

Regulatory Docket File



NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY AND
CLEVELAND ELECTRIC ILLUMINATING CO.

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

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

and

CLEVELAND ELECTRIC ILLUMINATING CO.,
et. al.

50-440A
50-441A

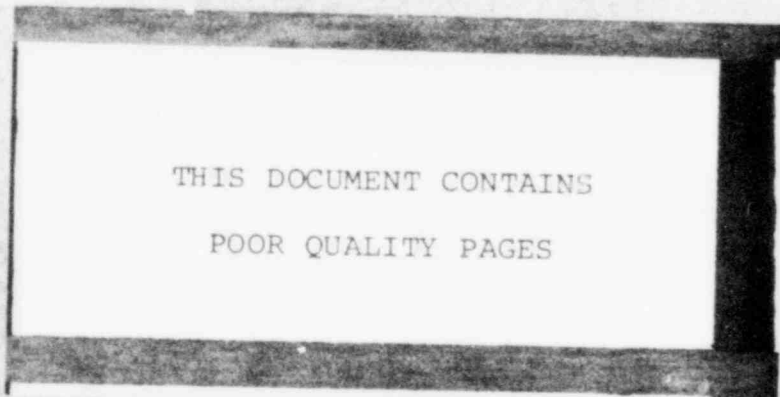
(Perry Nuclear Power Plant,
Units 1 and 2)

Place -

Silver Spring, Maryland

Date - 17 December 1975

Pages 2398 - 2472



Telephone:
(Code 202) 547-6222

ACE - FEDERAL REPORTERS, INC.

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P R O C E E D I N G S

CHAIRMAN RIGLER: Good morning.

Before we begin, Mr. Reynolds, do you know if Mr. Hauser or someone has checked with Mr. Gallagher and Mr. Lansdale about the 31st?

MR. REYNOLDS: I do not know. I can undertake to find out about that.

CHAIRMAN RIGLER: Will Mr. Hauser be with us this morning?

MR. REYNOLDS: He will not be with us this morning.

Why don't we make a phone call now and I will report back to you before the end of the morning as to what the status is on that.

CHAIRMAN RIGLER: As I get the picture, the 31st is a good day for Mr. Hart.

We are thinking of having the argument at East-West Towers if we can arrange it.

MR. REYNOLDS: We will check and report back to you as soon as we can.

Whereupon,

J. ROBERT HILLWIG

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

DIRECT EXAMINATION (Continued)

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<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REPERCUSSIVE</u>	<u>RECROSS</u>
J. Robert Hillwig	2400	2444	2459	

<u>EXHIBITS:</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
NRC Staff Exhibit 51 - NRC Document No. 241	2-03	2403
NRC Staff Exhibit 52 - Map of Toledo Edison system	2412	2437
Applicants Exhibit 17(TE)- Document "RCC-3)	2451	2451

BY MR. GOLDBERG:

Q Did you attend a meeting with Toledo Edison representatives on August 27, 1975?

A Yes, I did.

Q Where was the location of that meeting?

A Ramada Inn, Reynolds Road, Toledo.

Q Who was present at that meeting and whom did they represent?

A Mr. Paul Smart, Toledo Edison, Mr. Bill Hoopenberger, Dick Merriman, all of Toledo Edison, except Mr. Merriman was their Washington attorney. Our attorney for the four municipals, Mr. Bob Jablon, and Janjai from Southern Engineering. Myself, my superior, Mr. Sorgenfrei, Bowling Green. Mr. Robert Ratizack, Mr. Roy Dorsey Napoleon, Mr. Paul Hutchinson from Montpelier, Ohio.

Q Are you finished, Mr. Hillwig?

A There were several Toledo Edison division or district managers there. I don't know all of their names.

Q What was Mr. Paul Smart's position with the Toledo Edison Company at that time?

A At that time Mr. Smart's position was Vice President, Toledo Edison Legal.

Q What was Mr. Hoopenberger's position with Toledo Edison at that time?

A Bill's position was Rate Director.

Q At that meeting did you request that Toledo Edison wheel power to Bowling Green?

A No, I did not.

Q Did anyone on behalf of Bowling Green request that Toledo Edison wheel power to Bowling Green?

A Yes. Mr. Jablon brought up the issue again, our attorney.

Q Was it a request to wheel?

A Yes.

Q What was the response of Toledo Edison to that request?

A It was quite long. Mr. Paul Smart explained that due to their future planning or loads, the future financing of nuclear plants in CAPCO, that some -- and there was small talk in between. It ended up by Mr. Smart stating that we would be crazy to conceive or have a contract with wheeling with any of municipalities.

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

BY MR. GOLDBERG:

Q Is that what you said, Mr. Hillwig?

A Concede, give into any.

Q In that answer who did the "we" refer to that Mr. Smart used in his response?

A He was the spokesman for Toledo Edison at the

meeting.

Q Therefore the "we" refers to whom?

A Toledo Edison.

Q To the best of your recollection was that the language that Mr. Smart used?

A Yes, sir.

Q Was Mr. Hoopenberger present when Mr. Smart made that statement?

A Yes, sir.

Q What was Mr. Hoopenberger's response to Mr. Smart's statement?

A As I recall, nil, or none.

O At this time I would like to show you a letter. It is marked as NRC Document 241. I would like it to be marked for identification as NRC Exhibit 51. This is a September 17, 1975 letter from William E. Hoopenberger to yourself, Mr. Robert Hillwig.

Are you familiar with this letter?

A Yes, sir.

Q Do you recall receiving this letter from Mr. Hoopenberger?

A Yes, sir.

MR. GOLDBERG: I would like to move this letter into evidence as NRC Exhibit 51.

MR. REYNOLDS: May we wait a second? I need a

a chance to look it over. But I am sure I have an objection.

I was right. I would like to make the continuing objection on behalf of the Applicants other than the Toledo Edison Company with respect to the admission of this document into evidence.

CHAIRMAN RIGLER: The objection will be overruled. It will be admitted into evidence as NBC Staff Number 51.

(The document referred to was marked
(C Staff Exhibit Number 51 for
identification and was received
into evidence.)

BY MR. GOLDBERG:

Q Mr. Hillwig, you stated before that Bowling Green gets all of its bulk power from Toledo Edison. Has Bowling Green ever considered alternative sources of bulk power?

A Yes.

Q Were any requests made for bulk power by Bowling Green from other sources other than Toledo Edison?

A Yes. We spoke with the Ohio Power Company.

Q Could you please elaborate on the details of that request?

A My superior, Mr. Sorgenfrei and myself paid a visit to the Ohio Power Company office in Lima and

Mr. Horning sometime in the fall of '72 and spoke with him concerning our receiving total power from them.

At that particular time he was pleased to have a total power customer but came through a little later in our conversation after speaking to Campana at the main office that it was a possibility at that time because of the engineering and construction of a line that would be necessary to bring the two of us together and we were not financially capable of doing it all ourselves.

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

BY MR. GOLDBERG:

Q Although you were not capable of building a line to Ohio Power to receive bulk power from them, was there an alternative way of getting Ohio Power to you -- Ohio Power's power to you?

A Yes, through AMP-Ohio.

Q Was there any other alternative?

A No, no other alternative. We couldn't get it there -- we could not have received power from anybody else because we are not able to build the lines to reach to them financially.

Q If Toledo Edison agreed to wheel that power to you, would you then have been able to get the power?

A Yes, sir.

Q You testified earlier, Mr. Hillwig, that Bowling Green obtains all of its bulk power from Toledo Edison. You also testified that the contracts which you have operated under in the past with Toledo Edison contained a provision with which you were dissatisfied and that you were unsuccessful in attempting to delete that provision from your future contracts.

In light of these facts, why do you continue to obtain your bulk power exclusively from Toledo Edison?

A I have no other means of getting power from anybody else.

MR. REYNOLDS: I don't think I have a problem with what I believe the real question is. I have a problem with counsel's characterization as to some of the earlier testimony.

I object to the question on that basis and ask if we can have it restated in order to get to what I believe is the real purpose of the question and have the witness respond to that question.

CHAIRMAN RIGLER: Will you rephrase the question?

BY MR. GOLDBERG:

Q Does Bowling Green obtain all its bulk power from Toledo Edison Company?

A Yes.

Q Referring to the May '67 contract which has

already been entered into evidence, was that a contract you operated under in receiving bulk power from Toledo Edison Company?

A Yes.

Q Referring to Provision 8 of that contract, when that contract was in effect were you dissatisfied with that provision?

A Yes.

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

It was the exact question and exact answer we had yesterday.

MR. GOLDBERG: I am trying to lay the foundation for the question to establish that all the facts included in my question were indeed testified to by Mr. Hillwig.

CHAIRMAN RIGLER: We do recall the answers from yesterday. Proceed directly to the question. I think he has the framework in mind now.

