

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON CO. and CLEVELAND
ELECTRIC ILLUMINATING CO.
(Davis-Besse Nuclear Power Station)
and
CLEVELAND ELECTRIC ILLUMINATING
CO., et al.
(Perry Nuclear Generating Station,
Units 1 and 2)

Docket 50-346A

Docket 50-440A
50-441A

PREHEARING CONFERENCE

Place - Washington, D. C.

Date - Friday, 31 January 1975

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PREHEARING CONFERENCE

In the matter of:	:	
	:	
TOLEDO EDISON COMPANY and	:	
CLEVELAND ELECTRIC ILLUMINATING	:	Docket No. 50-346A
COMPANY	:	
	:	
(Davis-Besse Nuclear Power Station)	:	
	:	
and	:	
	:	
CLEVELAND ELECTRIC ILLUMINATING	:	
COMPANY, et al.	:	
	:	
(Perry Nuclear Generating Station,	:	Docket Nos. 50-440A
Units 1 and 2)	:	50-441A
	:	

Courtroom No. 24
U. S. District Court
3rd & Constitution, N. W.
Washington, D. C.

Friday, 31 January 1975

The prehearing conference in the above-entitled matter
was convened, pursuant to notice, at 9:35 a.m.

BEFORE:

- JOHN FARMAKIDES, Chairman,
Atomic Safety and Licensing Board Panel
- JOHN BREBBIA, Esq., Member
- DOUGLAS RIGLER, Esq., Member

1 APPEARANCES:

2 DAVID HJELMFELT, Esq., Suite 550, 1700 Pennsylvania
3 Avenue, N. W., Washington, D. C.; on behalf of the
City of Cleveland, Ohio.

4 W. BRADFORD REYNOLDS, Esq., and GERALD CHARNOFF, Esq.,
5 Shaw, Pittman, Potts & Trowbridge, 910 Seventeenth
6 Street, N. W., Washington, D. C., and DONALD H. HAUSER,
Corporation Solicitor, Cleveland Electric Illuminating
Company; on behalf of the Applicants.

7 BENJAMIN H. VOGLER, Esq., and ROY LESSY, Esq., Office
8 of General Counsel, United States Nuclear Regulatory
9 Commission, Washington, D. C., 20555; on behalf of the
Regulatory Staff, Nuclear Regulatory Commission.

10 STEVEN M. CHARNO, Esq., Antitrust Division, United
11 States Department of Justice, Washington, D.C.
12 20530; on behalf of Department of Justice.

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P R O C E E D I N G S

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2 CHAIRMAN FARMAKIDES: Good morning. We will
3 commence this prehearing conference and for purposes of identi-
4 fication this is Docket No. 50-346A, 50-440A and 50-441A.

5 This conference was called to discuss further a
6 matter that arose from a motion for an order compelling pro-
7 duction and delivery of documents which motion was discussed
8 further during oral argument the early part of this month,
9 following which the Board ruled that the Department of Justice,
10 the Nuclear Regulatory Commission, the City of Cleveland, and
11 any other party, primarily ANPO and the State of Ohio, could
12 review the materials already gathered by the Applicants and to
13 screen them to see which of those materials they would like to
14 review further.

15 We were then to hold a prehearing conference again
16 on January 17, at which time we would receive in the record
17 reports of what took place. The parties requested and the
18 Board found good cause to extend that time until today.

19 The Board also went to Cleveland to see examples of
20 some of the documents and how they were packaged and presented
21 and the Board also went to Akron, Ohio to visit Ohio Edison.
22 In Cleveland the Board visited Cleveland Electric Illuminating
23 Company. By the Board, I mean myself. It was not considered
24 necessary that all three members of the Board go, so I volun-
25 teered.

1 I think it was a most useful exercise. I think it
2 has resulted in the parties understanding each other's problems
3 a little bit more, so perhaps we're a little bit closer to a
4 resolution of this problem.

5 I'd like to have a report and I don't care how we
6 proceed. Perhaps we can just take it in order of the parties
7 as they appear. Mr. Charno, you happen to be sitting in the
8 right place at the right time.

9 MR. CHARNO: Can I pass to the AEC staff? They've
10 got our compiled figures.

11 CHAIRMAN FARMAKIDES: All right, sir. Mr. Lessy.

12 MR. LESSY: Pursuant to this Board's preliminary
13 ruling of January 3, 1975, the staff has traveled to each of
14 the five Applicants' offices in Ohio and Western Pennsylvania
15 to review and screen documents and the methods of organization
16 utilized by each of the Applicant companies.

17 Pursuant to the procedure discussed with the
18 Chairman at the CEI offices on January 7, 1975, Staff has
19 marked with colored dots those documents which it wishes to
20 examine more closely at a later date. Employees of each of the
21 Applicant companies have been fully advised as to the marking
22 system used by Staff.

23 The Department of Justice has also utilized a
24 similar system.

25 The following are the results of this preliminary

1 screening: The figures used include documents screened by the
2 Department of Justice. This is a composite figure on behalf
3 of the government.

4 First, the government was able to eliminate as either
5 not responsive or not desired approximately 9.2 percent of those
6 materials that were "produced." Thus, pursuant to the Board's
7 ruling, the government wishes to examine in detail a total of
8 only 24 file drawers of material or 8 file cabinets.

9 Now the Board will recall that Applicants in their
10 letter of 12-19-74 said that approximately 281 file drawers
11 were produced and available for inspection. The raw figures
12 are as follows: The government wishes to examine a total of
13 595-1/2 inches of materials. A file drawer contains 27 inches
14 and this equals 22 file drawers. Two additional drawers must
15 be added because of the company-by-company breakdown. This
16 totals, as I mentioned previously, 24 file drawers or approxi-
17 mately 60,000 pages.

18 Second, cost of certified copies. The approximate
19 cost of providing both the Department of Justice and Staff with
20 copies of the requested documents pursuant to the joint request
21 assuming Xeroxing cost of 6¢ a page is \$7,200. There is no
22 mailing charge included as the government would furnish frank
23 envelopes.

24 If the government were to be provided with one
25 Xerox copy only the cost would be half of that, or \$3,600.

1 Secondly, if the requested materials were to be
2 shipped from each of the five cities to a central depository in
3 Washington, D.C. and then reshipped railway express would charge
4 a grand total of approximately \$178.64 for this. The breakdown
5 of shipping costs would be as follows: At Cleveland Electric
6 Illuminating Company there were a total of three file drawers.
7 The roundtrip shipping charges would be \$26.26. At Duquesne
8 there were eight file drawers, a total of \$41.20. Toledo Edison,
9 five file drawers, a total of \$32.42. At Ohio Edison, a total
10 of six file drawers, a total of \$38.44; and at Pennsylvania
11 Power, two file drawers, \$24.70. This totals \$144.32.

12 REA pickup and delivery charges of \$34.32 must also
13 be added, producing an approximate total cost of \$178.64.

14 Because of the small number of file drawers that
15 we're requesting, this figure assumes that employees of the com-
16 pany would make the file drawers readily available to REA when
17 the truck came; that is, they could take it down the elevator
18 to approximately the first floor. If that were not available,
19 we would also have to add additional small sums; but at CEI,
20 for example, there being a total of only three file drawers,
21 we didn't feel this would be any burden.

22 Third, cost incurred by the government in its initial
23 screening. In order to comply with the Board's preliminary
24 ruling, the government has expended approximately \$4,000 for
25 air fare, lodging, etc., not including salaries. In addition,

1 438 professional hours were spent away from the office initially
2 screening materials. Accordingly, the Board should be aware,
3 as pleaded by Staff on January 7, 1975, that Staff's firm
4 position is that any expenses incurred by Applicants in order
5 to comply with this Board's final ruling on discovery should be
6 borne solely by Applicants.

7 If the Board were to order that a proportionate
8 share of expenses be borne by the government, Staff would
9 adamantly and urgently request, pursuant to 10 CFR 2.730,
10 Subsections F and G, certification up to the Commission of
11 expenses and the appropriateness of Applicants' motion for a
12 protective order.

13 Time. In the event certified copies were to be
14 ordered, we will require 45 days after receipt of those copies
15 before we would be in a position to proceed with depositions.
16 In the event a special depository in Washington, D. C. would
17 be ordered, we would require 90 days after delivery before we
18 would be in a position to proceed with depositions.

19 Because of the small quantity of file drawers --
20 that is a total of 24 -- and in order to save time, it is
21 suggested that all 25 files be brought to Washington at the
22 same time if a central depository were to be ordered.

23 Additionally, if a central depository were to be
24 ordered, based on our experience in the field, we strongly
25 request that the order establishing the depository contain the

1 following three provisions as a minimum: (1) That the deposi-
2 tory be a single large room or connecting rooms with tables,
3 chairs, adequate lighting and reliable Xerox facilities; (2)
4 That the government have unrestricted access to the depository
5 during normal business hours; (3) That the produced material
6 shall remain intact and shall not be moved or removed from the
7 room except pursuant to expressed Board order.

8 In addition, we have five observations pursuant to our
9 initial screening that we would like to make. First, we were
10 disappointed that at CEI on Tuesday, January 7, 1975 Applicants
11 were not represented by counsel so that a dialogue and dis-
12 cussion which may have facilitated our chore was not possible.
13 That was the date at which time the Chairman and the government
14 and the City of Cleveland examined the offices.

15 Second, we were disappointed that pursuant to the
16 Chairman's request during a conference call which took place
17 I believe on January 8, 1975, it took three weeks for counsel
18 for Applicants to attempt to demonstrate the relevancy of two
19 random items selected by the Chairman from the City's dis-
20 covery request at CEI.

