

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING
CO.

Docket Nos.
50-346A
50-500A
50-501A

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

and

CLEVELAND ELECTRIC ILLUMINATING
CO., et al.

50-440A
50-441A

(Perry Nuclear Power Plants, Units 1 & 2)

Place - Silver Spring, Maryland

Date - Monday, 8 March 1976

Pages 6227-6326

Telephone:
(Code 202) 547-6222

ACE - FEDERAL REPORTERS, INC.

Official Reporters

415 Second Street, N.E.
Washington, D. C. 20002

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of	:	Dockets Nos.
TOLEDO EDISON COMPANY and	:	50-500A
CLEVELAND ELECTRIC ILLUMINATING CO.	:	50-501A
(Davis-Besse Nuclear Power Station, Units 1, 2 and 3)	:	
and	:	
CLEVELAND ELECTRIC ILLUMINATING CO. <u>et al.</u>	:	
(Perry Nuclear Power Plant, Units 1 and 2)	:	50-440A 50-441A

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First Floor Hearing Room
7915 Eastern Avenue
Silver Spring, Maryland

Monday, 8 March 1976

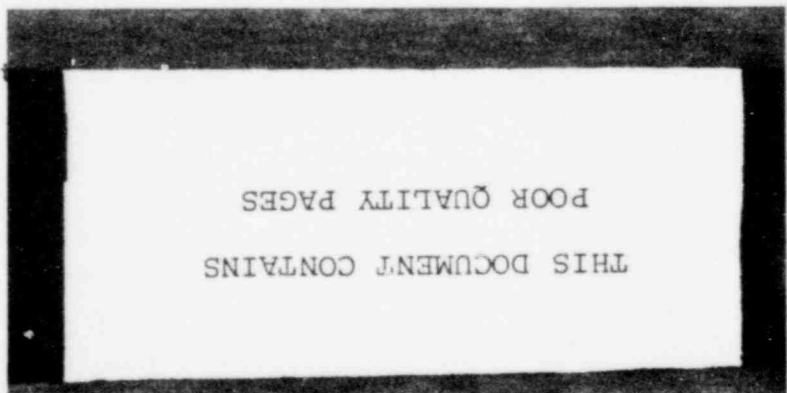
Hearing in the above-entitled matter was reconvened,
pursuant to adjournment, at 9:30 a. m.,

BEFORE:

- MR. DOUGLAS RIGLER, Chairman
- MR. JOHN FRYSIK, Member
- MR. IVAN SMITH, Member

APPEARANCES:

As here



THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

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C O N T E N T S

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WITNESS:

DIRECT

CROSS

REDIRECT

RECROSS

EXHIBITS

FOR IDENTIFICATION

IN EVIDENCE

DJ-67 through DJ-70

6231

DJ 457 through 476

6239

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C O N T E N T S

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REGROSS</u>
6	<u>EXHIBITS</u>			<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
7	DJ 481 (18370)			6296	6299
8	DJ 482 (218368)			"	"
9	DJ 483 (218369-67)			"	"
10	DJ 484 (218356)			"	"
11	DJ 485 (218355)			"	"
12	DJ 486 (218457)			"	"
13	DJ 487 (218792)			"	"
14	DJ 488 (218259)			"	6311
15	DJ 489 (211344)			"	6299
16	DJ 490 211344-345)			"	6311
17	DJ 491 (212031-052)			"	"
18	DJ 492 (212023)			"	"
19	DJ 493 (211989-212018)			"	"
20	DJ 494 (211929-957)			"	"
21	DJ 495 (211234)			"	
22	DJ 496 (211236)			"	
23	DJ 497 (218853-855)			"	
24	DJ 498 (23656)			"	6311
25	DJ 499 (263069)			"	"

	<u>EXHIBITS:</u> (Cont)	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2	DJ 500 (208608)	6296	6311
3	DJ 501 (24931-38)	"	6312
4	DJ 502 (211202-212)	"	6312
5	DJ 503 (211647-654)	"	6326
6	DJ 504 (30011290-291)	"	"
7	DJ 505 (30011270-271)	"	"
8	DJ 506 (30011268)	"	"
9	DJ 507 (219032)	"	"
10	DJ 508 (017654)	"	"
11	DJ 509 (City of Cleveland #73943)	"	"
12	DJ 510 (City of Cleveland #73944)	"	"
13			
14	DJ 511 (304523-304744)	"	"
15	DJ 512 (2-page affidavit with attachments)	"	"
16	DJ 513 (memo from Mr. Dreisbach to Mr. Dissmeyer, dtd. Sept. 21, '65.)	"	"
17			
18	DJ-514 (3-page document, "Description" of numbered Territorial Separation Points at certain road locations.)	"	"
19			
20	DJ-515 (ltr. from Mr. Dreisbach to Mr. Schwalbert, dtd. Oct. 27, '65)	"	"
21			
22	DJ-516, (one-page memo "Toledo Edison Co. Ohio Edison Co. Meeting.)	"	"
23	DJ-517 (ltr. from Mr. Dreisbach to Mr. Schwalbert, dtd Nov. 9, '65.)	"	"
24			
25			

C O N T E N T S (Contd)

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2	<u>EXHIBIT</u>	<u>FOR IDENTIFICATION IN EVIDENCE</u>	
3	DJ-518 (one-page memo dated 1-27-66)	6296	6326
4			
5	DJ-519 (one-page memo addressed to DEM, HBG & FFDL from Dreisbach	"	"
6			
7	DJ-520 (one-page memo dtd 6-27-66)	"	"
8			
9	DJ-521 (one-page memo Ohio Power-Ohio Edison Dividing Line)	"	"
10			
11	DJ-522 (One-page memo Holmes-Wayne REC*)	"	"
12			
13	DJ-523 (one-page memo. Ohio Edison-Ohio Power Fringe Territory)	"	"
14			
15	DJ-524 (one-page document (4-15-68)	"	"
16	DJ-525 (3-page document, dated June 10, 1968)	"	"
17			
18	DJ-526 (one-page memo, 9-20-68)	"	"
19	DJ-527 (two-page memo, 3-31-69)	"	"
20	DJ-528 (one-page memo, 5-1-69)	"	"
21	DJ-529 (one-page letter Markle to Campbell, 5-22-59)	"	"
22			
23	DJ-530 (2-page memo 7-2-69)	"	"
24			
25			

C O N T E N T S (Contd)

	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2			
3	DJ-531 (one-page ltr. Markte to Campbell 7-17-69)	6296	6326
4			
5	DJ-532 (one-page memo 9-7-65)	"	"
6	DJ-533 (ltr. & 3-page attachment from Dreisbach to Waugh (10-1-65)	"	"
7			
8	DJ-534 (map, boundaries Otway and Sandusky.)	"	"
9			
10	DJ-535 (map, boundaries Otway and Sandusky.)	"	"
11	DJ-536 (map, legend Toledo Edison Co. showing Fremont and vicinity.)	"	"
12			
13	DJ-537 (Map comparable to DJ-535, with key designated light dotted line as boundary.)	"	"
14			
15	DJ-538 (Map legend Toledo Edison Co.-Ohio Edison Co.)	"	"
16			
17	DJ-539 (Map carrying notation "T.E. Company," with numeral 3.)	"	"
18			
19	DJ-540 (map carrying political design. York, Green Creek, Thompson and Adams.)	"	"
20			
21	DJ 541 (two-page memo from Schwalbert to Zagol dated 7-5-65)	"	"
22			
23	DJ 542 (two-page document identified as record of two meetings between Dorsey and Moran)	"	"
24			
25			

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	<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2	DJ 543 (record of meeting between Dorsey and Moran, August 14, 1973)	6296	6326
3			
4	DJ 544 (five pages of handwritten notes)	"	
5			
6	DJ 545 (one-page document, letter dated May 5, 1970 from JBC to Genson)	"	
7			
8	DJ 546 (memo from Cloer to Schwalbert dated March 24, 1972)	"	
9			
10	DJ 547 (one-page handwritten note dated 4/25/73)	"	
11			
12	DJ 548 (memorandum from Cloer to Schwalbert, 1/29/73)	"	
13			
14	DJ 549 (one page of handwritten notes, 5/5/72)	"	
15			
16	DJ 550 (one page handwritten notes, 4/20/72)	"	
17			
18	DJ 551 (Toledo Edison memo dated April 29, 1969)	"	
19			
20	DJ 552 (five-page letter to Beck from Burch, 11/15/66)	"	
21			
22	DJ 553 (one-page document entitled "Elmore, Ohio Notes")	"	
23			
24	DJ 554 (memo dated April 29, '66 from Latin to Schwalbert)	"	
25			
	DJ 555 (one-page letter from Burch to Beck, 8/15/66)	"	
	DJ 556 (one-page letter from Beck to Burch, 8/6/66)	"	
	DJ 557 (9-page document entitled "Edison Questions and Answers)	"	

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EXHIBITS:

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IN EVIDENCE

DJ 24
DJ 25
DJ 34

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P R O C E E D I N G S

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2 MR. CHARNO: As the first order of business
3 this morning, we would like to complete some previously
4 introduced exhibits.

5 The last six documents in the pile that was
6 just passed out constitute replacements for various
7 exhibits which have already been identified.

8 Starting from the bottom of the pile, the last
9 is the contract between the Pennsylvania Power Company
10 and the Borough of Ellwood City.

11 This should be inserted in DJ 70. This is not an
12 identical contract with the illegible contract that appears
13 in DJ 70, but the Department and counsel for Ohio Edison
14 and Pennsylvania Power have stipulated that this is
15 substantially identical to the FPC filing, though not in
16 the same format.

17 The next document from the bottom is a contract
18 between Pennsylvania Power Company and the Borough of
19 Zelienople. This should inserted in DJ 69. It is subject
20 to a similar stipulation between counsel.

21 CHAIRMAN RIGLER: What was the number on that?

22 MR. RIESER: My next document on the bottom
23 is a bunch of rate sheets. Two things later is the contract
24 between Zelienople and Pennsylvania Power.

25 MR. AIUVALASIT: Here it is.

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1 MR. CHARNO: The next such document is a
2 Certificate of Public Convenience for service between
3 Pennsylvania Power Company and the Borough of Wampum, which
4 should be inserted in DJ-68. It subject to a stipulation.

5 MR. CHARNO: The next document in order is
6 a Certificate of Public Convenience between the Newcastle
7 Electric Company, predecessor in interest of Pennsylvania
8 Power Company, and the Borough of New Wilmington.

9 This should be inserted in DJ-67, and it is
10 subject to a similar stipulation.

11 The next document should be substituted in its
12 entirety for DJ-440.

13 It is entitled WJOE meeting, October 17, 1974.

14 The final document of the six should be inserted
15 in DJ-410 and is a typed version of 207227.

16 Counsel for Ohio Edison and the Department have
17 stipulated that this is a true and correct copy of that
18 page.

19 At this time the Department would like to move
20 DJ-67 through 70 into evidence. These exhibits were
21 previously objected to because of the illegibility of the
22 contracts.

23 MR. STEVEN BERGER: Your Honor,, with the
24 understanding that these contracts are coming in for the
25 period after '65, September of '65, we have no objection.

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1 MR. CHARNO: As I recall the Board's ruling
2 was for the period after September 1, '65, and to show the
3 state of affairs on September 1, '65, and that is the
4 Department's offer for these.

5 CHAIRMAN RIGLER: Which ones were they, again?

6 MR. CHARNO: 67 through 70. The ones
7 that have been amended this morning.

8 MR. REYNOLDS: Mr. Chairman, I would like to note
9 for the record, the continuing objection of all Applicants
10 other than Pennsylvania Power Company, with respect to these
11 exhibits.

12 CHAIRMAN RIGLER: The continuing objection is
13 overruled and we will admit at this time the Department
14 Exhibits 67 through 70.

15 (The documents previously
16 marked Exhibits U-67 through
17 70 for identification, were
18 received in evidence.)

19 MR. CHARNO: At this time the Department would
20 move Exhibits DJ-456 through 480 into evidence.

21 MR. STEVEN BERGER: As to DJ-456, this is a
22 memorandum written by the service director, the then service
23 director of the City of Wadsworth, which I think can be
24 fairly characterized as argumentative and which the Department
25 is offering for the truth as to positions stated by

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1 Mr. Craft in the memorandum to be taken or inferred to
2 have been taken by Ohio Edison.

3 The Department's offer, which appears at pages
4 6203 and 6204, states that they are offering this document
5 to show that Ohio Edison takes the position that it should
6 be allowed to extend its primaries one mile to serve a
7 customer immediately adjacent to the City and, additionally,
8 to show that Ohio Edison is insisting upon its rights under
9 the allocation agreement to serve an attractive load in a
10 manner that would block the municipal's growth, notwith-
11 standing the diseconomies and duplicity of distribution
12 services which would result from its insisting on its rights.

