced.

24 In the early '70's, '71, '72, as I'm sure you're
25 aware, financial conditions began to change very rapidly

mpb5

1 in the utility industry and for Ohio Edison Company. We
2 then began to apply the policies and to enforce them more
3 rigidly, most particularly in the early part of last year we
4 strengthened them up quite a bit.

5 Q You mentioned the real estate developer. If a
6 real estate developer, during this period of time, '65 to
7 date, were to come to you and ask for service and not for
8 service in the form of undergrounding, what would have been
9 the position of the Company from '65 up until the present
10 time?

11 A I expect that in 1965 we would have asked that
12 developer to bear the difference in cost between underground
13 installation and an overhead installation.

14 ^o
15 It was during the period at about that time that in
16 the years immediately after that there was of course a great
17 deal of interest and pressure from the public in increasing
18 the amount of underground as opposed to overhead distribution
19 service. The manufacturers began to supply us with better and
20 more reliable and less costly equipment for the purpose.

21 We began to find that in many instances the differ-
22 tial was no longer as great as it had been. We had seen
23 differentials of or instances in which an underground
24 installation cost three times as much as overhead and as high
25 as ten or more times, when we had rock close to the surface,
but those differences or those multiples began to drop very

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very substantially. We even found cases in which the
ground installation was less expensive although that was not
the common thing, in fact. And so, in fact, we found, as
in others, we relaxed our policies and we found the result
that in only exceptional cases, if any, were we asked for
the difference.

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1 Q Did there come a time, though, that because of
2 the financial conditions you described earlier, the policy
3 of the company with regard to undergrounding changed, or
4 as the relaxation of asking the contractor to cut back on
5 the cost of the undergrounding?

6 A I think we have not changed that at all. We
7 have become more insistent upon deciding whether the installa-
8 tions are underground or overhead, however.

9 Q Whatever the policy has been, has the policy been
10 applied uniformly throughout the Gale Station system?

11 A Yes, sir.

12 CHAIRMAN REGLER: Which policy?

13 MR. STEVEN BERGER: The policy that Mr. White
14 has just been describing generally with regard to whether we
15 go to undergrounding or otherwise.

16 CHAIRMAN REGLER: Yes. Well, I have some difficul-
17 tly with this line because I didn't pick up any policy of
18 the company. You asked him about the policy and his ori-
19 ginal answer, which was quite lengthy, described a number
20 of considerations that the company applied, and I never
21 heard any policy emerge from this.

22 Rather, my notes reflect that the company
23 weighed the benefits, the size of the load versus the length
24 of the extension, and then perhaps approached the customer
25 and tried to negotiate some sort of a partial payment.

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1 of the load and the costs of the extension?

2 THE WITNESS: Right.

3 CHAIRMAN RIGLER: All right.

4 THE WITNESS: Or even more.

5 CHAIRMAN RIGLER: All right.

6 BY MR. STEVEN BERGER:

7 Q When I asked you the question as to the uniformity
8 of the policy throughout the Ohio Edison system, what I
9 meant to ask really was would the policy of the company be
10 different if the company were involved in a competitive
11 situation, for example, with a retail -- a new real estate
12 development?

13 MR. LESSY: I'm going to ask that "competitive
14 situation" be described.

15 BY MR. STEVEN BERGER:

16 Q "Competitive situation" meaning the real estate
17 developer has not as yet determined which power supplier
18 he was going to take service from and there were alternatives
19 for that real estate developer.

20 MR. LESSY: To obtain power for the development?

21 MR. STEVEN BERGER: Exactly.

22 THE WITNESS: Yes, there would be no difference.

23 BY MR. STEVEN BERGER:

24 Q Now we have been discussing the extension of the
25 company's facilities at retail, extending service to new

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customers.

With regard to the extension of our facilities in order to provide service to wholesale or a substantially different class of an existing customer at wholesale, what has the company's policy been with regard to such matters and what additional facilities?

A We have not had in that connection, Mr. Board, any written instructions or policies to that effect of that word. As a matter of fact there have been several instances in which that kind of question has arisen.

The first I can recall is that several years ago when the City of Omaha approached the company with a request for an interconnection which required the laying of a few miles of 69 kv line, the company built the line, the connection was made and it is now in operation and has been for some time.

Later when the City of Norfolk was concerned about its future and, as I think I said you said, was exploring various ways in which it might be served, one of the things which it might follow for the future, one of the proposals made of us by Norfolk was that we consider supplying Norfolk at 69 kv. That, too, would have involved the laying of 69 kv lines.

As a matter of fact we were then in the process of

eb5 1 constructing a 69 Kv loop between one of our substations
2 which would pass fairly close to Newton Falls. I think some of
3 the distance. Service to them however would have required
4 some amount of additional line and we made a proposal to
5 them for 69 Kv service and again, as in the case of Charlin,
6 without any suggestion to them that they bear any part of
7 that cost.

8 The next instance, very similar to Newton Falls, was
9 the City of East Palestine, very similar in the sense
10 that that city was going through a review of the various
11 paths that it might follow in the future. They asked about
12 69 Kv service; we made them a proposal which we thought for
13 some time they were going to accept. We got well into the
14 engineering of a line to that city and I believe had pur-
15 chased some of the right-of-way before they finally decided
16 to sell the system, and again without any suggestion that
17 they bear part of the cost of that line.

18 More recently we have been considering 138 Kv
19 service to Newton Falls and to Miles. We have now reached
20 the period of the financial crunch. We are now in a situa-
21 tion in which we are not able to provide the cash needed
22 to do all the things that we think we ought to do with
23 respect to service to our retail customers, and we have in
24 the case of both Newton Falls and Miles asked that they bear
25 the cost of an extension of facilities in order to provide

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1 the service that they want.

2 Q You said Weston Falls, did you mean Weston Falls
3 or Cuyahoga Falls?

4 A I thought I meant Weston Falls. The utility
5 signed an agreement with them to start providing the
6 service. They will build and own a plant at Lima which is
7 essential to that service. That agreement is up before the
8 Federal Power Commission for approval.

9 Q Mr. White, in determining what the company's
10 position would be with regard to the degree to which
11 who shall bear them with regard to the extension of the
12 company's facilities to a new wholesale customer or the
13 extension of the company's facilities to an existing
14 sale customer for substantially different service, are
15 competitive situations ever involved in the decision
16 that the company makes with regard to what they will allow the
17 wholesale customer to do with regard to contributing to
18 bearing costs for those new facilities?

19 MR. LESSE: I'm going to ask that you don't
20 "competitive situations."

21 MR. CHARNO: Can I have the question read?

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

24 MR. STEWEN BERGER: By "competitive situations"
25 I'm speaking of whether or not the company takes into

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1 consideration the fact that in providing this new service
2 or in providing the service to the customer it is
3 enhancing the position of another to compete with the com-
4 pany in some way.

5 THE WITNESS: No, sir, that kind of thing is not
6 taken into consideration. The thing that we do and must
7 take into consideration is our financial ability, that more
8 than anything else.

9 As I say, at the moment, as we have been here for
10 a couple of years and as I dare say we will be for some time
11 into the future, we're in a situation in which our ability
12 to raise funds for capital purposes is limited. We have had
13 to reduce, if you will, the standards which we have in
14 effect or have had in effect for construction of distribution
15 circuits.

16 We have had to construct the circuits in such a
17 way that there is somewhat more vulnerability to lightning
18 for instance than there had been in the past in our older
19 stations.

20 We have kept our people under a very strict
21 discipline in the sense that one of our division engineers
22 who comes in with a new project which he thinks ought to be
23 given consideration must with that explain what other
24 project he proposes to drop in order to provide the funds.
25 In those circumstances we have as I say, and for those

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reasons in the two cases I mentioned, and the fact that
digital wholesale customers bear the cost of the work
which they have asked for in order to receive the
service that they want.

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BY MR. STEVEN BERGER:

Q I don't know what it's about. Let me just ask you -- when we talked about the line, can you define it as you mean by hearing the term?

A Well, in the case of Newton Falls, for example, it was necessary -- was or is, I'm not sure what the situation is, it's necessary to build some new miles of line that the nearest point our facilities reached, our existing facilities reached to the point at which Newton Falls had a transmission or was going to build one, whichever it was.

As I said, when we were faced with that situation in the case of Oberlin, for instance, the supply was more plentiful, we built that piece of line.

Q Without asking Oberlin for anything?

A Right.

In the case of Newton Falls, had we had the same amount of money, it would have meant that rather than building that system that was pressing, that was urgent, we would not have had to do something somewhere else in the system that was pressing, that was urgent.

So, the agreement with Newton Falls, which is made before the Federal Power Commission provides that Newton Falls will build that piece of line and own it.

Q Was there ever a time when the proposal of the Company to Newton Falls was something other than that?

A Yes, we proposed to them at one time that they

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1 raise the money, we would build the line and own it and
 2 there was some kind of a proposal which I don't have in
 3 mind at the moment for refunding that money at some
 4 some period of time. Just the reverse, if you will, of the
 5 real estate development plan that we had in mind.

6 Q Okay.

7 A But that was not satisfactory to Denver Falls. I
 8 believe their financial advisor told them they couldn't raise
 9 money, they couldn't sell bonds for that kind of a purpose
 10 so that didn't work out. They can apparently raise the money
 11 to build and own the line themselves, and that's where they
 12 are.

13 Q Are there contained in certain retail and wholesale
 14 contracts that the Company has with its customers limitations
 15 on the amount of capacity that a retail or a wholesale
 16 customer can take under contract?

17 A Our standard form of industrial contract has in its
 18 language which indicates service at such a voltage and at
 19 forth up to so many kva of capacity. There's a blank space
 20 and of course you put in what you're making -- and you're
 21 filling out the contract with the industrial contract that
 22 blank will be filled with a number, whatever it was agreed to
 23 be.

24 In most cases, however, in our contracts with
 25 wholesale municipal customers we have no such limitations, no

mpb3

1 that we're obligated in those cases to stay in touch with a
2 customer may need over the life of the agreement.

3 Q To the extent that inter-agency discussions are included
4 in the retail and some wholesale contracts, what kinds of loads
5 for including them?

6 A Well, they're included essentially in recognition
7 of the capability of the facilities we have in the area.
8 That is to say, if the customer is served at 13 Kv, for instance,
9 the 23 Kv facilities in his area may or may not be heavily
10 loaded at the time. He may or may not have an emergency, if
11 they are heavily loaded some form of relief by the addition
12 of a substation or splitting of the circuit or whatever it
13 may be.

14 So those are the kinds of considerations that are
15 in the picture on our side of the table.

16 On the customer's side of the table, he has some
17 idea of what the size of his load will be, what he anticipates
18 in the way of growth in that load over some period of time.
19 So between the two the engineering people arrive at a number
20 which is put in the contract.

21 Q And if, after that period of time the contract
22 is in effect that the customer decides that he needs addition-
23 al capacity, what happens?

24 A Well, we keep in touch with such a customer and
25 keep ourselves aware, as well as we can, of what his plans

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1 may be. And if we find that he's going to double the size of
2 his plant and put in a lot of additional equipment, then, of
3 course, we go about strengthening our facilities, do what
4 needs to be done, in order to provide him with the additional
5 capacity.

6 If nothing of that sort occurs, that is to say
7 if nothing need be done with our facilities then we just go
8 ahead and supply it.

9 Q Does the provision for expanding facilities in
10 certain retail and wholesale contracts, are they in any way
11 included for the purpose of keeping from a customer point
12 that that customer could use to compete with you at any
13 level of your business?

14 A No, they aren't for that purpose at all. They
15 are, as I say for reason of engineering considerations and to
16 let us know at least in some way the extent of the obligations
17 we're undertaking at the time to give us an opportunity if
18 some sudden, some large and sudden increase were to come, to
19 give us an opportunity to protect ourselves at least until
20 we have time to make the changes in our facilities that are
21 required, whatever they may be.

22 Q You mentioned before that many of your contracts
23 with your wholesale customers do not contain such capacity
24 limitations.

25 A That's right.

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1 Q Are these contracts all requirements contracts?

2 A Yes, that is so only there is a limit in terms on
3 the amount of either capacity or energy that the customer can
4 take.

5 Q And when you said that the provisions were in there
6 for purposes of protecting the Company, you were protecting
7 it from an engineering standpoint?

8 A Well, sure, so that if, as I say, there were a
9 large and sudden increase which exceeded the capability of our
10 facilities, or threatened to, we'd be in a position to say
11 to the customer, Now back off, give us time to get things
12 straightened out and then let that load come on.

13 Q Mr. White, has the Company ever refused to provide
14 high voltage, that is service at 69 kv and above to any
15 customer upon request?

16 A I expect there have been instances in which we
17 didn't have available in the area 69 or 138 kv facilities,
18 whatever it may be.

19 I'm sure there has not been an instance where we
20 have refused to provide such service when the facilities were
21 available.

22 Q And if the request came from someone in an area
23 where the facilities were in place, would the response of the
24 Company, We can provide that service, or was the response of
25 the Company, Let's talk about the facilities necessary to be

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placed on line in order to provide the service?

A Well, of course, that's what we've done with the line extension problem, but we would not put it in front of you might say in such an instance, and I'd like to say, if you would like you to participate in the same manner on a deposit basis, or whatever.

Q Has the Company ever received requests for high voltage service?

A Have we ever refused to take a service?

Q Yes.

A Well, I guess maybe we have done that in cases where suggested to us from what we think would be a long time ago maybe more years that some of our wholesale customers might like to think about service at 138 kv. None of them, I guess it is still very early, but it may change very shortly, and we've been asked to do that in both Niles and Cuyahoga Falls in regard to that. I've had question with us from time to time. However, we're in a position to take service at 138 kv. and we've been told that if there were such that when those requests came in we wouldn't be in a position to do that for the next several years because of the need to design and build substations and so on. So we would to them what we could do. We can't file a rate for 138 kv service until we have a rate, and you are prepared to take that service and we would not for it.

mpb7

1 we will file such a rate.

2 Q But the problem for the municipality, of course,
3 is that they're going to have a substantial amount of
4 investment in order to bring about service at the higher
5 voltage in the way of substation or whatever that they will
6 have to build. How do they determine the financial feasibility
7 of going to a higher voltage without getting some indication
8 from the Company as to what discount would be available to
9 them if they took it at a higher voltage?

10 A Well, we told them, we pointed to our industrial
11 rates which are set at a level and then provide a discount of
12 3.5 percent if the service is taken at 69 Kv and a discount
13 of 5 percent if the service is taken at 133 Kv. We said to
14 them on numerous occasions that that seemed to us to be a
15 logical pattern to be followed in the case of 133 Kv service
16 to municipal wholesale customers and that they could use
17 the 5 percent number if they cared to use it for rate-making
18 purposes.

19 We said also that since we were talking about
20 service which would only begin at some unspecified time in
21 the future, that obviously what the rate might be at that
22 time in the future would depend upon what were the costs of
23 the service then.

24 And so we've had that conversation with them
25 several times and we've written letters to them setting it

mpib8

1 out and I'm sure they have known, as I say, for at least ten
 2 or twelve years that they could -- that 100-cc service would
 3 be available to them when they wanted it and that for
 4 estimating purposes as of any time they had an idea of what
 5 they could work.

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1 Q Mr. White, did there come a time when the City
2 of Corvillo approached Ohio Edison with the general question
3 interconnection with Ohio Edison?

4 A Yes.

5 Q What point in time are we talking about?

6 A I think that was in 1973.

7 Q Do you recall the initial contact from Corvillo?

8 A I think the initial contact was a letter addressed
9 to Mr. Mansfield. I'm pretty sure that was it. It may have
10 been a phone call. At any rate there was a meeting arranged and
11 held.

12 Q Who was present at that meeting?

13 A Mr. Williams, who was I believe the superintendent
14 or the manager of the Corvillo system, a man named Lewis,
15 who was a consulting engineer. I think there was somebody
16 else there on behalf of Corvillo but I can't tell you who he
17 was.

18 Mr. Williams and Mr. Lewis did most of the talking.

19 For Ohio Edison there were Mr. Mansfield,

20 Mr. Firestone and myself.

21 Q During the course of those discussions do you
22 recall any discussion had with regard to the use of Ohio
23 Edison's transmission facilities for the purpose of third
24 party wheeling?

25 A No, sir, there was no such discussion.

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discussion was confined essentially to the rate
synchronous interconnections.

Q Mr. White, I think you indicated in your
testimony that the company filed for a rate increase
their wholesale customers at the Public Utilities Commission
in January of 1972. Is that correct?

A Yes, that's correct.

Q After the filing of that application for a rate
increase, were there incursions by the Public Utilities
Commission questioning the propriety of the rate
rates?

A Yes.

Q Who were the incursions?

A Well, they were essentially not a single entity
had approached us in 1966 and asked for a rate increase
wholesale rates which was ultimately lowered to a level
A committee of five or six representatives of the
our municipal wholesale customers in 1970 and at that
time gave themselves the name Wholesale Customers of
Edison, or WCOE.

Q Did there come a time when you had some contact
Wholesale Customers of Ohio Edison to discuss the propriety
of Ohio Edison's rate increase at the Public Utilities Commission?

A Yes.

Q And who was present at the rate of that meeting?

eb3 1 A Well, there were quite a number present. Mr. Stout
2 was there from Jayaboga Falls. I believe either Mr. Lynn
3 or Mr. Clevidence or perhaps both. I don't know if Gerald
4 Mr. Burgess from Miles was there. Mr. William Duncan, an
5 attorney from here in Washington who was their counsel
6 was present. Mr. William Hayden of W. H. Hayden, a consulting
7 engineering firm, was present. There may have been others.
8 It was a fairly large group.

9 CHAIRMAN RISLER: Can you give some idea of the date and
10 the circumstances of the meeting a little better, please?

11 BY MR. STEVEN BERGER:

12 Q Approximately how soon after the filing of your
13 application for a rate increase did this first meeting
14 with the WCOE take place?

15 A Oh, it occurred in the late summer I believe of
16 that year, of '72.

17 Q And who initiated the meeting?

18 A They did. They asked for a meeting.

19 Q Who were the principal negotiators for WCOE at
20 this meeting?

21 A Well, Mr. Duncan and Mr. Stout, I would say, at
22 that meeting carried on most of the conversation on their
23 behalf.

