

Regulatory Docket File

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING
CO.

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

and

CLEVELAND ELECTRIC ILLUMINATING
CO., et al.

(Perry Nuclear Power Plant, Units 1 & 2)

Place - Silver Spring, Maryland

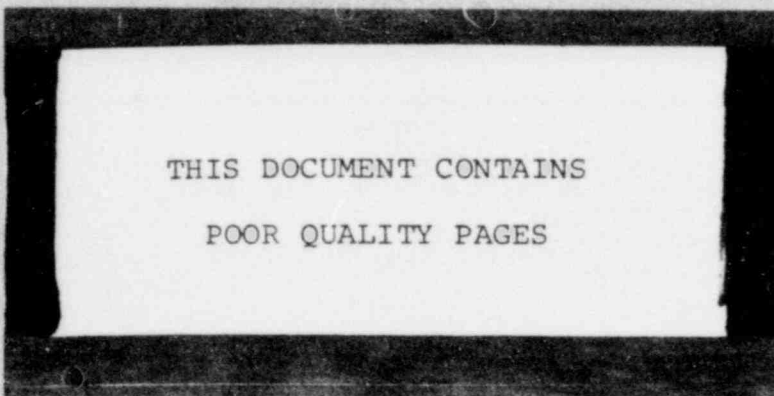
Date - Thursday, 19 February 1976

Docket Nos.

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

50-440A
50-~~441~~A

Pages 5246- 5316



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POOR QUALITY PAGES

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 -----X
4 In the Matter of : Docket Nos.
5 TOLEDO EDISON COMPANY and : 50-346A
6 CLEVELAND ELECTRIC ILLUMINATING CO. : 50-500A
7 (Davis-Besse Nuclear Power Station, : 50-501A
8 Units 1, 2 and 3) :
9 and :
10 CLEVELAND ELECTRIC ILLUMINATING CO. : 50-440A
11 et al. : 50-441A
12 (Perry Nuclear Power Plant, :
13 Units 1 and 2) :
14 -----X

15 First Floor Hearing Room
16 7915 Eastern Avenue
17 Silver Spring, Maryland

18 Thursday, 19 February 1976

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

21 BEFORE:

22 MR. DOUGLAS RIGLER, Chairman

23 MR. JOHN FRYSLAK, Member

24 MR. IVAN SMITH, Member

25 APPEARANCES:

As heretofore noted.

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25C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REINDIRECT</u>	<u>RECROSS</u>
M. R. Dorsey	5248	5287	5303	5313

(Further, 5314)

<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
DJ-300 (30011304)	5252	5281
DJ-301 (14000065)	5262	"
DJ-302 (14000077-79)	5266	"
DJ-303 (14000072)	5268	"
DJ-304 (14000073)	"	"
DJ-305 (14000074)	"	"
DJ-306 (14000081-82)	"	"
DJ-307 (14000083)	"	"
DJ-308 (14000068-69)	5270	"
DJ-309 (14000076)	5271	"
DJ-310 (30011765)	5272	"
DJ-311 (14000099)	5279	:
Applicants Exhibit 90 (TE) (ltr. dated Aug. 21, 1973, from M. R. Dorsey to John Cloer)	5296	5300
Applicants Exhibit 91 (TE) (ltr. dated Aug. 30, 1973, from W. E. Moran to Board of Public Affairs, City of Napoleon, attn: M. R. Dorsey.)	5296	5300

bw

C O N T E N T S (Contd)

<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Applicants 92 (TE) (ltr. from Mr. Dorsey to Mr. Cloer.)	5297	5300
Applicants 93 (TE) (ltr dated Sept. 18, 1974, from W. R. Moxan to Mr. R. Dorsey.)	5298	
DJ-312 (00016707)	5315	
DJ-313 (00016708 and 06)	5315	

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MR. MELVIN BERGER: The Department would like to call Mr. M. R. Dorsey as its next witness.

Whereupon,

M. R. DORSEY

was called as a witness on behalf of the Department of Justice and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MELVIN BERGER:

Q Will you please state your name?

A Marshall Roy Dorsey.

Q What is your business address?

A 225 Riverview, Napoleon, Ohio.

Q Are you testifying today pursuant to a subpoena?

A Yes.

Q Would you briefly outline your education after high school?

A Graduated from high school. I attended the University of Florida and graduated with a Bachelor of Science in electrical engineering.

Q What year was that?

A 1958.

Q Are you a member of any professional societies?

A Yes.

Q What societies?

A The National Society of Professional Engineers,
the Institute of Electrical and Electronic Engineers.

Q Are you a registered professional engineer?

A Yes.

Q In what states?

A Ohio and Florida.

Q Can you briefly outline your employment
history after graduation from college?

A I went to work for Florida Power & Light
Company in Miami, Florida immediately after graduation.
I worked for them in three different job categories.
I was approximately seven years in engineering in Daytona
Beach, Florida.

Then I moved to operations assistant supervisor
in Melbourne, Florida for approximately five years.

Then I moved to a district supervisor job in
West Palm Beach, Florida for approximately two years,
after which I moved to Napoleon as manager of utilities for
the City of Napoleon.

I am director of utilities and public works
for the City of Napoleon presently.

Q When did you go to Napoleon?

A December 1972.

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1 Q What are your present duties as Director of
2 Public Works?

3 A Director of Public Works or my entire duties?
4 There is a difference.

5 Q What are your entire duties?

6 A I'm responsible for the management, engineering,
7 planning, all of the management responsibilities for the
8 electric utility, water utility, sanitary sewer utility,
9 street department, sanitation department and the cemetery.

10 Q When you arrived in Napoleon, approximately
11 what was Napoleon's peak load?

12 A Best I can remember it was in the neighborhood
13 of 15 megawatts.

14 Q What is the present peak load of Napoleon for the
15 past year?

16 A Last year we peaked roughly 16 megawatts.

17 Q Do you know what month you reached your peak last
18 year?

19 A It was July or August. I would have to look at
20 the records to be sure.

21 Q When you first arrived in Napoleon, how was
22 Napoleon meeting its bulk power requirements?

23 A Our bulk power requirements -- are you speaking
24 of our purchase power requirements or the total requirements
25 for the system?

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1 A We were operating a 12 megawatt coal-fired steam
2 generator and we had purchase power connection with Toledo
3 Edison Company.

4 We were generating approximately 75 percent of our
5 requirement and buying the other 25 percent.

6 Q Had Napoleon always generated a portion of its
7 requirement and purchased a portion of its requirement?

8 A They had been an isolated system up until
9 approximately 1962, at which time the tie substation was
10 constructed and they started buying a portion of their
11 requirement.

12 Q So up until 1962 they generated all of their
13 requirements?

14 A Yes.

15 Q Is Napoleon still generating part of its
16 requirement today?

17 A No.

18 Q Is it generating any of its requirement today?

19 A No.

20 Q When did it cease generating?

21 A We officially ceased generating in February of
22 1975. We restarted a plant during the summer of 1975
23 for a three-month period on a special contractual arrangement
24 for sale of the power.

25 Q With whom was this contractual arrangement?

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1 A Toledo Edison Company.

2 MR. MELVIN BERGER: I would like to have marked
3 for identification as DJ-300, a document entitled
4 "Agreement," which is six pages in length and bears
5 Justice Document Number 30011304.

6 (The document referred to was
7 marked Exhibit DJ-300 for
8 identification.)

9 BY MR. MELVIN BERGER:

10 Q Mr. Dorsey, is this the arrangement you
11 just had reference to?

12 A Yes.

13 Q Mr. Dorsey, did anyone at Toledo Edison tell
14 you why Toledo Edison was entering into this agreement?

15 A During the discussions that led up to this
16 agreement, it was disclosed and I don't think it was any
17 secret information, it was public information, that Toledo
18 Edison did have some generation problems that were
19 anticipated for their summer peak, due to a loss of a
20 generator in February of that year.

21 Q Mr. Dorsey, have you had occasion since you
22 arrived in Napoleon to compare the rates of Napoleon, retail
23 rates of Napoleon to those of Toledo Edison in the
24 same geographic area?