13 They argue from this document that the
14 utilization of the allocation agreement over a period of
15 years allowed Ohio Edison to put a string of primary lines,
16 I take it, around the City, so that as of a certain point,
17 the City was no longer capable of expanding without
18 duplication of facilities over an area or running a line
19 through an area where they had no customers to serve, an
20 obviously uneconomical extension.

21 I submit that the document cannot come in
22 for purposes of establishing the truth of
23 positions taken by Ohio Edison, when it merely attempts
24 to characterize what what positions Ohio Edison is taking
25 or alledgedly taking in an argumentative fashion.

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As to DJ-477 and 478, which are the questions that were posed to Ohio Edison and the answers by Ohio Edison, the Department's offer with respect to those documents related all to matters which we would argue are remote from the factual situation which the Board has delineated as relevant for consideration of the issues in this proceeding.

As to 479 and 480, which are the notes of Miss McGovern of Mr. Mansfield's testimony before the Securities and Exchange Commission in connection with the Commission's investigation of the acquisition of Hiram by Ohio Edison and 480, which is Mr. Mansfield's testimony itself, first I would note as the Board questioned Mr. Charno, with regard to the relevance of Mr. Mansfield's personal opinions re public power, that I don't believe it is in any way relevant to the issues in this proceeding.

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1 Secondly, with regard to the truth of what
2 economies of scale are available in this industry at
3 whatever level we are talking about, I don't think Mr.
4 Mansfield's statement can come in for the truth of the
5 facts.

6 On a broader ground let me state this: The
7 Department has an allegation in this case that Ohio Edison
8 has, through acquisition, eliminated competitive electrical
9 systems in the area in which it serves. Ohio Edison is, of
10 course, a holding company subject to the jurisdiction of
11 the Securities and Exchange Commission under the Public
12 Utility Holding Company Act of 1935.

13 Each of the acquisitions which the Department
14 has questioned in this proceeding, namely Hiram, Norwalk,
15 and East Palestine, have all been subject to the approval
16 of the Securities and Exchange Commission.

17 As part of the responsibility of the Securities
18 and Exchange Commission in determining whether or not to
19 approve or disapprove of the proposed acquisition by a
20 holding company system, the SEC must determine whether
21 the acquisition "will serve the public interest by tending
22 towards the economical and efficient development of an
23 integrated public utilities system." 15 UCS Section 79J(c)(2).

24 In Addition, the SEC may also impose terms and
25 conditions on the acquisition "necessary or appropriate

1 in the public interest or for the protection of investment
2 and consumers." 15 USC Section 79J(e).

3 I would submit that as to the acquisitions
4 that have been made by Ohio Edison, subject to the juris-
5 diction of the Securities and Exchange Commission, that
6 it is that agency and that agency alone which should
7 consider the question of acquiring municipal systems.

8 The Holding Company Act is one to deal with
9 the question of concentration of control generally and
10 for this Board to be looking into the question of whether
11 or not Ohio Edison's acquisitions have in any way represented
12 the situation inconsistent with the antitrust laws to me
13 seems inappropriate, since it is the primary responsibility,
14 if not the sole responsibility of the SEC, to inquire
15 into those matters.

16 Let me just further add with regard
17 to 479 and 480 that it seems that 480 is clearly, if you
18 will, the best evidence.

19 479 are merely notes taken by Ms. McGovern
20 at the time Mr. Mansfield was testifying. The offer
21 of proof by the Department does not in any way to me
22 present a basis for the separate admission of those notes
23 as being different in any way from the admission of the
24 testimony.

25 I see no basis for the admission of the notes.

1 CHAIRMAN RIGLER: These notes were taken
2 contemporaneously with the testimony.

3 MR. STEVEN BERGER: That is my understanding.

4 Your Honor, I note in connection with Mr.
5 Mansfield's testimony before the SEC that the
6 Department is offering to show statements made by Mr.
7 Mansfield at that time which have no particular application
8 to the Hiram acquisition, but go more generally to the
9 allegations in their case.

10 CHAIRMAN RIGLER: To the allegations --

11 MR. STEVEN BERGER: That go more generally to
12 the allegations that the Department has in their case
13 and not just to the acquisition of Hiram.

14 CHAIRMAN RIGLER: In this proceeding?

15 MR. STEVEN BERGER: Yes. Mr. Mansfield's
16 deposition was taken in this proceeding. It would seem to
17 me if there were statements made in 1972 by Mr. Mansfield
18 which were relevant to the Department's case, if they
19 wanted to question Mr. Mansfield further with regard to it
20 or to find out his position today in regard to such things,
21 the time to do that was at the time of the taking of the
22 deposition.

23 The deposition is coming in as per the
24 discussion last Friday. I don't see why we should be
25 coming back to 1972 as to statements made by Mr.

1 Mansfield.

2 That concludes my remarks.

3 MR. ZAHNER: With respect to Department of
4 Justice Exhibits 456 through 486, Applicants other than
5 Ohio Edison make the continuing objection.

6 MR. CHARNO: With respect to DJ 456 for identifica-
7 tion, we would note this is the only evidentiary material
8 of which the Department is aware with respect to this
9 transaction. It is the only available evidence that this
10 load was next to the city's lines and at some distance
11 from Ohio Edison's lines.

12 We received no additional material on discovery
13 which indicated that Ohio Edison had any contrary opinion
14 or that they would take issue with the statements made in
15 this letter.

16 CHAIRMAN RIGLER: Did you depose Mr. Mansfield?

17 MR. CHARNO: With respect to 456?

18 CHAIRMAN RIGLER: No, just in general.

19 MR. CHARNO: Yes, Mr. Mansfield was deposed.

20 CHAIRMAN RIGLER: Did you depose Mr. White?

21 MR. CHARNO: I don't believe Mr. White was deposed.

22 CHAIRMAN RIGLER: Did you depose Mr. Haury?

23 MR. CHARNO: No.

24 CHAIRMAN RIGLER: Did you talk to Mr. Kraft,
25 the author of the letter?

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1 MR. CHARNO: No, we have not.

2 CHAIRMAN RIGLER: All right.

3 MR. CHARNO: We would therefore argue that
4 objections with respect to 436 would go to weight and
5 that Ohio Edison is in a position to bring out any
6 contrary information they have available.

7 With respect to DJ 480, we would take a similar
8 position on the comments of Mr. Mansfield with respect to
9 the existence of or nonexistence of the economies of scale
10 at the various levels of operation of Ohio Edison, as the
11 chief executive officer, we believe he was in a position
12 to be aware of the engineering and economic operational
13 facets of the operation which he commanded.

14 We would contend that the public-interest test
15 under the Public Utilities Holding Company Act is wholly
16 dissimilar from that under Section 2 of the Sherman Act
17 and Section 7 of the Clayton Act, and certainly a question
18 of whether a program of acquisitions as opposed to a
19 single acquisition constitutes part of a situation incon-
20 sistent with the antitrust laws which is the test which we
21 deal with in this forum.

22 We don't believe the determination by the
23 Securities and Exchange Commission has any relevance to the
24 determination to be made by the Nuclear Regulatory Commission.

25 We have no further argument.

1 CHAIRMAN RIGLER: The objection to 456 will be
2 sustained. It will be rejected from evidence.

3 The continuing objection is overruled, and
4 accordingly we would admit without objection from
5 Ohio Edison Nos. 457 through 476.

6 (The documents previously marked
7 DJ Exhibits 457 through 476,
8 inclusive, for identification,
9 were received in evidence.)

10 CHAIRMAN RIGLER: The objection to 477 and 478 are
11 sustained.

12 The best evidence objection to 479 is sustained.

13 We will defer for a few minutes our ruling on 480.

14 MR. CHARNO: The Department would enter a similar
15 stipulation with Ohio Edison to the one reached on Hudson
16 with respect to the existence and operation of the wholesale
17 agreement between Ohio Edison and Cuyahoga Falls and that
18 it would differ only in that it goes to the period
19 from 1966 through October 16, 1972.

20 The Department would therefore discard 218 -- let
21 me modify that stipulation.

22 The stipulation would go through September 1,
23 1972. The Department would discard 218376, 218--

24 CHAIRMAN RIGLER: I have a 206639.

25 MR. STEVEN BERGER: Mr. Chairman, I think that is

1 a duplicate of the first document you had in that pile,
2 which may have been discarded or marked.

3 MR. CHARNO: Could we discard that document at
4 this time?

5 Discarding 318376, 218374, 218373. We would
6 offer as DJ 481 18370.

7 We would discard 218369.

8 After 481, we discard 218369.

9 We would offer as DJ 482 a one-page document
10 numbered 218368.

11 We would offer as DJ 483 a two-page document
12 numbered 218366 and 67.

13 We would discard 218360.

14 CHAIRMAN RIGLER: Slow down.

15 MR. CHARNO: We would discard 218359.

16 We would offer as DJ 484 a one-page document
17 numbered 218356.

18 We would offer as --

19 MR. SMITH: Wait a moment, please.

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MR. STEVEN BERGER: Can I have an offer on this document?

MR. CHARNO: The Department would offer DJ- 484 for identification to indicate Ohio Edison's adherence to the allocation agreement in 1972.

The Department would offer as DJ-485, a one-page document numbered 213355.

The Department would offer as DJ-486, a one-page document numbered 218457.

We would offer as DJ-487, a one-page document numbered 218792.

We would discard 218261 through 262.

We would offer as DJ-488 for identification, a two-page document numbered 218259 through 260.

We would discard 218255 and 254.

We would discard 21169 through 76.

We would discard 20410 through 417.

The Department would offer --

MR. REYNOLDS: Steve, excuse me.

Could you give me an offer of proof on 488?

MR. CHARNO: We would offer DJ-488 for identification to show the existence and operation of a long-standing territorial allocation agreement between CEI and Ohio Edison.

MR. SMITH: Is that in the statement of the case?

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1 MR. CHARNO: Yes, it is.

2 MR. REYNOLDS: May I ask for clarification
3 whether this document is being used to show that or
4 to assist in showing that?

5 MR. CHARNO: We would offer this document to
6 show that.

7 MR. REYNOLDS: Okay.

8 Thank you.

9 MR. CHARNO: The Department would offer
10 as DJ-489 a two-page document numbered 211344 through 345.

11 The Department would offer as DJ-490 for
12 identification, a three-page document numbered 208570 through
13 572.

14 MR. REYNOLDS: Will you wait a minute, Steve?

15 MR. CHARNO: At this time the Department
16 would like to substitute a better copy.

17 We would ask that the new pages be numbered
18 208570 through 572.

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MR. STEVEN BERGER: Can I have an offer on
490?

MR. CHARNO: The Department would offer DJ 490 for
identification in support of its contentions that OE opposed
the Buckeye project in that it allowed cooperatives the
advantage of large scale generation; and further that this
document shows that Ohio Edison and Ohio Power agreed that
should the Buckeye plan be disbanded, the loads being
served by Buckeye in Ohio Edison's service area would
revert back to Ohio Edison.

They would not be served by Ohio Power Company.

MR. REYNOLDS: Will you read back the last portion
of that?

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

MR. CHARNO: The Department would offer as DJ 491
for identification a multi-page document numbered 212032
through 052, and note the existence of a better copy that
was handed out this morning.

We would further note a stipulation of counsel
that the marginal notations which appear in DJ 491 for
identification are those of Frances McGovern,
attorney for Ohio Edison.

CHAIRMAN RIGLER: Do you want us to substitute the
better copy?

1 MR. CHARNO: Please.

2 MR. STEVEN BERGER: Can I have an offer on this?

3 MR. CHARNO: We would offer DJ 491 for
4 identification to show the initial attempts by Ohio
5 Edison to block the possibility of service by Buckeye member
6 cooperatives to municipal systems located within Ohio
7 Edison's retail service area; and thereby to establish
8 Ohio Edison's intent in entering into its portion of the
9 Buckeye agreements and to distinguish this intent from
10 the professed intent of Ohio Edison.

11 CHAIRMAN RIGLER: You are going to have to fill
12 the Board in a little better on that. This is a draft
13 agreement. By whom was it prepared? To whom was it submitted?
14 Do we have that material before us?

15 MR. CHARNO: It states on the front cover that
16 the proposal was prepared by Ohio Power. The marginal
17 notations are those of Frances McGovern, and it is upon the
18 marginal notations that the Department would be relying
19 on this document. It appears the red-lining didn't come
20 through.

21 CHAIRMAN RIGLER: It did on mine.

22 I still don't understand exactly what the
23 implications are.

24 Let's turn to 212033 and in the middle of the
25 page, the word "provided" is singled out by

1 underlining completely around the word and the remainder
2 of that phrase with respect to a particular cooperative
3 and then only such amount as it shall require for
4 delivery and resale.

5 Those phrases are underlined. Who underlined
6 them?

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1 MR. CHARNO: Those were underlined in the
2 original. The red-linings in the margin.