24 CHAIRMAN RISLER: I'm still not entirely clear
25 as to the subject of the meeting. I gather it concerns the

ab4 1 request for increased rates but I'm not sure if that was
2 the entire agenda or if it covered a variety of subjects
3 also. I don't know if it has been started for representatives
4 Ohio Edison.

5 BY MR. STEVEN BERGER:

6 Q When they contacted you for the purpose of setting
7 up this meeting did they indicate to you what the purpose
8 of the meeting was going to be?

9 A Yes. As I said earlier, we had an application
10 on file with the FPC for an increased rate to three customers.
11 They indicated a desire to come in and talk to us about
12 that.

13 Q All right.

14 When the meeting was held what took place?

15 CHAIRMAN REIGER: Who was there from Ohio Edison?
16 I would like to get that.

17 BY MR. STEVEN BERGER:

18 Q Mr. White, other than yourself, who else was
19 present?

20 A I was present. I believe Mr. Spaulding was,
21 Mr. O. Waugh, vice president and our chief financial
22 officer, Mr. Zimmerman, another vice president. I believe
23 Miss McGovern, an attorney, was there. And I expect that
24 either-- I expect Mr. Wilson was there, the chief rate
25 evaluation engineer. And there may have been again a couple

eb5

1 more.

2 Q Who was the principal spokesman for the attorney?

3 A I was.

4 Q Could you relate to us the discussion that took
5 place at this meeting?6 A About the first thing that happened after they
7 greeting each other and so forth was that Mr. Stout passed
8 across several copies of a letter and said that he and they,
9 WCOE people, would like us to read it.10 Q Let me stop you at that point, Mr. Under, and show
11 you a document dated August 11th, 1972, which is a letter
12 from Mr. Stout to yourself, and it has been marked in this
13 proceeding as NRC Exhibit No. 30.

14 (Handing document to the witness.)

15 I ask you if that's the letter that you're making
16 reference to.

17 A Yes, this is the letter I referred to.

18 Q What reaction did you have to the letter? Did you
19 read it at that point in time?20 A Yes. I read it and at least those of the rest
21 of us from Ohio Edison who had copies read it.22 Mr. Stout remarked about a few points in the
23 letter that he thought needed some clarification and I don't
24 recall what those clarifications were. They weren't any-
25 thing of any importance, however.

ab5

1 I said that we had supposed the purpose of his
 2 meeting was to discuss the application of Title VIII, that
 3 this letter came as a complete surprise to us, that
 4 certainly was a fact, that we did not expect the subject of
 5 that meeting to react to it at all, and we didn't.

6 The meeting then went on into some discussion of
 7 other of the proposed changes in laws.

8 Q Was there another meeting held subsequent to this --

9 A Yes.

10 Q -- at which time was the issue of Title VIII, I mean, was
 11 a matter of discussion?

12 A Yes, sir. We met some weeks later.

13 Q Who initiated that meeting?

14 A It was pretty much the same group.

15 I don't know what agency initiated that meeting,
 16 Mr. Berger. I think at this meeting on August 11th we
 17 agreed on a date for another meeting a month or so, or two
 18 weeks later, at least that's my recollection.

19 So we met. I had said at the HRCB meeting of the
 20 August 11th meeting that we would give them some response
 21 to the letter, and we did.

22 Q And what was it?

23 A I directed their attention to the question, just
 24 to read it from the letter:

25 "Would Chic Eklund be willing to enter

ab7

1 into a partnership arrangement with the present
2 wholesale customers for future additions to the
3 company's power supply facilities?

4 MR. STEVEN BERGER: For the record, please
5 Mr. White is reading from the third paragraph on the third
6 page of NRC Staff Exhibit No. 30.

7 THE WITNESS: I said to them that we would be
8 willing to endeavor to work out with them such a partnership
9 arrangement. There was some discussion between Mr. Duncan
10 and me, what we were really talking partnership in the
11 strict legal sense of the word, and we agreed that we were
12 not, but that partnership for conversational purposes so to
13 speak was a suitable word and expressed what we were talking
14 about in that sense.

15 BY STEVEN BERGER:

16 Q What was the reaction of Mr. Duncan?

17 A Well, Mr. Duncan and the WCOB people generally
18 I think were surprised somewhat that we had given them a
19 favorable response on that point. At any rate they were
20 pleased and there resulted some general conversation about
21 ways in which this might be worked out: should it be a
22 Buckeye concept? Should it be ownership by the WCOB members
23 of particular pieces of particular generating units? Should
24 it be a unit purchase type of arrangement? Or what should
25 it be?

eb8

There was general discussion of how best to
general agreement that any one of them might be able to
do it, but nobody was prepared to start making it
and that is the worst, and so forth.

Q What took place next in your exam-

CHAIRMAN RIGLER: I don't want to interrupt your
examination which is proceeding very nicely on a
logical basis but I noticed that the question that was
put to Mr. White begins with the phrase "if so," and it
depends upon, it seems to me, a positive answer to the
preceding question. And I wonder if this question
itself directly to the predecessor question.

The partnership is preceded by the question:

"Would Ohio Edison be willing to
provide bulk power supply service as a long term
the existing full purchase power agreement?"

And then it continues:

"If so, . . ."

and we come to the question Mr. White just asked.

THE WITNESS: Mr. Rigler, I guess the reason I
stepped over that a moment ago is that we did say we'd
be willing to look at something like that. It would be
kind of an answer necessarily follows I think from a favorable
response to the next sentence.

But you know the subject of that first sentence

eb9

1 was never again discussed. It was never again mentioned that
2 I can recall by either side in those discussions, and they
3 have been continuing ever since August 11th of '73.

4 In other words-- Well, it just never came up
5 again.

6 BY MR. STEVEN BERGER:

7 Q Just to make it entirely clear, Mr. Davis, when
8 you answered affirmatively in terms of working out some kind
9 of a partnership arrangement, wasn't you necessarily
10 answering the first question in the paragraph, namely that
11 you were ready to provide bulk power on a level that was then
12 existing full purchase power requirements basis?

13 A No, I think-- Yes, I think that's so, as I
14 indicated to Chairman Riegler, Mr. Berger. But much less than
15 existing full purchase power requirements obviously would
16 depend upon what were the terms of the partnership arrange-
17 ment as it was finally worked out and might actually come
18 down to zero.

19 Q You stated that you and Mr. Dunbar had some discus-
20 sion as to the -- quote -- "partnership arrangement" --
21 close quote -- and I believe you said that it was pretty
22 much concluded by both of you that it was not to be a
23 partnership arrangement in the legal sense.

24 A No, as a matter of fact I think it could not be
25 legally.

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Q Why is that?

A I think an Ohio municipal corporation would have the legal capacity to secure a partnership in the same legal sense. I have some question whether Ohio law would allow it to do so. Particularly I would hesitate to put Ohio law into a partnership without a careful examination of the Holding Company Act of 1935, for instance.

Neither of us wanted a partnership in any legal sense, but both Mr. [Name] and I spoke in laymen's language and got somewhat confused. I think it was an acceptable word to use.

MR. JUSTICE BREWER: I give you 15 minutes to take a break, Mr. Rigger.

CHAIRMAN BREWER: All right, we'll come back at this time.

(Recess.)

CHIEF JUSTICE BREWER: We will resume.

Mr. [Name], what was your view about the Holding Company Act of 1935 that ruled a municipal corporation with respect to Ohio Edison's ability to enter into a form of a partnership arrangement with the WPAE group?

THE WITNESS: I had no particular opinion about Mr. Rigger. The Holding Company Act, in my legal opinion, is a very pervasive act and any relationship which we enter may have implications under that act.

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I was really just educating myself to -- in an
effort to draw some kind of a distinction between
"partnership" in the strict legal sense and "partnership"
in the layman's sense.

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CHARLES WICKERS: I was wondering if
Mr. Smith and I both were members of the
in the 1955 holding company which was
participation in the CSBOC arrangement.

THE WITNESS: No, I would not say that
that the CSBOC arrangement consisted of a
of tenancies in common in specific parcels of land
enter and then further arrangements as to the way in
they'll be operated and so forth.

CHARLES WICKERS: So it was a
loosely defined partnership with the CSBOC in
mind the absence of barriers to participation in
also be taken as an indication that it's not
impossible: legal impediments to that type of
with CSBOC?

THE WITNESS: I think you're asking me to
attempt with CSBOC to establish a partnership
same and the partnership, then, would have
I would want to examine that very carefully
get into it. That's what I'm saying. I
same view from his side of the table.

CHARLES WICKERS: Now, you would not
of what the Ohio Corporation Law and the
municipal corporations might do with respect to
forming some group the way that CSBOC

mpb2

1 THE WITNESS: There are some problems in that respect,
2 yes, and what we came to understand is, and what we would
3 then to study this thing, we did realize in fact that the
4 problems were among the problems that existed. They existed.

5 I think that there are ways that a majority of this
6 nature can be accomplished. There are ways -- there are at
7 least several different ways in which it can be done if you
8 ignore the existence of the possible legal problems with each
9 of them.

10 But Mr. Durbin and I both recognized that it could
11 be the height of foolishness to go ahead and do something that
12 would raise legal questions, or, in the least, possible way
13 practically raised legal questions that we would have to find
14 solutions to them.

15 BY MR. STEVEN BERGER:

16 Q Mr. White, we were at the point in the discussion
17 of the negotiation with WCOE where you're at this second
18 meeting where the subject of the August 11 letter came up.
19 What was going on otherwise at this time with regard to the
20 negotiations on the rates and any other matters that were
21 being raised in connection with your filing with the Federal
22 Power Commission?

23 MR. CHARNOFF: Can I have the question back, please?

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

1 THE WITNESS: Well, the two subjects, Mr. Morgan,
2 that is to say the particular arrangements -- in terms of
3 and the rate another word remains -- I would say that they
4 pretty much in parallel at both the August 11 meeting and the
5 second meeting and at subsequent meetings and also, I think,
6 several of them, both subjects would be discussed.

7 BY MR. SEVEN MORGAN:

8 Q What else took place other than the particular arrangements
9 to us thus far at that second meeting, with respect to the
10 discussions with regard to either or both of the subjects that
11 you say were being discussed?

12 A With respect to the rate subject, there was some
13 discussion. As you might expect, the view of the
14 people was that we were asking for too much. But that the
15 that we really weren't asking for enough. I think, I think
16 probably should have more.

17 I believe it was at that meeting that we were given
18 some information which they found to use in their own
19 proposals and we either furnished it to them or they
20 that we would, that kind of thing would be typical of the
21 rate negotiation occurring.

22 Q Was anything further discussed with respect to
23 the matters raised in the August 11, 1973 letter?

24 A Yes, there are two or three paragraphs in the August
25 11 letter with respect to whittling and our willingness to do so

mpb4

1 lack of it, to wheel. The questions arise whether we will,
2 in one way or another, wheel.

3 In all these questions I told them that we did
4 not propose to answer them at that meeting and we did not.

5 Mr. Mayben said two or three times we are or have
6 different ways, you're refusing to wheel. In each case I said
7 No, we are not refusing to wheel, we are simply telling you
8 that we have no answer for you to those questions, yes, no or
9 maybe.

10 So we went around and around a bit on that and then
11 was dropped for that meeting and we went on to something else.

12 Q After that meeting what took place here with
13 regard to the matters that were raised in the August 11, 1972
14 letter?

15 A Well, as you might expect, we continued our meetings
16 with the WCOE people and subsequently with the WWT people
17 and the FPC staff and there were a number of meetings. At
18 some point at one of those meetings Mr. Duncan suggested
19 that we should reduce to writing the agreement with respect
20 to a partnership arrangement -- quote --
21 and that we should make that writing a part of
22 whatever settlement agreement we might work out with respect
23 to the rates.

24 I agreed to that. Mr. Duncan and I independently
25 prepared drafts of a statement or an agreement for that purpose.

mp5

1 We exchanged those drafts, we compared them, and I believe will
 2 be changed some of my words. I changed some of the words
 3 some period of time we came to agreement on the substance
 4 of that and I believe we signed it in the presence of Mr. [unclear].

17

5 Q All right.

18

6 Let me take you back for a minute, Mr. [unclear]. As
 7 said, I believe, that Mr. [unclear] suggested that you
 8 that you had reached with regard to going forward in your kind
 9 of fashion with regard to the partnership arrangement that
 10 be memorialized and included as part of the settlement.

11 A Yes.

12 Q What was your understanding and what did you do
 13 just stop there. What was your understanding of the partner-
 14 ship agreement that was contemplated?

15 MR. [unclear]: I don't understand the question. I
 16 think the partnership agreement that was contemplated
 17 speak for itself. I don't understand what you are
 18 he asking -- I would like a statement of what you are
 19 this.

20 What is the question?

21 MR. STEVEN BERGER: You can have it put back. If
 22 the witness understands it, I have no problem with the way it
 23 was stated.

24 CHAIRMAN RIGGS: It seems clear on the record, if
 25 the witness can handle it.

mpb6

1 MR. LESSY: Okay.

2 MR. STEVEN BERGER: Can we have it read back, please?

3 (Whereupon, the Reporter read from his report,
4 as follows:

5 "What was your understanding and -- well,
6 let me just stop there. What was your under-
7 standing of the partnership agreement that was
8 contemplated?"

9 MR. LESSY: I'm not sure the record establishes
10 that agreement was reached to go forward prior to this time
11 and that's what the question assumes, which is my problem.

12 MR. STEVEN BERGER: Mr. White I believe testified
13 that at the second meeting an agreement was reached to go
14 forward, to go forward with some sort of a partnership
15 arrangement, the study of a partnership arrangement and him
16 asking Mr. White his understanding of what type of partnership
17 arrangement was within his contemplation that he was going
18 forward with at that time.

19 MR. LESSY: All right.

20 THE WITNESS: As to that point, Mr. Bergery, who
21 had had presented to us the question I read earlier from the
22 August 11 letter, would we be willing to enter into a partner-
23 ship arrangement for future additions to our power supply
24 facilities. My answer at that meeting had been that we would.
25 Both sides at that time recognized that there was more than

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one way in which that could be done and that it would be necessary to make some exploration of some of the ways in which it could be done and select one.

So that is what I want to say I would like to say reached an agreement at the August 11 meeting. I want to say Mr. Duncan and I undertook to give date written reports not having been done before.

BY MR. STEVEN BEREN:

Q Let me ask you this, Mr. Edison?

Let me show you a document which is entitled "Settlement Agreement" which has been identified in this proceeding as Applicant's Exhibit Number 7 and you can look at Exhibit C to the "Settlement Agreement" which is entitled "Memorandum of Agreement" and ask you if that was the final language that you and Mr. Duncan agreed that the purposes of the study to be conducted by Edison Edison?

(Handing document to the witness.)

A Yes, sir, it is.

Q Now, let me read the first sentence, which is:

"The parties will conduct studies and investigations of the engineering, financial and legal feasibility of an arrangement or arrangements under which the municipalities would by ownership in whole or in part or by special contractual arrangements be in a

1 position to participate directly in the operation
2 of specific generating capacity.

3 My question to you, Mr. [redacted], is with regard to
4 the phrase "specific generating capacity." Now you said
5 generating capacity did you have in mind and what was your
6 understanding from your discussions with Mr. Duncan as to
7 the specific generating capacity that he had in mind to be
8 studied pursuant to this memorandum agreement?

9 A Well, it might -- the specific generating capacity
10 might, if, for example, the conclusion were to be a return of
11 the Buckeye arrangement, be a specific generating unit owned
12 by WCOE. Other than that the specific generating capacity
13 that I had in mind and that Mr. Duncan had in mind, I'm sure,
14 was generating capacity then owned, or to be owned in the
15 future by Ohio Edison Company.

16 Q And the exchange of drafts that you spoke about
17 earlier reflected that and your discussions with Mr. Duncan
18 reflected that?

19 A Certainly the discussions did. It was both talking
20 off, of course, from the question in the Report in which which
21 refers to the Company's power supply facilities.

22 Q Is there anything contemplated by this "Memorandum
23 of Agreement" which would involve the use of Ohio Edison's
24 transmission facilities for purposes of third party wheeling?

25 A No, sir.

apb9

1 Q Approximately when was it, Mr. White, that the
2 settlement agreement was finally approved by the Federal
3 Power Commission?

4 A I believe that was late in 1973.

5 Q And what took place after the approval by the FPC
6 of the settlement agreement in the way of the work being
7 going forward on the "Memorandum of Agreement"?

8 A Sometime in the summer of 1974 I received a letter
9 from Mr. Duncan in which he said that he and the other people
10 and the Beck people, their engineering associates, had
11 spent some time working out a list of things to be done,
12 and investigation and a sort of program, and he had
13 attached those to his letter and suggested that I should
14 and get things started.

15 Q Let me show you a letter dated January 1974 from
16 Mr. Duncan to yourself with an attachment and I will ask if
17 these are the documents that you received at that time.

18 (Handing documents to the witness.)

19 The Exhibit numbers, I believe, are the exhibit
20 numbers 31 and 32.

21 A Yes, sir. This is a copy of the letter and the
22 attachment.

23 Q Was a meeting in fact conducted with Mr. Duncan?

24 A It was.

25 Q And approximately when did that take place?

1 A. I believe that took place in October, in the fall,
2 certainly, of '74.

3 Q. And where did it take place?

4 A. At our offices in Sharon.

5 Q. Who was present?

6 A. Once again, there was a rather large attendance.
7 On the WCOE side of the table there were five or six or so
8 representatives of various members of WCOE, Mr. Lurwell, Mr.
9 Mayben, the engineer, and, I believe, a couple of his
10 associates.

11 On our side of the table, of course I had three,
12 Mr. Spetrino, Mr. Czak, Mr. Eisenman, pretty much the same group
13 I mentioned before.

