



NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING CO.,

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

Docket Nos.

50-346A
50-500A
50-501A

and

CLEVELAND ELECTRIC ILLUMINATING
CO., et al.

50-440A
50-441A

(Perry Nuclear Power Plant, Units 1 & 2)

Place - Silver Spring, Maryland

Date - Thursday, April 1, 1976

Pages -8068

7922

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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TOLEDO EDISON COMPANY and	:	50-346A
CLEVELAND ELECTRIC ILLUMINATING CO.:	:	50-500A
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(Davis-Besse Nuclear Power Station :	:	
Units 1, 2 and 3)	:	
	:	
and	:	
	:	
CLEVELAND ELECTRIC ILLUMINATING CO.:	:	50-440A
<u>et al.</u>	:	50-441A
	:	
(Perry Nuclear Power Plant :	:	
Units 1 and 2)	:	
	:	

First Floor Hearing Room
7915 Eastern Avenue
Silver Spring, Maryland
Thursday, April 1, 1976

The hearing in the above-entitled matter was
reconvened, pursuant to adjournment, at 11:00 a. m.

BEFORE:

MR. DOUGLAS RISLER, Chairman

MR. JOHN PRYSIAK, Member

MR. IVAN SMITH, Member

APPEARANCES:

(As heretofore noted.)

C O N T E N T S

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>Verdict</u>
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William M. Lewis, Jr.	7939	7975	8040	8014	
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<u>Exhibits</u>	<u>For Identification</u>	<u>In Evidence</u>
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Staff Exhibit 210,
Letter dated November 13,
1973, to Mr. Cummings
from Mr. Craig

7934

7934

Applicants Exhibit 103(OE)
(IE-19, ltr dated Aug. 24,
1974 from Mr. Mansfield to
Mr. Williams.)

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Applicant's Exhibit 109 (OE)
(Letter dated August 30, 1974,
from Mr. Dawson to Mr.
Williams)

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DJ 200

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DJ 152

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DJ 536

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1 Most of these are based upon the fact that
2 the red-lining procedures as they developed during the
3 course of the hearing sometimes are not done with a
4 limited number of documents in the Staff's collection
5 case, and I want to address approximately a half dozen of
6 these instances.

7 With respect to Staff Exhibit No. 17, it has not
8 been red-lined as of yet, and we would request all six
9 pages of that exhibit be red-lined at this time.

10 CHAIRMAN RIGLER: All right.

11 MR. LESBY: Also with respect to Staff Exhibit
12 No. 23, we would request only that the first three paragraphs
13 on page 1 up to the signature line be red-lined.

14 CHAIRMAN RIGLER: What page is that?

15 MR. LESBY: Page 1.

16 Now with respect to Staff Exhibit No. 31, marking
17 was deferred due to copy legibility. However, that same
18 document was received in evidence as DF Exhibit No. 12.

19 Therefore, the Staff would withdraw all markings
20 previously marked and identified as 31.

21 Staff Exhibit No. 32 is an attachment to Staff
22 Exhibit No. 31, and we would request that all eight pages
23 of that Exhibit 32 be red-lined.

24 With respect to Staff Exhibit No. 31, we would
25 request that it be red-lined as follows:

All of page 1 and page 2, paragraph 11 of page 1, paragraph 13 of page 4, and the signature appearing on page 5.

CHAIRMAN RIGLER: Which paragraph on page 41
MR. LESSY: Paragraph 13.

Now, Staff Exhibit 44 is the R. W. Beck and Associates Power Supply Study dated July 1975, which has not to date been red-lined. We would like to ask that the following provisions be red-lined.

MR. SMITH: Which exhibits
MR. LESSY: 41.

We would request that with respect to the very first page of the study, which is a transmittal letter dated July 3, 1975 from R. W. Beck to the Wholesale Consumers of Ohio Edison be red-lined in its entirety.

We would request that pages I-4 inclusive to I-6 all be red-lined, that is the introduction and summary of the study.

We would request that Table IV-1, entitled "CIPCO Capacity Cost Analysis Factors, CIPCO-Ohio Edison" be red-lined, the table be red-lined in its entirety.

Off the record.

(Discussion off the record.)

CHAIRMAN RIGLER: On the record.

MR. LESSY: As we read Table IV-4, this reflects

the cost comparison factors of coal vs. nuclear units per kilowatt with the cost factors of coal being substantially higher.

We would now request that page V-2 of page V-2 up to item 3 be red-lined.

With respect to the table which appears on page V-2 of particular interest is the chart "Reserve Percentage Required of WCOB Imposing the CRPOB Reserve of Probability Formula."

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That table indicates extremely high reserves required of CCR using the 1970 formula. It shows 133.9 percent in 1976 and 133.3 percent in 1977, at least.

The table on page 7-4, applying the same formula to Ohio Edison, indicates reserves substantially less of approximately 17.6 percent in 1976 and 13.1 percent in 1977, and it continues.

MR. REYNOLDS: Mr. Chairman, my understanding was that if staff intended the Board to make specific findings as to certain matters, it would be helpful to have them now.

All I heard was what the tables showed. Is Mr. Lessy suggesting that there is some finding or conclusion to be drawn from that and, if so, could we put it on the record?

CHAIRMAN RIGLER: I think he has been sufficiently helpful for red-lining purposes, first of all in complying with the red-lining rule he has designated the portions he wants us to look at. Now he is going beyond that and indicating the findings he would draw from that.

It seems to me that he has described those findings in perfectly comprehensive form thus far.

MR. REYNOLDS: All I thought he did was describe what the tables showed without indicating that the conclusions

were that he expected to be done.

MR. LEE: 1-7. Beginning with paragraph 1-7, through paragraph 1-7, up to the last paragraph, 1-7, of the report, be read.

CHAIRMAN FISHER: 1-7 through 1-7 through --

MR. LEE: 1-7.

CHAIRMAN FISHER: 1-7 through 1-7 through --

MR. LEE: Yes, but on 1-7 through 1-7 through paragraph 1-7. Numbered 1-7.

These two pages discuss the Edison formula whereby charges to energy on a unit by unit basis would be determined.

Staff used these two pages as a basis for the proposition that Ohio Edison's proposal with respect to access to nuclear capacity is that WCOE be required to purchase 50 megawatts of capacity from the coal capacity program of Ohio Edison over the next ten years. Ohio Edison would pay operating and maintenance costs based on the formula based upon WCOE's cost plus 50 percent of the difference between Ohio Edison's fixed cost and WCOE's.

Staff feels that this is inconsistent with the recognized concept of charges based upon cost of services, for here charges are based on the cost of WCOE's service.

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1 plus the projected cost of 50 percent of someone else's
2 services.

3 Now, finally, there is an appendix to the study
4 in which certain correspondence between Ohio Edison and
5 WCOE is set forth.

6 We have two letters we would like red-lined.

7 The first letter that we would like red-lined is
8 dated February 28, 1975, and it is a letter from Lynn
9 Firestone of Ohio Edison to Messrs. Duncan and Cheesman.

10 It is a three-page letter and we would like all three
11 pages red-lined.

12 MR. REYNOLDS: Is this part of the study?

13 MR. LESSY: Yes.

14 MR. REYNOLDS: Could I have it again?

15 MR. LESSY: The last section of the study is an
16 appendix of correspondence. We would like two letters in that
17 red-lined. The first is a letter dated 2-28-75 from Lynn
18 Firestone to Messrs. Duncan and Cheesman, and we would like all three
19 pages of that letter red-lined.

20 Of particular note is paragraph 2 on page 2.

21 The second final matter is a June 17, 1975, letter
22 from Lynn Firestone to Messrs. Cheesman, Duncan and Brown.

23 We would ask that all five pages of that letter
24 be red-lined in its entirety and would note particular reference
25 to item 2 on page 2.

CHIEF OF BUREAU: That was the date of that meeting
in 1934: 4-17-34.

Mr. Golding is the one who was the one of
the Board which have previously been discussed in the
particular.

The Board may recall that on April 14, 1934
a letter from Howard A. Dunlap, General Manager, Executive
Manager of Buckeye Power, Incorporated, to Mr. William
W. Craig, City Manager of Nevada Falls, Calif., was
received in evidence.

Ex 3

the first sentence of that letter said:

"In your letter of November 13, 1973, you inquired as to the possibility of Baker & Berry, Inc. supplying the City of Newton Falls with supplemental electric power and energy."

Upon request of counsel for Ohio Edison we obtained, although with some difficulty, the Staff -- the letter of November 13, 1973 from Mr. Craig to Mr. Cummings, and we would ask that this be admitted as Staff Exhibit No. 210, and ask that it also be received into evidence.

MR. STEVEN BERGER: I think the office with regard to this document would simply be for purposes of completeness of the correspondence that was referred to earlier as Staff Exhibit 84?

MR. LESSEY: Are you asking us to take an offer of proof?

MR. STEVEN BERGER: I am asking you to take it if it is beyond what I have just stated.

MR. LESSEY: All right. It is for purposes of completeness.

In addition, upon reading the document, this Staff Exhibit 84 from Buckeye to Newton Falls, as I mentioned, begins:

"In reference to your letter of 11-13-73" -- this is that letter. This letter indicates, Staff Exhibit 210,

1 that Newton Falls is an isolated electric system; that for
2 some time Newton Falls has been disappointed in the option of
3 buying power by supplemental generation; that Ohio
4 Edison has "not been enthusiastic as to the project";
5 and fourth, that therefore Newton Falls are seeking another
6 seller by writing to Buckeye.

7 MR. STEVEN BERGER: I think the offer made to
8 demonstrate that Ohio Edison has not been enthusiastic about
9 the prospect.

10 MR. LESSY: I would refer Mr. Berger to the third
11 sentence of paragraph 7, "Our local private utility has
12 for various reasons not been enthusiastic about the
13 project."

14 MR. STEVEN BERGER: There has been no evidence
15 in this proceeding as to any contact between Newton Falls
16 and Ohio Edison for purposes of obtaining bulk power
17 supply, an alternative bulk power supply.

18 I think this is an entirely self-serving statement
19 and has no weight whatsoever with regard to what Mr. Lessy
20 offers it for.

21 MR. LESSY: I think the whole testimony of Mr.
22 Craig goes to the effort of Newton Falls to obtain power from
23 Ohio Edison.

24 MR. STEVEN BERGER: To obtain power from Ohio Edison
25 pursuant to an interconnection agreement. There was

nothing that Mr. Craig had testified to with respect to the obtaining of alternative bulk power supply.

MR. LESSY: To way of obtaining power under this through an interconnection with another utility.

CHAIRMAN RIGLER: Certainly this letter reflects the perception of Mr. Craig with respect to the enthusiasm of OE.

MR. LESSY: That is all it was offered for.

CHAIRMAN RIGLER: I think that part of Mr. Berger's objection to the offer went to the fact that you were trying to say OE by using the perception of Mr. Craig.

But subsequent to that limitation, the objection would be overruled.

REYNOLDS: I would make a continuing objection on behalf of all Applicants other than Ohio Edison.

CHAIRMAN RIGLER: All right. That is overruled and we will admit Staff Exhibit 210 into evidence at this time.

(The document referred to was marked Staff Exhibit 210 for identification, and was received in evidence.)

MR. LESSY: Finally, Staff Exhibit No. 18 was a large colored CAPCO map and Applicants requested that the

coloring code with respect to that map be explained.

We have distributed an exhibit to the staff. Exhibit 18 which sets forth a detailed explanation of the colored dots used in the original.

We would ask that this amendment be placed on the map or we would be happy to, if the House is willing, that the coloring -- the colored dot scheme could be discerned.

CHAIRMAN RIGLER: It will be entered.

MR. REYNOLDS: I think there is only one copy of the colored map which the Board has. I would like a Xerox copy so that I would like to request counsel to order to make it clear which of my black dots should be blue, green or yellow.

Also it is my recollection that there were colored lines on the map. I am not sure what kind of scheme or color code is relevant to.

MR. LESBY: Okay. The reporters were given maybe two copies of the same map for the official record copy. So you might be able to obtain one from them.

Secondly, the other colors on the map were used to delimit each particular company.

For example, Ohio Edison was one color, Toledo Edison was another, and it didn't have any relevance to anything other than that demarcation. I think Mr. Gay felt

that it was obvious on its face and didn't need a legend.

CHAIRMAN RICHNER: The Board would prefer that you work with the reporter's official copy rather than the Board copy. If that is not satisfactory, give us a call and we will have the secretary make the Board's copy available to you.

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MR. REYNOLDS: I am sure that will be satisfactory. I understand that no significance will be attached to the colored lines, other than just the fact that they outline an area of one of the Applicants.

In other words, there is no particular significance we should attach to the colored lines on the map; is that correct? They are for identification purposes only?

MR. LESSY: The lines he drew and the significance of those lines, as opposed to the colors of those lines are reflected in Dr. Guy's testimony and his cross-examination.

MR. REYNOLDS: That wasn't my question.

MR. LESSY: Then I don't understand your question.

MR. REYNOLDS: My question is whether we are attaching any significance to the color of the -- the different colors of the lines.

MR. LESSY: No. The only difference in colors is that for each company a different color was used.

MR. REYNOLDS: All right.

MR. SMITH: They delineate territorial boundaries.

MR. REYNOLDS: That is the allegation.

MR. SMITH: That is the statement on the map. They delineate territorial boundaries as that statement on the map refers to territorial boundaries.

MR. REYNOLDS: Right. That is basically all I was

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1 trying to determine, is that if there was a color scheme
2 attached to the lines, it was only for identification
3 purposes and not for any other significance.

4 That is really all I was asking.

5 MR. SMITH: Yes. This is the first time that the
6 record has indicated that the exhibit actually is in color,
7 because when you produced the color you simply handed it
8 to the Board as what I thought at the time was just a
9 courtesy, but you did not at that time offer the colored
10 map into evidence.

11 See, what happened is that you offered NRC -- this
12 exhibit into evidence this way, blue and white. I suggested
13 that if color was available, you produce it. Well, all
14 you did was hand me a color map and you said nothing to the
15 reporter until this morning.

16 So the record, until what you have said this
17 morning, indicates a blue and white map is in evidence as the
18 official exhibit.

19 MR. LESSY: Okay.

20 MR. SMITH: That is simply my memory.

21 MR. LESSY: I believe you are correct. There
22 were originals, one original to the Board, I believe, and
23 three to the reporter, of a large map which was in color.

24 Now, copies of that, reduced copies of that, were
25 distributed to the parties.

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1 MR. SMITH: NRC-85 is a large color map?

2 MR. LESSY: Yes, sir. Thank you. It is a large
3 colored map which, as Dr. Gay testified, he worked upon,
4 basically a CAPCO map produced by Applicants in their
5 application or in the Attorney General's questions.

6 That concludes the housekeeping items for Staff.

7 CHAIRMAN RICHER: Is the Department ready to
8 proceed?

9 MR. CHASE: It is.

10 CHAIRMAN RICHER: Mr. Lewis, we will remind you on
11 the record that you are still under oath in these proceedings.
12 Whereupon,

13 WILLIAM M. LEWIS, JR.
14 was recalled as a witness and, having been previously
15 duly sworn, was examined and testified further as follows:

16 DIRECT EXAMINATION

17 BY MR. MELVIN BERGER:

18 Q Mr. Lewis, do you work as a consulting engineer
19 for the City of Orrville?

20 A Yes.

21 Q Do you recall when you were first hired to do
22 consulting work for Orrville?

23 A Yes, I was first hired in 1960.

24 Q At that time, how was Orrville meeting its
25 bulk power supply requirements?

Lwd

1 A The City of Orrville at that time and still at
2 this time has an isolated generating system to provide its
3 bulk power requirements. It is not interconnected with
4 any other utility. Provides its own power requirements by
5 generation.

6 Q At the present time is Orrville constructing an
7 interconnection with another utility?

8 A Yes, it is.

9 Q With which utility?

10 A Ohio Power Company.

11 Q Do you know why Orrville decided to seek an
12 interconnection?

13 A Yes. Orrville decided to seek an interconnection
14 because it was experiencing a number of outages due to
15 problems in the generating units and also problems due to
16 weather conditions which would cause flooding of the
17 generating station and the loss of generation.

18 At various times the entire city has been blacked
19 out due to some technical problem or malfunction of
20 generating units and this may range from a period of perhaps
21 a half an hour to as much as four to six hours.

22 Then there have been occasions when there has been
23 heavy flooding and there is a water stream running very
24 close to the power plant and that stream overflows and shuts down
25 the entire generating station.

At one time I can remember Orrville was off without power for perhaps 26 to 48 hours.

Q Do you know when Orrville decided to seek an interconnection?

A Yes. To my knowledge, at least their consultation with me for an interconnection started back in 1968.

Q After Orrville decided to seek an interconnection, do you know if they contacted any of the CWPCC companies in the hope of securing such an interconnection?

A Yes, they did.

Q All right.

A They contacted Ohio Edison Company.

Q Do you know when they contacted Ohio Edison?

A They contacted Ohio Edison Company some days prior to June 11, 1973, because on that day -- on that day there was a meeting that I attended and some days prior to that the meeting was arranged.

Q Where was that meeting?

MR. REYNOLDS: Mr. Chairman, I would like to make a continuing objection on behalf of all Applicants other than Ohio Edison to the testimony.

CHAIRMAN RIGGS: Overruled.

BY MR. MELVIN BERGER:

Q Where was that meeting held?

A That meeting was held in Akron, Ohio, at the

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Office of the Ohio Edison Company.

Q Do you recall who was present at that meeting?

A Yes, I do. There was from Ohio Edison Company were present, and they were Mr. Mansfield, Mr. White, and a Mr. Firestone. There were three gentlemen present from the City of Orrville. One was Mr. Bolan, B-o-l-a-n, and Mr. Back, B-a-c-k, and a Mr. Williams, and then one of my engineers, Richard Chadcraft, and myself were present.