25 A Yes.

Q Do you know the relationship between the Toledo

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1 Edison industrial retail rates and Napoleon industrial
2 retail rates?

3 A. The last time that I had reason to compare them
4 was sometime last summer, at which time we were
5 approximately five percent below a specific customer that
6 Toledo Edison is serving in our area. We had compared a
7 specific bill of that customer against our rate that they
8 actually paid at that time, and we were approximately five
9 percent below Toledo Edison.

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Q Why did you make this rate comparison?

A I was asked to by the company, I guess he was a purchasing agent.

Q Which company would this be?

A Campbell Soup Company.

Q Do you know the relationship between the Toledo Edison residential rates and those of the City of Napoleon?

A The -- I'm trying to remember specifically. I had investigated this last summer also.

At that time, as best I can remember, we were running about 5 percent, somewhere in the neighborhood of 5 percent below Toledo Edison Company on residential rates. This was the residential rates in the county area surrounding the City of Napoleon.

Q Is that comparison still true today?

A The Toledo Edison Company recently raised their rates or advertised the fact that they were going to raise their rates which would further widen the gap on the different in the rate structure.

Whether or not that new rate is in effect. I'm not sure. I haven't checked the filing date that they had proposed to put the rate into effect.

Q You indicated that it would widen the gap. Do you know how much the gap would be under the proposed new Toledo Edison rates?

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MR. REYNOLDS: I object to that.

CHAIRMAN RIGLER: On what basis?

MR. REYNOLDS: He testified he doesn't know the details of the rates of proposal by TE. How can he testify as to the magnitude of the gap?

CHAIRMAN RIGLER: If he can answer, I will permit it.

BY MR. MELVIN BERGER:

Q Would you like to have the question read back?

A Yes.

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

THE WITNESS: On some rough comparison I made against the published rate, and the legal notice in the Toledo Blade, I believe it was, the gap was about 20 percent, as best as I can remember.

Toledo Edison would be approximately 20 percent higher than our rates.

MR. SMITH: What was that last statement? What was the last sentence you said?

THE WITNESS: Toledo Edison rates would be approximately 20 percent higher than the Napoleon rates.

BY MR. MELVIN BERGER:

Q Mr. Dorsey, to the best of your knowledge, is there any impediment which prevents the City of Napoleon from

competing with Toledo Edison for customers located outside the city limits of Napoleon?

A The only objection that I'm aware of is the anti-pirating law. I don't know whether it is in effect for a municipal or not, but that would be one thing that would have to be overcome if this was to happen.

Q Mr. Dorsey, do you know if Napoleon has competed with Toledo Edison for any industrial customers located outside the City of Napoleon?

A Yes.

Q Can you give us an example of one such situation?

A I'm not exactly sure of the date, but it was some time, I think, in 1972. The Clevite Harris Company made a changeover from Toledo Edison Company to a Napoleon power system.

Q How large a load was this customer?

A Their present load is now slightly over one megawatt demand. I don't know what their consumption is.

Q Do you know why they changed service?

A There was negotiation with the city manager at that time about making the change, and it was based on a cost savings to the Clevite Harris.

Q Mr. Dorsey, when you first arrived in Napoleon in December of 1972, was Napoleon in the process of exploring alternate sources of bulk power supply?

A Yes, they were.

Q What sources had they explored at that time?

A They had advertised for bids for bulk power supply.

Q At that time had they received any bids?

A Yes.

Q Who was this bid submitted by?

A There was one bid received from Tri-County Cooperative. There were no other bids.

Q Mr. Dorsey, do you know what the source of Tri-County's bulk power supply was at that time?

A The primary source was the Buckeye generator in Steubenville.

Q Under that bid, was Napoleon to purchase all of its bulk power requirements from Tri-County Co-op?

A Could you repeat that, please?

Q Under the terms of the bids submitted by Tri-County, was Napoleon to purchase all of its bulk power requirements from the co-op throughout the year?

A Again the bulk power requirement -- do you mean the power that we were going to buy, were we going to buy it all from them, or was the entire need of their system to come from them?

Q The entire needs of the system.

A The contract offered was a seasonal power

agreement which provided that we would generate with our own generators during three months out of the year.

Q What three months were those?

A December, January, and February.

Q Do you know why you would be generating for three months and purchasing for nine months?

A The buckeye system experienced a winter peak during those months, some time during those months, and they wanted us to not contribute to their winter peak on their system.

They offered us this contract that would provide that we would contribute to their winter peak. If we did, we would be penalized for it.

Q At that time did Napoleon have a winter peak or summer peak?

A Summer peak.

Q Does the fact that power would be supplied to you nine months out of the year on a seasonal basis have any effect on the price of that power?

A Yes.

Q What would that effect be?

A The seasonal power arrangement was a much reduced cost to the city. It was a cheaper rate by going to seasonal power.

Q Do you know why it was a cheaper rate?

A Essentially reducing the peak demand on any generating system improves the load factor of the system and makes better usage of the system for generation. By utilizing the more capacity over a longer period of time, you end up with a much better return on investment.

 Therefore, by reducing their peak load, they could supply us with the kilowatt hours we needed on a good load factor basis by limiting the contribution to the peak demand. It was economical for them to do this.

end 3

s4 1 Q When you arrived in Napoleon had this bid you
2 just referred to been evaluated?

bwl 3 MR. REYNOLDS: Could I have the question
4 again?

(The reporter read the pending question.)

5 THE WITNESS: As best I remember, it had.

6 BY MR. MELVIN BERGER:

7 Q What was that evaluation?

8 A the evaluation was a recommendation that we take
9 the Tri-County Power contract.

10 Q At that time was Tri-County directly interconnected
11 with the City of Napoleon?

12 A No.

13 Q Has Tri-County ever been directly interconnected
14 with the City of Napoleon?

15 A Not to my knowledge.

16 Q How did Tri-County intend to serve Napoleon?

17 A The proposal was that, well, there were actually
18 two proposals submitted. The initial proposal was that we
19 would take service at their Liberty substation which would
20 require the City to build a transmission line from Napoleon
21 to Liberty Center.

22 The alternate proposal, which was the one that
23 we governed acceptance of the contract under, was that we
24 would take service at our existing substation where we now and
25 did have at that time our Toledo Edison purchase power tie.

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1 Q You are saying that you conditioned acceptance of
2 the agreement on the second alternative; is that right?

3 A Yes.

4 Q How did Tri-County intend to serve you at that
5 existing substation?

6 A The intention was that we would serve every
7 existing transmission lines into existing facilities.

8 Q Who owned those existing transmission lines?

9 A Toledo Edison.

10 Q Do you know whether Toledo Edison would have
11 had to have made any physical changes in its existing
12 transmission network, in order to deliver power generated
13 by Buckeye Power to the City of Napoleon?

14 A No, they would not have.

15 CHAIRMAN RIGLER: Is Toledo Edison connected
16 to Tri-City?

17 THE WITNESS: The Toledo Edison system served
18 the Tri-County step down substations. Tri-County did not
19 own any transmission lines, to my knowledge.

20 BY MR. MELVIN BERGER:

21 Q Did Napoleon sign a contract with Tri-County?

22 A Yes.

23 Q At the time the contract was signed were there
24 any pre-conditions to obtaining service from Tri-County?

25 A Pre-conditions on whose part?

Q

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1 Q On Napoleon's part.

2 A Napoleon was required to disconnect from the
3 Toledo Edison purchase power connection and generate for
4 90 days as an isolated system prior to taking the Tri-county
5 Power.

6 Q Do you know if Toledo Edison agreed to provide
7 Tri-County with a delivery point at this substation?

8 A I was so informed by Tri-County.

9 MR. MELVIN BERGER: I would like to have marked
10 for identification as DJ-301, a document which is a letter
11 from Mr. F. Byron Wortman, W-o-r-t-m-a-n, to Mr. Roy Dorsey,
12 dated May 31, 1973, and bearing Department of Justice
13 identification number 14000065.