14 Q. Would you tell me the discussions that took place
15 at that meeting?

16 A. At that meeting -- I opened that morning, I guess.
17 I'm sure I did, saying that I had something I would like to
18 get off my chest. I referred to some statements in the
19 newspapers by the Mayor of Cuyahoga Falls in relation to our
20 fuel adjustment which either he or one of the Cuyahoga Falls
21 councilmen alleged was lining the pockets of the coal barons
22 and utility magnates and there were a few other names of
23 that sort. I said that I thought we were about to embark
24 upon a complex and difficult program, one that would require
25 the utmost of good faith, straightforwardness and confidence

mpb 11

1 on both sides of the table and that I thought it was most
2 unfortunate that we had to get into this in an unfortunately
3 created atmosphere of hostility and distrust. I said I just
4 wanted to get that off my chest, and let let's just deal in
5 business or words to that effect.

6 Q Was it agreed by both parties that you intended to
7 move forward in good faith?

8 A It was.

9 Q Did you comment upon Mr. Duncan's letter and
10 attachment at the October 7 -- or the October meeting?

11 A Yes, I did. There was some discussion of some
12 parts of it, of course.

13 Q Did you make specific reference to Item IV on page
14 3 of the attachment to Mr. Duncan's letter?

15 A I did.

16 Q And what did you say?

17 A I said that insofar as that referred to involving
18 third party power introduced into the Ohio Edison control area
19 on behalf of the municipals, that it was not part of the
20 agreement nor was it contemplated by that agreement; that
21 we had specifically reserved on that from the beginning
22 and continued to reserve on it.

23 I said that I thought that we had a difficult
24 enough problem just working out arrangements with respect to
25 generating capacity and that when, if ever, we were to talk

mpb 12

1 with them about wheeling, it ought to be at a different time
2 and under different circumstances and should not be permitted
3 to complicate the discussions with respect to generating
4 capacity.

5 CHAIRMAN RICHNER: Aren't the two interrelated?

6 THE WITNESS: At a later point in the meeting,
7 Mr. Pigler, Mr. Mayben raised precisely that point with me.
8 I said to him that we had assumed from the beginning that
9 if we made some arrangement with them with respect to generating
10 ing capacity a necessary and indeed an inherent part of that
11 would be some arrangement whereby we would provide transmission
12 service from the generating capacity in which we agreed with
13 them that they would have an interest to their outlying
14 points, that is to say, to the points at which we would
15 receive the energy and the capacity, the output as it were,
16 and put it to their uses.

17 I said to him also that we had assumed from the
18 beginning that it would be necessary that we agree upon
19 arrangements with respect to reserves and loadings, those two
20 things being, of course, part of any arrangement -- in any
21 real utilization of generating capacity.

22 I said that what we desired to establish from this
23 conversation was third party wheeling, but that we were
24 prepared, if our agreement with them involved the assembly
25 or contractual right to the output of a particular generating

mpb 13

1 unit, one or more at a particular point to provide the
2 transmission service from that point to the points at which
3 they desired to have the power and to make the appropriate
4 arrangements with respect to reserves and so on.

5 At that point Mr. Hayden said, what gives us all
6 we need, and we went on from there.

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CHAIRMAN WIGDER: Was that your answer to the possibility of third party meddling?

THE WITNESS: Yes, sir.

CHAIRMAN WIGDER: I have just asked you to determine why Ohio Edison was not so forthcoming in its response to that question and what you thought. I understand your testimony you discussed a number of issues third party meddling with an expert in 1974 and in 1976 you are again answering that question.

THE WITNESS: That's right.

CHAIRMAN WIGDER: Are there any other questions there is about that question that previous testimony more than two years.

What was there about the request that you were unwilling to grapple with it directly.

THE WITNESS: Well, as I said, Mr. Chairman, when the thing was first asked he said he and I were declining to answer.

You may recall that in that case the case so-called was somewhere I believe between the Court and the Supreme Court. Myself somewhat better than I.

CHAIRMAN WIGDER: I have the feeling that you have been decided by August of '72.

MR. FRENCH: It was decided by the District

1 Court but not by the Supreme Court. It was to mean the end.

2 CHAIRMAN RIGLER: Well, I can see where the Otter
3 Tail result might require you to withdraw your position, but
4 you are still not coming directly to my point about why
5 Ohio Edison was not willing to consider withdrawal and announce
6 its position and announce the rationale behind its position.

7 THE WITNESS: I guess all I can say in answer to
8 your question, Mr. Rigler, is what happened.

9 CHAIRMAN RIGLER: Well, let me back up a step.
10 Had Otter Tail never been decided, Ohio Edison certainly
11 could have wheeled had it desired to do so. In such a case
12 wheeled in the '50's had it desired to do so.

13 THE WITNESS: I have say.

14 CHAIRMAN RIGLER: Right.

15 So that irrespective of the legal question I
16 gather that there was some policy reason or some security
17 reason why Ohio Edison refused to discuss the subject.

18 THE WITNESS: Well, irrespective of the legal
19 question, in the summer of '72 I think I'd have to say there
20 was a reluctance on our part. We hoped that the Otter Tail
21 decision would not be as it was. Of course the Supreme
22 Court doesn't always decide cases the way we would like
23 it to.

24 When we got to-- But at any rate, knowing what
25 that kind of litigation was on the way, it seemed to us a

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1 proper and a prudent thing we do just to sit on the kind of
2 question for a time at this time.

3 When we came to '74 and the time had been clearly
4 the circumstances had changed very, very substantially in
5 the meantime because by then we had to approach a view
6 as to a specific -- a somewhat specific, really -- situation
7 in which we would attempt to go this time.

8 CHAIRMAN RUCKELSHAU: It's not possible to have the
9 merit of one alternative necessarily excluded as a result
10 of another alternative.

11 THE WITNESS: As things have unfolded, Mr. Ruckelshau --
12 and I am running well ahead of things in terms of what
13 be at the moment -- that very thing has occurred, and I
14 expect we'll get to that, or I can go into it in a
15 like.

16 CHAIRMAN RUCKELSHAU: I will let Mr. [Name] discuss
17 his chronological development.

18 THE WITNESS: All right.

19 BY MR. STEVEN HESSBY:

20 Q Mr. White, do you think the law is...
21 Edison the status of a common carrier?

22 A No, sir.

23 Q That being the case, as to the question of third
24 party wheeling, on what basis do you evaluate that question?

25 MR. HESSBY: Are we talking about today or in '74

or in '72?

MR. CONVIN DENNIS: Would you like to ask a question?

THE CHAIRMAN: Well, please wait until the witness

concludes that in all the circumstances in which the Edison
Tail Power Company was required to accept its own power
party wheeling.

On the other hand when you get into the question of
that that Edison's transmission system as a source of power
I don't see that would necessarily be a very good thing
Tail.

Now there are also the so-called "grand design"
academic grand design no construction, the power industry
as to favor and foster and promote the general welfare and
ownership would impose a certain burden on the public
education system. Legislation for this purpose has been
introduced in the Congress several times. None of them
ever been enacted.

I think it is possible to infer from the fact
extent that you can infer public policy from the failure of
Congress or the refusal of Congress to enact legislation
that it is not the public policy of the United States that
transmission systems bear the burden of 100 percent of
common carriers.

BY MR. CONVIN DENNIS:

Q Mr. White, after answer- Did you mention your

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1 answer? I'm sorry.

2 A I think so.

3 MR. CHAMNO: Could we have the question read,
4 please?

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

7 MR. CHAMNO: In that case I would like to phrase
8 the answer as non-responsive.

9 CHAIRMAN NISLER: I think the question was properly
10 worded and I think the answer falls within the category of non-answers
11 on this particular point.

12 Denied.

13 BY MR. STEVEN BERGER:

14 Q Mr. White, has Ohio Edison ever received a specific
15 request for third party wheeling? And what is that specific
16 request? Is a block of power that was scheduled for
17 delivery to a point on Ohio Edison's system
18 which could be delivered, assuming that Ohio Edison was
19 willing to transmit it.

20 A Not unless, Mr. Berger, you include in your
21 question the Buckeye transaction which I described earlier.

22 Q Other than the Buckeye transaction, are you saying
23 that Ohio Edison has never received a specific
24 request for third party wheeling?

25 MR. LESSY: I object to that grossly leading.

1 question. Mr. Berger is characterizing part of an answer
2 to another question and suggesting an answer to another
3 one. I think there was a question and I think that questions
4 ought not be that leading, and I ought to stand.

5 CHAIRMAN RIGLER: Let me hear the question.

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

8 CHAIRMAN RIGLER: I think the objection is well
9 taken. The question did suggest the answer.

10 2A MR. SILVER BRONER: Mr. Chairman, I will withdraw
11 the question but I would bring to the House's attention
12 Rule 611-C of the Federal Rules does permit leading ques-
13 tions in order to develop direct testimony of a witness.

14 CHAIRMAN RIGLER: I'm aware of that. What troubled
15 me about your question is when you said "is that possible?"
16 You really had implied the exact answer that you were asking
17 witness to give and he could have said "yes, and I would
18 that does not contribute really to the value of the testi-
19 mony as much as if he framed his own answer.

20 BY MR. SILVER BRONER:

21 Q Mr. White, assuming that Ohio Edison did not
22 receive a specific request to wheel power into this Edison's
23 area from outside the area, can you now state what Ohio
24 Edison's reaction would be to such a request?

25 MR. CHAPMAN: Let me ask a clarifying question.

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Are you saying our the new state would be a...
 session would be, or not fully...
 would have been?

BY MR. STEVEN...:

Q Assuming that was...
 point in terms of analyzing...

A Well, as I indicated in my...
 from Chairman Nigler yesterday, the...
 be the electrical and physical...
 the proposed transaction...
 our engineers of the size of...
 it was expected to occur,...
 for instance, for a few days, a few...
 permanently, the points at which...
 proposed to be wheeled would...
 to which it would be delivered, and...
 flows back at peak and...
 flows would be created which would...
 fuses or circuit breakers or other...

Since I'm not an engineer...
 things they would have to look at...
 theirs would be, but I am sure it would...
 matters.

Q Assuming the engineering...
 resolved, what other considerations...

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CHAIRMAN RIGLER: Well, wasn't your original question what would the company policy be, and would you assume some change in policy I don't think they would be concluding that they would engage in the type of activity that Mr. White has just been describing. The testimony is that in prior years they simply deferred decisions about this, which would never have had them into the engineering study he has described.

MR. STEVEN BERGER: No, no, Mr. Chairman.

THE WITNESS: Mr. Rigler, I think you're right, Mr.

Mr. Berger is asking an open-ended question to wheel. I take it that by that he means that you've just said to us "I have arranged with somebody outside of the Ohio Edison system to purchase three 110 kilowatt" for instance, "of capacity and the associated equipment for a period of one month," and that would be for a period of one year.

CHAIRMAN RIGLER: All right. Was it at that type transaction your testimony is you have never received any specific, direct request. Is that correct?

THE WITNESS: That is correct. What is the question is in effect what we would do if we got such a request.

CHAIRMAN RIGLER: All right.

MR. STEVEN BERGER: Mr. White just outlined the engineering considerations involved that would be involved in

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1 upon receiving such a message. And by question to him at
 2 that point, interrupting the speaker, was

3 BY MR. GUYER: CORRECT?

4 Q Assuming that the engineering problems would be
 5 overcome, what else would be considered by the company
 6 in formulating a response to that report?

7 A I expect essentially, Mr. Guyer, the first
 8 question in our minds would be who is going to pay for
 9 this service and how much, and would the interest on
 10 balance result in a benefit to Ohio Edison Company and if
 11 we could pass on to our retail customers the cost of the
 12 many responsibility or our stockholders, or both.

13 Q In the course of your discussions with WCOE,
 14 did WCOE ever identify a particular block of power outside
 15 the area of Ohio Edison that they wanted to consider being
 16 brought into the Ohio Edison area for their service?

17 A No. No, they didn't.

18 Q If in October of 1974 WCOE had come to you with
 19 a specific request to wheel into Ohio Edison's area third
 20 party power would you have considered it in the manner you
 21 have just described?

22 MR. LESBY: Would you repeat the question, please?

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

25 THE WITNESS: I think she named I have just

eb11 1 altogether?

2 Q Exactly.

3 A Oh, they would have considered it.

4 Q Now let me bring you back to Mr. White's refer-
5 ment to his letter of June 18th, 1974, and to the meeting
6 that took place in October of '74, and let's refer back to
7 Item 3. It says:

8 "Transmission service for various forms
9 of coordinating power services."

10 Now as to that portion of Item 3, were you
11 suggesting to WCOB at the October '74 meeting that you were
12 going to consider that use of your transmission system?

13 MR. LESSY: Objection. That's a leading question.
14 The answer to the question he wants is implied in the very
15 frame of the question.

16 CHAIRMAN REIGER: I agree with that objection.
17 It seems to me that your examination might be to ask for
18 his interpretation of 3-F, but the framing of the question
19 definitely suggests I think the type of answer that you hope
20 to elicit from the witness.

21 BY MR. STEVEN BURGER:

22 Q Mr. White, as to Item 3-F, when specifically did
23 you indicate to WCOB you did not believe should be considered
24 in the context of the study?

25 A I said that in my view the Memorandum of Agreement

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did not include wheeling third party power introduced into the Ohio Edison control area and we did.

As I said before, there was some discussion of this point between Mr. Maybe and me. What I told Mr. Maybe was that we thought the transmission of power to include transmission for various points of local distribution power services, which is the final part of the transmission service for delivery of power and energy to the municipal delivery point, which is the final delivery point. Mr. Maybe said "What gives us all this?"

Q All right.

Other than Item 3-7 we wrote any other items set forth in the attachment to Mr. Burger's letter of June 1974 that you specifically discussed yourself at the meeting?

A I think there was at least some discussion about each of them, Mr. Burger.

Q What, if anything, was said with regard to numbered Item 6 on page 6 of the attachment?

A Oh. On 6 at some point in the meeting there was something said by one of the municipal people which suggested to me that they might have some thought that Ohio Edison would participate in financing their obligations by picking up the money in one way or another.

I made it very clear to them that we had no

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1 intention of putting up the money or of guaranteeing the
2 financing for their obligations under the agreement and agree-
3 ment, whatever it turned out to be.

4 Q Was the question of membership in OASIS discussed
5 in this meeting?

6 A I'm not sure whether it was at this meeting. At
7 some point either in this one or in another meeting, one
8 of the representatives of the municipal agencies discussed
9 on their behalf any desire that they become members of OASIS
10 and indeed, none of them have ever requested membership.

11 Q Did the discussion in October, 1974, deal with
12 generating capacity that the WCOB might participate in?

13 A There was a considerable discussion back and forth
14 at that meeting between the Beck people, the WCOB's
15 consulting engineers, and our engineers. Our people for
16 example gave them the schedule, the proposed schedule for
17 installation of generating units as far out as we had been
18 committed at the time, and told them the type and size, the
19 location and so forth.

20 There was considerable conversation inasmuch as
21 which of our people would have information and they would
22 want and which ones of their people would call for it; just
23 establishing contact, so to say, between those who had
24 expertise in particular areas.

25 They suggested certain items of information that

eb14 1 they would want and we make arrangements with them, but they
2 would get it.

3 Our people did it's more. They were hundreds of
4 them and arrangements were made. When we built a line of
5 that that went on, yes.

6 Q Do you recall specifically asking the agreement
7 to WCCB at the October, 1974, meeting that you -- and that
8 I'm quoting:

9 "You, WCCB, should not be asked to
10 pick and choose the units that you want to
11 cipate in."

12 A I said something like that. We were in a dis-
13 cussion of what might be some of the guidelines, if possible,
14 for working things out. I said at that time that I didn't
15 I didn't feel at all sure that we could have a total
16 ownership in each and every Ohio Edison generating unit
17 because, I said, that creates a lot of paper work, title
18 issues, securing mortgage releases and so forth.

19 Mr. Mayhan said "I know exactly what you mean
20 because I'm doing that for somebody else and it's creating
21 a lot of problems -- and it creates a lot of headaches."

22 I said something else which is perhaps directly
23 contradictory, namely, that we would have a problem if they
24 wanted to take too large -- a very large lump, so to say,
25 out of any one generating unit because, depending on which

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what it was and what the timing was, that it could conceivably
create a problem or could conceivably help us in our ability
to meet our obligations to the shareholders of Koolhaas. I
was saying to them I guess I don't want you in the
units and I don't want you in the way, or words to that
effect.

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There was some concern on our part that there might be some thought on the part of the AUSA people that they would watch the units and endeavor to pick out the best one, one or two or whatever, and I said to them that that's what you will participate in and so what matters is what you do is of course something that we would not be surprised to see you do unilaterally. We're working with a confidential arrangement here which our Memorandum of Understanding says is for our mutual benefit and we would appreciate it if you have something to say on the questions which arise in the course of each.

Q What was said at the London meeting with regard to the form of the participation -- the possibility of the participation by WGBL?

A I think we had perhaps a number of discussions, whether the form of the participation would be a unit purchase contract, it might be created, I think I threw in as my contribution to that kind of discussion 'or something else that we haven't thought of yet.

Q Was there any discussion of items on page 4 of the attachment to Mr. Linton's letter?

A Yes, that's one of the very things I'm talking about.

Q The so-called "prepayment strategy"?

A Yes.

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1 Q How was the October meeting held, Mr. Hill?

2 A Well, as I said before, our engineering people
3 particularly had established their belief that the West
4 engineering people had essentially we didn't think they
5 go ahead to gather the information they desired to be in a position
6 in making the study that needed to be done.

7 CHAIRMAN RICHMOND: Refresh my recollection as to
8 whose handwritten notations appear opposite item 11.

9 THE WITNESS: That is I don't know.

10 MR. STAVES BURGESS: I believe Mr. Hill was qualified
11 that it was Mr. Duncan's. And that's where that stamp is
12 contained the R. W. Beck stamp on it. And I recall there was
13 some discussion about that.

14 BY MR. STAVES BURGESS:

15 Q Following that meeting, were there other meetings
16 held between representatives of WCCM and Ohio Edison?

17 A Oh, yes, there were a number of meetings.

18 Q And the information exchange that you talked about
19 that was contemplated, was spoken of at the October meeting?

20 A Yes, sir.

21 Q Were you present at any of the subsequent meetings
22 that took place between Ohio Edison and WCCM?

23 A No, I was not present at any meeting until another
24 meeting held last summer.

25 I was aware of meetings, correspondence, telephone

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1 calls in the interim, but I was not present at any of them.