Q At this meeting did Orrville encounter any problems with regard to Ohio Edison's agreeing to give them an interconnection?

A Yes. I think that we encountered some problems, yes.

Q What were those problems?

A Well, those problems were in three different areas. They were in the area of facilities required by Ohio Edison for the interconnection. They were in the area of the terms of the interconnection agreement -- that is, problems as far as we were concerned about the type of power arrangements we were seeking, compared to what Ohio Edison was willing to provide, and then in the third area, it was a matter of their -- well, what I would characterize as "reluctance" to enter into an interconnection agreement.

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arl 1 Q You mentioned that one of the problem areas was
2 facilities requirements. Specifically what problems were
3 encountered with regard to facilities?

4 A We had made engineering studies for the City of
5 Orrville and these studies showed that we needed an inter-
6 connection in a voltage class of approximately 138 kV.

7 We also needed an interconnection capable of about
8 30 MVA capacity. In fact, we recommended to Orrville that
9 the interconnecting transformer be 30 MVA.

10 We also recommended that the interconnection
11 consist of a single circuit transmission on line to Ohio
12 Edison.

13 When we met with Ohio Edison, I remember Mr.
14 White said that he didn't feel that a single circuit, which
15 would be a T, like Tom, a T-connection would be appropriate
16 for the Ohio Edison system.

17 We disagreed with this, because, as you may know,
18 T-type connections at 138 kV level are used quite commonly
19 in utility interconnections, interconnections between
20 utilities and also for their own system.

21 As it turned out, Ohio Edison insisted that it
22 not be a single line T-connection, but that it be a double-
23 circuited 138 kV line into Orrville.

24 CHAIRMAN RIGLER: Mr. Berger?

25 MR. STEVEN BERGER: Your Honor, could I have

1 the witness excused for a moment? I would like to speak
2 to the question of what the witness is testifying to now,
3 and really whether or not it is appropriate that he be
4 testifying to it at this point in time.

5 MR. MELVIN BERGER: I think we should let him
6 finish the answer.

7 CHAIRMAN RIGLER: Well, he has been interrupted.
8 Let's excuse him now.

9 (Witness temporarily
10 excused.)

11 MR. STEVEN BERGER: Mr. Chairman, I think you
12 recall the circumstances under which Mr. Lewis was
13 asked to come back and testify. I don't know that the
14 Board received a copy of a letter -- I don't believe that
15 they did -- which was dated March 11, 1976, and was sent to
16 myself, with a carbon copy to Mr. Reynolds, which, pursuant
17 to the Board's direction, set forth the facts and circum-
18 stances surrounding that which Mr. Lewis was going to testify
19 as to an alleged refusal to wheel by Ohio Edison Company.

20 If I may, I would like to read that into the
21 record at this point because I think it will show with
22 what I am saying.

23 This, again, is a letter to me dated March 11,
24 1976 from Mr. Melvin Berger of the Department of Justice,
25 stating:

1 "Enclosed please find the written confirmation
2 you requested of the information which was supplied to
3 you orally."

4 It states:

5 "On June 11, 1973, a meeting was held in
6 Akron, Ohio, between representatives of the Ohio Edison
7 Company and the City of Orrville for the purpose of discuss-
8 ing an interconnection agreement and coordinated operation.
9 Representing Ohio Edison at that meeting were Bruce
10 Mansfield and Clyde Fredericksen, along with some other
11 Ohio Edison engineers.

12 "Representing Orrville were Ray Williams,
13 William M. Lewis, Jr., and at least one engineer from Mr.
14 Lewis's firm.

15 "At this meeting Ohio Edison refused to consider
16 an arrangement with Orrville which would provide for the
17 transmission of power of unspecified origin by Ohio Edison to
18 Orrville."

19 And that concludes the letter.

20 It was my understanding from the Department
21 and my oral communications with them and in this letter that I
22 just read into the record, and I think it was made clear on
23 the record at the time Mr. Lewis was previously here, that
24 all that Mr. Lewis would be speaking to with regard to
25 Orrville and Ohio Edison was with regard to an alleged

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1 refusal to wheel by Ohio Edison at Ohio June 11, 1973 meeting.

2 I heard nothing with regard to the question of
3 interconnection and what may or may not have been asked
4 for and accepted and/or refused by Ohio Edison as to the 138
5 KV interconnection.

6 I have had nothing in the way of notice to Ohio
7 Edison that any claim was going to be made that OE in its
8 dealings with Orrville with regard to the 138 interconnection
9 and the terms and conditions for that interconnection would
10 in any way be questioned in this proceeding as constituting
11 a situation inconsistent with the antitrust laws or a part
12 thereof.

13 All I was given notice of was with regard to a
14 conversation allegedly taking place at the June 11, 1973
15 meeting on a refusal to wheel. I think the witnesses'
16 to response /the last several questions and the questions them-
17 selves, go into areas that I haven't been given notice of.

18 I understand for purposes of background and
19 understanding what the parties were there to discuss, it is
20 appropriate to set the context of the meeting. But to try
21 now and bring into this proceeding other matters that were
22 discussed at that meeting, and what was the purpose of the
23 meeting, and to try and bring in the Orrville-OE situation
24 is something that in its entirety is something I have never
25 been given notice of before.

I thought it was just for the June 11 meeting.

Of course, as to the September 5 findings of the Department, your Honor has already ruled that as to the question of an alleged refusal to wheel taking place at the June 11, '73 meeting, I believe the Board took the position that good cause had been shown to bring that in at this late date by reason of the fact that it was only on the morning that Mr. Lewis testified that the Department first became aware of this and that their earlier interviews with Mr. Lewis had not reflected this.

We objected to that, but the Board ruled otherwise. Now we are going into charges involved OS's relationships with Orrville beyond that. I really don't see good cause for it at this point in time.

MR. MELVIN BERGER: If Mr. Berger's concern is to whether or not the Department is alleging to whether there was a refusal by Ohio Edison to supply the 138 kV service, that is not being alleged by the Department.

Aside from that, I think the testimony that Mr. Lewis is giving is really contained in the March 11th letter.

Okay?

We said that the purpose of the meeting, the June 11, '73 meeting was to discuss an interconnection agreement and coordinated operation. Obviously you cannot

request wheeling if you don't have an interconnection.

MR. STEVEN BERGER: Your Honor, I believe the question that precipitated my remarks was Mr. Berger asking Mr. Lewis whether or not there were any problems with regard to interconnection. I didn't object at that point even though I thought it was leading and perhaps a little too vague, but Mr. Lewis went into three areas -- he is in the middle of an answer now, I think, that goes into three areas he believed he had difficulty in obtaining an interconnection agreement with Ohio Edison on.

He has talked about problems dealing with facilities, terms of interconnections, and a reluctance to enter into an interconnection agreement on the part of Ohio Edison, none of which I think is germane.

CHAIRMAN RIGLER: How do you respond to his point that if there is a reluctance to grant the interconnection, there can't be wheeling?

MR. STEVEN BERGER: I respond to it that Mr. Berger has just told us that there is no charge in this case that there was a reluctance on the part of Ohio Edison to provide 138 service.

MR. MELVIN BERGER: We said we are not alleging that there was a refusal to supply 138 kV service, but certainly a reluctance to enter into an interconnection has an immediate effect on the ability of OE to wheel.

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1 If they are unwilling to enter into an inter-
2 connection, then obviously they cannot wheel.

3 CHAIRMAN BIGGER: So we are to disregard the
4 problems with respect to the facilities by which the service
5 would be provided and concentrate only on the reluctance?
6 Is that what you are saying?

7 MR. MELVIN BERGER: I think the reluctance to enter
8 into an interconnection must be looked upon in terms of a
9 refusal to wheel. If testimony shows that Ohio Edison was
10 putting a series of road blocks in the way of Knoxville ob-
11 taining wheeling, then I think we would say that -- well,
12 before you get to the refusal to wheel, you may have a
13 series of road blocks put in the way of that -- of the
14 ability to wheel.

15 Therefore you would not even reach the problem of
16 refusing to wheel until you had the physical facilities to
17 wheel.

18 Therefore, any road block put in the way of
19 establishing these physical facilities would be relevant
20 to a refusal to wheel.

21 MR. STEVEN BERGER: Mr. Chairman, maybe we can
22 clear it up this way:

23 It has been my understanding from the first time
24 this matter was raised that the alleged refusal to wheel that
25 we are talking about was -- took place in a specific

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1 conversation during this June 11, '73 meeting. It wasn't
2 related to what positions Ohio Edison was taking with regard
3 to the interconnection agreements, that they were going to
4 be arguing by inference that that was a refusal to wheel.

5 If there was a specific conversation that
6 took place, that they are going to have Mr. Lewis testify
7 to, then I don't see why it is on the question of
8 interconnection necessary to go into those matters.

9 The witness isn't here and this is not evidence,
10 but I have never understood that there was any question
11 but that Ohio Edison made a good faith offer to interconnect
12 at 138 kV with the City of Orrville.

13 And if necessary, there is documentation to
14 support that and the terms and conditions of what they were
15 receiving from OE as an offer vis-a-vis what they were
16 receiving from Ohio Power as an offer -- those are matters
17 of record.

18 I don't know what he is talking about when he
19 says a reluctance on the part of Ohio Edison to enter into
20 138 kV interconnection agreement with the City of Orrville.
21 It has never been in this case.

22 CHAIRMAN RIGLER: It was in his March 11 letter
23 to you.

24 MR. STEVEN BERGER: What was? The fact that they
25 were meeting on June 11 for the purpose of discussing an

1 interconnection agreement?

2 CHAIRMAN RIGLER: Right.

3 MR. STEVEN BERGER: But nothing alleged with
4 regard to any impropriety with regard to that.

5 CHAIRMAN RIGLER: Right. That was my last
6 question to Mr. Melvin Berger.

7 MR. MELVIN BERGER: Yes. I thought I had answered
8 that.

9 I would also like to add that Mr. Steven Berger
10 has indicated that there was some very specific conversation
11 relating to the wheeling issue. It is not our understanding
12 that it is only related to -- that the wheeling problem is
13 related only to certain specific conversation with regard
14 to it. It is our understanding that it was specifically
15 discussed at the meeting, but that the refusal to wheel
16 by Ohio Edison was based on a little broader grounds than
17 just saying, "No, we won't wheel." It was all part of the
18 interconnection agreement, their reluctance to enter
19 the interconnection agreement, and their insistence upon
20 certain terms in that agreement which would make it
21 virtually impossible or certainly unacceptable for
22 Orrville to enter into an interconnection agreement.

23 CHAIRMAN RIGLER: And Mr. Lewis is going to
24 testify with respect to how the interconnection would affect
25 wheeling?

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1 MR. MELVIN BERGER: Yes. I believe that is self-
2 evident. If you cannot get an insurance agreement --

3 CHAIRMAN RIGLER: In terms of discussion at
4 this June 11 meeting?

5 MR. MELVIN BERGER: I am a little puzzled by the
6 Chairman's question. I am not sure I understand what
7 you are asking.

8 CHAIRMAN RIGLER: Was the subject of wheeling
9 discussed at the June 11 meeting?

10 MR. MELVIN BERGER: Yes, it was.

11 MR. STEVEN BERGER: First of all, as to Mr. Berger's
12 statements as to what my understanding is of what took
13 place at the June 11th meeting, let me just state right
14 now, the witness is out and again it is not evidence, that
15 my investigation internally at OE has not produced anybody
16 at OE present at that meeting who can recall any discussion
17 of any wheeling of OE for Orrville.

18 Also what I want reflected at this time is the
19 fact that the March 11th letter to me spoke in terms of
20 the people who were present for OE being Mr. Mansfield,
21 Mr. Frederickson, and another Ohio -- other Ohio Edison
22 engineers.

23 Mr. Lewis has just testified this morning that it
24 was Mr. White, Mr. Mansfield and Mr. Firestone.

25 Now, as to that June 11, '73 meeting, it is my

1 understanding that those were the three representatives
2 from Ohio Edison.

3 I have never received notice of that from the
4 Department of Justice different from what was in the March
5 11th letter, that I could cross-examine the witness on.

6 CHAIRMAN RIGLER: I am going to rule against you
7 on that. You will have that opportunity, but obviously he
8 put you on sufficient notice to go back to the company
9 as you did and try to find out who was there and what was
10 discussed.

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MR. STEVEN BERGER: Absolutely.

CHAIRMAN RIGLER: You have at least one man, Mr. Mansfield, who was there and working from that you could find out if his memory was wrong with respect to other participants in that meeting. I am going to let him continue.

I understand Mr. Berger now to say that they allege no impropriety with respect to the 138 kv interconnection?

MR. MELVIN BERGER: That is correct.

MR. STEVEN BERGER: But your Honor, what basis is there for extracting testimony from this witness as to the problems that Orville had with an interconnection agreement with OE? This was the first meeting that took place. He is talking about facilities problems, in terms of the interconnection problems and problems of a reluctance to enter into an agreement at all.

CHAIRMAN RIGLER: Right. He has explained his concentration there is on the fact that without an interconnection, there couldn't be the wheeling. Moreover he has told us he is going to tie up this line of testimony directly to the question of wheeling. On that representation I am going to let him proceed.

MR. STEVEN BERGER: I will object and move to strike at an appropriate time that I think it hasn't been tied up.

CHAIRMAN RIGLER: All right.

MR. SMITH: Such as a point.

At the time, when the subject of interconnection
 rather to the fact that the subject of interconnection
 to have whaling and a subject of interconnection
 was that

MR. SMITH: I don't see where you are
 going, Mr. Smith.

MR. SMITH: They would say that whaling? Because
 they were unhappy with the options available to them without
 whaling, which would relate to the initial discussion of
 interconnection, it would come to me.

MR. STEVEN BERGER: A person who is out and about the
 interconnection agreement when they are in a local system
 and that is what Carville did, they sought an
 interconnection agreement.

I don't know they sought an interconnection
 agreement for the purpose of having whaling.

MR. SMITH: Let's assume they sought an
 interconnection agreement for the purpose of having
 interconnection agreement.

MR. STEVEN BERGER: And getting a bulk power supply
 from the party they are interconnected with.

MR. SMITH: And after the negotiations, they were
 unhappy with it, no matter how reasonable the offer is or
 whatever. They were unhappy with it and then the discussion

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1 turns to an alternative source through wheeling.

2 MR. STEVEN BERGER: I think that you are
3 presenting may be a scenario that may give rise to that
4 which may be relevant testimony. It has nothing to do with
5 the facts in this case. What you are suggesting has nothing
6 to do with the facts in this case, and Mr. Barger will tell
7 you that. He will tell you that there was an interconnection
8 agreement proposed by Ohio Edison in terms of what would
9 be necessary for the cost of the facilities, the sub-
10 station -- I mean, there was discussion between Orville
11 and OE and OE didn't refuse to connect at 130.

12 There is no such thing in this record, nor could
13 there be.

14 Isn't that correct, Mr. Barger?

15 MR. MELVIN BERGER: Yes, we are not alleging
16 that there was a refusal to interconnect at 130. We are,
17 however, going into --

18 MR. STEVEN BERGER: You are going into a reluctance
19 to enter into an interconnection agreement, a reluctance
20 which was demonstrated at the first meeting between the
21 parties that was ever had.

22 MR. MELVIN BERGER: We are going into --

23 MR. SMITH: I am suggesting that the testimony
24 might be that there is no reluctance to interconnect, but
25 for whatever reasons there may be, Orville declined to

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1 accept any such arrangement and elected instead to have
2 wheeling.

3 MR. STEVEN BERGER: Where would they be wheeling -- over
4 whose lines would they be wheeling, Mr. Smith, if there was
5 no interconnection from GE to Oxville?

6 MR. SMITH: I guess I don't understand your
7 objection. I will just defer.

8 MR. STEVEN BERGER: My objection very simply
9 goes to the question of what it is Mr. Lewis was brought
10 here to testify to, and that we were given notice of,
11 and the charges that the Department of Justice has made
12 in the case.

13 MR. SMITH: A refusal to wheel?

14 CHAIRMAN EIGLER: In view of the concession
15 by the Department that they are not alleging any
16 impropriety with respect to the 138 kv interconnection itself,
17 no charges being made against you. You are not being
18 hurt by the testimony.

19 MR. STEVEN BERGER: I will move to strike it at
20 the appropriate time.

21 CHAIRMAN EIGLER: All right.

22 MR. MELVIN BERGER: Would you read the
23 question and answer back.

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

(Whereupon, the witness resumed the stand.)

THE WITNESS: The double-circuited 138 KV line that Ohio Edison proposed would come into the City of Orrville and be terminated in two oil circuit breakers, and then from that point would go into what Ohio Edison proposed as a 60 MVA interconnecting transformer, rather than the 30 that we had found to be proper.

The use of such interconnection facilities would be much more expensive than the facilities that we believed to be appropriate.

BY MR. MELVIN BERGER:

Q Mr. Lewis, I believe you also mentioned that there was a problem with regard to the terms of the interconnection agreement. Can you tell us specifically if a problem developed with regard to transmission service?

A There was a problem with transmission service among other things. The problem with transmission service was that Orrville was part of a group called American Municipal Power, Inc., which group was seeking an agreement with Ohio Power Company similar to the Buckeye Power agreement.

If they were successful, they would be able to supply their patrons, Orrville being one, with an

1 economical source of bulk power supply. But in order to
2 get this power supply to Orrville, it would require the
3 wheeling of power to Orrville over the Ohio Edison system,
4 from Ohio Edison's various interconnections with Ohio
5 Power Company.

6 Also at various times Orrville would have
7 excess capacity, excess generating capacity, and it was
8 intended that this excess capacity would be made available
9 to the AMP-C group, so that this power could be commingled
10 with other power that it would purchase from Ohio Power
11 Company, and made available to other patrons of AMP-C other
12 than Orrville, but this could not be possible if Ohio Edison
13 would not wheel that power if the interconnection was made
14 with them. This they refused to do.