14 There is an attachment to that document which is
15 NRC Staff Exhibit 129.

16 Since that is in evidence, I will not introduce
17 that as a Department Exhibit.

18 (The document referred to was
19 marked Exhibit DJ-301 for
20 identification.)

21 BY MR. MELVIN BERGER:

22 Q Mr. Dorsey, is this the document you just
23 had reference to?

24 A Yes.

25 Q Mr. Dorsey, were you informed as to whether or not --

1 MR. REYNOLDS: Could you wait a second until I
2 find NRC-129? I'm sorry.

3 BY MR. MELVIN BERGER:

4 Q Mr. Drosey, were you informed as to whether or
5 not Toledo Edison would wheel this power to the
6 Napoleon substation?

7 A The acceptance of the contract was based on the fact
8 that they would wheel the power. And, as I remember, we
9 were so informed, because we couldn't accept the contract
10 until we were assured they would wheel the power.

11 Q I would like to direct your attention for a moment
12 to the first page of NRC-129, which was the attachment
13 to DJ-301, and in particular, to the third sentence there
14 which reads, "Assuming separation of the City of Napoleon
15 from our system and successful continuous operation by the
16 City of Napoleon for 90 days on a self-generating basis,
17 satisfactory settlement of the extra compensation for two-
18 way feed," and then it goes on.

19 My question is in reference to the last phrase.
20 "Satisfactory settlement of the extra compensation for . . ."

21 What effect this extra compensation mentioned
22 here would have had on Napoleon.

23 A The primary interest that the City of Napoleon
24 had in buying the Tri-County Power was a cost savings to the
25 City, which could be passed on to their customers. The

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1 compensation for two-way feed would further raise the price
2 of the power that we had to buy under the original agreement
3 with Tri-County and would substantially reduce the financial
4 benefit to the City.

5 Q Was an amount of compensation for the two-way
6 feed ever agreed upon?

7 A No.

8 Q Mr. Dorsey, did you ever inform Toledo Edison of
9 your intent to disconnect for 90 days?

10 A Yes, I did.

11 Q Do you recall what form that communication took?

12 A As I remember it was a letter I wrote to the
13 district manager in Defiance, Mr. Clear.

14 Q I would like to show you now a document which
15 is already in evidence as DJ-149 and ask you if this is
16 the letter you are referring to?

17 A Yes.

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Q If Napoleon disconnected from Toledo Edison for 90 days, where would Napoleon have gotten its power from?

A You mean during the 90-day disconnect?

Q Yes.

A We would have generated all of our needs.

Q What would the effect of this 90-day disconnect have been on the type of operation -- strike that.

What would the effect of that type of operation have been on the Napoleon system?

A The Napoleon system at that time had two generators which were operational. One of them was a six megawatt unit that had been derated to less than five megawatts.

The other was a 12 megawatt unit which was fairly new and fairly dependable.

We would have necessitated that we run both units during this period. The six megawatt unit was in questionable condition, had given us trouble every time we had run it for the past few years.

The 12 megawatt unit was a good unit, but again had a history of unscheduled shutdowns of three or four months. And by being isolated and having to supply the entire needs of the Napoleon system through our own generators, we would have essentially reduced the reliability

of our power to our customers to a large extent.

Q Did you inform your customers of your planned shutdown?

A Yes.

MR. MELVIN BERGER: I would like to have marked for identification as DJ 302 a three-page letter from M. R. Dorsey on the letterhead of the City of Napoleon, and addressed to "Dear Customer."

BY MR. MELVIN BERGER:

Q Mr. Dorsey, I would like to ask you if this is the letter you just had reference to?

A Yes.

Q Did you receive any replies from your customers?

CHAIRMAN RIGLER: What are the numbers on that?

MR. MELVIN BERGER: The number is 14000077 through 79.

(The document referred to was marked DJ 302 for identification.)

BY MR. MELVIN BERGER:

Q Mr. Dorsey, did you receive any replies from any of your customers?

A Yes.

MR. MELVIN BERGER: I would like to now have marked for identification as DJ 303 a letter from C. W.

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Reace, R-e-a-c-e, purchase agent, to the City of Napoleon, dated August 6, 1973.

I would like to have marked for identification as DJ 304 --

CHAIRMAN RIGLER: What is the number?

MR. MELVIN BERGER: 14000072.

I would like to have identified as DJ 304 a one-page letter from Earl Short, addressed to the City of Napoleon, dated August 7, 1973, and bearing Department document number 14000073.

I would like to have marked for identification as DJ 305 a letter from David E. Blessner, B-l-e-s-s-e-r, addressed to Ray Dorsey, which I believe is a mistake, dated August 10, 1973, and bearing number 14000074.

I would like to have marked for identification as DJ 306 a two-page handwritten note, the first page of which, first half of which is apparently the letter Mr. Dorsey just identified as the one he sent to his customers, dated in the left-hand corner, center of the first page, August 8, 1973, and signed by Mr. and Mrs. Carl J. Basil, B-a-s-i-l, which bears Department of Justice document number 14000081 through 82.

I would also like to have marked for identification as DJ 307 a two-page document from John W. Shugar, S-h-u-g-a-r, addressed to the City of Napoleon, dated

August 21, 1973, and bearing Department of Justice document number 14000083.

(The documents referred to were marked DJ Exhibits 303 thru 307, for identification.)

BY MR. MELVIN BERGER:

Q I would like to ask you if the documents we have just marked are the -- are some of the responses which you just referred to?

A Yes.

Q Mr. Dorsey, did you investigate the possibility of securing other reserves for your system during the 90-day cutoff?

A Yes, I did.

Q What investigation did you make? What was the extent of your investigation?

A We attempted to find some type of portable diesel or turbine generator that we could rent and bring in and set up as an emergency source to supply power in case we lost one of our coal-fired turbines.

The only thing we were able to find was a 30 megawatt gas turbine which we could lease for a period of three months for a quarter of a million dollars, whether we used it or not.

Q Was that a practical solution to your problem?

A No, it was not. The expense was much too high.

Q Did you communicate your concern about the 90-day cutoff to Toledo Edison?

A Yes, I did.

Q Do you recall to whom you communicated it?

A Mr. Cloer.

Q I would like to show you a document that is in evidence as NRC 130.

I would like to ask you if this is the communication you are referring to?

A Yes, it is.

Q What were you asking for in this communication?

A I asked them to waive the 90-day disconnect clause in the Tri-County contract.

Q Did you receive a response from Toledo Edison?

A Yes.

Q What was the nature of that response?

A They refused to waive.

Q I would like to show you a document which is in evidence as NRC 131, and ask you if this is the response you are referring to?

A Yes, it is.

Q After your failure to secure the waiver, did you prepare -- go ahead and prepare to disconnect for 90

days?

A Yes.

Q Did you inform Buckeye or Tri-County of your plans to do this?

A Yes.

MR. MELVIN BERGER: I would like to have marked for identification as DJ 308 a letter from M. R. Dorsey to Byron Worthman, dated July 26, 1973, and bearing Department document number 14000063 through 69.

(The document referred to was marked DJ Exhibit 308 for identification.)

BY MR. MELVIN BERGER:

Q Mr. Dorsey, was this the letter by which you informed Tri-County of your intent to disconnect?

A Yes, it is.

Q Mr. Dorsey, by this time, had your concern over an emergency situation arising in Napoleon been taken care of in any way?

A I'm not sure I understand the question.

Q At the time of your letter to Mr. Worthman informing him of your intent to disconnect, were you still worried about an emergency situation arising?

A During the 90-day disconnect?

Q Yes.

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A Yes.

Q Did you communicate this concern to Toledo Edison?

A You mean other than what you have -- these other letters we have discussed?

Q Yes, other than the other letters we have looked at thus far.

A Yes, I did.

MR. MELVIN BERGER: I would like to have marked as DJ 309 a letter from M. R. Dorsey to John Cloer, dated August 14, 1973, which bears Department document number 14000076.

(The document referred to was marked DJ 309, for identification.)

BY MR. MELVIN BERGER:

Q I would like to ask you if this is the communication you just referred to?

