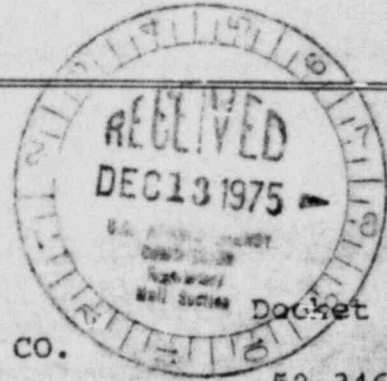


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NUCLEAR REGULATORY COMMISSION



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 and 2)

Place - Silver Spring, Maryland

Date - 11 December 1975

Pages 1961 - 2090



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the matter of: : Docket Nos.
:
TOLEDO EDISON COMPANY and : 50-246A
CLEVELAND ELECTRIC ILLUMINATING CO. : 50-500A
: 50-501A
(Davis- Besse Nuclear Power Station, :
Units 1, 2 and 3 ) :
:
and :
:
CLEVELAND ELECTRIC ILLUMINATING CO. : 50-440A
et. al. : 50-441A
:
(Perry Nuclear Power Plant, :
Units 1 and 2) :
-----X

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Thursday, 11 December 1975
First Floor Hearing Room
7915 Eastern Avenue
Silver Spring, Maryland

Hearing in the above-entitled matter was convened,
pursuant to adjournment, at 9:40 a.m.,

BEFORE:

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

APPEARANCES:

(As heretofore noted.)

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C O N T E N T S

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WITNESS:

DIRECT

CROSS

William J. Lyren

1968

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EXHIBITS:

IDENTIFICATION

EVIDENCE

NRC Staff Exhibit 44 -
NRC Document No. 462

2007

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PROCEEDINGS

CHAIRMAN REIDER: Good morning.

MR. SWEENEY BERGER: Yesterday, at the conclusion of Mr. Lyren's testimony I noted that he was reading from an apparently reading from some notes.

I asked for a copy of the notes he was reading from. I asked for a copy of the document.

After the session was over yesterday Mr. Grashof from our office went in and asked for those notes which to the Board's order that said the notes were to be prepared.

We were given this single page, which the Board can readily note it says, whereas...

I thought I was getting the document and apparently all I got was a page, and I think it is manifest from the notation at the top of the page, that that is not the document, but a page from the document that Mr. Lyren was reading from.

I would like to have the document.

MR. SMITH: What looks like that is that is a... time.

MR. FURBER: That is all he has in front of him.

MR. FUGLER: Perhaps we should... Mr. Grashof said I don't know what he was reading from.

asked Mr. Lyren what he was reading from and he said that I went and reproduced this and returned it.

CHAIRMAN REIDER: The fact he said that doesn't

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1 mean he was relying on the other pages. I think if he
2 were using notes to assist in his testimony, you are entitled
3 to those notes.

4 You can ask on cross-examination any notes he had
5 during the time of his testimony to which he was referring
6 could be in your possession now. If you want to ask what
7 answer 6 means, and try to get the rest of the document, we
8 would make that ruling after the proper foundation questions.

9 MR. STEVEN BERGER: Do you suggest I do that now?

10 CHAIRMAN RIGLER: No.

11 You are aware at this stage he was referring to the
12 notes. You have the notes, and you can cross-examine him on
13 the use of the notes and origin of things.

14 MR. STEVEN BERGER: I thought it was pretty clear
15 that the document was incomplete from the mere fact that this
16 says answer 6.

17 CHAIRMAN RIGLER: I am not sure on the face of the
18 document. It may turn out answers 1 through 5 have nothing
19 to do with the proceeding.

20 MR. LESSY: Or that he didn't refer to them.

21 MR. SMITH: At that time he had a single sheet
22 of paper, and if my memory is correct, that was the area of
23 testimony when the issue was raised. He held up the single
24 sheet of paper, and to me it appeared to be the same.

25 He may have others someplace else, but at the time

mm 3 1 that is what it was.

2 MR. LESSY: Why did you not advise us you were going
3 to approach the bench with this this morning. This is a
4 surprise to us.

5 MR. STEVEN BERGER: It wasn't until after we got
6 the document that I saw answer 6.

7 MR. LESSY: We were here last night until 6:30
8 and we were here this morning at 9.

9 Whereupon,

10 WILLIAM S. LYREN

11 resumed the stand, and having been previously duly sworn, was
12 further examined and testified as follows:

13 CHAIRMAN RIGLER: Before we resume the questioning
14 of Mr. Lyren this morning, the Board has had some discussion
15 overnight with respect to the withdrawal of NRC Document
16 No. 38 by the Staff.

17 The Board is concerned that there may have been
18 some confusion or misunderstanding with respect to why it was
19 that we rejected the offers of proof made by the Staff.
20 This was a so-called unsponsored document which has become
21 something of a term of art within these proceedings to refer
22 to documents as to which there is no question of authenticity,
23 but as to which the witness on the stand has no personal
24 knowledge. Such documents are admissible, of course, under
25 the federal rules.

mm4 1 The question that has been raised was despite their
2 apparent authenticity, counsel for some of the Applicants
3 wanted to know the scope of the use of the document because
4 there was no witness to cross-examine at the time the
5 document was introduced, is that correct, Mr. REynolds, or
6 Mr. BERger?

7 MR. REYNOLDS: That is correct.

8 MR. STEVEN BERGER: Yes, your Honor.

9 CHAIRMAN RIGLER: It is for that reason that the
10 Board permitted counsel for Applicants to ask for an
11 offer of proof to set the boundaries.

12 Now, if we turn to the Federal Rules of Evidence,
13 Rule 103, Subsection A2, which discusses offer of proof, it
14 says that in case the ruling is one excluding the evidence, the
15 substance of the evidence was made known to the Court by
16 offer. That is the procedure that we were going through.
17 Or, it was apparent from the context within which the
18 questions were asked.

19 Well, in the case of Document 38, we were very
20 close to the point where the context of the document was
21 apparent to the Board within the meaning of 103A2.

22 And we just wanted to make sure that counsel
23 understood the nature of our ruling so that through confusion,
24 through lack of understanding an otherwise relevant document
25 won't be discarded.

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1 Not only in this instance, not in particular
2 about this document, but throughout the proceedings. It
3 requires only a simple statement as to what the facts are,
4 what the evidence is contained within that document, what the
5 purpose is in introducing it; and our problem with that
6 particular document was that there seemed to be some confusion
7 with respect to the facts. Some of the offers of proof
8 went either beyond the facts, or else somehow twisted the
9 facts in that document. That is why it was rejected.

10 I don't know if that is helpful to you or not,
11 Mr. Lessy. We want to make sure other relevant evidence
12 is not lost because of a misunderstanding of the nature of
13 our ruling.

14 MR. LESSY: Is the Board saying if the context of
15 the document is apparent to the Board, offer of proof is not
16 required, or is an offer of proof required in all cases under
17 103?

18 CHAIRMAN RIGLER: That is at the discretion of
19 the Board.

20 The rule obviously gives the Board authority to
21 accept the document where the context becomes apparent by
22 the questions being asked.

23 However, with respect to this document it is
24 withdrawn at the present time, so if you wanted to use it,
25 you would have to start over, maybe.

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1 Do I see new faces here, before we begin?

2 MR. REYNOLDS: Mr. Abe Gerber is at the counsel
3 table.

4 CHAIRMAN RIGLER: On whose behalf does he appear?

5 MR. REYNOLDS: He is not a lawyer and not making
6 an appearance.

7 CHAIRMAN RIGLER: I see. Fine.

8 DIRECT EXAMINATION (Continued.)

9 BY MR. LESSY:

10 Q Mr. Lyren, does the City of Wadsworth have any
11 industries at or within its corporate limits, or near its
12 corporate limits?

13 MR. STEVEN BERGER: Objection.

14 Asked and answered yesterday.

15 CHAIRMAN RIGLER: It was, but we will permit it
16 to set the context for this line of questioning.

17 THE WITNESS: Yes, there is approximately 22
18 industries located inside the city.

19 BY MR. LESSY:

20 Q With respect to electric service for the industries
21 within the city, could you describe for us the industries within
22 the city that the City of Wadsworth does not serve with electric
23 service?

24 A There are three industries in the city that the
25 Ohio Edison Company provides service to. Among the 22 that

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1 I mentioned earlier, these are probably the three largest.

2 The one company is Barefoot Sole Corporation, which
3 takes its service at 69,000 volts from the Edison. I am
4 not sure of the size and magnitude of that load.

5 The other company is Conval. Conval is a maker or
6 manufacturer of valves. Their kilowatt hour consumption is
7 about 4 million per year. Their demand is somewhere in the
8 area of 530 kva.

9 The Ohio Match Company is the third industry. It is
10 a Division of Hunt Foods. Their annual consumption is approx-
11 imately 6 million kilowatt hours with a demand around
12 1050 kva.

13 The latter two industries are served by Edison
14 presently at 23,000 volt service levels.

end 1

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Q Are there any restrictions in the present contract between Ohio Edison and the City of Wadsworth identified and entered into evidence as Staff Exhibit 33 which would prevent Wadsworth from serving those industries?

A The contract that you referred to has been interpreted to exclude those three industrial premises from service by the City of Wadsworth because of the fact that they were served by the company prior to the execution of the contract.

They fall within the consideration of Item 4(c) and are not -- we are by contract prohibited from serving these customers.

Q Is 4(c) Exhibit A?

A No. That is 4(c) of the contract. Four reads except with the written consent of municipality or upon the order of the public authority having jurisdiction the company will provide no service (c) for use of any premises located inside the corporate limits of the municipality as of October 1, 1965 and then and not being furnished electric service by the electric company at such date.

Since the company was serving these three industries at that date, we are precluded from serving that.

MR. REYNOLDS: I will move to strike that response. I think the document speaks for itself. I believe we may be into the same confusion we were in yesterday. For that reason,

if Mr. Lessy or the witness would like to clarify it, we may be able to avoid the motion or I may be able to withdraw the motion.

The way the record now reads, it is inaccurate on the basis of the document and the document is the best evidence.

MR. LESSY: Staff would not oppose the motion to strike the answer. We will proceed with a more specific question.

CHAIRMAN RIGLER: We will strike the answer.

BY MR. LESSY:

Q Let me rephrase the question, Mr. Egan.

With respect to Exhibit A of that contract, which is entitled Municipal Resale Service Primary Voltage, I direct your attention to the provision which is unnumbered, entitled "Other," in which there are a number of subsections.

Begin on page 3. That appendix. And continuing through page 4. And I ask you if there is any provision there which would restrict Wadsworth from serving the three industries which you just identified.

A Well, under "Other," it says except with written consent of the company service furnished hereafter shall not be resold, (a) for use at any premises now being furnished electric service directly by the company. Except premises located in areas next to the municipality after the

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effective date hereof and in which the municipality shall have appropriated facilities of the company, et cetera.

That would appear to be the area which limits the -- or restricts the use or service of electrical energy to the three industries having been in existence and served by the company at the time of the signing of the contract.

Q Now, you indicated in your last or your answer to the question before this that the relevant provision had been interpreted to restrict or prevent Wadsworth from serving those industries. Who had it been interpreted by?

A It had been interpreted by the legal counsel for the City of Wadsworth.

Q Who is the legal counsel for the City of Wadsworth?

A Charles F. Johnstone.

Q Does he practice law in Wadsworth?

A Yes, he does.

Q Did Ohio Edison ever indicate that they had a different interpretation of that language?

A No.

MR. REYNOLDS: I object to that question.

MR. LESSY: I can ask if Ohio Edison -- we can ask if Ohio Edison indicated to the witness that they had a different interpretation of the language.

MR. REYNOLDS: That is not what the question was.

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If you want to rephrase the question that way,
fine.

CHAIRMAN RIGLER: I thought it was but rephrase
it, Mr. Lessy.

BY MR. LESSY:

Q Did Ohio Edison ever indicate to you or to
anyone to your knowledge that they had a different interpreta-
tion of his language?

A No.

Q Did any of the industries of the three industries
which you just set forth involved contact the City of
Wadsworth in recent times with respect to the possibility of
the city providing electrical service to them?

A Yes. Conval and the Ohio Match Company both
approached the city about providing electrical energy to them.

Q Did any or all of those industries who approached
you relate to you the reasons why they were approaching the
city for service -- I withdraw that question.

When I say they approached you, did they approach
you personally as Director of Service?

A Yes.

Q Did the industries relate to you the reasons why
they had approached you for service to consider the
possibility of the City of Wadsworth serving them?

A Yes.

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Q Could you state those reasons?

A The reasons they presented to us were that the company had recently requested or demanded that they change from a 23,000 volt service to a 69,000 volt service and it would be upon the companies, Conval and Ohio Match Company, to make the necessary arrangements in their transformers to accommodate the higher voltage.

The companies felt that this cost was exorbitant and they wanted to pursue other alternatives for power supply and it was that reason that they gave me when they contacted me.

MR. STEVEN BERGER: Your Honor, could I just have a time frame put at the time of that approach?

BY MR. LESSY:

Q Can you relate to us approximately when Conval or Ohio Match approached you?

A It was in late 1974, early 1975, in that time frame, in that six months.

Q Has the third industry, Barefoot Sole, approached you?

A No, they have not.

Q Could, in your view as Service Director, the City of Wadsworth provide service to those two industries who approached you based on the existing city capacity?

A Yes, I feel that we could.

Q Accordingly, pursuant to the request of Conval and Ohio Match, did the City of Wadsworth submit a bid for service to the two industries?

A Yes, we did.

Q When, according to your recollection, were the bids made by the city to Conval and Ohio Match?

A Sometime in the earlier part of 1975.

Q What was the response, if any, of the industries to the bids submitted by the City of Wadsworth to them?

A They have not responded to our proposal.

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A3 mml

1 Q When does the contract -- by that I mean NRC
2 Exhibit No. 35, the contract between Ohio Edison and the City
3 of Wadsworth expire?

4 A I'm not sure that I know the exact date of its
5 expiration. But, I am reading from the contract, it is dated
6 December 21, 1965 and the terms are a ten-year contract.

7 Q Does the contract --

8 A It looks like it would expire December 21, 1975,
9 but I am not -- I have not gotten a legal opinion on that.

10 Q Could you get a legal opinion on that from the
11 city attorney?

12 A Yes.

13 Q I wonder if you could review page 1 of the
14 contract, to identify initially the date that the contract
15 was entered into, and state it for us?

16 A It says this contract was made and entered into this
17 21st day of December, 1965, between the City of Wadsworth and
18 Ohio Municipal Corporation and Ohio Edison Company and Ohio
19 Corporation.

20 Q Can you locate for us on the first page, the
21 stated term of the contract?

22 A Under Section 1 it says:

23 "This contract shall become effective as of the
24 date it is accepted for filing by the Federal Power
25 Commission. The contract shall remain in force and effect

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1 for a period of ten years from that date, unless it
2 hereafter appears, because of a federal statute or
3 final order of a court having jurisdiction that the
4 Federal Power Commission does not have jurisdiction in
5 the premises, in which event the company reserves
6 the right to cancel this contract two years after written
7 notice from the company to the municipality of such
8 cancellation."

9 CHAIRMAN RIGLER: Mr. Lessy, we will save time
10 if you point to the provisions of the contract. We are
11 losing time.

12 BY MR. LESSY:

13 Q The municipality has the right to terminate the
14 contract before the ten-year period?

15 A Yes, I believe it does.

16 Q Referring you to the penalty paragraph, one
17 starting "The municipality" on page 1. I wonder if you could
18 read that language and answer the question are there any
19 conditions upon the municipality's right to terminate.

20 CHAIRMAN RIGLER: If they are in the contract,
21 they are there. You don't have to do this to get it in the
22 record.

23 MR. LESSY: The language here may be a little
24 ambiguous, but if it is clear to the Board we will move
25 forward.

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1 Would you prefer we move forward?

2 CHAIRMAN RIGLER: Yes, unless you want to point
3 out some ambiguity.

4 BY MR. LESSY:

5 Q Is the only way the municipality can terminate the
6 contract, is if it installs self generation?

7 A That is my interpretation of the contractual
8 provisions.

9 Q How long has it been since Wadsworth has had
10 self generation?

11 A I think we had a small amount of it back in 1924.

12 Q If Ohio Edison chose not to renew the contract on
13 December 21, 1975, the date you indicated which in your view
14 it expired, what position would Wadsworth be in in terms of
15 its power supply needs?

16 A Well, we would be at the mercy of the company.
17 We have no other alternative source of power.

18 Q Returning to Appendix 1, which we had looked at
19 with respect to the service of industrial loads, that is
20 Exhibit A --

21 CHAIRMAN RIGLER: May I ask a question, first.

22 Could you obtain power from another public
23 utility in the State of Ohio?

24 THE WITNESS: Not without some way of getting the
25 power to us.

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1 CHAIRMAN RIGLER: What is the closest public
2 utility other than Ohio Edison Company?