3 CHAIRMAN RIGLER: Did Miss McGovern make the
4 underlining or did someone else?

5 MR. CHARNO: It is our understanding that
6 Miss McGovern made the red-lining.

7 MR. PERI: We asked the company about
8 the handwritten notes. We will have to go back and check
9 about the underlining.

10 CHAIRMAN RIGLER: It must be the underling
11 or marginal notations which are significant, if the
12 documents bears on its face the caption "Ohio Power
13 Proposal."

14 MR. CHARNO: Clearly.

15 We would direct the Board's attention to the
16 footnote 3, both in the text and down in the footnote.
17 Footnote on on 212034.

18 CHAIRMAN RIGLER: Opposite those footnotes I notice
19 a series of checks and "Xs."

20 What is their significance.

21 MR. CHARNO: The Department is unable to
22 specify the significance.

23 CHAIRMAN RIGLER: All right.

24 MR. CHARNO: Finally, to a provision appearing
25 on page 212046 --

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1 CHAIRMAN RIGLER: Which provision?

2 MR. CHARNO: Paragraph 13 with the marginal
3 note.

4 CHAIRMAN RIGLER: You had better read that
5 marginal note.

6 MR. CHARNO: As per note page 8. The remainder
7 is illegible on this copy.

8 To avoid confusion, since there seems to be some
9 problem with where the red-lining came through, the Department
10 would be relying on the top of the first page down to
11 witnesseth upon the second page.

12 CHAIRMAN RIGLER: In its entirety?

13 MR. CHARNO: And the third page in its entirety.
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1 To the notes on page 212041, and to the paragraph
2 previously referred to on 212046.

3 MR. REYNOLDS: Mr. Chairman, could I ask, just
4 because I'm not sure after the colloquy, where we are.

5 Is the offer of proof to introduce this as
6 a negotiating position of the company, or is it to
7 introduce it to show the possession of Fran McGovern in 1965,
8 as a staff attorney, or is it to show the intent of the
9 company in '65 with regard to these matters.

10 I'm not sure what you said you are using the
11 marginal notes to show or prove.

12 I'm clear we have a stipulation that they are
13 Miss McGovern's.

14 I don't think there is any problem getting
15 on the record what position she held at the time.

16 My problem is what you are saying you will show
17 by the marginal notes.

18 Where does your offer go?

19 MR. CHARNO: The offer goes to intent.

20 MR. REYNOLDS: Whose intent?

21 MR. CHARNO: The company's intent.

22 Miss McGovern is acting as a chronicler and
23 reporting the actions of others.

24 It is the Department's contention she is acting
25 as a chronicler. We argue by using initials that she is

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1 reporting what people said and what people stated, and
2 the positions they took on behalf of the company.

3 The Department would offer as DJ-492 for
4 identification, an eight-page document numbered 212023
5 through 030.

6 Note the existence of a better copy which we
7 would ask to have substituted.

8 The first page is very weak and it is
9 identical with the page that immediately follows that,
10 except that the page that immediately follows has had certain
11 letters chopped off the end of words.

12 These letters are available on the first
13 lighter page.

14 There is a stipulation of Counsel that these
15 notes were also taken by Frances McGovern.

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CHAIRMAN RIGLER: When, where? I see when.
What are the circumstances?

MR. CHARNO: The Department would draw from context and the identity of the parties that this is a meeting between Ohio Edison and Ohio Power's representatives concerning the Buckeye contract.

In addition to those portions of the first page which are red-lined, the Department would also red-line the upper third of 212027.

MR. REYNOLDS: Down to where?

MR. CHARNO: Down to and including the parenthetical that reads "i.e., agreement with JRW," close paren.

On the following page 028, we would red-line the top of the page down through and including the line that reads D-OK.

Finally on 030 we would red-line the portion that begins F-15, CF, and extends down through the letters OK. That is the entire discussion on page 15.

The Department would offer as DJ 493 for identification a multi-page document numbered 211989 through 212018, and note the existence of two pages which should be substituted for the initial two pages.

MR. STEVEN BERGER: Can I have an offer on this?

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1 MR. CHARNO: The Department would rely upon
2 the marginal notation on 211990 to show Ohio Edison's
3 intent to restrict Buckeye member cooperatives and
4 prevent them from selling at wholesale to municipal systems
5 within Ohio Edison's retail service area.

6 MR. REYNOLDS: Steve, hold on a minute.
7 We have a problem.

8 CHAIRMAN RIGLER: Ours only go through 212013.
9 We will take 10 minutes at this point.

10 (Recess.)

11 MR. CHARNO: Continuing the offer of proof on
12 DJ 493 for identification, we would further offer the
13 document in support of our contention that OE sought in Ohio
14 Power's agreement not to sell power to cooperative systems
15 for resale to municipals independently of this contract,
16 and that would be the second marginal note on 211990.

17 CHAIRMAN RIGLER: That says nothing prevents
18 Ohio Power from selling to something for resale to
19 municipals.

20 MR. REYNOLDS: Co-ops.

21 CHAIRMAN RIGLER: Co-ops for resale to municipals.
22 Ohio Power could what -- I can't read it.

23 MR. CHARNO: Could give us a proposal on this,
24 FMCG.

25 The Department would offer as DJ 494 for

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identification a 28-page document and note that we have substituted for the first two pages of that document. The document is numbered 211929 through 957.

and 7

1 Again, there is a stipulation of Counsel that the
2 notes appearing hereon were taken by Frances McGovern.

3 MR. STEVEN BERGER: I would like an offer on
4 this.

5 MR. REYNOLDS: Can I, before we go to an
6 offer on 494, Mr. Charno, know was: your offer on 493
7 applicable to the red-lined portion 212005, as well as the
8 red-lined portion you referenced.

9 MR. CHARNO: Yes.

10 MR. REYNOLDS: All right.

11 MR. CHARNO: Again, the Department would offer
12 this Ohio Edison draft of the Buckeye agreement to show
13 Ohio Edison's intent to restrain Buckeye member cooperatives
14 from serving future municipal customers of Ohio Edison
15 at wholesale, as well as current customers, and Ohio
16 Edison's intent to assert a cancellation provision which
17 would be operative, if a Buckeye member cooperative sold
18 energy to a present or future Ohio Edison municipal
19 customer at wholesale.

20 CHAIRMAN RIGLER: How about the handwritten
21 notes that precede 494 in the notebook?

22 MR. CHARNO: I'm sorry. DJ, for internal
23 identification, 211982 through 986, should be discarded.

24 The Department would offer as DJ-495, a two-page
25 document numbered 211234.

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1 The Department would offer as DJ-496, a two-page
2 document numbered 211236 and 237.

3 MP. STEVEN BERGER: Can I have an offer on both?

4 MR. CHARNO: You may.

5 I would like to enter a stipulation for the
6 record, with respect to DJ-495, we have agreed that the
7 marginal notation in the upper left-hand corner states
8 from "JRW 6/1, filed Buckeye."

9 It is further stipulated that this was written
10 by Clyde Frederickson and was found in his
11 files, and that DJ-495 and 496 were received by
12 Mr. Frederickson from Mr. White.

13 Finally, the company Ohio Edison has been
14 able to identify the author of the handwriting appearing
15 on the second page of DJ-496 for identification.

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1 The Department would offer these two documents
2 to demonstrate that --

3 MR. STEVEN BERGER: Excuse me, Mr. Charno.
4 As to the handwritten notation on the second page of
5 496, I'm informed that Ohio Edison has no reason to
6 believe that the handwritten notation was made by anybody
7 at Ohio Edison.

8 MR. CHARNO: We have no knowledge whatsoever
9 concerning the source of the notation.

10 The Department would be offering both of these
11 documents to show that the Buckeye member cooperatives
12 were required as a quid pro quo for the investor-owned
13 utilities' participation in the Buckeye project to endorse
14 legislation which would restrict member cooperatives from
15 selling power at wholesale to municipalities which were
16 receiving at least 50 percent of their bulk power supply
17 from the respective investor-owned utilities.

18 We would further offer the document to show that
19 in the eyes of Buckeye and its member cooperatives, there
20 was no existing legislation or regulation which would
21 prohibit Buckeye member cooperatives from serving at wholesale
22 municipal customers then being served by investor-owned
23 utilities.

24 MR. CHARNO: The Department would offer as DJ 497
25 a three-page document numbered 218853 through 155.

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1 MR. STEVEN BERGER: Could I have an offer
2 on this?

3 MR. CHARNO: The Department would offer DJ 497
4 to show that in January 1967, seven private utilities
5 in Ohio, including Toledo Edison and Ohio Edison, agreed
6 in a confidential undisclosed agreement that present
7 municipal wholesale loads would remain with existing
8 suppliers and this confidential agreement was a pre-
9 condition for seeking territorial legislation at some point
10 in the future.

11 CHAIRMAN RIGLER: Where in the document does it
12 disclose an agreement that municipal loads would remain
13 with the present suppliers as a pre-condition of trying to
14 get passage of a territorial law?

15 MR. CHARNO: We would interpret 218354, which
16 lists the conditions for a territorial integrity law as
17 being pre-conditions.

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CHAIRMAN RIGLER: How so?

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What indicates that that is a precondition,

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rather than an objective of the law they would propose to have

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introduced and passed?

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MR. CHARNO: We will indicate initially that such

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a law would be beyond the jurisdiction of the Ohio

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State legislature.

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MR. REYNOLDS: Just for the record I note my

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disagreement with that statement, but I don't intend to

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argue it.

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At least not at this time.

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MR. CHARNO: The Department would discard 300336

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through 343.

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CHAIRMAN RIGLER: Did you say discard these

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pages?

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MR. CHARNO: Yes, sir.

17

The Department would offer as DJ-498 for

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identification, a three-page document numbered 23656

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through 658.

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MR. STEVEN BERGER: I would like an offer.

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MR. CHARNO: The Department would offer this

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document in support of its contention that Ohio Edison

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will wheel power, if it is necessary to maintain the

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company's control and dominance of transmission facilities.

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The Department would offer as DJ-499, a two-page

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1 document numbered 268609 through 610 and note a stipulation
2 as to the handwritten notations at the top of the first
3 page.

4 The first would read "12/20, mailed to J.R.W.
5 12/23, discussed "W/J.R.W and H.E.G. 12/23, D.E.B will
6 discuss further with C.O.L. reps."

7 "D.E.B." is stipulated to be Dean E. Beck, an
8 an Ohio Edison division manager.

9 CHAIRMAN RIGLER: "J.R.W.?"

10 MR. CHARNO: Is John R. White.

11 CHAIRMAN RIGLER: Who was the other one?

12 MR. CHARNO: H.E.G. and we don't have any
13 idea of H.E.G.

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1 MR. CHARNO: The Department would offer as
2 DJ 500 for identification a one-page document numbered
3 208608.

4 The Department would offer as DJ 501 for
5 identification an 8-page document numbered 24931 through 38.

6 MR. STEVEN BERGER: May I have an offer of proof?

7 MR. REYNOLDS: I'm missing 32, Steve. I don't
8 have the last part of the cover letter.

9 CHAIRMAN RIGLER: I don't have page 24932.

10 MR. CHARNO: It seems like that is missing
11 from everyone's copy.

12 The Department would offer as DJ 502 for
13 identification --

14 MR. STEVEN BERGER: I asked for an offer on that.

15 MR. CHARNO: I'm sorry. I didn't hear your
16 request.

17 We would offer 501 to show that Pennsylvania
18 Power's attempt to obtain a long-term lease of Grove City's
19 electric system in 1966 and that Pennsylvania Power did not
20 compete with any other investor-owned utility for Grove
21 City's wholesale load.

22 MR. REYNOLDS: Could we get the last part of
23 that read back?

24 MR. STEVEN BERGER: Let me have the whole offer
25 read back.

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

3 MR. CHARNO: The Department would offer as DJ
4 502 an 11-page document numbered 211202 through 212.

5 The Department would discard 211592 through 46.

6 The Department would offer as DJ 503 a document
7 numbered 211647 through 654. There is no page 211653.

8 While we are securing additional documents, I
9 would like to read the stipulation concerning initials
10 appearing in the Ohio Edison documents into the record.

11 DCB is D. C. Bixler, an Ohio Edison division
12 manager.

13 RED is R. E. Dawson.

14 EFD is E. F. Diesmeyer, D-i-s-s-m-e-y-e-r, vice
15 president, Ohio Edison.

16 end 11
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1 "J.F.D." is J. F. Doering, D-o-e-r-i-n-g.

2 "R.J.D. is R. J. Dreisbach, D-r-e-i-s-b-a-c-h,
3 general coordintor of division distribution practices.

4 "L.F." is Lynn Firestone, general system
5 planning engineer.

6 "C.W.F. is --

7 (Discussion off the record.)

8 MR. CHARNO: At this time we will only be enter-
9 ingo the record a stipulation with respect to the initials
10 and the corresponding names, as they appear throughout
11 the doucments taken from Ohio Edison's files.