A Yes.

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Q Do you recall if you received a written response to this?

A Yes, I did.

MR. MELVIN BERGER: I would like to have marked for identification as DJ-310, a letter from, well, I guess it is initialed "JBC," but it is on the letterhead of John B. Cloer, addressed to Mr. M. R. Dorsey, dated August 17, 1973, and bearing Department of Justice Document Number 30011765.

(The document referred to was marked Exhibit DJ-310 for identification.)

BY MR. MELVIN BERGER:

Q I would like to ask you if this is the response you just referred to.

A Yes.

Q Mr. Dorsey, did you also have oral communications with Toledo Edison personally regarding a suggested procedure for interconnecting -- I'm sorry, for disconnecting?

A Yes.

Q would you tell us with whom you discussed this matter?

A Mr. Cloer.

CHAIRMAN RIGLER: Can you speak up a little, please?

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1 BY MR. MELVIN BERGER:

2 Q Did you suggest a method for physically dis-
3 connecting Toledo Edison from Napoleon?

4 A Yes.

5 Q What was that method?

6 A I requested that they use the air brake
7 disconnect mentioned in this letter, as the disconnect point
8 without removal of the actual conductor between structures
9 that tie the two substations together.

10 Q Did you suggest this to Mr. Cloer?

11 A Yes.

12 Q What was Mr. Cloer's response to that?

13 A The letter is his response.

14 Q In case of the need to reconnect the two
15 systems during your 90-day cut-off, what would you
16 estimate the time to be to effect reconnection, using your
17 suggested method of disconnecting?

18 A Depending on the time of day that it occurred,
19 it would take possibly 15 minutes.

20 Q What would be the anticipated time of reconnection,
21 using the Toledo Edison, if disconnect had been made
22 according to Toledo Edison's plan?

23 A Estimated a minimum of four to five
24 hours, depending on the time of day. That would be under
25 good conditions.

1 Q Did Napoleon disconnect from Toledo Edison?

2 A No, we did not.

3 Q Why not?

4 A At the time we were preparing to make the dis-
5 connect, I had, the subject of this dual feed clause
6 had come up with additional compensation. I had approached
7 Toledo Edison about making changes in their proposed
8 agreement, which they had offered us at the same time that we
9 had accepted the Tri-County contract.

10 There were conditions in that agreement that were
11 intolerable to our system and would be very expensive as
12 compared to the rate we were paying prior to that.

13 I had approached them on the standpoint that if
14 they would make some changes in the proposal that would make
15 their contract more receptive to the City of Napoleon,
16 more economical and a better contract, that we could
17 live with that. I did not want to make the disconnect
18 because of the possibility of subjecting our customers to loss
19 of power.

20 If you would repeat the question, again, maybe
21 there is something else I would add.

22 MR. MELVIN BERGER: Can we have the
23 question and answer read back?

24 (The reporter read the record as requested.)

25 THE WITNESS: To answer your question, they made

1 some concessions on that agreement that made it more
2 receptive and helped me decide not to make the disconnect.

3 CHAIRMAN RIGLER: What do you mean by dual feed with
4 additional compensation problem?

5 THE WITNESS: After we had accepted the Tri-County
6 contract, Toledo Edison had told Buckeye that if we
7 were going to maintain the existing method of serving the
8 City of Napoleon, which is essentially a loop feed
9 with dual breakers and we are served between the breakers.
10 That gives us a choice of direction by which we can take
11 power.

12 The loss of one transmission line is only
13 a momentary loss of power. We can immediately swap over
14 to the other transmission line. If they were going to
15 maintain this manner of serving the City of Napoleon, we would
16 have to pay additional compensation for maintaining that type
17 of feed or they would put us on a radial feed by changing
18 our service tap over to on the other side of one of the
19 breakers, where we didn't have the dual feed capability.

20 They had passed this on to Buckeye and Buckeye
21 had come to me and said, you will have to either pay additional
22 compensation for the dual feed or if you don't want to pay the
23 extra compensation, you will have to take a radial feed
24 substation.

25 CHAIRMAN RIGLER: You were receiving partial power

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1 requirements from Toledo Edison at this time?

2 THE WITNESS: Yes.

3 CHAIRMAN RIGLER: That was subject to the dual
4 feed mechanism?

5 THE WITNESS: Yes.

6 CHAIRMAN RIGLER: No new equipment would have to
7 be installed, if you were to take from Buckeye under a dual
8 feed arrangement?

9 THE WITNESS: That is right.

10 Just a little information. The existing
11 substation has a double breaker arrangement, and we come
12 out of the middle.

13 The center tap also serves the Campbell Soup
14 Plant there in town. The Campbell Soup plant and the
15 City of Napoleon had the dual feed arrangement, we had
16 at that time and we still do.

17 They were going to eliminate the dual feed to
18 Napoleon, but keep the Campbell Soup plant on the dual
19 feed arrangement.

20 CHAIRMAN RIGLER: Did they tell you why they were
21 going to do that?

22 THE WITNESS: Toledo Edison didn't tell me
23 that. Buckeye told me that. Buckeye said that Toledo Edison
24 wanted additional compensation, if they maintain it.

25 CHAIRMAN RIGLER: Are there maintenance expenses

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associated with the dual feed type system?

THE WITNESS: Yes, there would be.

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CHAIRMAN RIGLER: Are they different than they would be on a single tap system?

THE WITNESS: They would be unless they eliminated the dual feed system altogether. By continuing to serve us by the dual feed method or putting us on the single feed and continuing to serve Campbell Soup by the dual feed method, I can't see that there would be any increase in maintenance and cost.

BY MR. MELVIN BERGER:

Q Mr. Dorsey, would the fact that Napoleon be served by a dual feed as opposed to radial feed have any effect on the Napoleon system?

A Yes. It would substantially reduce the reliability of the system, continuity of service.

Q Mr. Dorsey, I believe that in one of your answers a few questions back, you mentioned a proposal which was submitted to you by Toledo Edison; is that correct?

A Yes.

Q Did you find that proposal acceptable?

A No, it was not.

Q What features did you find objectionable in that proposal?

A There were several things in it. I can't recall them all. One of them was a 75 percent ratchet demand clause,

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and one of them was a restriction on service area proposal.

There were others, but I would have to read the contract in depth to recall them.

MR. MELVIN BERGER: I would like to have marked for identification as DJ 311 a document entitled FPC Electric Tariff, original volume one of the Toledo Edison Company, filed with the Federal Power Commission. This bears Department of Justice Document number 14000099. It is eight pages in length.

(The document referred to was marked DJ 311 for identification.)

MR. MELVIN BERGER: For the convenience of everyone, it has been red-lined.

CHAIRMAN RIGLER: That is Department Exhibit 311?

MR. MELVIN BERGER: Yes.

BY MR. MELVIN BERGER:

Q Mr. Dorsey, is this the proposal you just referred to?

A I can't be positive that this is the exact proposal that was offered.

The only thing I can say is that the paragraph 11A -- I don't know, it looks like sheet number 19 -- is essentially the restriction as to service area that was discussed in the proposal that was offered to the city.

It looks very similar to what was offered, and I can't be positive this is the exact writing that was offered, but I would say it is very close to it, if it is not.

Q Mr. Dorsey, did you comment to Toledo Edison with regard to paragraph 11 of this proposal?

A Yes.

Q What was the nature of your comment?

A I didn't like it. It was restrictive and I considered it to be illegal. Very undesirable for the City to enter into an agreement of this nature.

Q To whom did you direct these comments?

A As best I can remember, almost all of my comments along this line were with Mr. Moran of Toledo Edison Company.

Q Was paragraph number 11 in the proposal that you finally accepted?

A No, it was not.

MR. MELVIN BERGER: I believe that would conclude the Department's questioning of Mr. Dorsey on direct examination.

At this time we would like to move into evidence DJ 300 through DJ 311.

MR. BRILEY: No objections on behalf of Toledo Edison.

MR. REYNOLDS: Mr. Chairman, I would like to make

a continuing objection on behalf of all Applicants other than the Toledo Edison with respect to all of these documents.