BY MR. GOLDBERG:

Q Mr. Hillwig, could you please explain why you continued to get your bulk power exclusively from Toledo Edison Company?

A I have no other means to receive power from anybody else. Everybody else is too far away. We can't afford to build to them.

Q With respect to the '67 contract that we have been talking about, do you recall the term of that contract, length of time for which it would be in effect?

A Five years plus five years.

Q What do you mean by five years plus five years?

A It is continuing and if either side agree it continues for five more years. If disagreement or other notification is given, then a new contract is made. Otherwise it is a five and five, or ten-year contract.

Q Has that contract expired?

A Yes, sir.

Q Has it been renewed?

A No, sir.

Q Are you then presently operating without a contract?

A Yes, sir.

Q During the last six or seven months, Mr. Hillwig, has Toledo Edison Company or any other Applicant informed you of a new policy with respect to providing access to nuclear power and associated services such as transmission?

A No, sir, not to my knowledge.

Q To your knowledge has Toledo Edison or any other Applicant informed anyone in the Bowling Green system of that new policy?

A Not to my knowledge, no, sir.

MR. REYNOLDS: I only object to the question in that it assumes there is a new policy and we don't have any foundation laid in this record yet as to the basis for that.

CHAIRMAN RIGLER: As to an old policy relating to nuclear energy.

MR. REYNOLDS: That depends on what we are talking about in terms of old and new and the time frame that was involved.

CHAIRMAN RIGLER: I don't recall any previous testimony relating to nuclear energy. That is why I am confused about the use of the term new policy.

MR. GOLDBERG: I am simply asking if they have informed him that they do have a new policy, have any policy with respect to providing access.

CHAIRMAN RIGLER: If you ask about any policy, the question would be clearer to the Board.

MR. GOLDBERG: I will rephrase the past two questions, then.

BY MR. GOLDBERG:

Q Has Toledo Edison or any other Applicant in the past six or seven months informed you of any policy with respect to providing access to nuclear power and related services such as transmission of that nuclear power?

A No.

Q To the best of your knowledge, has Toledo Edison or

any other Applicant informed anyone in the Bowling Green city or municipal system of any policy with respect to providing access in related transmission services?

A Not to my knowledge, no.

Q Would you expect in your present position as transmission and distribution engineer in the Bowling Green municipal system that if in fact Toledo Edison or any other Applicant had informed anyone in the city of any policy with respect to providing access to nuclear power and related transmission services, that you would learn of that?

A Yes, sir.

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BY MR. GOLDBERG:

Q I would like to now return to a few areas and ask you further questions about those areas. Have you had occasion to refresh your recollection with respect to the testimony you gave yesterday about the city's transmission line which is mentioned in provision 7 of the contract which is in evidence as NRC Exhibit 45?

A Yes, I have.

Q Did you use any document to refresh your recollection?

A Yes, I did.

Q Do you have a copy of that document?

A Yes, sir.

Q Would you please identify the document?

A It is a map of Toledo Edison's power system as of June, '75.

CHAIRMAN RIGLER: What is the source of the map?

MR. GOLDBERG: I would like to first state that I have copied a portion of this map and distributed it to all parties and to the Board this morning. I have also circled in red the most relevant portion of that map.

BY MR. GOLDBERG:

Q How did you get a copy of this map?

A It was handed out to all of those who attended the August meeting in '75 by Toledo Edison.

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Q It was handed out by Toledo Edison?

A Yes.

CHAIRMAN RIGLER: Is this a reproduction from one of its annual reports by any chance?

MR. REYNOLDS: I didn't hear.

CHAIRMAN RIGLER: Did it come from the annual report? I see pictures up in the corner and I was curious as to its origin.

MR. GOLDBERG: Mr. Chairman, we just saw this map for the first time this morning and the machine was not able to reproduce the entire map. At the earliest possible time, we will reproduce the entire map and redistribute it.

CHAIRMAN RIGLER: My question is more of curiosity than being troubled by the authenticity.

MR. REYNOLDS: I think maybe I can clear it up. It is a reproduction of a larger wall map and it has been condensed in size and is a map that was produced by Toledo Edison Company.

MR. GOLDBERG: At this time, I would like to have this map marked for identification as NRC Exhibit 52.

(The document referred to was marked NRC Staff Exhibit No. 52, for identification.)

BY MR. GOLDBERG:

Q Now referring to this map, Mr. Hillwig, and

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referring specifically to the little section of the map showing the City of Bowling Green, would you please explain what the dark line is which passes through the City of Bowling Green in an east and westerly direction?

A Yes, that is our 69,000 transmission line that is part of Toledo Edison loop.

Q Is that the line which is mentioned in provision 7 of the contract in evidence as NRC Exhibit 45?

A Yes, it is.

Q Does Toledo Edison in fact use that transmission line to transmit Toledo Edison electricity?

A Yes, at times --

MR. REYNOLDS: I will object as having been asked and answered yesterday.

MR. GOLDBERG: The witness has refreshed his recollection.

CHAIRMAN RIGLER: I will permit it.

MR. REYNOLDS: I have no problem if we are testifying on the basis of refreshed recollection. I assume it's not on the basis of this document, though. I would like the record to make it clear if we are going to talk about the same testimony on the basis of refreshed recollection that it show that this testimony is not from the document or it should be stated on the record that he has used the document to refresh his recollection.

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MR. GOLDBERG: He has used this document to refresh his recollection. On that basis he is now testifying.

Is there a pending question that has not been answered?

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

BY MR. GOLDBERG:

Q Would you please again answer that question?

A Yes, at times they have used that line.

Q How do you know if they have used that line?

A First, they have asked to use the line to wheel power through because of equipment problems and their Pemberville substation.

Q When they asked to wheel power from whom and to whom was that power wheeled?

A All I can answer there is their Pemberville substation to the Tontogany substation.

Q Are those substations both on the Toledo Edison system?

A Yes, sir.

Q Did Bowling Green benefit from that wheeling?

A No, sir.

Q Are there any other ways in which you know that Toledo Edison has used that line?

A Yes. One other reason. Two years ago in the

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wintertime we commented on the frost on the wires of our end of the system, having frost on them. The loop going through town was perfectly bare. To me, they were pushing power through in excess of what our requirements were. It dried the lines up through the heat from the transmission of the loads they were pushing through it.

Q Did you personally view that transmission line at that time?

A Yes, sir.

Q During those times -- for those times that Bowling Green has in fact used that transmission line -- that Toledo Edison has used that transmission line, have they paid you for the use of that line?

A No, sir, they have not.

Q Have they ever paid you for the use of that line?

A No, sir, they have not.

Q Have they ever compensated you in any way for the use of that line?

A No, sir.

BY MR. GOLDBERG:

Q I would like to now refer you to provision 8 of the contract which is in evidence as NRC Exhibit 45.

CHAIRMAN RIGLER: Mr. Goldberg, before you get into questions about Section 8 of the contract, I wish you would refer your witness to paragraph 12 of the contract

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because I see an inconsistency between his testimony and the provision of the contract which is in effect at this time. I would like you to go over that with him to clear up possible confusion there.

BY MR. GOLDBERG:

Q Mr. Hillwig, I would like to refer you to Section 12, Division 12 of the contract marked as NRC Exhibit 45. I would like you to read that provision and I would like to ask you a question about that.

A Yes, sir, I read it.

Q Has Toledo Edison given you written notice to the best of your knowledge, providing for cancellation of this contract?

A Yes, sir, they did.

Q When did you receive that written notice?

A October of '71.

Q Thank you.

I would like you now to refer to provision 6 of that contract.

CHAIRMAN RIGLER: Mr. Goldberg, when you said written notice, you mean written notice of cancellation pursuant to paragraph 12?

MR. GOLDBERG: Yes, I did.

CHAIRMAN RIGLER: That is what you meant when you answered the question?

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THE WITNESS: Not cancellation, sir.

CHAIRMAN RIGLER: What sort of written notice did you receive?

THE WITNESS: I received a written notice that the new contract that was due May 1, '72, would be an increase in rates.

CHAIRMAN RIGLER: Did you sign a new contract with Toledo Edison providing for continuation of service at an increased rate?

THE WITNESS: No, sir, we did not.

CHAIRMAN RIGLER: Since May of 1972, have you been paying for electricity at the new higher rate proposed by Toledo Edison?

THE WITNESS: Yes, sir.

BY MR. GOLDBERG:

Q Referring to provision 8 of that contract, to the best of your knowledge, during the time when that contract was in effect, was there any reason except for provision 8 why Bowling Green couldn't compete with Toledo Edison for customers outside the corporate limits of Bowling Green?

A No, sir, there was no reason why we couldn't.

Q You have testified that during the time when this contract, including provision 8, was in effect, you were dissatisfied with provision 8. During that period of time, were you also dissatisfied with the relationship between

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Toledo Edison and Bowling Green with respect to wheeling or the lack thereof?