12 And the positions previously given should be
13 disregarded.

14 "A.N.G." is A. N. Gerant, G-o-r-a-n-t.

15 "C.W.F." is C. W. Frederickson.

16 "H.B.G. is H. B. Gould, G-o-u-l-d.

17 "D.R.G" is D. R. Gundry, G-u-n-d-r-y.

18 "H.E.H" is H.E. Hylton, H-y-l-t-o-n.

19 "R.C.J" is R.C. Jenkins.

20 "J'K." is John Kekela, K-e-k-e-l-a.

21 "R.L.K." is R.L. Kensinger, K-e-n-s-i-n-g-e-r.

22 "F.M.C.G" is Frances McGovern.

23 "D.B.M." is D. Bruce Mansfield.

24 "H.M." is Harold Miller.

25 "C.B.O" is C. B. Olds, O-l-d-s.

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"V.A.O" is V.A. Cwoc, C-w-o-c.

2

"J.T.V" is J. T. Rogers, Jr.

3

"R.J.S." is Russell J. Spetrino.

4

"M.V.T." is M. J. Tillett, T-i-l-l-e-t-t.

5

"D.O.W." is D. O. Wooldridge, W-o-o-l-d-r-i-d-g-e.

6

"J.R.W." is J. R. White.

7

And "R.G.Z" is R. G. Zimmerman.

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CHAIRMAN RIGLER: Off the record.

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(Discussion off the record.)

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1 MR. CHARNO: The Department would discard
2 30011300 through 301.

3 The Department would offer as DJ 504 for
4 identification a two-page document numbered 30011290
5 through 291.

6 The Department would discard 30011274 through 76.

7 The Department does not know the source of the
8 underlining. It was not placed on 504 by the Department.
9 We are not offering it for the underlining.

10 The Department would offer as DJ 505 for
11 identification a two-page document numbered 30011270 through 271

12 CHAIRMAN RIGLER: Wait a minute. Isn't that 506?
13 What happened to 30011274 through 76?

14 MR. CHARNO: That was discarded. Again the
15 Department does not rely on the underlining in 505.

16 The Department would offer as DJ 506 for
17 identification a one-page document numbered 30011268.

18 The Department would discard 30011243 through 56.

19 CHAIRMAN RIGLER: Through 56?

20 MR. CHARNO: Through 256, yes, sir.

21 The Department would further discard 30011259
22 through 61 and 66.

23 The Department would offer as DJ 507 a document
24 numbered internally 219032. It has only a number on the
25 first page. It is a 139-page document.

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1 MR. STEVEN BERGER: I would like an offer of
2 proof.

3 MR. REYNOLDS: I would, too.

4 MR. CHARNO: The Department would offer DJ 507
5 to demonstrate the extent to which and the circumstances
6 under which Ohio Edison and Pennsylvania Power engage in
7 coordinated operation with other utilities.

8 We would offer it for the amounts of wholesale
9 sales to municipals and cooperatives and to demonstrate
10 transmission services performed for and on behalf of other
11 utilities.

12 We would offer it for the terms and expiration
13 dates of the Toledo Edison-Pennsylvania Power contracts
14 with municipal utilities.

15 MR. REYNOLDS: You mean Ohio Edison, rather
16 than Toledo Edison?

17 MR. CHARNO: I'm sorry, Ohio Edison and
18 Pennsylvania Power, yes.

19 And for the terms and dates of Ohio Edison's
20 contracts with cooperatives prior to the Buckeye agreement.

21 CHAIRMAN RIGLER: Mr. Charno, I get 135 pages, not
22 counting the affirmations and certificate of service.

23 MR. CHARNO: That's correct, sir.

24 The additional five pages would be affirmations
25 and certificates.

1 The Department would offer as DJ 508 for
2 identification a multi-page document bearing the
3 internal identification number 017654. This consists of an
4 initial answer to interrogatories, 19 pages in length,
5 and affirmation of one page, and Exhibit P to the interroga-
6 tory answers, which consists of a series of correspondence.

7 I think I had perhaps better identify those by the
8 date of the letters in sequence.

9 One-page letter, November 27, 1972.

10 One page dated January 15, 1973.

11 Three pages dated May 1, 1973.

12 Two pages dated May 14, '73.

13 Three pages dated May 22, '73.

14 Two pages dated June 5, 1973.

15 Two pages dated June 12, 1973.

16 Two pages dated June 25, 1973.

17 Two pages dated August 2, 1973.

18 And one page dated August 30, 1973.

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1 MR. REYNOLDS: Could we have an offer of proof
2 on Exhibit 5087

3 MR. CHARNO: The Department would offer
4 DJ-508 for identification to show the extent to which,
5 and under what terms and conditions, CEI engages in
6 coordinated operations with other utilities.

7 We would offer Exhibit P as being the total
8 documentation supplied by CEI concerning its refusal
9 to wheel PASNY power for American Municipal Power-Ohio.

10 MR. CHARNO: The next two documents were supplied
11 to us by the City of Cleveland which had previously
12 Xeroxed them, so we are using their copies of the exhibits
13 which bear their numbers.

14 8 The Department would offer as DJ-509
15 for identification a multi-page document numbered 73243,
16 that being the City of Cleveland's identification number.

17 We will accept that designation as the Department's
18 number for this document. It is the title of the first
19 page, "50Year Planning Report, 50 YPR, 10-5-64."

20 MR. REYNOLDS: Have you indicated how far it
21 goes? How many pages or how we will identify the remaining
22 pages?

23 MR. CHARNO: I'm open to suggestions.

24 MR. REYNOLDS: I would start with 43 and internally
25 number the rest of the pages. Otherwise, I think you have a

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1 real problem.

2 MR. CHARNO: I think you will have the same
3 problem, because the next number is 434.

4 MR. REYNOLDS: We could make it 434-A.

5 If you don't make it clear on the record, what
6 the entire exhibit is, it will not be clear at a later
7 date what the reference is we are talking about.

8 I think we ought to leave a blank for the reporter
9 and the report can fill in the record.

10 MR. CHARNO: Would that method of identifying
11 pages be acceptable to the Board?

12 CHAIRMAN REGLER: Yes.

13 MR. CHARNO: The department would offer as
14 DJ-510 for identification a multi-page document
15 bearing the designation 73944.

16 MR. REYNOLDS: Could I get an offer?

17 MR. CHARNO: The Department would offer DJ-510
18 and DJ-509 to show CEI objectives and plan of action for
19 future years, as well as the company's then present
20 operating assumptions.

21 We would offer the document to show growing
22 concern within the company, that the Federal Power
23 Commission would force interconnection and coordination
24 with municipal systems.

25 We would offer it to show that the company

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expected competition with municipalities to continue
and increase.

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1 We offer it to show that the company recognized
2 that rights of way were becoming more difficult to acquire.

3 We offer it for the company's statement of
4 the benefits of coordination and the company's attitudes
5 toward coordination, both with investor-owned utilities
6 and municipal systems.

7 We offer it for the company's objective of sustain
8 ing a favorable tax status and its objective of
9 eliminating private generation within the CEI retail
10 service area; for its objective of eliminating or
11 acquiring the Painesville and Cleveland municipal systems;
12 and its utilization or the contemplated utilization of
13 interconnection agreements as a means of eliminating
14 Cleveland Municipal System.

15 We would offer it for the plans of action set
16 forth with respect to the objectives previously outlined.

17 We would further offer DJ 509 for the -- pardon
18 me, to show that in 1964 prior to the alleged territorial
19 agreement between Ohio Edison and Cleveland Electric
20 Illuminating, CEI anticipated competition with Ohio Edison.

21 The Department would offer as DJ 511 for
22 identification a multi-page document bearing the internal
23 numbers 304523 through 304744.

24 MR. KLEE: May we have an offer on that, please?

25 MR. CHARNO: Yes. The Department would offer DJ 511

1 to show that Toledo Edison must rely upon other utilities
2 in order to meet its peak load, that there is no overlap
3 of service areas among CAPCO members.

4 We rely upon it for the statement of the
5 benefits of coordination as detailed by Toledo Edison.

6 CHAIRMAN RIGLER: What page does that appear on?

7 MR. CHARNO: It is a reference to economies
8 of scale and mutual reliability. That may be on page --
9 the initial reference is 304543, at the top of the page.

10 We would offer the document for the fact that
11 industrial sales comprise a high percentage of the company's
12 total sales; for the fact that the company has and projects a
13 summer peak during the period of the forecast, as well as
14 the company's statement of resources which would be
15 utilized to meet its peak.

16 I offer the document for the summary of Toledo
17 Edison generating facilities and for the fact that
18 Toledo Edison has a contract with a private industrial firm
19 for the purchase of power.

20 We would offer the document further for the
21 stated differences between base load and peaking generation
22 and the utility of the latter in meeting large-scale
23 bulk power requirements.

24 We offer the document for the statements by
25 Toledo Edison concerning the availability and utility of

1 energy sources and fuels, the mixture of fuel to be
2 utilized in units, and the comparison of nuclear and coal
3 units, including specifically the statement on 304634, which was
4 the statement that the Department's expert agreed with during
5 redirect examination.

6 We would offer it for the view held by Toledo
7 Edison that from an economic point of view, larger units
8 are better, even though they require higher reserves,
9 because of the economy of scale.

10 We would offer it for the fact that within the
11 project nuclear fuel is found to be cheaper than coal;
12 for the fact that suitable sites are difficult to find for
13 nuclear units.

14 We would offer it for Toledo Edison's operating
15 statistics and for the description of coal supply joint
16 ventures and for the notes in the annual report indicating
17 the manner in which Toledo Edison computes its federal
18 income taxes.

19 The Department would offer as DJ 512 for
20 identification a two-page affidavit with attachments.
21 The attachments are specified in the affidavit.

22 CHAIRMAN RIGLER: Where are we going to find
23 that, Mr. Charno?

24 MR. CHARNO: It should follow the Toledo Edison
25 document.

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CHAIRMAN RIGLER: My next document is an annual report.

MR. CHARNO: That was part of the forecast.

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1 MR. REYNOLDS: Can I have an offer of proof
2 on Exhibit 512?

3 MR. CHARNO: The series of documents numbered
4 18000081 through 83, 079, 076 and 070 through 702, are
5 introduced to show that in 1964, Ohio Power refused to
6 serve the City of Bowling Green, a wholesale customer
7 of Toledo Edison.

8 081 through 83 are being tendered merely to
9 show that Bowling Green was a wholesale customer of
10 Toledo Edison and was located, physically, so that service
11 from Ohio Power would be feasible.

12 The 1957 documents are being offered because
13 of the reference in the lower left-hand corner of
14 18000072.

15 MR. REYNOLDS: I don't have numbers that are
16 corresponding to your numbers.

17 That is the problem I have having.

18 MR. CHARNO: You don't?

19 MR. REYNOLDS: No, I don't have a set of two.
20 I have 81, 82, 83 --

21 (Discussion off the record.)

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1 MS. URBAN: The first document in this packet
2 after the affidavit is a two-page letter with an attachment
3 and it is numbered 180000081 through 83.

4 MR. REYNOLDS: And the date is?

5 MS. URBAN: The date is February 5, 1975.

6 The next document is a one-page letter to Mr.
7 Sauville from Mr. G. V. Patterson. It is dated February
8 14, 1975, and numbered 180000079.

9 The next document is a one-page letter.
10 It is dated September 5, 1961, and it is numbered 180000076.

11 The next document is a one-page memoranda with two
12 attachments. The first page -- the memoranda itself is
13 dated January 27, 1964.

14 The first attachment is dated January 14, 1964.

15 The third attachment is dated January 24, 1964
16 and -- they should bear DJ numbers 18000070. That is for
17 the January 27, '64 memoranda.

18 The January 14, 1964 has as the last two digits
19 72.

20 And the January 24, 1964 attachment has as its last
21 two digits 71.

22 I'm sorry. I just referred to the document
23 dated January 14, '64 as a memoranda. That is a letter.

24 The next document in the packet is a one-page
25 memoranda dated April 18, 1962 with Department of Justice

1 number 18000044.

2 The document after that is also a one-page
3 memoranda dated April 18, 1962, with DJ number 1800045.

4 The next document is a one-page memoranda dated
5 July 11, 1962 with attachment. The number on the memoranda,
6 the July 11 memoranda, is 180047.

7 The attachment is dated July 3, 1962, and bears
8 DJ No. 18000049.

9 The next document is a letter dated July 18,
10 1962 and bears DJ No. 18000046.

11 The final document in this packet is a memorandum
12 dated February 23, 1966 with DJ No. 18000062.

13 MR. REYNOLDS: I think I interrupted your
14 offer of proof in order to get the numbering.

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1 MR. CHARNO: The Department would offer 18000044
2 and 45 to show the events giving impetus to the formulation
3 of the Buckeye agreement, and the concerns which led to
4 the formalization of a territorial allocation agreement
5 between Ohio Power and Ohio Edison and between Ohio Power
6 and Toledo Edison.

