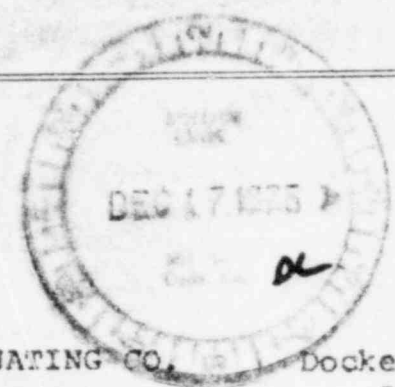




NUCLEAR REGULATORY COMMISSION



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.

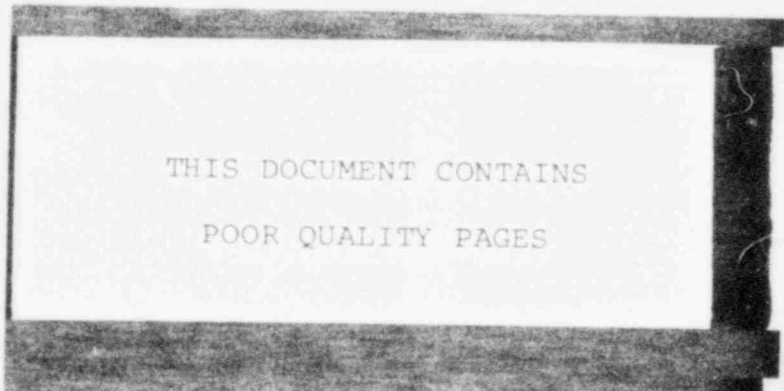
50-440A  
50-441A

(Perry Nuclear Power Plant,  
Units 1 and 2)

Place - Silver Spring, Maryland

Date - 16 December 1975

Pages 2222 ~ 2397



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C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
William J. Lyren		2244	2330 2356	2340 2357
J. Robert Hillwig	2363			
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P R O C E E D I N G S

CHAIRMAN RIGLER: Come to order.

MR. STEVEN BERGEN: Mr. Chairman, as we heard last evening we were awaiting a ruling from the Board on the question of whether or not my request for Mr. Lyren's notes or material involving his investigation of the inclusion of the restrictive provisions in the 1965 contract would be made available to us.

CHAIRMAN RIGLER: That's correct.

Mr. Goldberg, you are on your feet.

MR. GOLDBERG: I would like to respond to that, if I may.

Staff would strongly object to Mr. Lyren going back and searching his files and producing any notes or documents. He has not used those documents to refresh his recollection. They are not entitled to those materials pursuant to that.

Furthermore, it seems to me there is just another attempt to reopen discovery. If they want to reopen discovery, let them file a motion and we will answer it and the Board can rule.

MR. CHARNO: I would like to add that this is the time period which the Applicants had argued as irrelevant and for which we were able to obtain no discovery of the Applicants' files.

MR. REYNOLDS: If I could respond to that. As



that time we were arguing it was irrelevant it seemed to us it was irrelevant.

If the allegations had been recast so that it becomes relevant to bring in a new time period, I don't think the Board should fault the Applicants because of an earlier argument on irrelevancy.

At the time the argument was made we had no indication there would be Section 2 allegations in here with respect to unlawful use of monopoly power.

This case has become that with respect to each Applicant individually.

We are entitled to defend against those charges by going back as far as necessary to demonstrate that any use or acquisition of that dominance has been proper.

In terms of arguing what might or might not be relevant for broad, sweeping document requests or discovery requests at a time when we had no idea what the parameters were of the case, that should not limit the Applicants now if it becomes necessary to defend themselves with respect to those other allegations.

It may become necessary for them to go back to a period preceding the 1965 date, to defend themselves.

CHAIRMAN RIGLER: You are aware of the difference between the Applicants' and the Board's point of view on the broad parameters of the case.

MR. REYNOLDS: I understand that.

In terms of the argument as to relevancy, that argument was pitched at the time to the Board that was sitting at the time on the basis that we were talking about a CAPCO case. And that the allegations that were made by the parties in this context as we have pointed out -- prior arguments both by the Staff and the Department -- were in terms of CAPCO related matters.

We said in that context it was irrelevant to go back beyond '65. The broad issues were framed and I am not addressing that.

The Board ruled within the broad issues it was permissible to come in with allegations that relate to '59 acquisitions, '62 acquisitions, et cetera, which we have in this case by the Department of Justice if we go back and read September 25 filings.

I won't say by the Staff, but the Department of Justice has listed allegations against each of the Applicants that go back prior to the '65 date.

The legal theory supporting that is that these Applicants have individually gone out and acquired systematically systems in their areas for purposes under a Section 2 analysis to show an unlawful acquisition of monopoly power.

Folded into that argument is an unlawful use of

monopoly power.

The Applicants should be allowed to go as far back as they need to go back prior to '61 to show their dominant position has been acquired and their dominant position has been properly acquired.

CHAIRMAN RIGLER: That is not the subject matter of these notes.

Mr. Berger is asking for notes in connection with Mr. Lyren's investigation as to how certain provisions restricting the rights of Ohio Edison and the City of Wadsworth came to be in the contract. That has nothing to do with the acquisition program.

MR. REYNOLDS: That is an aspect that may go to unlawful use of dominant power. I don't see how you can separate it. If the allegation is we are a monopolist and got their wrongfully and we have used our power correctly, we are in trouble.

If the argument being made here is that the notes relate to how the provisions came to be in the contract and the inference or the line is that they were put into the contract by some threat or overbearance by the company and that therefore -- and that they are restrictive and that gives that the net effect has been a wrongful use by the company of their dominance, that certainly could go to exactly what I am saying is the charge under Section 2.

It seems to me we are entitled to go back as far as we need to go back to answer allegations which are addressed to the matter of either a wrongful acquisition or wrongful use of monopoly power.

CHAIRMAN RIGLER: That dominance factor was in the case from the very beginning. Dominance in the CCE territory.

MR. REYNOLDS: We stipulated dominance but there was not in these proceedings the question of whether that dominance has been wrongfully obtained or wrongfully used.

CHAIRMAN RIGLER: The question of whether it was wrongfully used was certainly in the case right from the drafting of the issues in controversy.

MR. REYNOLDS: Not with respect to the separate allegations that go to the City of Wadsworth or the City of whichever one we will talk about in the context of the September 5 filings.

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1 CHAIRMAN RIGLER: How else would they show the  
2 dominance except with reference to individual situations.  
3 You surely weren't going to lose on a vague charge of  
4 dominance and unlawful activities in relationship to the  
5 dominance.

6 MR. REYNOLDS: If that is the case, why is it we  
7 are not permitted to go back as far as we need to go to counter  
8 the attacks and defend ourselves?

9 CHAIRMAN RIGLER: Once the issues in controversy  
10 were framed and those issues were before you, you objected  
11 to going back beyond '65.

12 MR. REYNOLDS: We objected to disclosure on the  
13 grounds of relevance and over-burdensome because we would go  
14 back more than 10 years. We succeeded on that. The fact  
15 we succeeded on that says that they cannot come in and  
16 demonstrate to the Board that they were relevant. Given  
17 the fact we were successful there, that shouldn't preclude  
18 us from defending ourselves against the allegations they will  
19 make if it requires us to go back beyond '65. If I say it  
20 is irrelevant and the Board agrees because they don't meet  
21 their burden, that doesn't mean later on I should be sanctioned  
22 or prejudiced because I could show at that time that '65 was  
23 an irrelevant point. If I get other allegations, I should be  
24 able to defend against that and if I can show you it is  
25 irrelevant to go back beyond '65, if I can meet my burden, I

2mil 1 should do it. I shouldn't be penalized because they couldn't  
2 show relevance at the time they were required to. I shouldn't  
3 be faulted because I made a successful argument earlier  
4 that this Board bought as to relevancy. They have  
5 the burden to show you it is relevant. I'm saying we have an  
6 allegation. It goes to dominance. I'm not arguing the con-  
7 cept of when it came in or when we addressed it; if it is in  
8 the case we should have every opportunity to defend against  
9 that. If we have to go back to 1902, for example, then it  
10 seems the Applicants should have opportunity to put on  
11 evidence before this Board to demonstrate that the dominance  
12 was lawfully acquired and has been lawfully used throughout.

13 CHAIRMAN RIGLER: You prevented these people from  
14 discovering your activities in 1902.

15 MR. REYNOLDS: I didn't prevent them. They  
16 didn't demonstrate to the Board that it was relevant.

17 CHAIRMAN RIGLER: It was on your assertion that  
18 it wasn't relevant. You asserted to us there would be no  
19 materials relevant to these proceedings in the earlier years.  
20 That was part of the argument.

21 MR. REYNOLDS: My argument was on the basis of  
22 the request addressed to us if they went back 10 years, we  
23 did not think going back further would be relevant to this  
24 proceeding. I continue to maintain, as I have all along,  
25 that I don't think it is relevant because we are talking about

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1 activities under the license.

2 I have yet to understand why we go back to nineteen  
3 whatever it is, 10 years beyond, and then some. in this  
4 proceeding when we are trying to determine whether any  
5 activities under this license would create or maintain.

6 That has been my nexus position throughout. I  
7 will continue to say anything that goes back beyond that  
8 point is irrelevant from my standpoint. That doesn't mean  
9 if they come in and make an allegation that it is not  
10 relevant for purposes of my defending against that allega-  
11 tion. It's irrelevant in this particular proceeding.

12 As I view the proceeding, it is for activities  
13 under the license. If it is relevant for purposes of  
14 answering an allegation, I can't be barred from making a  
15 defense because I stood up and told the Board it was  
16 irrelevant because of the nexus argument. That was my  
17 position.

18 I still think it is irrelevant. That doesn't  
19 mean if the Board rules against me, that I don't have  
20 opportunity to come in and defend. If the Board says it is  
21 relevant and we can go back all the way, you are telling me  
22 I lost the argument, although I may have won at discovery.

23 I don't think it is relevant, but I should have  
24 opportunity to defend against that.

25 CHAIRMAN REGLER: The Board hasn't expressed any

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1 opinion on the point of how the agreement came into effect,  
2 how it is relevant, provided we understand that there is  
3 a stipulation of dominance, and then we look at the  
4 agreement as it affects the parties' relationship, and as  
5 it affects the competitive market from 1965 onward. I'm not  
6 persuaded right now that it matters a great deal historically  
7 how the agreement came into effect.