21 In addition, the mode of communication I believe that was
22 requested by the Chairman and agreed to by Mr. Charnoff was a
23 conference call, not a letter which we have just received.

24 Thirdly, notwithstanding expressed language to the con-
25 trary on page 18 of CEI's answers to interrogatories, there was

1 no central document depository at CEI.

2 Fourth, we're surprised and disappointed that our review
3 of CEI's production yielded only from 33 to 50 percent of what
4 our review of Duquesne, Toledo Edison and Ohio Edison production
5 had yielded. This failure to produce by CEI will necessitate
6 extensive depositions pursuant to subpoenas duces tecum in
7 Cleveland and we hope the Board will take this into considera-
8 tion in its revised schedule.

9 Fifth, we generally feel that the volume figures contained
10 in Applicants' counsel's letter of 12-19-74 must have been
11 greatly exaggerated. In fact, a very large percentage of the
12 materials produced were produced only in response to a few
13 questions. With respect to many of the questions there were
14 very few materials produced.

15 Sixth, generally, the labeling of materials was bad. The
16 best example of this is at Ohio Edison, pursuant to Joint
17 Request No. 7, we asked for a description of reliability
18 criteria used in the system. What we were shown was a roomful
19 of IBM runs which tested the reliability criteria against
20 various components of the system. Nowhere in that room were
21 the actual reliability criteria disclosed and the room was
22 approximately the size of this room and filled with IBM runs.
23 We immediately requested a conference with the Assistant
24 Counsel of Ohio Edison and the Chief Engineer to ask if they
25 could help in trying to determine the relevancy of what was

1 produced. We were then told that the actual reliability cri-
2 teria were contained upstairs in another room in two black
3 notebooks and that these were, as we mentioned previously, the
4 tests.

5 We went upstairs and the two black notebooks were con-
6 tained in a corner of a room but not labeled. Once we opened
7 the notebooks we found that there was a mark, "Government
8 Request No. 7," but the two black notebooks were not contained
9 with the rest of the produced documents. They were separate
10 and apart.

11 Accordingly, on the basis of that discussion, we were
12 able to eliminate an entire roomful of IBM runs.

13 That's all we have to report at this time, sir.

14 CHAIRMAN FARMAKIDES: Could you tell me again about CEI's
15 failure to produce that you mentioned? Go into more detail on
16 that, please. That was your item number four, I believe.

17 MR. LESSY: The way we have structured this, the Depart-
18 ment is going to go into detail in their remarks.

19 CHAIRMAN FARMAKIDES: Off the record.

20 (Discussion off the record)

21 CHAIRMAN FARMAKIDES: Back on the record.

22 I'd like to hear Mr. Hjelmfelt and then the Applicants.
23 Mr. Vogler, did you have anything else or Mr. Charno?

24 MR. CHARNO: If I may, first, we had some problems with
25 labeling that necessitated our requesting a larger volume of

1 documents from Ohio Edison than from anyone else, and our pro-
2 blem was with the labeling system at Ohio Edison.

3 I prepared a small chart trying to illustrate by way of
4 example what our problem was. When one looks at Department
5 of Justice Information Request No. 1, one finds that it's
6 cross-referenced to four City of Cleveland requests which are,
7 in turn, cross-referenced to the Joint Request of the City of
8 Cleveland Request and back to the Department of Justice's
9 Request.

10 So that in order to be sure you have seen everything that
11 is responsive to a single request, you end up, on the example
12 which was the only one I did all the way through, going to 17
13 different places. Then, obviously, you're going to go back
14 looking for something else unless you adopt the expedient that
15 we ultimately adopted which was going through everything which
16 was produced for the City of Cleveland for the Department of
17 Justice and for the Staff.

18 As a result, we have a substantially larger volume of
19 documents from Ohio Edison than we do from anywhere else.

20 MR. BREBBIA: Excuse me. I'm not sure I understand the
21 point. You made document requests for a certain number of
22 documents and they were cross-referenced to similar requests
23 by other parties?

24 MR. CHARNO: That's correct.

25 MR. BREBBIA: What concern is it that it therefore ultimately

1 produced more documents than you anticipated?

2 MR. CHARNO: A large amount of that material was
3 only marginally relevant to the original document request, if
4 at all. For instance, if we had asked for documents relating
5 to requests for participation in coordinated development, we
6 would ultimately get every document that Ohio Edison produced
7 on CAPCO. We would have to go through to find those. In other
8 words, the breakdown system was such that --

9 MR. BREBBIA: Your criticism is that they should
10 have been broken down into finer categories by the Applicants?

11 MR. CHARNO: The labeling system was totally meaning-
12 less insofar as Ohio Edison was concerned.

13 MR. BREBBIA: The labeling on the categories of
14 files?

15 MR. CHARNO: That's correct.

16 MR. RIGLER: Can you explain your diagram a little
17 better starting with your original reference and taking, for
18 example, the fifth level reference of C-14_B, and tell us exactly
19 what goes on to get down to that little one?

20 MR. CHARNO: Well, you look at the Department of
21 Justice -- they had two master lists of discovery requests and
22 if you look at the Department of Justice's request which they
23 designate E-1, you will find E-1 cross-referenced to four
24 different things, four different City of Cleveland requests.
25 Those are the "C" discovery requests. When you look at C-12

1 you will find it's cross-referenced to five different dis-
2 covery requests and inquiry of their production staff indicated
3 that in order to be sure that you would see every document
4 relative to DJ-1 you would have to go through each of the
5 cross-references until you ran out of cross-references.

6 MR. BREBBIA: Did they provide the cross-references?

7 MR. CHARNO: They provided the two master lists of
8 cross-references. That's correct.

9 CHAIRMAN FARMAKIDES: But you indicate in your
10 fourth level that, for example, C-14_B, you have an asterisk
11 and there you found a reference for the first time.

12 MR. CHARNO: C-14_B occurs for the first time at the
13 fourth level. The fifth level is entirely reiterative --
14 redundant.

15 CHAIRMAN FARMAKIDES: The fifth level is nothing
16 more than following through to be certain there's nothing
17 further on down. But your C-14_B, which is the fourth level,
18 there you find a reference for the first time?

19 MR. CHARNO: That's correct.

20 CHAIRMAN FARMAKIDES: Is that reference properly
21 classified under C-14_B or should that have been classified
22 under DJ-1?

23 MR. CHARNO: It's properly classified under C-14_B.

24 CHAIRMAN FARMAKIDES: So it was a question of
25 manual work rather than any attempt to mislead?

1 MR. CHARNO: Well, the problem is that when you
2 take a category of documents and then you cross-reference it
3 to something that has marginal relationship, and then you
4 cross-reference that to something that has marginal relation-
5 ship and then you cross-reference that to something that has
6 marginal relationship, by the time you got to the second, the
7 third or fourth levels of cross-reference they have little, if
8 any, relationship, but there may be one document in that cate-
9 gory.

10 Now we also found at Ohio Edison that there were
11 documents we would have expected to find in certain categories.
12 For example, documents relating to AMP Ohio, in the request
13 reference to AMP Ohio, which were not in that request, were
14 not made available pursuant to that request; and after we
15 tracked through all the cross-references on that particular
16 example the documents weren't in any of the cross-references.
17 And we questioned staff and they said, "Well, we don't have
18 any documents relating to AMP Ohio, if you haven't found
19 them," and I said, "We haven't found them and we have copies
20 of documents that you have." Then they found a file folder
21 that had documents in it but it hadn't been referenced to any
22 of the appropriate references or cross-references.

23 CHAIRMAN FARMAKIDES: Well, now, that's a completely
24 different point from what you state here.

25 MR. CHARNO: That's true.

1 CHAIRMAN FARMAKIDES: And that point may well be a
2 little bit more important than here. This, to me, connotes
3 workload, who's going to carry the workload.

4 MR. CHARNO: I think we have already carried it.
5 I'm just explaining why we have more documents from them than
6 we would otherwise have. We have overlapped, I'm sure, the
7 City of Cleveland's request for documents from them also,
8 since there was no dichotomy between the two which could be
9 observed.

10 CHAIRMAN FARMAKIDES: In getting down to the fifth
11 level of references, did you find any references appearing for
12 the first time in that fifth level?

13 MR. CHARNO: Not on this particular document
14 request. As I said, this was the only one I worked through
15 and I just gave up and did everything. It takes quite a
16 while to work out the cross-references because you're working
17 with two pieces of paper and you want to make sure you don't
18 miss one.

19 CHAIRMAN FARMAKIDES: All right, sir.

20 MR. CHARNO: With respect to copies of documents
21 produced, we fine-screened two drawers at CEI. We went
22 through every sheet of paper in them marking individual
23 sheets of paper. We found in no case did we have any interest
24 in or request production in Washington of any document that
25 there wasn't a copy or wasn't accompanied by copies.

1 Now certainly I can't generalize to any documents
2 other than the two drawers that we went through in detail, but
3 they were certainly well represented by copies, and I would
4 suggest that perhaps it would be helpful if the Applicants
5 would look a little bit more closely at their files to deter-
6 mine if there aren't copies available of a number of the docu-
7 ments that they're worried about being able to retain at their
8 home offices.

9 MR. RIGLER: You're saying that you had multiple
10 copies of the same document which accounted for part of the
11 volume?

12 MR. CHARNO: That, too. I'm also saying that
13 Applicants initially said they couldn't let documents leave
14 their home offices because these were in large measure the only
15 copies of those documents and they were required in the day-to-
16 day work of the companies and we did not find that to be true
17 in the limited sample that we fine-screened.