7 The Department would be offering pages
8 18000046 through 048 as showing refusal by Ohio Power to
9 bid on a system located in Toledo Edison's territory and
10 we offer this in support of our allegation that the
11 territorial agreement was formalized in maps in approximately
12 1965.

13 We offer 1800062 to show refusal by Toledo
14 Edison to bid on providing wholesale service to the
15 village of Cygnet, C-y-g-n-e-t, which at that time was a
16 wholesale customer located within Ohio Power's territory under
17 the territorial allocation agreement between Ohio Power
18 and Toledo Edison.

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1 MR. CHARNO: We also offer the document
2 to show communication between Toledo Edison and Ohio
3 Power concerning the municipal system's request for -- request
4 to Toledo Edison for Toledo Edison bid with respect to
5 supplying wholesale power to the city.

6 MR. REYNOLDS: Is that it? What is the allegation
7 in your September 5 filing that you are relating this to?

8 MR. CHARNO: We do not have an allegation in our
9 September 5 filing. As soon as we identify the other
10 documents relating to the agreement, we would propose to
11 amend our allegations at some point prior to the end of
12 our case.

13 The amendment would be based solely upon the
14 availability of newly-discovered evidence that was
15 recently produced by Ohio Edison and Toledo Edison.

16 MR. REYNOLDS: It would go to what? What is
17 the nature of the allegation?

18 MR. CHARNO: The allegation would be a
19 territorial allocation agreement.

20 MR. REYNOLDS: Between?

21 MR. CHARNO: With respect to those documents between
22 Ohio Power and Toledo Edison.

23 MR. REYNOLDS: It is our offer that the package
24 of documents attached to the affidavit relate to that agreement.

25 MR. CHARNO: As well as to Buckeye as stated on

1 the one document.

2 MR. REYNOLDS: All right.

3 MR. CHARNO: Before we begin introducing the
4 documents produced by Ohio Edison, would this be an
5 appropriate place to break for lunch?

6 CHAIRMAN RIGLER: It might. Let's go off the
7 record.

8 (Discussion off the record.)

9 CHAIRMAN RIGLER: We will take 50 minutes for
10 lunch.

11 (Whereupon, at 1:00 p.m., the hearing
12 was recessed for lunch, to reconvene at
13 1:50 p.m., this same day.)

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AFTERNOON SESSION

(2 p.m.)

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3 MR. CHARNO: The Department would offer as
4 DJ-513 a one-page document which does not bear a Department
5 number and is a memo from Mr. Dreisbach to Mr. Dissmeyer,
6 dated September 21, 1965.

7 We would offer as DJ-514 a three-page document
8 entitled description of numbered territorial separation
9 points at certain road locations.

10 We would offer as DJ-515 a one-page letter from
11 Mr. Dreisbach to Mr. Schwalbert, dated October 27, 1965.

12 We would offer as DJ-516, a one-page memorandum,
13 entitled Toledo Edison Company-Ohio Edison Company
14 meeting.

15 We would offer as DJ-517, a one-page letter from
16 Mr. Dreisbach to Mr. Schwalbert, dated November 8, 1965.

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1 We would offer as DJ 518 a one-page memorandum
2 bearing the initials RJD and dated 1-27-66.

3 We would offer as DJ 519 a one-page document
4 entitled memorandum, addressed to DBM, HBG and EWD
5 from Mr. Dreisbach.

6 We would offer as DJ 520 a one-page memorandum
7 entitled "Ohio Power Company" and signed RJD, and dated
8 6-27-66.

9 We would offer as DJ 521 a one-page memorandum
10 entitled "Ohio Power-Ohio Edison Dividing Line."

11 We would offer as DJ 522 a one-page memorandum
12 entitled "Holmes-Wayne REC."

13 We would offer as DJ 523 a one-page memorandum
14 entitled "Ohio Edison-Ohio Power Fringe Territory."

15 We would offer as DJ 524 a one-page document
16 entitled "Ohio Power-Ohio Edison Fringe Area" dated
17 4-15-68.

18 We would offer as DJ 525 a three-page
19 document, the first page of which is a letter from Mr.
20 Dreisbach to Mr. Dissmeyer, dated June 10, 1968, which
21 has a two-page attachment entitled "Ohio Power Company-
22 Ohio Edison Company Fringe Territory Meeting."

23 We would offer as DJ 526 a one-page memorandum from
24 Mr. Dreisbach to Mr. Dissmeyer, dated September 20, 1968.

25 We would offer as DJ 527 for identification a

1 two-page memorandum to file from JEM dated March 31, 1969.

2 We would offer as DJ 528 a one-page memorandum
3 to file from JEM dated May 1, 1969, and the attachment
4 which is a one-page memorandum to file from JEM dated
5 May 1, 1969.

6 We would offer as DJ 529 a one-page letter
7 from Mr. Markle, to Mr. Campbell, dated May 22, 1969.

8 We would offer as DJ 530 a two-page memo
9 from JEM to file dated July 2, 1969.

10 We would offer as DJ 531 a one-page letter from
11 Mr. Markle to Mr. Campbell dated July 17, 1969.

12 We would offer as DJ 532 a one-page memorandum
13 to EFD from RJD dated 9-7-65.

14 We would offer as DJ 533 a letter and three-
15 page attachment, the letter being from Mr. Dreisbach
16 to Mr. Waugh, W-a-u-g-h, dated October 1, 1965. The
17 attachment is entitled "Description of Numbered Territorial
18 Separation Points at Certain Road Locations."

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1 MR. CHARNO: The Department would offer as
2 DJ-534, a map showing the political boundaries between
3 Otway and Sandusky Counties, as well as the Sandusky Bay.
4 On the map appear three types of lines, a heavy dotted
5 line, a heavy solid line and a light dotted line.

6 We would offer as DJ-535, a map with similar lines,
7 which are identified as the heavy black line to Toledo
8 Edison, the heavy dotted line to Ohio Edison and the light
9 dotted line is identified simply as line.

10 It contains Lake Erie and the designations
11 Carroll, Erie.

12 We would offer as DJ-536 the map which carries the
13 legend Toledo Edison Company, map showing Fremont
14 and vicinity.

15 It carries a key identifying lines as Toledo
16 Edison Company and the lighter line as a Ohio Power
17 Company.

18 We would offer as DJ-537 a map comparable in
19 political designations to 535, which carries a
20 key designated the light dotted line as boundary rather than
21 lined

22 We would offer as DJ-538, a map carrying the
23 legend Toledo Edison Company, Ohio Edison Company,
24 and in the lower right-hand corner, the notation T.E.
25 Company and the numeral 2.

1 We would offer as DJ-539 a map carrying in the
2 lower right-hand corner the written notation T.E. Company,
3 with the numeral 3.

4 MR. SMITH: Can you give a better description
5 of that one?

6 CHAIRMAN RIGLER: What are the counties?

7 MR. CHARNO: With respect to 539, Green Creek,
8 York, Adams, and Thompson are the political designations
9 and the map carries in the legend Toledo Edison Company,
10 Ohio Edison Company. The light dotted line is designated
11 in the key as boundary.

12 We would offer as DJ-540, a map carrying the
13 political designations York, Green Creek, Thompson and Adams,
14 which contains no legend, but only a key and the heavy
15 black line there is Toledo Edison.

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1 The heavy dotted line is Ohio Edison and the
2 light dotted line is designated as line.

3 We would offer DJ 541 for identification, a
4 two-page memo from Mr. Schwalbert to Mr. Sagol, 2-a-y-o-1,
5 dated July 5, 1965, together with its attachments dated
6 7-3-74, which is four pages in length, 8-7-73, which is
7 five pages in length, and 9-1-72, which is three pages in
8 length.

9 CHAIRMAN RIGLER: What position did Mr. Schwalbert
10 occupy in July of '74?

11 MR. REYNOLDS: He was a vice president of
12 the company, but I'm not sure what the rest of the title
13 was. We will provide the rest of the title. Right around
14 that period of time he switched from a vice president of
15 one area to the vice president of another area. It was
16 around July '74.

17 CHAIRMAN RIGLER: He was a company officer in
18 July of '74?

19 MR. REYNOLDS: That's correct.

20 MR. CHARNO: The Department would offer as DJ
21 542 a two-page document identified as a record of two
22 meetings -- pardon me. Two meetings between H. R. Dorsey of
23 Napoleon and W. R. Moran of Toledo Edison.

24 We note stipulation between counsel for Toledo
25 Edison and the Department that these are the notes for Mr.

1 Moran.

2 MR. KLEE: Can we have an offer on both of these?

3 MR. CHARNO: Let me identify the second one.

4 We would offer for identification as DJ 543 what is
5 identified as a record of a meeting between M. R. Dorsey
6 of Napoleon and W. R. Moran on Tuesday, August 14, 1973.

7 We would note the stipulation of counsel for
8 Toledo Edison that these are also Mr. Moran's notes.

9 We would offer DJ 542 and 543 to show that at
10 the time of this writing, Buckeye's wholesale rates were
11 lower than Toledo Edison's.

12 We would offer it to show refusal of Toledo
13 Edison to waive its requirement that Napoleon disconnect
14 for 90 days.

15 We would offer it for Toledo Edison's awareness
16 that the legality of the application of this requirement
17 had been questioned.

18 MR. REYNOLDS: Could you read back that last
19 statement?

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

22 MR. CHARNO: We would offer as DJ 544 five pages
23 of handwritten notes. The first is labeled Pioneer 3-23.

24 MR. KLEE: Can we have an offer on that?

25 MR. CHARNO: The Department would offer DJ 544 to

1 to show that Toledo Edison gave Pioneer an estimate of
2 the price that Toledo Edison would pay for Pioneer's system
3 prior to the time bids for the system were requested by
4 Pioneer.

5 We offer it in general support of our allega-
6 tion concerning Toledo Edison's policy of acquisition and
7 in specific rebuttal to the implications contained in
8 Toledo Edison's fact brief on page 14.

9 The Department would offer as DJ 545 a one-page
10 document which is a letter dated May 5, 1970 from JEC to a Mr
11 Genson, G-e-n-s-o-n.

end 23 12 MR. KLEE: Can I have an offer?

13 MR. CHARNO: We will offer DJ 545 in general
14 support of its allegation of Toledo Edison's policy of
15 acquisition and specifically to show that Toledo Edison
16 suggested to the Haskins Municipal System that the company
17 would be willing to discuss acquisition if Haskins expressed
18 an interest in such discussion.

19 MR. CHARNO: The Department would offer as DJ 546
20 let's go off the record.

21 (Discussion off the record.)

22 MR. CHARNO: The Department would offer as DJ 546
23 a memo from Mr. Cloer to Mr. Schwalbert dated March 24,
24 1972.

25 We would discard the next page, which reads as

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1 the date 4-25-73 in the upper right-hand corner and
2 says "Annexation."

3 We would offer as DJ 547 a one-page handwritten
4 note dated 4/25/73.

5 We would offer as DJ 548 a memorandum from Mr.
6 Cloer to Mr. Schwalbert dated January 29, 1973.

7 We would offer as DJ 549 one page of handwritten
8 notes dated 5/5/72.

9 We would offer as DJ 550 one page of handwritten
10 notes dated 4/20/72.

11 We would discard the next two pages dated
12 April 14, 1972 and January 9, 1973.

13 MR. REYNOLDS: Taking DJ 546 through 550, what is
14 your offer of proof for that group of documents?

15 MR. CHARNO: The Department would offer DJ 546
16 through 550 in support of the continued operation of the
17 territorial allocation agreement between Toledo Edison
18 and Ohio Power Company.

19 And we would offer it to show discussion between
20 those two companies about exchanging customers and
21 effectuation of the agreement.

22 We would offer it to show an agreement
23 between Ohio Power and Toledo Edison that the two
24 companies would not operate in the same franchise town.

25 The Department would offer this agreement,

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1 therefore, in support of our position that the lack of
2 competition in the fringe areas between these companies is
3 due to the fear that such competition would have an effect
4 upon the competing company's rates throughout its service
5 area.

6 The Department would --

7 MR. REYNOLDS: Wait just a minute, Steve, if
8 you will, please.

9 MR. CHARNO: The Department would discard the
10 next 35 pages dated May 5, 1969, and then a drawing, and
11 then April 30, 1969.

12 The first date should be 7, I'm sorry.

25 13 We would offer as DJ 551 a Toledo Edison
14 memorandum dated April 29, 1969, and we would throw away
15 the following page entitled "Edgerton" and is a one-page
16 handwritten note.

17 The Department would discard the next page,
18 "Fremont News Messenger, November 15, '66."

19 We would offer as DJ 552 a five-page letter to
20 Mr. Beck from Mr. Burch, B-u-r-c-h, dated November 15, 1966.

21 We would discard the next two handwritten pages
22 which are dated September 14, 1967.

23 MR. KLEE: Can I have an offer on 552, the letter
24 from Beck to Burch?

25 MR. CHARNO: We would offer this letter to show an

1 interest in TE in acquiring the Elmore system.