Also I would like to make a more specific objection with respect to documents DJ 303, 304, 305, 306 and 307.

I don't see that these documents have any relevance to the matters that have been the subject of the testimony or to the issues in this proceeding, and it seems to me it is an attempt to fill this record with the type of innuendo that might be used at some later date in an improper manner and is something that ought to not come into the proceeding.

CHAIRMAN RIGLER: The continuing objection is overruled. The supplementary objection is overruled. Documents 300 through 311 will be admitted.

(DJ Exhibits 300 thru 311, previously marked for identification, were received in evidence.)

MR. REYNOLDS: I would like to make a continuing objection on behalf of all Applicants to the testimony of this witness, except for the Applicant Toledo Edison.

CHAIRMAN RIGLER: Staff?

MR. LESSY: I'm coming up with a few questions. I think if we are going to break early, I will let Applicants go and then you can come back to me.

MR. REYNOLDS: No.

CHAIRMAN RIGLER: We will not do that.

Mr. Hjelmfelt?

MR. HJELMFELT: I have no questions.

CHAIRMAN RIGLER: Before we break, the Board has a few questions which we might ask now.

Did I understand you to say the 90-day disconnect provision was included in a contract you were offered by Tri-County?

THE WITNESS: Yes.

CHAIRMAN RIGLER: Why did Tri-County insist upon a 90-day disconnect provision?

THE WITNESS: It was my understanding that they had a contractual arrangement with the CAPCO group, I guess Toledo Edison being a part of that group that required that this 90-day provision be met within the case of changing customers between the people or members of that group.

CHAIRMAN RIGLER: Did Tri-County have any independent interest aside from any contractual commitment that required them to ask for the 90-day isolated operation?

THE WITNESS: Not to my knowledge.

MR. REYNOLDS: Mr. Chairman, I will move to strike the answer just before this one on the basis that there has not been any indication in the testimony that the witness has knowledge of any arrangements that Tri-County may or may not have with CAPCO.

His testimony suggests in a speculative manner that there was such an arrangement. If there is such an arrangement, the best evidence would be that kind of agreement being brought forward.

CHAIRMAN RIGLER: I would think so, too, but at this stage with the witness on the stand, I think covering this now with him would be the better procedure.

There is at least a question in my mind with respect to his testimony because apparently we can infer that Toledo Edison is the instigating party for the 90-day disconnect provision, and yet the record, as it now stands, states that it was requested by Tri-County.

I think we should clear that up at this time.

MR. REYNOLDS: I'm not quarreling with that at all. The problem I'm having is that the witness has testified that that agreement in a contract to which Tri-County was a party to is an agreement between Tri-County and the CAPCO companies. We can go ahead and get into that in cross.

CHAIRMAN RIGLER: What information did Tri-County give to you with respect to the nature of any agreement which required 90 days isolated operation?

THEWITNESS: The primary people I talked with about this whole arrangement was the people from the Buckeye group.

The Tri-County manager at that time was not that deeply involved in what was taking place. He was kind of an intermediary and kind of filled the gap of making the initial contact.

But Charlie Jacks and Mr. Cummins of the Buckeye were the people I communicated with, and they were the ones that told me that this contractual arrangement was necessary between Buckeye and the Toledo Edison Company.

CHAIRMAN RIGLER: They made reference to a contract between Buckeye and Toledo Edison which they said required them to in turn require Napoleon to operate in isolation for 90 days prior to switchover?

THE WITNESS: That's correct.

CHAIRMAN RIGLER: Later in your testimony, you spoke of applying to Toledo Edison to obtain a waiver in a contract clause between Napoleon and Tri-County. How did you form your understanding that Toledo Edison was in a position to grant a waiver for a contract as to which they were not a party?

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THE WITNESS: The way it was explained to me by the representative of Buckeye was that the anti-pirating, the 90-day disconnect, was in there for the purpose of preventing one power company or system in that group of companies from taking the customers from another power system in that group. Where I was Toledo Edison's customer and Buckeye was going to take me as a customer, then if Toledo Edison waived it, the other companies could care less.

It was only the concern of Toledo Edison Company and Buckeye under this particular agreement.

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1 CHAIRMAN RIGLER: You made actual application to
2 Toledo Edison for waiver of the 90-day isolation clause?

3 THE WITNESS: I wrote them a letter and asked
4 them to waive it, yes.

5 CHAIRMAN RIGLER: Did you have any conversations with
6 them in addition to the letter?

7 THE WITNESS: Yes.

8 CHAIRMAN RIGLER: In these conversations did any
9 official of Toledo Edison acknowledge that their waiver
10 would permit Buckeye to conclude its interconnection
11 with you without insisting upon the 90-day
12 isolation provision?

13 THE WITNESS: No.

14 MR. SMITH: In reference to the Chairman's
15 last question, was that fact assumed in your conversation
16 with Toledo Edison?

17 MR. REYNOLDS: Assumed by whom, Mr. Smith?

18 MR. SMITH: By you and Toledo Edison or by
19 you or Toledo Edison. By anybody.

20 MR. REYNOLDS: Excuse me, sir --

21 MR. SMITH: I will ask my way, and if you don't
22 like it, you can ask it your way.

23 THE WITNESS: It was my understanding through my
24 conversations with Buckeye and with Toledo Edison Company
25 that Toledo Edison was the only party necessary to satisfy

1 in order to waive this 90-day disconnect. They were the
2 offended party, if they should lose me as a customer, that
3 the other members of the group weren't concerned, since I was
4 not their customer.

5 But as long as Toledo Edison was satisfied that
6 there would be no objection to it.

7 Did that answer your question?

8 MR. MSITH: Yes, thank.

9 CHAIRMAN RIGLER: We will take five minutes.

10 (Recess.)

11 MR. LESSY: Mr. Chairman, Staff has a couple of
12 questions only

13 CROSS-EXAMINATION

14 BY MR. LESSY:

15 Q Mr. Dorsey, has Toledo Edison ever offered
16 to Napoleon access to either the Perry or the Davis-Besse
17 Nuclear Units?

18 A No --

19 MR. REYNOLDS: I object to that, Mr. Chairman,
20 that is outside the scope of the direct testimony and it
21 seems it is impermissible. I move to strike the
22 question and answer.

23 MR. LESSY: I suggest in this proceeding
24 Applicants' policy as to access to the nuclear units
25 are always relevant.

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1 — CHAIRMAN RIGLER: Not on the cross-examination
2 rule. The objection is sustained.

3 We will strike the answer.

4 MR. LESSY: I have no further questions.

5 CHAIRMAN RIGLER: Si Campbell Soup still a
6 customer of the City of Napoleon?

7 THE WITNESS: We serve their V-6 plant, which is
8 a small portion of their operation there.

9 CHAIRMAN RIGLER: When you were referring to the
10 dual feeder system we were a little confused about
11 whether it was Toledo Edison or Napoleon that was supplying
12 power via the separate dual feed switch to the Campbell
13 Soup plan.

14 THE WITNESS: Toledo Edison.

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We serve the Campbell Soup by distribution voltage.

The dual feed is the Toledo Edison transmission service to the Campbell Soup area.

CHAIRMAN RIGLER: You may proceed, Mr. Briley.

BY MR. BRILEY:

Q Mr. Dorsey, are you familiar with the term "ratchet effect"?

A As it applies to the contract, purchase power contract?

Q Yes, sir.

A Yes.

Q Could you describe that for me, please?

A Essentially the purchase power rates are based on both demand and consumption. The demand rate is based on the KVA demand of your system for each month.

The ratchet in the case of 50 percent ratchet, if you have a KVA demand of say 20 KVA or say 20 MVA during a one-month period, one 30-day period, and with a 50 percent ratchet that applies, then the following month the minimum billing demand would be half of that, or 50 percent of that, which would be 10 KVA.

That may extend for different periods until it could regress to a lesser value.

Q I see.

I believe that you testified when you were negotiating your agreement with Tri-County that you had decided that you would not take Tri-County power during the peak months of December, January, and February.