A Yes, sir.

Q Would you please explain?

A If I may look, I believe, under Exhibit B of this contract --

Q You are referring to Staff Exhibit 45?

A No, sir. That is not correct. I will have to refer back to the contract, proposed contract that they submitted to us in March of '72 and following that in April of '72, a meeting we had with them. I returned this copy to them marked up, so I'm referring to the marked-up proposed copy.

Q That is NRC 46. I believe you said you would like to refer to Exhibit B of this document; is that correct?

A Yes, Exhibit B, service specifications. And the first page I marked insert A.

Q Please explain why you marked as you have so indicated.

A I marked this as insert A and enclosed insert A because I felt at the time we were not being compensated for wheeling through our system of their power. But we were required to furnish and we did the necessary switching and protective equipment. We also had to provide maintenance on these oil breakers in particular that I'm going to mention

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in insert A and suggested to them if you don't wheel power through our system, then why don't you maintain these oil breakers? Because it has been a problem with us from anywhere to four, six, eight hundred dollars annually to have Toledo Edison maintain the breakers for us, the City of Bowling Green, simply because we do not have the personnel to maintain and service this type of equipment. I inserted insert A into this supplement B service to try to redeem funds for their wheeling through our system. That is what I had in the back of my mind at that time.

Q Do you still feel presently that you are not being compensated for the use of that transmission line?

A That's correct.

Q On the first page of this document in the upper left-hand corner --

CHAIRMAN RIGLER: Which document?

MR. GOLDBERG: NRC 46, the same contract.

BY MR. GOLDBERG:

Q In the upper left-hand corner is a date, 3/9/72, which was written in by hand. Please explain the significance of that date.

A That is the date that Mr. Moran and Mr. Wendell Johnson from Toledo Edison gave us this copy of their proposed new contract.

Q Do you know whose writing that is?

10mil

A That is mine, sir.

Q And would you just explain when you presented this contract marked up to Toledo Edison representatives?

A At our second meeting, which was April, early part of April of '72.

MR. GOLDBERG: We have no further questions at this time.

CHAIRMAN RIGLER: Well, I think in order to save time I will raise a concern of the Board right here, so that all parties can address themselves to it. It is not at all clear to me whether or not the contract in evidence is -- NRC Exhibit 45 is or is not in effect, because I don't know if proper cancellation under clause 12 was made or not. Clause 12 on its face appears to provide that in the absence of cancellation it will continue to run for another five years. The testimony has not satisfied me as to whether the notice proposing a higher rate schedule affected the cancellation or not. If any party wants to address himself to that, it would be helpful to the Board.

MR. SMITH: In that respect, it might be helpful to inquire as to whether any of the provisions of the Exhibit 45 were complied with, particularly paragraph 8, subsequent to April, 1972.

BY MR. GOLDBERG:

Q Mr. Hillwig, subsequent to the end of the first

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five-year period mentioned in this contract, has there been compliance with any of the provisions of the contract, particularly provision 8?

A. Yes, we had at that particular time, no reason to change the operations. It was a matter of rates that we weren't in compliance with. We did not sign, renew the second five years by our signature in May of '72.

The remainder of the contract and my best knowledge maintained -- we maintained it in force.

CHAIRMAN RICLER: Are you under the impression you had to sign something in 1972 to extend the contract for another five years?

THE WITNESS: A renewal, yes, because it was being changed in the rate structure.

CHAIRMAN RICLER: In fact, neither party did sign a new contract?

THE WITNESS: That, we did not.

MR. SMITH: Can you give specific examples of how the narrative terms of the contract were complied with subsequent to April, 1972? If I understand your testimony, it is that you saw no reason to change your operations under the 1967 contract.

THE WITNESS: That's correct. We changed nothing at that time.

MR. SMITH: Did you continue to function as if

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the contract were in effect?

THE WITNESS: Yes, sir.

MR. SMITH: Can you give an example of what you did under the 1967 -- under the terms of the 1967 contract, notwithstanding your belief that it was expired?

THE WITNESS: The only best example I can say is that we never requested from Toledo Edison to extend our services out into their territory and never wrote a letter requesting that we be allowed to serve this or that. So we did not extend ourselves beyond the limits of paragraph 8 and in paragraph 7 we have provided all of the equipment and lines that they asked for. We tried to change nothing up until that particular time.

MR. SMITH: Well, Mr. Hillwig, would you, in the absence of paragraph 8, have extended yourself? For example, the second paragraph of -- the second subparagraph of paragraph 8 says that you will not, without the written consent of Edison Company, supply electric energy for resale to customers located outside the corporate limits of the city except for the village.

Would you have done that anyway? Normally, would there have been an opportunity for you to have done that?

THE WITNESS: You answered my question, practically. The opportunity did not arise to any degree for us to go out and infringe on their so-called territory.

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MR. SMITH: How about subparagraph B? I mean item B in the subparagraph of paragraph 8, which says, for use at any premises now being furnished electric service directed by the company?

Would you have had the opportunity to approach any of those customers?

THE WITNESS: I can't think of one, sir, no, sir.

MR. SMITH: So your testimony is not, then, that item A and item B had a restricting effect upon your operations. You are unable to point to any restrictive effect this had on your operations after April of 1972?

THE WITNESS: As it turned out, that's correct. If the opportunity would have been there, I would have been restricted.

CHAIRMAN RIGLER: Has Bowling Green sought to expand its customer base within the city limits?

THE WITNESS: Yes, sir.

CHAIRMAN RIGLER: Does Bowling Green have any policy with respect to expanding its customer base outside the city limits?

THE WITNESS: No, sir.

CHAIRMAN RIGLER: That is they have no policy to acquire such customers or not to acquire such customers?

THE WITNESS: No, sir, not to my knowledge.

MR. GOLDBERG: May I ask two further questions in

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light of this?

BY MR. GOLDBERG:

Q Did Toledo Edison ever indicate they had cancelled provision 8 or any other provision of that contract since 1972?

A No, sir.

Q If you had access to alternative sources of bulk power through wheeling, might you have approached other customers?

MR. REYNOLDS: May I have the question again, please?

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

THE WITNESS: Yes, it would have been --

MR. REYNOLDS: I'll object, but he has already answered.

CHAIRMAN RIGLER: Yes, if it would have been --

THE WITNESS: If it would have been cheaper power, we would have gladly tried to service more people.

MR. GOLDBERG: Thank you.

CHAIRMAN RIGLER: Justice Department.

BY MR. MELVIN BERGER:

Q Mr. Hillwig, I believe you said that at one time you worked for Glose, Cole; is that correct?

A Yes, sir. My job was to take care of municipal

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cities in Ohio concerning distribution and substations only.

Q What were your duties with Glos Pyle?

A I did the engineering layout, spec writing, receiving of bids, inspection and construction for the firm.

Q You stated you worked for Collier Construction Company at one time; is that correct?

A That's correct.

Q Can you describe your duties with Collier?

A Yes, I was their engineering and take-off man. Did the bid work, proposal work that we put out.

Q You just utilized the term take-off man. What does that mean?

A You are an estimator, basically.

Q You were doing estimating for them?

A Yes, sir.

Q In regard to what type of construction?

A All types down to industry. From industry up to the distribution and transmission tower work.

Q Yesterday you answered a number of questions dealing with the wheeling of Buckeye Power with Toledo Edison. Are you familiar with the Buckeye arrangement with Toledo Edison?

A No, sir, I'm not.

Q What would be the source of your testimony yesterday? Just your understanding of what the arrangement

16mil is.

A The understanding from Mr. Moran, from the meeting we had in June at the Holiday Inn in Bowling Green. He enlightened me to the fact that they were dissatisfied with their wheeling contract.

Q But you have had no detailed knowledge of the Buckeye arrangement? Is that right?

A No, sir, no detailed knowledge.

Q Does Bowling Green sell any power at wholesale outside the city limits?

A Yes, sir.

Q To whom do they sell this power at wholesale?

A The village of Tontogany.

Q Do you know what percentage of the Bowling Green load within the city this wholesale sale outside the city represents?

A On the wholesale it would be between two and three percent.

Q Does Bowling Green sell power at wholesale to anyone else besides the village of Tontogany?

A No, sir.

Q Does Bowling Green serve any customers outside the city limits?

A Yes, sir.

Q Can you tell me approximately what percentage of

17mil

a Bowling Green load within the city is represented by sales outside the city at retail?

CHAIRMAN RIGLER: Now you said within the city is represented outside the city. That is self-contradictory.

BY MR. MELVIN BERGER:

Q Can you tell me approximately what percentage the sales at retail outside the city are of Bowling Green's total retail sales load?

A No, I can't answer that. I could tell you another way of getting around it, though.

Q Go ahead.