2 Q Did Ohio Edison have certain proposals that were
3 developed independently by Ohio Edison up to 1967?

4 A Yes, Mr. Vincent developed two drafts of proposals
5 which he discussed with me and then presented to the WCCO
6 representatives at meetings with them.

7 Q And did you receive proposals from WCCO?

8 A Not until last summer. I think he might have
9 received a copy of a report prepared by H. G. Smith

10 MR. STEVEN WITNESS: I would like to ask Mr. Smith,
11 Chairman,

12 MR. SMITH: I have a question. Are you talking
13 this time?

14 MR. STEVEN WITNESS: I know's that's the time
15 CPOC negotiation, is that's what you want.

16 MR. SMITH: Well, let me ask it now.

17 In your discussions with the WCCO in 1967 about
18 the possibility of participating in generation, you
19 suggested that you would not want them unilaterally to select
20 which units they would participate -- in other words would
21 participate because it might affect your ability to WCCO
22 to maintain generation in CPOC.

23 THE WITNESS: Right.

24 MR. SMITH: I assume you were discussing the
25 possibility of giving the WCCO people access to your share of

1 the individual CAPCO units.

2 THE WITNESS: Yes, yes, indeed.

3 MR. SMITH: You have no authority to do otherwise.
4 You would have no authority to do otherwise, would you?

5 THE WITNESS: As I said to Chairman Hightower earlier,
6 the CAPCO arrangements consist of a series of branches in
7 common in generating units. We have a specified ownership
8 in each of the CAPCO units. We could not do anything more
9 than, I guess this is what you're getting at --

10 MR. SMITH: That your own words.

11 THE WITNESS: Right.

12 MR. SMITH: That's all you have to give.

13 THE WITNESS: Right.

14 MR. SMITH: However that share is allocated to you
15 by the CAPCO formula.

16 THE WITNESS: Yes, sir.

17 MR. SMITH: And it's allocated to you based
18 partly upon your load?

19 THE WITNESS: Yes, sir.

20 MR. SMITH: Well, the wholesale customers are a
21 part of your load.

22 THE WITNESS: Right.

23 MR. SMITH: Whether you supply them or they supply
24 themselves out of a share of your share, the load would
25 remain the same, wouldn't it?

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THE WITNESS: I would think so, and I think the
problem I had in mind. Mr. White, in that regard, if I
ownship, for instance, in a partnership or otherwise, so
that we might then get into questions of liability, we
supply whatever our obligations were as partners, etc.
Because, you see, we might have an obligation that has
not have been discussed here before, I don't think I might
have an obligation not only to see to it that we have
particular unit, but to sell a particular unit of that
unit.

MR. WHITE: I understand that.

THE WITNESS: All right.

MR. SEYMOUR WEISS: Yes, sir.

CHARLES HIGHER: Thank you very much.

MR. SEYMOUR WEISS: I don't think we need any more
of minutes, especially before we go to the next item.

CHARLES HIGHER: Is that all right?

MR. SEYMOUR WEISS: Yes.

CHARLES HIGHER: Very well.

(Pause.)

CHARLES HIGHER: So we adjourn.

BY MR. SEYMOUR WEISS:

Q Mr. White, I think we went on that point where we
were discussing the proposal that Ohio Wilson be level five,
WCOB. Approximately when was that proposal made?

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1 A As I remember it, Mr. Torgny, Mr. Street of
 2 Cuyahoga Falls handed to one of our witnesses a copy of a
 3 report prepared for WOOD by R. W. Beck. There was a meeting
 4 that had been scheduled -- on, this occurred some time in
 5 July of last year, and there was a meeting that had been
 6 scheduled for later in the month. Mr. Street said he'd like
 7 to talk about this report at the meeting. He was called for
 8 another purpose which I don't recall at the moment. The
 9 meeting was postponed a time or two and held in early August
 10 instead of July.

11 Q The proposal was contained, you said, in a study
 12 that was prepared by R. W. Beck for WOOD?

13 A Yes.

14 Q Were there several matters that were studied in
 15 that R. W. Beck study?

16 A Yes, there were.

17 Q And was there one particular plan that was
 18 recommended by R. W. Beck to WOOD?

19 A Yes, Beck examined I think six or seven different
 20 ways in which our partnership arrangement -- could in question --
 21 might be put together, might be carried out and recommended
 22 one of them as most advantageous to WOOD.

23 Q And what was the recommended plan?

24 A That plan would have operated about -- would
 25 operate about in this way:

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The net original cost of all the generating and transmission facilities of this Edison would be determined as of a date. An allocation of those facilities would be made as between WCOE and the rest of this Edison. The amount resulting from that allocation of the net original cost of this Edison's generation and transmission facilities would then be paid by WCOE to this Edison. The total amount of that amount is something between \$5 and \$10 million, I believe.

From that date forward, this Edison would be required to have the responsibility of providing all the energy needs for WCOE and of providing all the energy needs for WCOE. The charges to be made would be for the cost of what are commonly referred to as direct charges, that is from that day on WCOE would in effect be paying for the energy needs only the energy having paid in advance for the quantity, so to speak, and the charges therefor would be for fuel, or essentially only fuel and maintenance, and operating expenses for the provision of the energy.

The proposal also envisioned, as I understand it, also envisioned that periodically, and I believe it was proposed every two years you would run through the process again. That is to say the process of allocating and adjusting in order to keep the thing up to date by making periodic adjustments of additions and requirements in the generating and transmission

1 accounts.

2 Q After you received the Beck study, how much time
3 elapsed between your receipt of the study and the meeting to
4 discuss the Beck study?

5 A I'm not entirely sure of that, Mr. Morgan. I know
6 that I learned that the study was in our possession two days
7 or so before the meeting. My impression would be that it had
8 been around for a few days prior to that, but I don't know how
9 long.

10 Q Was the Beck study discussed in detail at the
11 Edison?

12 A Yes, it was to an extent. Inasmuch as there were
13 six or seven alternatives we didn't in any way undertake
14 any detailed analysis of each of them which would have required
15 a great deal of work.

16 We did, however, note that Beck rather strongly
17 recommended one of the alternatives and we focused our
18 attention on that. I asked Mr. Owen, our financial vice-
19 president, Mr. Firestone and others to sit down in a meeting
20 and consider that particular alternative, whether or not
21 be prepared to make an affirmative response to it, let's
22 say. I also had an opportunity in the interim to discuss it
23 with a couple of our outside directors. So that by the time
24 of the meeting we were prepared to react to the alternative
25 recommended by Beck.

mpb 9

1 Q Now, let's focus in on the meeting that took place.
2 Can you put it in a time frame for me?

3 A Very early August, probably August third, I believe.
4 Mr. Darger, of last year.

5 Q And where was this meeting held?

6 A That was in our offices in Akron.

7 Q And who was present at this meeting?

8 A Mr. Duncan, Mr. Chasman, Mr. Darger, and of course,
9 being people associated with Rod, Mr. Tyne, Mr. ...
10 Mayor Quirk of Cuyahoga Falls, also were present and I don't
11 recall their names at the moment.

12 Representing Ohio Edison, of course, I don't know,
13 I might say I had not been scheduled to attend the meeting
14 until after the Rod report was received to which I understood
15 that I ought to be there. Mr. Wilton, our regional district
16 engineer, Mr. Spatzino, Mr. Kujala, Mr. ...
17 Mr. Simmsman, perhaps a couple of others I don't recall.

18 Q Did the city of Cuyahoga Falls have legal counsel
19 counsel at that meeting?

20 A Yes, Mr. Metzzenbaum was there, and I believe Mr.
21 Sloan, the law director may have been there, but I don't know.
22 Mr. Metzzenbaum is a lawyer and was representing Cuyahoga
23 Falls.

24 Q Would you relate to us the discussions that took
25 place at this August meeting?

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1 A Well, essentially the WCOE people said to me at
2 the outset "What do you think of the Back report?"

3 I said first that I had stated they would recall
4 that we had made two different proposals so that one of
5 neither of which we had had any response by that time. And
6 I asked whether I should therefore consider that those
7 proposals had been rejected. They said I should.

8 I'd better not try to do this chronologically
9 because I don't remember it that well.

10 I then addressed myself to the fact reports as
11 such, and I said to them that I recalled there were six or
12 seven alternatives in it, of which Back had recommended one,
13 that because of that we had focused our attention only on
14 the one recommended by Back, and I asked them if that was
15 indeed the one WCOE had concluded that it would like to
16 pursue.

17 There was some side conversation between some of
18 the WCOE people and there seemed I thought, although I may
19 well be wrong about it, to be some hesitation on the part
20 of a couple of them.

21 But the upshot of it all was that they said to
22 us "Yes, the alternative recommended by Back is the one
23 we wish to pursue, and you should take it that as far as
24 we're concerned, from now on our discussions will be con-
25 centrated on that."

eb2

1 I think said to them that we had considered it
2 and that we would be prepared to go further, also on the basis
3 of that proposal.

4 Q Just let me interrupt you a minute, Mr. White.
5 Who was speaking on behalf of WCCB at that time
6 in time when it was considered to you that the alternative
7 that was recommended by Mack was the one that the committee
8 should proceed with regard to.

9 A Mr. Duncan said that at the point, the chair
10 Mr. Lyren or Mr. Suore as speaker asked me if I would
11 I had raised the question, "Do any of you want
12 to go ahead, or something of that sort?" I said "No,"
13 exactly. Either Mr. Lyren or Mr. Suore said "So Mr. [?]
14 negotiating committee. We have authority to work out
15 arrangement with you. There's what you're going to do." I
16 then something to the effect that "Yes, or this," and
17 must be aware that any final action will have to be taken
18 by the various city councils."

19 But as part of that conversation in the [?]
20 said, "Yes, the Mack recommendation represents what we
21 sires."

22 That was said on behalf of WCCB.

23 Q After-- Did you finish, Mr. White?

24 A Yes, sir.

25 Q After you indicated Chris Eitzen's position, was

eb3

1 exactly took place at that point?

2 A Well, I said to them I pointed out to them,
3 and I'm sure they know this, that back, for the purpose of
4 making comparisons as between the various alternatives,
5 had used data as of 1972. That of course is a perfectly
6 valid way to make comparisons between alternatives.

7 Nevertheless, having selected an alternative,
8 it was necessary -- and I pointed this out -- or it would be
9 necessary that the thing be reworked using current data.

10 CHAIRMAN RIGLER: Had he supplied Beck with
11 any of the 1972 information?

12 THE WITNESS: Yes, indeed. We'd supplied them with
13 a lot of it. Other parts of it they had gotten from the
14 FPC Form 1 for that year.

15 CHAIRMAN RIGLER: Had Ohio Edison updated the
16 1972 information it supplied Beck?

17 THE WITNESS: No, we had not updated it. They
18 were working with what was the best available to them at the
19 time. And all I was saying is we can't sign off on these
20 numbers. We're going to have to get up to date numbers
21 and use them, but using the same process.

22 BY MR. STEVEN BURGESS:

23 Q Just let me ask you a couple of questions on the
24 Beck study before we go into the discussion that took place
25 at the August meeting.

eb4

1 Was the Beck study a joint study between the WUSA
2 and Ohio Edison?

3 A Oh, no; no, indeed. It was a study prepared by
4 Beck on behalf of WUSA.

5 You've got to translate, Mr. Berger, that this was
6 an arm's length thing we were doing. It was being done by
7 and large in a friendly and cooperative atmosphere but
8 nevertheless arm's length.

9 Q All right.

10 Was the subject of wheeling discussed at the WUSA
11 last meeting?

12 A Either Mayer Quirk or Mr. K... who had
13 never before participated in any of these discussions, for
14 some reason asked us or asked us for a definition of wheeling,
15 so there was some discussion of what is an appropriate
16 a proper definition of wheeling which went on for some
17 minutes.

18 And at some point Mayer Quirk said, "Well, I
19 don't see any wheeling in this Beck recommendation," or
20 words to that effect, whereupon Mr. Chairman, the
21 engineer who was there on that occasion representing
22 Mr. Mayben, pointed out that wheeling -- that is, selling
23 third party wheeling -- would be contradictory to the whole
24 concept which they presented in their recommendation and
25 would be just a senseless unflattering term the point of view

ab5

of MOORE if that recommendation were to trigger later approval.

So that pretty well in 1962, the recommendation part of the contract.

Then, as the meeting was over, Mr. [unclear] the Caydoga Falls engineer, said to me, "Bill, would you want to call about the thing with you now?"

And I said, "What you're going to call will call."

Q Mr. White, how was the meeting on August 2, 1962 in terms of the parties going forward?

A At some point Mr. [unclear] picked up an agreement. I objected to that at first, thinking that he meant we ought to get all the details worked out there and there, which obviously we couldn't do, particularly in view of the updating problem. The agreement was given understanding.

And Mr. Duncan suggested that what Mr. [unclear] had in mind was simply a Letter of Intent. [unclear] recommendation now had the framework of the agreement going to do, at least, at least.

And I said "What's fine. I'll be glad to give you such a letter with you."

Duncan said that he would draft a Letter of Intent and send it on to us. And it was at that point that the meeting was breaking up.

Q Did you ever receive such a Letter of Intent?

eb6

1 A No, sir.

2 Q What are the present status of the negotiations
3 with WCOB?

4 A Well, as I say, we have not received the letter
5 of intent. Mr. Kaye has written and called a couple of
6 times to prod Mr. Duncan on it but we still haven't received
7 it; which puzzles me somewhat.

8 I have read Mr. Lynn's testimony in this pro-
9 ceeding, which evidences a very great deal of misunderstanding
10 as it seems to me of what the Beck recommendation really is.

11 I have been told that the Department of Justice
12 has some reservations of some kind about the Beck recommenda-
13 tion and I'm somewhat in a quandary simply because of the
14 pendency of this proceeding. It is not at all clear to
15 me if there should be conditions imposed by this Board, by
16 this Commission to what extent those conditions are required
17 something different or greater than or less than whatever
18 it may be, the Beck proposal.

* 19 Recognizing the hazards of litigation I have not
20 in my mind-- As I say, the whole thing leaves me
21 somewhat of a quandary at the moment. Nevertheless, so far
22 as Ohio Edison is concerned, we have not withdrawn and we
23 don't intend to withdraw our commitments, undertakings,
24 whatever you may care to call them, to WCOB.

25 CHAIRMAN RIGLER: Well, you can't withdraw that,

eb7

1 can you, in light of the fact that that was part of a
2 settlement agreement at the EPC?

3 THE WITNESS: No, I don't think we can,
4 Mr. Rigler, and we have no intention of attempting to. I
5 guess all I can say to you is that whenever things are pre-
6 pared to go forward, we're prepared to go forward. We'll
7 meet whatever problems we have to meet on the way, and do
8 the best we can.

9 CHAIRMAN RIGLER: Has Chic Malone supplied Beck
10 with updated information relating to the '73 figures and
11 you indicated were obsolete?

12 THE WITNESS: I'm not sure whether we have,
13 Mr. Rigler. Certainly the figures are available. They'd
14 be available --

15 CHAIRMAN RIGLER: Has Beck requested any other
16 figures?

17 THE WITNESS: No, they are not.

18 CHAIRMAN RIGLER: Did you identify the figures of
19 Beck which you contended were obsolete due to the passage
20 of time?

21 THE WITNESS: The whole thing. That was done
22 perfectly well. They knew what they were doing.
23 When they did it they recognized just as readily as did we
24 that it would be necessary to do the thing on a current
25 basis at the time we decided to go forward.

ab3 1 CHAIRMAN RIVERS: But it is your testimony that
2 you don't know if you've made that current information
3 available, and neither do you know if Jack has asked for
4 that current information?

5 THE WITNESS: That's correct. I just don't know.
6 I might say one other thing, Mr. Rivers, did I
7 overlooked:

8 I did point out to them that in one year it would
9 be necessary to receive a ruling from the Internal Revenue
10 Service because if the assets we had paid to us by DOD were
11 to be treated as ordinary income we would then in effect have
12 sold our property at half price, or whatever the tax was.
13 And we haven't done that and of course we can't until we
14 get something pretty definitive worked out to submit to the
15 IRS.

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Vol 2D

1 BY MR. OWEN BERGER:

2 Q Mr. White, one final question which I'll give to
3 you in terms of Ohio Edison and Pennsylvania Power:4 In designing rates does Ohio Edison give any
5 consideration in the design of its wholesale rates to the ability
6 of its wholesale customer to compete with Ohio Edison or
7 Pennsylvania Power at the retail level?

8 A No, sir.

9 MR. OWEN BERGER: Thank you, I have no further
10 questions.

11 CHAIRMAN FOLEY: Mr. Berge?

12 MR. KENNEL: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. KENNEL:

15 Q Mr. White, you indicated in your testimony that
16 that Ohio Edison had had a meeting with representatives of
17 the city of Coville at which the topic discussed was
18 synchronous interconnection. Do you recall that meeting?

19 A Yes, sir.

20 Q And I believe your testimony was that at that
21 meeting there was no request made by the city of Coville
22 for wheeling, whether it be specific or general, is that
23 correct and that that was not a topic of discussion, is that correct?

24 A That is correct.

25 Q Do you recall whether Mr. William E. White was at

1 that meeting as a consultant for the city of Louisville?

2 A I believe he was and I believe I so recalled.

3 Q I would like to show you a document which I
4 will mark as Applicant's Exhibit 127. It is a document that
5 is dated June 12, 1973, a memorandum prepared by Mr. Lewis
6 and the subject matter is the meeting that he attended with
7 Chic Edison on June 11, 1973.

(Witness, the document
referred to was marked
as Applicant Exhibit 127
for identification.)

12 BY MR. REYNOLDS:

13 Q I will ask you if you will review that memo and
14 indicate to me whether it is an account of the meeting which
15 you had testified to.

16 (Handing document to the witness.)

17 I am merely directing you to -- I am exclusively
18 directing you to the first two pages of that memorandum. I
19 believe the last three items on page 3 go to other matters.