Was that due to consideration of this ratchet effect you were talking about, and the economic effect of that on the City of Napoleon?

A Could you restate that, please?

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

THE WITNESS: The Tri-County contract was based on us complying with this seasonal power which eliminated purchased during the Buckeye peak period.

If we had taken purchases during that period, it would have cost us a penalty and whatever peak that we were billed that occurred during the Buckeye peak, we would be charged 100 percent ratchet demand for the next 12 months.

BY MR. BRILEY:

Q All right.

You also testified that Buckeye had proposed to you either a two-way feed or one-way feed, and that additional compensation would be involved if the two-way feed was utilized. This additional compensation, I assume, would be the additional compensation of the two-way feed

over the one-way feed; is that correct?

A There was going to be a charge for all power bought through the two-way feed over and above what the initial contract had spelled out.

It would be higher than -- the charge would not exist if the one-way feed was used.

Q So then that reflects the difference between the two-way feed and one-way feed, additional charge?

A Essentially, yes.

CHAIRMAN RIGLER: Do you recall what the price difference was?

THE WITNESS: No, sir, I don't.

CHAIRMAN RIGLER: Are you paying additional compensation in your present contract with Toledo Edison to obtain the dual feed feature?

THE WITNESS: No, sir.

If we are, it is not spelled out as such in the contract. It is built into the rate structure.

BY MR. BRILEY:

Q Mr. Dorsey, could you tell me what your winter peak load would be during December, January, and February?

A We peaked at roughly 15 megawatts this year. It wasn't quite that high at that time. Electric heat has raised our peak demand somewhat. I estimate at that time it was around 13 megawatts.

Q It was 13 megawatts at that time, and it is up to about 15 megawatts now?

A Yes.

CHAIRMAN RIGLER: At what time?

THE WITNESS: During the winter, December, January, and February. It normally occurs at the coldest time of the year.

CHAIRMAN RIGLER: The winter of what year? When did you experience the 13 megawatt peak?

THE WITNESS: In 1973, winter of '73-'4.

BY MR. BRILEY:

Q Had you entered into the agreement with Tri-County during the three winter months, what load would you be supplying to your system from your own generating facilities?

A We would still be purchasing a portion of the load.

Again we were faced with the 100 percent ratchet on peak, but we knew that there was going to be a certain quantity of power that we would have to buy, anyway.

So we could adjust our load during the high peak periods where we wouldn't entirely stop buying power, but we would reduce it to a minimum.

Q Were you finished?

A I would estimate we would be buying -- would have

been buying probably 25 percent of our needs even during that peak period.

Q Which would then leave 75 percent of your requirements then that you would be self-generating yourself?

A Yes.

Q Did you have any concern about the ability of your generating units to be able to supply that load during those three winter months, had you entered into an agreement with Tri-County?

A Yes.

Q You were concerned about that?

A Yes.

Q What was the extent of your concern?

A As I have stated earlier, the units had a history of unscheduled shutdowns due to various malfunctions.

Should the unscheduled shutdown occur on the Buckeye peak, it could have been a financial hardship on the City at that time.

Q You testified that your reason for not going ahead with the disconnect was that Toledo Edison made some concessions to you with respect to the contract with them.

You said, I believe, that the one concession was a relaxation of the ratchet demand, and another one had to do with the rate.

Could you explain that further?

A The ratchet demand was reduced from a 75 percent ratchet to a 60 percent ratchet.

Under the 75 percent ratchet, at our history of buying power at that time would have caused us to pay a penalty on our demand charge.

The 60 percent ratchet would not have. We could have utilized the full 60 percent without penalty.

I don't remember saying that it affected the rate.

Q I believe you said you had a problem with what you felt to be restrictive language.

A Yes, the agreement.

Q May I assume then, therefore, that the removal -- the agreement to remove that language and readjustment of the ratchet charge were your reasons for deciding not to go ahead and disconnect and take power from Tri-County; is that correct?

A This is what allowed me to justify not to make the 90-day disconnect. The two-way feed inclusion had come into there prior to that and raised big questions. This was what really sold me on not making the 90-day disconnect. I have to justify not doing it, and that was justification.

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1 Q Mr. Dorsey, what is the purpose of a ratchet
2 charge, do you know?

3 A Essentially, in my judgment, a ratchet charge
4 is for the purpose of defraying expenses of initial
5 investment on equipment required to meet peak demand which
6 do not have adequate load factor to pay it off over the
7 long haul.

8 Q Was the Toledo Edison Company and, specifically,
9 Mr. Cloer, that you referred to earlier, helpful and cooperative
10 with you in setting forth the manner in which you would
11 disconnect from the company in explaining how that could be done
12 and in explaining to you the manner in which it would be
13 possible to reconect, if the emergency would occur?

14 A Yes, he was.

15 Q Has the Toledo Edison Company been cooperative
16 in the City of Napoleon in the past when emergencies did
17 arise with respect to their systems?

18 A Yes.

19 MR. BRILEY: In order to improve and complete
20 the record with respect to documentary correspondence that
21 has previously been put into evidence, I would like to, at
22 this time, put some additional documents into evidence with
23 respect to this Witness.

24 I would like to have marked for identification
25 as Applicants Exhibit 90(TE) a letter dated August 21, 1973,

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1 from Mr. M. R. Dorsey to Mr. John Cloer of the Toledo
2 Edison Company.

3 (The document referred to
4 was marked Applicants Exhibit
5 90 (TE) for identification.)

6 BY MR. BRILEY:

7 Q Do you recognize this letter and do you recall
8 having sent it to Mr. Cloer?

9 A Yes.

10 Q And what was the purpose of the correspondence?

11 A This was a follow-up on the previous correspondence
12 concerning the disconnect to verify the date that we
13 would make the 90-day disconnect. There is also a question
14 in there trying to clarify the first month's billing under
15 the new rate structure that they had filed.

16 Q I see. And was that clarified?

17 A As I remember, it was.

18 MR. BRILEY: All right, the next document I would
19 like to have marked for identification is Applicants Exhibit
20 91 (TE) which is an August 30, 1973 letter from Mr. W. R.
21 Moran to the Board of Public Affairs, City of Napoleon,
22 attention to M. R. Dorsey.

23 (The document referred to was
24 marked Applicants Exhibit 91
25 (TE) for identification.)

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BY MR. BRILEY:

Q Mr. Dorsey, do you recognize this correspondence?

A Yes.

Q And what was the purpose of this correspondence?

A As best I can remember, this was in response to my request for a revision of the proposed agreement that would provide sufficient reasoning for me not to disconnect.

Q In other words, these were the provisions that you were looking for from Mr. Moran and this is the official documentation of those concessions to you and the City of Napoleon; is that correct?

A There were two letters written, both of which made some concessions, and the one was a kind of preliminary type thing.

I believe this is the one that was finally submitted since it does have the date prior to the scheduled disconnect. I received it on the day before the disconnect was scheduled.

MR. BRILEY: I would like to have marked for identification Applicant's Exhibit 92 (TE).

(The document referred to was marked Applicant's 92 (TE) for identification.)

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BY MR. BRILEY:

Q Mr. Dorsey, do you recognize this document?

A Yes.

Q Would you describe it, please?

A This is a letter to Mr. Cloer, in which I have stated that we discontinued our plans for disconnecting on August 31.

Q And you prepared and sent this correspondence, I assume, after you received Mr. Moran's letter of August 30, which is Applicant's Exhibit 91 (TE), is that correct?

A Yes.

MR. BRILEY: Next I would like to have marked for identification as Applicant's Exhibit 93 (TE) a letter dated September 18, 1974 from W. R. Moran to Mr. M. R. Dorsey.

(The document referred to was marked Applicant's Exhibit 93 (TE) for identification.)

BY MR. BRILEY:

Q Mr. Dorsey, do you recognize this document?

A Yes.

Q And could you please describe for me its purpose?

A I'm a little bit hazy about the details, but as

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best I can remember, I was seriously considering shutting down our generating facilities.