2 We would further offer it to show that Toledo
3 Edison had been requested to bid on July 11, 1966 on
4 the Elmore system.

5 We would offer it to show the comparative
6 rates of Toledo Edison and Elmore at that time.

7 We would offer as DJ 553 a one-page document
8 entitled "Elmore, Ohio Notes."

9 MR. KLEE: Is this offer the same as that for 552?

10 MR. CHARNO: We would extend the offer to show
11 Toledo Edison's solicitation of an invitation to bid
12 for the Elmore system.

13 Again making reference to Toledo Edison's
14 fact brief at page 14.

15 The Department would discard the remaining
16 documents in this packet which are a one-page letter
17 dated August 15, '66, one-page letter dated August 6, '66,
18 one-page memo dated April -- I'm sorry.

19 We would offer as DJ 554 the memorandum dated April
20 29, '66 from Mr. Latin, L-a-t-i-n, to Mr. Schwalbert.

21 We would discard the next three pages of handwritten
22 notes.

23 MR. REYNOLDS: Wait a minute, Steve.

24 Mr. Chairman, I would like to request under
25 Rule 106 that the government mark as its exhibits and

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1 introduce with the exhibits DJ 553 and 554 -- I'm sorry, 552,
2 553, and 554, the letters that have been identified as dated
3 August 15, '66 from Mr. Burch to Mr. Beck, and August 6, '66,
4 from Mr. Beck to Mr. Burch, in order to complete the
5 correspondence.

6 MR. CHARNO: I think that information in those
7 letters is contained in DJ 552, in the first paragraph.

8 MR. REYNOLDS: If you want me to comment on that,
9 I believe the Department offered Exhibit 552 in support of a
10 position it intends to take that bids were solicited
11 by Toledo Edison in regard to the Elmore system.

12 If that is the case, I want the two letters
13 marked as Exhibits by the Department of Justice and put in
14 the record at this time, which indicates where the request
15 for bids -- clearly the source of the request for bids
16 is set out in 552, as is the date of that request and
17 553 and 554 predate that request for bids.

18 They predate the letters which you wish to
19 have identified.

20 CHAIRMAN RIGLER: Do you object to putting them
21 in, Mr. Charno?

22 MR. CHARNO: No, I object to the implication contain-
23 ed in their request that this is somehow complete as mis-
24 leading.

25 We identify as DJ 555 a one-page letter from Mr.

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Burch to Mr. Beck dated August 15, 1966.

We would identify as DJ 556 a one-page letter from Mr. Beck to Mr. Burch dated August 6, 1966.

We would offer as DJ 557 a 9-page document entitled "Edison Questions and Answers." The first line of which reads, arabic one, how much would Toledo Edison be willing to pay for the Bryan Municipal Electric System.

MR. KLEE: Can I have an offer with respect to this document?

MR. CHARNO: The Department would offer DJ 557 in general support of its allegation concerning Toledo Edison's policy of acquisition. We would offer it to show Toledo Edison's interest in acquiring the Bryan system, specifically. To show that after acquisition of the Bryan System, TE intended to keep and expand Bryan's generating plant which we would argue supports the Department's contention that coordination between -- coordinated operation between municipal systems and investor-owned systems may be beneficial to both.

It shows that after a certain minimum rate that Toledo Edison's rates were higher than those of Bryan as of the time the document was executed.

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1 It shows Toledo Edison's position that isolated
2 municipal generation is inefficient compared with the economies
3 of scale available from large scale generation utilized
4 by CAPCO. We have a few further supplements to documents
5 previously identified that we would like to hand out at
6 this time.

7 MR. AIDVALASIT: At the time that the Department
8 introduced its Exhibit 25, which was the Federal
9 Power Commission filing for the Village of Beach City,
10 with a filing date of August 3, 1964, effective date of
11 September 3, 1964, it was pointed out by Counsel for
12 the Applicants that the contract was not attached.

13 Ohio Edison has since provided the Department
14 with a copy of an April 20, 1959 contract between the
15 Village of Beach City and Ohio Edison for wholesale power.

16 So we would ask that this particular three-page
17 document be included in Exhibit 25 and thereby completing
18 that designation as being the contract in existence between
19 Beach City and Ohio Edison.

20 I believe we have a stipulation that this contract
21 was in effect prior and up until the time that the
22 January 24, 1966 wholesale power contract came into
23 effect, which is Department of Justice Exhibit 45; is that
24 correct?

25 MR. STEVEN BERGER: I don't know the

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1 letter date, and it its validity. That is my only problem,
2 but we will try to substantiate that.

3 We couldn't stipulate as to the date that the
4 Beach City contract terminated, but we do have an understanding,
5 I believe, that it is coming in only for the period of time
6 after September 1965, until the time that it was terminated,
7 whatever that termination date was, which we will try to
8 verify the termination date.

9 MR. AIUVALISIT: It was subsequent to September
10 1965.

11 MR. STEVEN BERGER: I have no question as to
12 that. As to the January '66 date, I don't know that to be
13 a fact.

14 MR. AIUVALISIT: The Department wishes to use
15 it to show the conditions that existed as of September 1,
16 1965.

17 Now, with respect to Department of Justice
18 Exhibit 34, which is the Federal Power Commission filing
19 for the Village of Lodi, its wholesale relationship with
20 Ohio Edison, about the time of 1964, according to the
21 filing materials. There was no contract in the Federal
22 Power Commission filing.

23 Ohio Edison Counsel informed us, indeed, there
24 was no contract in existence between the village of Lodi and
25 Ohio Edison at the time, but there was in existence an

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1 ordinance that was dated December 3, 1956, under which Lodi
2 received wholesale service from Ohio Edison.

3 And it would be the Department's expectation
4 that this was -- that it was under this ordinance that the
5 village of Lodi received power until such time as it entered
6 into the December 28, 1965 contract between itself and
7 Ohio Edison, which is Department of Justice Exhibit 53.

8 With respect to the Village of Amherst,
9 Exhibit 44 --

10 MR. HJELMFELT: Is this to become a part of
11 Exhibit 34, or is it being marked as an exhibit?

12 MR. AIUVALISIT: The Department asks that it
13 would become part of Exhibit 34. With respect to the
14 Village of Amherst, Counsel for Ohio Edison has told us
15 that prior to December 30, 1965, wholesale contract with
16 Ohio Edison, which is Department of Justice Exhibit 44,
17 there was no contract in existence between Amherst and Ohio
18 Edison.

19 We have also been informed by Counsel for Ohio
20 Edison that prior to the July 25, 1969, contract between
21 the village of Prospect and Ohio Edison, which is Department
22 of Justice Exhibit 62, there was a February 1952 contract, but
23 I understand that there is some difficulty with respect to
24 stipulating at this time as to whether or not that contract --
25 or the date at which that contract terminated, but it is the

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1 belief of Counsel for Ohio Edison that it was in existence
2 for some period of time post-September 1, 1965; is that
3 correct?

4 MR. STEVEN BERGER: I believe that is correct.

5 Mr. Kayuha is trying to attempt to verify the
6 dates involved.

7 MR. AIUVALISIT: With respect to the Lodi
8 ordinance, we ask that that be designated 34-A, in terms
9 of its existence, as an attachment to Exhibit 34.

10 That is because it was not, indeed, part of
11 that particular rate filing, but merely to be an attachment
12 for purposes of completion of the situation that existed,
13 as far as Lodi, on or about that time.

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1 CHAIRMAN RIGLER: It will be marked as 34A.

2 MR. AUIVALASIT: We ask the Board to accept Beach
3 City contract with respect to Department of Justice
4 Exhibit 40 as an attachment.

5 CHAIRMAN RIGLER: I thought it was 25.

6 MR. AUIVALASIT: Pardon me. You are right.
7 It is 25.

8 CHAIRMAN RIGLER: We will take a recess.
9 (The documents referred to were
10 marked DJ Exhibit Nos. 481 thru
11 557, for identification.)

12 MR. CHARNO: At this time the Department would
13 like to move into evidence DJ 24, DJ 25, DJ 34, 34A and 481
14 through 557.

15 MR. REYNOLDS: Mr. Chairman, we have some
16 objections. Let me start and raise an objection as
17 to the first one in the number series that is objectionable
18 and in order to keep it in sequence, I will turn it over
19 to Mr. Berger to do the objections that Ohio Edison
20 has and then over to Mr. Klee to do the objections Toledo
21 Edison has, and then I will come back with the continuing
22 objection that the other Applicants have.

23 As to Exhibit 488, Mr. Charno has stated that
24 he intends to introduce this document to show the
25 existence and operation of a long-standing territorial
allocation agreement between CEI and Ohio Edison.

I would subject that the document on its face

1 negates that offer and I would refer the Board
2 specifically to the second page of the document and the
3 last two numbered paragraphs which reflect quite clearly
4 that to the extent any such agreement might or might not
5 be a possibility that that was something that was being
6 relegated to further exploration by the companies and not
7 something that was established or was being implemented or was
8 long-standing as Mr. Charno would suggest.

9 I would also submit that with regard to some
10 400 -- 557 documents that the Department has now introduced
11 on an unsponsored basis, I know of no other document that
12 even begins to suggest that there existed any long-standing,
13 short-standing or otherwise standing agreement between
14 Ohio Edison and CEI regarding territorial allegations.

15 I know no testimony in this record that would
16 support that. We have, therefore, Exhibit 492 standing
17 alone as a single exhibit to sustain the offer of proof.

18 I don't even think on that basis this exhibit
19 is entitled to any weight whatsoever to support that
20 assertion or allegation, and for that reason it should
21 not be introduced into evidence.

22 It clearly does not rise to a prima facie
23 showing of the matters Mr. Charno suggested he wants to
24 offer it for.

25 CHAIRMAN RIGLER: How about the paragraph that

1 says Mr. Zimmerman called Mr. Davis on April 1, '74
2 and Mr. Davidson stated 10 years or more ago the
3 two companies had had difficulty at certain boundaries
4 and it was concluded that the company with the lowest cost
5 should serve?

6 MR. REYNOLDS: I don't think that that suggests
7 any agreement of the sort that Mr. Charno has indicated.

8 It also goes on to say that this is not
9 agreeable with both of the parties, and they refer to the
10 respective VP. If that is the sentence he is relying on,
11 and that is all that we have in this record, and it is, as
12 far as I know, all we do have in this record to sustain a
13 long-standing agreement of the sort that Mr. Charno
14 has characterized, that falls well short of a prima facie
15 showing of that kind of agreement.

16 CHAIRMAN RIGLER: Next.

17 MR. STEVEN BERGER: As to DJ 490, the --

18 CHAIRMAN RIGLER: Other than the continuing
19 objection, the first specific objection by an individual
20 Applicant will occur at 490?

21 MR. REYNOLDS: Yes.

22 CHAIRMAN RIGLER: That is just to keep the record
23 straight.

24 Let me go back and we will admit at this
25 time Department Exhibits 24, 25, 34 and 40 --

1 MR. REYNOLDS: You said No. 40.

2 CHAIRMAN RIGLER: Wasn't that in the list?
3 34 and 34A. I guess, I don't know what 40 is. Was 40
4 included in that list?

5 I had 40 marked as deferred, and I thought
6 Mr. Aiuvalasit addressed that.

7 MR. CHARNO: He had addressed it. It is our
8 understanding that Ohio Edison is still trying to pin
9 down the existence of a contract with respect to 40. We
10 did not move 40 at this time.

11 CHAIRMAN RIGLER: All right.

12 We will admit 24, 25, 34, and then we will admit
13 481 through 487 and 489.

14 MR. REYNOLDS: I hadn't put on the record the
15 continuing objection of all Applicants other than Ohio
16 Edison with respect to those documents.

17 CHAIRMAN RIGLER: The continuing objection will
18 be overruled with respect to those documents.

19 (The documents previously
20 marked DJ Exhibits 24, 25, 34,
21 481 thru 487, and 489, for
22 identification, were received
23 in evidence.)

24 MR. STEVEN BERGER: As to DJ 490, the
25 Department's September 5 filing contained an allegation

1 stating that in 1965, Ohio Edison entered into an
2 agreement with Ohio Power Company that should Buckeye
3 Power, Inc., be dissolved Rural Electric Distribution
4 Cooperatives purchasing Buckeye generated power from Ohio
5 Power through Ohio Edison would become Ohio Edison
6 customers again.

7 The Department's offer of proof on DJ 490
8 includes in substance the charge contained in their
9 September 5 filing which I just quoted.

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1 As I understand it, the entire basis for that
2 charge is contained in a single paragraph in this document.
3 That, I believe, is on page two of the document, in
4 paragraph numbered 8.

5 If I might read it, it says, Mr. Dilsmeier asked
6 what would happen if we proceed with the buy-sell arrangement
7 with Ohio Power, and at some future date the REC were disbanded,
8 because they were not economic.