20 A Yes, this pretty well states the subjects that
21 were discussed at the meeting.

22 Q And does your recollection of that meeting accord
23 with Mr. Lewis' account of the subject matters that were
24 discussed?

25 A Yes, it does.

mpb3

1 Q And is it your recollection that there was nothing
2 else discussed other than the items that are listed in Mr.
3 Lewis' memorandum?

4 A That is my recollection.

5 Q Thank you, sir.

6 Now, I believe you also testified with regard to
7 the matter of a general request for revealing that was stated
8 initially in the context of the FPC settlement discussions
9 with the WCOE group, is that correct?

10 A That is correct.

11 Q And you have indicated to me that you did not
12 receive a specific request for checking back with the District
13 engineers and systems planners and discussing that would have
14 to undertake an evaluation of that request that is different
15 that you have related in your testimony?

16 A Yes, sir.

17 Q Would Ohio Edison be able to undertake the kind
18 kind of evaluation of a general request for revealing the
19 nature of the one that you indicated was made in the context
20 of the FPC settlement discussions?

21 A Well, you can't undertake any kind of evaluation
22 of a question which says will you check that with the
23 anything there that can be evaluated.

24 Q And when the Chairman indicated to you that he had
25 some trouble, I believe he said, with the two or three items

pb4

1 period in terms of Ohio Edison's response that it was deferring
2 consideration of a general request for wheeling, was there
3 during that period any more information given to the witness
4 request that would have enabled Ohio Edison to consider a
5 request for wheeling?

6 A No, sir.

7 Q Now, you also testified that Ohio Edison had
8 some reluctance to open its transmission facilities up as
9 a common carrier facility, is that correct?

10 A Yes, sir.

11 Q Would you regard Ohio Edison's use of its transmission
12 facilities for purposes of wheeling prior pursuant to specific
13 requests following the evaluation that you indicated and
14 the conclusion that Ohio Edison would give an affirmative
15 response to a specific request for wheeling, would you
16 consider the use of Ohio Edison's transmission facilities
17 for wheeling in that context to be using its facilities as
18 a common carrier?

19 MR. LESBY: Excuse me, Mr. Reynolds, could the
20 question be repeated? I think there is a --

21 MR. REYNOLDS: I will rephrase it. It was rather
22 long and got involved. Let me see if maybe I can shorten it
23 somewhat.

24 BY MR. REYNOLDS:

25 Q Assuming that Ohio Edison had indeed received over

1 the years requests for wheeling of a specific nature and
 2 following this evaluation as you have described it gave an
 3 affirmative answer to some or all of those requests, would
 4 that in your view be synonymous with opening up Ohio Edison's
 5 transmission facilities to common carrier status?

6 MR. REEST: I object to the question. The
 7 testimony is that under the current policy of Ohio Edison
 8 they would make such a study. The question talks about
 9 over the years. I think it is clear that over the years
 10 that was not the policy and that questions assume that that
 11 was the policy over the years or asks for an answer to that
 12 that.

13 MR. REINHOLDS: I disagree with Mr. Reest. But if
 14 he wants me to lay a foundation and then come back to this
 15 question, I have no problem doing so.

16 I'll go back, if it would make it clearer for the
 17 record.

18 Why don't I ask Mr. White:

19 BY MR. REINHOLDS:

20 Q Mr. White, going back prior to '70, would it occur
 21 we can go back in this proceeding to '65, did Ohio Edison
 22 had gotten a specific request for wheeling, would Ohio Edison
 23 have evaluated that specific request in the same manner that
 24 you described, that Ohio Edison would have evaluated a specific
 25 request received in 1974 or '75?

mpb6

1 A. Essentially the same, yes.

2 Q. All right.

3 And if, following such an evaluation, certainly
4 such requests had been made, Ohio Edison had given a definitive
5 response with respect to some or all of these requests, would
6 your view be that Ohio Edison's facilities were being used
7 as common carriers?

8 A. It would not.

9 Q. And why would it not?

10 A. I think essentially the difference lies in the
11 fact that we would have evaluated the requests and we would
12 have made our determination whether or not to comply. In our
13 status is that of common carrier it would be incumbent upon
14 us to comply and indeed if our facilities were inadequate to
15 comply with all the requests to provide facilities, that would
16 be adequate, I think. There is quite a difference.

17 Q. All right.

18 And am I correct in concluding that your reticence,
19 if you will, to engage in discussions relating to general
20 wheeling without specification is as real today as it was
21 prior to 1974?

22 A. Well, I'd answer you in two ways to that, Mr.
23 Reynolds.

24 The first is that without a specific contract there
25 really isn't anything to discuss in any concrete or practical

1 terms.

2 The second is that I would not be prepared and I
3 wouldn't have been in 1974, and I probably won't be in 1975
4 if I'm still around, in effect to dedicate the transmission
5 system of Ohio Edison to common carrier service with a view.

6 Now, I recognize somebody may disagree with me
7 at some point and if that occurs, that obviously, the
8 transmission system has been developed by us over the years
9 going clear back into the days of World War I for the purpose
10 of serving our internal or native load and we have raised the
11 money and done the engineering and done the construction and
12 we have done, we think, a good job of doing this.

13 We have never regarded that system as being
14 for use on demand by others. We don't do that, and
15 I would not be prepared to, as I said, to dedicate
16 of that system to common carrier service or to provide
17 any service.

18 That's not to say, and I don't want to be under-
19 stood as saying that when specific requests come, that we
20 at times and under circumstances and in situations that we can
21 accommodate that we won't take them seriously. We will take
22 them seriously, and we will respond favorably to them to which
23 we think we can properly make that response.

24 Q Does that complete your answer?

25 A Yes, sir.

mpb8

Q Thank you, sir.

A Now you also indicated, I believe, in connection with the discussions with representatives of OGE that you had a reservation allowing the state to make a unilateral decision with regard to which generating unit it did not participate in and I believe you expressed a hope that that they would pick the best one.

Do you recall that?

A That's one of the things I said.

Q Right.

Would you please indicate to us what you meant when you said that -- when you spoke of unilateral decisions?

A Oh, even when they are thought to be identical or as nearly identical as such things can be, for instance some generating units perform better than others.

There are, of course, differences in the different kinds of generating units, nuclear, gas, coal and so on. Out of any batch of generating units, therefore, it is possible for somebody to say, well, let's have one of the bunch, the most economic and the most reliable and so on and so forth. And what I was saying to the OGE along with all the other things I said is that we would not expect in working out a partnership arrangement with them that their choice in that way would be unilateral and more than

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any other ways I mentioned, that we would expect to participate with them in the decisions which which they would participate in and to what extent.

Q All right.

If we assume for a minute that the local utility would make its own selection on a unit-based basis and then we make that selection by choosing to participate in the most economical units that came on line what impact would that have on other other customers?

A Well, then, any other customers would have to receive their service from the least economical units and the result would be that instead of getting a certain amount of costs, so to speak, from your economical and least economical units conceivably, and I appreciate this is a slight bit of an exaggeration, conceivably units would have to be the least economical units and our remaining customers would be the least economical units.

Q And was that a part of your concern?

A Why sure it was. We have a contractual responsibility to our retail customers, after all.

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1 MR. REYNOLDS: I don't know anything further.

2 CHAIRMAN RIGLER: Was he going to be asked the
3 Applicants' 127?

4 MR. REYNOLDS: Well, I think he would be at
5 the time being.

6 CHAIRMAN RIGLER: You don't want to have it into
7 evidence?

8 MR. REYNOLDS: All right.

9 CHAIRMAN RIGLER: It's up to you. Is your
10 exhibit.

11 MR. REYNOLDS: Well, I guess by looking up those
12 might be a more appropriate time to have it in when
13 Mr. Lewis is recalled if that's necessary, but I will have
14 it into evidence now.

15 MR. LESTY: Did Applicants' 127 consist of
16 materials Mr. Lewis provided?

17 MR. REYNOLDS: It's taken from the file that
18 Mr. Lewis provided in response to the request made when he
19 was on the stand.

20 MR. LESTY: The Staff has no objection.

21 CHAIRMAN RIGLER: Hearing no objection we'll
22 receive Exhibit 127 into evidence.

23 (Whereupon, Applicant's
24 Exhibit 127, previously
25 marked for identification,
was received in evidence.)

eb2

1 MR. LIPSON: The order of cases for motion is
2 than Applicants will be the Department, the Court and the
3 City, in that order.

4 MR. CHASE: Would you be so good as to
5 to break for lunch?

6 CHAIRMAN RICHMOND: I think we would do. The Court
7 shall we take?

8 We'll be in recess for 15 minutes.

9 (Whereupon, at 12:45 p.m., the Court in
10 the above-entitled matter was recessed to resume
11 at 1:30 p.m. the same day.)
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ATTENTION: DIRECTOR

CHAIRMAN: DIRECTOR

Whereupon,

JOHN DAVIS

resumed the stand on behalf of Applicant, Ohio Edison Co.,
having been previously duly sworn, was examined and testified
further as follows:

CROSS-EXAMINATION (Continued)

BY MR. CHASCO:

Q Could we get some more background on the position
you've held with Pennsylvania Power Company? You've testified
you're presently chairman of the board. When did you
become chairman of the board?

A I became chairman of the board on February 1, 1978
of 1978. I had been elected as Director I think about a
year previously, a little more than a year previously.

Those are the only positions I hold or have held
with Pennsylvania Power Company.

Q When you were testifying upon the regulations which
Ohio Edison is subject to, I believe you testified that the
rates in areas which are not part of incorporated municipal
utilities are fixed by the Public Utilities Commission of
Ohio. Is that correct?

A No, I think I testified that all rates which are

eb2 1 not fixed by municipal corporations are fixed by the Public
2 Utilities Commission of Ohio.

3 Q Could you tell us how you'd use the word
4 "fixed" in the sense you just used it?

5 A Well, I'm using it in the sense in which it appears
6 in the Ohio statute which says that the Public Utilities
7 Commission shall fix and determine a just and reasonable
8 rate.

9 What I mean by that or what in that phrase means
10 that statute is that the Public Utilities Commission issues
11 an order which says the rate shall be thousands.

12 Q What happens prior to the issuance of such an order,
13 sir? Could you take us through the steps in receiving that
14 order?

15 A There is a procedure in the statute whereby it
16 be called an initial filing when there is a new rate
17 established for some new kind of service which has not been
18 offered before. That is a rare event in Ohio. Almost all
19 of the Commission's orders result from the filing of an
20 application by a utility company for a change in rate.

21 Such applications-- I'm sorry. A proceeding
22 may also be initiated by the Commission on its own motion,
23 or by a customer on complaint.

24 Essentially similar procedures are followed in
25 all three cases in that the Commission staff will make an

eb3

1 investigation. There will be a hearing at which the applicant
 2 and the complainant and the regulatory staff and any
 3 intervenors will present such evidence as they desire to
 4 present. And then, following the hearing, the Commission's
 5 order issues.

6 Q Is there also a hearing held under the procedure
 7 for the initial filing of a rate?

8 A Mr. Charno, I believe not. I have never had
 9 occasion to make such a filing, but I believe that a filing
 10 -- a rate filed under that procedure is permitted to go
 11 into effect. Once that has occurred it is then subject to
 12 change only in one of the three ways I have described.

13 Q Now when a utility files an application for a
 14 change in rate, does that application contain the new rate
 15 which it proposes to charge in the future?

16 A Yes. The statute specifies a number of exhibits
 17 which must be filed with the application, and among those
 18 are the rate, the existing rate which it is proposed to be
 19 as to which it is proposed that there be a change, and the
 20 new rate, so to speak, as it will exist after the change,
 21 with statements of revenue and expenses under each and so on.

22 Q Now with respect again to the application for
 23 a change in rate, is a hearing always held, or is it held
 24 only if requested by some party?

25 A I think it is possible, Mr. Charno, that there

eb4

1 might be no hearing -- I'm not at all sure of this, at least
2 a preliminary hearing if the application -- if the proposed
3 change is a reduction in the vote.

4 If the proposed change is an increase in the vote,
5 invariably be a hearing.

6 Q I'm not sure that I'm completely understanding
7 your answer. When you say there will invariably be a
8 hearing does that mean it's required by law or that it
9 inevitably happens?

10 A Both.

11 Q Can you tell us who serves on both the regula-
12 tory board of Ohio Edison and Pennsylvania Power and Light?

13 A Only to the extent that I'm an officer of both
14 companies.

15 Q Are you the only officer common to both?

16 A Yes, since there are two directors in common
17 to myself who are directors of both.

18 Q Has there been a grantor or a transfer of any
19 overlapping management in the past?

20 MR. REYNOLDS: You mean back in 1950?

21 MR. CHAMBERLAIN: I will accept that limitation.

22 THE WINNERS: There was a time, Mr. Chamberlain,
23 when there was a man named George Westerman who was engaged
24 in preparing window displays and things of that sort, who
25 was on the payrolls of both companies.

eb5

1 I think there have been one or two other inter-
2 related instances of that kind. When you look at it, I think
3 that the number of two or three utilities commonly had been
4 pretty constant.

5 BY MR. CHLENO:

6 Q Is it correct that you testified that you do
7 not for the fact that Pennsylvania and Ohio require electric
8 utility service to be provided by domestic corporations,
9 that Ohio Edison and Pennsylvania Power would probably be
10 one company?

11 A I think that is a very likely thing. I did say
12 that, yes.

13 Q Are the policies and practices of the two companies
14 identical to the extent they are not required to be different
15 by the laws of Ohio and Pennsylvania?

16 A Pretty much so, yes, and given, in addition, on
17 occasion, a lack of communication, some differences in
18 circumstance and the like. By and large, things are done
19 pretty similarly in the two companies.

20 Q What would be the policy differences that you
21 could think of that would not be related to differences
22 in state law requirements?

23 A I don't off-hand think of any.

24 Q Mr. White, did you testify that the first national
25 power survey had focused on -- in part had focused upon the

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economies to be achieved from pooling and ...
in response to a question from your ...
pressure from regulatory agencies ...

MR. STEVEN: ...
please?

(Whereupon, the Reporter said that ...
record as requested.)

THE WITNESS: I don't believe, ...
I so testified.

I did testify that the ...
out some rather optimistic goals, ...
of possibilities for reduction in electric ...
might be achieved -- or prices I believe I said, ...
prices which might be achievable in some ...

I don't know that it would be ...
the Power Survey focused on pooling, ...
certainly a discussion of that ...
I haven't read it in some years.

BY MR. CHAMBER:

Q Would it be your testimony that ...
in rates that were projected by the Federal Power Commission
were thought by the Commission to be achievable ...
creased coordination?

A No, I wouldn't say that. I think that the
Commission, as nearly as I remember it, discussed a number

eb7

1 of things which might contribute to reductions in average
2 prices for electricity. Among them I believe were increased
3 consumption, coordination, pooling, economic of work,
4 and very likely there were others that I don't have in mind
5 at the moment.

6 Q Would you agree that the National Power Survey
7 envisioned that two types of reductions in cost that might
8 flow from coordination or pooling were the utilization of
9 reserves and utilization of economies of scale?

10 A Yes, I think that's so. These were well-known
11 concepts in the industry at the time. Well, I have no
12 specific recollection that I read that in the National Power
13 Survey at the time it was issued, I'd be very much surprised
14 to find that they didn't discuss those items.

15 Q Does the Federal Power Commission have jurisdiction
16 to compel pooling in order to achieve economies?

17 A Not to my knowledge.

18 Q Are you aware of its ever having had such juris-
19 diction?

20 A To compel pooling?

21 Q To compel either pooling or any other type of
22 coordination in order to achieve economies?

23 MR. REYNOLDS: Excuse me. Could I get from
24 Mr. Charno what he means by "coordination" as a classification
25 before the witness answers? Do you mean an interconnection,

eb8

1 For example?

2 MR. CRAWFORD: Yes to your question.

3 BY MR. CRAWFORD:

4 Q Does the FCC have jurisdiction so-called to regulate
5 connection and reserve showing in order to reduce the
6 economies that might result from reduction of capacity of

7 A I'll have to answer your question, Mr. CRAWFORD,
8 in part Yes and in part I don't know.

9 As I recall Section 203 of the Communications Act
10 authorize the Commission to order -- the Federal Communications
11 Commission to order an interconnection, if it is found to
12 be in the public interest, and to set the terms and conditions
13 of the sale of capacity and reserve capacity in such
14 connection.

15 Whether to say that the Commission should have the
16 power to compel coordination, I just can't know. If you ask
17 you could make an argument that such authority is included
18 within the authority to set the terms and conditions. I
19 think it would be quite feasible to see one or the other
20 opposition to that, however, so I don't know for sure.

21 Q Are you aware of the Commission ever ordering
22 coordination on that basis?

23 A I'm aware that there have been cases in which
24 interconnections have been ordered against the opposition
25 of one or another of the parties to the proposal.

sb9

1 interconnection and I'm aware that in those cases, although
 2 I don't remember the details of that, the fact is that
 3 in fact described at least some kind of arrangement that
 4 is expected to ensue and has not been and might not be
 5 those transactions.

6 But when you ask me whether was it a case that
 7 in those cases ordered coordination, Mr. Justice, Mr. Justice
 8 does not supply me with an answer. I've been asked to
 9 I've read them.

10 Q Are there cases under Federal law?

11 A I would think so, yes.

12 Q They would not be cases under 1938?

13 A I don't know.

14 Q And would there be cases that you have in mind
 15 where the sole purpose for enforcing the interconnection was
 16 in order to achieve economies of operation?

17 MR. BERNHARD: Objections, please, Your Honor.

18 MR. CHASE: I don't believe it was asked
 19 and answered.

20 CHAIRMAN ROSEN: Sustain.

21 THE WITNESS: I don't know, Mr. Justice, I don't
 22 remember a case in which the issues were referred to
 23 terms. I suppose it's obvious that one of the things that
 24 would prompt a party to seek an interconnection or an order
 25 requiring an interconnection from the FCC would be the hope

eb10

1 that the applying party would achieve some reduction, but as
2 I say, I don't remember that I have read a case in which
3 the issues were stated in just this way in the Commission's
4 order.