The only thing that concerned me was should Toledo Edison raise their rates, when the proposed agreement expired, what kind of penalty would I have to pay if I chose to restart the generator.

I had requested a waiver of the 60 percent ratchet requirement if I did go to total purchase power, and should resume generation at a later date, and also had been pursuing the idea of building a larger, more efficient power plant for the City of Napoleon and was attempting to find people who were interested in purchasing a portion of the generating capability of that plant, so that we could build a larger plant than necessary for just the City of Napoleon and could gain economy by the larger size.

Q Is it then a fair characterization of this correspondence to say that herein Mr. Moran suggested to you, number one, a way in which you might be able to avoid the ratchet demand situation; and number two, that Toledo Edison would be very interested in pursuing the additional capacity as a purchaser?

A Yes.

MR. MELVIN BERGER: I object to that. I think the document speaks for itself.

MR. BRILEY: I believe I asked if it was a fair

characterization.

CHAIRMAN RIGLER: Overruled.

MR. BRILEY: Chairman Rigler, I would now like to move into evidence Applicant's Exhibits 90, 91, 92, and 93.

MR. MELVIN BERGER: The Department would like to object to Applicant's 93. We believe it is in evidence already as DJ 151.

MR. BRILEY: Can we have a moment, Mr. Chairman? If it is in evidence, obviously we don't want to put it in evidence again.

Chairman Rigler, Mr. Berger is absolutely right, and I amend my request for admissions into evidence to include only Applicant's Exhibits 90, 91, and 92.

CHAIRMAN RIGLER: Hearing no objection, Applicant's Exhibits 90, 91, and 92 will be admitted.

(The documents previously marked Applicant's Exhibits 90, 91, and 92 (ME) for identification, were received in evidence.)

MR. BRILEY: Toledo Edison Company has no further questions of this witness.

CHAIRMAN RIGLER: Mr. Reynolds?

BY MR. REYNOLDS:

Q Mr. Dorsey, I believe in response to a question by the Chairman, you indicated that it was your understanding Tri-County had an agreement with the CAPCO companies that contained a provision that you have described here as the 90-day cutoff provision.

What is the basis for your understanding that there was such an agreement between Tri-County and the CAPCO companies?

A Tri-County obtained their power from Buckeye, from the Buckeye generating system, and the Buckeye generating system had a 90-day provision with the other members of the CAPCO group.

Q Could you identify for me the members of the CAPCO group?

A Only as far as Toledo Edison is concerned. That is the only one I'm familiar with, and Buckeye.

Q Is it your understanding that Buckeye is a member of the CAPCO group?

A That was my understanding, yes.

Q Is it based on that understanding that you have made -- you have testified that Tri-County had an agreement with the CAPCO group that contained a 90-day cutoff provision?

A It was from the facts that were stated

to me by the representatives of Buckeye telling me that they had this agreement and that they had to live with it.

Q When you say "they" had this agreement --

A That Buckeye and Toledo Edison Company, they were involved in this agreement, and I understood it was under the CAPCO agreement.

Q Am I correct in understanding your testimony to be that insofar as your own knowledge is concerned, the parties to the contract were Toledo Edison and Buckeye and Tri-County, and no other parties? If you know, I mean.

A I don't know factually that the agreement exists in any case. That is just what I was told.

Q You were told this by people at Buckeye?

A Yes.

Q Who were those individuals?

A I had talked with Cummins and Jacks both. Now which one, I can't say, but it is one of the two.

MR. REYNOLDS: I don't have anything further, Mr. Chairman.

MR. MELVIN BERGER: We have redirect.

CHAIRMAN RIGLER: Mr. Lessy, will you have questions?

MR. LESSY: No, sir.

REDIRECT EXAMINATION

BY MR. MELVIN BERGER:

Q Mr. Dorsey, I would like to direct your attention to an exhibit which has been marked NRC Exhibit 131, which is the July 19 letter from Mr. Cicer to you.

Would you please read that over?

Have you had opportunity to read that over?

A Yes.

Q I would like to ask you if the statements contained in this letter concerning a contract between Buckeye and Toledo Edison and Napoleon complying with the terms of that contract were partially the basis of your earlier answers to questions posed by the Board and by Mr. Reynolds' following questions?

A Yes.

MR. MELVIN BERGER: We have no more questions.

CHAIRMAN RICLER: Mr. Lessy, we overruled your objection earlier on the basis that there was nothing in the direct examination which permitted you to enter that particular area.

As a result of cross-examination and the introduction of Applicant's No. 93 for identification, and some of the questions posed by Mr. Briley, there might now be a basis for you to pursue that line if any of the parties felt it was important.

The Board will not ask questions on its own and will not direct any of the parties to enter that area.

On the other hand, we can't help but observe that the boundaries of the direct examination have been expanded by the cross-examination.

MR.REYNOLDS: I will object, Mr. Chairman, because cross-examination is limited by direct, and it is not expanded by cross-examination of other parties which is also limited by direct.

We have our objection that we have noted with **respect** to any cross-examination by the Staff, but I think if we are now going to allow the Staff to cross and expand its cross of the witness on the basis of cross-examination, that the Board has not deemed to say is improperly beyond the scope of direct, that the Applicants made, I think that is outside what is permissible under cross-examination in any circumstances.

MR. MELVIN BERGER: I believe the Department allowed the Applicant to proceed on those questions without objecting in the interests of having a full and fair record. It would appear if the Staff has additional questions on that examination, it would be proper.

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1 CHAIRMAN RIGLER: Do you want to address the
2 procedural point first?

3 MR. LESSY: No, because apparently I will be allowed
4 to ask a couple of questions.

5 CHAIRMAN RIGLER: No, Mr. Reynolds has objected
6 to that.

7 First we will rule on his objection.

8 MR. LESSY: Let me state that the whole area of
9 testimony, as I see it, is Napoleon obtaining alternative
10 sources of bulk power supply. The specific instance of
11 obtaining sources is a contractual arrangement with Buckeye
12 Power. We think, as long as that line was opened up on
13 direct and expanded to some extent on cross, that another
14 alternative which would be the Toledo Edison share in nuclear
15 plants would also come within the area of alternative sources,
16 particularly in light of two facts, the first fact is that
17 those units are the purpose of the hearing and, secondly,
18 in an administrative proceeding we don't need to, at all
19 times, strictly follow the federal rules.

20 On that basis I would like to square with the
21 Witness very briefly that area.

22 CHAIRMAN RIGLER: I think I'm still in disagreement
23 with respect to how much close examination you may pursue,
24 based upon the assertion that the direct concerned alternate
25 power sources.

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1 The alternate power sources are limited.
2 The reconsideration we would be allowing would relate
3 solely to Applicants' introduction of testimony relating
4 to plans to have a larger power plant by 1980, perhaps
5 a power plant which would supply more than the needs of
6 the City of Napoleon and perhaps a power plant which could
7 make available up to 50 megawatts of power to the Toledo
8 Edison system.

9 That was the only area opened up by the
10 cross-examination which we would not permit you to go into.
11 It seems that might tie into your concern with the nuclear
12 plants at issue in this proceeding.

13 MR. BRILEY: The document DU-151 and was
14 tentatively identified as Applicants 93, and was not put
15 into evidence as such, refers, if you will look at it, to
16 Toledo Edison's participation in a larger power plant that
17 Napoleon was building.

18 It has virtually nothing to do with anything
19 that Toledo was engaged in.

20 I don't understand how my cross-examination based
21 on this document could possibly, under any stretch of the
22 imagination, open up a line of questioning about membership
23 in CAPCO or participation in any other unit.

24 CHAIRMAN RIGLER: I certainly agree with you with
25 respect to membership in CAPCO. It is the question of where

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1 Napoleon might obtain this additional power it was willing
2 to discuss with Toledo Edison was opened up by you.

3 MR. BRILEY: The Witness testified that the City
4 of Napoleon was considering building a larger plant on
5 their own.

6 CHAIRMAN RIGLER: That is the area of
7 exploration we would permit.

8 MR. REYNOLDS: So the record is clear, I gather
9 the Chairman has overruled my objection.

10 CHAIRMAN RIGLER: We will overrule your objection
11 and will permit limited additional examination confined
12 to the areas we consider were opened up by Applicants
13 during the course of their cross-examination.