3 THE WITNESS: The closest investor-owned utility
4 or just utility period?

5 CHAIRMAN RIGLER: Investor-owned.

6 THE WITNESS: It would be the Ohio
7 Power Company.

8 CHAIRMAN RIGLER: How far away are they?

9 THE WITNESS: Probably 7 to 12 miles from us.

10 CHAIRMAN RIGLER: Do they have any lines extending
11 towards Wadsworth to this point, 7 to 12 miles away?

12 THE WITNESS: I am sure if we could transmit --
13 along with Edison -- if we could work it out with Edison we
14 could get the power transmitted to Wadsworth.

15 I don't know. I am not that specifically familiar
16 with the exact configuration of their system. A line could
17 be built there, or transmission through wheeling could accomplish
18 that, I would think.

19 CHAIRMAN RIGLER: Are these facilities of Ohio
20 Power company capable of serving your 69 kv system?

21 THE WITNESS: Yes.

22 In fact, they are presently building a 69,000 volt
23 interconnection, I believe, into the City of Orville, which is
24 ten miles south of Wadsworth, so they obviously have the
25 capability.

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1 CHAIRMAN RIGLER: Aside from an investor-owned
2 utility, what is the closest other utility?

3 THE WITNESS: The City of Orville.

4 They are approximately the same distance as
5 the private power company. But they have generation and I
6 haven't pursued the capacity of that generation to the
7 extent they would be able to in fact supply service.

8 BY MR. LESSY:

9 Q If I might follow that up with one or two
10 questions.

11 Is there any way that-- assuming Orville had excess
12 generation to sell, would delivery of Orville Power to the
13 City of Wadsworth under existing facilities require wheeling
14 by Ohio Edison?

15 A Yes.

16 Q Would delivery of any power other than Ohio
17 Edison Power to the City of Wadsworth at any time require
18 wheeling by Ohio Edison?

19 A Yes.

20 We are completely surrounded by Ohio Edison.
21 Unless we built a separate transmission facility, wheeling
22 would be a mandatory requirement.

23 Q Approximately what is the distance between Orville
24 and Wadsworth?

25 A 12 miles.

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1 Q Do you have any idea as to what the cost of
2 construction of a transmission facility would be for 12
3 miles, even if you put it in terms of broad figures such as
4 thousands or hundred thousands, or millions.

5 A I would say it would cost in the area of a couple
6 of million dollars.

7 Q It was the area I was interested in.

8 Returning to Exhibit A, the provision entitled
9 toehr. I direct your attention to the small "b" and ask if
10 you view that as a restriction also on Wadsworth's abilities
11 to resell power?

12 MR. MELVIN BERGER: Are you referring to page 3
13 of Exhibit A?

14 MR. LESSY: I am referring to Exhibit A and that is
15 separately numbered and this would be 3, that is right.

16 THE WITNESS: Yes, that is a restriction in that
17 it provides that the company has exclusive rights to
18 service along their primary lines in the City of Wadsworth
19 as long as they can serve the properties, premises by secondary
20 distribution facilities of the company.

21 So, it would restrict us -- we would have to ask
22 permission, I would guess, to serve a customer that was in that
23 area.

24 BY MR. LESSY:

25 Q Returning now to Mr. Stout's August 11, 1972 letter,

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1 which has been received into evidence as Staff Exhibit No. 30,
2 I wonder if you could refresh our recollections by reading
3 into the record the first two questions, the last paragraph
4 of page 1.

5 A Would Ohio Edison be willing to provide bulk power
6 supply service on a less than existing volt purchase power
7 requirements?

8 That is the first question.

9 Q The second?

10 A Would Ohio Edison be willing to wheel power from
11 generating resources outside its control area to each of the
12 municipal wholesale customers connected to the Ohio Edison
13 system?

14 Q Is that the third or second question?

15 A I'm sorry.

16 The second is, if so, would Ohio Edison be willing
17 to enter into a partnership arrangement with its present
18 wholesale consumers or customers for future additions to
19 the company's power supply facilities.

20 Q Now, with respect to the last two questions, the
21 transmission or wheeling questions, you testified yesterday
22 that you never received a written answer to your letter, or
23 to your knowledge no answer was received, is that right?

24 A That is right.

25 Q With respect to the first two questions, what was

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1 the response, if any, of Ohio Edison to those questions, to your
2 knowledge?

3 A The answer to the first question was in the
4 negative because of the fact that we have always been talking
5 about full requirements of WCOE. We haven't received a total
6 answer to that. It is pending study and the recommendation
7 and answer by the company.

8 CHAIRMAN RIGLER: Mr. Berger?

9 MR. STEVEN BERGER: Notwithstanding the witness'
10 last comment, could I have a timeframe placed upon the
11 answer?

12 He said it did receive, and from whom it was
13 received.

14 BY MR. LESSY:

15 Q Are you finished with your answer, Mr. Lyren?

16 The question was, what response, if any, of Ohio
17 Edison was there to the first two questions?

18 MR. STEVEN BERGER: He has already answered that
19 question.

20 MR. LESSY: I asked if he completed his answer
21 before your objection, or your statement.

22 BY MR. LESSY:

23 Q The next question is, at what point in time, to
24 your knowledge, did you receive the negative answer to the
25 first question, or did anyone, to your knowledge, receive a

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1 negative answer to the first question, or in what context was
2 that answer received?

3 MR. REYNOLDS: Mr. Chairman, if we could break
4 up the questions, it may be easier to follow.

5 CHAIRMAN RIGLER: I agree.

6 Could you rephrase those questions, please?

7 BY MR. LESSY:

8 Q When, to your recollection, was an answer received
9 with respect to the first question.

10 The first question referring now to the first
11 question in the third paragraph of NRC 30.

12 A This matter was discussed in our negotiating session
13 following the memorandum agreement that accompanied the
14 settlement agreement, which was approved in 1973.

15 Q I believe the discussions took place in '74, started
16 in '74.

17 Is that the answer to your question when did they --

18 Q Yes.

19 MR. STEVEN BERGER: Your Honor, I would like more
20 specificity if I could have it. Is he referring to the October
21 7, '74 meeting that has been testified to heretofore as the
22 first meeting that took place under the settlement agreement,
23 to work out the arrangement contemplated by that agreement?

24 CHAIRMAN RIGLER: Is that the one to which you
25 refer?

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1 THE WITNESS: I haven't referred to any specific
2 meeting. There was a series of meetings held in this timeframe.
3 I am speaking of them as a group rather than specific meetings.
4 I don't have a specific meeting in mind. I don't know which
5 one.

6 CHAIRMAN RIGLER: All right.

7 BY MR. LESSY:

8 Q Do you have anything with you that might refresh
9 your recollection as to your answer to that question, the
10 question of whether or -- whether an answer was received?

11 A I don't know. I might have.

12 Do you want me to look?

13 (Pause.)

14 THE WITNESS: I'm sorry, Mr. Lessy, I can't find
15 the information.

16 BY MR. LESSY:

17 Q Did the wholesale customers hire the consulting
18 firm --

19 MR. STEVEN BERGER: There was still one other
20 matter of clarification. This is a rather important matter.

21 As I understand the witness' testimony, the first
22 answer that he gave on this line was that the answer to the
23 first question given by the company was no.

24 I wanted to know who, in the company, gave the
25 answer, and when it was given.

mm11

1 I realize he has some problem with the timeframe
2 now. I would like clarification as to who in the company
3 gave the answer to that specific question.

4 CHAIRMAN RIGLER: I think that is a logical
5 suggestion.

6 BY MR. LESSY:

7 Q Did the answer to this question occur during the
8 series of meetings you testified about yesterday? We were
9 addressing wheeling at that time. Did the answer occur at
10 that time?

11 A Yes.

12 And it was during the series of meetings as I
13 described in the previous answer, in the timeframe beginning
14 from 1974 to the present.

15 CHAIRMAN RIGLER: But the question is, who in
16 the company provided the answer.

17 BY MR. LESSY:

18 Q Who, to your knowledge, provided the answer at
19 those meetings?

20 Would it help to refresh your recollection by
21 showing you the attendance sheets?

22 A I could not recall the exact person, even if I
23 looked at the attendance sheets. The same people spoke at
24 each meeting, predominantly.

25 One meeting did not differ from another in the

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1 manner of who took part for the most part. I won't be able
2 to recall that.

3 MR. STEVEN BERGER: I don't mean to be cross-examining
4 the witness during Mr. Lessy's direct examination. We are
5 talking now about a series of meetings.

6 MR. LESSY: Two meetings, Mr. Berger. 10-7-74
7 and 8-1-75.

8 CHAIRMAN RIGLER: That was not my understanding.
9 He says a series of meetings.

10 MR. STEVEN BERGER: That is my problem.

11 CHAIRMAN RIGLER: He has gone as far as he can go.
12 He tried to be responsive to the questions you
13 raised, and you will have to go into it on cross-examination
14 if you want to pursue it further.

15 BY MR. LESSY:

16 Q Let me ask two additional questions.

17 Was it your impression that it was the company's
18 position at meetings that the answer to this question was no.

19 CHAIRMAN RIGLER: He has testified to that,
20 Mr. Lessy.

21 BY MR. LESSY:

22 Q Did the wholesale customer hire the consulting
23 firm of R. W. Beck?

24 A Yes, we did.

25 Q For what purposes was the Beck firm hired?

1 A The Beck firm was hired as consultants in the
2 matter of the first rate increase filing before the Federal
3 Power Commission. I believe that was in 1972.

4 They also were retained as consultants for the
5 study that was part of our settlement agreement and most
6 recently, have been hired as our technical consultants in the
7 matter of the pending rate increase before the Federal Power
8 Commission on the part of the company.

9 Q You mentioned a study in that answer.

10 Did that study have a title, or could you tell us
11 what the study in general terms was?

12 A It was a power supply study and it analyzed the
13 alternatives of power supply for the wholesale customers of
14 Ohio Edison.

15 Q That was prepared by R. W. Beck?

16 A Right.

17 MR. STEVEN BERGER: I think the record should be
18 clear. He indicated that R. W. Beck and Associates were
19 retained in connection with the FPC rate increase case. A
20 study was prepared.

21 Are we talking about a study being prepared in
22 connection with the rate increase, or are we talking about a
23 study being prepared in another connection in another timeframe?

24 BY MR. LEFSKY:

25 Q Will you answer that question?

mm14

1 A The rate increase was settled by negotiations between
2 the Company and the Cities. Part of the settlement included
3 a memorandum agreement which provided for the City --
4 the WCOE group, and the Company to engage in joint studies of
5 the engineering, legal, financial, feasibility of power supply
6 for the WCOE group.

7 The -- this study was, a part of this agreement
8 was implemented by the retention of the R. W. Beck firm to do
9 the engineering aspects of the joint studies. These
10 began in 1974 and are presently still in state of final
11 development.

12 Q Was a specific office or operating office of R. W.
13 Beck involved in the study that you just referred to?

14 A Specific individuals?

15 Q Or specific regional office?

16 A Yes.

17 The study was handled out of the Indianapolis office
18 of the firm.

19 Q And to your knowledge, which individuals were
20 primarily involved in the study from that office?

21 A William Cheeseman, Bill Maybaine and Joe Hartz.

22 Q Was a study completed and presented to the
23 wholesale customers?

24 A Yes.

25 A study was completed.

mm15

- 1 Q Approximately when was it completed and presented?
- 2 A To the WCOE group?
- 3 Q Yes.
- 4 A Approximately March of 1975.
- 5 Q You said it was a joint study.
- 6 Who financed the study?
- 7 A The study was financed by WCOE.
- 8 Q Do you know the approximate cost of the services
- 9 rendered in connection with the study to the WCOE?
- 10 A The WCOE expenses to date including some legal --
- 11 Q I won't be interested. Just the study.
- 12 A Just the engineering?
- 13 Q Yes.
- 14 A I don't have the exact --
- 15 Q Legal expenses are liable to inflate it.
- 16 A I would say it was approximately \$70,000.
- 17 Q Was the study -- the study then was purchased by
- 18 the Wholesale Consumers of Ohio Edison to study these matters
- 19 as you described?
- 20 The Whole Consumers paid for them.
- 21 Was the study also provided in its entirety to Ohio
- 22 Edison Company?
- 23 A Yes.
- 24 Q Under what circumstances was it provided to Ohio
- 25 Edison Company?

mm16

1 A It was submitted to the company as a proposal from
2 WCOE for their review, comments, recommendations, counter-
3 proposals and what have you.

4 Q When, approximately, to your recollection, was the
5 study presented by WCOE to Ohio Edison?

6 A I believe it was transmitted to them in early July
7 1975.

8 Q What was Edison's response after having received
9 the study, if any?

10 A I believe their response was contained or presented
11 at a meeting on August 1, 1975 that we have referred to
12 previously.

13 Would you like --

14 Q Could you summarize the position of Ohio Edison
15 as you understand it at that meeting with respect to the study?

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MR. STEVEN BERGER: Excuse me, your Honor. I don't want to cross-examine the witness through Mr. Lessy. When he says response to the study, are we talking about what the recommendations of the study were or to the study generally?

I think that is an important point of clarification for the record.

CHAIRMAN RIGLER: It strikes me that that may be covered better on cross if Mr. Lessy doesn't get to it now.

THE WITNESS: Will you repeat the question?

(The reporter read from the record as requested.)

THE WITNESS: The Ohio Edison officials were asked to comment on the study. The meeting that I mentioned on August 1, 1975 was called for the purpose of hearing Ohio Edison's discussion of the study after having received it some three or four weeks before that meeting. Their response was that they agreed in principle with the study.

However, not having been able to verify all of the numbers and the statistical data, they would not comment on the accurateness or the conclusions drawn from those numbers.

So the basic response was that they agreed in concept but needed further time to evaluate the report.

BY MR. LESSY:

Q Did you make available or did WCOE or did

1 R. W. Beck make available to Edison the opportunity to
2 check figures, confirm things that you just mentioned that
3 they indicated a desire to look into further?

4 A Yes. The engineering consultants R. W. Beck
5 offered their offices in Indianapolis to the company for
6 purposes of review of all of the statistical data and
7 documents that were used in preparation of the report.

8 Q To your knowledge, do you know if Ohio Edison
9 or its representatives have gone to R. W. Beck in
10 Indianapolis to check the figures and verify the matters
11 or talk to the writers of the study?

12 A As of two weeks ago they had not, to my knowledge,
13 gone to do this.

14 Q To your knowledge did R. W. Beck write them
15 telling them that they were still available?

16 A When --

17 Q To inspect the documents and the figures, et
18 cetera, in recent times?

19 A I discussed the matter with Mr. Cheeseman a few
20 weeks back. After he informed me he had not had correspondence
21 from Edison or had inquiry as to when they could come to
22 Indianapolis, I suggested he write them and ask them to
23 pursue the matter or when they were going to do it.

24 To my knowledge he had written a letter,
25 although I don't have a copy of the letter.

1 Q Have you seen a copy of the letter?

2 A I can't recall.

3 Q You testified that on August 1 of '75 Edison
4 indicated that they agreed in principle with the study. At
5 that time was this response of Edison -- how was this response
6 received by you or by the committee of the Wholesale
7 Consumers of Ohio Edison? What was your
8 reaction to their response?

9 A My personal reaction was one of frustration
10 because the response was the same response that we had
11 heard at the very first meeting when we started talking about
12 studying the problem.

13 The concept was supposedly something never in
14 doubt, that that was the response to the study when it was
15 completed.

16 So I was disappointed in the response and I looked
17 forward to a better response in the future, but I was
18 disappointed.

19 Q What basically to your knowledge did the study
20 recommend?

21 If you would like to refer to --

22 A I would have to refer to this.

23 MR. LESSY: We will make these available in their
24 entirety to counsel at the first break, and to the Board if
25 they desire.

BY MR. LESSY:

Q How many pieces of paper do you have with you?

A Two. We narrowed our efforts to seven alternative methods of power supply in the study. The first alternative was WCOE remaining as a total wholesale customer status quo more or less except for Newton Falls and Oberlin which, as we mentioned earlier, have some generating capacity and facilities.

It was that alternative that was used as a basis for comparison, comparing the other alternatives.

Alternative Number 2 was WCOE installing peaking units in order to supplement wholesale purchases. I think we were probably inhibited somewhat in this particular alternative study in that we did not consider buying peaking power from third-party sources because of Edison's restrictions or interpretation that that particular type of transmission was out of the scope of the study.

Nevertheless, we did construct an alternative that provided WCOE installing their own peaking units in order to supplement their wholesale purchases.

Alternative Number 3 was WCOE acquiring capacity of large baseload units in small denominations of 50 megawatts while making the transition from total wholesale to total self-generation.

These small denomination baseload units were to

1 be units that Ohio Edison would be involved in the
2 construction of in the future.

3 Nuclear, coal, whatever the construction schedule
4 for the company dictated, this alternative would be involved
5 in that schedule, construction schedule, but would be
6 limited to the 50 megawatt capacity in each of those units.

7 CHAIRMAN RIGLER: Did the study discuss any
8 particular nuclear units?

9 THE WITNESS: Yes, it studied all of the units
10 that are in Ohio Edison's current construction schedule.

11 MR. SMITH: Did you say this was a temporary
12 consideration?

13 THE WITNESS: This was an alternative. This was
14 a study and we are talking about seven alternatives.
15 Alternative Number 3 is -- we are evaluating the relative
16 feasibility of the alternatives.