15 Q Mr. Lewis, are there other members of AMP-Ohio
16 in the Ohio Edison service area?

17 A Yes.

18 Q In your discussions with Ohio Edison at the
19 June 11th meeting regarding the transmission service, who
20 spoke on behalf of Ohio Edison?

21 A Mr. Mansfield.

22 Q Were there any meetings with Ohio Edison subse-
23 quent to this June 11, 1973 meeting?

24 A Not that I attended.

25 Q Did Orrville decide eventually to abandon its

discussions with Ohio Edison relating to a possible inter-connection?

A Yes.

Q Why was that?

A Well, basically for two reasons:

One was the cost of the interconnection, the interconnecting facilities. It was just prohibitive as far as Orrville was concerned, and as far as we were concerned.

In addition to the cost to interconnect with Ohio Edison, Ohio Edison insisted that they own the interconnecting facilities -- that is, the double-circuited transmission line and the oil circuit breakers and terminating facilities at Orrville.

I recall that they wanted Orrville to come up with the money and they wanted Orrville to pay them O&M expenses each year, but they wanted to own the line.

And so Orrville just couldn't go along with that, even though it was further for them to interconnection with Ohio Power Company and required the purchase of right of way that they had a great part of if they had interconnected with Ohio Edison.

But they still couldn't go along with that agreement.

Secondly, Orrville needed a -- what I characterize as an interconnection agreement that is common among electric

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utilities. Such an interconnection agreement provides for emergency service for the purchase of short-term power, for the purchase of limited term power, and Ohio Edison just refused to do this.

Q Did you --

MR. STEVEN BERGER: Your Honor, I move to strike the last answer of the witness.

MR. MELVIN BERGER: May I ask on what basis?

MR. STEVEN BERGER: It is irrelevant to the issues in the proceeding and it is irrelevant to the charges involving Orrville and Ohio Edison.

MR. MELVIN BERGER: Do you wish me to comment on that, Mr. Chairman?

CHAIRMAN RICHER: What is up to you. There is a motion pending.

MR. MELVIN BERGER: All right.

First, I think the Board does have discretion to hear this evidence; and secondly, I think it goes back, again, to what was discussed earlier, that refusal to wheel power on behalf of Ohio Edison is intimately related to the terms and conditions of the interconnection agreement which Orrville was seeking, that if you put enough road blocks in the way to Orrville obtaining the interconnection agreement, obviously you won't need to reach the point of having the physical capability of wheeling for Orrville.

1 MR. STEVEN BERGER: Your Honor, the witness has
2 just testified to reasons that they abandoned pursuing the
3 matter of 138 kV interconnection with Ohio Edison, and if
4 my recollection is correct of the witness' answer, it in no
5 way spoke to the question of wheeling.

6 He testified that it was the cost, it was
7 prohibitive, and in addition, that OE insisted that they
8 own the facilities. I heard nothing in the witness' answer --

9 MR. MELVIN BERBER: I believe that the witness'
10 answer was cut off by Mr. Berger.

11 MR. STEVEN BERGER: I don't believe so. I believe
12 the witness was finished.

13 CHAIRMAN RICLER: All right.

14 With regard to the question of whether the answer
15 relates to any of the issues in controversy, it is
16 perfectly clear that it does.

17 With respect to whether it relates to any of
18 the charges of allegations made by the Department, it is
19 apparent to me that it does not, because the Department has
20 retreated from that and made concessions with respect to the
21 adequacy of the offer for the 138 kV service.

22 Now, that leaves the Board in something of a
23 quandary, because the witness' answer clearly bears on issues
24 in controversy and it would furnish evidence that might help
25 us to resolve some of those issues in controversy, notwith-

1 standing the Department's backing away from addressing
2 those particular issues in its allegations.

3 The Department has made no effort to ask us to
4 hear this for good cause shown, and in fact it reiterated
5 this morning that it made no allegations in that regard.

6 So what I am going to do is take a five-minute
7 recess and confer with the Board about whether we are going
8 to take it in the Board's discretion, notwithstanding the
9 attitude of the Department.

10 MR. MELVIN BERGER: I would like to request
11 of the Board a couple of questions prior to a ruling.

12 CHAIRMAN RIGLER: Would the reporter read the
13 question and answer back?

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

16 MR. MELVIN BERGER: Mr. Chairman, if I may on
17 the record request that the Department be allowed to ask Mr.
18 Lewis a couple of questions prior to the ruling of the Board?

19 CHAIRMAN RIGLER: Tell me what they would be before
20 he answers.

21 MR. MELVIN BERGER: When did he first inform the
22 Department about the cost of facilities problem; was he
23 relying at that time on his memory, or on his notes.

24 MR. REYNOLDS: Would you start again, please?

25 MR. MELVIN BERGER: When did he inform the

1 Department about the cost of facilities problem. At that
2 time was he relying on his memory or on notes?

3 Since that time has he looked at his notes of
4 this June 11th meeting.

5 And did he inform the Department the first time
6 this morning of refusals to coordinate?

7 CHAIRMAN RIGLER: I can't see what possible
8 difference the answers would make in view of the fact that as
9 late as 20 minutes ago you told me that you were making
10 no allegations with respect to the LSC interconnection or
11 any improprieties arising from it.

12 Secondly, having had at least one additional
13 bite at the apple, I would think that the Department would
14 have gone back and been very thorough with this witness
15 before you brought him in here this morning, before you wrote
16 the March 11 letter.

17 So I am not inclined to let you ask those questions.

18 MR. MELVIN BERGER: There is one additional
19 question which I believe the Department would like to ask
20 Mr. Lewis prior to a ruling, and I would like to state that
21 for the record, too.

22 CHAIRMAN RIGLER: All right.

23 MR. MELVIN BERGER: Do most agreements between --
24 excuse me -- do such interconnection agreements as you
25 referred to in your last answer also provide for wheeling

1 services.

2 CHAIRMAN RIGLER: You may not ask that at this
3 time, either.

4 Now, referring to Mr. Steven Barger and his
5 motion to strike, we have concluded that the obligations
6 of the Board to obtain a complete factual record, and all
7 of the evidence which bears in the accurate and fair resolution
8 of the issues in controversy requires us to accept this
9 evidence, notwithstanding our agreement that that part of
10 your objection which goes to the Department's failure to put
11 you on notice with respect to this.

12 We will avoid any prejudice to you by either allowing
13 you to recall Mr. Lewis at a later date or to take care of this
14 during part of the Ohio Edison's case.

15 Nonetheless, the probative value of the
16 evidence as it relates to the issues in controversy is such
17 that we are going to deny the motion to strike, and the Board
18 itself is going to ask some questions at this time.

19 In your negotiations with Ohio Edison on
20 behalf of Orrville with respect to the interconnection, did
21 you make any requests relating to the additional services
22 such as short or limited term emergency service?

23 THE WITNESS: Yes, sir.

24 CHAIRMAN RIGLER: And what was the response to
25 that particular request?

THE WITNESS: The response first to the emergency power request was that it was sort of a fantasy, a fantasy on Orrville's thinking.

Mr. Mansfield said that it was just inconceivable that Orrville could ever be of any help to Ohio Edison in the form of providing emergency service and that emergency service as contemplated and as part of interconnection agreements between utilities visualized a two-way street.

He said that, of course, Ohio Edison could and did have facilities to provide emergency service to Orrville, but that in no way could Orrville return such services, and therefore the price for power, for emergency service, which at that time was about 17-1/2 mills per kilowatt hour among utilities, would not be applicable because that 17-1/2 mills contemplated a two-way street and it was impossible in this case.

I remember I told Mr. Mansfield that under the Gainesville decision, the Gainesville, Florida decision, I didn't feel that that was proper. And either Mansfield or White, I have forgotten which, told me that they thought I was misreading the Gainesville decision.

And since we didn't have a lawyer present, I stopped the conversation and did not go further.

In regards to short-term and limited-term power, Mr. Mansfield said again that that was a matter that was a

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two-way street among utilities in most respects, and that since Orrville would not be able to reciprocate, that he didn't feel that that was proper in an agreement to supply power to Orrville.

I reminded him that in a number of cases throughout Ohio there were agreements for limited term power where one utility had excess capacity for a number of years and would provide that power on a one-year or five-year basis to another utility where the other utility was not able to reciprocate.

There was one other point in that I reminded him that Orrville did have the possibility of adding another boiler. They already had the generating unit, but they needed another boiler to fire it.

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S9 1 Should they add that, it would provide them about
bwl 2 20 megawatts of additional power and then in the future,
3 within the five-year period, they might well be able to
4 supply a certain amount of short-term power to Ohio Edison.

5 CHAIRMAN RIGLER: Were any other services that either
6 company could provide for the other in connection with the
7 completion of an interconnection discussed?

8 THE WITNESS: Yes. As I said earlier, we asked
9 for wheeling service or transmission or service, because
10 of Orrville's relationship with American Municipal Power.

11 CHAIRMAN RIGLER: All right, any other services?

12 THE WITNESS: There was some discussion about
13 standby service.

14 Now, I characterized that in what I was asking
15 for for Orrville as emergency service.

16 It became apparent during the discussion that
17 Ohio Edison was thinking of standby service, even to the
18 extent of an open switch, nonsynchronous type of service.

19 That is all that I can recall in addition to what
20 I have given you.

21 CHAIRMAN RIGLER: Now, all of these subjects
22 were touched upon at this meeting in June, on June 11 of
23 1973.

24 THE WITNESS: Yes, sir. they were.

25 CHAIRMAN RIGLER: Does the Department intend to
examine with respect to any subsequent contacts?

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1 MR. MELVIN BERGER: I believe we already have,
2 Mr. Lewis was asked when he attended any other meetings
3 at which -- that were subsequent to June 11th and I believe
4 he answered no, he did not.

5 MR. STEVEN BERGER: Mr. Chairman, in response to
6 the last question from the Board, Mr. Lewis made reference
7 to some notes, I take it notes of a meeting of June 11, 1973,
8 that he made, perhaps otherwise, but I would like to have a
9 copy of those before cross-examining Mr. Lewis.

10 MR. LESSY: As would staff, sir.

11 CHAIRMAN RIGLER: Can you make those available?

12 THE WITNESS: Sir, they are back in my office.
13 I don't have them. Yesterday I jotted down just some pencil
14 notes for use here. They are welcome to these.

15 CHAIRMAN RIGLER: Fine. Thank you.

16 MR. STEVEN BERGER: I will take those, but I would
17 also request that the notes themselves be produced.

18 THE WITNESS: Mr. Chairman, I would like to correct
19 one statement that I misunderstood the question for. If the
20 question was, did I attend any subsequent meetings with Ohio
21 Edison, and if I said that I did not, that is not correct.
22 I did attend a meeting on August 24, 1973, with Ohio Edison.

23 CHAIRMAN RIGLER: In connection with your
24 representation of Orrville?

25 THE WITNESS: Yes, sir.

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1 CHAIRMAN RIGLER: Who was present at that meeting?

2 THE WITNESS: There was a man -- I will have to
3 spell the name for you -- C-o-d-i-n-g-t-o-n, and a man by the
4 name of W-i-n-a-n-s. There was a man by the name of
5 Johnson and a man by the name of B-u-s-s-e-r. When
6 four people were from Ohio Edison and a Mr. Dingle, D-i-n-g-
7 l-e-r, from Ohio Edison.

8 Ray Williams from Orrville and myself represented
9 Orrville.

10 CHAIRMAN RIGLER: What was the subject matter of
11 the meeting?

12 THE WITNESS: Engineering details concerning
13 clarifying questions on the letter that Mr. Mansfield
14 wrote outlining the interconnection facilities and also
15 a request by Orrville for a temporary supply of emergency
16 power until we could build the interconnection to Ohio
17 Power Company.

18 CHAIRMAN RIGLER: What was their response to that
19 request?

20 THE WITNESS: To the later request?

21 CHAIRMAN RIGLER: Yes, sir.

22 THE WITNESS: The response was that Ohio Edison
23 would be happy to work with us if we were going to eventually
24 interconnect with them, but that if we were going to interconnect
25 with Ohio Power, they felt we should look to them for a

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1 temporary lower voltage supply, rather than to Ohio
2 Edison.

3 CHAIRMAN RIGLER: Did you attend any other
4 meetings on behalf of Covville with Ohio Edison personally?

5 THE WITNESS: No, sir.

6 CHAIRMAN RIGLER: Did officials of Covville report
7 to you any subsequent contacts they had with Ohio Edison
8 in order to obtain your recommendation or your sanction to
9 new proposals?

10 THE WITNESS: I am not sure that I understood
11 your question.

12 There were contacts made between Mr. Williams
13 and a Mr. Dawson of Ohio Edison, and Mr. Williams did
14 report to me of those contacts.

15 To my knowledge they were all by telephone
16 and I don't recall at the moment, specifically, when they
17 were.

18 I have no idea. But I know at different times
19 Mr. Dawson did talk with Mr. Williams, and he relayed the
20 contact to me.

21 CHAIRMAN RIGLER: Do you recall when it was that
22 ~~Covville~~ it made its decision to interconnect with Ohio
23 Power, rather than Ohio Edison?

24 THE WITNESS: I don't have the specific date.
25 This decision was made at a Board of Affairs or Utility

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1 Board meeting.

2 As I recall, it was sometime after the meeting
3 and the letter that was written.

4 My guess would be that it was sometime in
5 November or December of '73.

6 CHAIRMAN REGLER: You may resume your examination,
7 Mr. Berger.

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BY MR. MELVIN BERGER:

Q Mr. Lewis, did Ohio Power request that Orrville provide the same facilities as Ohio Edison did to effect an interconnection?

A You mean for the interconnection?

Q Yes, for the interconnection.

A No. Ohio Power agreed to a T-type connection except to the extent that it was extending from one of their switching sections.

Q Was there a difference in cost between what Ohio Power wanted and what Ohio Edison wanted?

A Yes.

Q Do you know the approximate difference?

A Yes. At that time we were estimating the cost for the interconnection with Ohio Power at somewhere between 500 and 600,000, and the estimated cost for the Ohio Edison facilities would have been something on the order of about \$1,500,000.

Q Mr. Lewis, when Orrville obtained its interconnection with Ohio Power, will it have excess capacity?

A Yes. At certain times.

Q Does it have any plans as to what it will do with that excess capacity?

A Yes. The plans are that it will make that excess capacity available to the AMP-O system so that AMP-O can

1 commingle that power with power it purchases from Ohio
2 Power and make it available to its other patrons.

3 However, there has been some discussion that
4 at certain times, energy might be made available to Ohio
5 Power Company. Orrville has a very good coal purchase
6 contract and there are times, Ohio Power indicates, when
7 the Orrville cost for energy would be less than costs that
8 they are incurring.

9 So it is possible that if that develops further,
10 some of the power may be made available -- some of the
11 excess capacity may be available to Ohio Power Company.

12 MR. MELVIN BERGER: That would conclude the Depart-
13 ment's direct examination of Mr. Lewis.

14 CHAIRMAN RICLER: What is the present size of
15 the Orrville generation system?

16 THE WITNESS: They have about a 70 megawatt
17 capacity. Some of these units are older units, as you can
18 appreciate. Their largest unit is about 30 MW.

19 CHAIRMAN RICLER: Do you recall what their load is
20 at this time?

21 THE WITNESS: Their load is approximately 40 MW.
22 I don't have the exact figures, but just a couple of
23 months ago one of our engineers was looking at a load study,
24 and it was running about 38 at that time, 38 MW.

25 MR. SMITH: Is there a seasonal diversity between

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1 Orrville and AMP-O, other AMP-O users?

2 THE WITNESS: Other AMP-O patrons, you mean?

3 MR. SMITH: Yes.

4 THE WITNESS: Yes. I think there would be,
5 to the extent that Orrville experiences a summer peak and
6 some of the members of AMP-O, their patrons have winter
7 peaks.

8 For example, the City of Westerville that is north
9 of Columbus has a distinct winter peak, and they would be
10 able to utilize some of the capacity from Orrville on a
11 seasonal basis.

12 CHAIRMAN RIGLER: Mr. Lessy?

13 MR. LESSY: I would like to cross-examine. May I
14 get a copy of the notes for the parties before we go ahead?

15 CHAIRMAN RIGLER: Yes.

16 CROSS-EXAMINATION

17 BY MR. LESSY:

18 Q Mr. Lewis, you testified basically that there
19 were three reasons, I believe, that Orrville finally chose
20 to interconnect -- basic reasons why Orrville finally
21 chose to interconnect with Ohio Power over Ohio Edison.

22 One was the facilities, two was the terms of the
23 interconnection agreement, and three was the reluctance --
24 what you termed the reluctance for Ohio Edison to enter into
25 an agreement with Orrville; is that correct?

1 A Yes, sir.

2 Q Now, with respect to the facilities that Ohio
3 Edison required, how much -- what length of line, of inter-
4 connection line was involved here, approximately?

5 A To Ohio Edison?

6 Q Between Orrville and Ohio Edison, yes.

7 A Well, on a mileage basis, approximately six
8 miles. But now you understand that Ohio Edison was requesting
9 two circuits, so that would be a total of 12 circuit miles.

10 Q You said the approximate cost of the requirements
11 that Ohio Edison had, engineering requirements that Ohio
12 Edison had as a prerequisite to the interconnection was
13 approximately \$1-1/2 million?

14 A Well, I don't think I said that their engineering
15 would cost that. I said that the facilities for the inter-
16 connection were estimated to cost approximately \$1-1/2
17 million.

18 Q In your experience, is that amount of cost for
19 the interconnection reasonable or unreasonable?

20 MR. STEVEN BENDER: Your Honor, I don't think
21 Mr. Lewis has been qualified as an expert. I don't think
22 he has been called as an expert. I am not questioning his
23 expertise, but I think it calls for a response on the part
24 of an expert witness.