14 We went so far at one point as to have Mr. Briley
15 actually paraphrase this paragraph to the Witness, and we let
16 that come in over the objection of the Department of Justice.

17 BY MR. LESSY:

18 Q Mr. Dorsey, with respect to access to large-scale
19 generating units has Toledo Edison ever offered to sell
20 nuclear power from any of its nuclear plants to Napoleon?

21 MR. REYNOLDS: I object.

22 CHAIRMAN RIGLER: I will sustain that.

23 They were talking about a sale of Napoleon back to
24 Toledo Edison and the question would be, where was Napoleon
25 going to get the power it hoped to sell back to TE.

1 Your questions would have to relate to the sale
2 from a municipality back to TE, rather than vice versa.

3 BY MR. LESSY:

4 Q Mr. Dorsey, does Napoleon have any excess
5 capacity at the present time?

6 MR. REYNOLDS: I object as having been asked
7 and answered.

8 CHAIRMAN RIGLER: You are correct, but I will permit
9 it.

10 THE WITNESS: You mean in the generating system?

11 BY MR. LESSY:

12 Q Yes.

13 A No.

14 Q If Napoleon did have any excess capacity, do you
15 feel that you would be able to sell any of that to
16 Toledo Edison?

17 A No, it would entirely depend upon Toledo Edison.

18 Q Would you be desirous of obtaining any excess
19 capacity in the future or additional capacity in the
20 future above and beyond your present power supply?

21 MR. REYNOLDS: I will object to that question.

22 CHAIRMAN RIGLER: Basis?

23 MR. REYNOLDS: As I understand the Board's ruling,
24 we are talking about an area that relates to the capability
25 or ability of Napoleon at some time in the

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1 future to sell power to Toledo Edison.

2 What Napoleon may be desirous of doing or not
3 desirous of doing in the abstract doesn't relate to that at
4 all.

5 CHAIRMAN RIGLER: Well, indirectly, it does.
6 Can you rephrase that?

7 MR. REYNOLDS: If it is rephrased, I think he could
8 get the answer he is looking for, but the way it is phrased
9 it goes outside --

10 MR. LESSY: Could I have it read back?

11 (The reporter read the record as requested.)

12 BY MR. LESSY:

13 Q Would Napoleon be interested in exploring
14 other possible means of obtaining access to power supply
15 for purposes of resale and for other purposes at this time.

16 MR. REYNOLDS: I object.

17 CHAIRMAN RIGLER: I think maybe a little more
18 rephrasing. Ask him if they made any plans or had any
19 discussions relating to acquisition of generating capacity
20 in the future.

21 Start out that way.

22 BY MR. LESSY:

23 Q Has Napoleon had any discussions either initiated
24 by it or by anyone else concerning the acquisition of
25 generating capacity in the future, above and beyond its

1 present arrangements?

2 A We have been discussing for a couple of years now,
3 the possibility of building a new power plant.

4 Q During those possibilities of both discussing
5 it and studying it, have you studied the possibilities of
6 building any power plants; is that your testimony?

7 A Only on a wholesale basis. We have never gone
8 into a feasibility study or engineering study.

9 Q Have you considered during the terms of these
10 studies, the possibility of access to any nuclear power plant,
11 such as Davis-Besse or Perry?

12 MR. REYNOLDS: I object to that.

13 CHAIRMAN RIGLER: Overruled.

14 THE WITNESS: Would you repeat the question?

15 (The reporter read the pending question.)

16 MR. REYNOLDS: Before he answers, Mr. Chairman,
17 can I get a clarification from Counsel as to what he means
18 by the term of those studies?

19 MR. LESSY: The Witness testified they had been
20 studying such matters. The question is whether or not access
21 to nuclear was in the scope of those studies, during the
22 recent term, during the recent couple of years.

23 MR. REYNOLDS: Well, my problem is, if he is asking
24 him the question with respect to the studies, I think that the
25 Board has ruled on my objection, and I don't have other

1 objection.

2 But if he is saying during the period of time
3 that we were talking about one set of studies, was he
4 also into another area, I do have a problem with the
5 question, and I think it is an improper question.

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I have asked for clarification for the term of the studies. If it is within the scope of the studies, then I made my objection, and it has been overruled.

If it is otherwise, I would like to make an additional objection, because I think that is a much different question than the former ruling was addressed to.

MR. LESSY: If they are studying alternatives to supplying generation, I think the recommendation of options they had in front of them was relevant.

CHAIRMAN RIGLER: Ask him what was included within the studies.

BY MR. LESSY:

Q What was included within the studies you previously mentioned?

A I want to possibly clarify the term "studies."

The studies, as stated, were more on scope review of possibilities, what alternatives were there available. Where might be the most logical approach to obtain additional generating capability and where might there be some interest aroused in this respect.

Q Other than the Buckeye, which you have testified to as an alternative, what alternatives did you consider, if you can recall?

A I have actively pursued the possibility of building a coal-fired boiler with a supplementary solid

waste as a fuel.

I have considered the possibility of -- it may sound far-fetched -- building a nuclear generator in our area.

I have also considered the possibility of buying into somebody else's nuclear generator, but I have never pursued it actively.

Q With respect to the policy of either building your own nuclear generator or buying into someone else's nuclear generator, has anyone ever come to you indicating that either of those options would be available if you desired it?

A No.

MR. LESSY: I think that concludes this line of questioning. Thank you.

MR. BRILEY: Mr. Rigler, I have short recross.

RE-CROSS-EXAMINATION

BY MR. BRILEY:

Q Mr. Dorsey, in connection with your studies as to the possibility of nuclear power, did you ever approach Toledo Edison and ask them to -- if you could participate in any nuclear units that they were participating in?

A No.

Q Did you ever approach anyone else other than Toledo Edison and ask if you could participate in any

nuclear units?

A No.

MR. BRILEY: I have no further questions.

MR. MELVIN BERGER: I believe we have one or two questions.

MR. REYNOLDS: Excuse me.

What now is the Justice Department's status in terms of additional questions?

CHAIRMAN RIGLER: They would be confined to the last immediate area of examination.

FURTHER REDIRECT EXAMINATION

BY MR. MELVIN BERGER:

Q Mr. Dorsey, in your discussions with Toledo Edison, with regard to possibly selling them power from a large unit as evidenced by the document DJ 151, did Toledo Edison ever offer you participation in nuclear units?

MR. REYNOLDS: I will object to that.

CHAIRMAN RIGLER: Sustained. It has been asked and answered.

MR. MELVIN BERGER: I believe we have no more questions.

CHAIRMAN RIGLER: All right. Thank you very much. (Witness excused.)

MR. REYNOLDS: If I may, Mr. Chairman, let me make the motion on behalf of Applicants other than Toledo

Edison under Rule 105 with respect to the testimony of this witness.

CHAIRMAN RIGLER: All right. We will defer our ruling for uniform treatment.

MR. CHARNO: The Department would propose to continue with the identification of documents until such time as the Board would like to break for the day.

CHAIRMAN RIGLER: What will you do with respect to moving in the documents you identified yesterday?

MR. CHARNO: We will identify more and attempt to move them all in on Monday.

(Discussion off the record.)

MR. CHARNO: The Department would offer as DJ 312 for identification a one-page document numbered 00016707.

The Department would offer as DJ 313 for identification a two-page document numbered 00016708 and 06.

MR. GREENSLADE: Will you repeat those numbers?

MR. CHARNO: 00016708 and 06.

CHAIRMAN RIGLER: I'm sorry. We're going to have to stop here.

(The documents referred to were marked DJ Exhibits 312 and 313, for identification.)

CHAIRMAN RIGLER: Monday morning at 9:30.

(Whereupon, at 12:45 p.m., the hearing
was adjourned, to reconvene at 9:30 a.m.,
Monday, February 23, 1976.)