8 Assume, for purposes of this argument, that there  
9 was an illegal agreement in effect. The fact that one party  
10 urged it on the other doesn't save its illegality.

11 MR. REYNOLDS: If the agreement was illegal,  
12 you are saying that the fact that the city may have urged  
13 it on the company doesn't save its illegality?

14 CHAIRMAN RIGLER: Or the company or the city.  
15 That is why you may have a point when you say it is irrelevant  
16 that prior to '65 one party pushed the other into accept-  
17 ance of this particular agreement.

18 MR. REYNOLDS: I'm saying that whether the  
19 agreement is -- I guess that you interjected another thought  
20 in there. That is whether the agreement is legal or illegal.

21 CHAIRMAN RIGLER: If it is a legal agreement, then  
22 it really doesn't matter how it came into being. There is  
23 no point in our listening to its historical background.  
24 If it is a legal agreement, it will not create or maintain  
25 an inconsistent situation. Unless we get to the bundling



Smil 1 theory, and this doesn't seem to be the type of thing that  
2 would affect the bundling theory. We have to operate on  
3 the assumptions that there is an inference we can draw with  
4 respect to the illegality of the agreement. If it is  
5 illegal, both parties may have been at fault. That doesn't  
6 prevent the maintenance of a situation inconsistent with  
7 the antitrust laws. This is a proceeding in which the  
8 Nuclear Regulatory Commission is looking at an overall  
9 situation.

10 MR. REYNOLDS: But it may well be that the  
11 circumstances surrounding how this agreement was entered  
12 into will bear on how this Board views this particular  
13 agreement in terms of whether it is legal or illegal because  
14 we are in and I continue to remind the Board a different  
15 setting than you normally get in an antitrust case. We  
16 are in a highly regulated industry.

17 It may well be what appears to one reading  
18 the document in the abstract is a restrictive provision  
19 when the Board sees why it was entered into, who was urging  
20 what, that the Board would take a different view of the  
21 contract than it would, looking at it on its face.

22 It may be, for purposes of making the  
23 determination that you have injected, that is the legality  
24 or illegality of the contract or contract provisions, that  
25 it is relevant to go back to when the contract was entered

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1 into to see what it was the parties were bargaining for in  
2 drawing that contract and what it was that was permitted  
3 within the context of this particular type of industry.  
4 It could be very relevant to the kind of label you put on  
5 the contract as to its legality.

6 All I'm saying is that I think the defendant  
7 Applicants should not be cut off from their opportunity  
8 to answer allegations which go to this type of a question  
9 because at an earlier time they demonstrated to the Board,  
10 for what I will label as nexus reasons, that it was irrele-  
11 vant for discovery purposes.

12 CHAIRMAN RIGLER: Let me ask another question. Who  
13 made any allegations with respect to the origin of the  
14 contract?

15 MR. REYNOLDS: Mr. Lessy yesterday made some  
16 allegations.

17 What do you mean "with respect to the origin"?

18 CHAIRMAN RIGLER: I didn't get that from any  
19 direct examination of Mr. Lessy. The whole subject matter  
20 you say you must defend against was introduced by Mr. Berger  
21 during his cross-examination.

22 MR. STEVEN BERGER: I don't think it was intro-  
23 duced by me. It was introduced by a gratuitous statement made  
24 by the witness on my cross-examination. By virtue of his  
25 having made it, I was called on, in defending my client,

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1 to inquire further into it.

2 Certainly the question I posed -- and if the  
3 Board wants me to find it, I will -- did not call for that  
4 kind of response. His having made it, I couldn't let it go.  
5 I had to probe into it. That is part of the responsibility  
6 of a cross-examiner where a witness takes him into a  
7 collateral area, he cannot say that is something I wasn't  
8 talking about. If it involves a serious allegation against  
9 his client, he has to probe.

10 CHAIRMAN RIGLER: What is the serious allegation  
11 against your client?

12 MR. REYNOLDS: Can we ask Mr. Lyren to leave?  
13 If we get him on the stand and continue to interrogate  
14 him along these lines, it would be best if he leave.

15 CHAIRMAN RIGLER: We are not going on much farther  
16 on this. I think the Board has enough argument now so that  
17 it will be able to rule.

18 MR. STEVEN BERGER: I won't go into the matter  
19 of the origins of the charge unless the Board wants me to  
20 and I will refer them to the page numbers and why I believe  
21 it to have been a gratuitous statement. Because it was  
22 stated by the witness, I believe it was incumbent upon me to  
23 delve into it.

24 CHAIRMAN RIGLER: It didn't occur as a part of  
25 Mr. Lessy's examination. If you asked a question that opened

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the door that undercuts Mr. Reynold's arguments about why he has to suddenly defend himself against these allegations.

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MR. STEVEN BERGER: With regard to the issue at hand, which is the question of whether or not we should be entitled to receive from Mr. Lyren whatever notes or documents he had involving his investigation of the inclusion of the restrictive provisions in 1965. I won't argue at length what we have talked about heretofore, in terms of the discovery issue, other than to say in the Alabama case, which involved similar charges, that we now know about in terms of the relationships between Alabama Power Company and the small systems that operate in its areas, that they surfaced very early on and were very much a part of the advice letter and every single municipal system's deposition was taken in that case, cooperative system's deposition were taken, the files of the municipalities and cooperatives were examined in that case.

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CHAIRMAN RIGLER: This isn't the Alabama proceeding.

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MR. STEVEN BERGER: No such situation developed in this case. At the times the matters in controversy were set down, this Board did not set down the matters in controversy. If you look on the matters in controversy in a vacuum and not at the prehearing conference remarks made by Staff and Justice with regard to allegations made, I regard that to be

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1 a matter of importance in terms of misleading of the  
2 Applicants in terms of how they should proceed during the  
3 discovery process.

4 CHAIRMAN RIGLER: It is not fruitful to continue  
5 on this line.

6 MR. STEVEN BERGER: If, during the hearing  
7 process, a matter comes up such as this, where the witness  
8 is now talking from his recollection from notes and documents  
9 which he has in his possession, which I did not believe that  
10 I was -- I should be inquiring into, and Mr. Reynolds didn't  
11 believe he should be inquiring into in name of fairness,  
12 we should see the notes and documents to further defend  
13 ourselves on the matter that the witness has gratuitously  
14 injected into the record. I can't explain it further than  
15 that.

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MR. GOLDBERG: May I make one point further? This is not simply a question of relevance. The question is not simply whether notes and materials which Mr. Lyren may have back in his office are relevant to this proceeding. Even if they were relevant, the question is can a party who has conducted a broad cross-examination beyond the scope of direct request of a witness to go back into his files and produce documents and notes which he has not used to refresh his recollection.

I don't think there is any rule of evidence, any rule of procedure which allows that without reopening of discovery. And reopening of discovery can be and might be mutual if it is granted to one party.

MR. CHARNO: I was going to echo the last comment of Staff that certainly if discovery is to be reopened we feel there is a fruitful area here for investigation.

MR. SMITH: Mr. Berger, may I ask is Mr. Zimmerman the signator of the Ohio Edison Company, he is available to you still?

MR. STEVEN BERGER: Yes, he is, sir.

MR. SMITH: You are asking him to come up with notes of his interviewing other people so many years ago to establish the conditions beyond this contract. This is my concern about it. The relevancy I think is there. You are asking for an awful lot of effort to prove not much when you

have better evidence available to you, much more reliable.

At the best, if he brought it in, it would be very weak evidence.

MR. STEVEN BERGER: It is the only thing I have to go on, your Honor.

CHAIRMAN RIGLER: He has told you three times with respect to his gratuitous comments he has told you two or three times on the record that he has no personal knowledge and that he wasn't even employed at the time this document was signed. For a variety of reasons, you lose.

The motion to produce will be denied.

MR. LESSY: May I make a clarifying statement?

CHAIRMAN RIGLER: No.

This will apply throughout the proceedings. If one attorney for a party -- and I use the term party loosely because I have been permitting not only Applicant but individual attorneys for the individual companies to address a particular matter -- decides to make the argument or is assigned the responsibility, then I will not let multiple attorneys to address the question.

Since Mr. Goldberg addressed the question, I will not permit you to come in and make additional argument.

That applies across the board. That applies to Mr. Berger and Mr. Charno and Mr. Reynolds and Mr. Charnoff when he is here. One attorney only will speak to an argument.

MR. CHARNO: Can we ask for a clarification on your last ruling?

Did you mean to foreclose the opportunity for one of the individual Applicant's counsel to speak on the same matter that either Mr. Charnoff or Mr. Reynolds would be speaking on?

CHAIRMAN RICLER: No. Although I don't want to foreclose the possibility at some point in the proceedings, we might require Applicant to consolidate their response.

We haven't seen fit to do so yet. It hasn't been a problem.

We will take a five-minute recess.

(Recess.)



lmil 1 CHAIRMAN RISLER: I want to bring up a collateral  
2 matter.

3 I have asked the reporter to identify as  
4 Board Exhibit 1 the Lyren notes which were directed yesterday  
5 to the parties and I have asked the reporter to designate  
6 as Board Exhibit 2 the Lyren notes in their original form.  
7 I have asked the reporter to seal those notes so they would  
8 be available in the event that anybody wished to press that  
9 point with the Appeal Board. Otherwise, they are not  
10 available to any of these parties.

11 (The documents referred to  
12 were marked Board Exhibits Nos.  
13 1 and 2, for identification.)

14 Whereupon,

15 WILLIAM J. LYREN

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

18 MR. STEVEN BERGER: We have one document that we  
19 have introduced and marked for identification, but we have  
20 not moved it into evidence. That is Applicant's Exhibit  
21 No. 12(OE-PP), Document No. OE-7, which is Article 18, Section  
22 6, of the Ohio Constitution. I so move its admission at  
23 this time.

24 MR. LESSY: I don't want to be unduly technical  
25 in objecting, but with respect to this particular excerpt we

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1 have no indication -- I don't doubt it, however -- the record  
2 should be clear that this is the current statute and it comes  
3 from the current volume or pocket part. The last reference  
4 we see on here is 1959 and we have no way of knowing at this  
5 time, nor does the Board, that this is current.

6 In addition to that, if there are any annotations  
7 with respect to that section in an annotated excerpt, I think  
8 they should be includable. I don't think it is necessary  
9 to put in the whole volume of the code, but the way it is  
10 as it is may be somewhat incomplete and we object on the  
11 basis of the incompleteness.