25 MR. LESSY: I will ask him on voir dire.

1 CHAIRMAN RICHER: Well.

2 Mr. Lewis is a professional engineer in the
3 business of giving engineering advice, is he not?

4 MR. STEVEN BERGER: Yes.

5 CHAIRMAN RICHER: I think he is qualified to
6 answer that. If he is not, he has been alerted to notify
7 us of his own limitations.

8 BY MR. LESSY:

9 Q Mr. Lewis, have you consulted on interconnection
10 contracts between utilities in your experience?

11 A Yes.

12 Q How many years have you had experience in such
13 consultation?

14 A Since 1953.

15 Q Have you actively negotiated these contracts,
16 including the cost thereof?

17 A Yes, sir.

18 Q Are you prepared to render an opinion as to whether
19 or not the equipment required by Ohio Edison was reasonable or
20 unreasonable?

21 A Yes, I am.

22 Q Could you tell us, please, whether or not
23 the equipment rendered by Ohio Edison as a necessity for
24 the interconnection with Orrville was reasonable or unreasonable?

25 A In my opinion it was unreasonable.

1 Q All right.

2 You also mentioned that the terms of the inter-
3 connection agreement were something that was a problem
4 between the proposed interconnection/Ohio Edison and
5 Orrville.

6 Did the company state to you as to why Ohio
7 Edison required that it must own the line as opposed to
8 Orrville?

9 A No, sir.

10 Q Was there any discussion of the method of financing
11 the line?

12 A I --

13 Q Did Ohio Edison propose any financing requirements?

14 A Ohio Edison just simply said that Orrville had
15 to come up with the capital to build the line.

16 Q Did they say at what time they had to come up
17 with the capital?

18 A No, I don't think they did.

19 Q Okay.

20 Now you also termed as a third reason a
21 reluctance of Ohio Edison in your view to enter into the
22 agreement.

23 Could you please explain what you meant by that?

24 A Yes.

25 When we first sat down with these gentlemen on

1 June 11th, Mr. Mansfield started off the discussion
2 with a lot of just general talk, and after we got by that,
3 Mr. Mansfield said that he thought that legally he had to
4 interconnect with Orrville if they requested it, but he
5 didn't feel that legally he had to make it a synchronous
6 interconnection.

7 Well, you know, if you start off like that, you
8 are not going to get very far with negotiations.

9 Q Had Orrville requested a synchronous interconnec-
10 tion?

11 A Yes, sir. Yes, sir. That is the only type of
12 interconnection that would be useful to Orrville.

13 Q Why is that?

14 A Well, you know, if you lose a generator and
15 you are not tied in synchronously to the incoming inter-
16 connection, well, then, you have lost your load. Because your
17 own generators -- that is the problem now, they are not
18 capable of picking it up.

19 Q Did Mr. Mansfield say he was not willing to offer
20 an interconnection, a synchronous interconnection?

21 A No. No. He said that, in starting off, that
22 he just didn't think legally he had to do that. And after
23 we talked, and I told him that that is the only type of
24 interconnection that would be of any benefit, he agreed to
25 study the situation and write Orrville a letter.

1 Q Did he write Orrville a letter?

2 A Yes.

3 Q Do you have a copy of that letter?

4 A No, sir. I do at my office, yes, sir.

5 Q Do you have any recollection as to what the
6 letters provided?

7 A Yes. Yes. I just read the letter yesterday.

8 The letter provided first of all in two or three of the
9 opening paragraphs -- it restated what the discussions were
10 about, and then it went into the facilities that Ohio
11 Edison felt were necessary and it talked about the fact
12 that Orrville would have to come up with the money for the
13 capital investment, the operation and maintenance expenses.
14 It came up with the fact that Ohio Edison would own
15 the line right through the heart of Orrville's service area.
16 That was about it.

17 Q Now, at that meeting --

18 CHAIRMAN RIGLER: Did it offer a synchronous interconnec-
19 tion?

20 THE WITNESS: Yes, it did.

21 BY MR. LESSY:

22 Q At that meeting of 6-11-73, when you asked for
23 a transmission service, when you -- did you personally
24 request a transmission service on behalf of Orrville?

25 A I discussed the matter, but I think that probably Ray

Williams asked the question.

Q When you discussed the matter, did you have any specific power sources in mind?

A Yes. Yes. I had the AMP-O -- the Southern Municipal Power, Inc. system sources in mind, which at that time were not firm'd up, but were considered to be one of the Ohio Power generating units or -- or and perhaps even power from Simlar at that time, as I recall.

CHAIRMAN RIGLER: Did you specifically mention the possibility of exchange of power among AMP-O patrons at the meeting with Mr. Mansfield?

THE WITNESS: I am not sure that I framed it in that way. But we did discuss the fact that Orrville wanted to be in a position to place their excess capacity available to AMP-O.

Now I can't imagine saying that without going further and saying that that power would be made available to other AMP-O patrons. But I don't know that I did.

CHAIRMAN RIGLER: But Mr. Mansfield, under the concept, was to exchange power among members of AMP-O?

THE WITNESS: Well --

CHAIRMAN RIGLER: Was there any question in Mr. Mansfield's mind that that was in the contemplation of Orrville?

MR. REYNOLDS: I object to that.

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1 THE WITNESS: I don't know whether there was any
2 question in his mind or not. I couldn't say. But I know
3 that I made it very clear.

4 CHAIRMAN RIGLER: That is what I meant.

5 THE WITNESS: I made it very clear that Orrville
6 wanted to be able to make its excess capacity available to
7 AMP-O.

8 CHAIRMAN RIGLER: That answers my question. I
9 appreciate what you were saying.

10 MR. REYNOLDS: I didn't mean it disrespectfully.
11 I just had a problem with how he was going to testify.

12 CHAIRMAN RIGLER: I shouldn't have phrased it
13 that way, and I think it is corrected now.

14 BY MR. LESSY:

15 Q Did you have any specific sources of third-party
16 power that could be wheeled across the line to AMP-O or
17 others at the time of that 5-11-73 meeting?

18 A I don't understand your question.

19 Q Did you discuss, for example, or did you have
20 in mind, for example, Buckeye power or PASNY power or C&I
21 power or Toledo Edison power as a power to be wheeled?

22 MR. STEVEN BERGER: Your Honor, I think if the
23 question is read back, it makes no sense.

24 BY MR. LESSY:

25 Q Wheeled to Orrville --

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MR. STEVEN BERGER: If you read the entire

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question, I don't think the witness can respond to it.

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CHAIRMAN SIGLER: Rephrase it one more time.

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BY MR. LESSY:

Q When you requested wheeling or when wheeling was requested of Ohio Edison, did you or Mr. Williams, to your knowledge, have any specific third party -- third party power sources in mind?

THE WITNESS: Mr. Chairman, I don't know what he means by "third party."

CHAIRMAN RICLER: What he means is whose power was Ohio Edison going to wheel, I believe.

THE WITNESS: Okay. Ohio Edison would be wheeling AMP-O power and that power would be made available to AMP-O from, one, a generating unit that Ohio Power would make available to AMP-O under the terms of its agreement with AMP-O, or two, from limited term, short-term or emergency power that Ohio Power would make available to AMP-O under its agreement, or, three, at that time we were contemplating power from Simmer, the first Zimmer nuclear unit that would be made available to AMP-O.

Now, since that time, that Zimmer power has been dropped.

MR. REYNOLDS: Excuse me, Mr. Chairman, could I just -- I am not sure whether I understood the Witness' earlier testimony. For clarification, if I could ask him, you mean under the agreement which at the time had not been signed between AMP-O and Ohio Power?

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1 THE WITNESS: Yes, sir.

2 MR. REYNOLDS: Thank you.

3 BY MR. LESSEY:

4 Q What was the difference in mileage that was
5 required to build an interconnection between Orrville and
6 Ohio Edison and Orrville and Ohio Power?

7 A Approximately three miles. To build to Ohio
8 Power takes nine miles. To build to Ohio Edison takes
9 six.

10 Q What is the average price per mile, in your
11 experience, of building a 138 kv interconnection
12 for an additional three miles?

13 A Well, on the facilities we were contemplating --
14 is that what you mean?

15 Q Yes, sir.

16 A Which is a single pole, horizontal post-type
17 construction, the cost is approximately \$60,000 per mile,
18 not including right-of-way.

19 Q Was Orrville required to obtain right-of-way?

20 A Well, if Orrville had interconnected with Ohio
21 Edison, they had distribution right-of-way, which would permit
22 them to overbuild with transmission on four and a half
23 to five miles of the line.

24 However, in going to Ohio Power, they only have about
25 two miles of distribution that required them to obtain .

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1 right-of-way for approximately seven miles.

2 Q Has anyone from Orrville mentioned to you
3 the additional cost involved in obtaining that right-of-way
4 for seven miles to them, or do you have any idea of how
5 much that was?

6 A I have the exact figures, because we obtained
7 the right-of-way for them. The right-of-way has all
8 been procured and -- at least we thought it had until
9 yesterday. We are running into some problems now.

10 It is running somewhere on the order of about
11 \$70,000, I recall.

12 Q Did Ohio Power agree to a wheeling schedule
13 with its interconnection with Orrville?

14 A Yes.

15 MR. LESSY: NO further questions.

16 BY MR. HJELMFELT:

17 Q How many circuit miles is the line between
18 Orrville and Ohio Power?

19 MR. REYNOLDS: I object to any cross-examination
20 by Mr. Hjelmfelt of this witness. This is a witness that
21 has come in here to testify about the specific matters
22 relating to Ohio Edison and the City of Orrville and under
23 the Board's direction in this case, I think it falls outside
24 the scope of the City's case.

25 MR. HJELMFELT: I believe the Board's order

made it clear that the City would be permitted to cross-examine on the other parties' cases.

CHAIRMAN RIGLER: That is in violation of the Prairie Island decision?

MR. STIMPFEN: Yes.

CHAIRMAN RIGLER: That is correct.

Mr. Smith was pointing out that Prairie Island goes further in instances where the Board itself has asked questions of the witness that have developed relevant evidence.

So the objection will be overruled.

THE WITNESS: Could I have the question?

MR. REYNOLDS: I would like to respond.

CHAIRMAN RIGLER: You may respond.

THE WITNESS: Can I have the question?

(The reporter read the pending question.)

THE WITNESS: Mine.

BY MR. HJELMFELT:

Q Was the second circuit that Ohio Edison was requiring for the interconnection and the increase in size in the transformer from 30 MVA to 40 MVA, in your opinion, necessary for the protection of the Ohio Edison system?

A No.

MR. HJELMFELT: I have no further questions.

CHAIRMAN NIGLER: Off the record.

(Discussion off the record.)

CHAIRMAN NIGLER: We will take 15 minutes for

Lunch.

(Whereupon, the hearing was recessed for

Lunch, to be reconvened this same day.)

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AFTERNOON SESSION

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Whereupon,

WILLIAM L. LEWIS, JR.

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

CROSS-EXAMINATION (Continued)

CHAIRMAN RIGLER: Mr. Berger.

BY MR. STEVEN BERGER:

Q Mr. Lewis, I believe you testified that you have been a consulting engineer for Orrville since 1958; is that correct?

A Yes.

Q To your knowledge, is anyone else serving in the capacity of consulting engineer to the City of Orrville since that time?

A Yes.

Q Can you tell me which consulting engineers you know of?

A It is a firm in Akron, Ohio, and they have several members of the firm that is in the firm's name, and I think it is something like Glas, Pyle, Shumer -- I don't know the other names. There are about five or six names in the firm.

Q Okay. Thank you.

1 In connection with your responsibilities as a
2 consulting engineer for the City of Orrville, did there
3 come a time in 1969 or thereabouts where Orrville had
4 perhaps the worst outage in its history?

5 A Yes.

6 Q Do you know what Orrville did to remedy the
7 situation?

8 Well, before asking you that, could you describe
9 the nature of the problem that existed on Orrville's system
10 in 1969?

11 A Along in the month of July of that year, there
12 came a very heavy rainstorm and there was a lot of water
13 that fell, and there is a little stream that runs by the
14 power plant that normally is just a small trickle.

15 When this rain came, that stream became very large
16 and it flooded the entire power station. I wasn't there at
17 the time. I was in Washington.

18 The reports that I got, though, that this water --
19 perhaps it was maybe a day and a half before the water went
20 down. It completely stopped their generating plant.

21 Q Did Orrville have occasion to call upon Ohio
22 Edison for aid in that circumstance?

23 A Yes.

24 Q And do you recall what Ohio Edison's response was?

25 A I know what the results were. I don't know what

1 the response was.

2 Q Why don't you tell me what the results were?

3 A The results were that Ohio Edison made available
4 a tap from a 33 KV line that they have running in the
5 general vicinity of the power plant, and they made that tap
6 available to some small transformers, small single phase
7 transformers that constitute a two-part, three-phase
8 bank, and Orrville was able to get enough power from that,
9 which is, oh, maybe on the order of 600 KVA, to get essential
10 services back on the line.

11 Q Do you know whether or not the City of Orrville
12 was quite pleased with the way Ohio Edison responded to their
13 request for help in that emergency?

14 A The people I have talked to, some of them are happy,
15 some aren't.

16 Q Some were happy in 1969, and some were not?

17 A Yes.

18 Q Do you know specifically anything that was
19 asked of Ohio Edison at the time of that emergency and was
20 refused?

21 A No. No, I don't.

22 Q Other than in 1969, and up to the time when
23 discussions were initiated with regard to the 138 KV
24 interconnection, which I believe you testified was days prior
25 to the June 11, 1973 meeting, did -- to your knowledge, did

1 the City of Orrville ever have occasion to call upon Ohio
2 Edison and request service of any kind?

3 A No, not to my knowledge. I do know that there
4 were discussions at different times between Mr. Ray Williams
5 at Orrville and people at Ohio Edison. But I don't know
6 the nature of those discussions.

7 I know that at one time in 1972 Mr. Williams
8 prepared a proposed interchange agreement, and did talk
9 with a fellow by the name of Dawson from the Massillon
10 office of Ohio Edison.

11 There were some other discussions. But I don't
12 know the detail of them.

13 Q Let me see if I can refresh your recollection.

14 Are you aware that in 1970, the City of
15 Orrville requested Ohio Edison to provide certain stand-
16 by service to the City of Orrville in connection with backing
17 up certain industrial customers that the City of Orrville
18 had?

19 A No. I am not aware of that specific date or
20 that -- in that time frame. I do know that there were some
21 discussions that I had with Orrville and industrial people,
22 and during those discussions there was a statement made
23 that --

24 MR. STEVEN BERGER: Excuse me for interrupting,
25 Mr. Lewis.

1 Is this before the June 11, '73 meeting or after?

2 THE WITNESS: Before. There was a statement
3 made that Williams, Ray Williams had talked with Ohio
4 Edison about this possibility. But I don't know the
5 details of it.

6 BY MR. SEVEN BERGER:

7 Q All right.

8 And you weren't aware that Ohio Edison in fact
9 offered standby service in 1970 to the City of Oakville
10 upon their request?

11 A Again, not specifically that date, but I do
12 understand that -- I was told prior to the meeting on June,
13 in June of 1973, that Ohio Edison did offer a non-synchronous
14 standby service.

15 Q Do you know that a synchronous intertie was asked
16 for at any time prior to the June 11th, 1973 meeting?

17 A The agreement that Ray Williams prepared and
18 talked with Mr. Dawson about did request a synchronous
19 interconnection, yes, sir.

20 Q And do you know that it was refused?

21 A No, I don't know specifically that it was refused
22 except that the standby service that Ohio Edison proposed
23 was from the 33 KV system, KV line, and it was my understand-
24 ing that they would not make that available on a synchronous
25 basis.

Q All right.

1 Mr. Lewis, once again, prior to the June 11, 1973
2 meeting, other than as you have testified to, are you aware
3 of anything that was requested by the City of Orrville of
4 Ohio Edison in the way of a service or anything else that
5 you aware of that Ohio Edison -- strike that, Ohio Edison --
6 that was requested by the City of Orrville --

7 MR. MELVIN BERGER: May I have that question
8 read back?

9 (Whereupon, the reporter read the
10 pending question, as requested.)

11 MR. MELVIN BERGER: I think the question is
12 rather confusing, unless the witness is able to understand it.

13 BY MR. STEVEN BERGER:

14 Q Other than as you have testified here, are you
15 aware of the City of Orrville, prior to June 11, 1973, asking
16 Ohio Edison for anything?

17 THE WITNESS: Mr. Chairman, when he says "other
18 than what I have testified to," I want to be sure that I
19 have testified to the fact that Mr. Williams did present
20 this interconnection agreement and that that was refused,
21 and I don't know that I am to restate that or not in answering
22 his question.

23 CHAIRMAN RIGLER: He means other than that.

24 THE WITNESS: Other than that, no. The answer is
25 no.

1 BY MR. STEVEN BERGER:

2 Q Okay.

3 Let's talk a little bit about the events leading
4 up to the June 11, 1973 meeting.

5 Prior to your meeting on June 11, '73, did you
6 meet with representatives of the City of Orrville to discuss
7 what it was you were going to talk about on June 11, 1973?

8 A Yes. We did have meetings, and we also had tele-
9 phone conversations.

10 Q Did those meetings and conversations include a
11 discussion of what you would be asking Ohio Edison for
12 with regard to transmission services?

13 A Yes.

14 Q During the course of these discussions, did it
15 ever arise that the City of Orrville was going -- was it
16 ever suggested that the City of Orrville would ask Ohio
17 Edison whether or not they would transmit power then available
18 from the City of Orrville to another point?

19 THE WITNESS: Mr. Chairman, could I have that
20 question read back?

21 CHAIRMAN RICLER: Yes, you may.

22 (Whereupon, the reporter read the
23 pending question, as requested.)

24 MR. MELVIN BERGER: By "then," do you mean at the
25 time of the discussions or when the interconnection was

1 completed?