18 MR. RIGLER: On the production of copies, though,
19 couldn't some of them have had marginal notations that would
20 have required them to produce multiple copies of the same
21 document?

22 MR. CHARNO: No. We noticed when there were multiple
23 copies they were generally an original and a succession of
24 copies with no notation on any of them. I think this is due to
25 the method by which at least CEI produced documents. They

1 produced file folders apparently when anything within the file
2 folder was relevant and no attempt was made to eliminate the
3 duplications that we could observe.

4 The Department also has problems with the responsive-
5 ness of some of the companies. Let me start by saying that we
6 received very good cooperation and apparently fully responsive
7 Production from Toledo Edison and from Duquesne Light. With
8 respect to the other companies we had different problems in
9 different places.

10 As Mr. Lessy has pointed out, the volume of produc-
11 tion from the CEI of what we consider relevant production was
12 much smaller. This was due to several factors that we can
13 identify immediately. One of them was that CEI didn't produce
14 a large amount of material that was produced by other companies.
15 For instance, Toledo Edison and Duquesne Light, large volumes
16 of CAPCO minutes and indeed most of the materials that other
17 companies seemed to have underlying those minutes were not
18 made available to the Department or the Staff, as indicated, as
19 being responsive. Perhaps they were to the City of Cleveland.
20 We don't know. But we feel that there are requests that we
21 made that that type of material should be responsive to and
22 that other Applicants considered it responsive to.

23 We had similar problems with fragmentary production
24 at Pennsylvania Power and, to a much lesser extent, at Ohio
25 Edison, with respect to CAPCO materials.

1 So we have identified an inconsistency in production
2 of material which should be equally in the possession of each
3 of the companies involved. We had a great deal of difficulty
4 locating materials relating to AMP Ohio in Ohio Edison,
5 Pennsylvania Power and CEI. Now we can state with reasonable
6 certainty that those materials were not among those that we say
7 we don't want to see further. We can't state with absolute
8 certainty that they may not be among the materials that we have
9 asked to be produced. I think there are a number of other
10 categories of documents where we have control documents that
11 we did not find. We don't know whether or not they are in the
12 materials that we have asked to have produced.

13 This is due to the method by which we proceeded.
14 We went through in more detail material we rejected than
15 material we accepted. If we find upon final production that
16 those materials are not included, we are going to have a serious
17 problem that's going to go one of three ways: Either, as Mr.
18 Lessy suggested, it will require extensive depositions -- it
19 certainly requires that this Board order the production of a
20 list of documents which have been destroyed so that we have
21 some idea of whether the documents that have not been produced
22 are no longer in existence -- and it could, if it's sufficiently
23 comprehensive, necessitate further document discovery.

24 MR. BREBBIA: Mr. Charno, you --

25 MR. CHARNO: Could I make one further point along

1 the line of responsiveness and then I think I have covered all
2 I have to say on that subject.

3 We found in several companies the apparent absence
4 of executive materials. By that, I mean memoranda, letters,
5 correspondence from executive offices. Other companies were
6 very careful to produce this, notably Toledo Edison. We saw
7 executive materials at Ohio Edison and we saw the complete
8 files of the executives at Duquesne Light, but CEI, the files
9 appeared to be primarily the working files of the working
10 divisions and appeared to be the same at Pennsylvania Power.

11 MR. RIGLER: Did you ask anyone at CEI to guide you
12 to the executive files?

13 MR. CHARNO: We were informed that everything we
14 sought was located -- everything the Department of Justice
15 sought was located in one room. Now we found later that that
16 wasn't -- we were informed on the site that this was the case
17 by the staff individual who was assisting us. We did find
18 one cross-reference in one of the drawers that directed us to
19 another room.

20 MR. RIGLER: But going back to the executive file
21 problem, did you ask that staff individual to help you find
22 the portion of the room in which the executive files were
23 stored?

24 MR. CHARNO: He said that any files that were in
25 there would be located in the drawer that was responsive to the

1 specific request and he wasn't sure of the nature and extent
2 of the search.

3 MR. RIGLER: How many days were you at CEI?

4 MR. CHARNO: Well, we were originally there one
5 day, came back two days, and then the next morning we sought
6 production of the materials that we had been cross-referenced
7 to. We were told that we couldn't get to those materials
8 because they were in an attorney's office and the attorney
9 wasn't there. So we came back the following week for an addi-
10 tional day to go through those materials. And there were two
11 of us there most of that period.

12 MR. BREBBIA: Mr. Charno, back to the question I
13 was going to ask you earlier, the suggestion of missing docu-
14 ments, does that arise out of references to documents which to
15 your knowledge were not produced which appear in documents that
16 were produced? Is that what you're referring to?

17 MR. CHARNO: No, sir. I'm referring to documents
18 that the Department presently has in its possession that were
19 either prepared by or received by one of the Applicants which
20 we did not discover.

21 MR. BREBBIA: You mean which were not produced in the
22 materials that were produced?

23 MR. CHARNO: Let me back up. I'm saying that we
24 did not see them in the materials we rejected and they may be
25 in the materials that we have requested, but we did not see

1 them on a rapid, once-through.

2 MR. BREBBIA: I follow that part of it. What I
3 can't follow is how you arrive at the fact that there are
4 missing documents. Do you have documents that refer to docu-
5 ments that you didn't find?

6 MR. CHARNO: No. We have documents that we did not
7 find. We have them from other sources.

8 MR. RIGLER: In the interval between visits to CEI
9 or these other companies, were you in contact with Mr. Reynolds
10 and Mr. Charnoff or anyone to see if they could help you solve
11 your problems?

12 MR. CHARNO: No, we were not. This was in the
13 nature of a rough screen and we didn't really realize the
14 problems with the exception of Ohio Edison, and we worked very
15 hard while we were there, but that problem was inherent in the
16 makeup of their production.

17 MR. BREBBIA: Well, if I can summarize your position
18 for the Board, you have done the rough screen and you have
19 reduced this to roughly 25 file drawers, and is it your feeling
20 that if we order the production of the 25 file drawers or we
21 order them reproduced and shipped to you that your discovery
22 would perhaps not be substantially completed as a result of
23 what you feel to be possible gaps in the documents that you
24 have requested?

25 MR. CHARNO: I think that is our position. We know

1 there are substantial gaps in production. For instance, the
2 CAPCO materials, we know that one produced them and another
3 didn't. We don't know whether those gaps are due to the
4 destruction of the documents, which is why we want the list of
5 documents that have been destroyed which would explain it
6 certainly, and may be the complete and sole explanation of why
7 they weren't produced.

8 With respect to other categories of documents, we
9 are not sure whether they are in what is being produced or not,
10 but it is a possibility -- and I raise this point -- a possibility
11 that document discovery has not been adequate thus far and
12 production has not been adequate and it is not a certainty but
13 I want to put the Board on notice.

14 MR. BREBBIA: In regard to the reference to CAPCO
15 documents, are you saying that, for instance, one of the
16 Applicants has produced an entire CAPCO file and you expected
17 the same file to be reproduced, or you expect different docu-
18 ments to be produced?

19 MR. CHARNO: I'm actually saying both. Say Duquesne
20 Light, as an example, produced the CAPCO executive committee
21 minutes which I think are clearly called for. They also pro-
22 duced their internal memoranda relating to those minutes. Now
23 we received neither from CEI.

24 MR. BREBBIA: Well, you wouldn't need but one set
25 of the minutes.

1 MR. CHARNO: That's correct.

2 MR. BREBBIA: If you had a complete set of the
3 minutes that would be the same minutes -- I mean, if you were
4 satisfied you had them for every meeting --

5 MR. CHARNO: That's true. We requested only one
6 set of minutes.

7 MR. BREBBIA: But if there were any documents from
8 reading the minutes you found them in one place and in at least
9 one other place they were not produced without a notation that
10 there were none?

11 MR. CHARNO: Not only without a notation that there
12 were none, but the fact that the minutes themselves were not
13 produced at the second location tends to eliminate the assump-
14 tion that I would normally make that when I didn't see them
15 they didn't exist.

16 MR. BREBBIA: Well, you go back to your original
17 discussion in your original request to the effect that you
18 wanted a list of what was destroyed.

19 MR. CHARNO: Definitely.

20 MR. BREBBIA: So you could resolve this problem
21 without further discovery.

22 MR. CHARNO: Hopefully, it would have that effect.
23 Obviously, if a document was not produced that we knew existed
24 and further was not on the list of destroyed documents, it
25 would not resolve the problem. I think that covers the

1 Department's position.

2 CHAIRMAN FARMAKIDES: Thank you.

3 Mr. Hjelmfelt, and then we'll get to the Applicant.

4 MR. HJELMFELT: Yes, sir. The situation of the
5 City of Cleveland is a bit different at this time because at
6 the point at which the Chairman made the suggestion as to the
7 method of marking files that we requested or documents that we
8 would like to have produced in Washington the City had already
9 completed tours with a rough screen in all or nearly all of
10 these cities.

11 Accordingly, we proceeded on the basis of developing
12 a list of categories of documents which I would find to be more
13 in keeping with the Chairman's earlier suggestion that possibly
14 as a result of the rough screening there could be a narrowing
15 of the document requests.

16 Copies of our suggested listing of categories of
17 documents that would not be needed to be produced here have
18 been furnished to all the parties. I have copies available
19 for the Board if the Board desires to see it. Do you have any
20 feeling in that regard? Would you like me to hand them up?

21 CHAIRMAN FARMAKIDES: I think we may need to see
22 those, yes, but let's hold off a minute. Let's hear the rest
23 of your comments, sir.