17 MR. SMITH: Didn't you use language indicated
18 that you were considering this third alternative only as a
19 temporary measure pending some other --

20 THE WITNESS: No, I didn't say that.

21 Alternate Number 2 was installing peaking units
22 in order to supplement wholesale purchases. Alternate 3 is
23 SCOE acquiring capacity of large baseload units in small
24 denominations of 50 megawatts while making the transition
25 from total wholesale to total self-generation.

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1 In other words, we would buy into a unit and
2 continue to buy into units until we reached our total
3 requirements being represented by unit capacity or capacity
4 that we had purchased.

5 MR. SMITH: Thank you.

6 THE WITNESS: One of the problems we had in
7 developing this alternative was that the company made it
8 very clear that we could not pick and choose the units of
9 participation but had to agree to follow this approach of
10 small units of capacity in each unit that came on the line
11 as it was constructed.

12 CHAIRMAN RIGLER: By the company, you mean Ohio
13 Edison?

14 THE WITNESS: Ohio Edison. Right.

15 Alternative 4 was WCOE acquiring baseload capacity
16 and installing peaking units in an effort to develop a
17 blending of generating capacity while making the transition
18 from wholesale to self-generation.

19 In other words, we were going to acquire
20 baseload capacity from the company and install our own peaking
21 units in an effort to develop a blending of generating capca
22 capacity and going again from total wholesale to total self-
23 generation.

24 CHAIRMAN RIGLER: You confused me on that. Did
25 you say installed baseload capacity from the company?

end4

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1 THE WITNESS: We would acquire baseload capacity
2 and install peak load capacity ourselves as a group.

3 CHAIRMAN RIGLER: What do you mean by acquire
4 baseload capacity?

5 THE WITNESS: It would be acquired in a similar
6 manner to that in alternate 3 where we acquire the capacity
7 from large baseload units in small denominations over a period
8 of time dependent upon their construction schedule and the
9 number of plants that they built.

10 MR. SMITH: Number 3 would be 100 percent?

11 THE WITNESS: That's right.

12 MR. SMITH: Including peaking?

13 THE WITNESS: Including peaking.

14 Number 4 would just deal with the acquiring of
15 baseload capacity and we would install our own peaking.

16 I think one of the significant problems we had
17 in development of this alternative was that we were not able
18 to consider buying peaking power from third-party sources
19 once again due to the company's refusal to talk about the
20 transmission from third party sources and the wheeling
21 problem from the study.

22 MR. STEVEN BERGER: I get the last from the
23 study. I didn't understand what was meant.

24 MR. LESSY: That was cross-examination. Let him
25 answer. He is in the middle of a long answer.

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1 MR. STEVEN BERGER: Okay.

2 CHAIRMAN RIGLER: Going back to 4 with the
3 acquisition of the baseload capacity, would that include
4 capacity from nuclear units?

5 THE WITNESS: Yes.

6 CHAIRMAN RIGLER: Do you recall whether specific
7 nuclear units were considered in the study?

8 THE WITNESS: We talked about Ohio Edison's
9 construction schedule plans for a ten-year period from 1974
10 through say 1984. So if Ohio Edison has plans to participate
11 in nuclear units, those plans would definitely be in the study.

12 CHAIRMAN RIGLER: Do you recall what those
13 particular nuclear units were?

14 THE WITNESS: Perry.

15 I think Davis-Besse was one. Those two were
16 definitely there, I am sure.

17 Number 5 was WCOE would install and operate a
18 baseload plant -- in other words, install self-generation.
19 But we would do this over a period of time. It might take
20 transition to do this rather than build it at one time. We
21 would still need interchange contractual arrangement with
22 the company in order to make our group be able to coordinate
23 its power supply among itself.

24 Our group is not interconnected except through
25 Ohio Edison. We would have to evolve some way of getting from

1 the generation that we built to the 21 members.

2 CHAIRMAN RIGLER: It would require wheeling by OE?

3 THE WITNESS: It would require the transmission
4 among the member parties.

5 Number 6 was the specific proposal of the company.
6 That was analyzed. The company had proposed that WCOE acquire
7 baseload capacity in small denominations of 50 megawatts in
8 specific plants to come on line over the next ten years as I
9 have said in earlier alternatives.

10 WCOE would pay the -- in addition to the capital
11 costs associated with those purchases, would pay the
12 operating and maintenance and the cost of transmitting the
13 power to the group.

14 And they also include another factor that they
15 felt that the company should share in the savings, in the
16 lower fixed costs to the WCOE which would accrue to SCOE
17 due to lower interest on financing and some tax savings
18 on the purchases that were to be made in the plant.

19 The company felt they were entitled to share in
20 those savings.

21 This proposal required WCOE to pay 50 percent
22 of the savings to the company.

23 The seventh alternative is similar to the first
24 alternative, that of remaining total wholesale customers. With
25 one exception. Basically WCOE would make a purchase power

1 prepayment equivalent to the net plant allocated to WCOE.
2 This payment would eliminate the company's return and
3 associated income taxes on that part of the allocated plant

4 The debt service charges for the bonds issued by
5 WCOE in making the purchase power prepayment are expected to
6 be considerably less than capitalized charges that would be
7 allocated by the company under the current wholesale consumer
8 arrangement and rate procedures of the FPC.

9 It was this prepayment of purchase -- of power
10 purchase that the study recommended of the seven alternatives
11 that were studied.

12 BY MR. LESSY:

13 Q With respect to, I believe, 3 and 4, Mr. Lyren,
14 you indicated that Ohio Edison had stated during the formation
15 of the study that it did not desire wholesale consumers to
16 pick and choose with respect to large baseload units such
17 as Perry and Davis-Besse but that they would be required to
18 take a blending of all of the units; is that correct?

19 A That's right.

20 Q Were these units CAPCO units or were they, to
21 your knowledge, Ohio Edison units?

22 MR. STEVEN BERGER: Your Honor, I object to the
23 terminology CAPCO units?

24 MR. REYNOLDS: I join in that objection.

25 MR. LESSY: I would accept a substitute term.

1 BY MR. LESSY:

2 Q Were these units --

3 CHAIRMAN RIGLER: Do you mean were the units
4 jointly owned by CAPCO member companies?

5 MR. STEVEN BERGER: If that definition
6 holds true here on out, fine.

7 CHAIRMAN RIGLER: I am not trying to suggest a
8 definition.

9 MR. REYNOLDS: With that understanding,
10 if he wants to use the short form.

11 MR. LERACH: I was going to say I am not sure
12 that every member company shares in every station and there
13 may be some confusion with the definition suggested.

14 MR. REYNOLDS: I would like to suggest that I
15 think the joint ownership may be misleading. It is
16 tenants in common.

17 If we are going to put a definition on the
18 short form it should be accurate on the record.

19 MR. LESSY: Maybe it is clear by saying the
20 units discussed were Perry, Davis-Besse, Unit 2.

21 (Recess.)

22 MR. STEVEN BERGER: Your Honor, if that matter is
23 resolved, I would like to raise another one, if I may.

24 Mr. Lessy has designated as Staff Document
25 NRC 462 the study itself that is conducted by

1 R. W. Beck and Associates for the wholesale customers of
2 Ohio Edison.

3 Mr. Lyren has been testifying for the last several
4 minutes as to contents of that study. The best evidence is
5 the study itself.

6 I have copies of that study available right now
7 for everybody.

8 Even though I don't want to tell Mr. Lessy how
9 to try his case, I do think it is a best evidence and I think
10 it would be far more informative for the Board and
11 far more helpful to the parties in following the witness'
12 testimony if that study was before the parties and before
13 the Board as the witness goes through his statement in regard
14 to his factual knowledge of it and with whatever impressions
15 he has in regard to it and testify directly to it.

16 MR. LESSY: In response to that, this witness
17 has only been asked to summarize seven provisions of the study.
18 We would ask a few basic questions about it.

19 The best evidence of the preparation of the study
20 is the preparer. It is a very complex, technical document.
21 It would take ten man-hours to red-line it. It is that level
22 of detail that Staff at this point does not plan to go into
23 in its affirmative case.

24 CHAIRMAN RIGLER: On the other hand, if we had
25 nothing more than the page with the seven proposals summarized

1 I think that might be very helpful to us.

2 MR. LESSY: The page with the summary of the
3 proposals.

4 CHAIRMAN RIGLER: Right. We have been discussing
5 seven proposals or conclusions of the study, seven alterna-
6 tives. I think it might be useful to us to have that
7 particular portion of the study in front of us.

8 MR. LESSY: Let me ask Mr. Lyren in this
9 procedural context --

10 BY MR. LESSY:

11 Q Is there a page in the study or few pages which
12 serve as a summary?

13 A Yes, I believe so.

14 MR. LESSY: If that is the case, we would endeavor
15 to make that available. We would have to locate that, xerox
16 it and distribute it.

17 If there is a summary portion like that, we
18 would be happy if the Board so desired, as long as it is
19 understood that at this point it would be an unsponsored
20 exhibit.

21 Mr. Lyren would not be the sponsoree or
22 sponsor of that.

23 It is something that counsel for Ohio Edison
24 feels might help, but we will not move it into evidence as
25 an exhibit sponsored by Mr. Lyren at this time.

1 CHAIRMAN RIGLER: Do you want to make it
2 available?

3 MR. STEVEN BERGER: I was prepared to do that.
4 I was prepared to put in the document on cross-examination
5 through Mr. Lyren. I had copies of it prepared. I did not
6 red-line it because I believe in terms of the relationships
7 between Ohio Edison and wholesale customers of Ohio Edison, I
8 don't have a document that is more relevant in its entirety
9 than this particular study.

10 All of the document is relevant and should be
11 considered in its entirety by the Board.

12 CHAIRMAN RIGLER: Why don't you distribute it to
13 the Board at this point.

14 MR. LESSY: Mr. Berger said he was not aware that
15 we were going to go with Mr. Lyren into the power supply
16 study. I refer the parties to the list of witnesses and
17 a description with Mr. Lyren.

18 If you are impugning a surprise with that aspect,
19 I am referring you to that pleading.

20 MR. STEVEN BERGER: I am not impugning that at all.

21 If the Board will give me enough time to get
22 the copies of the study distributed, I will have it to you in
23 five minutes.

24 MR. LERACH: I think the record is somewhat in
25 a state of disarray precisely about what will be done with

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1 this document.

2 I want to make a best evidence objection on behalf
3 of Duquesne Light. Mr. Lessy's own description of the
4 document as highly technical and complex is confirmed by
5 my own first view of it. I do not think it has been
6 correct to have the witness comment on it unless the
7 document is marked at this time.

8 MR. LESSY: I don't think a summary would lead
9 us into a question that the witness should have the document
10 in front of him while he does that.

11 CHAIRMAN RIGLER: There was no objection while
12 he was summarizing. That is in the record.

13 MR. LESSY: We will introduce it now as an
14 unsponsored exhibit. Staff hereby asks that the power supply
15 study for Wholesale Consumers of Ohio Edison by R. W. Beck
16 and Associates dated July 1979 which is designated as
17 Staff Document 462 be identified as NRC Staff Exhibit 44.

18 It would be an unsponsored exhibit. We would
19 not be in a position at this time to make an offer of proof
20 with respect to it.

21 We respectfully move for its entrance into
22 the record.

23 CHAIRMAN RIGLER: We will mark it Staff Number 44
24 for identification purposes at this time.

25

1 (The document referred to was marked
2 NRC Staff Exhibit Number 44
3 for identification.)

4 MR. LESSY: Was there a pending question before
5 the break and objection thereto?

6 (The reporter read from the record as requested.)

7 MR. MELVIN BERGER: Excuse me. Has this
8 document been admitted into evidence?

9 CHAIRMAN RIGLER: It has not. I didn't understand
10 it to be offered into evidence, either.

11 MR. MELVIN BERGER: I was asking for clarification.

12 MR. LESSY: To clarify the record, I want it
13 received into evidence as an unsponsored exhibit.

14 MR. REYNOLDS: I would like to note the
15 continued objection as to Applicants other than Ohio Edison
16 and Pennsylvania Power with respect to this particular
17 document.

18 CHAIRMAN RIGLER: That will be overruled.

19 Hearing no other objection, it will be admitted
20 into evidence at this time as NRC Exhibit Number 44.

21 (NRC Staff Exhibit 44, previously
22 marked for identification, was
23 received into evidence.)

24 (The reporter read from the record as requested.)

25 CHAIRMAN RIGLER: There was objection to the

1 phrase CAPCO units.

2 Do you want to rephrase the question?

3 MR. LESSY: No.

4 MR. REYNOLDS: I would like to have back what was
5 just read.

6 Is Mr. Lessy's answer that he will leave the
7 question as it was phrased?

8 CHAIRMAN RIGLER: I will sustain the objection on
9 the basis that no proper foundation has been laid to designate
10 these units the CAPCO units.

11 MR. LESSY: We feel that the units, ownership
12 of the units, et cetera, would be obvious from the names of
13 'tes and this witness may not be that familiar with
14 which of the Applicants in this proceeding have certain
15 percentages of which units and the supply ought to speak for
16 itself as to which units were considered in those relative
17 alternatives.

18 CHAIRMAN RIGLER: There is no evidence as to the
19 ownership of the units on the record at this time.

20 The witness has expressed familiarity with the
21 units in terms of the Davis-Besse name or the Perry name and I
22 suggest you use that terminology until you have laid a proper
23 foundation for calling them the CAPCO units.

24 MR. LESSY: We will offer into evidence during our
25 affirmative case which is indeed required by the statute that

1 the Commission consider the applications, twenty questions
2 and advice letters, and those unsponsored exhibits will
3 reflect the appropriate ownership. The red-lining of those
4 exhibits will take time.

5 CHAIRMAN RIGLER: With respect to the applications
6 themselves they need not be red-lined.

7 MR. LESSY: Thank you very much, sir.

8 I might state that maybe one of the reasons for
9 the dichotomy between the Staff's document numbers and the
10 actual exhibit numbers.

11 BY MR. LESSY:

12 Q Mr. Lyren, with respect to the third and fourth
13 power supply alternatives considered during the course of
14 the study, you indicated that Ohio Edison stated that the
15 wholesale consumers would not be free to pick and choose from
16 individual units but would have to consider all of the baseload
17 units as a blend; is that correct?

18 A Yes, that's correct.

19 Mr. Firestone made that comment on at least one
20 occasion.

21 Q Do you recall which occasion that was, sir?

22 A Which meeting?

23 Q Yes.

24 A I believe it was either the first or second
25 meeting of the group and the company. We already discussed

1 that first meeting where we discussed the purposes of the
2 study. I believe it was at that meeting, a follow-up to the
3 June 18, 1974 letter from Mr. White to Mr. Duncan.

4 Q Is that the October 7, '74 meeting as opposed to
5 the August 1, '75 meeting?

6 A Yes, definitely.

7 Q In your view would access to particular baseload
8 units be preferable to the blend concept?

9 A There certainly is reason for considering that
10 approach, in addition to the approach that has been followed
11 as a result of these negotiations.

12 The reason for my saying that is that by
13 stretching out for a long period of time or ten years the
14 purchasing of capacity, we are going to get involved in more
15 expensive capital outlays for that capacity and it may be
16 more beneficial to buy more capacity in the early years and
17 very little in the later years. Maybe all at once.

18 This approach was totally rejected as being one
19 that the company could accept.

20 CHAIRMAN RIGLER: You mean the company could not
21 accept it? Could or could not?

22 THE WITNESS: Could not accept the concept of WCOB
23 picking Davis-Besse or picking Perry and saying we want
24 250 megawatts rather than the plan that has been proposed in
25 this study.

1 CHAIRMAN RIGLER: Suppose they had bought some
2 fossil fuel plants during that period, would you have been
3 required to pick up some of the excess of those plants?

4 THE WITNESS: That is exactly right.

5 In other words, the construction schedule and the
6 purchase schedule that was discussed and incorporated in
7 the acquisition of capacity program involved in addition to
8 the nuclear plants also Proposed steam plants. So there
9 was other than nuclear involved also.

10 BY MR. LESSY:

11 Q Would there be a requirement to also
12 purchase other existing fossil facilities as part of the
13 total picture or were we only talking about units that were
14 planned as of the time of the study?

15 A To the best of my recollection we were limited to
16 talking about future plants. They would not discuss the
17 acquisition of the present facilities already on line. It had
18 to be new construction. And, of course, that would then
19 follow whatever their construction schedule was.

20 Q With respect to I believe it is Alternative 5,
21 that would be, as my notes here indicate, from your
22 testimony, a baseload plant owned and operated by WCOE which
23 would provide power to the various members.

24 How would the members be able to get -- transmit
25 power back and forth between themselves?

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A Well, we couldn't without -- it was understood we would have to work out some kind of contractual arrangement for transmission between the cities and villages and various units of membership in WCOE.

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BY MR. LESSY:

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2 Q Were each of the cities interconnected with each
3 other?