2 MR. STEVEN BERGER: At the time of the discussions.

3 MR. MELVIN BERGER: I object to the question as not
4 making any sense. If there is no interconnection, how
5 can there be power available?

6 MR. STEVEN BERGER: I am talking about a block of
7 capacity specifically available to another party which
8 the City of Orrville would want to make use of Ohio
9 Edison's transmission facilities in order to transmit it to
10 that other party.

11 CHAIRMAN RICLER: I think the Department's
12 objection goes to the fact that there was no way to get it
13 there.

14 MR. STEVEN BERGER: I understand that. My
15 question -- I think it is clear from the witness' testimony
16 that the City of Orrville is still an isolated system.

17 What I am asking is whether or not when the
18 question of transmission services was discussed internally
19 by the City of Orrville with its consulting engineers --
20 whether or not those internal discussions honed in on a
21 specific block of capacity that the City of Orrville then had
22 available that it wished to transmit to some distant third
23 party.

24 CHAIRMAN RICLER: That is permissible.

25 THE WITNESS: Mr. Chairman, I am confused.

1 MR. STEVEN BERGER: Let me try and simplify it.

2 CHAIRMAN RIGLER: Ask your question to Mr. Berger
3 so that you understand what he is asking you.

4 THE WITNESS: You mean ask my question of --

5 CHAIRMAN RIGLER: Mr. Steven Berger, representing
6 Ohio Edison.

7 BY MR. STEVEN BERGER:

8 Q Prior to your meeting on June 11, 1973, was there
9 a firm commitment on the part of the City of Orrville that it
10 would make available a block of capacity to any third
11 party -- to any third party, assuming they could get
12 the transmission of Ohio Edison?

13 A Yes, to this extent: There was not a written
14 agreement, but there had been discussions and exchange of
15 letters between Orrville and AMP-O that Orrville would
16 make certain blocks of power available, and even to the
17 extent of a schedule as their projected load requirements
18 would increase and what they could make available.

19 In addition to the letters, there were discussions
20 with AMP-O that Orrville would make these blocks of power.

21 Now, as I say, there was no written agreement,
22 but there was a meeting of the minds between AMP-O and --

23 CHAIRMAN RIGLER: This occurred prior to the June
24 11, 1973 meeting?

25 THE WITNESS: Yes, sir.

1 BY MR. STEVEN BERGER:

2 Q Was that communicated to Mr. Mansfield?

3 A Well, in the discussions with Mr. Mansfield, as I
4 said earlier, we -- I specifically told him that Orrville
5 had capacity available at various times that we wanted to
6 make available to AMP-O and that AMP-O was desirous of receiving
7 that capacity.

8 Q But your discussions with Mr. Mansfield were
9 clearly exploratory, were they not?

10 A I don't know what you mean by "exploratory."

11 Q It was the first time you had raised the question.
12 You had nothing specific that you could transmit to a third
13 party, assuming you could get it, on June 11, 1973?

14 A Oh, yes, we did.

15 Q But you have just testified that you didn't have
16 a contract?

17 A Well, we didn't have a contract, but I can assure
18 you that AMP-O would have accepted whatever we had to
19 send them.

20 Q Let's try it on the other side. Was there a
21 block of capacity that was isolated in the City of Orrville
22 prior to June 11, 1973 that -- were you able to get
23 transmission from Ohio Edison, that block of capacity would
24 have been made available instantaneously to the City
25 of Orrville?

1 MR. MELVIN BERGER: Could I have the question
2 read back?

3 [Whereupon, the reporter read the pending
4 question, as requested.]

5 MR. STEVEN BERGER: I don't know whether that was
6 my mistake or the reporter's.

7 BY MR. STEVEN BERGER:

8 Q What I am talking about is this:

9 Let's put aside the question of excess capacity
10 that the City of Orrville had. Was the City of Orrville in a
11 position to take capacity from a distant third party if they
12 obtained transmission from Ohio Edison on June 11, 1973?

13 MR. MELVIN BERGER: Assuming that there was no
14 interconnection?

15 MR. STEVEN BERGER: Assuming there was an inter-
16 connection.

17 THE WITNESS: I need to ask a question of
18 clarification of the lawyer.

19 MR. STEVEN BERGER: Surely.

20 THE WITNESS: Do you mean that if on June 11, 1973
21 there had been a physical synchronous interconnection
22 between Ohio Edison and Orrville, was there a block of
23 power available to Orrville at that time?

24 MR. STEVEN BERGER: And that Orrville wanted at that
25 time.

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1 THE WITNESS: And that Orrville wanted at that
2 time. All right. Now I think I can answer your question.

3 Number one, there was not a specific block of
4 power available at that time because it was ridiculous
5 to prepare for one since there was no interconnection.

6 And secondly, yes, Orrville would have taken a
7 block of power, had it been available.

8 CHAIRMAN RIGLER: That would depend on the price
9 of that power, I suppose?

10 THE WITNESS: Yes, sir, it would have. But the
11 negotiations that we had had with Ohio Power and AMP-O up
12 to that time would have meant that there was a block of short
13 term power available on a weekly basis that Orrville could
14 have used at the price they would have been willing to
15 pay, and particularly, Mr. Chairman, Orrville was conscious
16 of a block of emergency power being made available to them.

17 So had the interconnection been available, they
18 certainly would have taken power that could have been made
19 available to them.

20 BY MR. STEVEN DESTER:

21 Q I am a little confused, Mr. Lewis. I thought at
22 that time there was no agreement with AMP-O and Ohio
23 Power?

24 A There was no signed agreement, but we had reached
25 agreement on probably 90 percent of the terms. One of those

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1 terms was emergency and short term power. It was only
2 in the very last stages that limited term was resolved,
3 but short term and emergency was resolved very early.

4 Q As to what use Orrville contemplated making of
5 Ohio Edison's transmission facilities, all of that which
6 you have just discussed or just testified to, that was a
7 matter that was discussed and -- by yourself with officials
8 of the City of Orrville prior to the June 11, 1973 meeting?

9 A Yes.

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1 Q What portion of that was communicated at the
2 June 11, 1973 meeting, to Ohio Edison?

3 A During the June 11 meeting I personally discussed
4 the arrangement that Orrville had with AMP-O for the
5 exchange of capacity and energy.

6 Secondly, I discussed the matter of emergency
7 power supply from AMP-O to Orrville and, thirdly, I discussed
8 the matter of short-term power supply from AMP-O to Orrville,
9 and, fourthly, I discussed the matter of limited term
10 or annual capacity and energy from AMP-O to Orrville.

11 Q You talked about short-term at the June 11,
12 1973, meeting.

13 Were you talking to Mr. Mansfield and the others
14 that were present in terms of the availability
15 of short-term power from Ohio Edison or were you talking
16 about the availability of short-term power from a third
17 party to be wheeled over Ohio Edison's lines?

18 A That was made clear?

19 A Well, I tried to make it clear.

20 Now, I can't say what is clear to Mr. Mansfield
21 and what isn't. But certainly he has been in the business
22 long enough that he knew the terms that I was using.

23 Q And Mr. Mansfield's response to you on all of these
24 matters was a flat no?

25 A Mr. Mansfield's response to the question of

1 short-term, limited-term emergency power from NEP-O
2 was that they would not wheel that power. His answer to
3 me concerning short-term, limited-term and emergency
4 power from Ohio Edison's system was that in order to provide
5 short-term and emergency, it had to be a two-way street
6 and he didn't visualize that Orrville was a two-way street.

7 Q Was it open to you to show that Orrville would
8 be a two-way street and OE would benefit from an inter-
9 connection with Orrville which might justify the kinds
10 of transactions you are talking about?

11 A I don't know what you mean: "was it open to us?"

12 Q Open to you to demonstrate to Mr. Mansfield
13 or other people at Ohio Edison that there were benefits
14 to be derived from the interconnection -- there were
15 benefits to be derived by Ohio Edison from the
16 interconnection and these should be taken into account.

17 A No, I think that Mr. Mansfield closed the door
18 on that, because I remember, I told him that I thought
19 under the Gainesville decision that it was not necessary
20 to show a true reciprocal type of availability of power
21 and John White, I believe it was, responded that I was
22 misinterpreting the Gainesville decision.

23 So, not being a lawyer and having no lawyer
24 with me, I shut up.

25 Q I thought you testified earlier that

1 Mr. Mansfield's comments with regard to Gainesville, the
2 Gainesville decision -- either Mr. Mansfield or Mr. Adams,
3 I don't recall what you said -- was that they were not
4 legally obligated to establish an interconnection on a
5 synchronous basis.

6 A You misunderstood me, sir. I said when
7 Mr. Mansfield said that he felt he was legally, because of the
8 antitrust rulings across the country -- I think he said
9 the Elbow Lake decision -- that he was required to make an
10 interconnection with us. But he was -- He didn't feel or
11 wasn't sure that he was legally required to make a
12 synchronous interconnection with us.

13 The Gainesville decision came up during a
14 discussion of emergency energy, not synchronous versus
15 standby.

16 Q Prior to June 11, 1973, had the City of Knoxville,
17 to your knowledge, ever communicated to Ohio Edison that
18 it sought transmission services from Ohio Edison?

19 A I am trying to recall whether that was contained in
20 the letter that Mr. Williams gave to Mr. Dawson, but
21 I don't think it was.

22 Other than that, I have no knowledge that they did.

23 Q Either orally or in writing?

24 A Either orally or in writing, yes.

25 Q Subsequent to the June 11, 1973, meeting, was the

1 subject of transmission service ever again raised by the City
2 of Orrville with Ohio Edison?

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3 A Yes.

4 Q when was that?

5 A On February 7, 1974.

6 Q What was the purpose of that meeting, Mr. Lewis?

7 A To resolve certain technical clarifications that
8 we needed in regard to Mr. Mansfield's letter of August
9 24, 1973, concerning certain emergency temporary facilities
10 that we wanted to obtain from Ohio Edison.

11 Q I thought you testified this morning that the
12 question of whether or not the City of Orrville would
13 interconnect with Ohio Edison or Ohio Power was resolved
14 in or about November of 1973?

15 A It was.

16 Q What were you doing with Ohio Edison in February
17 of '74, talking about anything related to 123 kV
18 service?

19 A Because after it was resolved that we would take
20 power from Ohio Power, a number of people in Orrville came
21 to the City Council and to the Board -- the Utilities Board
22 and said that people from Ohio Edison had come to them
23 raising Cain because they had gone to Ohio Power and they
24 wanted them to reconsider it.

25 And on two bases, the Utilities Board instructed

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1 us to have another meeting to clarify some of these details
2 with Ohio Edison.

3 Q Did you have a meeting in August of 1973?

4 A With Ohio Edison? No, sir.

5 Q I believe you testified this morning that you did.
6 Do you want to correct your testimony?

7 A Yes, I do. The meeting was on February 7, 1974.

8 CHAIRMAN RIGLER: Is this the meeting -- the
9 same meeting that you said earlier occurred in August of 1973?

10 THE WITNESS: Yes. I think it was. If you
11 look at the notes, I think I read this date in the middle of
12 my notes, and that was the date of the letter from
13 Mr. Mansfield. It should have been that the meeting was
14 in Massillon on February 7, 1974. If I misquoted that date,
15 the date of the second meeting was February 7, 1974.

16 BY MR. STEVEN BERGER:

17 Q You said at this February 7, 1974, meeting about
18 the subject of transmission on services was again mentioned.
19 Would you tell us what you said?

20 A Not specifically.

21 Q You don't recall what you said?

22 A I recall the general discussion, but I don't
23 recall every word that I said.

24 Q Give us your best effort.

25 A I asked what load control equipment Ohio Edison would

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1 required and what dispatching lines they would acquire --
2 that is, communication lines -- if we were to acquire power
3 over their transmission system from Ohio Power Company.

4 MR. SMITH: I have a question to ask.

5 Was there any discussion in either of your meetings
6 with Ohio Edison about the legality of the City of Orrville
7 paying for interconnection facilities which would not
8 belong to the City of Orrville?

9 THE WITNESS: No, that was not discussed in either
10 meeting. You see, Ohio Edison did not drop their letter
11 on us until the latter of August 30th, when in that letter
12 they said that they would own the facilities.

13 In other words, we were to pay for them, provide the
14 capital and the O&M expenses, but they would own them.

15 And I don't recall that that was mentioned until the
16 letter.

17 MR. STEVEN BERGER: Your Honor, I think it might be
18 easier -- I do happen to have a copy of the August 31st
19 letter. I would like to put it before the Board and the
20 parties now. It would be marked for identification as
21 Applicants Exhibit 109, I believe it is --

22 MR. LESSY: 108.

23 MR. STEVEN BERGER: Applicant's Exhibit 108,
24 IE-19 would be the document number.

25 To identify it, it is a letter dated

bw7 1 August 24, 1973, from Mr. Mansfield to Mr. Ray S. Williams,
2 the Director of Utilities of the Greenville Municipal
3 Utilities.

xx 4 (The document referred to was
5 marked Applicants Exhibit No.
6 100(OR) for identification.)

7 MR. STEVEN BERGER: Have you read that letter,
8 Mr. Lewis?

9 THE WITNESS: Yes.

10 BY MR. STEVEN BERGER:

11 Q Is that a copy of the letter that you have
12 a copy of which you testified this morning that you
13 looked at yesterday prior to coming here?

14 A It appears to be, yes, sir.

15 Q Before we return again to the February 7, '74,
16 meeting, let me just ask a few questions with reference
17 to the letter. Are there certain services that are inherent
18 in any synchronous interconnection between two utilities?

19 MR. LESSY: Could you read the question, please?

20 (The reporter read the pending question.)

21 THE WITNESS: It is --

22 MR. MELVIN BERGER: May I ask what Mr. Berger
23 means by "inherent"?

24 BY MR. STEVEN BERGER:

25 Q By the fact of having a synchronous interconnection,

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1 are there not services that each utility necessarily
2 provides to the other?

3 A. The answer is, no. Except for the -- if you
4 want to consider inadvertent interchange as a service.

5 I don't. But sometimes that contract, in an
6 interconnection contract, inadvertent services and inadvertent
7 power flows are priced out. I suppose you could call that
8 a service. But, other than that, I don't think there are.

9 Q How about emergency services?

10 A No, not at all.

11 Q No?

12 A No, sir.

13 Q If there is an emergency on Knoxville's system,
14 and they are synchronously tied to the Ohio Edison, doesn't
15 the Ohio Edison system instantaneously back up the Knoxville
16 system?

17 A. They instantaneously do, but all that is required
18 is for the dispatcher to call and tell Knoxville to get
19 off, which could take five minutes.

20 Q Let me ask you, the next to the last paragraph
21 on page 2 of Mr. Mansfield's letter to Mr. Williams talks
22 in terms of -- it states, "If the foregoing proposal
23 is attractive to you, we would be pleased to work out
24 the engineering details with you and to discuss the
25 general operating considerations."

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1 . Would the question of how emergency
2 service is to be provided and the costing of that service
3 fall within your understanding of "general operating
4 considerations"?

5 A. No, sir.

6 Q. It would not?

7 A. No, sir.

8 Q. All right.

9 CHAIRMAN RIGLER: Mr. Berger, you are touching on some
10 questions that were of interest to me.

11 The Witness has testified that at the June 11th
12 meeting, Mr. Mansfield was reluctant to give emergency
13 service contending that there was no reciprocity of
14 benefits involved and that, therefore, the 17 mil
15 rate would not be adequate compensation. That being so,
16 I have always -- I have begun to wonder exactly what the
17 purpose of the interconnection was. I think your recent
18 line is touching on that.

19 Why did Orrville desire an interconnection,
20 Mr. Lewis, if they couldn't get emergency service?

21 THE WITNESS: They didn't sir. But when they
22 went to Ohio Edison, part of the interconnection, they
23 wanted emergency service and they wanted it either in
24 the Ohio Edison system or from AMP-O over the Ohio
25 Edison system.

1 CHAIRMAN RIGLER: Are you saying that although
2 Ohio Edison expressed a willingness to provide an inter-
3 connection, despite a facilities' problem and a cost
4 problem, that there still remained a question of the cost
5 of any emergency service and the terms of the contract
6 for emergency services that would be provided once the
7 interconnection was in?

8 THE WITNESS: That is right.

9 CHAIRMAN RIGLER: I see.

10 THE WITNESS: And if that emergency service
11 was not available from either the Ohio Edison system
12 or wheeled by the Ohio Edison system, there was no point
13 in the interconnection.

14 CHAIRMAN RIGLER: I see.

15 BY MR. STEVEN BERGER:

16 Q When you got a copy of the August 24, 1974, letter
17 from Mr. Mansfield, what services did you think Ohio Edison
18 was going to provide the City of Coville as a result of
19 this synchronous intertie?

20 A Based on what Mr. Mansfield had told us, I didn't
21 think they were going to furnish any.

22 Q After the August 24th, '74 meeting, did you ever
23 again meet with Mr. Mansfield?

24 A On this matter?

25 Q Yes.

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1

A No.

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Q Mr. White?

3

A No.

4

Q Mr. Firestone?

5

A No.

6

Q Did you call Mr. Firestone on December 5, 1973,
and ask for standby service?

8

A I don't know whether I did or not.

9

Q If Mr. Firestone said that, would you have any
reason to doubt him?

10

11

A No.

12

Q Isn't it a fact that you called him on
December 5, '73, and set up the February 7, 1974, meeting,
specifically for the purpose of discussing standby
service?

15

16

A It could be that I called him to set up the meeting
and that one of the items that we were to discuss was the
standby services. But we also included in that meeting --
and if I called Mr. Firestone, frankly, I thought it was
Mr. Dawson, but if it was Firestone, we wanted to discuss
the other engineering details and questions of
clarification on the letter.

22

23

Q On the 138 kv interconnection?

24

A Yes, sir.