24 MR. HJELMFELT: The result is that it's our estimate
25 that the total number of file drawers which we would desire

1 produced in Washington has been reduced to 60 file drawers,
2 which comes out to an average of 12 from each of the cities.
3 However, it would obviously not necessarily break down as to
4 12 from each of the cities and as part of our method of setting
5 forth categories where they're referring to documents which
6 ordinarily are available from all five of the Applicants or
7 may be available in the files of all five of the Applicants we
8 have not undertaken to designate a particular set from a
9 particular city, but rather, we would allow the Applicants to
10 divide that chore among themselves in a nature that they could
11 more equitably distribute the number of file drawers. If they
12 prefer, we could designate a particular Applicant to produce
13 sets.

14 With respect to the costs of producing the file
15 drawers, the cost figure that I have is developed from the
16 actual transportation by REA of two file drawers from the City
17 of Cleveland to our offices at \$6.38 per file sent in transfer
18 files, and by my arithmetic for the 60 drawers, going two ways,
19 I come up with a figure of \$777.

20 We would suggest that when the documents are
21 delivered to Washington that we would need approximately three
22 months to review the documents and thereafter we would request
23 one additional month to prepare for depositions, for a total
24 of four months.

25 I might add to that, that my experience viewing the

1 CEI documents and that that I understand from discussing with
2 Mr. Brand his experience, both there and the other cities,
3 would very much coincide with the experience of the Department
4 of Justice with respect to materials that were produced and
5 the comparability of materials that were produced in other of
6 this Applicant's cities.

7 MR. BREBBIA: Mr. Hjelmfelt, I understand
8 the position of the government on the question of production
9 of documents in Washington because there are two agencies that
10 are located in the City of Washington. The document requests
11 for production made by you are in fact made by the City of
12 Cleveland. The City of Cleveland is located in fairly close
13 proximity to most of these organizations from whom you sub-
14 poenaed documents.

15 Why should this Board put the Applicants to the
16 burden of shipping documents for the City of Cleveland to
17 Washington?

18 MR. HJELMFELT: Well, Your Honor, the actual work
19 of course that's going to be done, the utilization of the docu-
20 ments, will be done by Washington counsel for the City of
21 Cleveland. So the fact that the City itself is the intervening
22 party does not relate to where the documents are going to be
23 utilized.

24 MR. BREBBIA: Well, document requests are not
25 Usually governed by the convenience of counsel, Mr. Hjelmfelt.

1 Your client is the one making the request, I repeat again, and
2 You're making it on their behalf at least, and they are located
3 in Cleveland. You're asking us, despite that fact, to put the
4 Applicants to the expense or to bear the expense of shipping
5 the documents here for your convenience.

6 Now the Justice Department and the Commission Staff
7 are located in Washington. They don't have staff out there
8 and they understandably asked for production here.

9 MR. HJELMFELT: Yes, sir. The City would suggest
10 that the circumstances of having the documents centrally
11 located, particularly when there are documents that, as was
12 pointed out by the page handed up by the Department of Justice
13 where you have cross-references, that there are advantages to
14 the efficient review of documents to having the documents cen-
15 trally located in one locality.

16 Secondly, the time required by the City to complete
17 its review of the documents we believe would be shortened by
18 having the documents located not simply in one place but in
19 Washington where those persons reviewing the documents will be
20 located, and also having the documents from all the cities
21 together at one place from all the Applicants.

22 MR. BREBBIA: When you made your document request
23 originally before we got into this fracas you made no request
24 for production of documents in Washington.

25 MR. HJELMFELT: That's correct, Your Honor, and in
the other AEC proceedings in which we had had experience up to

1 that time the documents were produced in Washington and the
2 problem had not arisen. We had not foreseen that this problem
3 would arise.

4 MR. BREBBIA: Well, you didn't ask. I don't under-
5 stand that statement. You didn't ask them to be produced in
6 Washington originally when your experience was in other hearings
7 that you have been in that you did request them to be produced
8 in Washington.

9 MR. HJELMFELT: I'm sorry. I misled you there. The
10 other AEC hearings in which we have been involved -- for
11 example, the Farley case and the Waterford case, where all the
12 documents had not reached the production stage, the Board had
13 indicated that a central depository would be established in
14 Washington and in the Farley case Alabama Power Company pro-
15 duced all documents in Washington and we did not specifically
16 request that they be produced here.

17 CHAIRMAN FARMAKIDES: I think though, Mr. Hjelmfelt,
18 in both of those cases the Applicants agreed to that procedure
19 as part of a discussion they had with all counsel. Isn't that
20 correct, sir?

21 MR. HJELMFELT: That's correct, Your Honor.

22 CHAIRMAN FARMAKIDES: Anything else, sir?

23 MR. HJELMFELT: Not at this time.

24 MR. RIGLER: Tell me again about your 60 file

25 drawer figure, how you came to that.

1 MR. HJELMFELT: Yes, sir. That is an estimate based
2 upon the quantities of material that we know from observation
3 that we have eliminated through the categories that we have
4 said we do not require produced here.

5 MR. BREBBIA: This is from a screen made by you
6 screening documents, from the actual screening of documents?

7 MR. HJELMFELT: That's right, from actually going
8 around through the files.

9 MR. BREBBIA: Which was much more extensive than the
10 rough screen that took place in the past couple weeks?

11 MR. HJELMFELT: Well, a portion of the screening
12 was because I started out early in December simply reviewing
13 documents, but thereafter we did a rough survey screen equiva-
14 lent to what the Staff and the Department did.

15 MR. RIGLER: If we establish a central document
16 depository in Washington, would the City of Cleveland be
17 amenable to picking up part of the tab for production of addi-
18 tional files over and above those requested by the Staff and
19 Justice? You have given us a figure of \$777. I assume there's
20 some duplication in that between the files you would be requestin
21 and the 25 files that Justice and Staff want.

22 MR. HJELMFELT: I assume there would be, Your Honor.

23 MR. BREBBIA: You don't know offhand whether they
24 are all included or what number of them would be included in
25 the 25 drawers asked for by the Staff and the Justice Department?

1 MR. HJELMFELT: No, I don't. However, it is
2 obvious that there's a great many CAPCO documents that we're
3 requesting to see that would also be sought by the other
4 intervenors -- or the Staff and the Department -- and
5 accordingly, it would be a considerable duplication I would
6 believe between what we are asking and what the Department and
7 Staff are asking. That's particularly true with the Applicants
8 other than the Cleveland Electric Illuminating Company.

9 MR. RIGLER: Do you want to reflect further about
10 my question about picking up the cost while listening to the
11 Applicant?

12 MR. HJELMFELT: Yes, sir.

13 CHAIRMAN FARMAKIDES: I have a couple more points.
14 Mr. Hjelmfelt, the last point, however, the NRC Staff and the
15 Department of Justice Staff, both of those people were
16 separating out documents by appending to them some sort of
17 indicator. You're talking about approximately 60 file drawers
18 based on categories. So we really can't tell if there's any
19 overlapping. Who in the world would decide which documents
20 in fact were overlapping? That would be quite a job in itself.
21 So we're talking about 60 file drawers as to yourself and 25
22 as to the Justice Department and Staff, which is roughly 85
23 file drawers.

24 MR. HJELMFELT: That is true if those categories
25 we have asked for are not fully duplicated in requests by

1 Staff or the Department.

2 CHAIRMAN FARMAKIDES: But who's to determine that?
3 You see? Are you going to take that job on?

4 MR. HJELMFELT: Well, I should think that, for
5 example, if the Department has requested all CAPCO executive
6 minutes from one of the parties and we have a request of a
7 similar nature, then it would be obvious that they're over-
8 lapping.

9 CHAIRMAN FARMAKIDES: Yes, but let me clarify this
10 point. Mr. Charno, you don't have a list of the documents
11 that you have tabbed, have you?

12 MR. CHARNO: No. The Department Staff individually
13 marked everything that was to be produced.

14 CHAIRMAN FARMAKIDES: Okay. So you don't really
15 know that you have asked for all CAPCO documents. All you
16 know is you have marked certain documents and you want those
17 produced here.

18 MR. CHARNO: I think there are categories that we
19 could readily agree that we had asked for all the documents
20 in that category; for instance, CAPCO executive minutes.

21 CHAIRMAN FARMAKIDES: Anything else?

22 MR. CHARNO: I think that would best be directed
23 to the Staff since they did most of the structural search.

24 MR. LESSY: The CAPCO executive minutes were
25 requested from Toledo Edison by Staff and they totaled roughly

1 a file drawer and a half, maybe two file drawers.

2 CHAIRMAN FARMAKIDES: What other category could you
3 identify?

4 MR. LESSY: I don't know what other categories they
5 have.

6 CHAIRMAN FARMAKIDES: Well, let's go back to the
7 25 file drawers. Does that include, assuming, Mr. Charno, that
8 we would take your chart and chart out all of the Department of
9 Justice's requests and the NRC's requests with the first level,
10 second level, third level references, fourth and fifth level
11 references -- would those 25 file drawers include all cross-
12 references?

13 MR. CHARNO: Well, they would include our selection
14 from everything produced by Ohio Edison.

15 CHAIRMAN FARMAKIDES: But that doesn't mean that
16 there aren't additional references that you would like to see
17 from your review of these cross-references?

18 MR. CHARNO: I'm not sure that I followed you. I
19 don't believe that's the case. In other words, what we ended
20 up doing at Ohio Edison is going through every document they
21 produced.

22 MR. BREBBIA: And screening out what you wanted?

23 MR. CHARNO: That's correct.

24 CHAIRMAN FARMAKIDES: Now those that you have
25 screened out, you have marked with a red tab?

1 MR. CHARNO: Yes, sir.

2 CHAIRMAN FARMAKIDES: And let's assume one of those
3 with a red tab also is cross-referenced to -- or in that file
4 cabinet you have a cross-reference to another document. Have
5 you also included that other document?