12 MR. STEVEN BERGER: This came from the 1974 pocket  
13 part.

14 CHAIRMAN RIGLER: We will receive into evidence  
15 Applicant's Exhibit 12, not hearing any objection thereto.

16 Mr. Lessy, I'm not sure I agree with you about whether  
17 or not it would be desirable to have the annotations. We  
18 can take judicial notice of the provisions of the Ohio Code.  
19 Certainly we can take judicial notice of any actual cases,  
20 but the annotations represent somebody's editorial notes with  
21 respect to the opinions. The cases themselves could be  
22 pointed out to us.

23 MR. LESSY: As long as there is representation  
24 that this is the current form of the statute, then we have  
25 no objection.

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1 CHAIRMAN RIGLER: All right.

2 (The document referred to,  
3 heretofore marked Applicant's  
4 Exhibit No. 12(OB-PP), for  
5 identification, was received  
6 in evidence.)

7 MR. STEVEN BERGER: One other matter. In regard  
8 to Board Exhibit 1, during the direct examination of Mr.  
9 Lyren, the particular pages of his notes he did refer to  
10 and we asked for copies of, and which Mr. Lessy, on behalf  
11 of the Staff, gave to us, are not included in Board Exhibit  
12 No. 1. These three pages that I'm referring to that were  
13 turned over to us are not part of Board Exhibit 1.

14 Perhaps, and at this portion of the record, it  
15 would be appropriate to mark and have entered into evidence,  
16 those three pages as well.

17 CHAIRMAN RIGLER: Evidence of what?

18 MR. STEVEN BERGER: Evidence that the witness  
19 was referring to them.

20 CHAIRMAN RIGLER: You have that on the record,  
21 anyway. I'm not going to prevent you from putting  
22 it in, but what possible good do they do you? There weren't  
23 any contradictions there, were there?

24 MR. STEVEN BERGER: Well, I just thought, for  
25 completeness, your Honor, for having all of the notes of the

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1 witness that have been made reference to in the proceeding,  
2 included in the record at a single place, it would make  
3 sense because the three pages I am referring to are not  
4 included in the Board Exhibit 1 and it would be good to  
5 include them at this time. I have copies.

6 CHAIRMAN RIGLER: The Board would not venture to  
7 make that a Board exhibit.

8 MR. STEVEN BERGER: Can I have a moment?

9 I will not introduce those documents at this time.

10 CROSS-EXAMINATION (continued)

11 BY MR. STEVEN BERGER:

12 Q I direct your attention to pages 2030 and 2031 of  
13 the transcript of December 11, 1975.

14 A Yes.

15 Q Referring you to line 25 on page 2030, the  
16 Chairman asked you the question: "I had a question going  
17 back to something you said earlier. I think from the Board's  
18 point of view, it would be very important, and I want it  
19 crystal clear. Did I understand you to testify that  
20 Ohio Edison refused to make available base load power,  
21 including power from Davis-Besse and Perry if that power  
22 was to be resold by the members of the WCO group to present  
23 industrial customers of Ohio Edison?"

24 You stated, "I would say the answer to that  
25 question is yes, considering all of the conditions which

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1 applied along the line all the way back to that industrial  
2 customer. The answer would be yes. They refused to do that.

3 After a comment by myself, the Chairman said,  
4 "Mr. Lyzen, from your answer to my last question, would it  
5 be correct to conclude, then, that there would be restrictions  
6 on the resale by WCO members of power obtained from Davis-  
7 Besse or Perry if the only alternative proposed in the Beck  
8 study by Ohio Edison were adopted?" Do I understand that  
9 your answers to the Chairman's questions on those pages,  
10 2030 and 2031, are based upon your understanding of the  
11 contractual provisions in the contract restricting the City  
12 from extending their service to existing customers of Ohio  
13 Edison?

14 A I would say yes, that I had that understanding and  
15 incorporated that in my thinking in answering the question

16 Q You have earlier stated that the provision in the  
17 contract which prevented the extension of the City's primary  
18 lines outside the City without the company's consent  
19 inhibited the growth of the City's electrical system; is that  
20 not correct?

21 A Yes, I said it did.

22 Q Can you give us the specific instances in which  
23 the City's growth of its electrical system was in  
24 fact inhibited in terms of its growth by virtue of the  
25 contract provision?

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1           A       The specific instance was the knowledge that if  
2 we wish to extend or expand our system in those areas, we  
3 would have to owe the company something in return. I was  
4 told on each occasion when request for service was made,  
5 that a customer would have to be at some future time given up  
6 by the City. Certainly we did not look forward to this  
7 day of reckoning. We did not wish to become further  
8 indebted to the company. So we did not pursue expansion  
9 of our system. The expansion came about in a limited  
10 fashion on the basis of people just walking in and asking  
11 us would we serve them. We did not go out and seek any  
12 additional customers because of the contractual provisions  
13 that existed.

14           Q       You did, nonetheless, on a number of occasions,  
15 ask the company's consent to serve?

16           A       Yes, on a number of occasions.

17           Q       And on how many occasions do you recall you did  
18 so?

19           A       I would say five or six. I can't recall that  
20 number because they were intermittent and between one another  
21 so far that I just can't accumulate all of the numbers.  
22 That is all I had.

23           Q       And the company granted their consent in all of  
24 those situations?

25           A       No. They denied our largest request, which was

7mil 1 for approximately 14 customers in the Sharon Park Estates.  
2 They granted all the individual requests on a customer basis,  
3 one-for-one basis, but the large extension we requested,  
4 they refused.

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Q Now, you said the fourteen residential customers in the Sharon Park Development was a matter you wanted to extend your facilities to?

A Yes.

Q Are there fourteen customers in the Sharon Park Development?

A There are fourteen lots right now for development. There is presently only one customer there at the moment.

Q At what time did you ask for the extension into the Sharon Park Development?

A I can't recall that.

Q Approximately?

A I would guess sometime early in '72. I am not sure.

Q If you had in fact been granted the extension and, as you have testified, only a single residential customer was developed in this area, would you regard that as being a very prudent extension of your primary lines?

A Probably would not have extended it immediately. We would have allowed the developer to demonstrate his development and we would have done so on a phase basis rather than going in and installing all of the underground facilities for the entire development in advance.

Our underground construction program would have taken a little different approach.



jon2

As I mentioned earlier, we have different philosophies about underground extensions and compensations, et cetera.

I would say that we would still be interested in serving that area. We would have even knowing it wasn't going to proceed with -- in a rapid manner. We would still like to have that in our service area.

Q How would you have served the one customer if you hadn't extended your facilities?

A We would have extended them to the extent they could have demonstrated they would build that one home.

Q Won't that be the principal capital expenditure involved?

A There was much more required than just the extension to serve that particular home. We would probably be able to serve that home in a different manner than the company was required to serve it. They had to -- they could not utilize our lines.

Our lines perhaps are in a position to be able to serve it in a different manner.

What I am saying is I can't testify that we would have made the same extensive capital expenditures that the Edison was required to make to serve those lots because of our existing facilities.

Q This was the situation that you described, and you

correct me if I am wrong, that the company's underground policy or position with regard to serving the Sharon Park Development served as an enticement to the developer and therefore Ohio Edison got the load rather than the City of Wadsworth getting the load because of its policy with regard to making underground service available on a perhaps different cost basis; is that correct?

A Yes, that's correct.

Q What is the policy of the City of Wadsworth with regard to the extension of underground service and who bears the cost for the extension of that service?

A The City of Wadsworth basically.

I will describe a principle. I won't make dollars and cents representations. I don't have that in my head.

The principle is that the city and the city's electrical system will bear the cost of what an overhead construction would cost in the area. The development would bear the cost differential between underground and overhead, thus assigning the added cost to putting it underground to the specific development rather than to the system.

That is the basis on which the charges are allocated.

Q How long has that policy been in effect?

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A Since we started to construct underground -- it was before my time. It preceded my time with the city. I can't speak for that.

Q It has continued up to the present time?

A Yes. One of our problems we deal with it consistently in all areas of the system both inside and out. We could not make a special arrangement for somebody outside the city that we weren't willing to make for customers inside the city.

Q Are you suggesting, or did you suggest when you testified earlier in terms of the company anticipating development by granting or by providing underground service to that customer that the company had done so on an ad hoc basis if you will and would only have provided underground service in the way that they provided it in the Sharon Park situation because they were in a competitive situation?

A I would have no way of making that assertion. All I am stating is that this is the situation that exists. How I came to saying that I felt this was the circumstance was I talked to the developer involved and he told me this was what his reason was for wanting service by Edison.

Q The City of Wadsworth has a consistent policy for the extension of underground facilities inside and outside. Does the Ohio Edison Company have an inconsistent policy in regard to the extension of underground in competitive

jon5

situations and in situations where there is no potential for competition?

A I don't wish to make that assertion. I have no thorough knowledge of their policy other than the information that was given to me by the developer suggesting that our charges were too high, that he was able to get a better deal from the Edison.

I didn't go into the details of his dealings with the Edison. I discussed it with Mr. Henry of the Ohio Edison on a very brief basis and could not understand why the company would want to make a tremendous expenditure of the line extension, doubling our facilities, just to serve this customer.

That is the extent of my knowledge on the subject.

end5

mail 1 Q Other than the Sharon Park Development, is there  
2 any other situation where the City of Wadsworth was precluded  
3 from the extension of their primary facilities?

4 A Not to my knowledge, I can't think of any at the  
5 present time.

6 Q But in the eight years you were there, this was  
7 the only situation you can recall that the growth of the  
8 City's system was in any way inhibited?

9 A No, I didn't say that. I said that was the only  
10 time where we made a request that we were denied. I  
11 feel that the City's growth was inhibited by the fact that  
12 we could not actively pursue without having the knowledge  
13 that we were going to have to pay back and under what terms  
14 to pay back we were not sure at that particular point in  
15 time. We didn't find out until we actually made a pay-back.  
16 I feel that the existence of the restriction inhibited  
17 our growth and our growth policies in those areas.

18 Q Let's talk about banking, Mr. Lyren. In the  
19 nine years that you have been with the electric system of the  
20 City of Wadsworth, how much existing customers of the  
21 City of Wadsworth have been transferred or has  
22 service been displaced by Ohio Edison that were  
23 theretofore being served by the City of Wadsworth?

24 Strike that.

25 Other than the situation involving the Winklers

2mil 1 in the annexed area in the City of Rittman, can you recall  
2 of another instance during all of the time you were there  
3 when existing customers of the City of Wadsworth were, if  
4 you will, transferred to the existing system of Ohio Edison  
5 Company?