4 A All of the cities are located on Ohio Edison's
5 system. They didn't have to pass thorough any other area,
6 or what have you, so they would be -- power would be permitted
7 to flow -- or they would make arrangements through contractual
8 arrangements for the power to flow over their system to the
9 other member cities.

10 Q Is that wheeling arrangements?

11 A Under my definition that would be included as
12 wheeling, yes.

13 Q What is your definition of wheeling?

14 A My definition is transmission of power from one
15 party to another.

16 Our problem with the company was not in the area
17 of transmitting power from their facilities to ours or our
18 facilities over their transmission lines to ours, but wherein
19 we talked about injecting a third party that had -- that Ohio
20 Edison was not involved with contractually or others they
21 resisted this approach.

22 It is in that context that they did not approve of
23 wheeling, but they did approve of transmission across their
24 system in the manner that I have described.

25 Q If either the desired, either the preferred provision

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1 or any of the provisions were implemented, would it make
2 available with respect to the study -- would it make available
3 power for resale to the wholesale municipal customers of Ohio
4 Edison?

5 A It is my interpretation that it would not.

6 My recollection of the negotiations are such that
7 the company on a number of occasions were very sure we were
8 talking about just the needs of the WCOE members and not of
9 some other entity.

10 That they wanted any excess capacity that was
11 available. Even in the preferred plan, or proposed preferred
12 plan of prepayment of purchase capacity we are talking about
13 not purchasing in excess of our own individual nets.

14 That approach was rejected rather early in the
15 game. We were talking about ours as a group and needs of the
16 group, and not the needs of somebody else having excess power
17 flow through us to someone else.

18 That was excluded from our study of alternatives.

19 Q In your view or your experience, would that
20 restriction have any impact on load growth by the individual
21 members of WCOE?

22 A I'm not sure of the answer to that question.
23 I'm not sure.

24 Q What is the present state of negotiations between
25 the wholesale consumers and Ohio Edison concerning the provisions

mm3

1 of the study?

2 A As I stated earlier, the company felt that they
3 needed time to go over in detail the statistical and technical
4 data contained in the study.

5 Obviously, if they do not agree with the methodology
6 or the numbers that have been used or any assumptions that
7 have been made in the development of the alternatives,
8 this could drastically change perhaps the conclusions that
9 are drawn.

10 So, we are waiting for the company to proceed with
11 that detailed examination. Also, there was to be some kind of
12 memorandum of understanding that the attorneys were going to
13 work out saying that the company agrees in principle to the
14 report.

15 Here again, that isn't very important to us.
16 We are more interested in getting a study and the conclusion
17 jointly agreed to on a very specific basis, rather than a
18 conceptual basis.

19 To my knowledge, neither one of these things have
20 been accomplished, but I am not 100 percent sure.

21 Q How long have these negotiations concerning power
22 supplies between WCOE and Ohio Edison taken place, to your
23 knowledge, since the FPC settlement which you referred to
24 earlier?

25 A I believe we started our -- the first session was

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1 that October 1974 meeting,

2 I believe that was the first meeting that was
3 held after the settlement agreement in which we proposed the
4 basic elements of the study, et cetera.

5 Q Is there a planned Phase 2 of the study program?
6 That is a leading question.

7 Is there another stage of the study planned?

8 A Obviously we did not address ourselves to all the
9 many details, agreements and many of the even technical and
10 engineering details that would have to be developed once a
11 specific plan is arrived at.

12 There is also the question of financial feasibility
13 and legal feasibility that has to be carefully addressed.

14 The WCOE group has independently discussed the
15 plan on a very informal basis with leading financial people
16 in the country to get some of their input into their --
17 into the recommended plan, or one of the alternatives,
18 whether they favored some other alternatives.

19 So we do have to look at these other things.
20 There is definitely more work to do other than just agree to
21 the recommendations in this study. There is much followup
22 work to be accomplished.

23 Q Now when is it anticipated that all this will come
24 to fruition and there will be some agreement and that the
25 wholesale consumers will have-- that there may be some sort

mm5 : 1 of power supply arrangement or transmission arrangement as
2 requested in Mr. Stout's August 11, 1972 letter?

3 A I would have no idea.

4 At the rate it has been going, it could be a couple
5 of years.

6 MR. STEVEN BERGER: Excuse me, your Honor, as to
7 the last question and answer, and the reference to Mr. Stout's
8 letter of August 11, 1972, I object to the question and I
9 would like to have the answer stricken on the ground that
10 Mr. Lessy is attempting to establish Mr. Stout's letter as
11 the basis for the study and what is taking place today in
12 terms of negotiations and working towards an agreement.

13 I think the record, as it stands right now reflects
14 that it is not Mr. Stout's letter, but the settlement agree-
15 ment of the FPC.

16 I don't think there is a factual basis in the record
17 for the last question and response.

18 MR. LESSY: Could the reporter read back the question?

19 (The reporter read the record as requested.)

20 Q BY MR. LESSY:

21 Q Could you refresh us as to the date of the FPC
22 settlement, roughly?

23 CHAIRMAN RIGLER: Do you mean your reference point
24 to be the FPC settlement?

25 MR. LESSY: Yes.

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1 CHAIRMAN RIGLER: Would your answer be changed if
2 we made the reference point the FPC settlement?

3 THE WITNESS: No.

4 MR. LESSY: My recollection was that they were
5 roughly in the same timeframe.

6 BY MR. LESSY:

7 Q How, in your view, could the wholesale consumers
8 benefit from access to alternative sources of bulk power
9 through wheeling such as the PASNY power, or Buckeye power you
10 referred to yesterday.

11 MR. REYNOLDS: In the first place, there has been
12 no reference as to PASNY power by this witness. He referred
13 to Niagara Power and not PASNY power.

14 Secondly, we have had a definition of wheeling by
15 the witness, which would indicate there is not a refusal for
16 wheeling.

17 If that is so, I want to make sure the question is
18 clear as to what the definition of wheeling is we are using
19 when we are asking for this response.

20 MR. STEVEN BERGER: If I may have a further objection,
21 I believe there is no factual basis in the record as yet, as
22 of a specific request on the part of WCOE of any of the other
23 alternatives sources of power supply that we are talking
24 about.

25 He is asking for a conclusion based on something

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1 that there is nothing in the record to establish a factual
2 foundation for that.

3 CHAIRMAN RIGLER: The question will be rephrased
4 because of Mr. Reynolds' objection.

5 Are you saying he said there was no refusal to
6 grant any of the other alternatives proposed in the Beck
7 study?

8 MR. STEVEN BERGER: My objection goes to that portion
9 of the --

10 CHAIRMAN RIGLER: I am asking a separate question now.

11 It seemed to come up in the phrasing of your
12 objection. You indicated that the witness has not testified
13 with respect to any refusal by OE to consider alternatives
14 1 through 5 proposed in the Beck study, is that correct?

15 MR. STEVEN BERGER: No, I wasn't speaking to that,
16 your Honor.

17 All I was speaking to was Mr. Lessy couched the
18 questions in terms of the alternative of obtaining some third
19 party power. I don't believe that there is any -- he was
20 asking a conclusion with regard to the obtaining of that
21 third party power.

22 I don't think there is any testimony in the record
23 by this witness as to any third party power availability
24 or any third party power request by the WCOE for such power.
25 Or, any studies having been conducted for such purpose.

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MR. LEESY: Mr. Stout's letter is a request.

The witness mentioned yesterday Niagara and Buckeye Power as considerations.

If Mr. Reynolds prefers the term Niagara to PASNY, I will be happy to substitute it. We are asking the witness who participated in the negotiations, who you felt the wholesale consumers could benefit from wheeling.

By wheeling, it may be my lack of specificity in the question, the third party wheeling, wheeling from sources other than Ohio Edison.

Before you answer, there is objection. That is the purpose of the question. The question to the witness is, how do you feel the -- or why would it be desirable for the wholesale consumers in your view, to have access to alternative sources of bulk power through transmission services, third party wheeling?

That is the question it was our intent to ask.

THE WITNESS: I think this wheeling question and the company's position and my particular definition is where we had such difficulty.

First of all, the company did not want to discuss wheeling where a third party, outside third party was involved. They wanted to -- they were willing to consider wheeling internally or along their system where a third party outside of WCOE and the company were -- if there wasn't a third party

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1 involved.

2 The question, as I understand it is, do I feel
3 there would be any benefit or what are the benefits to a
4 third party wheeling concept being applied to our study.

5 BY MR. LESSY:

6 Q Either to the --

7 CHAIRMAN RIGLER: I am confused.

8 Are you saying that Ohio Edison did agree in princi-
9 ple to transmitting power on its lines from sources outside
10 of its operating area to the members of WCOE?

11 THE WITNESS: I am saying that they would not
12 discuss this arrangement where -- like, they would not discuss
13 from Buckeye to -- wheeling across their lines to WCOE.
14 They would not discuss a third party outside of their generation.

15 If they owned generation in Parry, they will see
16 to it that we get that power transmitted to us.

17 CHAIRMAN RIGLER: If it is power generated by some-
18 body in whom they have no ownership interest, they have
19 refused to discuss wheeling that power over their transmission
20 system?

21 THE WITNESS: That is exactly right.

22 MR. STEVEN BERGER: I would like a clarification
23 as to the witness' response in regard to Buckeye as it being an
24 example, rather than their having been a specific situation
25 in which someone came to Ohio Edison and talked in terms of

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1 Buckeye Power and there was a specific refusal on the part
2 of Ohio Edison to discuss such a proposal.

3 THE WITNESS: That is correct. We used the termi-
4 nology Company A, B, C rather than Buckeye, PASNY or Niagara.
5 We used letter designations. We did not make a specific
6 request for Buckeye Power.

7 CHAIRMAN RIGLER: There was a general denial on
8 behalf of Ohio Edison to transmit power over its transmission
9 facilities where it was the nongenerating source of the power?

10 THE WITNESS: That is right.

11 MR. STEVEN BERGER: I would like a clarification as
12 to whether or not there was a general denial of wheeling, or
13 general denial to discuss wheeling.

14 MR. REYNOLDS: In the context of the settlement
15 discussions going on at the time.

16 MR. LESSY: I think that is cross-examination.

17 CHAIRMAN RIGLER: Let's clarify it now.

18 MR. LESSY: There were two sources.

19 One source is Mr. Stout's letter which specifically
20 requested --

21 MR. REYNOLDS: I believe the witness has to
22 testify and not counsel.

23 MR. LESSY: Shall I ask a question?

24 CHAIRMAN RIGLER: No, I want the witness to address
25 himself to the point that Mr. BERGER and Mr. REYNOLDS just

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made which was, did the refusal to discuss wheeling occur
in the context of the FPC settlement?

THE WITNESS: That is correct.

CHAIRMAN RICLER: That was the sole way that it
occurred?

THE WITNESS: It occurred in the period from 1974
to date as we were discussing our alternative sources of
power.

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1 CHAIRMAN RIGLER: Is that the clarification
2 you were seeking, Mr. Reynolds?

3 MR. REYNOLDS: I believe so.

4 BY MR. LESSY:

5 Q Along that line, Mr. Lyren, I believe you
6 testified to this yesterday, was there any response to your
7 knowledge by Ohio Edison Company to the August 11, 1972
8 letter from Mr. Stout on behalf of Wholesale Consumers to
9 Mr. White?

10 MR. STEVEN BERGER: That has been asked and
11 answered several times.

12 MR. LESSY: This impacts on the discussion the
13 Chairman was interested in as to whether or not there had
14 been refusals to wheel.

15 Now, it has been said there has been a refusal
16 to discuss third-party wheeling or its consideration in the
17 power supply study. Now, as long as we are on that subject,
18 Mr. Stout specifically asked them what they are willing
19 to do.

20 I was asking the witness to answer.

21 When we had this part of the transcript the
22 whole subject of transmission would be lumped together.

23 MR. STEVEN BERGER: I object to Mr. Lessy's
24 characterization of Mr. Stout's request as being specific in
25 any regard.

1 MR. LESSY: I said Mr. Stout's request. The
2 request speaks for itself.

3 MR. STEVEN BERGER: You said Mr. Stout's specific
4 request.

5 CHAIRMAN RIGLER: All right.

6 MR. LERACH: I have a point of general
7 procedural objection to having evidence discussions on
8 objections to evidence take place in front of the witness
9 where Mr. Lessy cannot -- cannot help but suggest a response
10 to the witness -- it cannot help but suggest a response to
11 the witness and it is not only Mr. Lessy, but when we
12 attempt to explain to the Board why something is relevant,
13 it cannot help but suggest to the witness what sort of
14 answer he should give.

15 I am not suggesting you alter your procedure.
16 I raise the point that perhaps there is a better way to proceed
17 on his.

18 CHAIRMAN RIGLER: Right. But I don't think the
19 objections have been to relevance but to clarity in this
20 instance.

21 MR. STEVEN BERGER: That was precisely my point,
22 your Honor.

23 CHAIRMAN RIGLER: Do you want to rephrase the
24 question? There was objection to your use of the word
25 "specific" in phrasing the question.

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1 MR. LESSY: As long as there had been some
2 clarification as to third-party wheeling and transmission
3 services, does the letter of Mr. Stout dated
4 August 11, 1972 to Mr. John R. White on behalf of the
5 Wholesale Consumers of Ohio Edison, as well as the
6 response, if any, of Ohio Edison thereto, impact in your
7 mind on Ohio Edison's position regarding wheeling?

8 By wheeling, I mean the wheeling referred to in
9 that letter.

10 MR. STEVEN BERGER: I think that the record has
11 already reflected as to question of whether or not there was
12 a response to Mr. Stout's letter of August 11, 1972 and
13 Mr. Lessy has characterized it as if there was a response to
14 Mr. Stout's letter which was prior to the negotiations leading
15 up to the FPC settlement.

16 MR. LESSY: I would like to know -- and this is
17 not in the record -- as to whether or not the Wholesale
18 Consumers of Ohio Edison consider the statements allegedly
19 made by Ohio Edison made at the meetings to be in response
20 to Mr. Stout's letter.

21 That is not in the record. I would like to get
22 an answer to that.

23 CHAIRMAN RIGLER: I permit that question at this
24 time.

25 THE WITNESS: Personally I do not consider it a

1 response.

2 BY MR. LESSY:

3 Q Now, the question to you before this line was:
4 how do you feel the Wholesale Consumers benefit from third-
5 party wheeling if it were made available to them?

6 A If third-party wheeling was made available and
7 we could consider a slight variation in the alternatives that
8 were studied, the results may be different.

9 I mentioned in Alternative Number 2 where WCOB
10 would install peaking units in order to supplement wholesale
11 purchases. It is quite possible that the economics of
12 acquiring these peaking loads -- this peaking power from
13 someone else might be more economically feasible than
14 Alternative Number 2 as presently examined.

15 Also Alternative Number 4 could be modified and
16 re-examined if we could consider that element.

17 Q Now, apart from the study, assuming that these
18 matters were still in the subject negotiation, if tomorrow
19 the City of Wadsworth or other of the wholesale consumers
20 had access to alternative sources of bulk power supply
21 wheeled in, what would be the desirability of this in terms
22 of loads, costs? What would be the desirability of it?

23 MR. REYNOLDS: Mr. Rigler, as a matter of
24 clarification, I think we will have some problems with
25 this unless we can make it clear which proposal or alternative

1 suggestion that we are going to talk about when we are
2 answering the question because there have been a number of
3 different alternatives.

4 As I understand the question as it was phrased
5 we haven't focused on any of them. I am not sure the
6 witness is equipped or qualified to make this judgment.

7 MR. LESSY: The question was if it were read
8 back that not considering the options in the study, what
9 would be the desirability in his view of having access to
10 alternative sources of bulk power.

11 CHAIRMAN RIGLER: Ask that question.

12 Answer that.

13 THE WITNESS: Our present status is a wholesale
14 consumer purchasing power under a wholesale contract and at
15 rates established by the FPC. These rates are demand-
16 sensitive in that we pay for our peaks. If we could
17 transmit power during these peak times from some other source
18 perhaps we could lower our overall cost of energy purchase.

19 That would be a potential advantage, or at least
20 a potential alternative to our present situation.

21 One thing that adds further to that possibility
22 is that the rural electric coop load is off peak when we are
23 on peak. There is definitely a potential for study there.

24 CHAIRMAN RIGLER: Which rural electric coop are
25 you referring to?

1 THE WITNESS: In our general area, that area
2 being the area surrounding Ohio Edison, it would be Buckeye
3 basically.

4 BY MR. LESSY:

5 Q What -- what do -- to your knowledge do any of
6 the existing contracts between Ohio Edison and its wholesale
7 consumers permit the taking of power on a partial requirement
8 basis as opposed to full requirements?

9 A Do any of the contracts allow it?

10 Q Yes.

11 A There is one city that takes partial requirement,
12 the City of Oberlin. All of the rest of the cities are
13 required to take full requirement.

14 Q Wadsworth takes full requirements?

15 A Wadsworth takes full requirements.

16 Q Suppose you were permitted to take partial require-
17 ment and shop for the rest to fulfill the rest of your
18 needs, would that be desirable in your view?