6 MR. CHARNO: Not unless when we went through it
7 appeared on its face to be relevant, in which case we would
8 have marked that.

9 CHAIRMAN FARMAKIDES: So we actually are talking
10 a net of 25 file drawers?

11 MR. CHARNO: This would be true only with respect
12 to Ohio Edison, however, because they are the only ones that
13 did this cross-references system. We had to go through all
14 the documents produced.

15 CHAIRMAN FARMAKIDES: How about CEI?

16 MR. CHARNO: CEI produced one set of documents for
17 the Department and one set for the City of Cleveland. So we
18 went through only those designated the Department of Justice
19 and AEC Staff.

20 CHAIRMAN FARMAKIDES: I didn't understand this
21 earlier. In other words, you're talking only of Ohio Edison
22 Comoany when you're talking of cross-references?

23 MR. CHARNO: Yes, sir. The purpose of that chart is
24 why we're requesting more documents from Ohio Edison.

25 CHAIRMAN FARMAKIDES: You had no problems with the

1 other four?

2 MR. CHARNO: Well, we didn't have that problem.

3 MR. BREBBIA: Enlighten me again, Mr. Charno. Is it
4 25 file drawers total that you're talking about from everybody?

5 MR. CHARNO: Yes, sir.

6 MR. BREBBIA: Okay.

7 CHAIRMAN FARMAKIDES: And there are no other cross-
8 references that you have to look at?

9 MR. LESSY: If there are cross-references they are
10 counted.

11 CHAIRMAN FARMAKIDES: Mr. Charnoff?

12 MR. CHARNOFF: Let me first indicate, gentlemen,
13 that the CAPCO engineering people have examined the plant
14 schedules the last couple weeks in light of a number of circum-
15 stances and I think that the new schedules would be pertinent
16 to your consideration of everything here.

17 Taking into account certain financing problems and
18 certain other licensing problems that we have with regard to
19 the Perry unit, particularly at this moment, and looking at
20 what is from an engineering standpoint feasible, the CAPCO
21 people have settled on the following best schedule for their
22 units: The Perry unit which had been scheduled for April 1979
23 and 1980 for units 1 and 2 is now set for June 1980 for unit 1
24 and April 1982 for unit 2, provided that construction is
25 allowed to resume at the site this spring.

1 This results from the fact that the April 1979 date
2 had originally been set based upon commencement of site work
3 this past summer. As the Board and some other people know,
4 that didn't get started until the fall. We have now encountered
5 another delay due to a suspension of the -- hopefully a short
6 suspension of the limited work orders, and as a result, on some
7 realistic basis, the CAPCO executives now hope and are confi-
8 dent that they can meet a mid-1980 date on unit 1.

9 MR. BREBBIA: Didn't you just say June of 1980?

10 MR. CHARNOFF: Mid-1980 is June 1980.

11 MR. BREBBIA: You mean mid-year?

12 MR. CHARNOFF: Yes. I'm sorry. The other plant
13 that's relevant to this proceeding is Davis Besse Unit 1 and
14 that is still scheduled for fuel loading early in 1976 and
15 hopefully will go commercial by June of 1976.

16 So that notwithstanding this new schedule, we are
17 still in some difficulty as we see it with the antitrust
18 review process here unless insofar as Davis Besse is concerned
19 the grandfather clause applies, and we have some question as to
20 that, and there's a great dependency upon our commencement or
21 recommencement of site work. If that were to continue to
22 slip, that June 1980 date would be defeated.

23 Now in light of that, the need to get on with this
24 Particular proceeding and taking into account that the Justice
25 Department and AEC Staff have collectively expended considerable

1 time during the last four weeks trying to screen and reduce
2 the amounts of material that they wish, and as I understand
3 their reduction to 24 file drawers, that's back in the category
4 of what Mr. Reynolds and I had assumed last September when we
5 had looked at the discovery requests and assumed it would be
6 in the ballpark of the kinds of discovery requests that had
7 been made in other cases where you recall that I believe
8 Farley was about four file drawers and Louisiana about four, and
9 I think Duke went up to about 25 -- in light of that reduction
10 down to 24, in light of our schedule, the Applicants would
11 propose to bring in those 24 file drawers to a depository in
12 our office building.

13 We will undertake the expense of the transportation
14 which I am told on a rough figure would just calculate --
15 as based upon the other cost data that we have given you
16 earlier this week in response to your request for the total of
17 500 small file drawers -- we would assume that would exceed
18 about \$1500. We will accept that cost. We would place those
19 files in a room on probably the eighth floor of the Bar
20 Building and I hope that it will have adequate lighting and
21 adequate chairs. We wouldn't want Mr. Lessy to have to sit
22 on the floor. And we would make available Xerox facilities
23 in our offices.

24 CHAIRMAN FARMAKIDES: Off the record.

25 (Discussion off the record)

1 CHAIRMAN FARMAKIDES: Back on the record.

2 MR. CHARNOFF: And we would provide those documents
3 and have them available and it's our view that having them
4 available in that central room for a three to four week period
5 would be consistent with the schedules that have been undertaken
6 by these attorneys at our January hearing when they indicated
7 that they could -- certainly Mr. Lessy did -- that they could
8 review all the documents, had we brought them all in, in a
9 four to six week period. And to the extent that we have to
10 reproduce those documents to bring them in to my offices, the
11 companies would undertake that cost as well.

12 The companies, however, would resist having to
13 reproduce copies to transmit directly to the other parties in
14 this case because that would be a double reproduction. The
15 reason why we will undertake that reproduction in the first
16 case, in one set, would be simply because I, too, would want
17 those documents available to me, and Mr. Hauser has assured me
18 that he wouldn't charge me for those particular documents.

19 Now it's our view that bringing them in -- and we
20 will bring them all in in about -- I would say it would take
21 about two weeks, I'm told, to reproduce these documents. So
22 that we could bring them in and make them available roughly
23 about February 15 or 16, whatever it is, and we would propose
24 that there be a discovery schedule of the documents not
25 exceeding three to four weeks. This would be entirely

1 consistent, as I indicated, with prior representations of Mr.
2 Lessy as to his capability to examine these documents and also
3 certainly consistent with the original schedule of the Board
4 with regard to document discovery.

5 CHAIRMAN FARMAKIDES: Mr. Charnoff, I do understand
6 you to say, however, that these documents will be available to
7 not only Justice and NRC, but also the City of Cleveland.

8 MR. CHARNOFF: I hadn't said that, but I will say
9 that. I am perfectly prepared to have the City of Cleveland
10 examine the Department of Justice and AEC documents that are
11 brought in here. I'm not proposing to bring in the documents
12 that MELP requested unless they happen to be in the same file
13 drawers that were requested by the Department of Justice and
14 the AEC, and I would like to get to the MELP question in a
15 while.

16 MR. RIGLER: May I ask you a question at this point?
17 Where are the depositions going to take place?

18 MR. CHARNOFF: I don't know. I would think, as I
19 understood Mr. Lessy, he would have depositions taken in
20 Cleveland, if that's where the deponents are going to be
21 located. I would think that would be where most of them would
22 take place.

23 MR. LESSY: We haven't discussed it and we don't
24 have a position as to the site of depositions.

25 MR. RIGLER: Has any thought been given to having

1 some of the depositions where a large part of the documents
2 will be examined?

3 MR. CHARNOFF: We are flexible on that. We really
4 have had no discussions internally or with the other parties
5 as to the site.

6 MR. RIGLER: I'm thinking of the availability of
7 the documents during the depositions. If you had the deposition
8 program taking place in the close vicinity of the central
9 depository, sometimes that's helpful.

10 MR. CHARNOFF: The only comment I would make with
11 regard to the documents, I would assume, sir, that Justice and
12 AEC and MELP, to the extent they wish to visit our offices to
13 look at the same documents -- and they would be welcome to do
14 so -- to the extent they would wish copies of those documents
15 for their use, we will charge them for those at the 8¢ a copy rate
16 and they may take them with them. At that point, if they wish
17 to use them for purposes of deposition, I guess they can do it
18 anyway. We're willing to be somewhat flexible depending upon
19 the convenience of the deponents.

20 We would then think that depositions ought to begin
21 after that month and should take no longer than roughly another
22 month, which, again, would be consistent with the original
23 schedule that we all agreed to and the Board established in
24 this particular proceeding.

25 We would really disagree quite strongly with the

1 Staff and Justice position that if we mailed the documents to
2 them that they could do all of their document discovery work
3 in 45 days, but if it's located in the depository that they
4 would need 90 days.

5 Now I would like to comment briefly on the MELP
6 proposal. We did receive a letter from one of Mr. Hjelmfelt's
7 associates, Mr. Brand, on Wednesday purporting to outline the
8 categories of documents that MELP would wish brought here and
9 those it would not wish brought in here. We have no way of
10 knowing whether or not that results in 60 file drawers or 600
11 file drawers.

12 In effect, the proposal by MELP would have us do a
13 great deal of further file segregation. It would require us to
14 provide samples of certain documents and to note on those
15 samples certain information so that they could know what it is
16 that the document sample purports to represent. It would, in
17 effect, have us do the discovery work for MELP and we believe,
18 as one of the Board members noted, that MELP had never before
19 requested in its original request that the documents be brought
20 in here, and I would ask that the Board take cognizance of the
21 fact that the City of Cleveland has produced all of two file
22 drawers in response to our request, that the MELP and the City
23 of Cleveland has large legal staff -- at least three of whom
24 have been familiar with the activities of the Cleveland
25 Electric Illuminating Company, I am told, in connection with

1 other matters -- and so I would think that there's no justifi-
2 cation for our bringing in additional file drawers to convenienc
3 counsel for the City of Cleveland.