6 A No, that particular contract or that particular  
7 transaction balanced our account, the one you described.  
8 So the answer would be no. I can think of no other than  
9 that.

10 Q This situation involved both the Sky Park  
11 Development and the annexed area in the City of Rittman. Is  
12 that correct?

13 A I believe it also involved some area outside of  
14 the annexed area of the City of Rittman. It was in the  
15 township that was there. I haven't referred to the map for  
16 many years. I can't recall the exact -- I can't state that  
17 it was all within the City of Rittman. I know there was a  
18 portion of it in the City of Rittman. I'm not sure it  
19 was all in the City of Rittman. You are speaking of the  
20 correct transaction.

21 Q I realize that, but you will have to be more  
22 specific in terms of giving me your understanding of whether  
23 or not the customers that were involved in the Sky Park  
24 Rittman transaction, if we can use that terminology,  
25 and I think we understand what we are talking about.

3mil

1 whether that was involved there were existing customers of  
2 the City of Wadsworth that were located in any area other  
3 than the annexed area of the City of Kirtman.

4 A I don't -- I can't answer the question. I  
5 don't know if each of the homes given over to Edison were  
6 in the City of Kirtman or in Gilford township. I'm not  
7 certain.

8 Q Do you recall that there were three customers  
9 involved in the City of Wadsworth?

10 A Do you have a document that shows three? I  
11 would agree with three if I were shown a document. I don't  
12 remember.

13 Q Do you recall the name Winkler?

14 A They were involved, yes.

15 Q There were three Winklers, were there not?

16 A There could very well be. I don't know. When  
17 you have 6900 customers --

18 MR. STEVEN BERGER: Your Honor, I would like to  
19 have marked as Applicant's Exhibit No. 13(OE-PP), Document  
20 No. OE-8, which is being introduced on behalf of Ohio  
21 Edison and it is a three-page document that clearly we will  
22 concede these are three separate letters sent to three  
23 different individuals, but in effect they're identical  
24 letters other than the names. For purposes of simplifying  
25 the record and not cluttering it up, we have included all three

RIGLER: They will be so identified

(The document referred to

marked Applicant's Exhibit

12(OE-PP), for identification

SEVEN BERGER:

I direct your attention to the  
of the page, to Mr. Ben Winter on  
Winter, Jr., on the second page, and  
the third page, and ask you if that

s.

Your attention specifically to  
paragraph, which states due to  
of Pittman Corporation in 1934  
responsible for you to be served by  
the Ohio Edison Company.

explain what you intended to say  
you said it was more fees for  
Ohio Edison than by the C&E

was borrowing a term from Ohio  
if we accumulated some cases that  
le with the company, there to us  
a better start talking at some



4mil

1 as a single exhibit.

2 CHAIRMAN RIGLER: They will be so identified.

3 (The document referred to was  
4 marked Applicant's Exhibit No.  
5 12(OS-PP), for identification.)

6 BY MR. STEVEN BERGER:

7 Q Mr. Lyren, I direct your attention to the signa-  
8 ture at the bottom of the page, to Mr. Sam Winkler on the  
9 first page, Fred Winkler, Jr., on the second page, and Mr.  
10 Harold Winkler on the third page, and ask you if that is your  
11 signature?

12 A Yes, it is.

13 Q Directing your attention specifically to the  
14 second to the last paragraph, which states due to the  
15 extension of the City of Rittman corporation limits in your  
16 area, it is more feasible for you to be served from the  
17 Rittman District of the Ohio Edison Company.

18 Would you explain what you intended to convey  
19 to the Winklers when you said it was more feasible for  
20 them to be served by Ohio Edison than by the City of  
21 Wadsworth?

22 A Well, it was borrowing a term from the Ohio  
23 Edison people. After we accumulated some customers that  
24 we needed to reconcile with the company, they came to us  
25 and suggested that we better start talking about some

5mil 1 customer trades to balance the books. They didn't like the  
2 idea of us getting so far ahead in customer credits.  
3 They suggested we look at areas of our system that were  
4 sticking out like fingers into their system or extremely  
5 close to their system where they could easily take them  
6 over and felt that these were areas that we should look at.  
7 This was one of the areas and there were a number of others  
8 that we did examine. This letter represents to the people --  
9 we did not, of course, tell the people we had negotiated  
10 their service to the Edison. We felt the approach that was  
11 given in this letter was much more diplomatic and did give  
12 them a reason for the customer transaction. So it was more  
13 feasible -- the City of Rittman was served by the Ohio  
14 Edison Company predominantly. We used that as an explanation  
15 of why we were transferring them, although there was  
16 certainly much more to it than that.

17 Q Is there home rule in the City of Rittman?

18 A Yes.

19 Q Did you envision any difficulty in having the  
20 City of Wadsworth serve in another incorporated city?

21 A Not necessarily. I never thought about it.

22 Q How would the rates be established?

23 A I would not be able to answer that question  
24 without a research or have somebody counsel me on it. I'm  
25 not familiar with the law in that respect.

6mil

1 Q Don't you view this as analogous to a situation  
2 where the City of Wadsworth might annex an area to its  
3 system and appropriate the facilities of whatever power  
4 supplier was serving there and supplant them as the power  
5 supplier?

6 A No, I don't. If the City of Rittman had an  
7 electrical system, I would. I know of no instance where a  
8 municipality appropriated inventory for a private utility  
9 company to expand into, even if it was inside the City.  
10 This didn't enter my thinking at all.

11 Q You didn't envision any operational difficulties  
12 in serving in the City of Rittman?

13 A No, I didn't. Not in this area. In fact, I  
14 hated to give these three customers up. They were very good  
15 customers. They were farm customers with high consumption  
16 of kilowatt hour sales. Demand was very good. Their peak  
17 demands were opposite of our system peaks in many cases.  
18 They were very good loads for us.

19 Q Let me ask you this question: You say these  
20 were very important customers to you?

21 A I didn't say they were very important. I said  
22 they were very good customers.

23 Q Very good customers, excuse me. The Rittman  
24 situation was directly related to the Sky Park situation,  
25 is that correct?

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A Yes.

Q I direct your attention to page 1949 of the transcript. That is on December 10. More specifically to line -- sentence beginning on line 13, wherein you state, "The Sky Park Development was one of an underground construction. One of our concerns was as we started to extend this primary underground for just one phase of the development that really we should be talking about the entire undeveloped area."

What did you mean by that?

A I meant that when we went to serve a property underground, we were getting ourselves in a little bit of a box if we did not have some assurance that we were going to continue to serve the entire development. The law I'm talking about is predominantly an engineering situation. In other words, we have to know on a given circuit how many homes we plan on serving so that that circuitry can be properly engineered and placed so that it doesn't have to be replaced in the future if more load comes on that circuit. So we were interested in the Sky Park area because the company had granted us previously a request to serve a portion of the development or the development as it was proceeding very slowly. We wanted that to incorporate in our discussions with the company with regard to the customer trade, the idea of trading territory as well as

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customers. That really goes hand in hand. When you trade a farm parcel, it has maybe 1000 foot of frontage. The potential for development of that customer is maybe 10 lots. So we felt if we were going to give up that kind of a customer that we also should be getting more than just equalizing the contract itself that had been contemplated, but also some land area associated with those developments. This would make it more feasible for us to engineer the process and engineer the development.

6

7

Q What you were really trying to do was that the City of Wadsworth was looking to even off territories here?

A We knew the company wanted those three customers. We knew the three customers they had suggested so as we give them included a tremendous amount of advantage and development potential.

We did not think it a fair trade on a customer basis until we could somehow get an equal amount of development potential traded in the transaction.

Does that answer your question?

Q Let me ask you this: if the Ohio Edison Company had come to you and said we would like to serve the three customers in the recently-annexed area of the Kirtman District and that was all they said, what would the City of Wadsworth have done?

A Said I am sorry but we don't want to give you those customers.

Q I refer you to NRC Staff Exhibit Number 39 which is a letter from yourself to Mr. Haury. I direct your attention --

A I don't have a copy of the letter yet.

Q The third paragraph states in consideration for same the Ohio Edison Company agrees to pay the City of Wadsworth the inventory price of the existing pole line and appurtenances and further agrees to permit the City of

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Wadsworth to serve all present and future customers in the Sky Park Development -- now, are you telling me were it not for the agreement on the part of Ohio Edison Company to permit the City of Wadsworth to serve the future customers in the Sky Park Development and to agree not to compete for those customers in the future, that the City of Wadsworth would not have allowed the three Winklers to be transferred to the Ohio Edison system?

A I wouldn't have considered it a fair trade because of the tremendous development potential of the Winkler farms in the future because of the road frontage. It wasn't a good trade in the absence of additional consideration.

I would say we wouldn't have considered that trade.

Q It was a trade. It wasn't a payback of the bank, was it?

A A trade included compensation for the customers that had already been taken. The discussion would never have come up unless the company had approached us about getting our account in order.

Q The question I asked you was that you would not have given Ohio Edison the three Winkler customers if they had only come to you and said we granted you the right to serve certain customers pursuant to the contract and we are here asking you for the three Winklers in the recently-annexed area in the

City of Rittman, you wouldn't have consented to that? You testified to that? correct?

A Exactly.

Q It was the future development of the Sky Park area that really enticed the City of Wadsworth to enter into the contract for the Rittman-Sky Park exchange, is that right?

A That is incorrect.

Q Tell me what is correct.

A First of all the enticement to enter into the agreement was the obligation that the City had assumed upon taking customers from the Edison or gaining permission to serve customers that the Edison had the contractual right to serve.

That was the major enticement to enter into any agreement with the company.

In entering into an agreement all of our interests had to be considered, what customers we were going to replace the customers we had gotten in the past. The Windler customers became of primary interest to the company. They suggested those three customers as compensation for the ones we had already attained.

We suggested that that was not a fair exchange of customers as a payback. It was just not fair because of the type of customers that they were as well as the potential future development area along the frontage of the road.



So we proceeded to try to equalize the compensations and it ended up in the arrangement that you described or has been described here.

I would say the motivation for accepting the thing from the very beginning was the fact that we had to pay back the customers we had acquired in the past.

CHAIRMAN RIGLER: Mr. Lyren, let me ask this question. If it were not for the existence of the agreement, could you have served both Sky Park and kept the Winklers with their potential for development?

THE WITNESS: Absolutely.

BY MR. STEVEN BERGER:

Q You would have served the Sky Park Development without -- I am not talking about the consents that the company granted to you prior to the signing of the agreement involving the Sky Park-Rittman exchange.