19 A Yes, I believe that additional alternative
20 would be desirable.

21 Q How?

22 A It would give us the opportunity to investigate
23 the economics of the part that wasn't purchased from the
24 company. It would also perhaps encourage the company to be
25 more competitive in the power that they would be supplying

1 to us.

2 Those are two things I can think of right off-
3 hand.

4 Q Has, to your knowledge, Ohio Edison, within
5 the past six months, approximately, seven months, offered
6 access to any of the nuclear units as a unit, not as a
7 blend, to either the City of Wadsworth or any of the whole-
8 sale consumers of Ohio Edison?

9 A No, not to my knowledge. I understand that
10 as except a blend.

11 Q Have they said, for example, there is a plant
12 called Perry? Would you be interested in participating in the
13 Perry plant as a plant?

14 A They haven't made that statement. They
15 have said that we could participate in Perry as long as we
16 did not exceed a 50 megawatt load and we also participate in
17 all of the other plants that Ohio Edison is going to build.
18 That was the condition under which the offer was made. It
19 was an offer conditionally made, with conditions applied.

20 CHAIRMAN RIGLER: When is it that this discussion
21 took place?

22 THE WITNESS: This was in the series of talks
23 on the settlement agreement and the development of these
24 alternatives.

25 CHAIRMAN RIGLER: I had a question going back to

1 something you said earlier. I think from the Board's point
2 of view it would be very important and I want it crystal
3 clear. Did I understand you to testify that Ohio Edison
4 refused to make available baseload power including power
5 from Davis-Besse and Perry if that power was to be resold
6 by the members of the WCOE group to present industrial
7 customers Ohio Edison?

8 THE WITNESS: I would say the answer to that
9 question is yes, considering all of the conditions applied
10 along the line all the way back to that industrial customer.
11 The answer would be yes, they refused to do that.

12 MR. STEVEN BERGER: Could I get some further
13 clarification?

14 CHAIRMAN RIGLER: Not now, you may not.

15 Mr. Lyren, from your answer to my last question
16 would it be correct to conclude, then, that there would be
17 restrictions on the resale by WCOE members of power obtained
18 from Davis-Besse or Perry if the only alternate proposed in
19 the Beck study by Ohio Edison were adopted?

20 THE WITNESS: Absolutely.

21 BY MR. LESSY:

22 Q Are you familiar with any acquisitions of municipal
23 electric entities in the last five years by Ohio Edison?

24 A I am familiar with three: the Village of Hiram
25 system, the City of Norwalk and the City of East Palestine

we some familiarity with.

TEVEN BERGER: Could I have one moment
opening continues?

MAN RIGLER: Yes.

a.)

TEVEN BERGER: Could I have the question and
read back before I make an objection?

MAN RIGLER: Yes. I didn't hear a question,

TEVEN BERGER: I think he did respond to the
reporter read from the record as read.)

TEVEN BERGER: Earlier today Mr. Lyren was
asked to his list of intended fact witnesses
lists of NRC Staff in referring to witnesses
Lyren would be testifying to in the

statement in that statement is there anything
to believe that Mr. Lyren was considered
as to be testifying to the acquisition
Company.

only it is not reflected in any of the records
before us.

SSY: I think that the phrase was used
in the Wholesale Consumers of Ohio
Company. I would refer the

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1 Board to the list of statements in intended fact witnesses.

2 For example, by the Dequasne Light Company in
3 which they listed or by any other parties whose they list
4 relationships.

5 If we listed with Mr. Lyren a number of specific
6 areas the question of acquisitions falls within the relation-
7 ships certainly.

8 This is not a point we will harbor. Mr. Lynch
9 will address matters relating to the relationship between the
10 Wholesale Consumers of Ohio Edison with Ohio Edison Company.
11 The testimony will include but is not limited to the
12 following:

13 I think this line will not be an extended line
14 should be included in the general designations. If it is not,
15 then the Staff will strictly rely on the designations given
16 by Applicants in their list of intended witnesses.

17 If that will be the ruling of the Board, the scope
18 of Applicants' testimony is going to be very limited.

19 MR. STEVEN BERGER: Two comments, if I may,
20 Mr. Chairman.

21 I think in any way to place the Staff, Justice
22 Department and the intervenors on parity with Applicants in
23 this proceeding in terms of our respective responsibility
24 to give notice in advance of what our respective cases are
25 going to show I think is folly. Otherwise we would have to

1 A Yes, they are all in Ohio Edison's service area.
2 As such if they would be in existence today they would be
3 involved in our study as a group. Our study, you understand,
4 is a group study. We are studying WCOE as a group and the
5 impact that that group would have on the available power
6 supply. They would be part of the group perhaps if they
7 existed as entities.

8 Q One final question --

9 MR. REYNOLDS: For purposes of clarification, when
10 we use the term "service area" in that question and answer
11 is it being used as term of art or the area in which Ohio
12 Edison served?

13 If we are using it as a term of art, it would be
14 helpful to have a definition.

15 If his objective is to say the area in which
16 Ohio Edison served, then that is all he was directing his
17 attention to at this time.

18 MR. LESSY: That is what I meant. The other
19 area in which Ohio Edison provided service.

20 CHAIRMAN REGLER: Is that how you answered the
21 question?

22 THE WITNESS: Yes.

23 MR. REYNOLDS: Thank you.

24 BY MR. LESSY:

25 Q Yesterday, Mr. Lyren, you testified to the policy

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1 of banking of customers that was engaged in by Ohio Edison
2 with certain wholesale customers. Is that practice in effect
3 today?

4 CHAIRMAN RIGLER: Before you go on, Mr. Berger
5 was on his feet.

6 MR. STEVEN BERGER: As to the question,
7 and answers in regard to acquisitions I renew my objection
8 on the previous grounds and on the additional ground that
9 there have been charges made in this proceeding in regard to
10 those acquisitions.

11 Notwithstanding the fact that the Board as an
12 administrative body is going to be receiving evidence,
13 Mr. Lyren, as Service Director of the City of Wadsworth and
14 his relationship to those acquisitions and the underlying
15 facts and circumstances that gave rise to the acquisitions is
16 so tangential -- I think it rises to the level of a question
17 of admissibility for him to be testifying in regard to them
18 at this point.

19 CHAIRMAN RIGLER: He may have personal knowledge
20 of the facts he testified to.

21 MR. STEVEN BERGER: Let Mr. Lassy lay the
22 foundation for that.

23 CHAIRMAN RIGLER: I am not troubled by that. I
24 am more troubled by the relevance.

25 (The Board conferring.)

1 CHAIRMAN RIGLER: Mr. Lessy, do you intend to
2 introduce other evidence during the course of Staff's
3 presentation relating to Ohio Edison's acquisitions?

4 MR. LESSY: We may introduce evidence with
5 respect to attempted acquisitions. In other words, the type
6 of -- before the Board rules, I have reviewed my notes and in
7 the nature of the evidence to be presented by MIC Staff, we
8 referred to the matters in controversy.

9 Seven, assuming the answer to six is yes, is this
10 ability to hinder or preclude competition been exercised for
11 the purpose or effect of eliminating one or more of the
12 entities of COCT.

13 We want to get into the record there have been
14 acquisitions.

15 That is my offer of proof.

16 CHAIRMAN RIGLER: I say it is of marginal probative
17 value at this time. We will permit it to remain in the record.

18 MR. STEVEN BERGER: Could I have a statement of
19 the basis of the witness' knowledge in regard to those
20 acquisitions?

21 CHAIRMAN RIGLER: On cross you could.

22 MR. LESSY: Had I gotten the last question
23 out before the objection and motion?

24 (The reporter read from the record as requested.)

25 THE WITNESS: No.

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1 BY MR. LESSY: Can you --

2 MR. MELVIN BERGER: The question was
3 wholesale customers. Is that what you meant?

4 MR. LESSY: Yes.

5 BY MR. LESSY:

6 Q Yesterday you testified to the practice of
7 banking of customers, banking of customers that took place
8 between Ohio Edison and Wadsworth. Is that practice of banking
9 of customers still going on in December of 1975?

10 A No.

11 Q As of when did that practice cease?

12 A It ceased with the settlement agreement and last
13 approval of the Federal Power Commission of the changes in
14 the tariff which was sometime, I believe, in 1973 but I am
15 not sure of my date.

16 Q Was that a negotiated settlement?

17 A Yes, it was a negotiated settlement.

18 Q As a result of that settlement the practice
19 ceased; is that right?

20 A That's correct.

21 MR. LESSY: No further questions.

22 CHAIRMAN REGLER: We will start with the Justice
23 Department examination immediately after an abbreviated
24 lunch break today.

25 We will resume at 1:30.

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(Whereupon, at 12:30 p.m., having in the above-entitled matter was recessed, to reconvene at 1:30 p.m., this same day.)

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AFTERNOON SESSION

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1:40 p.m.

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MR. LESSY: Before we start this afternoon, in response to a question relating to the summary of a study Mr. Lyren referred to some handwritten notes.

6

7

Staff will now distribute copies of those notes to everyone present.

8

9

CHAIRMAN RIGLER: Mr. Berger, would you care to proceed?

10

Whereupon,

11

WILLIAM S. LYREN

12

resumed the stand, and having been previously duly sworn,

13

was further examined and testified as follows:

14

CROSS-EXAMINATION

15

BY MR. MELVIN BERGER:

XXXXXX

16

Q I would like to ask you questions in regard to

17

Staff Exhibit No. 35, which is the agreement between

18

Wadsworth and Ohio Edison Company.

19

Do you have a copy of that in front of you?

20

A little earlier today, Mr. Lessy asked you to

21

look at page 1 of this agreement. The second paragraph in

22

item 1. I would like to refer you to that right now if you

23

could just briefly read that over.

24

(Witness reading the document.)

25

A I think I understand that.

mm2 1 Q I believe you testified this morning that it was
2 your understanding that if Wadsworth was to terminate this
3 agreement by giving the required notice, that it would only
4 be able to do so if it started to generate its power require-
5 ments by itself, is that correct?

6 A That would be my interpretation of the paragraph,
7 yes.

8 Q Would it be possible for Wadsworth to start
9 generating power by itself?

10 Strike that.

11 What would be necessary for Wadsworth to start
12 generating its own power requirement?

13 A It would have to build a generating plant and
14 proceed with all of the preliminaries associated with developing
15 an acceptable plan for generation.

16 Q Could you briefly outline what would be necessary?

17 A I believe we would make some preliminary studies
18 as to the types of generation that -- and the size of generating
19 capacity needed to supply the needs of the community over
20 a significant period of time.

21 I also think we would probably look at other
22 WCOE members' interests in such a plan since their contracts
23 contained the same provision.

24 Then we would proceed to develop, select a plan
25 or select a type of facility and sizing of a facility and

mm3

1 proceed with engineering and acquiring the necessary permits
2 and license, siting approvals.

3 Having not fully gone through all of these
4 steps, I am somewhat unfamiliar with all of the requirements
5 of such a procedure. I can imagine that it would be a very
6 lengthy procedure to go through, and one that would take a
7 considerable amount of professional assistance.

8 Q Do you have any idea what the costs might be?

9 A I don't have any idea, not knowing the specific
10 size of the plant that would be done. All I know is from
11 other matters in other situations where generation has been
12 built that size -- or the cost is very expensive.

13 CHAIRMAN RIGLER: Mr. Reynolds?

14 MR. REYNOLDS: I am going to object to any further
15 continuation of this line of questioning as having absolutely
16 no relationship whatsoever to activities under the license.
17 It is speculative.

18 It is very remote with respect to what we are
19 talking about in this proceeding.

20 MR. MELVIN BERGER: I believe it relates directly
21 to possible restraints on competition which are contained
22 in this agreement, and therefore goes to a situation inconsistent
23 with the antitrust laws.

24 CHAIRMAN RIGLER: We have been permitting questions
25 relating to the agreement. I am not sure how your present

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1 line has any bearing on the agreement itself, particularly
2 the provision to which you referred the witness initially.

3 MR. MELVIN BERGER: In view of Mr. Lerach's earlier
4 comment, I would be happy to tell how I think it bears on that
5 issue.

6 Perhaps Mr. Lyren should not be present when I
7 advise everyone.

8 CHAIRMAN RIGLER: All right..

9 MR. LERACH: I didn't mean to restructure the hearing.
10 It was a point that occurred to me.

11 CHAIRMAN RIGLER: It was a valid comment.

12 We will exclude the witness momentarily. Do you
13 want to step outside of the room.

14 (Witness temporarily excluded.)

15 MR. MELVIN BERGER: I believe that this provision
16 has been used by Ohio Edison as a means of preventing
17 Wadsworth from obtaining its bulk power supply from any
18 other source aside from Ohio Edison, since the only way they
19 could possibly terminate this contract for its ten-year term
20 would be to go into self generation, which is highly impractical.
21 It, therefore, would prevent them from terminating this contract
22 and obtaining bulk power supply from anybody else.

23 CHAIRMAN RIGLER: Does somebody want to get the
24 witness.

25 We will overrule the objection, Mr. Reynolds.

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1 (The witness resumed the stand.)

2 BY MR. MELVIN BERGER:

3 Q Mr. Lyren, if you had a choice between obtaining
4 your bulk power supply for Wadsworth from either establishing
5 self generation, or from obtaining it from another supplier
6 of bulk power, that is another supplier besides Ohio Edison,
7 which would be the method of choice for obtaining such a
8 power supply?

9 A I probably would choose to thoroughly investigate
10 the option of purchasing from another supplier simply because
11 I am sure the Wadsworth system isn't large enough to compete
12 with the economies of scale, et cetera, that would be available
13 from other major generating sources.

14 My choice would be to seek it elsewhere first.

15 Q Mr. Lyren, are you familiar with the retail rates
16 of the Ohio Edison Company in the area around Wadsworth?

17 A I am generally familiar with them.

18 I could not testify to their exact rates, but I
19 have reviewed their rates on a comparative basis from time to
20 time with the Wadsworth rate.

21 Q Are you familiar with Wadsworth rates?

22 A Yes.

23 Q What customer classifications do the Wadsworth rates
24 have?

25 Do they have more than one customer classification?

nm6

1 A Yes, we have a residential rate. We have a large
2 power industrial rate and a commercial rate, which also applies
3 to some smaller industrial loads.

4 Q Is there a rate differential between Wadsworth and
5 Ohio Edison?

6 A Yes, I believe I already testified to the differen-
7 tial that exists in the residential rates in the surrounding
8 area and the Wadsworth system.

9 Q Is there a differential in comparison with the
10 commercial rates?

11 A There is a differential in the commercial rates as
12 well as the industrial rates. All the rates there is a
13 differential. They are not the same.

14 Q Do you know what the approximate differential is
15 in the commercial rates?

16 A No, I cannot testify to that difference.

17 Q I believe you said the difference in residential is
18 15 percent, is that right?

19 A Yes.

20 Q Would the commercial be more or less than 15 percent?

21 A It would be much less.

22 Q What about the differential in regard to
23 the industrial rates, differential if any?

24 A The industrial rate -- we have three industries, as
25 I testified earlier that take service and are located inside

mm7

1 the city. The rates that these people pay when compared to
2 our industrial rates, the rates they pay the Ohio Edison are
3 lower than the Wadsworth industrial rate.

4 Q So the Ohio Edison industrial rates are lower
5 than the Wadsworth rates, is that right?

6 A Yes, they are.

7 At least the last time I checked that is right.

8 Q Have you ever compared the Ohio Edison industrial
9 rates to the wholesale rate that Ohio Edison charges the
10 City of Wadsworth?

11 A Yes, we checked it.

12 The last time it was checked was our last rate -- the
13 rate increase request before the Federal Power Commission in
14 1972. At that time we did investigate the rate 31 which
15 was the rate level at I believe 69,000 volt service level of
16 Edison to the wholesale rate.

17 Q Rate 31 is your wholesale rate?

18 A No, our wholesale rate is called wholesale rate.

19 Rate 31 is the designation of the industrial rate
20 that the comparison was made to that Ohio Edison had.

21 Q What did the comparison show?

22 A At that time it showed we would like to get rate 31.
23 It seemed to be a better rate than the wholesale rate, lower
24 rate.

25 Q Rate 31 was lower than the wholesale rate that was

mm8

1 being charged to Wadsworth?

2 A That was our opinion, yes.

3 Q Do you know -- strike that.

4 Is it a fact that the OE wholesale rate to Wadsworth
5 is higher than OE rate 31? Has that fact affected Wadsworth's
6 ability to compete with OE for industrial customers?

7 A I think that was a factor.

8 There existed until 1973 other factors such as
9 limitations on the extension of primary that were probably
10 equally important.

11 There was only one industrial customer that I
12 can recall that was beyond our primary extension or our primary
13 lines in the Township that was served by Edison, that we
14 would have competed for had we had the ability to extend a
15 rate structure that would have permitted us to offer a
16 competitive rate.

17 Q What was the name of that customer?

18 A Ohio Brass Company.
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11 1 Q You indicated just now that you would have
2 competed for them but for the limitation on the extension of
3 lines.

4 In what time frame would you have been able to
5 compete for them?

6 A Well, it was -- I think in the year 1967, '68,
7 '69. In that general time frame. I can't remember the
8 specific time.