4 I will, however, as I indicated, agree to having
5 Mr. Hjelmfelt or his associates review the Justice Department
6 files in our particular location.

7 I would also point out that the \$777 transportation
8 cost mentioned by Mr. Hjelmfelt, of course, does not include
9 any duplication cost. I would also indicate that insofar as
10 Mr. Hjelmfelt made reference to the Farley and Waterford cases
11 that, in total, those cases resulted in about almost four file
12 drawers for Justice and for the intervenors, and you're talking
13 about a substantially different number in this particular case.

14 I would like to just briefly comment on some of the
15 observations made by Mr. Lessy and Mr. Charno to the extent
16 that I can. First of all, the fact that no counsel by Appli-
17 cants were present on January 7 was simply in light of the fact
18 that at the prehearing conference it was indicated that that
19 wouldn't be necessary. We had tried to have one of the local
20 counsel present but they were committed at that point to other
21 meetings, and I must say, until today, we never heard any
22 particular observation that there was something inappropriate
23 about that.

24 Insofar as comments are concerned about the Ohio
25 Edison cross-references system, I am impressed with the fact

1 that what happened was Ohio Edison did a quite thorough job
 2 of locating documents and identifying just where they would be
 3 located for each of the parties, and it impresses me that a
 4 very thorough job of production was done by Ohio Edison.

5 In any event, our agreement to bring the documents
 6 in seems to me meets the particular observation. I would note,
 7 however, that Mr. Charno did indicate that a large number of
 8 the documents were marginally relevant. If that's true, then
 9 what happened was this particular Applicant took pains to put
 10 before the other parties everything that was marginally rele-
 11 vant, and I must say that we instructed them to do that so that
 12 there would be no cause for anybody saying the documents are
 13 missing.

14 Now insofar as the allegations are concerned about
 15 Cleveland Electric not having documents available, to the
 16 the best of my knowledge, the CAPCO minutes are available in
 17 the documents available at Cleveland Electric Illuminating
 18 Company unless they appear in the privileged documents for
 19 which privilege was requested. I don't know that, nor does
 20 Mr. Charno, but we have not destroyed any files. The only
 21 company that has indicated any files have been destroyed was
 22 Ohio Edison and we presented a paper pursuant to the Board
 23 order indicating that.

24 I would propose that Mr. Charno wait to see whether
 25 or not the documents he's alleging are not present are indeed

1 present either in the files we produced or unless they are in
2 some other category which are producible subject to the privi-
3 lege question.

4 I believe that really represents our response to
5 those comments that are worth us putting in any response to
6 at this point, Mr. Chairman, unless the Board has any questions.

7 MR. RIGLER: Mr. Charnoff, you commented that some
8 of the CAPCO documents may have been withheld on grounds of
9 privilege. Did I misunderstand you?

10 MR. CHARNOFF: What I meant by that is some of the
11 backup documents that Mr. Charno says are not present might
12 very well be within the privileged category of documents -- not
13 the minutes per se, but some of the backup documents.

14 MR. RIGLER: But could it at best only be individual
15 member company documents? Is that correct?

16 MR. CHARNOFF: Well, he was addressing himself,
17 sir, as I understand it, to the absence -- and I don't know
18 whether they are totally absent -- but to the absence of back-
19 up documents to certain CAPCO executive minutes.

20 MR. RIGLER: But those would have to be individual
21 member company documents, would they not?

22 MR. CHARNOFF: They would be individual member
23 company documents, that's correct, and I believe we're talking
24 about the CEI documents.

25 MR. RIGLER: He also raised a problem of an

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apparent inability to find executive files. Would you be able to work with him on that?

MR. CHARNOFF: I will be glad to work with him. It was our understanding that the CAPCO minutes were provided in all of the companies' production.

MR. RIGLER: I thought he was talking then about individual executive files within the CEI organization. Maybe I misunderstood Mr. Charno.

MR. CHARNO: No. You understood correctly.

MR. CHARNOFF: Individual executive files? I don't know that they're not produced, but to the extent that there may be some -- and I might point out that there may be some and they may be in the privileged files. I point out that Mr. Hauser is an attorney and some of them may be in his confidential files.

MR. RIGLER: If they were in the privileged files, though, they would at least be identified to Mr. Charno even though they would not be produced.

MR. HAUSER: Really, I know that we did ask each one of the executives to produce documents responsive to the request of the Department and the Staff and the City of Cleveland. Ther material there is included in the documents produced.

Quite frankly, the number of documents to be obtained from the executives would be very small in that you

1 found documents at the lower levels of management is perfectly
2 reasonable insofar as my knowledge of the operation of the
3 companies is concerned. I wouldn't anticipate that the execu-
4 tives would have very much material at all pertaining to the
5 request.

6 MR. LESSY: May I make a comment? We didn't find
7 anything from your files, Mr. Hauser.

8 MR. HAUSER: That's correct.

9 MR. CHARNOFF: Mr. Chairman, let me point out that
10 Mr. Hauser's files are indicated in the privileged files and will
11 be made available.

12 MR. CHARNO: That certainly doesn't accord with the
13 list of privileged documents that you supplied.

14 MR. HAUSER: It said in there, all the files --

15 MR. CHARNO: All the files?

16 MR. BREBBIA: All the files responsive to the
17 request is what you're talking about. You didn't receive any
18 of his files.

19 MR. LESSY: No, nor from any of the executives from
20 CEI, where, correspondingly, other copies pursuant to the
21 same request we did. That's the point.

22 CHAIRMAN FARMAKIDES: Let me understand, Mr. Charnoff.
23 You indicate now that you feel you could have all the 24 or 25
24 file drawers delivered here in the next week or so?

25 MR. CHARNOFF: I would say about two weeks.

1 CHAIRMAN FARMAKIDES: By the 15th of February, and
2 you were then suggesting that the Staff of both Justice and
3 NRC could review those files within a month and then take
4 depositions the second month?

5 MR. CHARNOFF: Yes, sir.

6 CHAIRMAN FARMAKIDES: Could I hear a response to
7 that, Mr. Charno?

8 MR. CHARNO: Yes. I'd like to hit several different
9 things. I must admit that I have not adequately looked at the
10 list of privileged documents. Let me address that first and
11 then I will address time.

12 CHAIRMAN FARMAKIDES: Excuse me, Mr. Charno. I just
13 noticed it's time for all of us to have a recess here. Let's
14 take a ten-minute recess.

15 (Recess)

16 CHAIRMAN FARMAKIDES: Mr. Charno, we interrupted you,
17 sir.

18 MR. CHARNO: If I may, let me address myself first to
19 the list of privileged documents. The purpose of the list of
20 privileged documents is to provide an initial basis for the
21 parties and for the master in this case to assess claims of
22 privilege. Now when you have a large number of documents which
23 happened to be in substantial part executive files, which are
24 not identified specifically and about which no specific infor-
25 mation is given, that privileged document list is well nigh

1 useless with respect to those documents.

2 I would assume that CEI would intend to supplement
3 the privileged document list and give specific information on
4 the documents that it is withholding pursuant to an assertion
5 of the claim of privilege.

6 With respect to copies, if I may, I'd like to
7 address a question to counsel for the Applicant.

8 CHAIRMAN FARMAKIDES: Proceed, sir.

9 MR. CHARNO: What is your position on paying for
10 the cost of copying those documents that the Department and
11 the Staff wish to have copied in the central depository?

12 MR. CHARNOFF: As I had indicated, we would be glad
13 to do it for you at 8¢ a page or you can do it yourself.

14 MR. LESSY: Or we can do it ourselves?

15 MR. CHARNOFF: Supply your own paper and labor.

16 MR. LESSY: At no charge?

17 MR. REYNOLDS: You provide the paper and the labor.

18 MR. LESSY: No overhead or cost of the building or
19 lighting?

20 MR. CHARNOFF: The Bar Building is so cheap, Mr.
21 Lessy, there's no overhead.

22 MR. REYNOLDS: You still have the cost of the
23 Xerox machine.

24 CHAIRMAN FARMAKIDES: I think the Board understood
25 there would be no charge if you gentlemen brought in your

1 labor, your ink and your paper. Let's proceed. Is that
2 right, Mr. Charnoff?

3 MR. CHARNOFF: That's right.

4 MR. CHARNO: With respect to time, the schedule
5 outlined initially by Mr. Lessy of 45 days from when we
6 received copies and 90 days if we were going to run a fine
7 screen in Applicants' offices, the offices of their counsel,
8 was put forward as a good faith minimum under the circum-
9 stances.

10 We have seen the materials. We are not dealing
11 with a situation any more where we're talking about 15 file
12 drawers a week with the implicit assumption that over 90
13 percent of it, as we found, is going to be chaff for our
14 purposes. We are dealing with documents which seem to have
15 direct relevance which are going to have to be screened in
16 their entirety. They are going to have to be read through
17 and we feel that 90 days, under those circumstances, is a
18 minimum time necessary for preparation.

19 As to the period depositions should last beyond
20 that, I would say it would be a minimum of 60 days and that
21 might have to be expanded depending upon the nature of actual
22 production once we have gone through it and the extent to
23 which depositions will have to replace documentary discovery.

24 MR. BREBBIA: Mr. Charno, is this assistance still
25 available to you if we establish the central depository to

1 review these documents; that is, staff people trained in this
2 area; or is that only relevant to, as you have just described
3 it, merely a screen of documents to see whether or not of the
4 15 file drawers a week variety to see whether you would want
5 the documents?