A Our outside city limits sales would -- were approximately 4-1/2 percent of our -- customers, not sales, is a little over four percent of our customers is outside the city limits.

Q That is at retail?

A At retail, yes.

Q I believe you mentioned a number of Toledo Edison people in your testimony, such as Mr. Moran. Do you know what position Mr. Moran has held with the Toledo Edison Company during the time you met him and had discussions and negotiated with him?

A Yes. Mr. Moran was a vice president.

Q What was the position of Mr. Wendell Johnson, who you also mentioned?

18mil

A. At that time, Mr. Johnson was district manager of the Fremont Division.

Q What is Mr. Johnson now, at the present time, if you know?

A I don't specifically know other than he was taken into Toledo and has a new position and is a Toledo officer, I should say.

Q Two general service and one power?

A Yes.

Q How do you distinguish between the two general service schedules?

A By requirements; one is less than 100 KVA and the other is less than 1000 KVA.

Q You indicated an answer that these have not always been the customer classifications; is that correct?

A That's correct.

Q How did the classifications in the past differ from the present ones?

This is in the time period you have been at Bowling Green.

A They differed in this respect, that we had residential -- we had a residential hot water heat. We had residential all-electric. Those hot waters and all-electrics have been eliminated generally speaking from the old to the new.

Q Are you generally familiar with the Bowling Green rates for these classes of customers for the time period you have been at Bowling Green?

A Yes, generally.

Q Are you also generally familiar with the Toledo Edison rates for similar service in the Bowling Green area?

A Yes.

Q Has there been a difference in the rates of Toledo Edison and Bowling Green for similar service during the time you have been at Bowling Green?

A Yes, sir.

Q Which rates have been lower?

A All.

Q All rates?

A All of our rates have been lower than their rates.

Q That is for similar customers?

A Correct.

Q Has this been true during the entire time you have been with Bowling Green?

A Yes, sir, it has.

CHAIRMAN RIGLER: Are your rates the same inside of the city and outside of the city?

THE WITNESS: Yes, sir.

CHAIRMAN RIGLER: Is there any restriction with respect to servicing customers outside the city that arises by operation of Ohio law?

THE WITNESS: Not to my knowledge.

CHAIRMAN RIGLER: You and Toledo Edison are free to compete for customers outside the city limits?

THE WITNESS: Yes.

CHAIRMAN RIGLER: When I say free, I mean there

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is nothing in the law that restricts them.

THE WITNESS: No, sir.

MR. REYNOLDS: To his knowledge, I assume that is the question.

THE WITNESS: That is correct, sir, to my knowledge, I know of none.

BY MR. MELVIN BERGER:

Q I believe in response to some of Mr. Goldberg's questions about use of this approximately four miles of 69 KV transmission line by Toledo Edison you indicated there was one instance where you think they were using a line because of frost conditions that you observed and there had also been some requests by Toledo to use the line when they had problems in the Pemberville Substation; is that correct?

A That's correct.

Q Would these have been different occasions, the frost and the Pemberville problem?

A Yes, sir.

Q To your knowledge was this transmission line damaged in any way by Toledo Edison's using it for transmission of power?

A No, sir, not to my knowledge.

Q Did Bowling Green suffer any detriment by virtue of this use?

A Only in the respect that we maintain the equipment

1 for them.

2 Q Would that maintenance go on whether they
3 use the line or not?

4 A Probably yes, to a degree.

5 MR. MELVIN BERGER: May I have a moment to confer?

6 (Pause.)

7 BY MR. MELVIN BERGER:

8 Q Mr. Hillwig, I take it then since Bowling Green
9 has served no detriment by the use of that line by Toledo
10 Edison, that that line does have excess capacity which can
11 be utilized; is that correct?

12 A It could have, yes.

13 Q Is that still the situation today?

14 A Yes.

15 Q I believe you mentioned in response to some
16 of Mr. Goldberg's questions that Bowling Green had sought
17 alternate sources of bulk power supply and particularly you
18 mentioned contact you had with Ohio Power Company.

19 To your knowledge has Bowling Green directly or
20 indirectly sought other sources of bulk power supply aside from
21 Ohio Power?

22 A Through AMO-Ohio we have tried and belonged
23 to the organization in hopes that someday we could, yes.

24 Q What efforts has AMP-Ohio made in obtaining bulk
25 power supply?

A They have made efforts in the direction of Ohio Edison, the Ohio Power and PASNY Power for wheeling.

Q Wheeling from whom?

A From their sources or PASNY Power or Buckeye Power, I believe, and intermingling among ourselves the municipals. There were one or two who had excess power. Hamilton and Orville had some excess at one time.

CHAIRMAN RIGLER: Had access or generating capacity, do you mean?

THE WITNESS: They had the generating capacity that would have afforded excess power.

CHARIMAN RIGLER: Oh, excess.

BY MR. MELVIN BERGER:

Q Who did AMP seek wheeling by?

MR. LERACH: I don't know if he mentioned two cities. You mentioned Orville.

THE WITNESS: Hamilton, Ohio.

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

THE WITNESS: I thought I answered that to the best of my ability. Ohio Power, Ohio Edison. Is this what you are asking?

BY MR. MELVIN BERGER:

Q You mentioned in response to one question that AMP-Ohio had sought some wheeling arrangements. I want to

know with whom had they sought wheeling arrangements.

A Company-wise, to my knowledge, Ohio Power, Ohio Edison, PASNY Group, and I had talked to Toledo Edison a number of years back and, as I have repeated here, about wheeling and rates for AMP-Ohio at that time.

I don't know if that answers what you had in mind or not.

Q I just wanted to know who AMP-Ohio had contacted in regards to making wheeling arrangements.

A To my knowledge, that is it.

Q To your knowledge has AMP-Ohio requested access to any nuclear plants?

A Yes. I am positive they did through the City of Cleveland for Davis-Besse and on their own for the ones that are east of Painesville and also the Duquesne area plant.

They wrote and requested a percentage of whatever was available for Ohio.

The details I am not clear with.

CHAIRMAN RIGLER: Can we identify the plant east of Painesville?

BY MR. MELVIN BERGER:

Q Is this in Perry Township?

A Yes. I am sorry. I can't think of the name of it.

Q Would the Perry plant be the name? Does that ring a bell?

A I believe you are correct.

Q What about the one in Duquesne area, do you know what plant that was, the name of that plant?

A No, I don't.

Q Would Beaver Valley sound familiar?

A It could be very well, yes, sir.

MR. LERACH: I move to strike the witness' last answer as speculation.

CHAIRMAN RIGLER: Denied.

BY MR. MELVIN BERGER:

Q I think you indicated that AMP-Ohio had contacted Ohio Power as a possible source of bulk power supply. Do you know the nature of the request or the discussions that took place with Ohio Power and AMP-Ohio?

A No. I was not in attendance. I don't know the exact nature of their requests.

CHAIRMAN RIGLER: Mr. Hillwig, is AMP-O incorporated?

THE WITNESS: Yes, nonprofit incorporation.

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BY MR. MELVIN BERGER:

Q Mr. Hillwig, at the present time, does Bowling Green purchase power from Toledo Edison under a tariff that is on file with the Federal Power Commission?

A Yes, sir.

MR. MELVIN BERGER: I think that will be all.

MR. GOLDBERG: At this time, Mr. Chairman, may I simply move into evidence NRC Exhibit 52, which is the map.

CHAIRMAN RIGLER: Hearing no objection, it will be admitted as NRC Exhibit 52.

(The document referred to, heretofore marked NRC Staff Exhibit No. 52, for identification, was received in evidence.)

MR. GOLDBERG: Thank you.

CHAIRMAN RIGLER: Mr. Hjelmfelt, before I give you your turn, it might be better for the Board to ask a question or two relating to the Department of Justice's questions.

What was the nature of the contact between AMP-O and Ohio Edison with respect to acquiring bulk power?

THE WITNESS: With respect to bulk power?

CHAIRMAN RIGLER: Did I understand you to say that AMP-O approached Ohio Edison to both get power, and,

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second, to get wheeling or transmission services for someone else's power?

THE WITNESS: Yes, they offered at one time a unit down on the river at Cardinal, another new plant they were in the process of building.

CHAIRMAN RIGLER: They offered a part of the unit to whom?

THE WITNESS: To AMP-Ohio, but AMP-O was not able to take advantage of it at that particular time, but I believe the operation was still there.

MR. REYNOLDS: Are we talking about Ohio Edison or Ohio Power?

CHAIRMAN RIGLER: My question was Ohio Edison, or at least I hope it was.

MR. REYNOLDS: I'm not sure, then, the witness understood your question. I believe there is confusion.

CHAIRMAN RIGLER: Did I misspeak?

MR. REYNOLDS: I'm not sure you did. I think we should go back. He has answered, I think, with something else in mind.