9 Mr. Laktow and Mr. Martinka agreed in some
10 cases the load question would refer back to Ohio Edison.

11 It is my contention that solely on the basis
12 of this paragraph or memorandum, the Department of Justice
13 falls short of making a prima facie case with regard to the
14 charge contained in the September 5 filing.

15 I don't think it permits the inference the Department
16 would have the Board to draw from this.

17 I don't think proposed findings and conclusions
18 on this charge could be sustained on the sole basis of para-
19 graph 8, page two of DJ-490.
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1 MR. STEVEN BERGER: Mr. Frederickson's
2 deposition was taken in this case, and beyond attesting
3 to the fact that the memorandum is an accurate reflection
4 of what was said by the parties, that is as far as the
5 Department position went.

6 I don't think it makes out an agreement. It
7 represents a consensus of the parties as to what would
8 happen.

9 As to 491, 493 and 494, which are the draft
10 agreements of the Ohio Power, Ohio Edison agreement, I think
11 they are drafts and nothing more than that, and since a
12 final agreement was executed between the parties that
13 should represent the evidence in this proceeding.

14 Now, as to Miss McGovern and the notations
15 that she made on these drafts which the Department of
16 Justice is relying upon, principally, in their offers of
17 proof, I don't believe that the statements contained there
18 by Miss McGovern, a staff attorney for Ohio Edison, can be
19 attributed to the company, to the extent that they are
20 reflective of intent and purpose that the Department of
21 Justice would rely upon.

22 As to 495 and 496, the Department's has offered
23 both of these documents to show that the Buckeye member
24 cooperatives were required, as a quid pro quo for the
25 investor-owned utilities' participation in the Buckeye project

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1 to endorse legislation which would restrict member cooperatives
2 from selling power at wholesale to municipalities which were
3 receiving at least 50 percent of their Buckeye Power supply
4 from the respective investor-owned utilities.

5 I think the offer of proof fails, and the reason
6 I believe it fails, is because I don't think we are involved
7 with a quid pro quo at all, but rather from the face of
8 the document, the co-ops state that, and I'm quoting from the
9 second paragraph on the first page, second sentence states,
10 "throughout these negotiations, however we" -- being the
11 cooperatives -- "have been motivated by the desire that power
12 and energy involving economies of scale be made available
13 to the Buckeye members at a reasonable cost and that steps
14 be taken to eliminate to the greatest extent practicable
15 the construction and operation of duplicate facilities."

16 I don't think in any place in this document
17 is it reflected that it was to be a quid pro quo for the
18 Buckeye project.

19 The Department further offered these documents,
20 that is 495 and 496, for the purpose of showing that in the
21 eyes of Buckeye and its member cooperatives, there was
22 no existing legislation or regulation which would prohibit
23 Buckeye member cooperatives from serving at wholesale,
24 municipal customers, then being served by investor-owned
25 utilities.

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1 Now, if the reference is to the proposed
2 legislation contained on page 2, which it was agreed that they
3 would support, the fact that they were ready to support that
4 legislation couldn't seem to prove or to tend to prove that
5 they were unaware of other legislation in the state
6 which might affect the ability of the cooperatives to serve
7 municipalities then being served by investor-owned systems.

8 I didn't get from the offers of proof from the
9 Department the reason why it is necessary to put in both
10 of these documents.

11 I recognize the fact that they have different
12 letterheads. I don't know the significance of it.

13 MR. CHAPNO: Until we received the stipulation we
14 only had identified the letter from the Ohio Rural Electric
15 Cooperatives which does not make specific reference to
16 Bickeye.

17 You have two organizations which may or may not
18 overlap in membership.

19 The only one we could associate with the company
20 is 495 initially, except that it came out of the files.

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1 MR. STEVEN BERGER: Okay.

2 Or 497, the offer of proof states that the
3 Department would offer the document to show that in
4 January 1967, seven private utilities in Ohio, including
5 Toledo Edison and Ohio Edison, agreed in a confidential,
6 undisclosed agreement that present municipal wholesale
7 loads would remain with existing suppliers and this
8 confidential agreement was a precondition for seeking
9 territorial legislation at some point in the future.

10 The Chairman queried as to why it was thought
11 to be a precondition, since the conditions for a
12 territorial integrity law set forth in the attachment to
13 the letter has in it a provision specifically providing
14 for that to be included within the law.

15 It would seem that the suggestion that it was a
16 precondition to seeking the legislation is belied also by the
17 Department of Justice 495 and 496, which contains the
18 vary clause referred to with regard to municipal systems
19 as part of the proposed legislation.

20 I'm referring now to the numbered paragraph 1
21 on page 2 of DJ 496 and 496.

22 As to all of the documents, 495, 496, and 497, as
23 well, I believe they are all protected by the Moore-
24 Pennington Doctrine. Notwithstanding the fact that they
25 are not letters addressed to or presented to a governmental

1 body, they nonetheless deal with the question of efforts
2 to influence a governmental body and are protected by
3 the doctrine.

4 As to DJ 501, the Department offers this
5 document to show that Pennsylvania Power's attempt to
6 obtain a long-term lease of Grove City's electric system
7 in 1966 and that Pennsylvania Power did not compete with
8 any other investor-owned utility for Grove City's whole-
9 sale load.

10 Taking the offers in reverse order, as to the
11 offer with regard to Pennsylvania Power not competing with
12 regard to wholesale, I take it that the Department is relying
13 upon the last paragraph on page 1 of DJ 501 that carries
14 over to page 2, and quoting from that relevant part, I
15 mention Mr. Edgely of Pennsylvania Power, asked Mr. Kedler,
16 who is the Borough solicitor of Grove City if he had given
17 any further thought to our original discussions concerning
18 whether it is necessary for the Borough to place for bids the
19 leasing of its electric utility system.

20 He stated that in his opinion the Borough
21 could lease its electric utility system without the
22 necessity of placing the same for bids and he would also --
23 he would so advise the Borough council and if they requested
24 his opinion in writing, he would submit it and forward a
25 copy to me.

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1 The basis of his opinion is that bidding is
2 required to allow for competitive pricing. In this case,
3 the only one who could bid for the electric service is
4 Penn Power since no other utility is in competition with
5 Penn Power in the area of the Borough.

6 Therefore, a bid of the property would be useless.

7 I submit it was Mr. Medler from Grove City
8 who was speaking with regard to the question of
9 competition at wholesale, no one from Pennsylvania
10 Power Company, and the offer should fail with regard to
11 that.

12 As to the question of the offer going to the
13 question of Penn Power's attempt to obtain a long-term
14 lease of Grove City's electric system in 1966, I know of
15 nowhere in this case that the Department has made an
16 allegation with regard to the events surrounding that, and
17 I don't believe it is relevant to any of the issues in this
18 proceeding.

19 I believe that concludes my remarks.

20 The only other comment I would have, Your Honor,
21 is with regard to 507, the offer on that states that
22 the Department would offer DJ 507 to demonstrate the extent
23 to which and the circumstances under which Ohio Edison and
24 Pennsylvania Power engage in coordinated operation with other
25 utilities.

1 We would offer it for the amounts of wholesale
2 sales to municipals and cooperatives and to demonstrate
3 transmission services performed for and on behalf of
4 other utilities.

5 We would offer it for the terms and expiration
6 dates of the Ohio Edison-Pennsylvania Power contracts with
7 municipal utilities and for the terms and dates of Ohio
8 Edison's contracts with cooperatives prior to the Buckeye
9 agreement.

10 I raise it only in the sense if it is
11 duplicative, I don't see the need for it. I know
12 there is much in this record that goes to what the
13 Department has already offered these answers for already
14 and don't know the necessity of cluttering up the
15 record with this.

16 MR. GREENSLADE: With regard to Document No. 508,
17 I would like to enter an objection on behalf of Illuminating
18 Company on the ground that the document is duplicative
19 of material already on file with the Board, and in that
20 respect echo the same objection as was just made by
21 Mr. Berger with regard to the supplemental interrogatories
22 that were filed by Ohio Edison Company and Pennsylvania
23 Power Company.

24 CHAIRMAN RIGLER: Before we hear the objection
25 on 508, did the Department have any response on the

1 objections made through No. 502?

2 MR. CHARNO: Yes, we do.

3 It would be the Department's position with
4 respect to 488 and 490 that these documents do
5 rise to a prima facie showing and absent any evidence to
6 the contrary, they do meet the Department's offers, and
7 that the Applicant's objections would go to the weight
8 of those documents.

9 With respect to 491, 493 and 494, Ohio Edison
10 has taken a position on brief that the purpose of
11 certain language alleged by the Department be restrictive
12 in the Buckeye Agreements was placed in there solely to
13 accord with state law.

14 We introduced these drafts, the marginal
15 notations, some of which are quotations and some of
16 which are analyses of accompanying language to show that
17 there was a clear intent prior to the execution of the
18 document to insert restrictive provisions and that it had
19 no relationship whatsoever to complying with state law.

20 We would argue with respect to 495 and 496 that
21 it is illogical to -- pardon me, the logical inference of
22 seeking legislation is that what you seek legislation to
23 accomplish has not previously been accomplished.

24 Otherwise, it would seem a total and complete
25 waste of time.

1 With respect to 497, we would only note that
2 495 and 496 constitute a commitment by the co-ops with
3 respect to service areas.

4 497 is the consensus of investor-owned
5 utilities among themselves and is not to be revealed to
6 the cooperatives.

7 With respect to 501, the Department argues
8 that long-term lease is in the nature of an acquisition.
9 We have no specific allegation in our interrogatory
10 answers, but we have referred to the acquisitions of
11 the system on brief, I believe, and certainly to the extent
12 we are dealing with Ohio Edison and Pennsylvania Power
13 as a combined entity, the acquisition policy that is
14 clearly evident in Ohio Edison's dealings, the fact that
15 the same officers set policy for the two companies, I
16 think could be imputed to Pennsylvania Power.

17 CHAIRMAN RIGLER: How about Mr. Berger's point
18 that the offer of proof fails as to Penn Power being
19 the only competitor in the area, because it is Mr. Kedler
20 speaking and not a representative of Penn Power?

21 MR. CHARNO: If the nature of his objection is
22 hearsay, I would say this is an admission of a party.

23 CHAIRMAN RIGLER: 507.

24 MR. CHARNO: I'm sorry, I thought you said up
25 to 502.

1 CHAIRMAN RIGLER: I did. The objection to 488, the
2 objection to 490, objection to 491, 492 and 494 are
3 overruled. We will accept into evidence at this time
4 Department Exhibits 488, 490 through 494.

5 (The documents previously
6 marked DJ Exhibits 488, and
7 490 thru 494 for identification,
8 were received in evidence.)

9 MR. REYNOLDS: Mr. Chairman, can I make the
10 continuing objection on behalf of ^{all} Applicants but Ohio
11 Edison with respect to those documents you last mentioned?

12 CHAIRMAN RIGLER: Noted.

13 The objections to 495, 496, and 497 are sustained.
14 They will be excluded from evidence.

15 498, 499, and 500 will be admitted into
16 evidence at this time.

17 (The documents previously
18 marked DJ Exhibits 498, 499, and
19 500, for identification, were
20 received in evidence.)

21 MR. REYNOLDS: As to 498 to 500, I make a
22 continuing objection on behalf of all Applicants but Ohio
23 Edison.

24 CHAIRMAN RIGLER: Overruled.

25 As to 501, the offer of proof will be rejected as

1 whether Penn Power regarded itself as the sole competitor
2 in the Grove City Area.

3 And the remainder of the objection will be
4 overruled.

5 It will be admitted into evidence.

6 (The document previously
7 marked DJ 501 for identifica-
8 tion, was received in evidence.)

9 MR. REYNOLDS: As to 501, I make the continuing
10 objection on behalf of all Applicants other than Pennsylvania
11 Power Company.

12 CHAIRMAN RIGLER: That is overruled.
13 We will also admit 502 into evidence at this
14 time.

15 MR. REYNOLDS: Same continuing objection on 502.

16 CHAIRMAN RIGLER: Overruled

17 (The document previously
18 marked DJ 502 for identifica-
19 tion, was received in evidence.)

20 CHAIRMAN RIGLER: Mr. Greenslade had just objected
21 to 508.

22 MR. REYNOLDS: 507.

23 MR. GREENSLADE: 508.

24 CHAIRMAN RIGLER: What is the next objection after
25 that?

1 MR. KLEE: Your Honor, with respect to
2 document marked for identification as DJ 511, again it is a
3 document entitled "Forecast for Electric Generation and
4 Transmission, 1976 to 1986."

5 The material contained therein is essentially
6 redundant. It has been in one form or another introduced
7 into evidence previously. It does not go to establish
8 anything that would be relevant to this proceeding, and for
9 that reason it should not be introduced into evidence.