You are saying you would have served Sky Park?

MR. CHARNO: Could I have that question read back?

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

MR. CHARNO: Could I ask that that be rephrased? I am not sure I understand the question.

CHAIRMAN RIGLER: I am confused between the use of the word could and the use of the word would in that.

MR. STEVEN BERGER: We will move on.

BY MR. STEVEN BERGER:

Q Mr. Lyren, you mentioned in connection with the extension of primary an industrial customer by the name of Ohio Brass; is that correct?

A Yes.

Q Would you state the circumstances involving -- the situation involving Ohio Brass again for us?

A I would like to refer to the testimony I gave to refresh my memory.

Can you direct me to that?

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

BY MR. STEVEN BERGER:

Q To the best of your recollection.

A I can't remember the situation I discussed in my previous testimony. I remember bringing it up. I can't remember in answer to what question or on what subject we were involved with.

Q Would you tell us what Ohio Brass is?

A Ohio Brass is a research center testing transformers and electrical components of like variety. I am not totally familiar with the complete operation. They do a lot of testing. They have a large tower that simulates lightning and that is all I can say about it.

Q Did the City of Wadsworth ever consider extending

electric service to Ohio Brass?

A They were outside our service area.

Q That is not responsive. You have a lot of customers outside your service area.

A At the time they were built, no, we did not consider, because they were outside our service area.

Q What is your service area?

A It was beyond the point where our primary existed. So we could not serve it without a request from the company to provide service.

Q Well, there have been other situations that you have described where it was beyond your primary facilities but you nonetheless asked the company for their consent to extend their primary. Did you consider doing so in the Ohio Brass situation?

A No, and in fact, as I testified, we did not consider doing so in a premeditated fashion with regard to any of the other customers. All of the other customers came to us and asked us to serve them. It was only after this request that we pursued the line of asking the company if we could serve. We never got any request from the company to provide service and did not do so.

MR. LESSY: You never got a request from Ohio Brass Company to do so?

THE WITNESS: Right.

BY MR. STEVEN BERGER:

Q On page 2052 of the transcript, if you will take a look at that. The second question on that page is can you give us an example of one instance where you might have been precluded from including a customer because of a restriction in a contract. You answered in the case of Ohio Brass Company we would have been in a position to bid for service to the company had we been in a position to extend our facilities and had a rate structure that was competitive to the company.

Is that your testimony?

A Sure.

Q Were you in a position to extend service to Ohio Brass?

A No, because we did not want to get involved in paying back the customers.

Can you imagine how many residential customers we would have to give to the company to compensate for serving Ohio Brass?

Q How far were the primary facilities of the City of Wadsworth from the Ohio Brass Company?

A I am not sure. I would say maybe a thousand feet.

Q A thousand feet?

A It is on the other side of 70.

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Q You won't say you were two miles away from Ohio Brass Company?

A Absolutely not, not to their property.

Q At what voltage would you have had to serve Ohio Brass?

A I have no knowledge of their voltage requirement at this time.

Q Didn't you earlier testify that you would have had to serve Ohio Brass at 69 KV?

A I did not.

Q Would you accept that service to Ohio Brass would have had to be extended on a 69 KV line?

A No, I wouldn't accept that.

Q Accepting it subject to check that it would have to be on 69 KV basis, can you give me a capital expenditure that would have been necessary for the City of Wadsworth to extend its primary facilities to Ohio Brass?

A I couldn't answer.

MR. LESSY: I wouldn't object to that question if it is clear on the record it is a hypothetical question.

CHAIRMAN RIGLER: Did the witness answer the question?

THE WITNESS: I can't answer the question.

CHAIRMAN RIGLER: Let me ask you a question at this point.

If the agreement between Ohio Edison and Wadsworth were not in effect, would you in your capacity with the city have been interested in exploring with Ohio Brass the possibility of extending service to it?

THE WITNESS: Absolutely. Exactly.

CHARIMAN RIGLER: I want to make sure I understand this. Your testimony is that in the performance of your duties you avoided or did not pursue opportunity to go to nearby customers because you thought the agreement would prevent you from supplying these customers even if they agreed to take service from the city?

THE WITNESS: Yes. In fact the agreement was in effect in the period we are talking about. It was prior to 1972 or prior to 1973 whenever the agreement was still in effect.

MR. SMITH: Didn't you testify to another question, that the Ohio Edison rate 31 was lower than what you paid Ohio Edison?

THE WITNESS: Yes, that is a fact. We would still pursue it if we didn't -- I can't say that one of the elements or the other -- whether it took both of them to preclude it or whether one would have precluded it.

Had we still had a rate problem which we do, and we did, would that have been enough not to entice me to go out and obtain that customer, I don't know. And

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not given the opportunity to make that decision, I just don't know.

MR. SMITH: I would like to ask a few more questions along this line.

Going back to your individual customers like the Winklers, what was Ohio Edison's rate to them relative to your rate to them?

THE WITNESS: Our rate was lower than Edison's rate.

MR. SMITH: So then if you -- when you wrote them the reason that you were switching, you were telling them it was for feasibility. Was there concern on your part to advise them that they had simply been traded away?

THE WITNESS: There was a concern. I didn't know exactly how to -- I knew how to tell them -- I didn't know that we should get involved in the intricacies of the background of the customer trade.

I anticipated problems with the customers because of their higher electric bill, but there didn't seem to me to be an alternative acceptable to all of the parties.

What customer is going to want to be put on the Edison system if it means a higher rate?

MR. SMITH: You were reluctant to tell these customers that the reason was that you had to repay the bank?

THE WITNESS: That's right.

CHAIRMAN RIGLER: Is this a good opportunity to have a five-minute break?

(Recess.)



12/11

1 MR. STEVEN BERGER: Your Honor, I have not the  
2 admission of Applicant's Exhibit 13 into evidence.

3 CHAIRMAN RIGLER: Without objection, it will be  
4 entered into evidence as Exhibit No. 13.

5 (The document referred to,  
6 heretofore marked Applicant's  
7 Exhibit 13(OB-PE), Box  
8 identification, was received  
9 in evidence.)

10 BY MR. STEVEN BERGER:

11 Q Mr. Lyren, you stated that the City of Wadsworth  
12 has no alternative source of bulk power supply. Would you  
13 tell us what efforts the City of Wadsworth has made with  
14 regard to securing an alternative bulk power supply source?

15 A The only thing that comes to mind is the  
16 agreement by the City to become part of a study of -- along  
17 with the other members of WCOE.

18 Q You have mentioned other bulk power supply  
19 sources at some point in your testimony, specifically  
20 Niagara Power, Buckeye Power, Ohio Power, and some unknown  
21 sources for peaking power, I believe. The City of  
22 Wadsworth has made no direct contact to any of these sources  
23 for purposes of determining the availability of these  
24 alternate sources of supply?

25 A The City of Wadsworth is also a member of

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2mil 1 AMP-Ohio, which is investigating or has been trying to secure  
2 the PASNY or Niagara Power through PASNY arrangement  
3 injected into Ohio, and as a member of AMP, we would like  
4 to be considered for that source of power if and when it  
5 becomes transferable into the State of Ohio, and we have been  
6 involved as a member of AMP in that matter.

7 Q Do you know how much power is available from that  
8 source?

9 A I think it is 30 megawatts.

10 Q Do you have an understanding as to how that would  
11 be distributed among the various members?

12 A No. I don't think any conclusion has been made  
13 there. I think the first problem of the day is making it  
14 available on a transmission basis into the State of Ohio.

15 Q Let's get into that question, Mr. Lyden.  
16 Referring you to Staff Exhibit No. 30, that is Mr. Stettin's  
17 letter of August 11, 1972.

18 MR. LESSY: Does the witness have a copy?

19 THE WITNESS: I don't have a copy.

20 BY MR. STEVEN BERGER:

21 Q You testified on direct examination about the  
22 four questions posed at the bottom of the first page.  
23 Take a look at the second page, and I'm referring to  
24 where it states your answers to those questions are  
25 important to us, for they have great bearing on the pending

3mil 1 rate increase proceeding.

2 First, let me ask you, this letter was sent prior  
3 to the settlement reached in the rate proceeding; is that  
4 correct?

5 A. That's right.

6 Q You also testified that there was no response to  
7 the Stout letter; is that correct?

8 A Some of the questions weren't specifically  
9 responded to.

10 Q I'm saying there was no letter response to the  
11 August --

12 A No, not that I'm aware of.

13 Q In light of what was stated on page 2 of Mr.  
14 Stout's letter, did you expect, after the settlement agree-  
15 ment, that Mr. Stout's letter would be responded to?

16 A I really didn't anticipate that it would have  
17 been responded to at all.

18 Q Thank you.

19 CHAIRMAN REGLER: Why not?

20 THE WITNESS: Because I had knowledge of the  
21 company's attitude in this question and didn't really feel  
22 they were going to respond one way or the other.

23 BY MR. STEVEN BERGER:

24 Q What is the basis of that statement, Mr. Eyzens?

25 A I knew that the company would not wheel third

4mil 1 party power for us.

2 Q When did you become aware of that?

3 A I had that inclination from discussions with the  
4 company representatives, et cetera. It is just a general  
5 feeling that I had. You asked me did I feel I would receive  
6 a response to this letter. My answer is, I did not feel.  
7 The reason is I had this thought or image of the company's  
8 policy in this area and did not anticipate it.

9 Q That was with regard to the October 7 meeting  
10 and the August 1 meeting?

11 A No, this is with regard to this letter of August  
12 11, 1972.

13 Q I realize that. What is the basis of this  
14 inclination or impression you had?

15 A After eight years of talking to the company  
16 and company representatives, my impression was they would  
17 not respond in this area.

18 Q Did you ever go to the company with a specific  
19 proposal to wheel third party power?

20 A In what time frame?

21 Q In any time frame.

22 A I believe we did in the matter of the meeting  
23 of October 7, 1974, where we asked that that third party  
24 wheeling be considered as part of our study of alternative  
25 sources of power and were refused.