5 BY MR. CHAMBERG:

6 Q Sir, could you describe the manner in which your
7 wholesale rates are regulated by the Federal Power Commission?

8 A Yes, sir.

9 They were first regulated by the Federal Power
10 Commission or their rates under regulation by the Federal
11 Power Commission in 1965 I believe. Now, a group of our
12 wholesale customers, a group which has now become known as
13 WCOE, approached us and said to us when they had observed
14 that we were making some reductions in retail rates and told
15 us that suggested to them that we ought to be thinking about
16 a reduction in their rates as well.

17 We sat down with them and entered into some
18 discussions. It was at about that time that the Indiana
19 case either was decided or had just been decided, and the
20 Indiana and Michigan case and the Arkansas case were being
21 where in the process; I don't remember just where.

22 At any rate, to make a long story short, we
23 negotiated with the wholesale customers. We later con-
24 cluded that -- during the course of the negotiations
25 concluded that we ought to call the FPC staff, and we did,

eh11

1 and several of our meetings then were three-cornered meet-
 2 ings between ourselves, the FPC staff and the NCCU folks.

3 We reached an agreement on a new revision. We
 4 entered into new contracts with each of the individual
 5 customers embodying these new rates. We filed these with the
 6 FPC. They were accepted for filing and then, for the first
 7 time, our rates could be said to have been regulated by the
 8 FPC.

9 Since that time we filed an application with the
 10 FPC for a change in the rates, in this case an increase of 10%.
 11 And after some time -- I spent some time installing meters on
 12 that this morning -- new rates were received on new contracts
 13 were entered into. These were proffered from the FPC
 14 for filing.

15 At the moment we have filed another application
 16 with FPC for changes in those rates. That application is
 17 pending.

18 Q Mr. White, does acceptance for filing by the
 19 Federal Power Commission constitute approval or acceptance
 20 of the rates that have been filed?

21 A I think if they deliberately -- or it seems to me
 22 to be, I should say, a deliberately ambiguous way of saying
 23 this rate is acceptable and we will let it be effective.

24 It is not quite the same, in this is your point,
 25 Mr. Charno, as the procedure of the Public Utilities

eb12

1 Commission of Ohio which should further in order saying the
2 rate shall be this.

3 Q Sir, do you recall-- let me ask that:

4 Does the Federal Power Commission notify you
5 of their acceptance of a rate for filing?

6 A Yes.

7 Q Do you recall in any of those acceptances or in
8 all of these notifications of acceptance the following
9 language:

10 "this acceptance for filing does not
11 constitute approval of any service rates, charges,
12 classification or any rule, regulation, contract,
13 or practice affecting such rate or service provided
14 for in the above-designated rate schedule and rate
15 schedule supplement, nor shall such acceptance be
16 deemed as recognition of any claimed contractual
17 right or obligation affecting or relating to such
18 service or rate, and such acceptance is without
19 prejudice to any findings or orders which have been
20 or may hereafter be made by the Commission in any
21 proceeding now pending or hereafter instituted by
22 or against your company."

23 Let me just ask-- Let me rephrase the question:

24 Is that boilerplate language that comes in every
25 notification?

eb13

1 A It's long enough since I actually looked at one
2 of these, Mr. Charo, that I'm not entirely sure that that
3 is the boilerplate, but certainly WFO has boilerplate of
4 that type.

5 It has always seemed to me to be either a peculiar
6 thing for that Commission to do because there is no doubt
7 in my mind that if the Commission supposed that there
8 existed any of the multitude of things against which it takes
9 a reservation in that language, it had ample authority and
10 means to do something about it before it went into its work.

11 Nevertheless, that's what it does say. What it
12 is.

13 MR. SMITH: Did you say it had the means to do it?
14 You said "authority" and something else.

15 THE WITNESS: Yes, I think I said more. What I
16 had in mind was that the Commission has staff, it has
17 expertise, it has procedural ways to get into whatever it may
18 be. It has-- Before it issues a letter of such kind,
19 certainly in every case in which we've been before it, its
20 staff has investigated the matter to a considerable extent
21 at least, and there has been a hearing at least before an
22 Administrative Law Judge.

23 I guess I'm raising a semantic question, of that
24 type of question, Mr. Smith. I just observed to Mr. Charo
25 that it seems to me odd that, having had the matter before

eb14

1 it and having had ample opportunity to close the thing up
2 if there's anything wrong with it, with the Commission does
3 make a custom or habit or practice of setting the rates
4 plate at the end of these acceptance periods.

5 BY MR. CHAMSO:

6 Q Is there any legal requirement of a hearing before
7 the Federal Power Commission when you file either a new or
8 an amended rate?

9 A I'm not sure, Mr. Chamso. I believe that a hearing
10 is not required unless there has been an intervention. Don't
11 hold me to that because I'm just not sure.

12 Q You mentioned the hearing before an Administrative
13 Law Judge in which Ohio Edison had been involved. When did
14 that occur, sir?

15 A That occurred in the course of the proceedings
16 on our 1972 application.

17 Q Was there a hearing in 1965 or '66 when you
18 originally filed rates with the Federal Power Commission for
19 Ohio Edison?

20 A I believe there was not, but you must remember
21 that that filing was under most unusual circumstances.

22 We believed, as had most of the industry, that
23 the Federal Power Act did not apply to contracts with
24 customers of the kind -- of the WOOD customers. The Colver
25 case indicated that in fact such jurisdiction -- or that

eb15

1 that Act did apply and therefore that the Commission had
 2 such jurisdiction; not just the Colton case but that case
 3 plus the Indiana-Michigan case and the Baltimore case.

4 That came as a great surprise to most of us and
 5 at that time the Commission issued a statement of policy
 6 in which it said in effect that rate schedules, rate
 7 contracts which were filed with it by a date, whatever it
 8 might be, would be received by the Commission and made
 9 effective -- and be permitted to be made effective without
 10 any inquiry in effect by the Commission into the wisdom of
 11 the filing utility to have filed such contracts in the past.

12 The Commission very properly indicated that it
 13 was stating that policy for itself only and that that policy
 14 was without prejudice to the rights of anyone who might
 15 have thought he was injured in some fashion in years gone by.

16 So there were a great many filings made under the
 17 shield, if you will, of that statement of policy, including
 18 the filings made by Ohio Edison Company and Pennsylvania
 19 Power Company.

20 Q Who did the NRC make that statement of policy,
 21 do you recall?

22 A I'm sorry, I don't remember the name of it, but
 23 it was at about that time.

24 Q And about that time would be what year?

25 A About 1964 or '65.

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Q When did Pennsylvania Power first file wholesale rates with the Federal Power Commission?

A Mr. Charno, there's a long story to be told in that connection, a good deal of it lies outside what I understand to be the time period with which you're presently concerned.

MR. STEVEN BERKIN: Your Honor, if I may at this point, I am familiar with what Mr. White is referring to at this point in time. There is a rather long history, there was a proceeding involving the question of the filing of Pennsylvania Power Company's rates with the Federal Power Commission over almost a 30 year period which has not yet been resolved by the Federal Power Commission. It has gone through an initial decision, it involves the question of refunds allegedly due a complaining ratepayer in Pennsylvania Power Company's areas under the claim that Pennsylvania Power should have been filing with the Federal Power Commission since 1935 or '38 and the question of the retroactive application of the Federal Power Act from the date it was enacted that we have been talking about.

MR. CHARNO: Maybe I can rephrase the question. I asked and ask another one that you've got into that jurisdictional tangle.

BY MR. CHARNO:

Q Did Pennsylvania Power Company file its wholesale rates with the Federal Power Commission in the 1960's?

mpb2

1 A Yes.

2 Q And approximately when was that?

3 A That would have been in about the same time, 1954
4 or 1955.

5 Q This morning, sir, or yesterday I believe you
6 testified that the Pennsylvania Regulatory Commission allocated
7 areas of service between utilities in Pennsylvania. Is that
8 correct?

9 A Well, it issues Certificates of Convenience and
10 Necessity which designate the area within which the
11 utility is permitted to serve.

12 Q Is that retail or wholesale service or both?

13 A I'm sure it's retail, Mr. Chasro, I'm not sure
14 that it's wholesale but I think so.

15 Q And what is the basis for your saying that it would
16 include wholesale?

17 A I don't know that I have a basis for it but I have
18 the thought. It's something I'd be glad to discuss if you
19 wish.

20 Q So if I understand your testimony correctly, the
21 wholesale service area of Pennsylvania Power Company would
22 be regulated by the Pennsylvania Public Utilities Commission
23 while the terms and conditions and rates of wholesale service
24 by the Pennsylvania Power Company would be regulated by the
25 Federal Power Commission?

mpb3

1 A If I am correct in thinking that the Pennsylvania
2 Commission has that kind of jurisdiction, and the answer to your
3 question is yes.

4 Q This may be somewhat redundant, but I don't think
5 so, it will at least clarify the situation. Let me ask you
6 if you're aware of any decision by either the Pennsylvania
7 Commission or any court in Pennsylvania that has held that
8 the Pennsylvania Commission has jurisdiction over wholesale
9 service areas concerning sales to municipalities? (What was the
10 Colton case was decided?)

11 A I'm not quite sure I understand what you're asking.
12 Are you asking me whether I am aware of a decision of the
13 Pennsylvania Commission since the Colton case in which there
14 was litigated the question whether the Pennsylvania Commission
15 had authority to require a utility to serve or not to serve
16 a wholesale customer, and the Commission decided that
17 question affirmatively?

18 Q With the exception of adding that the wholesale
19 customer was a municipal system, comparable to the regulatory
20 jurisdiction of the Federal Power Commission, 160, isn't that
21 I'm asking.

22 A Mr. Chazno, I just don't know whether there has
23 or has not been such a decision.

24 Q Sir, yesterday your counsel asked you to identify
25 a series of documents. Do you still have those with you at

mpb4

1 the witness table?

2 A I left them here on the table, Mr. Charne. I
3 presume they are still here.

4 Q Could I ask you to refer to what is been identified
5 in evidence as Exhibit DJ-230 which is a February 12 letter
6 from Ohio Edison to Pittsford?

7 (Pause.)

8 A I'll get there in a minute, Mr. Charne.

9 I have it.

10 Q Sir, at the lower left hand corner of that letter
11 series of initials. Is that the list of people who received
12 carbon copies of that letter?

13 A Mr. Charne, looking at the copy before me it
14 appears that that may have been added later. I believe, however,
15 that it is a list of people to whom copies were sent, and
16 least the initials of such people.

17 Q Can you tell us the last three initials on that list
18 the names of the last three individuals whose initials appear
19 on that list?

20 A I can tell you two of them with some certainty,
21 L.H. I feel quite sure relates to Leslie Henry, F.R.M., and I
22 feel quite certain refers to Victor W. Greenleaf.

23 I'm not quite so sure that I am reading the third
24 one from the bottom correctly because it's a bit blurry, but
25 but I think it is probably F.H.M., Jr., in that case I would

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believes it to be Thomas H. Munsch, Jr.

Q If that were W. J. K., would you accept the initials of Mr. Munsch's middle initials?

A I can't be sure whether it's a "K" or "T", but I won't quibble with you over it. I'm not that sure of Mr. Munsch's middle initial anyway.

Q Do you recall copies of this letter being distributed to Mr. Munsch, Mr. Greenslade and Mr. Henry?

A I don't recall it, but having seen the letter with these initials on it, I'm reasonably confident it existed.

Q Sir, I want to direct your attention to your discussion of your contracts with wholesale customers, this would be Ohio Edison's contracts with its wholesale customers.

Do you recall who else with Ohio Edison was involved in the negotiation of the 1948 contracts?

A Mr. Owoc, Mr. Hilton, who was their chief evaluation engineer, I believe Mr. Spetrino was in their negotiation, at least from time to time, I believe Mr. McGovern.

Dates always got a little troublesome for me, Mr. Charno, and I'm not sure whether it would have been Mr. Zimmerman or Mr. Gould who might have participated as well.

Q I don't believe that either Mr. Spetrino or Mr. McGovern has been identified yet on the record. Who are they?

A Mr. Spetrino and Mr. McGovern, at the time, were

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both attorneys. Mr. Spetina is now general counsel.

Q Has the matter of those "Holden's" as it were been the province of any one person in the legal department with anyone else?

A I was myself in the legal department at the time and I guess it was more in my province than the province of anyone else.

Q When your counsel was examining you I believe he pointed out that certain restrictions upon the names of customers were contained in paragraph 4 of the contract that he showed you and some were on page 2 of the contract.

Can you tell us if there was any other law or ordinance that appear to be roughly comparable provisions, and dealing with the Company's obligations and one dealing with the municipalities in separate places?

A I'm sure we had a number for that, but I don't recall but I can't call to mind what it was.

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3A eb1

1 Q Do you have what was identified as Applicant's
2 Exhibit 10 before you?

3 I believe that's a letter dated February 11, 1972,
4 1972, from you to Mr. Hanson.

5 A Yes, sir, I have it.

6 Q Is it your testimony that this was the company's
7 communication of its proposal for a change in the 1963
8 contracts-- Strike that.

9 Is it your testimony that this letter constituted
10 the company's communication of its proposal for a change in
11 the 1963 contracts to the municipalities which are whole-
12 sale customers of CEI?

13 A That was my testimony. I think I mentioned also
14 that while this letter is addressed to the Mayor of the
15 City of Wadsworth, a similar letter went to the Mayor of
16 each of the other municipalities.

17 Q How much prior to the sending of this letter did
18 Ohio Edison determine what its new proposal was going to be?

19 A I suppose, Mr. Charno, that we had had all matter
20 of new rates as such under discussion for eight or ten months,
21 and we had spent quite a bit of time working up and assembling
22 the rather voluminous filing which must accompany an
23 application of this sort.

24 As to the other changes, namely the deletions
25 from language of the contract, I'm not sure I can take you

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a very precise answer. I think our decision in that respect evolved, rather than came about as a sudden flash of lightning so to speak.

I suppose right up to the day we actually called this thing out it would have been conceivable that we might have changed our minds in that respect, but we didn't.

Q Was there any other change in this contract other than the deletions that you pointed out, and the changes in the rates? Specifically with respect to the contract, were there any changes other than the deletions?

A I don't believe so, Mr. Gurnea. If so, they would have been changes of but little consequence.

As a matter of fact my recollection is, as far as the contract itself is concerned, that we simply took a copy of the 1965 contract as it then existed and superimposed it with a piece of white paper over the portions that we proposed to delete. I believe I testified to that previously. The rest of it remained unaltered.

With respect to those provisions in the rate schedule which we intended to delete, we did that in practice a less obvious way but by way of printing the rate sheet without those provisions in it.

Q Would the contracts have remained in effect for another three years but for your modification which you've described here of those contracts?

eb3

1 A Yes, that would be approximately true at least.
2 They were ten-year contracts and this was early '70s, yes.

3 Q Would it have been possible for you to change the
4 rates without changing the contracts?

5 A I would think no. That is to say it would have
6 been possible for us to have filed such an application.

7 Q I believe, sir, that you testified as to two
8 reasons that the territorial provisions were removed from
9 the contracts: one, that you personally were becoming more
10 sensitive to antitrust law and two, because of the small
11 number of occasions upon which the provisions had been made
12 operative. Is that correct?

13 A Yes, that's correct.

14 Q Is it your contention then that these provisions
15 do not operate unless the request is made for a waiver of the
16 provision?

17 A I'm bothered by the tense of your verb, Mr. Chamber.
18 But leaving that aside, the only way I had of knowing to
19 what extent these provisions had been operative was by
20 reference to my knowledge of the number of occasions on which
21 consents had been requested.

22 Obviously I could not tell you how many times
23 somebody didn't do something because they were there.

24 Q Sir, when you wrote to the Federal Power Commission
25 submitting the contracts and rate schedules in I believe it

eb4

1 is Applicant's Exhibit 11, I don't make any mention of the
2 antitrust laws in that letter. Is that correct?

3 MR. BYRONNE: I'll object, the witness speaks
4 for itself.

5 MR. CHARNIC: Well, then let me ask this:

6 BY MR. CHARNIC:

7 Q Was there a reason that you didn't make the
8 reason for eliminating the provisions that you wrote to the
9 Federal Power Commission?

10 A I'll have to look at the letter first, Mr. Charnic,
11 to be sure I didn't. I don't remember.

12 Q Certainly.

13 (Witness reading.)

14 A Apparently you're right. Apparently I did not
15 mention that reason in the letter to the Federal Power
16 Commission. I can't tell you today why I didn't.

17 Q Sir, do you recall any other reasons for the
18 deletion of those paragraphs that you have not mentioned to
19 at this time or weren't included in this letter to the
20 Federal Power Commission?

21 A The only other thing I can think of, Mr. Charnic,
22 was that in a few, a very few instances, I thought I had
23 become aware that they were creating a sort of imbrication
24 between us and our municipal customers, and I thought that
25 wasn't worth having around.

eb5

1 I don't attach a great deal of importance to that
2 because as far as I was aware of any such indication it was
3 at a pretty low level, but why have it when you can't read
4 it. I guess that was my frame of mind.

5 Q Do you recall which municipal customers might
6 have been irritated?

7 A No, I don't believe I do.

8 Q Sir, do you recall discussing any other possible
9 reasons for the deletion of those paragraphs about the contracts
10 and the rate schedule?

11 A Any other possible reasons?

12 Q Yes, sir.

13 MR. REYNOLDS: Could I have that question back?

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

16 THE WITNESS: I don't believe I do, Mr. Chairman.
17 If some other reason existed I may well have discussed it
18 with somebody. I don't recall it, however.

19 BY MR. CHARNO:

20 Q Mr. White, could you tell us what individuals were
21 involved in the formulations of the revised contracts and
22 rates for Ohio Edison's municipal customers in 1972?

23 A The rate work itself would have been done either
24 by Mr. Hilton-- I think it must have been done by him
25 because I think that would have been before his retirement,

1 and the people in his department, of course,

2 The rest of it was lost by me and by Miss Johnson.

3 MR. CHANNO: I would like to order for later identifica-
4 tion as the Department's exhibit want in order a two-page
5 document captioned "Memorandum, February 3, 1971." That
6 would be Exhibit 87-623.