6 MR. CHARNO: I think that it is far more relevant
7 to the rough screening of documents simply because with the
8 knowledge of electric power you can be useful in knowing
9 generally what's going to be required. When you're talking
10 about educating someone as to a case, you're not going to be
11 educating that many additional people to the specific fact
12 situation that they are searching for materials concerning.
13 We could perhaps secure additional people, but it's not going
14 to be as extensive as it would have been. We're going to have
15 to educate each one in what's going on.

16 MR. CHARNOFF: May I make a comment on schedule,
17 Mr. Chairman?

18 CHAIRMAN FARMAKIDES: Yes, sir.

19 MR. CHARNOFF: Maybe this would be constructive. In
20 light of the new plant schedule and in light of the fact that
21 that new plant schedule means that reserves in the CAPCO area
22 can be way down from where they were supposed to be, in the
23 neighborhood of 11 to 12 to 13 percent as compared with the
24 20 percent that at least one licensing board and the FPC deter-
25 mined to be the right level, I would like to propose the

1 following: We could relax on scheduling in light of the fact
2 that all of the parties here are presumably in favor of letting
3 the plant get on the line. I would suggest that if each of
4 the parties here would stipulate to the issuance of the con-
5 struction permit.

6 MR. LESSY: I object, sir. We are antitrust counsel.

7 CHAIRMAN FARMAKIDES: Let the man finish, Mr. Lessy.

8 MR. CHARNOFF: But stipulate to the issuance of
9 the construction permit for Perry and the operating license
10 for Davis Besse Unit 1. When the other proceedings regarding
11 safety and environmental matters are concluded, subject to the
12 subsequent issuance of conditions to that construction permit
13 and that operating license based upon the outcome of this par-
14 ticular proceeding, then it seems to me we could relax on the
15 schedule to provide the time that Justice needs. I think we
16 are committed to going ahead with the hearing on some sort of
17 reasonable schedule in any event. The public interest would be
18 served by non-delay in the plants. The MELP, if they're
19 interested really in access to that plant, certainly has an
20 interest in having the plant on the line. Certainly the AEC
21 Regulatory Staff so far has taken the position that there's a
22 need for power from the plant.

23 I'm not asking AEC to waive any of its environmental
24 or safety reviews on any of those plants and, to the best of
25 my knowledge, the Department of Justice is not opposed to the

1 construction of the Perry plant or the operation of Davis Besse
2 Unit 1.

3 I would respectfully submit that now we're on track
4 for a schedule that would lead to a hearing perhaps this fall
5 or at latest this winter, no one will be delectory in that
6 regard. The public interest could well be served by such a
7 stipulation and we would not have a quibble over 30 days versus
8 90 days. We could agree to the 90-day concept under those
9 circumstances and it seems to me we could remove that terrible
10 pressing public interest on having the plant on line on some
11 reasonable schedule from intruding into this particular pro-
12 ceeding.

13 MR. LESSY: May I make a motion, sir? I'd like to
14 move that that whole statement be stricken from the record as
15 not relevant to this proceeding. We're talking about substan-
16 tive issues that none of us are familiar with. We're talking
17 about other proceedings that I have read press releases on in
18 fron of the Chairman and other members of another panel. I
19 think December 2 was the due date for production. The Chairman
20 has seen what we have had to go through in five cities and we
21 need three months I think to review those documents, and I hate
22 to even get near matters beyond our expertise. I frankly
23 didn't understand anything Mr. Charnoff said.

24 MR. CHARNOFF: We're not going beyond his --

25 CHAIRMAN FARMAKIDES: Excuse me, Mr. Charnoff.

1 Mr. Lessy, we're not going to strike. What it was was an offer,
2 as I understand it, on the part of the Applicant to join in
3 whatever time frame you all want provided you then stipulate
4 as to the matter that he suggested, and that is the construc-
5 tion permit for Perry. Now what's your response to that,
6 Mr. Charno or Mr. Lessy or Mr. Hjelmfelt?

7 MR. CHARNO: I think we can state with complete
8 firmness that the Department will not so stipulate. It ill
9 behooves one representing the public interest to flaunt the
10 Congressional will and the explicit provisions of the statutory
11 scheme in the manner suggested by counsel, and we will not do
12 so.

13 MR. CHARNOFF: Mr. Chairman, may I say --

14 CHAIRMAN FARMAKIDES: Excuse me, Mr. Charnoff.

15 MR. LESSY: The statute requires prelicensing anti-
16 trust review, if that's what is required. We are unwilling to
17 stipulate. I think it's unfair to bring up that kind of offer
18 without advising us ahead of time because we're unprepared to
19 address it. I think that the Applicants' tactics here on
20 discovery have caused a delay in this proceeding. I think
21 that the Board will require that we were not advised until the
22 final date after documentary discovery was completed that they
23 were unwilling to produce and deliver as requested.

24 The Board will recall that for two weeks there was
25 an essential non-compliance with the Board's order of

1 privileged documents and a motion for protective order was
2 made almost six weeks after the period the Board scheduled
3 for completion of documentary discovery was due, and we
4 absolutely object to it and we are unwilling to stipulate to
5 it. I agree with the Department's time frame, as stated by
6 Mr. Charno about ten minutes ago.

7 CHAIRMAN FARMAKIDES: Mr. Hjelmfelt?

8 MR. HJELMFELT: The City of Cleveland is not pre-
9 pared to enter into such a stipulation. We allege that the
10 operation of the Davis Besse without suitable licensing pro-
11 visions will maintain a situation which is inconsistent with
12 the antitrust laws and detrimental to the municipal electric
13 light and power plant of the City of Cleveland. We would not
14 be eager to stipulate that that plant go into operation until
15 we are protected.

16 Furthermore, with respect to the public interest
17 of the area of the City of Cleveland in the CAPCO area, if
18 indeed reserves in this area of the country are going to be
19 in the nature of 11 or 12 percent and if indeed there is
20 going to be a shortage of power in this area, then I would
21 submit that a very appropriate way to alleviate this situation
22 and perhaps conclude this entire hearing would be for the
23 Applicants to agree now to stipulate that they are willing to
24 enter into agreements with the City of Cleveland for third
25 party of Wheeling, which would bring an influx of 30 megawatts

1 of power into the City of Cleveland and help reduce the need
2 of the public for this power.

3 CHAIRMAN FARMAKIDES. So that we have two offers
4 now, gentlemen.

5 MR. CHARNOFF: Mr. Chairman, may I observe with
6 regard to the remarks of Mr. Charno and Mr. Lessy, that the
7 Atomic Energy Commission in its Waterford decision -- I can't
8 site it right now -- clearly contemplated that a construction
9 permit could issue in an antitrust case provided all the
10 parties stipulate to it. I didn't create something new in my
11 particular proposal. It was created and suggested by the
12 Atomic Energy Commission and to the extent that the Staff still
13 works for the Nuclear Regulatory Commission they ought to examine
14 that particular footnote in the Waterford decision. I believe
15 it was last September. And they ought to decide whether or not
16 the public interest is really going to be served by having a
17 decision on this case which will be rendered presumably some
18 time this year or early next year affect the availability of
19 those power plants. I can do no more.

20 CHAIRMAN FARMAKIDES: Mr. Charnoff, as one member
21 of the Board, I agree with that; but let me also say, sir, that
22 I think Mr. Hjelmfelt's offer was also responsible. In other
23 words, what I'm saying in essence is that I consider your offer
24 to be a responsible offer made on the record. I consider that
25 of Mr. Hjelmfelt to be equally responsible. Now I don't,

1 however, feel that Justice or the NRC is bound to accept that
2 offer by reason of any decision. I think that they have to act
3 in what is in their best interest, which is, of course, the
4 public interest.

5 I do feel, however, sir, that you could have made
6 that offer perhaps prior to this occasion, priot to meeting of
7 counsel, to allow them the opportunity of digesting and con-
8 sidering the offer, and I think that may be one of the problems
9 here.

10 I do know of the decision that you refer to and,
11 very frankly, I was involved in that decision and certainly we
12 did contemplate the needs of that part of the country, the
13 power needs, and we did reach the conclusion that you articu-
14 lated. That conclusion is a conclusion of the Nuclear Regula-
15 tory Commission, not the Board that issued it. It went all the
16 way up. So it is now a final determination.

17 But I would feel that this type of offer can better
18 be explored by you and perhaps can be better explored by the
19 parties in a private negotiation between you and perhaps you
20 could do so immediately after our session today, but I do think,
21 gentlemen, all counsel, that those are two offers, both of them
22 responsible. Perhaps you can compromise and reach an agreement
23 between you.

24 Let's go back to Mr. Charno. Did you have anything
25 else, sir?

1 MR. CHARNO: No.

2 CHAIRMAN FARMAKIDES: Were you finished?

3 MR. CHARNO: Yes, I was.

4 CHAIRMAN FARMAKIDES: Mr. Lessy?

5 MR. LESSY: Except to say, sir, that we support
6 the time frame suggested by the Department of Justice and that
7 we accept the proposal by the Applicants as far as Xeroxing is
8 concerned. That is, if we supply the paper, ink and labor,
9 there will be no charge for copies.