9 Q As of today do you know the rate differential,
10 if any, that exists between Ohio Edison Rate 31 which is
11 their industrial rate, and the wholesale rate being
12 charged Wadsworth?

13 A No, but I don't have any reason to believe that
14 the situation has changed. The rate increase is pending
15 before the Federal Power Commission. The wholesale rate is a
16 very significant increase in rates.

17 There have been some adjustments to Rate 31
18 since the last time it was checked, but my recollection of the
19 magnitude of those increases does not approach the magnitude
20 of the increase proposed under the present filing so I would
21 say that I think that it is still exists that the wholesale
22 Rate 31 would be a better rate -- or, excuse me, Rate 31
23 would be a better rate than the wholesale rate.

24 Q As of today would this differential affect
25 Wadsworth ability to compete with Ohio Edison for industrial

1 customers?

2 A It might affect the decision of the two companies
3 that have asked for service from the city; although they
4 haven't rendered a decision, we had to tell them what rate to
5 pay. Although there was other things taken into
6 consideration such as the requirement of the company to
7 change their transformer capacity, I am just not sure
8 what exact impact it would have on their decision.

9 I would have to assume if we could offer them a
10 better rate than the company that that would influence their
11 decision as to what course of action they would take in the
12 future.

13 Q Can you offer them a better rate than G&S can
14 at this time?

15 A At this time I cannot without restructuring my
16 other rates, reallocating the costs somewhere.

17 Q Would it be proper to reallocate your rate
18 structure in order to come up with a better industrial rate?

19 MR. REYNOLDS: I will object unless we have some
20 qualification of what the counsel means by proper.

21 CHAIRMAN RIGLER: Sustained.

22 BY MR. MELVIN BERGER:

23 Q Why -- is there any reason why Wadsworth would
24 restructure its rates -- strike that.

25 Briefly, how are the rate structures of the

Wadsworth municipal system determine?

2 A Back in 1968 we had a very detailed analysis made
3 of our overall operating expense, capital improvement program,
4 and, of course, cost of wholesale power purchases analyzed and
5 analyzed and a rate structure -- and we hired a professional
6 consultant in rate matters to make recommendations on a rate
7 structure which would relate the cost of service to the
8 various classes of customers that I have previously mentioned.

9 We have from time to time as a result of increases
10 in wholesale costs been required to adjust, make some
11 modification to this rate structure, but basically a primary
12 of the rate structure is on the cost of service basis.

13 We have analyzed our cost of service to each
14 class of customer and try to identify the costs associated
15 with that class of customer and set our rates accordingly
16 to recover those costs.

17 MR. REYNOLDS: I will move to strike the witness'
18 testimony that relates to rate matters as being involved with
19 matters that are filed before the FPC and the Pennsylvania
20 State Commission and therefore having no relationship -- I am
21 sorry, the Ohio State Commission, and therefore having no
22 relationship to activities in the license.

23 CHAIRMAN RICLER: That will be denied.

24 BY MR. MELVIN BERGER:

25 Q If you were to lower your industrial rates at

1 this time in order to compete more favorably with Ohio
2 Edison's Rate 31, would the lowering of that rate have to
3 be subsidized by the raising of other rates?

4 A Yes. We have established our revenue requirements
5 and if we lower the revenue that is received from a certain
6 class of customer, we have to show where we are going to get
7 it. Or else cut our costs somehow.

8 That would still be an improper approach.

9 I would say that the answer is yes, we would have
10 to increase the rate somewhere else to provide that loss
11 of revenue.

12 Q So that the people whose rates would be the --
13 the consumers whose rates would be increased would then be
14 paying a rate greater than is justified by the allocation of
15 cost of services; is that right?

16 A That's right.

17 Q Did Wadsworth serve industrial customers outside
18 the city limits?

19 A Yes, we served Admiral Machine Company
20 while it was outside the city. The company was located along
21 our primary distribution circuit.

22 This was the company involved in the
23 controversy over the hanging of a transformer by its services
24 to that company.

25 That was the reason it was controversial, because

1 it was outside the city at the time.

2 We went ahead and, as I mentioned in earlier
3 testimony, hung the transformer and served the industry.
4 We have served industry outside the city.

5 Q Has Wadsworth ever been prevented in any way
6 from serving customers outside the city limits?

7 A Only through provisions of the contract that
8 existed to 1973 through the provision of excluding our
9 right to extend primary service to my knowledge.

10 Q Can you give us an example of one instance where
11 you might have been precluded from including a customer
12 because of a restriction in a contract?

13 A In the case of Ohio Brass Company we would have
14 been in a position to bid for service to the company had we
15 been in position to extend our facilities and had a rate
16 structure that was competitive to the company.

17 Q Have there been residential customers that you were
18 prohibited from serving that you wished to serve because of
19 contractual restrictions?

20 A Yes. I believe it was in 1972 we made a request
21 to serve the Sheraton Park Estates Development. It was a
22 subdivision of approximately 26 proposed lots. The city had
23 the exclusive right to serve approximately 11 of those lots due
24 to periphery construction of existing primary.

25 We asked the company's permission to serve the

1 balance of the subdivision. The company refused and in turn
2 asked us permission to serve the LL that we had the right to
3 serve.

4 Reaching no agreement, the company built about
5 a mile of transmission line, double-building or over-building,
6 parallel-building our facilities, and put in underground in
7 the development to serve the fourteen lots, approximately
8 fourteen lots that were not serviceable by secondary
9 extensions from our primary.

10 As it turned out, there is one house built in
11 the development today. They ran into problems in another
12 avenue of their development. There is one house there, but we
13 had requested and we are denied the right to serve the
14 remainder of that development.

15 Q You just used the term double-building. Can you
16 explain what you meant by that term?

17 A Through about half of this extension that the
18 company had to build to reach the development the city
19 already had a primary line on one side of the road and
20 the telephone company had a line on the other side. So they
21 had to construct a facility in addition to our facility in
22 order to accommodate transmission to that development so
23 they were duplicating electrical service along the highway,
24 both the city and the company enjoyed the transmission
25 construction on the same road.

1 Q You have utilized the term primary and secondary
2 distribution lines. I wonder if you can define those for us.

3 A Our primary lines are 12,270 volts or 1400 volt.
4 That is our primary system. We step down to 240 or 120 for
5 the residential consumption or the consumption of a different
6 industry might be a different voltage.

7 We step down from the primary voltage
8 distribution levels to the service voltage and that is the
9 secondary.

10 Q Could you serve customers from your primary
11 distribution line directly?

12 A I don't think that would match -- if the customer
13 required it we could. I don't know why we couldn't.

14 Q But a customer served from the primary
15 distribution line would have to be served at somewhat over
16 12,000 volts; is that what you are saying?

17 A If a customer required more than the voltage
18 than we had available, then we couldnot serve him at that
19 point unless we made some adjustments in our facilities or
20 our system.

21 Basically our system is 12.5 in the rural outlying
22 areas.

23 Q Could you serve a customer from your primary
24 distribution line or would you have to step it down?

25 A We would have to step it down.

1 Q Mr. Lyren, if not for the contractual
2 provision we were referring to in regard to extension of
3 primary or secondary lines, would Walsworth have sought
4 customers outside the city limits up from the time you
5 arrived there up until 1973?

6 A Absolutely every time the situation arose that
7 we felt we should serve the customer we made a request of
8 the company for permission to serve in writing.

9 We also -- with a few exceptions, I would say
10 that was generally true.

11 * We tried to extend our system through the
12 procedure outlined. We were denied on the occasion I
13 told you about, the fourteen lots in the Sheraton Park
14 Estates.

15 There are probably some areas we did not bother to
16 make requests for, but on the whole that procedure was followed.

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1 Q Does the Wadsworth municipal system pay taxes?

2 A We don't pay taxes directly to, we pay gross receipts
3 taxes. The Edison Company adds gross receipt taxes to our
4 bill. They collect that tax from us. It is on our power bill.
5 Personal property taxes for the poles, lines and structures,
6 et cetera are not -- are tax exempt.

7 What we do in lieu of taxes is included in the
8 cost of electrical energy to your consumers is the cost of
9 providing all the city with street lighting program, all of
10 the city with electrical energy to supply the need of the
11 park and recreation facilities, city hall and city building,
12 youth centers and those public places. This type of energy --
13 supplying this type of energy is in lieu of taxes, in lieu
14 of the general fund or the regular tax base of the city having
15 to be utilized for the payment of these facilities and these
16 services.

17 Q So you supply free street lighting and free electric
18 service to city buildings, is that right?

19 A That is right.

20 Q I would like to turn to a few questions relating
21 to the 1972 FPC rate case which you have alluded to a number
22 of times.

23 I believe you stated that out of that case developed
24 a settlement agreement.

25 Is that correct?

nun2

1 A Yes, that is correct.

2 Q Are you generally familiar with the agreement?

3 A Yes, I believe so.

4 Q With regard to your understanding of the agreement,
5 did that agreement provide for some type of joint study with
6 respect to new bulk power supply arrangements?

7 A Yes.

8 Q Do you know -- were you connected with negotiations
9 which led up to that agreement?

10 A Yes.

11 Q Did you personally participate in those negotiations?

12 A Most of them.

13 Q Who was, if we can use the term, the primary
14 negotiator for WCOE during the negotiations?

15 A Mr. William Maybinc and Mr. Emerson Duncan.

16 Mr. Maybinc from R. W. Beck, and Duncan from the
17 firm of Duncan and Allen and Mitchell.

18 Q Who did they report to on the progress of the
19 negotiations?

20 A They reported to the negotiating committee, of
21 which I was a member.

22 Q Do you know which party suggested that this study
23 be included as part of the settlement agreement?

24 A I believe it was Mr. Maybinc's suggestion that
25 that be included as an item to be considered in the negotiations.

mm3

1 although that was injected into the negotiations very last.
2 We had reached an impasse as to the amount of rate increase
3 justified; and some of the other features of the request
4 pending before the Commission, and so we felt we could not
5 accept their last proposal and we asked that they consider
6 the additional item of a joint power arrangement in
7 consideration for us accepting their last economic proposal.
8 And it resulted in the settlement of the case.

9 Q So the inclusion of that study was accepted by
10 WCOE in place of the possibility of lowering the rates, is
11 that right?

12 A VERY definitely.

13 Q Did the members of WCOE agree to this?

14 Did all of the members agree to this?

15 A Yes, all of the member communities signed the
16 applicable agreements that permitted the settlement agreement
17 to go into effect.

18 Q With regard to your understanding of just the
19 settlement agreement itself, did it preclude inclusion in this
20 study of third party wheeling, or the wheeling of power which
21 originated from a source outside the Ohio Edison -- outside
22 the area served by Ohio Edison?

23 A In my opinion the settlement agreement and the
24 memorandum agreement dealing specifically with the study,
25 did not preclude that.

mm4 1 Q Is there anything in the negotiations which led up
2 to the settlement agreement which would indicate that it was
3 the intent that this third party wheeling be excluded from
4 this study?

5 A No.

6 In fact, I think the Spout letter previously admitted
7 here indicated that we did have a device for third party
8 wheeling. I recall no contradiction to that device to limit
9 third party wheeling.

10 Q Would you have been aware if there was such a
11 contradiction, as a member of the committee?

12 A I should have been aware, but I am not aware of
13 any, and I certainly think I would have been.

14 Q After the settlement agreement was signed, I
15 believe you testified that another committee was set up.

16 Is that correct?

17 A Yes.

18 Q Did that committee have a name?

19 A We just continued to use the same name for all
20 of our -- well, we designated them 1, 2, 3. The second
21 committee being the committee to be responsible for a followup
22 on the settlement agreement.

23 Q How was it determined what items WOOD wanted to
24 have included in this study?

25 A It was determined through discussion of the committee

mm5

1 and their legal and engineering consultants and a letter was
2 prepared that we have referred to here previously from Mr. Duncan
3 and sent to the company as a basis for our first meeting on the
4 subject.

5 That letter represented what we felt needed to be
6 studied although this was to be a joint venture, so we had to
7 get the company's approval of the items to be included in
8 this study.

9 Q Is this letter you are referring to, Staff Exhibit
10 No. 31?

11 Perhaps we can show you a copy of that.

12 A Yes.

13 That is correct.

14 Q The number is Staff Exhibit 31 and 32.

15 This is what you referred to as the letter which
16 included the items that the WCOB committee wanted to include
17 in the study, is that correct?

18 A Yes.

19 Q Were all of these items eventually included in
20 the study?

21 A NO, I believe as we previously testified, that item
22 3 F was deleted at the request of the company.

23 Q Who, specifically, requested that deletion?

24 A I believe to the best of my recollection, it was
25 requested by Mr. White.

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1 There was also a statement made in item 6 relating
2 to the development of a financing plan. I am not sure that the
3 comment made in that matter was for purposes of totally
4 deleting it, but suggesting that Ohio Edison wasn't going
5 to be involved as our banker.

6 Q Who suggested that?

7 A I believe it was Mr. White, but I am not certain.

8 Q With regard to the rejection of SF, do you recall
9 at which meeting that occurred?

10 MR. LESSY: Is this duplicitous direct examination?

11 I recall going over this.

12 MR. MELVIN BERGER: This is probably the last
13 question in this series. I want everything in one spot here.

14 CHAIRMAN RIGLER: Proceed.

15 THE WITNESS: I believe the date was 10-7-74. It was
16 the meeting -- first meeting of the group that had been
17 previously testified to. I can't recall the exact date. It is
18 in the testimony.

19 BY MR. MELVIN BERGER:

20 Q I believe you stated that you were not aware of
21 any further discussions with regard to third party wheeling that
22 took place after the October '74 or August '75 meeting?

23 Is that a fair statement of what you said?

24 A After the August 1975 meeting.

25 MR. LESSY: Could the reporter read back the

1 question, please.

2 (The reporter read the record as requested.)

3 THE WITNESS: To the best of my knowledge there has
4 been no discussion on the matter since August of '75, no.

5 MR. MELVIN BERGER:

6 Q Would you be aware of it if there had been such a
7 discussion?

8 MR. STEVEN BERGER: Your Honor, I don't think that
9 was responsive to the question Mr. Berger asked.

10 CHAIRMAN RIGLER: I think he was referring to the
11 October 7, '74 meeting and he asked whether or not there
12 were any further discussions with regard to wheeling other than
13 at that meeting and the witness' response was not responsive.

14 I think it would help to have the question and
15 answer restated to clarify the record.

16 (The reporter read the record as requested.)

17 MR. STEVEN BERGER: I withdraw my objection.

18 I didn't hear the August '75 reference.

19 MR. REYNOLDS: I question whether we need to
20 go over testimony which I believe was gone over earlier this
21 morning. I don't know that I want to --

22 CHAIRMAN RIGLER: I am getting that feeling too.

23 You may assume our familiarity with the testimony.
24 It is not necessary if you have a final question in the series,
25 to go over four or five to lead us up to that point. Many

ms 1 of the questions have been covered by the Staff examination.

2 MR. MELVIN BERGER: Very well.

3 BY MR. MELVIN BERGER:

4 Q Mr. Lyren, if Ohio Edison had been willing to do
5 everything WCOE wanted, with the exception of this third party
6 wheeling, would that be acceptable to WCOE?

7 CHAIRMAN RIGLER: Acceptable in what sense?

8 I don't understand.

9 BY MR. MELVIN BERGER:

10 Q Would you be willing to agree to such an arrangement?

11 MR. STEVEN BERGER: I don't know what he is talking
12 about.

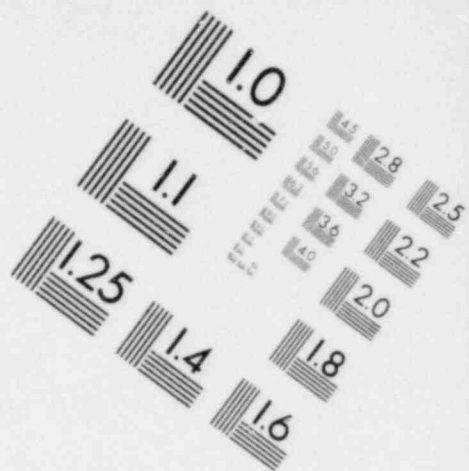
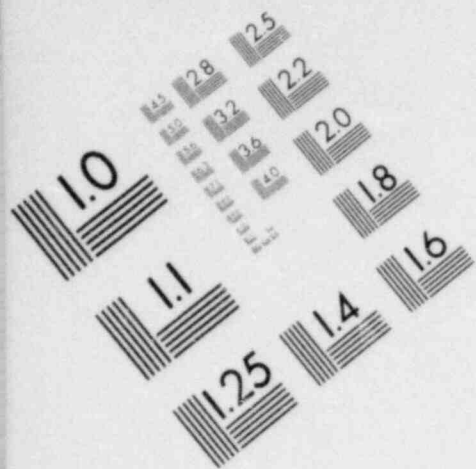
13 CHAIRMAN RIGLER: We will sustain an objection to
14 that. It is too vague.