CHAIRMAN RIGLER: My questions relate to the contact between AMP-O and Ohio Edison, which I understood was one of the companies you identified as having been contacted by AMP-O to acquire power or transmission services.

THE WITNESS: That was one of the companies that

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AMP-O had been dealing with for a wheeling or transmission contract.

CHAIRMAN RIGLER: But not for a purchase of power contract, then?

THE WITNESS: Not to my knowledge, no.

CHAIRMAN RIGLER: Can you tell me about the nature of the contact between AMP-O and Ohio Edison with respect to transmission services?

THE WITNESS: The details, I cannot tell you, no, sir. I was not there personally.

CHAIRMAN RIGLER: Do you know exactly what it is that AMP-O was requesting from Ohio Edison?

THE WITNESS: The right to use their system to wheel power.

CHAIRMAN RIGLER: Do you know the source of the power that they asked to be wheeled over the Ohio Edison system?

THE WITNESS: Not exactly, no.

CHAIRMAN RIGLER: Do you know the destination of the power AMP-O requested to be wheeled over the Ohio Edison system?

THE WITNESS: The municipals in their area was basically what they were trying to get the wheeling power for, in Edison's area.

CHAIRMAN RIGLER: The transmission of services

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would have been for delivery within the Ohio Edison area?

THE WITNESS: That's correct.

CHAIRMAN RIGLER: The transmission services would not have been for transmission through the Ohio Edison area to destination points outside of its present service area.

THE WITNESS: I wouldn't say that. They possibly would want to have wheeled on through to reach those on the western part of the state.

CHAIRMAN RIGLER: But you don't know the details of the request that was made?

THE WITNESS: No, sir, I do not.

CHAIRMAN RIGLER: Do you know when the request was made?

THE WITNESS: Datewise, no. A year or two years ago.

CHAIRMAN RIGLER: Did you ever learn anything with respect to the nature of the Ohio Edison response to the request for transmission services?

THE WITNESS: Yes, it was not received too well. That is what I can say.

MR. MELVIN BERGER: Mr. Chairman, may I ask a question to clarify a point which is still unclear?

CHAIRMAN RIGLER: You may ask a clarification question.

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BY MR. MELVIN BERGER:

Q. Mr. Millwig, in response to one of my questions with regard to the nature of the contact between AMP-Ohio and Ohio Power, you indicated that you didn't know the nature of the contact. In response to one of Mr. Rigler's questions in regard to the contact between AMP-Ohio and Ohio Edison, you mentioned the Cardinal generating unit. I'm wondering if you had gotten Ohio Power and Ohio Edison confused in your mind when I asked you the question about the nature of the contact between AMP-Ohio and Ohio Power. Whether in fact it was the Cardinal unit that you should have referred to in that context rather than in the other context?

A. Yes, you are basically right.

May I ask a question? Who has a contract with Orville through AMP-Ohio, the Ohio Power Company or the Ohio Edison Company, for wheeling and power?

Q. I believe the answer to that is the Ohio Power Company.

MR. LESSY: This is the document Staff is securing now. We have a document, but not the service schedules.

MR. REYNOLDS: I object to having counsel testifying. The witness has testified he doesn't have the knowledge. I move to strike counsel's remarks.

CHAIRMAN RIGLER: I will grant that motion.

MR. SMITH: Of course, the Board knows it is Ohio

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Power. We heard testimony on that.

THE WITNESS: I wanted to clarify.

MR. SMITH: We heard testimony on that and I'm announcing to all assembled that I know who it is. Mr. Lyren testified to that.

Didn't Mr. Lyren testify that Ohio Power had an arrangement with Orville?

MR. REYNOLDS: The testimony that was addressed to that matter by the witness was that he was not familiar with what the situation was and we asked the documents and the documents would be produced and we would provide them to the Board and then we would have a record as to what the situation was.

MR. SMITH: It was Ohio Power. We are trying to get the identify of the utility.

MR. REYNOLDS: That's right. But not wheeling. The questions we are talking about here went to a wheeling question. Ohio Power was not the basis for my objection.

MR. SMITH: The activity.

MR. REYNOLDS: The characterization of the transaction or arrangement.

CHAIRMAN RIGLER: The Board will consult the document to be supplied before it draws any conclusion. The relevance or weight of the particular question may not be all that great anyway.

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MR. REYNOLDS: I appreciate that. Mr. Smith asked for clarification as to why I was confused when he made that statement. What I was saying was based on material that is to come.

MR. HJELMFELT: I invite the Board's attention to the transcript for December 16; in the afternoon session, under redirect by Mr. Lessy, it shows that AMP-O has a contract with Ohio Power for third party wheeling which includes transmission to Orville.

MR. LESSY: We will get a finalized copy of that document and we will provide it to the Board at the earliest moment and that will satisfy all parties.

MR. HJELMFELT: Has Mr. Berger concluded?

CHAIRMAN RIGLER: Yes, you may conduct cross-examination as may be permissible. There was objection yesterday to your conducting cross-examination. The Board overruled the objection on the basis of RAI-74-11 at page 867. This is Prairie Island. Mr. Charnoff argued this to the Appeal Board, did you not?

MR. CHARNOFF: That was another winner. I also had the luxury of having the Staff on my side in that case, however.

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MR. HJELMFELT: The Board asked a question with respect to whether Toledo Edison-Bowling Green contract, NRC-45, is still ineffect. I am sure Mr. Smart can help me with this.

I didn't find anything in the contract that would indicate there was a provision for unilateral rate changes which under the -- since the testimony showed a rate increase it would indicate that the contract must have expired by its terms at the end of the first five-year period.

MR. REYNOLDS: I object and move to strike.

Mr. Hjelmfelt has under the Board's order some latitude to cross-examine this witness. I heard no question in his statement and I doubt the relevance of it in any event.

CHAIRMAN RIGLER: You are saying he is arguing rather than asking questions?

MR. REYNOLDS: If it was argument.

CHAIRMAN RIGLER: We grant the motion to strike.

MR. HJELMFELT: I made my offer to assist the Board.

CHAIRMAN RIGLER: Thank you.

CROSS-EXAMINATION

BY MR. HJELMFELT:

xxx Q Mr. Hillwig, is it your testimony that the company which made an offer of access to a nuclear plant to AMP-O was

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a company which had signed a wheeling contract with AMO-0?

MR. GOLDBERG: I would object. There is no evidence that it was a nuclear plant.

MR. HJELMFELT: I will rephrase the question.

BY MR. HJELMFELT:

Q Is it your testimony that some utility in Ohio offered AMP-Ohio access to an electric generating plant?

A Yes.

Q And is it your testimony that that utility was one which had a wheeling contract with AMO-0?

A To the best of my knowledge, yes, it was.

MR. HJELMFELT: I have no further questions.

CHAIRMAN RIGLER: All right. The Board has a question which I think maybe we will ask now because Mr. Reynolds may want to go into this on his cross-examination and it might be better to have it before him at that time.

You referred to an August 1975 meeting between officials of Bowling Green and Toledo Edison at which a request for wheeling was made by Bowling Green which request was refused by the officials of Toledo Edison.

When you were asked about the reasons why the request was refused, I understood you to say that one of those reasons advanced was Toledo Edison's future financing of nuclear power plants in CAPCO.

My question is: how was it explained that the

1 future financing of nuclear plants had any effect upon
2 Toledo Edison's ability to wheel for Bowling Green?

3 THE WITNESS: I am not sure it did have an effect
4 on their wheeling. It was a matter of Mr. Smart giving us a
5 background or his reasoning behind why he didn't want to do
6 some things.

7 CHAIRMAN RIGLER: I wasn't asking for your
8 remarks. I am asking about any reasons advanced by
9 Mr. Smart or any other Toledo Edison personnel that
10 shed any light on why the financing of nuclear plants
11 in CAPCO affected Toledo Edison's ability to wheel.

12 THE WITNESS: No. As far as I know, it had no
13 effect on the wheeling.

14 CHAIRMAN RIGLER: But did they explain it any
15 further to you?

16 THE WITNESS: No, other than their involvement
17 of their own in CAPCO to build up their loads and they had
18 been depending on our load which had been planned into
19 their future growth and he stated that, as I said, they would
20 not want to give us wheeling which would allow us to get
21 it someplace else and leave them holding the bag.

22 CHAIRMAN RIGLER: Did they make any other
23 reference to their inability to wheel for Bowling Green
24 with respect to some other commitment of Toledo Edison in
25 CAPCO?

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THE WITNESS: No.

CHAIRMAN RIGLER: Thank you.

MR. LERACH: The record should reflect I think the witness never answered that question.

CHAIRMAN RIGLER: I think we will take a five-to ten-minute break. No more than ten minutes, please.

(Recess.)