25

Q And you specifically -- whoever you talked to, he

1 it Mr. Dawson or Mr. Finestone-- specifically raised as
2 a matter for the agenda of the meeting of February 13, 1974,
3 the subject matter of 138 kv interconnection?

4 A Yes, as I recall, I did.

5 Q Let's talk a little bit about the cost of
6 interconnection presently being constructed to Ohio Power.
7 How is that being financed?

8 A By municipal bonds.

9 Q Do you know the amount of the issue in order
10 to pay for the interconnection?

11 A Yes, sir. It is either 2.3 or 2.5 million.
12 I am not sure.

13 Q 2.5 which was designated for the Ohio Power
14 interconnection?

15 A No, sir. You asked me what the amount of the
16 issue was.

17 Q What portion of the 2.5 is -- has been expended
18 or will be expended in order to create the interconnection
19 between Ohio Power and the City of Orrville?

20 A We are estimating, as I recall, about 1.5 million.

21 Q What does that include?

22 A That includes the interconnection facilities
23 at the East Wooster Substation of Ohio Power Company, the
24 single circuit horizontal post wood pole transmission
25 on-line, the substation and power transformer at the

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1 generating plant, and the necessary tie-in to the present
2 generating bus -- that is, the 138 kv bus -- at the power
3 plant.

4 It includes the right-of-way procurement and
5 it includes certain payments to Ohio Power, in order to
6 satisfy the property owners, so that they would let us
7 have the right-of-way along two stretches of road and it
8 covers rebuilding the distribution facilities for about two
9 miles in the City of Orrville.

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CHAIRMAN RICLER: What portion of those facilities will be owned by the City of Orrville?

THE WITNESS: All of them except we will turn over the transfers of distribution facilities that are presently owned by Ohio Power Company back to them after they are transferred to the transmission poles.

The problem was, sir, that we couldn't secure right of way along two sections of the route unless we agreed and Ohio Power agreed to eliminate their distribution facilities so there were not two rows of poles along this area.

BY MR. STEVEN BENNER:

Q I am sorry, Mr. Lewis, I missed in your answer -- probably didn't hear it -- what did you include in the way of a substation?

A Which substation, sir?

Q Is there a substation that Orrville had to agree for purposes of the interconnection with Ohio Power?

A Yes. First of all, there had to be a new line built at the East Wooster Substation, which is owned by Ohio Power Company and which Orrville will own.

Secondly, there has to be a substation which consists of the power transformer at the power plant.

C How much is that?

A I don't know.

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1 Q Approximately?

2 A Approximately 250,000, the one at the power
3 plant, and the one at East Webster is approximately 35, 40,000.

4 Q Orrville will own the transmission line?

5 A Yes, sir.

6 Q You testified, I believe, in response to a question
7 from Mr. Hjelmfelt that it was your opinion that loop service
8 rather than the T-tap was not necessary in order to
9 maintain the reliability of the OE transmission system; is
10 that correct?

11 A Yes, sir.

12 Q It was certainly conveyed to you, though, that
13 it was OE's opinion that loop service was necessary in order
14 to maintain the integrity of their system?

15 A It was conveyed to me, that's right. I didn't
16 agree with them, but it was conveyed.

17 Q Mr. Lewis, before a company such as Ohio Edison
18 could agree to make use of their transmission facilities
19 other than for purposes of supplying their own load, would
20 it not be necessary for a system such as Ohio Edison to know
21 where and in what amounts the power that would be injected
22 into the system would enter?

23 A Yes.

24 Q Would it be necessary from a planning standpoint
25 to know when it was going to be required to transmit the

1 power and in what amounts?

2 A Yes.

3 Q In your discussion with Mr. Mansfield on June
4 11, 1973, was there anything said by any of the parties
5 when you raised transmission service to the effect that,
6 "Well, we just won't flat out agree to wheel and make our
7 transmission system available whenever you ask for it, but
8 show us something specific and we will talk to you about it?"

9 A No. The earlier was the content of the discussion
10 tion, that they just weren't interested, they didn't want to
11 discuss it.

12 Q You never pursued it further?

13 A What was the use?

14 Q So that the question of transmission service
15 and the availability to Orrville was in your mind raised
16 for the first time and finally decided at the June 11th,
17 1973 meeting?

18 A I think everybody from Orrville came away with
19 the clear understanding that the matter was closed.

20 Q How long was the meeting on June 11, 1973?

21 A I don't really know. I think I have it in my
22 notes, but I am not sure. I would estimate an hour and a
23 half to two hours.

24 However, I should say to you that there was a
25 lot of discussion about other things that may have taken 15 or

1 20 minutes.

2 Q What portion of the meeting was taken up with the
3 question of transmission services?

4 A I don't know.

5 Q Approximately?

6 A I don't know.

7 Q Five minutes?

8 A I don't know.

9 Q 10 minutes?

10 A I don't know.

11 MR. MELVIN BERGER: Objection. I think the
12 witness has answered the question.

13 MR. STEVEN BERGER: It is important, Your Honor.

14 CHAIRMAN RIGLER: He has indicated he doesn't
15 know.

16 BY MR. STEVEN BERGER:

17 Q Was it less than half the meeting?

18 MR. MELVIN BERGER: Objection.

19 CHAIRMAN RIGLER: I will permit that.

20 THE WITNESS: Your Honor, I am not trying to be
21 difficult. You see, these things would be talked about --

22 CHAIRMAN RIGLER: I understand. Just if you know
23 if it was more than half, say yes. If you don't --

24 THE WITNESS: I don't know.
25

1 BY MR. STEVEN BERGER:

2 Q You read your notes of the June 11th meeting
3 prior to testifying here today; is that correct?

4 A Yes, I did.

5 Q You did that yesterday?

6 A Yes, sir.

7 Q Do you recall the specific notations about
8 transmission services in your notes?

9 A Yes. Yes, I do.

10 Q When will the Ohio Power interconnection be
11 established?

12 A The last estimate that we made was June of this
13 year. That was made for the filing with the Federal Power
14 Commission of certain documents.

15 However, we were to receive our poles for the
16 line in January, and so far we have only gotten a third of
17 them.

18 Q You have testified this morning -- correct or is
19 I'm wrong -- that as to the question of standby service
20 that was raised after the June 11, 1973 meeting, that
21 was for purposes of an interim period when Orville would
22 not have the benefit of 138 KV interconnection; is that
23 correct?

24 A Yes, sir.

25 Q Was it also your testimony that Ohio Edison would

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1 not enter into a standby contract with the City of Orrville
2 without an agreement from Orrville to choose Ohio Edison
3 as the entity with which you would interconnect at 138 kv

4 A No, sir, that was not my testimony. My testimony
5 was that people at the meeting on February 7th, 1974 said that
6 if we did not propose to go to Ohio Edison for the 138 kv
7 interconnection and if we proposed to go to Ohio Power, that
8 we should look at Ohio Power for the temporary supply of stand-
9 by power rather than Ohio Edison.

10 Q But in point of fact, it was never suggested by
11 Ohio Edison that they wouldn't make available to you standby
12 power if you in fact chose Ohio Power rather than Ohio Edison
13 for the 138 kv interconnection?

14 MR. MELVIN BERGER: Can I have that back, please?

15 (Whereupon, the reporter read the
16 pending question, as requested.)

17 THE WITNESS: Well, sir, it was pretty clear to
18 me that the statement I just related to you said that very
19 thing.

20 BY MR. STEVEN BERGER:

21 Q After the February 7, '74 meeting, is it not
22 true that Ohio Edison extended to the City of Orrville a
23 contract for standby service?

24 A I don't know whether they did or not.

25 Q You never saw a contract for standby service from

1 Ohio Edison to the City of Orrville?

2 MR. MELVIN BERGER: Objection. I think it was
3 asked and answered.

4 CHAIRMAN RIGLER: Overruled.

5 THE WITNESS: I believe that I did see a
6 contract for standby service, but I don't recall when I got
7 that contract.

8 BY MR. STEVEN BERGER:

9 Q Do you recall ever seeing a provision in a contract
10 between -- in a proposed contract between Ohio Edison and
11 the City of Orrville that had a provision to this effect:

12 "The company and the municipality are considering
13 a 138,000 volt synchronous intertie. If such an intertie
14 is put into operation, this contract shall, at the option of
15 the municipality, and by written notice to the company,
16 terminate as of the date service commences at 138 volts
17 from the company."

18 A I don't specifically remember that statement, no.

19 Q You don't?

20 A No.

21 Q You don't --

22 A However, it is in keeping with the understanding
23 that we reached at our meeting on February 7th.

24 Q You will have to explain that to me, Mr. Lewis.

25 A Well, the meeting on February 7th indicated by --

1 it was indicated by Ohio Edison during that meeting that
2 if we had temporary service and then we entered into the
3 138 KV interconnection, that that service would then be
4 terminated on the temporary or standby basis at the lower
5 voltage.

6 Q Mr. Lewis, it is on that basis that you concluded
7 that they wouldn't provide the service?

8 A No. No. I just got through saying that they
9 told us that we should look to Ohio Power --

10 Q Logically?

11 A I beg your pardon?

12 Q Logically they said it. You are saying, "You
13 should look to Ohio Power logically for the standby
14 service if you are thinking of choosing the Ohio Power
15 for the 138 KV interconnection," is that what you are saying?

16 MR. MELVIN BERGER: I object to that as being
17 argumentative, and also Mr. Lewis has not finished his
18 previous answer.

19 CHAIRMAN RIGLER: We will allow him to finish
20 his answer. The objection as to being argumentative is overruled.

21 THE WITNESS: In finishing my previous answer,
22 Ohio Edison said that if we were going to Ohio Power Company
23 for the 138 KV interconnection, that we should look at Ohio
24 Power Company for the temporary supply of standby power.

25 Now, it is also in keeping with that discussion

1 that the provisions of the statement that you just read
2 would be that if we did arrange with Ohio Edison for a
3 supply of temporary standby power, that that would be
4 terminated when we made the 138 kV interconnection
5 with Ohio Edison because there would be no point in it at
6 that time.

7 BY MR. STEVEN BERGER:

8 Q Precisely, but there was certainly no under-
9 standing in your mind that if you went to Ohio Power for the
10 138 kV interconnection, that Ohio Edison would be unwilling
11 to provide standby service, were you?

12 A Why, there most certainly was that understanding
13 in my mind.

14 Q I guess the contract will speak for itself.

15 A I don't think it does.

16 Q If an offer was made after the February 7, 1971
17 meeting to provide standby service to the City of Louisville
18 wouldn't that run counter to your answer?

19 A No, I don't think so.

20 Q Explain that to me.

21 A Well, simply that if an offer was made based
22 on the supposition that we were going with Ohio Edison for
23 the 138 kV interconnection, that would be one thing.

24 But there was no indication after our meeting on
25 the 7th that if we went with Ohio Power Company, the statement

1 made during the meeting were not still to be in effect.

2 Q Mr. Lewis, if you have a contract that is proposed
3 by Ohio Edison handed to representatives of the City of
4 Orrville for standby service, and nowhere in that contract
5 does it indicate that if the City of Orrville signs the
6 contract, thus obligating Ohio Edison to provide standby
7 service, that that service will ever be terminated if the
8 City of Orrville determines to establish a 138 KV inter-
9 connection with Ohio Power, wouldn't you agree that Ohio
10 Edison was willing to provide standby service in any event?

11 A No, I wouldn't agree to that at all.

12 Q Explain that to me.

13 A Based on the discussions that were during the
14 February 7, '74 meeting, and if Ohio Edison submitted a
15 proposed contract to Orrville after that meeting, that
16 contract could have been just a suggested form of contract.
17 Was it signed by Ohio Edison?

18 Q Was it your understanding at the meeting of
19 February 7, '74, was to discuss a contract which the
20 City of Orrville already had in hand?

21 A No.

22 Q Do you know whether or not the City of Orrville
23 already had a contract in hand by the time of the February
24 7, '74 meeting?

25 A I don't recall that they did, no.

1 Q I believe you testified you recalled having
2 seen a contract?

3 A I recall having seen a contract for temporary
4 service, but I don't recall when the contract was sent to me
5 or who sent it to me.

6 Q Let me see if I can get something clear.

7 When is it that you can best pinpoint in time
8 when the City of Orrville communicated to Ohio Edison that
9 it was no longer interested in interconnecting with Ohio
10 Edison at 138 kV?

11 A I would estimate that that was some time in late
12 spring or early summer of '74.

13 Q Of '74.

14 Do you know when the contract was signed with
15 Ohio Power?

16 A Not precisely, no.

17 Q Were you present at the signing?

18 A Yes, I was.

19 Q Can you give us an approximate date?

20 A I think it was along in, oh, maybe July or
21 August of '74.

22 Q All right.

23 But you say it was the spring of '74 or summer --
24 spring or early summer of '74 when Orrville communicated
25 to OE that it was no longer interested in interconnecting at

1 138 KV with Ohio Edison?

2 A I am guessing that that was about the time. I
3 recall that Mr. Williams told me that he had been in
4 communication with Mr. Dawson on several occasions and
5 Mr. Dawson wanted to know what Orville was going to do,
6 and I don't remember the precise time, but I do recall that
7 it might have been two or three occasions on which these
8 conversations were held between Williams and Dawson.

9 CHAIRMAN RIGLER: We'll take five minutes.

10 (Recess.)

11 CHAIRMAN RIGLER: On the record.

12 MR. STEVEN BERGER: Your Honor, prior to this
13 break I was fumbling around looking for a document. I
14 finally located it.

15 I would like to have it marked as Applicant's
16 Exhibit 109 OE 20. It is a letter dated August 30, 1974
17 from Mr. Dawson of Ohio Edison to Mr. Williams, and it
18 is marked at the bottom "approved by Mr. Williams as of
19 November 19, 1974."

20 CHAIRMAN RIGLER: Who is the author?

21 MR. STEVEN BERGER: Mr. Dawson, who is the
22 division manager of the Massillon Division, I believe, and
23 who Mr. Lewis has otherwise identified, I believe, in his
24 testimony.

25 CHAIRMAN RIGLER: All right.

(The document referred to was marked Applicant's Exhibit 100-CE 10, for identification.)

BY MR. STEVEN BENSER:

Q Have you read that, Mr. Lewis?

A Yes.

Q Does that refresh your recollection as to any matters that you testified heretofore about?

A No.

Q Have you ever seen this letter?

A I don't know that I have, Mr. Benser.

Q Let's see if we can piece together a little bit with regard to standby service.

As I understand your testimony, I think you have tried to make pretty clear here that Ohio Edison Company was not going to be the party that Orrville Interconnected with at 138 kV, and Ohio Edison's position was that it was not going to be the party to provide standby service to the City of Orrville -- that's correct, is it not?

A Yes.

Q You have also testified that it was in the spring or early summer of 1974, that it is your best understanding that the City of Orrville communicated to Ohio Edison that it was not interested in Ohio Edison any longer

1 as a utility with which the City of Orrville might wish to
2 interconnect at 138 kV; is that correct?

3 A Yes. And you understand that I was trying to
4 recollect when that date was and it was some time in that
5 period, to the best of my knowledge.

6 Q Certainly by August of 1974 it was brought home
7 to Ohio Edison that Ohio Edison was not going to be the
8 party that the City of Orrville was going to interconnect
9 with at 138 kV, isn't that correct?

10 MR. MELVIN BERGER: Objection. I think that is all
11 for an answer which is beyond the knowledge of the witness.
12 How does he know what was or was not brought home to Ohio
13 Edison?

14 CHAIRMAN RICLER: May I hear the question?

15 (Whereupon, the reporter read the
16 pending question, as requested.)

17 CHAIRMAN RICLER: Overruled.

18 THE WITNESS: Mr. Berger, I don't know exactly
19 when the contract was signed with Ohio Power Company, but I
20 do recall that there were photographs there about the power
21 service, and my best recollection would have been that that
22 was either in July or August.

23 I would assume that on that basis, certainly by
24 August, if that is when it occurred, Ohio Edison knew that
25 they were going with Ohio Power -- that Orrville was

1 going with Ohio Power.

2 Now if that signing didn't occur until September,
3 then I could not say that August was when they knew it.

4 BY MR. STEVEN BERGER:

5 Q Are you aware of any kind of communication from
6 Ohio Edison to the City of Orrville which indicated that
7 Ohio Edison was no longer willing to provide standby
8 service to the City of Orrville because the City of Orrville
9 had decided to establish the interconnection at 138 KV with
10 the Ohio Power Company?

11 A Other than what was said at the meeting on
12 February 7th, no.

13 Q That's correct?

14 A No.

15 Q You are sure, are you not, that the Ohio Edison
16 Company must have known by November 19, 1974 that the City
17 of Orrville had decided to establish an interconnection with
18 the Ohio Power Company at 138 KV?

19 A Did you say November?

20 Q Yes.

21 A Yes, I would certainly assume they knew it by then.

22 Q Does Applicant's 109, which is the August 30, 1974
23 letter, surprise you, Mr. Lewis?

24 A No.

25 Q Do you find it consistent with your testimony?

1 A Yes.

2 Q Mr. Lewis, when you were here the last time,
3 you discussed the question of transmission service as
4 it was discussed at the June 11, 1973 meeting with the
5 Department of Justice, did you not?

6 (Whereupon, the reporter read the
7 pending question, as requested.)

8 THE WITNESS: Yes.

9 BY MR. STEVEN BERGER:

10 Q Did you indicate to the Department at that time
11 who was present at the June 11, 1973 meeting?

12 A Yes.

13 Q Who did you indicate was present at the meeting?

14 A Mr. Mansfield, Mr. White, Mr. Firestone, Mr.
15 Williams, Mr. Bolen, Mr. Back, Mr. Cunniff, and myself.

16 Q You told that to the Department of Justice when
17 you testified here previously, the day you testified there
18 previously?