10 CHAIRMAN FARMAKIDES: Mr. Hjelmfelt, anything else,
11 sir?

12 MR. HJELMFELT: Yes, sir. First, I would like to
13 suggest that Applicants have indicated that proceeding on the
14 basis of our selection of categories of documents and a method
15 of narrowing our document request and reducing the number of
16 documents produced in Washington would put the burden on them
17 of performing our discovery. We would be willing to have a man
18 in Cleveland or any of the cities on Monday to start undertaking
19 to designate the documents now in a fashion similar to the
20 Staff and the Department did. This of course would also be a
21 method of eliminating any duplication in that we would identify
22 the duplication as we went along, marking the documents we
23 desired. The City of Cleveland would also be willing to parti-
24 cipate in sharing the expenses of transportation from the cities
25 to the City of Washington.

1 CHAIRMAN FARMAKIDES: What does that mean, sir?

2 MR. HJELMFELT: We would be willing to pay the REA
3 costs for the transportation, the \$777 or thereabouts.

4 MR. BREBBIA: For the 60 files?

5 MR. HJELMFELT: For the 60 files. We think we're
6 making a high side estimate with 60 files. We would anticipate
7 that it would be less than 60 files, but without being in a
8 position to make an actual measurement we wanted to give the
9 Board the high figure.

10 CHAIRMAN FARMAKIDES: All right, gentlemen.

11 Mr. Charnoff, anything else, sir?

12 MR. CHARNOFF: I'd only say if MELP wishes to pay for
13 the cost of freight and reproduction of the documents and send
14 their man out there next week, we will be glad to reproduce it
15 at their expense and send it in at their expense. I see no
16 reason why the City of Cleveland should be a beneficiary of the
17 payers of the Cleveland utility company. If they're going to
18 have a man out there next week, that man could go out there and
19 do the document work that he has to do. He can determine which
20 documents he wants and they could be reproduced at their expense
21 and he could have their copies.

22 As far as Mr. Charno's statement that he needs 90
23 days to digest the particular contents of our documents, once
24 he determines he wants a particular document he could have it
25 reproduced at his cost and he could take it with him and digest

1 it as long as he wishes. But I don't see the need for 90 days
2 on this kind of matter when for a far larger set of documents
3 they were prepared to do this matter in a far shorter period.

4 MR. LESSY: That was before we had seen the documents.

5 CHAIRMAN FARMAKIDES: Mr. Charno, anything else?

6 MR. LESSY: The previous time frame we gave on
7 January 3rd was before we had seen the documents.

8 CHAIRMAN FARMAKIDES: Mr. Hjelmfelt?

9 MR. HJELMFELT: I would merely state what I had in
10 mind in going out and marking the documents now, of course, is
11 merely the segregation by categories which we would perform,
12 certainly not the full reading of the documents which would be
13 done eventually and, secondly, with respect to reproduction
14 costs, I think throughout this proceeding the costs of repro-
15 ducing these documents have been greatly exaggerated because of
16 the numerous occasions on which numerous copies of the documents
17 are already in existence and that there's no reason for any
18 party to incur a cost now of reproducing an additional copy of
19 some of these documents.

20 CHAIRMAN FARMAKIDES: Anything further, Mr. Charnoff?

21 MR. CHARNOFF: No, sir.

22 CHAIRMAN FARMAKIDES: All right. The Board is going
23 to discuss this at the bench for just a few minutes. Bear with
24 us.

25

(Bench conference)

1 CHAIRMAN FARMAKIDES: I think the Board is prepared
2 to rule on the record and we will follow this thing up with a
3 prehearing conference order.

4 The Board then, in agreement with the offer made by
5 the Applicant and accepted by the Department of Justice and the
6 NRC Staff, the Board does hereby order the establishment of a
7 document depository established at Applicants' counsel's office.
8 The Applicants will produce up to 25 file drawers as requested
9 by the Department of Justice and the Nuclear Regulatory
10 Commission Staff, the documents to be forwarded to that deposi-
11 tory as quickly as possible, hopefully by February 10, 1975.

12 The entire production of 25 file drawers will be
13 made by February 15. The Board would expect that at least
14 half of those documents will be there by February 10.

15 The depositions may then commence April 7, 1975, and
16 the documents depository will remain in existence throughout
17 the depositions.

18 As to the City of Cleveland, the City may request
19 production of documents up to 60 file drawers to be placed in
20 the document depository that we have just identified, at the
21 City's transportation expense. The Board would expect that 15
22 drawers per week, commencing February 10, will be so placed in
23 the depository. The City must also be prepared for its depo-
24 sitions by April 7, 1975.

25 The Board will then review the progress at a

1 prehearing conference that we are now tentatively setting for
2 April 23, 1975. Other hearings might arise in the interim as
3 necessary.

4 Now one thing that we would not only urge but we
5 now direct the parties to discuss these discovery problems
6 with each other. Any discovery problem that ensues should be
7 discussed with other counsel, all counsel, before any remedy
8 is requested of the Board. We can anticipate a lot of house-
9 keeping chores and a lot of relatively minor administrative
10 problems arising by reason of discovery. I think you all know
11 this, but it would seem to us that the basic rule is talk to
12 each other first. If you come to us with a motion for relief
13 without having exhausted first the opportunity of talking to
14 each other and hopefully resolving the issue, we will consider
15 this in granting or denying the motion.

16 Any questions, gentlemen?

17 MR. LESSY: One of the points that Staff made this
18 morning was we asked for three provision -- or descriptions
19 being made with respect to the document depository if it were
20 established by the Board. Just briefly, one, that the deposi-
21 tory be adequately lighted, etc., and have adequate Xerox
22 facilities; second, that the government have unrestricted
23 access during normal business hours; and third, that the pro-
24 duced material shall remain intact and shall not be moved or
25 removed from the Board except pursuant to Board ruling.

1 So we would like to hope that the Board would
2 consider proposing these for the convenience of counsel.

3 CHAIRMAN FARMAKIDES: Mr. Charnoff?

4 MR. CHARNOFF: We will agree to those, obviously.

5 CHAIRMAN FARMAKIDES: You will agree to that?

6 MR. CHARNOFF: Certainly.

7 CHAIRMAN FARMAKIDES: Anything else, sir?

8 MR. CHARNOFF: Yes, sir. On the MELP matter, I'm
9 unclear as to whether the Board has decided the cost of
10 duplicating the materials and bringing them in here for MELP
11 inspection is on the Applicant or is on MELP?

12 CHAIRMAN FARMAKIDES: Sir, the only expense that
13 we have assigned to the City of Cleveland is the transporta-
14 tion of the file drawers here. If there's any duplication
15 necessary the Applicants will bear that cost. We do not
16 anticipate there would be much need for duplication, if any,
17 especially in view of the fact that we have asked that only
18 15 file drawers per week be delivered.

19 MR. CHARNOFF: I had a second question, sir. We
20 do not know which drawers MELP wants in that we really have
21 not had the documents in the same manner that Justice has.

22 CHAIRMAN FARMAKIDES: That is a responsibility of
23 the City of Cleveland, sir, and Mr. Hjelmfelt. How soon can
24 you do that, sir?

25 MR. HJELMFELT: We will commence on Monday, Your
Honor.

1 MR. RIGLER: If he doesn't start to designate until
2 Monday -- it's going to take Mr. Hjelmfelt some time to desig-
3 nate those drawers, and I don't see how the Applicant can
4 possibly get them here by the 10th.

5 CHAIRMAN FARMAKIDES: Let's say that you two gentle-
6 men work that out between you. If you cannot, and after you
7 have talked to each other to see if you can resolve this,
8 come back to us.

9 MR. CHARNOFF: As long as we have a reasonable
10 time, I'm sure we can work it out.

11 CHAIRMAN FARMAKIDES: Certainly, you have ample
12 time before April 7 to in fact review all those documents,
13 Mr. Hjelmfelt.

14 Anything else, gentlemen?

15 MR. CHARNOFF: Yes, sir. I'm sorry. I'm puzzled.
16 I do understand that the 15 drawers for MELP are to be here
17 for one week and then they are returned?

18 CHAIRMAN FARMAKIDES: That's something else we would
19 like you two to work out, if possible. From the point of view
20 of the Board, we do not feel that those drawers should be kept
21 here throughout the entire period of time. Now if it's con-
22 venient for both of you to keep them here for two weeks rather
23 than one week, or three weeks, I think you should do it.

24 MR. CHARNOFF: We begin to run into the reproduction
25 problem.

1 CHAIRMAN FARMAKIDES: I don't see, sir, -- I was out
2 there and I looked at your files. I just don't see the repro-
3 duction problem that you have been talking about. I don't see
4 it. I went both to Ohio Edison and I went to CEI. I agree
5 with the other parties. If there is a reproduction problem,
6 it's a very minimal one.

7 MR. CHARNOFF: Well, let us examine it, but I do
8 understand we're not obliged to keep the MELP files here
9 throughout the deposition period the same way as we are the
10 others.

11 CHAIRMAN FARMAKIDES: That's correct. But, again,
12 I would hope that you would talk to the City of Cleveland to
13 see if you can't both come up with an agreeable solution to that
14 particular problem. We don't see it as a very serious problem.
15 Anything else?

16 MR. CHARNOFF: I take it at the April 23 conference
17 we will have some discussion of termination of deposition
18 period.

19 CHAIRMAN FARMAKIDES: Yes, sir. That's primarily
20 the reason for that particular conference.

21 MR. LESSY: And size of depositions, sir?

22 CHAIRMAN FARMAKIDES: Yes. There may well be some
23 need for conference before that. We hope that you will talk
24 to each other and resolve these matters. It's taking too much
25 time of all of us and it's not necessary.

1 Is there anything else?

2 (No response)

3 Gentlemen, I will see you then on April 23 and by
4 that time I hope we have a set schedule fixed. Thank you very
5 much.

6 (Whereupon, at 11:40 a.m., the prehearing
7 conference was adjourned.)

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