5mil 1 Q We will be discussion that in a moment. Bring  
2 to August 11, 1972 --

3 A Right.

4 Q -- did you --

5 A I didn't personally know.

6 Q Did anybody, to your knowledge?

7 A I can't think of anybody.

8 Q I would like to refer you to Staff Exhibit No.  
9 44, which is the bulk power supply study, and direct your  
10 attention under Section 1 --

11 MR. LESSY: Excuse me, Mr. Darger. Does the  
12 witness have a copy of the study?

13 THE WITNESS: No, I don't. Section 1, you say?

14 BY MR. STEVEN BERGER:

15 Q Section 1 and specifically the page number that's  
16 Roman I-2, where there are five items listed.

17 CHAIRMAN RIGLER: What page?

18 MR. STEVEN BERGER: It's a little difficult to  
19 identify pages on this study, but I'm looking at the page  
20 and at the bottom it has purpose and scope under capital B.

21 BY MR. STEVEN BERGER:

22 Q The preceding pages, the last paragraph says,  
23 "Ensuing negotiations with the company resulted in a settle-  
24 ment of the case without a hearing. The principal  
25 considerations by both parties in the settlement were as

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1 follows:"

2 And I'm reading, now, No. 5, and it states,  
3 "The company and WCOE would undertake a joint study of the  
4 engineering, financial, and legal feasibility of an arrange-  
5 ment whereby the municipalities would be able to participate  
6 directly with the company in bulk power supply facilities.

7 "If such a study should demonstrate feasibility  
8 of a plan, the company would cooperate with the WCOE to put  
9 such a plan into effect."

10 Is that your understanding of what the settlement  
11 agreement contemplated?

12 A The settlement agreement had a memorandum of  
13 agreement. I would like to refer to that -- memorandum  
14 of agreement is specifically what was entered into in the  
15 contractual arrangement with the company.

16 Q My question to you is, is this your understanding  
17 of what WCOE and the company agreed to in the settlement  
18 agreement? We will be referring to the settlement agreement.  
19 I'm asking you right now is this your understanding?

20 A Yes, in part, it is.

21 Q It is in part?

22 A Yes.

23 Q What part is it not?

24 A I feel that we should also study the feasibility  
25 of third party wheeling and taking advantage of third party

7mil 1 sources. That is why it was included in our first meeting,  
2 in the letter submitted for purposes of discussion at that  
3 meeting that we actually incorporate that. It wouldn't  
4 have been in there if we didn't feel it should have been in  
5 there.

6 MR. STEVEN BERGER: Can I have the question  
7 repeated, please?

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

10 BY MR. STEVEN BERGER:

11 Q Is it in the agreement?

12 A Pardon me. I don't understand the question.

13 Q Is third party wheeling in the agreement, to your  
14 knowledge?

15 MR. LESSY: In which agreement?

16 MR. STEVEN BERGER: The settlement agreement.

17 MR. LESSY: Would the witness like to view the  
18 settlement agreement?

19 MR. STEVEN BERGER: I would like to have his  
20 recollection before we refer to a specific document?

21 CHAIRMAN RIGLER: I would like to let him use it.  
22 He started out by saying he would rely on the language of  
23 the settlement agreement. His having said that, I don't  
24 understand the thrust of the last several questions. What  
25 difference does his understanding mean if he says he will

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1 rely on the settlement agreement?

2 MR. STEVEN BERGER: He is Chairman of the  
3 WCOE. He has been on the steering committee of WCOE  
4 at the three times they have come together with the company.  
5 I think his understanding is important.

6 CHAIRMAN RIGLER: You have had three or four  
7 questions probing his understanding now, and I think the  
8 time has come to let him see the agreement.

9 MR. REYNOLDS: The direct testimony was based  
10 totally on his understanding without any agreement being  
11 introduced. It would be proper to probe his understanding  
12 on cross in order to follow up the probing of his under-  
13 standing on direct.

14 THE WITNESS: After reading Exhibit C, memorandum  
15 of agreement, I do not find that there is an inclusion or  
16 exclusion of any specific wheeling arrangement or transac-  
17 tion arrangement. It simply is conduct studies and  
18 investigations of engineering and financial and legal  
19 feasibility of an arrangement or arrangements. It isn't,  
20 in my opinion, excluded or included specifically by  
21 reference.

22 BY MR. STEVEN BERGER:

23 Q Where it states that municipalities -- that the  
24 municipalities would, by ownership in whole or in part, or  
25 by special contractual arrangement, be in a position to



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1 participate directly in the output of specific generating  
2 capacity -- what specific generating capacity did you have  
3 in mind when you signed the settlement agreement?

4 A Any and all generating capacity of the company.

5 Q Thank you.

6 Referring you to Exhibit No. 31, Staff Exhibit  
7 No. 31, which is -- that is Mr. Duncan's letter with the  
8 attachment.

9 A That is also included in the study, isn't it?  
10 I need a copy of that.

11 MR. LESSY: Do you have a copy to show the  
12 witness?

13 MR. STEVEN BERGER: I just have the one I have to  
14 work from.

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BY MR. STEVEN BERGER:

Q I should have asked that the witness be given a copy of Staff Exhibit 32. That is the attachment to the letter.

Do you have that as well?

A Yes.

Q Mr. Lyren, I believe you have testified that as to Item 3F on Staff Exhibit 32, which is on page 3, that the notation next to Item 3F was something that was placed there by Mr. Duncan at the October 7, '74 meeting; is that correct?

A That is the best of my recollection, yes.

Q Can you explain, then, how it is that the document, Staff Exhibit 31, to which Staff Exhibit 32 is attached, is marked in the left-hand column received June 26, 1974, R. W. Beck & Associates, Indianapolis, Indiana?

MR. LESSY: Is that a question?

BY MR. STEVEN BERGER:

Q In view of the fact that you have testified it was written by Mr. Duncan, this document came from R. W. Beck files and the meeting was held on October 7, 1974, how then is it that a document from R. W. Beck files has Mr. Duncan's notation on it?

CHAIRMAN RIGLER: Where is the Beck number?

MR. STEVEN BERGER: I am looking at Staff Exhibit

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Number 31 which is the cover letter itself and it states received June 20, 1974, R. W. Beck & Associates.

CHAIRMAN RIGLER: All right.

THE WITNESS: I can't answer the question.

BY MR. STEVEN BERGER:

Q Do you understand the difficulty?

A No, I don't understand the difficulty.

Q Well, is it clear to you from the face of the document that this is something that was received by R. W. Beck & Associates?

A Yes.

Q If this document was received by R. W. Beck & Associates on June 29, 1974, how does it have Mr. Duncan's handwriting on the attachment to it?

A It must be that Mr. Duncan was using a copy of the letter that he had gotten from -- if I remember correctly, at the meeting Mr. Duncan and Mr. Mayben were both present. It could have been -- I don't know the answer to your question.

Are you asking how could it have happened?

Mr. Duncan and myself secured a copy of the letter from Mr. Mayben --

Q I don't want your speculation on this. If you have no knowledge of it --

A That is not what you asked me.

CHAIRMAN RIGLER: You asked him for it.

MR. STEVEN BERGER: Let him finish his answer.

THE WITNESS: Mr. Mayben could have given Mr. Duncan a copy of the letter he had written at the meeting and Mr. Duncan inscribed thereon his comment as the meeting proceeded.

It is obvious that Mr. Duncan made available his private letter or made a copy available to Mr. Mayben or R. W. [redacted] and they received it June 20.

That is the only explanation I can think of.

BY MR. STEVEN BERGER:

Q You nonetheless still contend that that is Mr. Duncan's handwriting?

A Yes, I feel it is.

MR. STEVEN BERGER: Just give me a moment, your Honor.

(Pause.)

BY MR. STEVEN BERGER:

Q Mr. Lyren, you have testified as to the October 7, '74 meeting as well as the August '75 meeting that Ohio Edison did not want to discuss the matter of third-party wheeling because it did not believe that the settlement agreement contemplated the study of such a concept; is that correct?

A Yes.

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Q Do you recall at the -- shortly before the conclusion of the August 1, 1975 meeting that Mr. Scarut in your presence stated to Mr. White something to this effect: you realize we may be back with a specific request for wheeling and Mr. White said we will be ready to sit down and talk to you if you have a specific request?

A I don't recall that, no.

Q You don't recall any conversation of that kind?

A If I was in the vicinity, I wasn't listening.

Q I believe you were asked on a couple of occasions what was the recommendation of the R. W. Beck, the joint study that was conducted. Would you tell us to the best of your recollection what the recommended plan was?

A You want it from recollection or do you want me to refer to the study?

Q I would like the recollection.

CHAIRMAN RIGLER: What was the question?

MR. STEVEN BERGER: I wanted the witness' recollection as to what the recommended plan of R. W. Beck was based upon the joint study conducted by the parties pursuant to the settlement agreement.

MR. LESSY: The witness asked if he could refer to the study in responding.

MR. STEVEN BERGER: If he can't give me his recollection.

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CHAIRMAN RIGLER: I will let  
by memory. However, did I correctly recall  
he was discussing the study and summaries  
had notes available to him?

MR. STEVEN BERGER: Yes, I believe

CHAIRMAN RIGLER: Even his comments  
based on notes to refresh his recollection

MR. STEVEN BERGER: Excuse me

CHAIRMAN RIGLER: Even his comments  
at which time he did not have the study  
did utilize notes to refresh his recollection

MR. STEVEN BERGER: Yes, as  
were considered. But I want -- Mr. I  
Chairman of WCOE. I would like to get to  
what the recommended plan was without his  
any specific documentation.

I think it is a fair question  
Chairman of WCOE to be responding to it  
at least at first --

CHAIRMAN RIGLER: I will let

THE WITNESS: The recommendation  
with the prepayment to the company for  
the general description of alternative  
prepurchase of capacity.

1 BY MR. STEVEN BERGER:

2 Q Would that involve the existing facilities of  
3 the company, existing generation facilities of the company?

4 A No. We weren't to consider those. We were just  
5 considering new facilities that would come on line in the  
6 future.

7 Q It is your understanding of the prepayment  
8 concept that it would not involve present generating  
9 facilities of the company?

10 A Well, I believe there was a mix there of both  
11 nuclear and coal-fired plants. It would have included  
12 some of their newer plants that went on line. Huron Valley  
13 is that in existence at the moment, or is Mansfield?  
14 I can't recall specifically the names of the plants that were  
15 to be considered in that program without referring to the  
16 study.

17 Q Do you know whether or not Ohio Edison has a  
18 nuclear plant presently on line?

19 A I am not certain.

20 Q Do you know what the average cost per kilowatt  
21 hour over a ten-year period the prepayment plan recommended  
22 by R. W. Beck would have resulted in for the wholesale  
23 customers of Ohio Edison?