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MR. REYNOLDS: Mr. Chairman, Mr. Smart advised you yesterday that Mr. Briley was ill and he is unable to be here. We had a conversation with the Staff and the Department yesterday afternoon and they raised the possibility that Mr. Smart might at some time in the future have to testify in this proceeding and that if that were the case -- because he is an officer of the company, vice president-legal and secretary, and if that is the case, then I think there is a question whether he should participate in cross-examination at an earlier stage and testify at a later stage. He does not feel comfortable about doing that, and we think the point is well taken.

Given the circumstances with Mr. Briley's illness, with the permission of the Board, I would like to undertake the cross-examination on behalf of Toledo Edison, but with the understanding that Fuller, Henry, Hodge and Snyder will be representing Toledo Edison in this proceeding and they will be participating in the future. I'm sort of pinch-hitting in this situation because of the circumstances.

CHAIRMAN RIGLER: You can proceed.

I was wondering if we may have the same problem with Mr. Hauser that we are having with Mr. Smart?

MR. REYNOLDS: Mr. Hauser is in-house counsel and Mr. Smart is with a law firm that is outside counsel.

MR. LESSY: May we have one minute? There is no

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need for the Board to leave to discuss with some of the parties whether Mr. Smart should be sequestered for cross-examination.

CHAIRMAN RIGLER: The question comes a little late. I don't know what the ruling would have been during the direct testimony. Obviously, he is going to consult and has consulted with Mr. Reynolds as to what to ask on cross-examination. That is in the control of the Applicants. I don't see how prejudice would arise because of his being present for cross-examination.

MR. SMART: Mr. Chairman, for purposes of clarification, I want to state to the Board, when I arrived in town I had no anticipation that there was any likelihood I would be called as a witness. When that became known to me, which was after I orally noted my appearance here, I became concerned that I not get myself into any conflict situation.

At that time, I had indicated we would file a written notice of appearance. I'm somewhat uncertain whether to withdraw the oral one, file the written one, or to leave things as they are. I do not intend to participate further in these proceedings as counsel personally.

CHAIRMAN RIGLER: I think maybe you had better file the written notice. Your remarks will be on the record and I think can be considered by all of the parties. However, you were introduced on the transcript and I think that

3mil maybe the record would read more correctly if a written notice were filed.

 Actually, you could turn around and file a withdrawal, if you want.

MR. SMART: It will be filed this morning.

CHAIRMAN RIGLER: All right. Thank you.

BY MR. REYNOLDS:

Q Mr. Hillwig, I just have a few questions for clarification purposes primarily.

 In your testimony yesterday, reference was made to a memorandum dated January 8, 1973, entitled a memorandum of AMP-Ohio, Inc., 1972 power supply negotiations with the Toledo Edison Company.

 I believe it bears Staff Exhibit No. 49, and there was attached to it a cover -- and there was attached to it a cover memorandum NRC Staff Exhibit 48, which referred to this memorandum as an affidavit.

 The Board Chairman then requested whether that was a loose use of the term "affidavit."

 I would like to show you what is another copy of this document and also distribute it now. We conducted a file search and we found that the copy in our files has a signature and certification on it and that the term "affidavit" might have been properly used.

 If I can distribute that, we can proceed. For

4mil identification purposes, I will mark this as Applicant's Exhibit No. 17(TE), and it is document No. TECO-31.

(The document referred to was marked Applicant's Exhibit No. 17 (TE), for identification.)

MR. REYNOLDS: I did not locate this document, Mr. Chairman, until after the proceeding yesterday, and in reviewing the transcript and noting your comment, we undertook to see if we had a copy in our file that would bear on the question you raised.

CHAIRMAN RIGLER: My only question was whether that was in fact the proper enclosure since the cover letter referred to an affidavit. But we will receive this. Are you moving it into evidence?

MR. REYNOLDS: Yes, I am.

CHAIRMAN RIGLER: Hearing no objection, it will be admitted as Applicant's Exhibit 17.

(The document referred to, heretofore marked Applicant's Exhibit No. 17(TE), for identification, was received in evidence.)

BY MR. REYNOLDS:

Q Mr. Hillwig, let me direct your attention to the third and fourth paragraph of that memorandum. Third paragraph

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1 reads as follows:

2 Mr. Hillwig then pointed out that while AMP-O
3 did not yet have access to any power supply sources that would
4 require wheeling by Toledo Edison, we hope to have such
5 supplies in the fairly near future and that in case that
6 were to develop, we would want Toledo Edison to wheel such
7 AMP-O power to our municipals in the Toledo Edison area.

8 Is that, sir, an accurate account of your
9 comments on that point at the June 2 meeting that is refer-
10 enced in the memorandum?

11 A Yes, sir, to the best of my recollection, that's
12 correct.

13 Q The next paragraph reads:

14 Mr. Hillwig then asked whether Toledo
15 Edison would be willing to wheel for AMP-O in case
16 AMP-O were to purchase bulk power or to generate on its own.
17 They declined to give any immediate answer other than to say
18 that Toledo Edison was very dissatisfied with the wheeling
19 arrangement they had with Buckeye for wheeling Buckeye
20 Cardinal power to the co-op substations in the Toledo
21 Edison area. I ask you whether that paragraph sets forth
22 accurately what the comments were by you and the response
23 by Toledo Edison at that meeting?

24 A Yes, sir, I believe it does.

25 Q On the following page, the first paragraph, Mr.

6mil 1 Moran and Mr. Johnson answered all questions by saying that
2 the best they could do would be to see what the Toledo
3 Edison position would be, and then let AMP-O know. And
4 my question, Mr. Hillwig, is whether NRC Staff Exhibit 50,
5 which was introduced yesterday, is the correspondence from
6 Mr. Moran which subsequently let AMP-O know of the Toledo
7 Edison position.

8 A Yes, this is subsequent to that meeting, yes.
9 As I know it, yes, that's correct.

10 Q Now, we had some testimony this morning about a
11 meeting in August of this year and I believe you indicated
12 that a request was made by you at that time of Toledo Edison
13 to wheel power; is that correct?

14 A No, sir, it is not correct.

15 Q Would you correct me?

16 A The request was not made by me. It was made by
17 Mr. Joblin of Spiegel, our attorneys.

18 Q Was it made on behalf of Bowling Green?

19 A On behalf of Bowling Green and the other three
20 municipals.

21 Q And the other three municipals?

22 A He was the attorney for the four municipals,
23 yes.

24 Q In making the request, did he indicate a specific
25 source of power that the four municipals were interested in

7mil 1 having wheeled by Toledo Edison?

2 A Not to my knowledge, he did not, no.

3 Q Did he indicate any other specifics such as
4 destination or amount of power that he was interested in
5 having wheeled?

6 A Not amounts. He mentioned Bowling Green.

7 Q Do you have in front of you the map that was
8 referred to earlier this morning that is Staff Exhibit No.
9 52?

10 A Yes, sir.

11 Q If I could ask you to look at that for just a
12 minute. I believe you testified yesterday, in response
13 to a question by the Chairman, that Bowling Green had some
14 400 customers located outside the city limits. Do you
15 recall that testimony?

16 A Yes, I do.

17 Q Could you indicate on this map for me where those
18 customers are located?

19 A Generally, yes. The majority are located south of
20 Bowling Green in what is known as Portage, Ohio. The remainder
21 are radial lines east, west, and the northeast area,
22 which are rural or farms.

23 Q Are you familiar with the Hancock Wood Rural
24 Electric Cooperative?

25 A Yes, sir.

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1 Q Do they serve in the Portage area where you
2 indicated the bulk of the customers are located?

3 A No, sir.

4 Q Does Toledo Edison serve in that area, to your
5 knowledge?

6 A No, sir.

7 MR. REYNOLDS: I don't have any further questions.
8 Maybe I should, if I could, make a statement to the Board
9 for clarification. There has been some question here
10 as to the existing contract, its termination, the prior
11 contract, and so forth. We undertook to obtain by
12 telecopier the existing tariff. What we got was not the
13 document that -- the proper document that could be introduced.
14 We will, therefore, clear this matter up on our direct case.

15 CHAIRMAN RIGLER: It would be of interest to the
16 Board to see if there were any cover letter attached to the
17 exchange of contracts in 1972 between Toledo Edison and
18 Bowling Green. When I say the exchange of contracts, the
19 proposed amended contracts is what I should have said.

20 MR. REYNOLDS: We intend to put in the full
21 documentation that will cover the confusion the Board may
22 have with respect to what the contractual arrangement is
23 between Bowling Green and Toledo Edison, correspondence,
24 contracts, and filings, et cetera.

25 MR. LESSY: I would like to note from what has been

9mil 1 stated on the record so far there may be a significant legal
2 question as to whether or not there is a contract, whether
3 it is written or oral and the term of that contract. We
4 would like to reserve the right to address that question
5 from the point of view of FPC rules and contract law.