7 (Whereupon, the document
8 referred to was marked
9 as 87 Exhibit 623 for
10 identification.)

11 BY MR. CHANNO:

12 Q Mr. White, I would like to ask you first if you
13 can tell me the individuals to whom the initials of the
14 addressee and the sender of this memorandum refer?

15 A The first initials appear to be mine.

16 The second set of initials, those of Miss Johnson.

17 Q I'd like you to look over this memorandum and
18 tell us whether you recall receiving it.

19 A I'm sure I received it.

20 Q Mr. White, does this document refresh your
21 recollection as to the reason why one territorial provision
22 was placed in the contract and the other comparable
23 territorial provision was placed in the rate schedule?

24 A Are you referring, Mr. Channo, to the one
25 numbered 5? If you are--

eb7

1 Q My question was simply does anything in this
2 memorandum refresh your recollection.

3 MR. RICHOLDS: As to what?

4 MR. CHARNO: Would the Reporter read back my
5 question, please?

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

8 THE WITNESS: Item 5 in this memorandum, Mr. Charno
9 indicates that it was Miss McGovern's recollection in 1971
10 that the idea was at the time, there is to say in 1971, and
11 the terms that bind the municipalities were not fixed in
12 the rate schedule on the supposition that that would not be
13 changed while the other provisions were put in the contract
14 that is to say, the provisions that would have bound the
15 company --- and those were in a place where they could not
16 changed without the consent of the municipalities.

17 CHAIRMAN RIGLER: Read that back please, for
18 answer.

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

21 CHAIRMAN RIGLER: Off the record.

22 (Discussion off the record.)

23 CHAIRMAN RIGLER: On the record.

24 There is some thought that you may have mis-
25 spoken in your answer. Would you care to give it again so

eb9

1 recollection or she would not have had it out in this surp-
2 random.

3 But even having seen it, my own recollection is
4 not refreshed by it.

5 MR. SMITH: All right. I see nothing in Item
6 Number 5 which indicates she is referring to a summary of
7 1963, only to a 1971 interpretation of what the 1966 contract
8 provides for.

9 THE WITNESS: I get your point and you may be
10 right, certainly.

11 Mr. Charno was asking me of course whether this
12 refreshed my recollection of 1963, and unfortunately it
13 doesn't.

14 BY MR. CHARNO:

15 Q Mr. White, when you agreed with Mr. Smith's descrip-
16 tion, did you have in mind the first sentence of the
17 second paragraph of Number 5 which reads:

18 "Our idea was to have the terms that
19 bind the municipalities live on after the ten-
20 year contract expired."

21 A Well, I think Mr. Smith's question suggested to
22 me, Mr. Charno, that Miss McGovern may either have been
23 stating her recollection or may have been making a contem-
24 poraneous interpretation in 1971. And I agreed with him
25 that that is possible.

eb10

1 All I can say surely and certainly to you is that
2 looking at this memorandum doesn't refresh my recollection
3 as to the events of 1965 and it doesn't refresh me, for
4 instance, that what Miss McGovern stated here is a summary
5 of facts as they occurred in 1965. I am left just feeling
6 a blank.

7 Q Sir, going to the next sentence after the one I
8 just read:

9 "We didn't think of changing the rate
10 before the contract expired."

11 Now did you know then you were going to change
12 the rate as of February 8, 1971? And what had been discussed?

13 A We had obviously by that time, Mr. Charno, started
14 to give consideration to a change in the rate. I would not
15 have thought that it had been quite that early, but I'm sure
16 that this memorandum would not have been written except if
17 that item had been under discussion.

18 Q Sir, let me direct your attention to the paragraphs
19 numbered 6 and 7, and let me ask you if Miss McGovern's
20 characterizations of the provisions set out in 6 and 7 are
21 in accord with your own understanding of those provisions.

22 MR. STEVEN BERGER: I don't really think it matters
23 very much at this point. The contracts will speak for
24 themselves.

25 MR. CHARNO: I'm trying to determine whether this

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language is an acceptable characterization as far as the witness is concerned and that's contained in your previous testimony.

THE WITNESS: If I may have a few minutes, Mr. Charco, to look at the contract?

MR. CHARCO: Certainly, Mr. White.

CHAIRMAN RICHMOND: Why don't we call a ten-minute break?

(Recess.)

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npbl 32

1 CERKOVICH REEMER: Back on that matter.

2 BY MR. CHAMBER:

3 Q Mr. White, have you had an opportunity to examine
4 exhibit DJ-513, paragraphs 6 and 7 over the telephone?

5 A I'm not sure what DJ-513 is, Mr. Chamber.

6 Q That would be the memorandum of February 1, 1958
7 to you from Ms. McGovern.

8 A That was not mailed to White copy.

9 Q I'm sorry.

10 A Yes, sir, I have.

11 Q Are you in a position to state what is the extent
12 with her characterizations contained in paragraphs 6 and 7
13 of that memorandum?

14 A Mr. Chamber, if what Miss McGovern has referred to
15 is a list of characterizations, as I believe it is, I
16 would not agree with those characterizations.

17 It seems to me a better reading of the memorandum
18 is that it is simply a list of subject matters, of the nature
19 of the locations as between the districts and the various
20 of provisions which relate to these subject matters, and
21 they are, of course, in apparent form looking to the districts
22 and the rate schedules themselves.

23 Q Is it your testimony, then, that what you are is
24 not apparent from looking at DJ-513 as far as you are concerned?

25 A Well, that's correct. For example, the names of

mpb2

1 look at the first one at the top of the second page of that
2 exhibit it reads:

3 "Limitation on our right to exercise constitu-
4 tional power of municipality to serve outside its
5 area..."

6 I think I referred in my testimony yesterday to
7 the provision of the Ohio constitution which imposes some
8 limits on the ability or on the authority of a municipality
9 to serve outside its corporate limits. The provision of the
10 contract which relates to that is number 5 on page 5 and it
11 simply says that the Company will not initiate any action
12 challenging the municipality in the event it exercises its
13 constitutional authority.

14 I don't regard these statements in the memorandum
15 as characterizations and I don't mean to be gabbling with
16 you over semantics, but I don't.

17 Q Six, does paragraph 5 of the contract make reference
18 to the constitution of the state of Ohio?

19 A Not in so many words. It says that the Company
20 agrees it will not initiate a proceeding challenging the
21 authority and power of the municipality in the corporate limits
22 I have mentioned.

23 The authority and power of the municipality is
24 derived from the constitution and it's plain to me at least
25 that paragraph 5 of the contract couldn't, therefore, be

1 talking about anything else.

2 Q As I recall your testimony yesterday, sir, I
3 believe that you stated that the 30 percent limitation --
4 pardon me. I want to get your testimony as precisely as I
5 can from my recollection.

6 Was it your testimony that the 30 percent limita-
7 tion would not apply to a wholesale customer and that there
8 was substantial question as to whether a wholesale customer
9 had any surplus which it could sell outside its own territory?

10 A No. I think you don't have my words exactly
11 clearly in mind, Mr. Charney.

12 Q Could you correct me, sir?

13 A All right, I'll be glad to try.

14 The constitution authorizes a utility which
15 operates a utility to sell outside its territory the
16 surplus product of the utility in an amount not to exceed
17 30 percent of the amount it sells inside.

18 Some years ago in a law write back to the
19 of Piqua and Dayton Power and Light Company, the
20 Court held that that constitutional provision should be
21 construed in terms of numbers of kilowatt hours.

22 So, for illustration you can put in 100 million

23 A municipality which sells within its own territory
24 limits 100 million kilowatt hours may, if it has a surplus
25 product or in the form of a surplus product of its utility,

mpb4 1 50 million kilowatt hours or up to 50 million, sell those
2 outside its corporate limits.

3 The question which has been discussed in this case was
4 not litigated, is whether a utility whose only source of
5 supply is purchase may legitimately have a surplus portion
6 of its utility within the meaning of that constitutional
7 provision.

8 CHAIRMAN RIGLER: Suppose it has a mixed source
9 of supply consisting of some self-generated power and some
10 purchased power?

11 THE WITNESS: Mr. Rigler, I don't want to give the
12 answer to that would be.

13 If it had a mixed supply, as a practical matter,
14 not as a legal matter, as a practical matter, I would suppose
15 that the amount purchased would be only the amount needed
16 in excess of what it produced with its own generation. Now
17 the question might well remain, but whether it could legitimately
18 have a surplus, that question might remain.

19 If you ensure that it could you would have a
20 difficult problem of measurement and I don't know how you
21 would do the measuring.

22 These are problems that just have not been addressed
23 to my knowledge and I just don't know how you would answer
24 them.

25 CHAIRMAN RIGLER: I was thinking, for example, of

mpb5 1 the possibility of municipalities associated with AEP-0
2 arrangement requiring, let's say, public preference power from
3 outside the state, if it could be delivered to the municipali-
4 ties, some of which are engaged in self-generation.

5 THE WITNESS: I can well see how the situation
6 could arise, but I don't know the answer.

7 CHAIRMAN RIGNER: Mr. White, suppose a municipality
8 which was engaged in self-generation, in order to bolster its
9 reserves made a contract with an outside supplier and that
10 contract had a demand charge provision in it, a demand charge
11 provision. In those circumstances the municipality might
12 have surplus available from outside which it did not need
13 for its own internal use within the city and yet where it
14 would be financially sound for it to seek an outside market.
15 Do you have any opinion as to what the requirements of
16 Ohio law might be with respect to the disposal of that type
17 of surplus power?

18 THE WITNESS: Where you get into a constant differential
19 kind of problem, perhaps. I would suppose that it would be
20 somewhat easier in those circumstances for the municipality
21 to defend itself against the argument that it had no legitimate
22 surplus.

23 The difficulty might arise in that electric service
24 consists of both capacity and energy and that municipality
25 would, I suppose, have a surplus of energy if it prevailed on

mpb5 1 that side of the argument, but not a surplus of capacity.
2 And I really don't know where that would leave you.

3 BY MR. CHARNO:

4 Q Mr. White, does Ohio Edison have a present position
5 or policy with respect to whether municipal systems can sell
6 their surplus outside their corporate limits if they are all
7 requirements wholesale customers?

8 MR. REYNOLDS: I'll object to that question. The
9 witness has already testified that if you're a full require-
10 ments wholesale customer you don't have surplus.

11 MR. CHARNO: I'm asking if that's the Company
12 position at this time, that that is the appropriate interpreta-
13 tion of the provisions of the Ohio State constitution.

14 THE WITNESS: Now you're changing the question a
15 little bit, Mr. Charno.

16 I would certainly argue that that is the appropriate
17 interpretation or the correct interpretation of the Ohio
18 constitution.

19 When you ask me whether the Company has a position
20 or policy with respect to that provision of the constitution,
21 I take it you are asking me whether I have made up my mind
22 or whether the Company has made up its mind that whenever
23 we have reason to believe a municipality may be in violation
24 of that provision we either will or will not attempt to bring
25 some kind of an action to enforce the provision against that

mpb7

1 municipality. To that question my answer is that I have not
2 made up my mind either way on the question, and how the
3 Company and there is no policy or position in that respect.

4 As a lawyer, strictly as a lawyer now, and not
5 as president of Ohio Edison Company, now, I have always
6 thought I would like to see an appropriate case in which to
7 litigate that question to see how it would come out.

8 Whether we would, or in order of the Company, now,
9 bring such a suit in the event we saw or thought we saw a
10 violation is something we have not decided but we will
11 decide until we saw the case and considered it in the matter
12 at the time.

13 BY MR. CHAPMAN:

14 Q Do you recall discussing this question with Mr.
15 Mansfield?

16 A Oh, sure. I've discussed it with Mr. Mansfield
17 many times. As I say, it's an intriguing legal question.
18 Mr. Mansfield has a legal background, as I know, it's the
19 kind of thing that we like to chat at at times. I think we
20 like to do it.

21 Q Do you recall Mr. Mansfield making a public state-
22 ment that under Ohio law municipalities have the constitutional
23 privilege of selling up to half of the output of their genera-
24 tion outside the municipal boundaries, or in the case where
25 they are wholesale, half of whatever they purchase or not more

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than half outside the corporate limits?

A. I do not recall his making that statement.

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1 Q Sir, when you were testifying concerning the
2 reasons for the provisions in the 1913 contract, I believe
3 you indicated that one of the reasons was that-- a heavy
4 strike that.

5 MR. CHARNO: At this time I would move to get
6 into evidence.

7 MR. BERGER: No objection.

8 MR. REYNOLDS: I will make the continuing
9 objection on behalf of all Applicants other than Ohio
10 Edison.

11 CHAIRMAN REICHER: The continuing objection is
12 overruled and we'll receive 613 in evidence.

13 (Whereupon the document referred to
14 heretofore marked for identifica-
15 tion as DJ 613, was marked in
16 evidence.)

17 BY MR. CHARNO:

18 Q Now, Mr. White, do you recall attending some
19 hearings before the Securities and Exchange Commission in
20 Washington on June 27th, 1972, in a proceeding captioned
21 File No. 3-3613, where you entered an appearance on behalf
22 of Ohio Edison and Mr. Mansfield testified?

23 MR. BERGER: Can I have more of a description
24 of that proceeding?

25 MR. CHARNO: Well the caption was "In the matter

wb2 1 of Ohio Edison Company."

2 MR. BERGER: Was this in connection with the
3 Hiram acquisition?

4 MR. CHARNO: Yes, it was. I believe it is
5 in connection with that proceeding? Yes, it is.

6 THE WITNESS: If it was in fact the Hiram
7 acquisition, I was there.

8 BY MR. CHARNO:

9 Q Would it refresh your recollection as to Mr.
10 Mansfield making such a statement if I suggested that it
11 took place at that proceeding?

12 MR. BERGER: I object, your Honor. I think
13 we've gone far enough on this line. It seems to me that,
14 No. 1, I didn't object to the initial question; I thought
15 it was just completing a line. As to whether or not Mr.
16 Mansfield made such a statement or didn't make such a statement,
17 to me it seems has absolutely no relevance to this
18 proceeding. And now to be referring to the very document
19 that was excluded from this proceeding for other reasons
20 with regard to other statements that Mr. Mansfield may
21 have stated, I really see no purpose in pursuing this line
22 of inquiry.

23 CHAIRMAN RICLER: That's overruled. I suggested
24 Mr. White to have been testifying with respect to the
25 policies of Ohio Edison. And as we look at the announced

wb3 1 purpose for his testimony, the short description. It seems
2 to me he intended to address broad policy issues. And,
3 indeed, throughout his testimony he was recalled to
4 positions taken by the Company at meetings at which he was
5 not personally present, but where he was aware of what those
6 policies were. And in that vein I think the line is proper,
7 and therefore this particular series of questions remains
8 proper.

9 MR. BERGER: I won't argue with your Honor.

10 BY MR. CHARNO:

11 Q Do you have the question in mind, Mr. White, or
12 would you like it repeated?

13 A I assume, Mr. Charno, that you have read some-
14 thing from the transcript of that hearing indicating that
15 Mr. Mansfield said there that an Ohio municipality which
16 purchases its supply may sell, or have power to sell outside
17 its limits up to 50 percent of the amount it sells inside
18 its limits, and may purchase the total.

19 Q Would you find it helpful to have that question
20 before you?

21 A I'll be glad to look at it if you would like to
22 me. I thought I had the thought.

23 Q I think you do. But if you would like the
24 quotation I'd be happy to furnish you with it.

25 A No, it's not necessary.

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1 Your earlier question to me, Mr. Charro, had
 2 been whether I recalled Mr. Mansfield making such a state-
 3 ment. I did not. I don't. But I have no reason to doubt
 4 if you find that in the transcript, that is in shape. It
 5 surprises me. But, if he said it he said it.

6 I would, nevertheless, testify, as I did testify,
 7 that in my opinion that is an incorrect interpretation of
 8 that constitutional provision. But since it has never been
 9 litigated in Ohio I suppose it is just as likely that I am
 10 wrong as that anybody else might be wrong in the interpreta-
 11 tion.

12 Q What was Mr. Mansfield's position with Ohio
 13 Edison in June of 1872?

14 A He was the President.

15 He was not, however, Mr. Mansfield's policy
 16 policy, or a position of the Company as the literature which
 17 you read, but simply saying what he thought at the time as
 18 the meaning to be given to the constitutional provision.

19 Q Sir, yesterday when you were testifying concern-
 20 ing the wholesale contracts I believe you stated that you
 21 were only aware of one instance in which this Edison sought
 22 to have the city waive the requirements of the contract, is
 23 that correct?

24 A I believe I did testify to what I think, yes.

25 Q Do you recall the circumstances surrounding this

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1 single request?

2 A No, sir, I don't.

3 Q Sir, I would like to show you a document which
4 has been entered into evidence as Exhibit B-19, which is a
5 June 10th, 1968 memorandum, and I'd like to ask you if that
6 would refresh your recollection with respect to the one
7 instance.

8 (Handing document to the witness)

9 CHAIRMAN RIGLER: Off the record.

10 (Discussion off the record)

11 CHAIRMAN RIGLER: On the record.

12 THE WITNESS: I don't see anything in this
13 memorandum, Mr. Charno, which indicates a request by
14 Ohio Edison to a municipality for its consent to serve a
15 customer.

16 BY MR. CHARNO:

17 Q I believe you testified that there were approxi-
18 mately twenty-five to thirty occasions on which requests for
19 waiver were presented to Ohio Edison. Is that a correct
20 statement?

21 A I believe so.

22 Q Did you further testify that the basis for that
23 opinion was the document shown you by your counsel?

24 A Yes, sir. I testified that based on my own
25 observation during the period from '65 to '72 or thereabouts

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1 I would have supposed that there were only one or two
 2 such instances. And Mr. Borwar had shown me within the
 3 past couple of weeks correspondence and other papers which
 4 made me think that there was probably some correspondence
 5 like twenty-five or thirty such instances.

6 CHAIRMAN RIGLER: I wonder if we could move
 7 little faster if the lead into the questions can be made to
 8 deal with such details as pure testimony. That will be
 9 what you refer to, and then if you need to make any
 10 money, if you can identify the text, pick up the subject of
 11 the question.