24 A I think it was approximately 31 mills.

25 I have to refer to the study for the exact answer.

1 Q Was that clearly the most economical plan studied?

2 A As far as we were concerned, if our assumptions  
3 were correct and our data was correct, it was.

4 Q Did you come to the August 1, 1975 meeting ready  
5 to accept the recommendation of R. W. Beck?

6 Had you already accepted the recommendation of  
7 R. W. Beck?

8 A Yes, we as a committee -- not as a group, but as  
9 a committee we had agreed at that point in time to accept  
10 their recommendation and to proceed with the matter in that  
11 fashion if in fact the company would give us their approval  
12 of that recommendation or their comments on all of the study.

13 Q Well, when the meeting was -- shortly after the  
14 meeting was convened, didn't Mr. White state that the  
15 company was agreeable to the recommended plan of R. W. Beck?

16 A No. He said that they agreed with it in  
17 principle.

18 Q What did you understand that to mean?

19 A The same thing as when we started our study,  
20 that he agreed with it in principle. We wanted them to  
21 accept responsibility. Since this was a joint study we felt  
22 the Edison Company had a responsibility for agreeing with  
23 the recommendation.

24 Q Didn't Mr. White --

25 MF. LESSY: Excuse me. I think the witness was



1 not finished with his answer.

2 CHAIRMAN RIGLER: I agree.

3 THE WITNESS: The company expressed to us that  
4 they had adequate time to check all of the documents and all  
5 of the figures, what have you, and were not willing to say  
6 that the report was factual, or representative of their  
7 thinking.

8 They were willing to accept the principle  
9 behind the prepayment plan, but that was it.

10 We expect much more than that from the company  
11 in regard to a joint power supply study.

12 Our studies all along have been altered to their  
13 requirement or at least to their demands, for example, for  
14 not including third-party wheeling. That was not included in  
15 the study and was not taken into consideration in the  
16 alternatives.

17 We felt they had a responsibility to become  
18 associated with the numbers, to become associated with the  
19 assumptions made in the study and make some definite stand  
20 on the study itself rather than say in principle we would  
21 agree with it.

22 This is why I was very disappointed that after  
23 having the study in their possession for three weeks all they  
24 could say was that the principle was something that they would  
25 accept.

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BY MR. STEVEN BERGER:

Q Let me ask you a couple of questions, Mr. Lyran. What more could have been done at the August 1, 1978 meeting other than an agreement in principle in light of the fact that the numbers that were included in the study were based upon 1972 figures?

A I think a lot could have been done. I am wondering what was done in the three weeks they had the study. The principle could have been discussed in five minutes. It was at least three weeks that had transpired. We assumed they were doing something with it.

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Q You had a scheduled meeting for August 1, 1975, to discuss the recommended plan and the basic purpose for the meeting was to see if the parties could agree in principle to the plan?

A That is not true. The purpose of the meeting was to hear Edison's comments on the alternatives and on the study.

Q What reason would there be to discuss the alternatives --

A This is the first time --

MR. LESSY: It is happening again.

CHAIRMAN RIGLER: This time the witness interrupted the question.

BY MR. STEVEN BERGER:

Q If the study was sent to the company and it contained a recommendation and you had already indicated to me that you came to the August 1, 1975, meeting with an agreement by the committee to accept the recommendation, what purpose would be served in discussing the other ideas economical alternatives suggested by the study? Wasn't the principal reason for being there to determine whether or not the company would agree to the principles underlying the prepayment plan?

A No. Let me tell you the reason why. First of all, there are other studies and other parts to this before a

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1 conclusion can be drawn totally. You will note in the  
2 settlement agreement, we talked about financial feasibility.  
3 We talked about legal feasibility. There may, in fact,  
4 be more than one alternative that we should be prepared  
5 to move forward on in the study of the financial  
6 feasibility and the legal feasibility. As a result of  
7 that thinking, I think, although we favored the recommended  
8 plan, we were not ruling out some of the other alternatives  
9 that were high on the ladder in terms of their costs.  
10 We might not be able to justify, from a financial feasibility  
11 standpoint, the alternative that dealt with the proposed  
12 of capacity. If it wasn't feasible financially or wasn't  
13 feasible legally, then that alternative would eventually  
14 have to be scrapped. I don't think we were trying to ask  
15 the company only about the recommended plan, but we wanted  
16 them to look at the whole study and we wanted their  
17 reactions to the whole study and we also hoped to come out  
18 of the meeting with an understanding that we would proceed  
19 with one or two or three possible alternatives in the  
20 ensuing studies that had to be made.

21 This is the reason that I say no to the answer  
22 to your question that we expected them to say, "Yes, we  
23 agree with No. 1; go ahead."

24 CHAIRMAN RIGLER: Mr. Eyrer, did the company  
25 understand that the WCOE group did not intend to limit the

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agenda to discussions of one particular alternative?

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THE WITNESS: I don't know what the company understood. All I know is that we submitted the study to them for their review. We had this in mind. Whether we also communicated that, I don't know.

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CHAIRMAN RIGLER: The study had several alternatives?

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THE WITNESS: That's right. It had seven altogether.

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CHAIRMAN RIGLER: Had there been discussion with the company prior to this meeting with respect to which alternative might have been preferable, between WCOE --

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THE WITNESS: Not between WCOE as a group.

14

CHAIRMAN RIGLER: Between WCOE and the company?

15

THE WITNESS: No, not that I know of.

16

BY MR. STEVEN BERGER:

17

Q Mr. Lyren, I refer you to page 1-16 of the study and ask you to read the -- direct your attention to the last paragraph.

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19

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A Yes.

21

Q It states that -- and this is when the company had before the August 1, 1975 meeting; is that correct? That was the study that was sent to them in July of 1975?

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A Yes.

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Q It states, assuming that the company finds the

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prepayment acceptable as presented in Section 7, and that complete group --

MR. CHARNO: We don't find that in our copy.

MR. STEVEN BERGER: I'm reading from the wrong piece of paper.

CHAIRMAN RIGLER: You are on I-11, I believe, Mr. Berger.

BY MR. STEVEN BERGER:

Q Assuming the company finds the prepayment proposal acceptable, as presented in Section 7, and that complete group cooperation by the municipalities as anticipated in our analysis is maintained, then alternative No. 2 is the most economically feasible plan for the WCOE to meet its future power supply requirements.

Section outlines the prepayment concept and our recommendations in detail.

Before asking you a question, I would like you to refer to Section 7 wherein R. W. Beck speaks in greater detail about this.

MR. STEVEN BERGER: With the Board's indulgence, I would like to read into the record substantial portions of Section 7. It is of importance to this witness' testimony.

CHAIRMAN RIGLER: You are referring to the section that begins, prepayment power --

MR. STEVEN BERGER: Yes.

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CHAIRMAN RIGLER: There is no need to do that.

2 We will consider the whole page and a half as reported here  
3 in the study.

4 BY MR. STEVEN BERGER:

5 Q Just referring you to the Section 7, that is  
6 Roman I-2, at least let me read into the record the last  
7 paragraph. This arrangement, being the prepayment concept,  
8 is expected to ensure the WCOE members a reliable source  
9 of power at costs which permits full utilization of the  
10 municipality's tax exempt status and not for profit  
11 principles, to the mutual benefit of the WCOE and the  
12 company, and provide WCOE an opportunity to exercise greater  
13 control over future power supply decisions and costs.

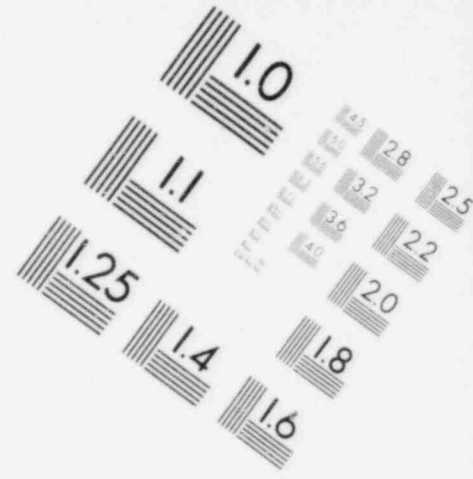
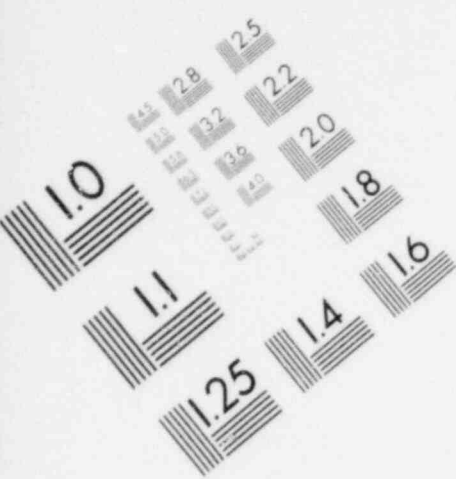
14 Now, I ask you the question that, on August 1,  
15 1975, did Ohio Edison agree in principle with all of that  
16 which I have just read from the R. W. Beck study?

17 A The only statement they made was that they agreed  
18 in principle with the study, so I assumed they agreed with  
19 everything. I just don't know.

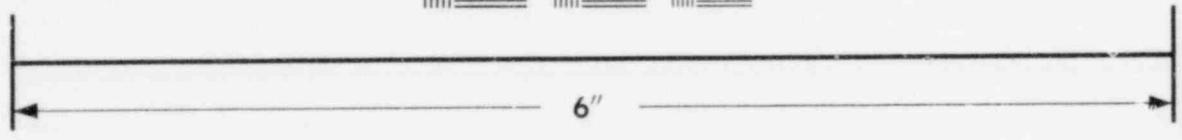
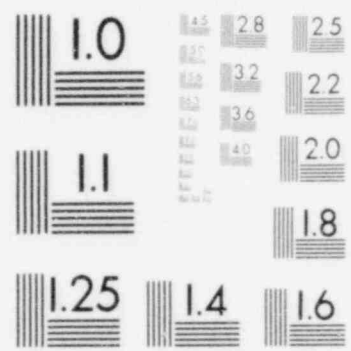
20 Q Was the R. W. Beck study based upon 1972 figures?