6 CHAIRMAN RIGLER: Mr. Lerach.

7 BY MR. LERACH:

8 Q Mr. Hillwig, you made reference to a communication
9 from AMP-O requesting participation in a power plant in
10 the Duquesne area. Was this by way of a letter?

11 A You are asking me something that was directly not
12 connected to me. I understood at a meeting that this had
13 taken place. I had no personal knowledge of it being by
14 letter, telegraph, or telephone.

15 Q You have no personal knowledge as to whom the
16 request was addressed?

17 A That's correct.

18 Q You do now know the name of the power station
19 to which it related?

20 A No.

21 Q Do you mean yes or no?

22 A No, I do not know the name of the station it was
23 connected with at that particular time. All I know is
24 that it was Duquesne Light and Power area.

25 Q Is it correct that the City of Bowling Green is

10mil 1 not interconnected with the Duquesne Light Company system?

2 A That's correct.

3 Q Is it also correct that Duquesne Light Company,
4 to your knowledge, has never committed any acts or taken any
5 action which has restricted the growth or the operation of the
6 Bowling Green system?

7 A That's correct.

8 Q Is it true that Bowling Green has no contracts
9 with Duquesne Light Company relating to the Bowling Green
10 power system?

11 A That's correct.

12 Q Have you, or to your knowledge, has anyone else
13 from the City of Bowling Green, ever requested Duquesne Light
14 Company to make available to you, Bowling Green, an ownership
15 interest or other participation interest in a power station
16 in which Duquesne Light Company had an interest?

17 A To my knowledge, we never have.

18 Q Is it true that you have never asked Duquesne
19 Light Company to wheel power for the City of Bowling Green?

20 A That's correct.

21 Q You have testified to a number of meetings that
22 you had with different parties relating to Bowling Green's
23 bulk power supply situation. Is it correct that no one from
24 Duquesne Light Company was present at any of those meetings?

25 A To my knowledge, that's correct.

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MR. LERACH: Thank you.

CHAIRMAN RIGLER: Any redirect?

MR. GOLDBERG: No, your Honor.

MR. MELVIN BERGER: Yes, I have a couple of
questions on redirect.

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REDIRECT EXAMINATION

2 BY MR. MELVIN BERGER:

3 Q Mr. Hillwig, I would like to refer you again to
4 NRC Exhibit 52 which is the map which you showed us this
5 morning. I would like to ask you if Toledo Edison serves
6 any customers east of Bowling Green.

7 A Not in the near east. Further out, yes. By that
8 I mean a mile away.

9 Q Does Toledo Edison serve customers to the west
10 of Bowling Green?

11 A On the same basis, yes, approximately a mile or
12 two west of us and north.

13 Q Does Toledo Edison serve any customers to the
14 northeast of Bowling Green?

15 A Yes.

16 MR. MELVIN BERGER: That is all.

17 MR. REYNOLDS: Mr. Chairman, I am putting on my
18 other hat, if I may. I would like to request a ruling similar
19 to the one requested at the end of Mr. Lyren's testimony
20 under Rule 105 as to each of the other Applicants separately
21 that Mr. Hillwig's testimony be restricted solely to the
22 Toledo Edison Company except with respect to his testimony
23 that relates to AMP-Ohio requests that may or may not have
24 been made.

25 There, to the extent you are in that area, it

he perhaps began discussing matters that went
do Edison-Bowling Green situation and relationship.

Outside of that testimony, my request is under
a similar order from the Board restricting the
s testimony.

CHAIRMAN RIGLER: Now then about his reference to
on's advancing as a reason for refusal to wheel
ation in CAPCO in CAPCO nuclear plants?

MR. REYNOLDS: I ask that that be restricted to
on unless it can be shown at some time that any
members of CAPCO or the other joint Applicants
knowledge of that or had any participation in that
and it seems to me that should be limited to
on.

CHAIRMAN RIGLER: Let's talk about Rule 105 if
it says when evidence which is admissible as
for one purpose but not admissible to another
purpose right there, is it your contention that
Hillwig has given is not admissible to other
solely that it is not relevant to the other

MR. REYNOLDS: My position would be that it
is to the other parties.

CHAIRMAN RIGLER: Why not?

MR. REYNOLDS: I would return to the

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1 argument that I have made heretofore that as I understand
2 the nature of the cases that are presented it seems to me
3 until you have some evidence in here that is sufficient
4 to establish either a contract combination or conspiracy
5 within the meaning of Section 1 that the evidence that comes
6 in should come in only against the parties it is directed
7 against unless there is a connection made at a later date.

8 Unless there is a connection at a later date, the
9 evidence is admissible only as to the single party.

10 CHAIRMAN RIGLER: Well, withholding our ruling
11 until the end of the affirmative case by the parties
12 opposed to Applicants to see if such connection is made.

13 MR. REYNOLDS: That would be agreeable.

14 The only note that I added at that point is that
15 it seems to me that the Applicants should have the ruling
16 of the Board prior to the time they are to put on their
17 direct case with respect to this motion because it could
18 materially change the scope and the nature of their direct case.

19 CHAIRMAN RIGLER: All right.

20 Now, returning to the text of Rule 105, it doesn't
21 say we shall strike the evidence if we were to agree with
22 your contention. It says the tribunal shall restrict the
23 evidence to its proper scope.

24 MR. REYNOLDS: I did not move to strike yesterday
25 or today and I very carefully did not. I am not asking that

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1 it be stricken, but only that it be restricted to its proper
2 scope but not that it be stricken. That was not my motion.

3 I agree with what the Chairman is saying on that
4 point. I do feel that the question is in accordance with
5 Rule 105 that it be restricted to its proper scope,
6 not that it be stricken.

7 CHAIRMAN RIGLER: We will take your request under
8 advisement.

9 You may wish to amend or withdraw the requests
10 at the completion of the affirmative cases of the other parties
11 So I am going to count on you to remind us at some proper
12 opportunity that we make a ruling or make a revised ruling
13 if you should revise your request.

14 MR. REYNOLDS: I understand.

15 MR. LERACH: On behalf of Duquesne Light Company,
16 I make a motion that none of Mr. Hillwig's testimony be
17 considered in determining whether a situation inconsistent
18 with the antitrust laws exists with respect to the Duquesne
19 Light Company.

20 Mr. Reynolds' motion has certain exceptions to
21 the scope of the ruling requested. Mine has no exceptions. I
22 move that none of his testimony be considered against Duquesne
23 Light Company.

24 I think the meaning of admissible in Rule 10c
25 really is in terms of relevance because only relevant evidence

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1 is in terms of relevant because only relevant evidence is
2 admissible against a party.

3 Mr. Hillwig gave no testimony whatsoever that
4 related to Duquesne Light. Therefore, I request that his
5 testimony not be considered against Duquesne Light.

6 CHAIRMAN RIGLER: We will take that under
7 advisement.

8 MR. HJELMFELT: If the Board is deferring ruling,
9 it might wish to defer hearing argument also; is that correct,
10 or should I state now to be sure I am heard.

11 CHAIRMAN RIGLER: If there are preliminary
12 considerations you want us to be thinking about as we mull
13 this over over the next several weeks, you can call this to
14 our attention now.

15 You are correct that we would hear further argument
16 before we made a significant ruling on this point.

17 MR. HJELMFELT: I will defer argument on that
18 point.

19 MR. REYNOLDS: For clarification, I don't mean
20 for my qualification to undercut Duquesne Light's position.
21 I think I was a little sloppy in what I was doing because I
22 am talking in terms of three different Applicants.

23 The qualification I was talking about as to
24 AMP-Ohio wouldn't have been relevant to Duquesne Light in any
25 event, but it would be relevant to testimony we have heard

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1 here today with respect to Ohio Edison. That was the reason
2 for the qualification.

3 CHAIRMAN RIGLER: I agree with you that the
4 key word may be relevant. Maybe we are not in agreement on
5 that.

6 Rule 105 talks in terms of admissibility which is
7 a different question than relevance.

8 I disagree with Mr. Lersch.

9 MR. REYNOLDS: That we will have opportunity to
10 argue.

11 MR. GOLDBERG: Before the Board rules on the
12 question of the applicability of Rule 105, the Staff would
13 like opportunity to respond.

14 I would like at this time to point out that the
15 last phrase of that rule is "and instructs the jury
16 accordingly."

17 Many of these rules, including this one, is
18 designed to prevent the jury from misapplying evidence against
19 the improper parties.

20 Similarly, in the Applicant statements against
21 procedural matters to be considered many of the cases they
22 cited were cases in which a jury sat and the court was
23 concerned about the jury misconstruing the evidence.

24 Here we have a Board which is more capable of
25 properly applying the evidence.

1 CHAIRMAN RIGLER: That's right, but as we sit
2 as a trier of fact, our judgments would be based only upon
3 evidence that we deemed to be admissible and relevant perhaps
4 to the same degree it would be considered by a jury sitting
5 as a trier of fact.