15 BY MR. MELVIN BERGER:

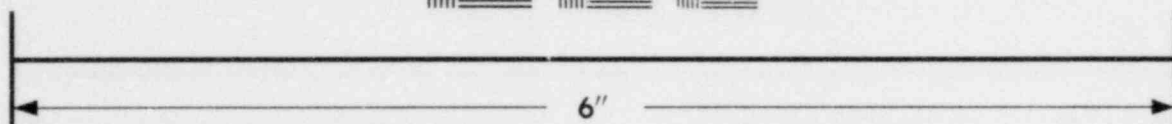
16 Q Mr. Lyren, does WCOE consider third party wheeling
17 to be an important provision in this agreement that is
18 reached with Ohio Edison?

19 A I think our attitude in the development of this
20 procedure or this study, and treatment was that if we
21 could improve our position over what it was at the time we
22 started, or as of today, any improvement would be welcome.

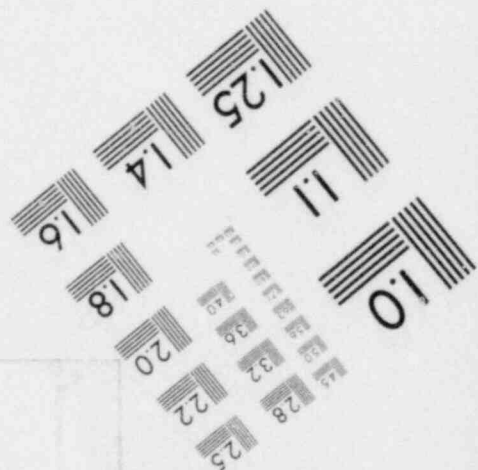
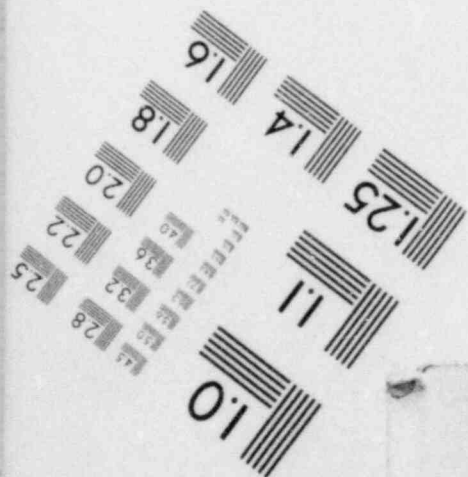
23 However, and we proceeded along -- and we proceeded
24 along this line in regard to negotiations. If the company
25 said, we will not do this, we tried to look by that and sidesteer

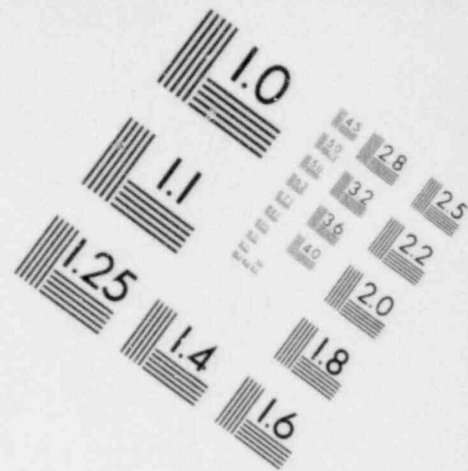
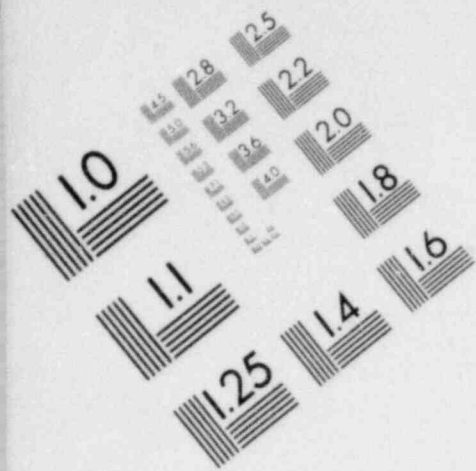


**IMAGE EVALUATION
TEST TARGET (MT-3)**

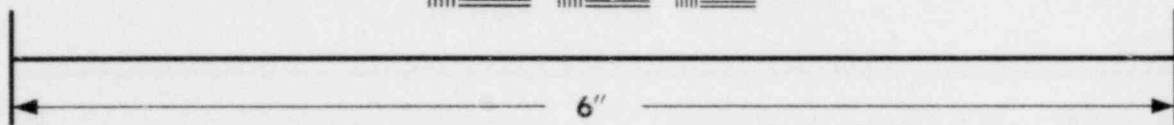
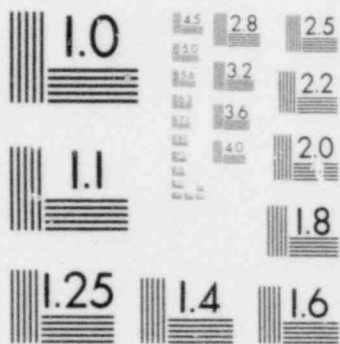


MICROCOPY RESOLUTION TEST CHART

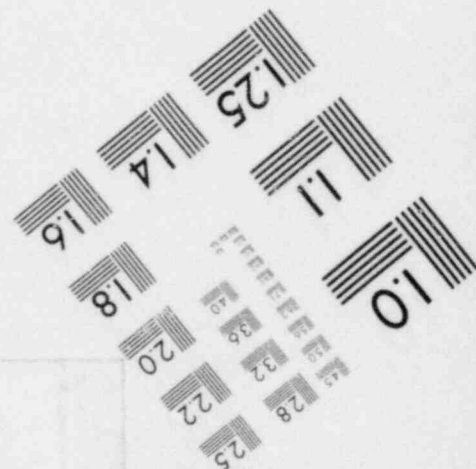
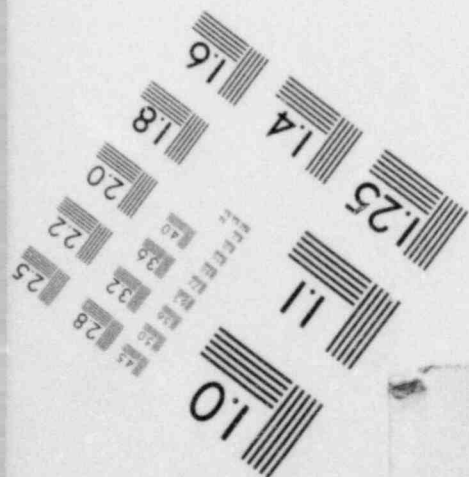




**IMAGE EVALUATION
TEST TARGET (MT-3)**



MICROCOPY RESOLUTION TEST CHART



1 that or go around that roadblock. It was something analogous
2 to taking a trip, and I am in the driver's seat and the
3 Edison Company knows how to get there, and I am driving
4 and we come to a fork in the road and I say, should we turn
5 right and they say, no if you turn right the road is out
6 ahead, we have to go left, so we go left.

7 We did not determine that any one single item
8 perhaps was going to be catastrophic as far as improving our
9 situation. We do feel that many of the things that were
10 requested by the company or many things that the
11 company insisted be followed in developing alternatives did
12 shape the conclusions and did shape the economics and the
13 alternatives significantly.

14 That is about all I can say. I don't think I can directly
15 say that I, personally, would like to see third party wheeling
16 a part of it. I think we should restudy -- if we could get
17 the company to agree to that, that we certainly have some
18 other alternatives or at least some major modifications that
19 could be made to the alternatives that we have studied. But
20 we did not say we can't study any more -- we can't proceed
21 any more because you won't do this.

22 We proceed to see what end we would come to, or
23 to see if we could proceed and make some improvement in our
24 power supply arrangements.

25 CHAIRMAN RICLER: We will take a break of only

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two minutes.

A brief break.

(Recess.)

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MR. MELVIN BERGER: I believe I only have two, three

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three, four more questions which will be short.

3

BY MR. MELVIN BERGER:

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Q I would like to clarify one point with Mr. Lyren.

5

I would like to refer him to Staff Exhibit 2 and in

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particular page 3, next to Item 3F.

7

I believe you stated in your earlier

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testimony that the handwriting on this document is that of

9

Mr. Duncan; is that correct?

10

A Yes.

11

Q Is it your testimony also that it was Mr. White

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who stated that this provision should be deleted?

13

A Yes, to the best of my recollection it was

14

stated. It was stated at the October meeting, the first

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meeting we had.

16

Mr. Duncan made this marginal note at the time

17

it was said. To the best of my knowledge and recollection,

18

Mr. White was the speaker at that time.

19

Q Also, have you ever been contacted by anyone

20

representing Ohio Edison with regard to the acquisition of

21

the Wadsworth system?

22

A The only conversation I can recall on the

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subject of acquisition occurred at a meeting with

24

Mr. Haury and Mr. Clevidence on the subject of customer

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trades and this meeting occurred in either 1967, '68 -- I

1 don't recall the exact time of the meeting, but the reason
2 I recall the circumstances was that I did have some
3 discussion on the matter with Mr. Clevidence after the
4 meeting as to what I thought or he thought our system was
5 worth.

6 It certainly was not given any serious
7 consideration. It was just brought up at that time.

8 MR. MELVIN BERGER: I think that is all the
9 questioning I have.

10 CHAIRMAN RIGLER: Thank you.

11 Mr. Hjelmfelt?

12 MR. HJELMFELT: I am ready to proceed.

13 BY MR. HJELMFELT:

14 Q Mr. Lyzen, you testified that constructing a
15 transmission line to Orville, I believe, approximately 12
16 miles, would cost I think you said a couple of million dollars.
17 Would this be constructed through urban areas or rural
18 areas?

19 A Basically rural areas.

20 Q You talked about the possibility of obtaining
21 power from Buckeye. Do you know whether there is seasonal
22 diversity between the WCOE members and Buckeye?

23 A Yes, there is.

24 MR. LESSY: It may help the record if counsel or
25 the witness would clarify the meaning of the term seasonal

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1 diversity.

2 THE WITNESS: Our peak occurs in the summer.
3 Ten co-op or Buckeye's peak would be a winter peak.

4 BY MR. HJELMFELT:

5 Q Would it be advantageous to the cities to
6 obtain power on a seasonal diversity basis from Buckeye?

7 A It could be. It certainly would be something
8 that should be fully investigated. But on the surface it
9 would appear there should be some savings there.

10 Q You were discussing what Wadsworth would
11 consider, what factors it would look at if it were
12 going into generation. You indicated you had also considered
13 the possibility that other members of the SCOE would join
14 with Wadsworth.

15 What impact would it have if other WCOE members
16 would join with Wadsworth?

17 A It would improve the economics of the situation,
18 I think, or could improve it because of the larger units to
19 be constructed and this should have -- this should be an
20 advantage.

21 Q When you were discussing the seven alternatives
22 studied or mentioned in the Beck report, did any of those
23 alternatives require purchases of partial firm requirement
24 power from Ohio Edison?

25 A I would like to look at the list again.

1 CHAIRMAN RIGLER: Would it be more helpful to refer
2 to the agreement itself or to the study itself?

3 Maybe I can find it here. If I can't, I will look
4 at the study.

5 The Board would prefer you referred to the
6 study.

7 MR. HJELMFELT: I might say that I invite your
8 attention to Alternatives 3, 4, 5 of the ones I am
9 interested in.

10 CHAIRMAN RIGLER: Mr. Hjelmfelt, was your
11 question whether the study contemplated this purchase or
12 required this purchase?

13 BY MR. HJELMFELT:

14 Q My question is whether to make the alternatives
15 feasible it would require partial requirement purchases.

16 A Alternative Number 3 considered that the WCOE
17 would acquire in small denominations capacity from these
18 plants and eventually it would go from 50 megawatts in each
19 plant and theoretically eventually the system would -- we
20 would purchase enough capacity to satisfy the needs of all of
21 the system.

22 So if I am interpreting your question correctly,
23 the answer would be yes.

24 Q Fine. And how about Alternative Number 4?

25 A Alternative Number 4 would also be yes.

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1 Q Alternative Number 5?

2 A That would be no. That requires the group to
3 basically construct their own generation as I read it, so they
4 won't be acquiring baseload capacity under that scheme.

5 Q And when you refer to baseload capacity, are you
6 referring to all capacity up to the peaking units?

7 A That's right.

8 MR. HJELMFELT: Thank you.

9 I have no further questions.

10 CHAIRMAN RIGLER: Mr. Lyren, what distance from
11 Wadsworth is the closest CEI distribution point.

12 THE WITNESS: I can't answer that question
13 factually. I would guess it would be about 25 miles. That
14 is very rough guess, because I am not totally familiar with
15 their system.

16 I believe in the study there is a system
17 distribution map. Maybe you can gather it from that study.
18 I can't testify to that.

19 CHAIRMAN RIGLER: All right. Mr. Berger.

20 BY MR. STEVEN BERGER:

21 Q Mr. Lyren, I would like to ask you some questions
22 just as to the manner in which you prepared yourself for the
23 testimony before this Board.

24 First of all I would like to know whether or not
25 you met with members of the NRC Staff and the Department of

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1 Justice prior to your testimony here today.

2 A Yes.

3 Q Did you meet with them separately or jointly?

4 A Both.

5 Q Can you specify on what occasions and with whom
6 you met?

7 A In early -- this summer I met in my office with
8 Mr. Lessy and I met Mr. Lessy again in Cleveland, I think it
9 was in November sometime.

10 Then I met with members of the Staff here in
11 Washington after arriving here -- I think I arrived here
12 Tuesday night, didn't I -- Tuesday night.

13 Q And with the Justice Department?

14 A The Justice Department, I have spoken with them
15 very briefly yesterday after the session and this afternoon or
16 this morning but very briefly.

17 Q Could you briefly describe the nature of the
18 conversations you had at the first meeting with Mr. Lessy?

19 MR. LESSY: Could we get a clarification
20 as to the direction? It can go in a number of ways. For
21 everyone's purposes I would like to know if he is trying to
22 show bias.

23 What is the direction of this examination?

24 MR. STEVEN BERGER: I am trying to determine the
25 extent to which Mr. Lyren is testifying on a spontaneous

1 basis.

2 I want to know the extent to which that which
3 is contained in his direct examination is a result of his own
4 knowledge and factual assertions and I think I am entitled
5 to know the nature and the extent of the conversations had with
6 Mr. Lessy. It bears upon the notes, some of which we have
7 received.

8 I am trying to lead up to these notes and how
9 they were prepared and who prepared them and the circumstances
10 surrounding their preparation.

11 CHAIRMAN RIGLER: Well, you are going to get into
12 a somewhat delicate area there. I am prepared to hear you
13 for a while on the subject.

14 I am prepared for you to go to the subject
15 matter of the notes. And certainly if he had the meetings.

16 I am not prepared to let you go into the subject
17 matter of the meetings in detail.

18 MR. STEVEN BERGER: The witness' credibility
19 is a matter I have a right to inquire into.

20 CHAIRMAN RIGLER: The suggestion that he was
21 testifying, however, from less than his own personal knowledge
22 when the witness is testifying under oath and when he indicated
23 the source of his knowledge may be going a little far now
24 absent some suggestion that Mr. Lessy was engaged in
25 impropriety in these meetings.

1 MR. STEVEN BERGER: I am not suggesting
2 impropriety at all in regard to Mr. Lessy's conduct.

3 CHAIRMAN RIGLER: I understand that. You may
4 proceed momentarily keeping my remarks in mind.

5 (The reporter read from the record as requested.)

6 THE WITNESS: Very generally the first meeting
7 was Mr. Lessy's introduction to him, having never heard of
8 Mr. Lessy, introduction to the type of information that he
9 would like me to, if I had anything on file with regard to
10 the matters of interest in the proceeding of the NRC
11 licensing conditions.

12 It was more or less just a general question
13 and answer session where he asked me questions and I gave
14 him the answers. I don't recall any specifics.

15 All I know is that it was on this subject.

16 He did not express any of his opinions. He
17 asked for my opinion and what documents I had that might be
18 relevant to the matter that he was interested in.

19 BY MR. STEVEN BERGER:

20 Q Did Mr. Lessy tender any documents to you for
21 you to review at that time?

22 A Not to my knowledge, I cannot recall any at that
23 time.

24 Q Has he prior to the hearing tendered any documents
25 to you for you to review?

1 A All he has tendered to me is a list of questions
2 that he sent to me and asked me to prepare the answers to them.

3 Q Did you present in writing to Mr. Lessy in any
4 form the answers to any questions that he had posed to you
5 at that time?

6 A No, I made all my answers, all the writing that
7 I did on the sheets were for my own personal use.

8 Q Did the -- you mentioned another meeting with
9 Mr. Lessy. Could you describe the conversations that took
10 place at that other meeting with Mr. Lessy?

11 A At the second meeting we talked --

12 Q This was where and when?

13 A I don't recall the exact date. It followed the
14 first meeting, naturally, and it was in the fall sometime.
15 I would say October or September or October. If I had my date
16 book I could find it out, but I don't know from memory.

17 This meeting was -- he had sent me a list of
18 questions and this was a meeting where I communicated to him
19 by answers to those questions.

20 The purpose of the meeting was to find out
21 whether or not the questions were in the proper order.
22 well-structured, whether I had questions about the questions,
23 whether they meant what was intended to be meant and that was
24 pretty much the extent of that meeting.