12 BY MR. CHAMBER:

13 Q Were the documents shown to you by your
 14 counsel exhibits in this proceeding?

15 A Many of them have shown, Mr. Chamber, others
 16 I have seen on the documents that have been placed before
 17 me. I'm not at all sure that all of them do. I don't
 18 know, I have no way of knowing, for example, which of them
 19 have been admitted and which have not.

20 Q Were you informed by counsel that all documents
 21 you were shown represented all requests for evidence of which
 22 he was aware?

23 MR. BERGER: Your Honor, I think we're getting
 24 pretty close to the line.

25 CHAIRMAN RIGLER: I agree.

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MR. BERGER: I object.

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CHAIRMAN RICE: I'm not sure we supposed the
line on that one question.

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I'll overrule your objection. But I'll agree
it's perilously close.

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THE WITNESS: I took it that they were, Mr.
Charno, from what Mr. Berger said. I'm not sure that I can
remember that he put it in so many words.

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BY MR. CHARNO:

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Q Sir, you testified that at one point you traded
customers with Toledo Edison, and that had been approved
by the Public Utilities Commission of Ohio.

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When you traded customers with Edison was that
approved by the Public Utilities Commission of Ohio?

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A My recollection is that we had a two-pronged
problem in that case, in that it was necessary for us to
obtain from the Public Utilities Commission of Ohio authority
to abandon service to those customers who were to transfer
Hudson's customers, and, as well, necessary for us to obtain
authority from the SEC to acquire the utility facilities,
or utility assets which we were to acquire.

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Q Would your answer be the same with respect to
the trade of customers between Ohio Edison and Wadsworth?

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A I think we had a different situation there,
Mr. Charno.

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1 I believe that-- My recollection is fuzzy
2 on Wadsworth. I believe that the amount of utility assets
3 that we acquired in that transaction was less than a
4 thousand dollars, and that there was no CCC proceeding.
5 I don't recall whether there was a proceeding before the
6 Public Utilities Commission of Ohio.

7 Q Mr. White, in preparing to testify in this
8 proceeding did you review any documents other than those
9 relating to the request for waivers of wholesale contract
10 provisions?

11 A I reviewed quite a number of documents,
12 Mr. Charno, that were handed to me by Mr. Sawyer. He indi-
13 cated that they were documents which either had been ad-
14 mitted or had at least been offered in this proceeding, and
15 that they were documents as to which somebody might wish
16 to ask me questions.

17 There were two pretty thick loose leaf binders
18 and a large Manila folder. And I skinned through all the
19 documents in all three of those.

20 Q When you say that the documents had been admitted
21 in this proceeding, you mean offered in evidence?

22 A I thought, Mr. Charno, that I understood that
23 some of them had been offered but had not as yet been made
24 the subject of a ruling by the Board as to their admission.

25 There is a procedure, apparently, here, which is

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unfamiliar to me whereby there are documents called
"unsponsored exhibits." I don't know just precisely what
that means. And there was an indication from Mr. Tolson
as I say, that some, at least, of the things which he
handed me in his books had in fact been admitted in
evidence.

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Q You have testified that you eliminated the restrictive provisions in your Ohio Edison contracts prior to the expiration of the term of those contracts in the setting of the rate filings. Is there any power that would similarly eliminate the comparable provisions in the Pennsylvania Power contracts in the course of the 1974 rate filing?

A Mr. SWEET: I think that, in the course of the rate filing you're talking in terms of comparable provisions, that it would be a little more specific?

MR. SWEET: Certainly.

BY MR. SWEET:

Q The provisions in the Pennsylvania Power contracts which fix service to existing customers on or all of them, the Company and the municipalities?

A I think essentially, Mr. SWEET, that that was simply an oversight or failure of communication between the companies. I'm confident that had the rate filers in Pennsylvania been fully aware of what was going on, I think they would have done the same thing.

Q Sir, when you testified that you were aware of any territorial agreements between Ohio Edison and Pennsylvania Power at this time, did your answer go both to written and unwritten agreements?

A Yes, sir.

Q Could you tell us who Mr. SWEET is?

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1 A Mr. David Siskler?

2 Q Yes, sir.

3 A He is division manager of Ohio Edison Company's
4 Warren division.

5 Q Are you aware of an agreement, transition agreement
6 between your division manager, Mr. Siskler, and the city of
7 Newton Falls not to raid each other's customers?

8 A No, sir.

9 Q Sir, yesterday you testified on CF-129, which was
10 a letter to Mr. Mount from Mr. Grant which you advised in
11 the preparation of. Do you recall that?

12 A Yes, sir.

13 Q Was it brought to your attention at any time after
14 the date of that letter that Ohio Edison took a position on
15 whether or not it would purchase Newwalk's generating equip-
16 ment?

17 A I think the letter itself takes the position with
18 respect to that, Mr. Charno.

19 Q What I'm asking, Mr. White, is can you advise of
20 any subsequent position taken by the Company with respect
21 to the Company's purchase of Newwalk's generating equipment?

22 MR. STEVEN BERGER: Generally, are we talking
23 about diesel or steam?

24 BY MR. CHARNO:

25 Q Separately or together.

mpb3

1 A I don't recall such a thing, Mr. Castro, no, sir.

2 Q Yesterday you testified concerning some acquisitions
3 of municipal systems made by Ohio Edison. Could you talk us
4 with respect to each of the acquisitions who initially
5 approached the Company or if the approach was in the opposite
6 direction, who from Ohio Edison initially approached the
7 city concerning the acquisition?

8 A With respect to the Lovellville acquisition, Mr.
9 Charno, I can not tell you the initial contacts, however
10 initiated them were between people at Lovellville and company
11 people in our Youngstown division. I am not clear to give you
12 the names of the people.

13 In the case of the Hiram acquisition, I can
14 suggest to you that for some years we had had requests from
15 time to time from Hiram College that we send our people to
16 the college and requests for information, estimates, if you
17 will, as to what the college's electric bill would be if it
18 were served by Ohio Edison rather than by the Hiram Village
19 Municipal System.

20 Most of these contacts were between officials of
21 the college and Mr. Gould, who was a vice president of the
22 Company. Some of them were, I believe, with people in the
23 Warren division.

24 In most instances, in fact in all instances that
25 I am aware of these requests were initiated by people at the

mpb4 1 college and it was as a result of those contacts that
2 eventually conversations with respect to a sale of the village
3 system began.

4 In the case of the Vermont Legislature the conversa-
5 tions were initiated by people at Norwich, I think principally
6 the Mayor and I don't remember his name, to name Robert,
7 Mr. Mount, the safety and service director, and they directed
8 their attention to our Bay Division manager who through part
9 of the period and I think all of it was Mr. Smith.

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1 In the case of the East Palestine acquisition our
 2 conversations with East Palestine were initiated by somebody
 3 connected with the city whose name I don't know, with Mr.
 4 Dean Beck, our Salem district manager.

5 Q Sir, do you recall who initiated the conversations
 6 regarding sale with the officials of Hiram? Was it Hiram
 7 or was it Ohio Edison?

8 A That's rather hard for me to remember precisely
 9 as you asked the question, Mr. Chamo. The officials of
 10 the college at Hiram were the ones who initiated all of the
 11 conversations and who kept the thing going. In some cases
 12 they were also officials of the village. The village is the
 13 college and the college is the village, by and large, if
 14 you're acquainted with that town.

15 There were discussions of course of providing
 16 service, both total and partial, and of a sale of the
 17 facilities. At one time as I recall we received a letter
 18 from the Mayor of the village, asking questions about some
 19 of those possibilities. And we responded to it in due course.

20 Q Do you recall whether Hiramville made inquiry
 21 concerning wholesale service within a year or two of the time
 22 they were acquired?

23 A I don't believe so, Mr. Chamo. I may be wrong
 24 but I don't believe so. If so, it was not a particularly
 25 serious inquiry and it wasn't pressed.

eb2

1 Q Did East Palestine make any inquiries concerning
2 bulk power alternatives?

3 A Oh, yes, sir. Yes, sir.

4 The first conversation that we had with East
5 Palestine was when one of their people -- and I assume he
6 would have been the superintendent of the electric system --
7 approached me I say Dear Beck, our Salem district manager,
8 and inquired about wholesale supply.

9 Q Did you testify that these acquisitions were
10 all reported to the Securities and Exchange Commission?

11 A Yes, sir.

12 We may not, Mr. Charno, acquire a utility's
13 assets except pursuant to authorization by SEC and in each
14 case, we filed an appropriate U-1 and received an appropriate
15 order before we completed the acquisition.

16 Q With the exception of the Hiram situation, were
17 hearings held with respect to the other three acquisitions?

18 A No. As you know, the SEC's procedure is to issue
19 a notice of the filing of such a U-1 and to send a letter for
20 interventions or for inquiries and so on. In each case except
21 the Hiram case, those notices were passed without inter-
22 vention and without inquiry.

23 Q Does the Securities and Exchange Commission have
24 any authority to order the provision of bulk power supply
25 services by the holding companies which are subject to its

eb3 1 jurisdiction?

2 A To whom?

3 Q To anyone?

4 A Not to my knowledge.

5 That authority had been conferred upon the Federal
6 Power Commission in Part 3 of the Federal Power Act. I will
7 recall that Part 3 of the Federal Power Act and the Holding
8 Company Act of 1935 were passed as a single piece of legis-
9 lation.

10 Q Today, sir, when you were testifying concerning
11 requests to wheel, both generally and specifically, you
12 stated that you specifically reserved your consent upon
13 WCOE's request for general wheeling.

14 Have you ever subsequently addressed that ques-
15 tion with them?

16 A Only insofar, Mr. Chamo, as I have already
17 testified. When we were reviewing Mr. Monahan's list of
18 items for discussion and I indicated to him that I thought
19 that third party wheeling, so to say, was not contemplated
20 by our Memorandum of Agreement and further, that I thought it
21 was -- it would add an unnecessary complexity to our dis-
22 cussions with respect to generating capacity.

23 And later, in our meeting in August of last year,
24 when there was some discussion, what is the proper definition
25 of wheeling, and then finally as the meeting was breaking

eb4 1 up when Mr. Stout said to me, "Well, we're still going to
2 want to talk to you about financing some day."

3 And I said, "Sure, we can talk with you're ready."

4 These are the only two sentences.

5 Q Did you ever inform NCCB's representatives that
6 while you wouldn't discuss financing on a general basis, if
7 they wanted to bring you a specific proposal you would
8 consider and evaluate that proposal and give them an answer
9 on it?

10 A I don't recall saying that kind of thing in so
11 many words. I think I said many things from which they
12 might reasonably have concluded that that was the case.

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MR. VOLLER: Can I have the last answer read back, please?

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

BY MR. CHARNO:

Q Mr. White, could you tell us what those things were?

A I think, Mr. Charno, that the very fact that I said to them that third party wheeling was something that could not be discussed in the abstract, or in the absence of some concrete proposal is the kind of thing to which I referred.

And some such conversations took place, for instance, last August.

I might add that the representatives of WCOE have never hesitated to approach us and let us know that there was something they would like to discuss with us.

Q Would there be any other comments that you've made from which you feel representatives of WCOE could have drawn the conclusion that they would be free to make requests for specific wheeling, and that those requests would be considered by Ohio Edison?

A Mr. Charno, don't misunderstand what I'm saying to you. We did not at any time issue an open invitation to WCOE to make specific wheeling requests to us. What I said

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1 was that I think our conversations with them -- or what I
2 meant to convey, certainly, was that our conversations with
3 them were in such terms that they would not have hesitated
4 to approach us with a specific wheeling proposal.

5 I added, and also again, that they have never
6 hesitated to approach us with a request when they felt they
7 ought to do so, or wanted to do so, whatever the nature of
8 the request was.

9 They just aren't all that brahmin, Mr. Shree.

10 Q Was your position -- and by "your" I mean Ohio
11 Edison's position with respect to requests for general
12 wheeling, as you've termed them, the same in October of '74
13 as it is

14 A I think I answered this morning in response to
15 a question of Mr. Reynolds that I would not be prepared
16 today, I was not prepared in 1974, and I would not expect
17 to be prepared two or three or four years from now. And I want
18 to take the position that the Ohio Edison transmission system
19 is, or has been, dedicated to common carrier transmission
20 service.

21 I said also that when somebody puts the question
22 "Will you wheel third party power?" there is no way I can
23 answer that question. Because there is no way that I can
24 determine what it is that I'm being asked to discuss or
25 what it is that I'm being asked to talk about.

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1 When somebody approached us with a proposition
 2 that he would like us to wheel for him a particular variety
 3 of vegetable from our source, from a given source to a certain
 4 delivery point, and for a period of time, I don't know what
 5 thing that I can analogize, or what our experience was, and
 6 and that I can respond to, whether affirmatively or nega-
 7 tively; but only then.

8 Q If I understand your testimony correctly,

9 MR. BENSER: Excuse me.

10 Were you finished, Mr. Bishop?

11 THE WITNESS: I think so.

12 BY MR. BENSER:

13 Q If I understand your testimony correctly, in

14 1972 and in 1974 you received several on WFO's proposals
 15 rather than explaining the reasons for doing so, is that
 16 correct? --and by "these factors" I mean the factors
 17 you've explained in your last answer.

18 A In 1972, Mr. Champs, I said to the WFO people
 19 that I was not going to respond to their questions about
 20 wheeling. I made it clear in that conversation, and I ex-
 21 pressed to make it clear by Mr. Mayham, that our response
 22 to those questions would be neither yes nor no any more.

23 In 1974 I said to them -- and I'm upgrading
 24 myself, I'm sorry to say: (a) that we did not consider that
 25 we had made an agreement with them in the summer of '72

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1 Agreement which embraced that subject, and that therefore
2 at a meeting to discuss what we would do about the Memorandum
3 of Agreement it was an inappropriate subject. And, second,
4 that I thought that the complexities and difficulties of
5 the task we had set ourselves with respect to generation
6 were such that it would be counterproductive, if you will,
7 to add to it discussion of another difficult and complex
8 subject.

9 Q Was there any reason you did not inform WCOE
10 in either 1972 or 1974 of the Company's position concerning
11 general third party wheeling?

12 A Well, Mr. Charno, we were being approached by
13 WCOE with some propositions that they had in mind. We were
14 prepared to agree to look favorably upon a portion of what
15 they requested. From that time on we thought that's what
16 they were doing with WCOE. We did not think, and don't recall,
17 that we were getting together with them for a general dis-
18 cussion of all the things that may be at issue in the electric
19 utility industry. So of course we didn't talk about it.

20 Q Is it then your--

21 A We are not ideologists, Mr. Charno, and we don't
22 approach our conversations with WCOE in an ideological
23 manner. We thought we had a practical, realistic kind of
24 problem which they had presented to us and which we were
25 willing to make an effort to solve. And that's where we

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1 directed our attention.

2 Q Sir, wouldn't it have been helpful in the
3 solution of WCOB's accounting problems if they had known
4 in 1972 or 1974 that you objected to general agreements for
5 wheeling but you didn't object to specific requests for
6 wheeling?

7 A I have no idea.

8 When the Beck report came to our attention
9 with Beck's recommendation, they presented what I thought
10 was a very practical, indeed a somewhat ingenious approach
11 to doing what WCOB had told us they wanted to do.

12 Q Was that report promised on the absence of
13 third party wheeling?

14 A I don't know. It was prepared by Beck for us by
15 us.

16 Q Well, wasn't the elimination of third party
17 wheeling specifically made a condition of going forward with
18 this study? --or have I misunderstood your testimony?

19 A Mr. Charno, it was not made a condition of
20 anything. We simply didn't agree at the time the questions
21 were asked us that we would consider it or that we would
22 discuss with them, or even that we would answer those parti-
23 cular questions.

24 We did agree that we would endeavor to work
25 with them to achieve a so-called partnership arrangement for

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1 their participation in some of our generating capacity.
2 That was not conditioned on anything. That was a flat-out
3 agreement. We made it in '72. We repeated it in the
4 Memorandum of Agreement. And we confirmed it in August of
5 last year when they presented to us the specific proposal
6 which they did, and told us they would like to carry the
7 thing out upon that basis, and we said "We'll do it."

8 Q Wasn't third party wheeling specifically excluded
9 at each of those steps except the first, at which time you
10 refused comment on it?

11 A Mr. Charno--

12 MR. BERGER: Each of which steps, Mr. Charno?

13 MR. CHARNO: '72, '74 and '75, with the excep-
14 tion of '72 where he refused comment.

15 THE WITNESS: Third party wheeling was not
16 included at any point. It was not included in the Memorandum
17 of Agreement. It was not included in the Best recommenda-
18 tion. Third party wheeling has nothing to do, or very little
19 to do, directly or necessarily, with participation in
20 generating capacity. And, as a matter of fact, at our
21 August meeting of last year Mr. Cheeseman, Mr. David's repre-
22 sentative at the meeting, pointed out, in response to a
23 comment from one of the WCOE representatives, that third party
24 wheeling would not only be inconsistent with, but would conflict
25 with and frustrate the purpose and the operation of the

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1 proposals that Back had made.

2 And that's the point, Mr. Chairman, that I had
3 in mind when you and I exchanged a few sentences this morning
4 or yesterday.

5 MR. CHERNO: I would now be entitled to the wit-
6 ness' answer as non-responsive. I inquired as to whether it
7 was excluded, not whether or not it was included. I think
8 that shows an entirely different intent. To specifically
9 exclude something is not the same thing as to include it
10 whether or not it was included.

11 CHAIRMAN RICLER: What was your question?

12 MR. CHERNO: I said, was not child graft
13 wheeling excluded at each of these stages with the exception
14 of the first at which you declined to do so?

15 CHAIRMAN RICLER: I'll grant your question.

16 Can you answer that yes or no?

17 THE WITNESS: No, sir, I cannot.

18 CHAIRMAN RICLER: Very well.

19 Why don't we stop here for today for this time. Let's
20 at what the question was when we gave the witness the
21 morning.

22 We'll resume at nine-thirty in the morning.

23 (Whereupon, at 4:35 p.m., the hearing in the
24 above-entitled matter was recessed, to reconvene at
25 9:30 a.m. the following day.)