6 MR. MELVIN BERGER: Before a ruling is made on
7 this the Department would like to address itself to the issue.

8 CHAIRMAN RIGLER: All of this may be premature,
9 although I think Mr. Reynolds is correct in bringing his
10 motion to our attention at the earliest opportunity.

11 All right, Mr. Hillwig, you may step down. Thank
12 you very much for coming this long distance.

13 (Witness excused.)

14 CHAIRMAN RIGLER: Before we adjourn for the
15 day, I wonder if we can get the matter of the exhibits which
16 have been introduced for identification purposes but not
17 introduced into evidence cleared up.

18 MR. LESSY: The Staff would like to resume with
19 that on the first day of the next hearing.

20 With respect to a couple of these exhibits, there
21 are attachments which would make them complete and in
22 terms of xeroxing the copies, we haven't completed that.

23 I do have a matter relating to two unsponsored
24 exhibits that I would like to go into at the Board's
25 pleasure.

1 CHAIRMAN RIGLER: All right.

2 MR. LESSY: There are two unsponsored exhibits
3 Staff would like to offer at this time. The reason we waited
4 until this time is because these documents were from the
5 files of the Toledo Edison Company and when Mr. Briley was
6 here previously I requested a stipulation as to authenticity.

7 I spoke with Mr. Reynolds preliminarily yesterday
8 and he gave me a preliminary indication.

9 As Staff Exhibit 53 and 54, the Staff's Documents
10 Numbers 22 and 23.

11 MR. REYNOLDS: I have no problem, I don't think,
12 with what we are going to be doing.

13 I think Mr. Lessy was referring to his comments
14 to me yesterday that went to the authenticity of the material.

15 I am handicapped because Mr. Briley I thought
16 would be here. He is the one I passed the matter on to.
17 He is not here.

18 If we can defer this it would be more
19 appropriate, it seems to me, and we can do it without taking
20 up a lot of time of the Board.

21 CHAIRMAN RIGLER: Does Mr. Briley intend to be
22 here on the 5th?

23 MR. REYNOLDS: If he is not, I will have an
24 answer on the 5th or before the 5th, because I will have had
25 a chance to get in touch with Mr. Briley. I thought he would

1 he here and we could give Mr. Lessey the answer.

2 I am not in a position, although I don't think
3 we will have difficulty with it.

4 It would save everybody a lot of time if we can
5 wait and I could talk with Mr. Lessey at some other time during
6 the break about it.

7 MR. LESSY: I wonder since the request was made on
8 the first day of hearing and it does relate to matters
9 relating to Mr. McCabe's testimony and Mr. Lerach will not
10 be here come the 5th because he has matters in another
11 proceeding we will go at the Board's pleasure. It relates
12 to Mr. McCabe's request for CAPCO membership.

13 The request for stipulation of authenticity was
14 made on the first day of hearing. Mr. Lerach has other
15 commitment.

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1 CHAIRMAN RIGLER: Mr. Lerach is not likely to
2 challenge the authenticity of the document in which Mr. Toledo
3 Edison assures him there is no problem.

4 MR. LERACH: Mr. Riser can speak for the firm.
5 There is no problem.

6 CHAIRMAN RIGLER: All right. Then maybe we
7 will defer until the 5th. I'm not sure we have solved our
8 problem with respect to exhibits. I think Mr. Smith has
9 a word on that.

10 MR. SMITH: I would prefer not to have presented
11 to me exhibits you don't intend to offer into evidence. I
12 don't want to read them or consider them. I have two stacks
13 of them right now.

14 CHAIRMAN RIGLER: This relates to the --

15 MR. SMITH: This ex parte communication with me.
16 If you don't intend to offer them into evidence.

17 MR. LESSY: We circulated to all parties, including
18 the Board, a copy of the exhibits we intended to offer into
19 evidence. A few of those exhibits are matters I intended
20 to go into today. If the Board prefers, we can distribute
21 them as we go along. We thought because of the bulk of the
22 material that it would be difficult to get up and hand out
23 three copies. Perhaps we won't have an afternoon session
24 today. Perhaps we can either -- I prefer to do this on the
25 6th and get the matter straightened out as to exhibits to

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1 which there are attachments or to go forward on an unsponsored
2 basis. Because the nature of the testimony, there are
3 documents we intended to use and we did not. All of the
4 parties have those documents. We would be happy to go
5 forward at the Board's discretion.

6 MR. SMITH: I'm talking about my personal
7 preference. I regard it as ex parte, even though the other
8 parties to the proceeding may have copies of them. Who knows
9 that is being considered?

10 CHAIRMAN RIGLER: We know we will not consider
11 anything that has not been properly introduced and accepted
12 into evidence. But nonetheless, I think Mr. Smith is right.
13 We would prefer not to have these unintroduced documents in
14 our possession.

15 MR. LESSY: Okay. Fine. I don't think the problem
16 will be in terms of the unsponsored nature of most
17 of these which I plan to go forward on -- I thought I would
18 resolve the problem today. I apologize for the question of
19 inconvenience.

20 CHAIRMAN RIGLER: It is the question of whether or
21 not you actually intend to introduce them into evidence.

22 MR. SMITH: Now we have NRC Exhibit 49, which is in
23 evidence. It is an incorrect document. I think that
24 needlessly adds confusion to the record.

25 MR. LESSY: It is incomplete. You are talking

3mil 1 about the attachment to the letter that Mr. Hillwig
2 testified to. It is an incomplete document, in that it
3 does not include the affidavit part. I think the record --
4 the document that Mr. Hillwig had during the term of his
5 testifying was not the affidavit copy. Subsequently Applicant
6 produced that or presented it to the Board and moved it
7 into evidence as an Applicant exhibit. That does not make
8 the document incorrect because it does not have the affi-
9 davit. It is the document Mr. Hillwig had in his files.

10 MR. SMITH: You want to leave it in that way?

11 MR. LESSY: I see no reason not to.

12 MR. SMITH: My concern is if NRC 49 is cited in
13 your proposed findings or your proposed findings or your
14 brief or sometime else without a memory better than I have,
15 I may not recall that Applicant's 17 is the same document,
16 except that it is in affidavit form. Except that I
17 happen to have written it on my copy. It is a procedure
18 which makes briefing difficult, makes deciding difficult.
19 It is unnecessarily complex.

20 MR. LESSY: I would like to make clear as of the
21 time when that exhibit was offered, we had no knowledge
22 there was any other form of it. If you would like us to
23 withdraw --

24 MR. SMITH: I'm only observing difficulties I
25 have with loose language of exhibits.

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1 MR. CHARNO: Mr. Chairman.

2 MR. SMITH: I understand this is the only copy
3 he had and that this is the copy the witness testified
4 about.

5 MR. CHARNO: For clarification of the record, the
6 Exhibit 48, cover letter dated January 8 and Exhibit 49,
7 both NRC exhibits, is dated January 8. Applicant's Exhibit
8 17, it becomes clear this was not notarized until sometime
9 after the original was sent. I'm sorry. I'm incorrect.
10 I withdraw that comment.

11 CHAIRMAN RIGLER: Tentatively we are looking to the
12 hearing on disqualification on December 31.

13 MR. CHARNOFF: If we are adjourning now, can I
14 arrange for a conference call with you to advise you of Mr.
15 Lansdale's availability later today or tomorrow.

16 CHAIRMAN RIGLER: How about tomorrow morning?
17 I can't give you a precise time because I may have another
18 appointment. If the conference call operator will check
19 with me in the morning, I will give you a time.

20 MR. CHARNOFF: If the date is available, I will
21 call your office and say it is available and call the other
22 parties and say it is available. Then you could put out an
23 order. If the date is not available, I will try to arrange
24 a conference call.

25 CHAIRMAN RIGLER: We will be considering only the

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1 motion to disqualify. The other parties do not have to be
2 here. They are welcome to come if they want to, but there is
3 no necessity for them to be there.

4 MR. HJELMPFELT: If there is a conference call, it
5 would be better to have Mr. Hart on it than our office.

6 MR. CHARNOFF: Okay.

7 MR. GOLDBERG: At what time on the 5th are we
8 reconvening?

9 CHAIRMAN RIGLER: Our tentative plan is to go
10 four consecutive days that week. That should be about 15
11 witnesses, I hope.

12 MR. GOLDBERG: We are to have a witness ready
13 at 10:00 a.m.?

14 CHAIRMAN RIGLER: We have Mr. Lessy's preliminary
15 matters, but that shouldn't take more than a couple of
16 minutes.

17 Yes. Everyone have a nice holiday. We will see
18 you on the 5th.

19 (Whereupon, at 12:15 p.m., the hearing was
20 adjourned, to reconvene on January 5, 1976, at 10:00 a.m.)
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