25 Having seen the questions, I also had a number

1 of documents that related to the questions and my answers
2 that I made available to Mr. Lessy.

3 Q We have made reference a couple of times to these
4 so-called notes. Could you tell us --

5 MR. LESSY: I object to the characterization of
6 so-called notes. It is clear they are notes.

7 MR. STEVEN BERGER: I withdraw that.

8 BY MR. STEVEN BERGER:

9 Q With regard to the notes that were taken, these
10 notes are in your own handwriting?

11 A The ones you have in your possession that I
12 see, that is my handwriting, yes.

13 Q When did you prepare the notes?

14 A I prepared it intermittently from the time I got
15 the questions until the time of the hearing. I didn't sit
16 down and do it all at one time.

17 Q The questions that you got from Mr. Lessy, were
18 they in written form?

19 A Yes.

20 Q Do you have a copy of those questions with you
21 today?

22 A I might have.

23 MR. LESSY: Your Honor, we have not objected. We
24 are about to.

25 I think the indication here is that he has told

1 what has happened in his preparation for coming to testify.
2 Now we are going to start to object. This is near to
3 becoming inferences. I think that the preparation of the
4 witness has been described and I think that that is all that
5 is appropriate and anything else we will object to on a regular
6 basis.

7 MR. STEVEN BERGER: Is there a copy?

8 CHAIRMAN RIGLER: You asked if he had a copy of
9 Mr. Lessy's question.

10 MR. LESSY: Staff objects to the question.

11 MR. STEVEN BERGER: I would like to know if
12 he has the questions and if he does I would like to see them.

13 CHAIRMAN RIGLER: I take it you object.

14 MR. LESSY: We object to the question. He
15 testified I sent him a list of questions and he gave me
16 the answers and he came to testify. I think that anything
17 else is really not relevant.

18 Mr. Vogler indicates that the only two instances
19 at which time he referred to the notes we have copied
20 those and distributed them.

21 We haven't seen any other materials he has had
22 and we object on the grounds of relevancy and on other grounds
23 also. But that is all we will state now.

24 CHAIRMAN RIGLER: I hope I put the parties on
25 warning that all grounds for objection have to be expressed on

1 the first go-round so you will not reserve other
2 grounds.

3 MR. LESSY: May I have a minute or so?

4 (The Board conferring.)
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2 MR. LESSY: We have three grounds. At some point
3 in time Mr. Vogler might take over because this is involving
4 me personally. They are not material, the information
5 I sent is in my work product and they are -- and anything
6 else would not be relevant to the proceeding.

7 MR. STEVEN BERGER: Your Honor, as to the answers
8 to the questions that were posed by Mr. Lessy in writing
9 to the witness --

10 MR. LESSY: I object. There is no indication
11 that we posed answers. We posed questions.

12 MR. STEVEN BERGER: If I said answers, I am sorry.
13 I meant to say as to the questions posed by Mr. Lessy to the
14 witness, to which he prepared answers, there may be information
15 in those notes, material helpful to the Applicants in this
16 proceeding.

17 I think I am entitled to those notes.

18 MR. LESSY: The only instances where the witness
19 has referred to any notes we have produced copies of those
20 and distributed them to all parties. If he had additional
21 notes, he did not refer to I don't see how they are relevant.

22 CHAIRMAN RIGLER: I am inclined to agree with Mr.
23 Lessy. I am not sure he is on sound ground with respect
24 to work product but with respect to relevancy it is difficult
25 for me to see how you are prejudiced in any way by not having
answers to questions which may be irrelevant to the proceeding

eak2 1 and which Mr. Lessy has never gone into. This is cross
2 examination.

3 MR. STEVEN BERGER: In any event, we are talking
4 about three pieces of paper that we have now received of
5 a set of notes the size of which I still do not know.

6 The problem of course is that I don't know what
7 material is contained therein. I think I am entitled just on
8 the basis of what is coming in thus far, to know beyond
9 this what it is. The witness' credibility is in question.

10 MR. LESSY: The witness' credibility is not in
11 question here.

12 CHAIRMAN RIGLER: Mr. Lessy, please. I don't
13 understand how the answers to question which may never have
14 been posed goes to the question of credibility. You have
15 opportunity to examine the witness with respect to the facts
16 of anything, with respect to which he has testified. You have
17 an opportunity to ask him direct questions about his knowledge.
18 You have an opportunity to ask him about the subject matter
19 with which he has testified but to get notes which may or
20 may not be extraneous, I don't see how that contributes to the
21 introduction of facts which this Board should consider.

22 In other words, that is not the proper way to discover
23 facts.

24 MR. STEVEN BERGER: Mr. Lerach is on his feet.

25 MR. LERACH: I only wish to ask to be permitted to
speak before the Board rules.

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MR. STEVEN BERGER: May I have a moment.

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(Pause.)

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MS. URBAN: I am concerned about your comment concerning the work product. If you are going to give a ruling on whether Mr. Lessy's notes would be considered work product, I would like to speak to that point. If not, I would wait until it perhaps comes up with our own notes if it does ever come up.

CHAIRMAN RIGLER: All right.

MR. STEVEN BERGER: Your Honor.

CHAIRMAN RIGLER: Give me a minute now, Mr. Berger.

MR. STEVEN BERGER: Your Honor, first let me say that again, I don't want to belabor the fact we haven't had discovery in this proceeding. But, of course, that is a fact.

I haven't had an opportunity to take Mr. Lyren's deposition before. The extent that that which is reflected in his notes is extraneous to this proceeding or extraneous to anything, he has said heretofore, I would not go into that but as to the notes themselves, it is indicative of the way the witness has prepared himself to testify. I am entitled to see the notes.

CHAIRMAN RIGLER: I am prepared to rule now that your claim that you had no opportunity to discover is not fairly founded because substantial portions of Mr. Lyren's testimony were directed within the issues in controversy as

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1 those issues were established right from prehearing conference
2 No. 2 and you did not need to wait for the September 5 filing
3 to get to substantial portions of the testimony he has put
4 before you, particularly with respect to access.

5 Terms and conditions of access to the Davis-Besse
6 and Perry Units. Your claim that you were not on prior notice
7 that in order to protect your client you perhaps should have
8 examined Mr. Lyren simply wouldn't qualify.

9 MR. STEVEN BERGER: I respectfully don't want
10 to argue with the Board but let me just say on the record
11 we have made heretofore that we considered the September 5
12 filing to be a surprise. There was up until, shortly until the
13 receipt of the September 5 allegations a single counsel
14 representing all of the Applicants in this proceeding, a single
15 counsel that conducted all discovery on behalf of all the
16 Applicants in this proceeding.

17 CHAIRMAN RIGLER: The Board was aware of that and
18 the Board urged those single counsel to get in additional
19 counsel to help during the discovery period. That is a matter
20 of record. But continue. Moreover the single counsel was coun-
21 sel for the Ohio Edison Company so that your client should
22 have been aware from the very outset of the issues in contro-
23 versy, from the day they were established by the Board.

24 MR. STEVEN BERGER: Again, I don't want to reargue
25 with the Board that fact.

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CHAIRMAN RIGLER: This is argument so put your
2 entire argument on the record.

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MR. STEVEN BERGER: I will. I think I
have stated at the prehearing conference which took place
prior to the setting down of the matters in controversy,
matters of controversy that were set down by a Board that I
don't believe Mr. Prysiaak or Mr. Smith were on at the time --

CHAIRMAN RIGLER: I was not either.

MR. STEVEN BERGER: We are talking about a Board
that wasn't here. We don't know how they viewed those matters
at that time. At the prehearing conference that preceded
it, it was made clear by Staff and Justice that no allegations
were being made in regard to relationships between
any Applicant and other entities in their service other
than CEI and the entities in their area. All of Mr. Lyren's
testimony relates to the relationships between Ohio Edison
and Wholesale Customers of Ohio Edison. Setting down matters
in controversy they necessarily have to be based on some
allegations. Before the matters in controversy were set down
we had the Perry advice letter. The Perry advice letter said
as to everybody other than CEI, clearly, we adhere to what
we stated in the Beaver Valley letter.

In the Beaver Valley letter, they stated their
should be no antitrust hearing held in regard to any of the
Applicants for the reasons stated therein. In the Perry advice

eak6 1 letter they adhered to the Beaver Valley letter as to all
2 Applicants except CEI.

3 In fact, I must particularly note that the
4 conclusory statement of the Perry advice letter said we
5 believe a hearing should be held "on this application".

6 However, the Davis-Besse letter said
7 we believe it should be held as to each of the Applicants.
8 That is February 14, 1975, more than seven months after the
9 matters in controversy were set down.

10 All we knew in terms of allegations at that time
11 against our clients was they did not relate in any way
12 to the Wholesale Customers of Ohio Edison. It related solely
13 to the question of establishment of the delivery points
14 for the cooperatives.

15 That is all we knew. I submit to you that
16 were it not a joint application, there never would have been
17 a bad advice letter in Davis-Besse as to Ohio Edison, and
18 Pennsylvania Power Company. That is clear.

19 It would not have given rise certainly to the issues
20 and matters in controversy set down in July 1974. You yourself
21 have said that you have not tailored your matters in controversy
22 with regard to the way they have been set down in any other
23 proceeding but to the issues in this case.

24 They are broad matters in controversy for sure. They
25 were broad matters in controversy for purposes of discovery.

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2 But they are broad matters in controversy
3 that have to be based on some allegations. The fact of setting
4 down the broad matters in controversy, they were subject
5 to interpretation perhaps that there was room to
6 look to the relationships between Ohio Edison and its relation-
7 ships with its wholesale consumers in and of itself, particularly
8 with regard to the statements made by Staff and Justice
9 at the prehearing conference which took place prior to
10 that issuance of the matters in controversy.

11 The Applicants other than CEI clearly had a right
12 to rely upon those allegations in their interpretation
13 of the matters in controversy. It was for that reason that
14 single counsel for all of the Applicants believed that there
15 was no necessity to go into any of the discovery with regard
16 to any of the Applicants and their relationships with the other
17 entities in their area, other than CEI. For that reason,
18 not a single deposition was taken. There was never a request
19 to intervene in this proceeding by anybody in our
20 service area.

21 There was never a specific request for access to
22 the Perry or Davis-Besse units.
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1 I know this involves something that Mr. Lyren is
2 testifying to, but I tell you there was never a specific
3 request for access to either the Perry or Davis-Besse
4 units.

5 On the basis of the way the letters of advice are
6 normally issued by the Department of Justice and the way
7 in which this Commission goes about determining whether or
8 not a hearing should, or should not be held, it is clear that
9 were it not for the joint nature of the application, there is
10 no way in the world that a hearing would have been held at
11 all in regard to Ohio Edison and Pennsylvania Power.

12 What we saw on September 5, 1975 is what should
13 have been in a letter of advice. We found ourselves with weeks
14 to prepare, without discovery on those allegations.

15 That has been our problem all along, your Honor.

16 CHAIRMAN RIGLER: We have heard this argument
17 before. The Board has ruled against you. The Board has
18 found the September 5 filing was a reflection of Applicant's
19 request for more specific allegations following the discovery
20 period.

21 MR. STEVEN BERGER: That is correct.

22 CHAIRMAN RIGLER: Moreover, and I have before
23 me the issues in controversy. I cannot agree with your
24 interpretation of those issues. Throughout these issues it re-
25 fers to Applicants, not to an Applicant. Not to CBI, but to

1 Applicants. It refers in issue 3 to bulk power transactions
2 involving individual contracts for sale for resale which seems
3 to be within the ambit of Mr. Lyren's testimony.

4 MR. STEVEN BERGER: May I ask --

5 CHAIRMAN RIGLER: I am not finished.

6 Certainly issue 4 was well within the ambit of
7 Mr. Lyren's testimony, and again it refers to Applicants,
8 plural.

9 The same holds true of issue 5.

10 It is inconceivable to me that you would prevail
11 on an argument that you were not aware prior to the discovery
12 period that these charges were being leveled against all
13 Applicants.

14 MR. STEVEN BERGER: Your Honor, here is the basic
15 problem.

16 CHAIRMAN RIGLER: Which is taking us far afield.

17 This was all in response to your comment that you
18 had not taken Mr. Lyren's deposition at some earlier period,
19 and to our initial reaction that that failure to take his
20 deposition was chargeable against the Applicants to the extent
21 that they wish now they had deposed him at some earlier
22 period.

23 MR. STEVEN BERGER: Your Honor, let me make this
24 final point in the name of argument, if you will.

25 CHAIRMAN RIGLER: I want a complete argument.

mm3 1 We are not cutting you off.

2 MR. STEVEN BERGER: It is clear that the Justice
3 Department and the Staff had nothing in the way of an
4 allegation set forth at the time of the setting down of
5 the matters of controversy involving any of the Applicants
6 and their relationships with the other entities in their
7 area.

8 That is clear beyond a doubt

9 If they wanted discovery for purposes of inquiring
10 into those relationships, then I submit to you your Honor,
11 what we are talking about is an extension of the 180 days
12 within which they have to render antitrust advice with regard
13 to any other Applicant.

14 I view the Perry advice letter as a rendition of
15 advice by the Department of Justice that no antitrust hearing
16 need be held with regard to all of the Applicants other than
17 CEI with the limited exception that they are members of
18 CAPCO and CAPCO impacts upon the competitive situation
19 in the area served by CEI.

20 CHAIRMAN RIGLER: There is a refinement of the
21 estoppel argument you presented earlier. The Board indicated
22 as a matter of public policy and as a matter of the
23 responsibility of the Nuclear Regulatory Commission Applicants
24 do not get a clean bill of health at the conclusion of the
25 advice letter if the Commission becomes aware of the

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1 existence of a situation inconsistent with the antitrust law
2 prior to the granting of that license.

3 MR. SEVEN BERGER: I understand that, your Honor.

4 Let me state that the advice letters which I
5 have been privy to, the Alabama proceeding -- I have seen the
6 advice letters in Consumers, I saw the advice letters in Duke,
7 the original advice letters in Vepco. I say to you everything
8 in those advice letters set forth in the way of specificity
9 of allegations is the kind of allegations we found on September
10 5.

11 You expected us to go through discovery with nothing
12 in the way of specificity of charges on our own fishing expedi-
13 tion to determine what it is we were going to be charged
14 with in this proceeding.

15 CHAIRMAN RIGLER: Now we have reached the point
16 where it is no longer fruitful to continue. The Board is
17 of a different opinion.

18 We have had this argument several times over on
19 the record.

20 With respect to our immediate problem, coupled
21 with Mr. Lyren's transportation problem, we are going to
22 defer ruling. We will resume argument because some of the
23 other counsel have expressed a desire to participate in
24 this argument.

25 In the meantime, the Board is going to be considering

mm5 1 Rule 612 of the Federal Rules of Evidence relating to
2 writings used to refresh memory. That may have impact on
3 our thinking with respect to whether we will require
4 Mr. Lyren to deliver his notes to you.

5 MR. STEVEN BERGER: May I suggest that Mr. Lyren's
6 notes in their entirety, be tendered to the Board for the
7 time being.

8 CHAIRMAN RIGLER: Rule 612 provides for in
9 camera examination of the writings, and I think that would
10 be an excellent idea. That would give us a better feel for
11 their content. It might assist us in making our ruling.

12 Mr. Reynolds?

13 Let me note for the record that Mr. Berger nodded
14 agreement to my last assertion.

15 MR. STEVEN BERGER: Yes.

16 MR. REYNOLDS: Would the Board direct its attention
17 to Rule 613 in considering the matter?

18 CHAIRMAN RIGLER: We will.

19 MR. ROELMFELT: I would like to respond to one
20 comment by Mr. Berger in which he indicated the Applicants
21 had been represented by a single counsel during the discovery
22 phase.

23 During the taking of depositions, counsel for
24 each and every one of the Applicants at one point or another,
25 did appear at depositions and did participate, including

mm6

1 Mr. Steven Berger during July of 1975.

2 MR. LESSY: For Ohio Edison.

3 If the Board is going to permit in hearing
4 discovery of the relationships between witnesses and counsel
5 in light of the number of witnesses that have been notified
6 by all the parties, including the Applicants, where you
7 have in-house witnesses for the companies, we are really
8 looking at an extremely lengthy hearing, if that type of
9 thing will be permitted.

10 I have met with Mr. Lyren twice prior to his being
11 on the stand. If you have a relationship with an Applicant
12 company and the fact witness is an employee or officer of
13 the company, we are looking down a much different road.

14 MR. STEVEN BERGER: I am looking at an entirely
15 different problem, when we are dealing with attorney-client
16 privilege rather than a relationship between someone
17 under subpoena and the counsel who subpoenaed him.

18 CHAIRMAN RIGLER: No attorney-client privilege
19 exists between Mr. Lyren and Mr. Lessy. That is not the ques-
20 tion.

21 The question that is troubling us is one of rele-
22 vance.

23 We will see allof you next monday at 11:00 a.m.

24 (Whereupon at 3:30 p.m., the hearing in the above-
25 entitled matter was adjourned, to resume at 11:00 a.m., Monday,
15 December 1975.)