19 MR. MELVIN BERGER: By previously, you mean back
20 in February, I believe it was; is that right?

21 MR. STEVEN BERGER: Correct.

22 THE WITNESS: I have only been here once before.

23 BY MR. STEVEN BERGER:

24 Q One time before. And it was on that date that
25 you --

1 A Yes. And, Mr. Berger, when the Department of
2 Justice asked me about this, I called my secretary and asked
3 her to look up the notes and she read me those notes.

4 Now, assuming she read me those names, because
5 I wrote it on the back of my airline ticket folder, and I
6 threw the folder away -- I can't say to you today that
7 those are the names I had. But every reason would lead me
8 to believe that they were.

9 Q Do you know a Mr. Fredericksen?

10 A No, sir. Not specifically.

11 You understand that I said Fixations, don't you?

12 Q Yes, I do.

13 You testified in response to some questioning
14 by Mr. Lessy that you believe that the cost of the
15 facilities proposed by Mr. Mansfield in the August 24, 1972
16 letter to establish the interconnection between Ohio Edison
17 and the City of Orrville were unreasonable; is that correct?

18 A I don't think I testified to that, sir.

19 Q You did not testify --

20 A No, sir. I said the facilities they were
21 requiring were unreasonable. I did not say that the
22 cost was unreasonable.

23 Q Thank you.

24 MR. STEVEN BERGER: Your Honor, I think there are
25 other lines I could pursue at this time. I am really not

1 well informed, however. I think it is best to stop at this
2 point and reserve the right to continue my cross-examination
3 of Mr. Lewis at a later time.

4 CHAIRMAN RICHES: We have indicated that we would
5 afford you that privilege. However, I do think you should
6 pursue any questions related to the question of wheeling at
7 this time, since you were on specific notice with respect
8 to that testimony.

9 MR. BERGER: I understand that, Mr. Chairman.

10 I would like to move in Applicant's 108 and 109.

11 MR. LESSY: Staff would have an objection to
12 108 unless we were provided with a copy of the third
13 paragraph from the bottom on page 2, "Detailed Engineering
14 Analysis for Such an Arrangement."

15 And also the third paragraph on page 3, "We have
16 concluded from our engineering analysis."

17 If those analyses are written, I think we are
18 entitled to them, because we would like to take a look at
19 what their -- what Ohio Edison's engineering analysis was
20 which led to the conclusion that this over a million dollar
21 equipment was required.

22 We would like our engineers to have an opportunity
23 to review that also.

24 MR. STEVEN BERGER: I don't think he is entitled
25 to it, your Honor.

1 MR. LESSY: I would cite Federal Rule of
2 Evidence 106, which says that "when a writing or recorded
3 statement or a part thereof is introduced by a party, any
4 adverse party may require him at that time to introduce any
5 other party or any other writing or recorded statement
6 which ought, in fairness, to be considered contemporaneously
7 with it."

8 We have a disagreement between the opinion of
9 Mr. Lewis and the apparent opinion of Ohio Edison as to what
10 would reasonably be required, and we would like our own en-
11 gineering staff to review the Ohio Edison study.

12 MR. STEVEN BERGER: Your Honor, it may be that
13 at the time Mr. Lewis comes back, I am going to put in
14 what Mr. Lessy is asking for. I don't believe, as a matter
15 of fairness, that Mr. Lessy is entitled to those underlying
16 documents. Mr. Lessy -- neither the Department nor Mr.
17 Lessy -- I realize the Board has on its own gone into
18 another matter here today, but the underlying engineering
19 analysis that went into the August 24, 1973 letter, I don't
20 think is germane right now.

21 I think that -- I certainly don't have anything
22 from Mr. Lewis, haven't asked him for it. I mean it will
23 open up discovery and establish a collateral matter as to
24 whether or not the engineering analysis of Ohio Edison was
25 better than the engineering analysis of William Lewis

1 Associates -- this could go on a long time. I don't really
2 see the necessity to produce those documents.

3 CHAIRMAN RIGLER: I think the rule is well taken,
4 and well invoked in this instance, and we would require
5 the production of the study.

6 MR. STEVEN BERGER: I believe the rule is one of
7 context. It is fairness and one of -- in the name of
8 context, not in the name of discovery.

9 CHAIRMAN RIGLER: I am not sure I fully understand
10 your point, but it seems to me that to afford a fair reading
11 to the exhibit you propose to introduce into evidence,
12 that it would be necessary to have that study.

13 MR. MELVIN BERGER: Mr. Chairman, the Department
14 would also like to request that we be provided with the
15 copies of the three documents mentioned in the first
16 paragraph of Applicant's 109.

17 MR. STEVEN BERGER: Your Honor, maybe we can
18 dispose of it this way:

19 There have been requests made here. Let us make a
20 request and maybe we can agree to do it this way:

21 I would like to have from Mr. Lewis not only the
22 June 11, 1973 notes of the meeting, but I would like to have
23 Mr. Lewis' entire file on the City of Orrville in relation
24 to Ohio Edison.

25 CHAIRMAN RIGLER: Can you provide that material,

1 Mr. Lewis?

2 THE WITNESS: You say can I provide it?

3 CHAIRMAN RICLER: Yes.

4 THE WITNESS: Yes, I suppose I can.

5 MR. MELVIN BERGER: Mr. Chairman, the Department
6 would object to Mr. Lewis being asked to turn over those files
7 in view of the fact that discovery has been closed for quite
8 a number of months.

9 CHAIRMAN RICLER: Mr. Berger, the Department
10 is the one who is asking us to waive that rule for good
11 cause shown, and go into those new matters.

12 That is thoroughly inconsistent position,
13 and that is rejected.

14 THE WITNESS: Mr. Chairman, I am not a lawyer
15 and I don't know what my rights are, but I would like the
16 opportunity to discuss with my personal counsel what you all
17 are requiring of me, since I am not a party to this thing.

18 CHAIRMAN RICLER: We will certainly accord you
19 that privilege, Mr. Lewis.

20 One point I wanted to make is that included within
21 your file relating to Orrville may be matters which Orrville
22 would consider confidential or which would be competitive
23 information which they would not want to release to the Ohio
24 Edison Company.

25 Two things can happen: Either we can exclude

1 that information altogether if it does not deal with the
2 Orrville-Ohio Edison relationship, or we can bring it in
3 subject to a protective order that would insure that no
4 Ohio Edison personnel have access to that information.

5 We could make it confidential on the record.

6 So we will give you an opportunity to consult
7 with your attorney and report back to us first with respect
8 to what is in the file; and second, with respect to what
9 information you contend might be in a confidential status.

10 However, it seems that much of the information is
11 going to be information that already has been exchanged
12 between Orrville and Ohio Edison. It seems to me that
13 type of information would not be regarded as
14 confidential since Ohio Edison is already aware of it and
15 I would think that that would be readily available.

16 So will you report back to us through Mr. Senger
17 with respect first to what is in the file, and second with
18 respect to what protection, if any, is claimed? And I
19 emphasize once again that if this is information peculiar
20 to Orrville, that has nothing to do with any interface with
21 Ohio Edison, that would be not included within the request.

22 MR. STEVEN BERGER: Your Honor, may I interject
23 here just so that we aren't inadvertently limiting the
24 discovery to a point that I am really not in agreement with?

25 When I said "Orrville-OE," I meant to include in

1 that Orrville-OP to the extent that it is relevant to OR.

2 CHAIRMAN RIGLER: Yes. But I am talking about
3 information in which, let's say, Mr. Lewis is acquiring
4 new customers or new load growth just for the City of Orrville.
5 That would not be included within the scope of the request.

6 MR. STEVEN BERGER: Yes.

7 THE WITNESS: Mr. Chairman, would you be good enough
8 to furnish or order one of the parties to furnish me a copy
9 of the transcript so my attorney can read it?

10 CHAIRMAN RIGLER: Mr. Berger of the Justice
11 Department will do that.

12 THE WITNESS: And may I have at least 10 days
13 after receipt of that to consult with my attorney?

14 CHAIRMAN RIGLER: You may.

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1 THE WITNESS: Thank you.

2 MR. STEVEN BERGER: Mr. Chairman, just
3 so that I can try to be clear as to what I am
4 seeking, I am seeking everything in the way of documents
5 that in any way relates to Orrville's desire to establish
6 an interconnection at 138 kv, be it with Ohio Edison
7 or Ohio Power and any other documents relating in any way
8 to services requested of Ohio Edison from the time that
9 Mr. Lewis first became the consulting engineer for the
10 City.

11 CHAIRMAN RIGLER: I think that is appropriate
12 and I would imagine Mr. Lewis wouldn't have any trouble pro-
13 ducing that type of information.

14 Mr. Berger, Mr. Smith reminds me that as we
15 provide today's transcript, it would include that portion
16 of the record which took place with Mr. Lewis excused
17 from the room. Now, the Board is of the opinion that
18 given our ruling, there is no reason why the entire
19 transcript should not be available to Mr. Lewis.

20 MR. BERGER: I quite agree.

21 CHAIRMAN RIGLER: All right. So you have our
22 directive to furnish the study referred to in the third
23 paragraph from the end of the second page of Exhibit 100;
24 subject to that directive, we will receive 100 into evidence
25 at this time.

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(The document previously
marked Exhibit Applicants
109 (C) for identification,
was received in evidence.)

MR. LINSY: On the third paragraph of page
1, there was also one mentioned: "We have concluded
from our engineering analysis" --- it may be the same one.

I just wanted to make sure that is also
included.

CHAIRMAN RIGLER: All right.

MR. STEVEN BERGER: Your Honor, whatever underlying
memorandum or documents there are that Mr. Mansfield was
relying upon in the August 24, '73, letter, I will make
available.

CHAIRMAN RIGLER: All right. Now we come to the
Justice Department request relating to the documents
mentioned in the first paragraph of 109. Do you have any
problem with them?

Off the record.

(Discussion off the record.)

CHAIRMAN RIGLER: With respect to 109 Mr. Lewis
will look first in his files and see if he can provide
copies of those documents to the Department of Justice.

If he is unable to do so, the Department
may contact Ohio Edison which will then attempt to supply

copies of those documents.

Subject to that stipulation, we will receive 100 into evidence at this time.

(The document previously marked Applicants Exhibit 100 for identification, was received in evidence.)

CHAIRMAN RIGLER: Is there redaction?

MR. MELVIN BERGER: Yes, limited redaction.

MR. LESBY: Does that complete cross for everything, but the 132 kv interconnection?

MR. STEVEN BERGER: That completed cross on only transmissions as discussed at the June 11, 1973, meeting.

CHAIRMAN RIGLER: It includes cross as to the wheeling issue, which was identified separately by the Department, but it would not include completion of cross with respect to the matters the Board went into or any collateral matters as to which Applicant would claim insufficient notice.

REDIRECT EXAMINATION

BY MR. MELVIN BERGER:

Q In response to some of Mr. Berger's questions, Mr. Lewis, you indicated that in 1969 when Ohio Edison provided Orrville with some emergency service some people in Orrville were not happy with Ohio Edison's response; is that correct.

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A That is my understanding, yes, sir.

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1 Q Do you know why they were unhappy?

2 A No, I don't specifically.

3 Q I believe in part of your testimony you indicated
4 you wanted to clarify something with regard to your
5 February 7, '74 meeting, and possibly your August 24, '73
6 letter.

7 Do you want to clarify that at this time?

8 A Yes. I want to be sure that the record shows
9 that the second meeting that I have testified to between
10 representatives of Oakville and Ohio Edison was held in
11 Mansfield, Ohio on February 7, '74, and if I misspoke the
12 date of 8-24-73 earlier, that was not correct.

13 Q Where was that meeting held?

14 A Massillon.

15 Q Mr. Lewis, did Ohio -- did the Ohio Power Company
16 feel that loop service was necessary to maintain the integrity
17 of its system in dealing with the interconnections?

18 MR. STEVEN BERGER: I object, Your Honor. It
19 makes no difference whether Ohio Power thought it was
20 necessary for their system. Unless you can show that Ohio
21 Power's system was the same as Ohio Edison's system, it would
22 make no difference.

23 CHAIRMAN RIGLER: Sustained.

24 BY MR. MELVIN BERGER:

25 Q Mr. Lewis, is it necessarily true that loop

1 service is necessary to maintain the integrity of a system?

2 MR. STEVEN BERGER: I object, Your Honor.

3 CHAIRMAN RIGER: I will permit that for what it
4 is worth.

5 THE WITNESS: May I have the question repeated?

6 (Whereupon, the reporter read the
7 pending question, as requested.)

8 THE WITNESS: No.

9 BY MR. MELVIN BERGER:

10 Q Mr. Lewis, would it have been necessary for
11 Ohio Edison to know when they were to transmit power for
12 Orrville and in what amounts they were to transmit power
13 for Orrville in order to agree in principle to transmitting
14 power for Orrville?

15 MR. REYNOLDS: I object.

16 MR. LESSY: Is that objection for counsel other
17 than Applicant other than Ohio Edison?

18 MR. STEVEN BERGER: No.

19 MR. REYNOLDS: I made the objection. I don't
20 understand what Mr. Lessy's question is. One of the bases for
21 my objection is that it calls for a conclusion as to what Ohio
22 Edison might or might not have thought was important to Ohio
23 Edison.

24 I don't see how this witness is in any position
25 to testify to that.

1 MR. MELVIN BERGER: We believe this would call
2 for an engineering judgment.

3 CHAIRMAN RICLER: I would like to hear the
4 question again. Mr. Lessy's point went to the fact that
5 if you are objecting on behalf of Ohio Edison, Mr. Sawyer is
6 the only one who has that privilege right now.

7 MR. REYNOLDS: I would agree with that.

8 MR. STEVEN BERGER: He objected and I would
9 subscribe to his objection.

10 MR. REYNOLDS: I am objecting on behalf of the
11 Applicants other than Ohio Edison.

12 MR. LESSY: Are you going to waive your 105
13 motion?

14 MR. REYNOLDS: No. I don't understand
15 why that would follow. In fact, I intend to make it.

16 CHAIRMAN RICLER: I will permit it.

17 THE WITNESS: No.

18 MR. MELVIN BERGER: That would conclude the
19 Department's redirect at this time.

20 MR. LESSY: No questions.

21 MR. HJELMFELT: No questions.

22 RECROSS-EXAMINATION

23 BY MR. STEVEN BERGER:

24 Q Is loop service something which is presently
25 provided by any utilities that you are aware of?

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1 THE WITNESS: Mr. Chairman, I don't understand
2 the question.

3 BY MR. STEVEN BERGER:

4 Q Let me put it to you this way:

5 Do you know whether or not utilities, rather
6 than tap a line, run a radial line into a particular load,
7 will in the name of reliability instead of running a
8 single line into the load, will loop the line to make
9 for better reliability?

10 A Yes.

11 Q Does each large transmission system have its
12 own protective scheme?

13 A Yes.

14 Q Without knowing the scheme, could you say whether
15 or not in a given situation on a given system that loop
16 service is indicated or not?

17 A No.

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Q Thank you.

MR. STEVEN BERGER: I have no further questions.

MR. REYNOLDS: I will now make my request under Rule 105 to limit the testimony.

CHAIRMAN RIGLER: We will defer that. I don't want to leave Mr. Lewis sort of in limbo, so, it seems to me, that you may decide you have no further questions for Mr. Lewis, that you have covered everything. It may be that you will want to exercise the privilege of further cross-examination. What I am going to do is ask you to notify the Board within ten days after receipt of the exchange of documents that we have discussed in connection with Applicants Exhibits 108 and 109, whether you intend to call Mr. Lewis or not. And if we don't hear from you within ten days after further documents have been exchanged, we will assume that you have no further questions.

MR. STEVEN BERGER: That will be fine, your honor.

MR. LESSY: Off the record.

(Discussion off the record.)

CHAIRMAN RIGLER: On the record.

(Witness excused.)

The first document as to which ruling has been deferred is Department Exhibit 200, which is an affidavit followed by a series of documents. We wrestled with this problem, it seemed to us that we are going to admit the

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1 Bader Affidavit.

2 MR. REYNOLDS: Bader Affidavit, Court February
3 6, 1976.

4 CHAIRMAN RIGLER: That is correct. However,
5 we are not going to admit all of the exhibits to that
6 affidavit. Nonetheless, in order to get in those
7 exhibits, which we will be admitting, we will admit the
8 affidavit itself and we can disregard, then, certain facts
9 and certain documents listed in that affidavit.

10 We are going to exclude from evidence Exhibit
11 1, a memorandum of February 12, 1962, from Prentiss to
12 Cook.

13 We are going to admit -- we are going to exclude
14 the second exhibit, the April 28th memorandum from Cook
15 to Dible, but we are going to admit the third exhibit,
16 which is a March 1, 1965 memorandum from Ruddicks to
17 Prentiss.

18 We are going to exclude the August 6, 1970
19 memorandum from Ruddicks to Prentiss. We are going to
20 admit the March 20, 1961, letter from Barry to Conn.

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1 That letter includes attachment which will
2 come in with the principal exhibit. We are going to admit
3 the March 23, 1961 letter from Barry to Garrison.

4 We are going to exclude the March 23, '61 letter
5 from McGlasson to Wilhelm.

6 We will admit the April 3, 1961 letter from
7 Prentiss to Wilhelm.

8 We will exclude the April 21 letter or memorandum
9 from Barry to Prentiss.

10 We will admit the June 7, 1961 memorandum from
11 Doughty to Prentiss.

12 We will exclude a document entitled "Notes for
13 Prentiss and Oscar Holm," dated January 27, '61.

14 We will exclude the Enler memorandum of February
15 14, 1962.

16 We will exclude the untitled four-page memorandum
17 of July 20, 1962 of Mr. Ball.

18 We will exclude the February 12, '62 memorandum
19 to Mr. Andrews.

20 We will exclude the document called "Buckeye
21 Power Data," dated April 2, '62.

22 We are going to exclude the Patterson to Sporn
23 memorandum of July 31, '62.

24 Now I would like to skip over to Exhibit 152 which
25 is the second Bader affidavit, this one dated February 19, 1976.