10 With respect to the document marked for identifica-
11 tion as DJ 512 --

12 MR. REYNOLDS: On Exhibit 512, the Department
13 stated that its offer of proof as to internal document
14 documents 18000081 through 83, 18000079, 76, 70 through 72,
15 are introduced to show that in 1964, Ohio Power refused
16 to serve the City of Bowling Green, a wholesale customer
17 of Toledo Edison.

18 I would first point out to the Board that as
19 to Exhibits 18000081, 82, 83, these are documents dated
20 February 5, '57. 79 is dated February 14, '57. 76 is
21 dated September 5, '61. And then we get up a little closer
22 in documents 70, 71, and 72. They are all dated January
23 of '64. All of which dates precede the September 1, '65
24 period which has been the focus of this proceeding up to
25 this point, and I don't see how these documents are relevant
to any matters within that time period.

1 Also I don't understand how in terms of the
2 issues in this case the refusal by Ohio Power to serve
3 Bowling Green is a relevant issue. It is certainly not
4 in the time period that the documents are talking about.

5 Documents 18000081 through 83 are also being
6 tendered, the Department states, merely to show that Bowling
7 Green was a wholesale customer of Toledo Edison and was
8 located physically so that service from Ohio Power
9 would be feasible and yet I note in the third paragraph
10 on the first page of the internal document ending in the
11 number 81 that the sentence begins, "We recognize that
12 at present inadequate capacity is available by Ohio Power
13 to serve Bowling Green's existing load requirements."

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1 I question whether these documents would even
2 support that offer that the Department has made.

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3 Then going going to documents 10000044 and 45, the
4 offer is to show the events giving impetus to the formulation
5 of the Buckeye agreement and the concerns which led to
6 the formalization of a territorial allocation agreement
7 between Ohio Power and Ohio Edison, between Ohio Power
8 and Toledo Edison.

9 I don't see anything in the referenced documents
10 that begins to suggest what the Department seems to infer
11 from the correspondence that is set forth there.

12 I also note that these are documents that are
13 dated April 18, '62, and -- those two are April 18, '62, which
14 which gain some period of time before September 1, '65.

15 Moving to the next three documents which bear
16 the internal numbers 1000046 through 48, they are introduced
17 as showing refusal by Ohio Power to bid on a system located
18 in Toledo Edison's territory, and we offer this in support
19 of our allegation that the territorial agreement was
20 formalized in maps in approximately 1965.

21 I just fail to see how 196w documents would begin
22 to suggest any activity in '65.

23 Certainly, these documents don't reflect any
24 activity that might occur in '65 and I don't see anything
25 in the record that would begin to suggest an agreement between

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1 Ohio Power and Toledo Edison as to formalized territorial
2 maps, edcept what has been marked as Department of Justice
3 Exhibit 536, which on its face is nothing more than a map
4 of facilities -- of the respective facilities or a map
5 depicting the respective facilities of Ohio Power Company
6 and Toledo Edison Company in the area of Fremont and
7 does not have anything that would reflect the City of
8 Pemberville nor does that map suggest any kind of formalized
9 territorial agreement in '65 or any other time.

10 Then we have as the last document in this
11 package, the first one that is indicated within the time
12 period, September 1, '65, and later, and that is internal
13 document 18000062, which is offered to show a refusal
14 by Toledo Edison to bid on providing wholesale service to
15 the Village of Cygnet, which at that time was a wholesale
16 customer located within Ohio Power's territory under the
17 territorial allocation agreement between Ohio Power and
18 Toledo Edison.

19 I don't see anything in this document that
20 suggests such a territorial agreement between Ohio Power
21 and Toledo Edison and, again, I refer to what has been
22 marked as DJ Exhibit 536, which on its face is nothing
23 more than a map of facilities located in the Fremont
24 area, which is in the area between Toledo Edison and Ohio
25 Power

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1 I don't see how from that material there is any
2 basis for drawing the inference of territorial agreements'
3 that would impact on the Village of Cygnat as the
4 Department intends to believe is the case in
5 connection with the February 23, '66 document.

6 MR. KLEE: Your Honor, as to the document
7 marked for identification as DJ-545, the company objects
8 on the basis that the face of the document does not support
9 Mr. Charno's offer of proof which, as I understand it, is that
10 this document is being used to support an alleged --
11 Toledo Edison's alleged corporate policy of acquisitions.

12 I see nothing in this document which in any
13 way indicates a general policy of Toledo Edison to do that.

14 As to the documents 546 through 550, Toledo
15 Edison Company again objects on the ground that these
16 documents fail to conform with Mr. Charno's offer of proof
17 and these documents do not conform to it, because at most
18 they show that -- they discuss a possible exchange of
19 customers should there be an annexation which is quite
20 a different thing from his offer of proof which is, as I
21 understand it, is a continued operation of a territorial
22 agreement between Toledo Edison Company and Ohio Power.
23 There must be something more to link up any such documents
24 as this to any such allegation.

25 The documents do not show that there is no

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1 competition in fringe areas, due to the fear that such
2 competition would have an effect upon the rates throughout
3 either company's service areas.

4 I find nothing on any of these documents which
5 would indicate anything along those lines.

6 Your Honor, with respect to the documents
7 marked for identification as DOJ numbers 541 through 557,
8 the Department of Justice has asked the Toledo Edison
9 Company to enter into certain stipulations with respect
10 these documents.

11 As of this time the company has been unable
12 to ascertain the requested information and that while
13 we are trying to get it as quickly as possible, we would
14 believe it would be more appropriate to defer the
15 introduction of these documents until such time as the company
16 has been able to find the information requested.

17 MR. CHARNO: Which document numbers is that?

18 MR. KLEE: 541 through 557.

19 Correct me, if I am wrong.

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1 MR. CHARNO: That is true with respect to 557,
2 which is unauthored, certainly. We would have no
3 objection deferring that.

4 The same would be true with respect to 553, and
5 551, 550, 549, 547, and 544, all of which there is a problem
6 of authorship.

7 We have no objection to deferring those.

8 CHAIRMAN RIGLER: Do you want to respond on 507, 08,
9 11 and 12?

10 MR. CHARNO: Yes, I do.

11 With respect to both 507 and 508, the Department
12 does not believe those documents to be duplicative.
13 This is the only source at any point in the record of
14 which we were aware where the volume of wheeling which is
15 performed by one company for another one is available.
16 And the coordination that takes place under the Ohio Valley
17 Electric Company agreements, the Akron parties' agreement,
18 the CAPCO transmission facilities agreement, and the
19 Mitch parties' agreement to be quantified for these two
20 companies.

21 This material is already in evidence for the
22 remaining CAPCO members.

23 With respect to 511, I think it comes as a bit of
24 a surprise that the relationships of fossil and nuclear
25 units are not at all relevant to this proceeding in view

1 of the fact that Applicants spent several hours cross-
2 examining the Department's expert with respect to this
3 particular point and constructed a complex hypothetical.

4 We refer to 30463, which is the last series
5 of pages on the availability and utility of different
6 types of fuels and it states, "In view of current
7 requirements for effluent controls at fossil fuel plants,
8 the high capital costs for nuclear power plant is not sig-
9 nificantly greater than coal-fired plants. Nuclear Fuel
10 presently provides the least costly energy source for
11 large base-load generating plants." That supports the
12 underlying factual data in the report.

13 I offer that as an example of material which I
14 do not believe to be in the record, certainly not in that
15 detail, and certainly not as of 1974, looking ahead for 10
16 years, and not stated, I believe, as to Toledo Edison.

17 I think the Applicants have raised that for one
18 thing as an issue and they are in a poor position to maintain
19 that it is irrelevant at this point.

20 I object to the characterization of this
21 document being cumulative in nature.

22 With respect to DJ 512 for identification, we
23 note in addition to 536, and 546 through 550 that DJ 519
24 makes reference to agreements between -- territorial
25 agreements between various Ohio utilities, including

1 Toledo Edison and Ohio Power.

2 This is in the context of Ohio Edison's attempt
3 to convince Columbus and Southern that it should enter
4 such an agreement with Ohio Edison.

5 MR. REYNOLDS: Could you read that back, please?

6 CHAIRMAN RIGLER: On 512, would you respond to the
7 allegations that it doesn't cover dealing with Buckeye?
8 Which was part of the offer.

9 MR. CHARNO: I would refer to the second
10 paragraph on 18000044.

11 CHAIRMAN RIGLER: That refers to rural electric
12 cooperatives generally. That doesn't refer to Buckeye
13 necessarily.

14 MR. CHARNO: Buckeye was not in existence yet,
15 and rural electric cooperatives generally became Buckeye
16 insofar as they are Ohio rural electric cooperatives.

17 CHAIRMAN RIGLER: You better amend your offer if
18 that is your intention. I don't see how it could
19 demonstrate a relationship with an organization that
20 isn't even in existence.

21 MR. CHARNO: I believe we did offer that
22 prospectively.

23 We can expand it. The Department's offer at 6276
24 states that the Department would offer 44 and 45 to show
25 the events and it should be the circumstances giving

1 impetus to the formulation of the Buckeye agreement.

2 We will expand that by noting that with the
3 possibility of -- one of the possibilities that Ohio Power
4 feared was that the municipal systems would become linked
5 in the contemplated cooperative generation and transmission
6 system and that the investor-owned utilities would lose not
7 only the cooperative loads, but also the municipal loads,
8 and that the restrictions in the Buckeye agreement
9 were ultimately adopted to prevent exactly that from
10 happening.

11 MR. REYNOLDS: Mr. Chairman --

12 MR. CHARNO: We would note further that
13 these arguments -- these positions of Ohio Power are
14 evidenced in Exhibit 200, which we should move into
15 evidence concurrently with these documents.

16 That was the exhibit deferred in Applicant's
17 request including the archive documents.

18 MR. REYNOLDS: In order to make things clear
19 and not coming back after a long string of objections,
20 perhaps it should be pointed out by Mr. Charno who Mr.
21 Prentiss is and who Mr. Patterson is, since we are being
22 told that this document is supposed to infer some intent
23 to the Applicants with regard to their participation in
24 the Buckeye agreement prospectively.

25 It would seem given that it may be relevant to

1 advise the Board at this time who those individuals are.

2 MR. CHARNO: We requested 62 and 63 Moody's
3 Public Utilities Officers List for Ohio Power, American
4 Electric Power for the relevants both with respect to
5 this Exhibit 512 and with respect -- I'm not sure which one --

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1 CHAIRMAN RIGLER: The point is they are employees
2 of Ohio Power and not one of the Applicants.

3 MR. CHARNO: That is certainly true.

4 CHAIRMAN RIGLER: That was your point,
5 Mr. Reynolds?

6 MR. REYNOLDS: Yes, sir.

7 CHAIRMAN RIGLER: How do you respond as to the
8 Applicants' objections as to the time period covered by the
9 document?

10 MR. CHARNO: With respect to '62, I think it is
11 necessary to go that far back to reach the genesis of the --
12 of what became the Buckeye contract and the restrictions
13 that are contained in that contract. This is when that
14 was first coming to rise.

15 These two pages became supportive of the
16 documents contained in Exhibit 200, which are far more explicit.
17 In terms of Ohio Power's fears which were communicated to all
18 of the other investor-owned utilities and along with the
19 suggestion that what ultimately became the Buckeye arrange-
20 ment be initiated.

21 CHAIRMAN RIGLER: All right. We will receive into
22 evidence Exhibit 503 through 511 overruling the objections
23 to 507, 508 and 511.

24 We will defer ruling on 512.

25 We will receive into evidence 513 through 543.

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1 MR. REYNOLDS: On 503, the continuing objection goes
2 to all companies, but Pennsylvania Power Company.

3 On 504 through 506, the continuing objection
4 goes to all companies but the Toledo Edison Company.

5 On 507 to all companies, but Ohio Edison and
6 Pennsylvania Power.

7 508 through 510, all companies but Cleveland
8 Electric Illuminating Company.

9 On 511 all companies, but the Toledo Edison
10 Company.

11 On 513 through 517, all companies, but Ohio
12 Edison and Toledo Edison.

13 On 518 through 532, all companies, but
14 Ohio Edison.

15 On 533 all companies, but Ohio Edison and
16 Toledo Edison and that would be the same for 534, 35.

17 For 536, all companies but Toledo Edison
18 Company.

19 537 through 540 all companies but Ohio Edison
20 and Toledo Edison.

21 And for 541 through 543 all companies, but
22 Toledo Edison.

23 CHAIRMAN RIGLER: The continuing objection is
24 overruled.

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(The documents heretofore
marked Exhibits DJ-503
through 511 for identification
were received in evidence.)

(The documents heretofore
marked Exhibits DJ-513
through 543 for identification
were received in evidence.)

CHAIRMAN RIGLER: We will reconvene tomorrow
morning at 11 a.m.,

(Whereupon, at 4:50 p.m., the hearing
was adjourned, to be reconvened at 11:00 a.m., on Tuesday,
March 9

End