Once again, we are going to admit the affidavit itself, although not all of the attachments to it. We are going to exclude the 19 -- February 5, 1957 letter from Mr. Sawvel to Mr. Patterson, and the February 11, 1957 letter from Mr. Patterson to Mr. Sawvel.

We are going to exclude the September 5, '61 letter --

(The portions of 15 Exhibit 200 referred to by the Chairman were admitted in evidence.)

MR. REYNOLDS: Did you say September?

CHAIRMAN RIGLER: Off the record.

(Discussion off the record.)

CHAIRMAN RIGLER: Back on the record.

It appears that the September 5, 1961 letter from Mr. Conn to Mr. Ayes was incorrectly identified in the affidavit itself as a February 5 letter and that Mr. Ayres' name was misspelled A-i-r-e-s.

It is that third item which correctly should bear the September 5, 1961 date which will be excluded.

We are going to admit the January 27, 1964 letter from Prentiss to Schmidt, and the two draft attachments dated January 24, '64, and January 14, '64 to

1 that letter.

2 We are going to exclude the April 18, 1962 memorandum
3 from Prentiss to Patterson and the attachment dated
4 April 18, 1962.

5 We are going to exclude the July 18, 1962
6 letter to Mr. Hechman and we are going to exclude the
7 July 11, 1962 letter from Barry to Patterson, together with
8 its attachment, and we are going to admit the February 13,
9 1966 memorandum from Fowler to Barry.

10 (The portions of
11 Exhibit 152 referred to
12 by the Chairman were
13 admitted in evidence.)

14 CHAIRMAN RIGLER: And that takes us over, I believe,
15 to Exhibit 586, which is the Moody's Utility
16 Manual listing of directors and officers of Ohio Power in
17 1962. That will be admitted.

18 (The portions of Exhibit
19 586 referred to by the
20 Chairman were admitted
21 in evidence.)

22 CHAIRMAN RIGLER: I believe the last item is
23 Exhibit 480, which is the Mansfield deposition in the SEC
24 proceedings.

25 MR. STEVEN BERGER: Testimony, Your Honor.

1 CHAIRMAN RIGLER: Testimony, I beg your pardon.

2 Because we believe that the proceeding was suffi-
3 ciently different from this so that attorneys for Mr.
4 Mansfield did not have opportunity to object or cross-
5 examine with respect to what might be an issue in this
6 proceeding, and because we believe that there was
7 ample opportunity to examine Mr. Mansfield directly with
8 respect to the nature of that testimony and not having
9 availed itself of that opportunity, the use of this
10 document at this time even for impeachment purposes wouldn't
11 seem appropriate.

12 We are going to exclude 480 from admission
13 into evidence.

14 Off the record.

15 (Discussion off the record.)

16 CHAIRMAN RIGLER: Back on the record.

17 Yes?

18 MR. REYNOLDS: There are some continuing
19 objections that I would like to make for the record with
20 respect to those documents that you have allowed in, and
21 that were attached to the two Bader affidavits.

22 CHAIRMAN RIGLER: I thought they were already
23 on the record, but if, as it may, the continuing
24 objection would be overruled with respect to them, and
25 we will admit them consistent with the rulings we

1 just gave.

2 MR. REYNOLDS: All right.

3 The only thing I want to be clear is who I was
4 making the continuing objection on behalf of.

5 I think it is probably clear from the documents,
6 but I don't think it will take too long if I do it
7 real quickly.

8 As to Exhibit 512, the two documents that were
9 admitted, the continuing objection would be on behalf of all
10 Applicants other than Toledo Edison Company.

11 As to the five documents admitted as attachments
12 to the Bader affidavit marked as DJ Exhibit 300, the
13 continuing objection would be with respect to all
14 Applicant's other than Ohio Edison Company.

15 CHAIRMAN RIGLER: To what it?

16 MR. REYNOLDS: Yes, sir.

17 CHAIRMAN RIGLER: Off the record.

18 (Discussion off the record.)

19 MR. REYNOLD: I would like to go on the record
20 and I can indicate to the Board what my thinking is.

21 I have obviously given a lot of thought to it. I
22 feel that in light of what needs to be done, both in terms
23 of motions and in terms of the record that we now have, which
24 is voluminous, both as to testimony and to documents, and
25 in terms of meeting with the witnesses and preparing the case

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1 and giving sufficient notice to the other parties of
2 the witnesses and the documents we intend to use, that I
3 need to ask for four weeks, not in terms of indicating that
4 I am asking for four, and I can use two, because I really
5 don't think it can be done in less than four weeks' time.

6 CHAIRMAN RIGLER: I have a real problem with that.
7 The Board was thinking of asking you to start as early as
8 the 14th of April and trying to get a couple of days in
9 that week.

10 I think the most time we would want to give you
11 would be until the 19th, or let's say even the 20th.

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1 MR. GOLDBERG: Mr. Chairman, the Staff would object
2 to anything over a week. We would be willing to go along
3 with your suggestion of the 14th, however. One of the
4 considerations in this case is whether or not it is
5 grandfathered. In light of that, we would like to
6 avoid any further delay.

7 CHAIRMAN RIGLER: I am familiar with the arguments
8 that were made in response to the appeal board's
9 questioning on the grandfather argument. But that really
10 is a collateral consideration, because if the appeal
11 board overrules this Board and decided that Davis-Deane
12 is grandfathered, so be it. If they agree with this,
13 so be it also, although in that instance we would want
14 to continue our policy of coming to a conclusion of these
15 hearings just as soon as possible.

16 MR. REYNOLDS: My four weeks is -- I don't
17 contemplate any free time in there. I am sensitive
18 and aware of this problem of schedule. Obviously, I have
19 taken that into full account. But I think that in terms
20 of the kind of case that we are involved in, I can't
21 compromise the interests of the client in order to
22 expedite this hearing or precipitate this hearing at a pace
23 that is too fast to cope fully with the case, and the evidence
24 we have heard.

25 I would merely state that I have been totally
occupied in the hearing on a full-time basis. I do intend

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1 to file some motions which I had indicated to the Board
2 earlier, and there will be -- there is a need to prepare
3 those motions in time for that, and that is in addition
4 to the other obvious things that need to be done, in order
5 to prepare.

6 CHAIRMAN RIGLER: We are conversant with the
7 problems you would face, but they are no different, really,
8 than the problems the other parties faced when we forced them to
9 adhere to deadlines for beginning the hearings.

10 We did have to give a few extra days, but it occurs
11 to me that, even those few extra days were requested by
12 the Applicants, more than the opposition parties at the end
13 of November and at the start of December.

14 MR. REYNOLDS: Justice had a month. The problem
15 is that -- and I think it is a lot different.

16 The Justice Department had a month and, of course,
17 the City had a delay which has enabled it to prepare for
18 its case over an extra month's period too.

19 Our real difficulty is that until this point
20 we haven't had the full scope and unless we get the
21 arguments that you have requested, we don't have the full
22 scope and nature of the case. We have had an awful lot
23 of material put into the record at a very rapid pace which,
24 obviously, is going to take time to digest and look through
25 and that process is ongoing at the moment. We haven't been

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sitting back and doing nothing.

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But I think quite understandably by the size
of the record that that is going to take some time, and
the 14th really gives me only --

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arl 1 CHAIRMAN RIGLER: I would disagree with you with
2 respect to any element of surprise.

3 MR. REYNOLDS: I am not suggesting any element of
4 surprise

5 What I am suggesting is that at this particular
6 juncture -- I am suggesting that in terms of preparing our
7 case, we have not had -- we don't have the luxury of presenting
8 it as a direct case in the first place. Ours is a responsive
9 case to what has been presented in this record.

10 The Staff, The Department, and the City have
11 certainly, as of their September 5 filing -- and my feeling
12 is that on their contentions before that, they have had
13 a handle on what their case is going to be, and where they
14 were going to go with their case.

15 We have not had that opportunity to formulate
16 our position until we know what it is that the
17 charges are against us and what evidence has been put in.

18 CHAIRMAN RIGLER: You have had that since
19 September 5.

20 MR. REYNOLDS: Not the evidence. It now is our
21 responsibility to go through the evidence and see the extent
22 to which the September 5 allegations have or have not been
23 proved.

24 That is something we intend to do.

25 CHAIRMAN RIGLER: That is a narrowing of the case,

1 not an expansion.

2 MR. REYNOLDS: I would hope to narrow the
3 case.

4 What I am saying is I need the four weeks and
5 part of that would be taken in an effort to narrow the
6 case.

7 I agree with you wholeheartedly. And to the
8 extent we are in a position to narrow the case, and it can
9 appropriately be narrowed, that will mean less time putting
10 on our case once we start.

11 The thing that bothers me about moving very
12 rapidly into our case is that we don't have the opportunity
13 to assess the evidence and make any determination as to
14 whether a narrowing can or cannot take place.

15 MR. GOLDBERG: Mr. Chairman, the Board's original
16 suggestion was for a one-week delay from the close of the
17 case of the parties opposed to Applicants until Applicants
18 started their case.

19 Now, I have consulted with the management of the
20 NRC and it is their position that one week is an
21 appropriate time and nothing more than that.

22 And I would like the record to show that we are
23 opposed to anything more than a one-week delay. We will
24 go along with the Chairman's suggestion of the 14th. But
25 we object to anything more than that.

1 MR. SMITH: Who is the management of NRC?

2 MR. GOLDBERG: The people in the NRC who make the
3 policy decisions from the top of the Executive Legal
4 Director's Office on up.

5 MR. LESSY: Applicants have made certain people
6 very conscious of the charges of negligence in the
7 administrative process here, and the question of the
8 scheduling and timing of this particular proceeding receives
9 very wide distribution.

10 It is a situation that was created by Applicants.
11 We would note the Staff never asked for any delays at all,
12 and we have had to put our case on first, and that is in
13 conjunction with doing a lot of other things.

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1 MR. REYNOLDS: I am not suggesting that my
2 situation has been created by any one party or all parties
3 at all.

4 I guess what I am suggesting is I now
5 have a mammoth case, in fact, three cases, that have to
6 be dealt with and an effort is going to be made and
7 a very conscientious effort, to try to narrow it,
8 if not by motions that the Board feels are valid, in terms
9 of perhaps the nature of the evidence we would have to
10 put in. I feel that the four weeks can be used
11 constructively and there is a good chance that by doing it,
12 you can eliminate what would otherwise be some
13 evidence that the Applicants, because they aren't able to
14 take that kind of look at the case, would feel they had
15 to put on out of an abundance of caution.

16 That is really what my -- why I say, four
17 weeks, and I represent to the Board that I am not saying
18 it with it in mind that I can do it in two weeks as a
19 bargaining ploy. I am saying it in very good faith that I
20 have made a careful assessment, and I really feel that
21 that is the minimum time that I can possibly do it in,
22 to do the job that I feel needs to be done for the
23 client.

24 CHAIRMAN RIGLER: Taking note of our original
25 schedule and taking note of the September 5 filing,

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1 in conformance with the evidence and to the parameters
2 of that filing, to the burden that we put on other parties to
3 meet schedule dates, we are not going to give you the four
4 weeks.

5 However, we will give you more than the 14th.

6 MR. REYNOLDS: Mr. Chairman, just one other
7 comment. I am trying to get it in before you rule.

8 The point I wanted to bring up is that I fail to
9 see how anybody can possibly be prejudiced by the four-
10 week time that the Applicants ask for.

11 We are really in a position where in the event
12 that the four weeks causes or impacts on getting the license
13 of the plant, certainly the Applicants are the ones that are
14 going to be hurt more than anybody else.

15 It is not our intent -- putting aside the
16 filing of Davis-Besse, we have the Perry Plants that are
17 also potentially -- the schedule of those is potentially
18 jeopardized because of construction. It is certainly
19 not in our interest to delay this proceeding to a point
20 where it will impact on the schedules if there is any
21 way we can do it.

22 On the other hand, we are -- if we don't get the four-
23 weeks, I think that -- on the other side, that can only
24 inure to the detriment of the Applicants, because it is
25 us, now, that have to analyze the situation and to go

1 forward with our case. I don't see how it is any prejudice
2 to the other parties if the four-week time is allowed.

3 CHAIRMAN RIGGS: Assuming -- I don't mean to
4 suggest that we have made any decision, but anticipating
5 that you make some motions in an attempt to reduce the
6 scope of the case, and you lose them all, just for planning
7 purposes, make that assumption --

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1 MR. REYNOLDS: We would have to, I think.

2 CHAIRMAN RIGLER: How long do you anticipate
3 the Applicant's case would take?

4 MR. REYNOLDS: My meeting tomorrow was to try
5 to make that assessment. I would suggest to the Board that ---
6 again, subject to some revision which may be necessary
7 after I have had a chance to consult with all the other
8 counsel -- that the projection that was made to the Appeal
9 Board as a date for the closing of the record being some time --
10 I believe that was in early to mid-July -- would be an outside
11 date.

12 I would -- I am not suggesting -- I would say that
13 would say that would be closing of the entire record in the
14 event that it were necessary or appropriate to go
15 through rebuttal and so on. I don't know how long it would
16 take.

17 I would think that the Applicant's case at the
18 outside would not run more than two months, and my guess
19 is that that is a very outside estimate.

20 On the other hand, as you suggested in these
21 hearings, other lawyers than myself have been trying to attend
22 to the matter of going through what has been done in order
23 to make that kind of assessment and we intend to meet
24 tomorrow and I don't want to -- by suggesting that as an
25 outside date, I don't want to mislead the Board into

1 thinking that I have really got a firm idea about it.

2 CHAIRMAN RIGLER: All right.

3 You made the point that by giving you an extended
4 date, no one would be prejudiced and that indeed it is
5 the Applicants who have an interest in advancing these
6 proceedings, because it is the Applicants who want to get
7 the plants on line. I appreciate that, and I think the
8 response to it is that there is also a public interest in
9 insuring that administrative proceedings move promptly.

10 MR. REYNOLDS: I agree with that.

11 CHAIRMAN RIGLER: I am convinced personally that
12 complex cases can be tried and completed in a reasonable
13 period of time without depriving any party of due
14 process, and I don't think that the magic words "complex
15 case" -- "multiple applicants" -- automatically invoke
16 the specter of hearings that drag on indefinitely.

17 I have some very strong feelings with respect
18 to manageability which accords due process and yet which
19 permits the statute to function in the process which
20 Congress intended.

21 That is a consideration that is very important
22 to the Board.

23 MR. REYNOLDS: I would agree with that, and only
24 suggest that I think we have been moving along at the kind
25 of pace in this proceeding which would certainly comport

1 with that public interest and I would submit that the
2 four weeks we suggest is just in my view -- it is not one
3 that would interject into this proceeding the kind of delay
4 that would alter the overall schedule of the proceedings so
5 as to make it appear that it was dragging. Certainly
6 compared to the other antitrust proceedings --

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7 CHAIRMAN RYGLER: I am not using any other case
8 as a yardstick. I am looking at the issues in controversy
9 here, the scope and the nature of the evidence that has
10 been presented, and what would be appropriate in this
11 particular proceeding.

12 MR. REYNOLDS: I wasn't suggesting that as a
13 yardstick. I was just saying certainly with that as the
14 only other proceeding we have, we are well ahead of the
15 schedules of those proceedings.

16 I don't think the four weeks I am suggesting is
17 the type of delay that is really going to undermine that
18 public interest.

19 I fully agree with that as a factor that has to
20 be taken into account, and I am submitting only that I don't
21 think the four weeks that I am suggesting is one that would
22 conflict with that public interest.

23 MR. GOLDBERG: Mr. Reynolds states now that he is
24 not using any other case as a yardstick. I would like to
25 point out that in their appeal brief in the grandfather

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1 issue they did use another case as a yardstick.

2 MR. REYNOLDS: That was for a different reason.

3 CHAIRMAN RIGLER: All right.

4 What I am going to do is give you longer than
5 the 14th. I am going to tentatively set a date of either
6 the 20th or the 21st, which would be in the nature of almost
7 three weeks from today.

8 I am going to ask you to initiate a conference
9 call perhaps next Tuesday after you have had a meeting of
10 counsel, and you can report further on this.

11 The burden would be on you to demonstrate the
12 need for additional time, and I am taking into account
13 the arguments you have already presented.

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14 To reiterate those arguments wouldn't
15 help you that much. I want a very realistic picture of
16 where you are and where you are going.

17 I also anticipate that some time during the
18 week of the 12th, we may have to get together for one morning
19 to hear the 105 argument and to hear the clean-up matters
20 of the Department, and also I would hope by then any motions
21 you have to file.

22 MR. REYNOLDS: All right.

23 I guess now that does give me a problem. I was
24 going to suggest perhaps Monday we meet. I really have
25 difficulty preparing any motions until I hear the 105

1 arguments of the other parties.

2 That also impacts on my ability to prepare and
3 the extent to which we are in a position to narrow this
4 proceeding or not narrow the proceeding.

5 CHAIRMAN RIGLER: We will come in Monday
6 morning at 9:30.

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1 MR. REYNOLDS: If we could meet Monday
2 morning, I could probably give a report to the Board at
3 that time of the meeting on Friday which would accomplish
4 everything.

5 CHAIRMAN RIGLER: Fine.

6 The Monday meeting will be very brief. I take
7 it only an hour or so.

8 MR. HJELMFELT: I would like to put one thing on
9 the record.

10 I think everybody is aware that I have up on
11 appeal the question of privileged documents and if I should
12 get a decision saying I am entitled to them before the
13 record is closed here, I would want the Board to be
14 on notice that I will be coming back and asking leave to
15 put in some of those documents, perhaps.

16 CHAIRMAN RIGLER: All right. I suppose we will get
17 together Monday at 9:30.

18 (Whereupon at 5:00 p.m., the hearing was
19 adjourned, to be reconvened at 9:30 a. m., on Monday,
20 April 5, 1976.)

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