21 A If it stipulates in the study it was then, I  
22 would agree with it. I don't have first-hand knowledge.

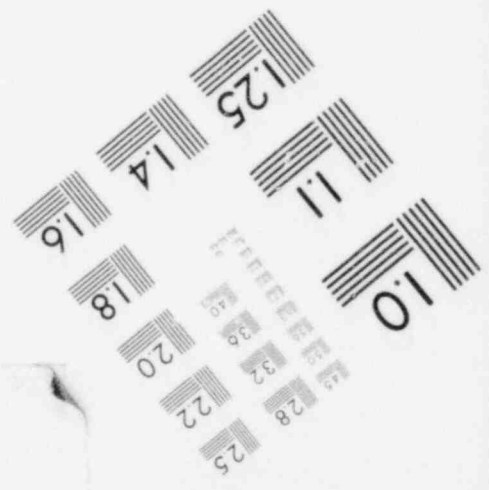
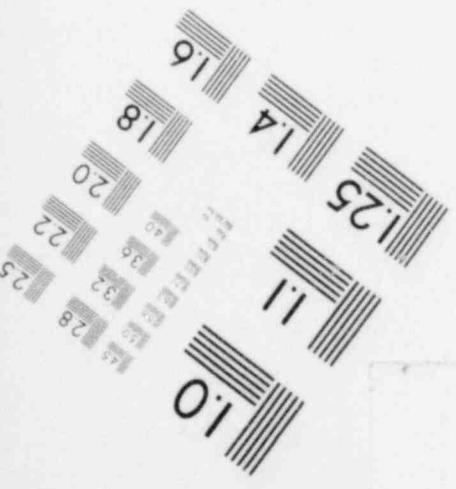
23 Q If there was agreement in principle in that all  
24 that was involved was an updating of the figures,  
25 wouldn't the important thing be the agreement in principle



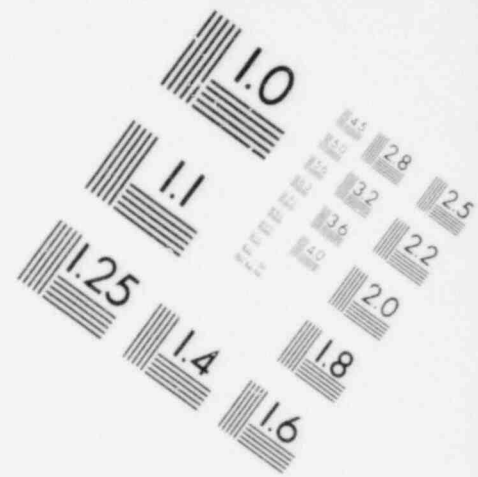
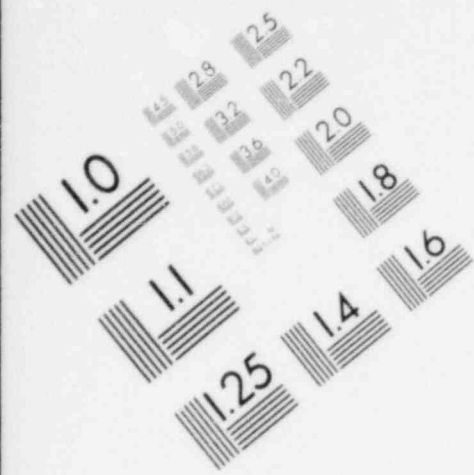
**IMAGE EVALUATION  
TEST TARGET (MT-3)**



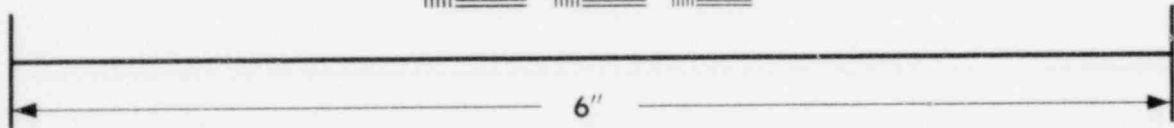
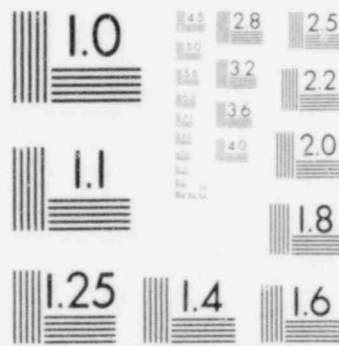
**MICROCOPY RESOLUTION TEST CHART**



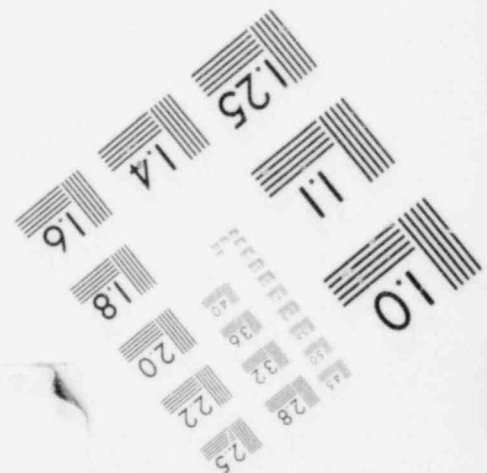
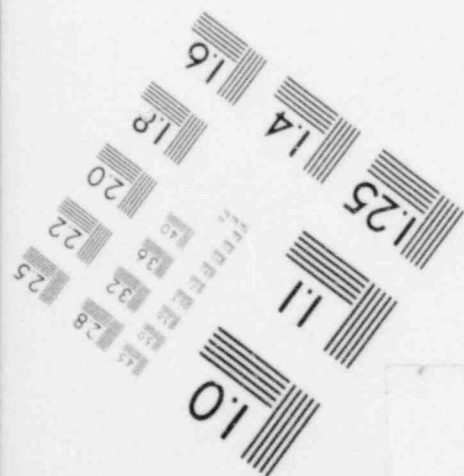




**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**MICROCOPY RESOLUTION TEST CHART**



6mil : and not the updating of the figures?

2 A Since we told them at the meeting we are not just  
3 looking at the recommended alternative, but one or two others,  
4 I don't know that I could say that they agreed in principle  
5 with every alternative that was discussed there. They didn't  
6 say anything except, I agree in principle. They were very  
7 evasive. They didn't communicate, in my opinion. They  
8 didn't tell me anything.

9 Q Did you tell them that for the first time at the  
10 August 1, 1975, meeting?

11 A Did I tell them that?

12 CHAIRMAN REGLER: Tell what?

13 BY MR. STEVEN BERGER:

14 Q That you were interested in other alternatives  
15 than the one interested by H. W. Beck set forth  
16 in the study?

17 A We said we were interested in all of the  
18 alternatives.

19 Q You told them that for the first time at the  
20 August 1, '75, meeting?

21 A No, I don't recall.

22 Q Had you met on the study before that time?

23 A Not as a group.

24 Q WOE?

25 A Yes.

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MR. STEVEN BERGER: I have a document to put into the record.

I would like to have marked for identification as Applicant's No. 14(OB-PP), Document No. OB-9, a letter from Joseph A. Herz to Mr. Stout dated August 18, 1975.

CHAIRMAN RIGLER: It will be so identified.

(The document referred to was marked Applicant's Exhibit No. 14(OB-PP), for identification.)

xxx

BY MR. STEVEN BERGER:

Q Have you seen this letter before Mr. Stout?

A Yes, I believe I have.

Q This, of course, is a letter dated 18 days after the meeting that took place on August 1, 1975, and was Mr. Herz at that meeting?

A I believe he was.

Q After that meeting, Mr. Herz still takes the position on page 2, directing your attention to the amount to the last paragraph, which states, "As a result of our analysis, we recommended the WCOB pursue the purchase power prepayment concept as outlined in the report. This method of power supply would have mutual benefits for both of us and the company and appears to be the alternative most easily implemented. A brief discussion of the purchase power prepayment concept follows."

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I don't think the Board wants me to go into that brief discussion.

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Then, directing your attention to the last paragraph on page 4, it states, "In conclusion we anticipate the prepayment concept when fully implemented, to ensure the WCO members a reliability source of power at costs which permit full utilization of the municipality's tax exempt status and not for profit principles and provide an opportunity to exercise greater control over future power supply decisions and costs."

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Did you receive a copy of this letter?

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A Yes. In fact, I'm familiar with the instructions to prepare it. The letter was prepared by Mr. Hertz and sent to Mr. Stout, the Chairman of WCOE, at Mr. Stout's request, in order to have a document that he could distribute to the entire WCOE membership for their review.

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At this point, the committee might have been familiar with details of the recommendations and what have you, but we felt it important to distribute a document that was more readable to other members of the committee.

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That was the background on which the letter was prepared and sent. I'm sure I got a copy of it.

25

Q Is the committee still prepared to go forward on a prepayment concept?

A We are still prepared to go forward on a

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1 prepayment concept. We would like also to consider some of  
2 the other alternatives because of the potential problems  
3 with financial feasibility and legal feasibility in the  
4 prepayment plan. We are extremely interested in that. I  
5 haven't meant to imply that or degrade the study in its  
6 conceptual approach to the problem. My problem is that it  
7 is only part of the way home. We have got a long way to go  
8 to improve our status further and I feel that we could build  
9 upon either one -- either the prepayment plan or one of the  
10 other alternatives to meet that situation.

11 Q You stated on your direct examination by Mr.  
12 Lessy that during the discussions that took place with the  
13 company in connection with the study, that the company  
14 recommended a blend concept rather than taking individual  
15 pieces of particular units; is that correct?

16 A I believe I testified that the company told us  
17 very clearly at the first meeting that we would not be  
18 permitted to pick and choose the units of participation,  
19 that we would have to come to some other arrangement for  
20 acquiring capacity in the units being considered for  
21 construction in their current construction schedule. That, to  
22 the best of my knowledge, is the representation that I have  
23 tried to make in earlier testimony.

24 Q Isn't it your understanding that what the company  
25 is recommending to you was an alternative which would be

10mil 1 for the wholesale customers of Ohio Edison a more reliable  
2 bulk power supply source if they sought to obtain or  
3 participate in the interest of generating facilities of the  
4 company?

5 A I believe that that is not my understanding of  
6 their reasoning for not wanting us to pick and choose  
7 in units. They did have some reasons, but I'm sorry I can't  
8 recall them exactly. I think they were set forth in  
9 documents that were prepared by Mr. Finestone, but I don't  
10 have first-hand knowledge of all of the reasons. I couldn't  
11 testify that that was the reason.

12 Q Let me ask you this question: What is the peak  
13 WCOE peak load?

14 A I think it is presently about 200 megawatts.  
15 We are planning for a 10-year period, for 500 megawatt load,  
16 but I'm not certain that that is peak. I'm not sure what  
17 those numbers actually represent. It is in the study and I  
18 would refer to the study if you wanted me to try to find it.

19 Q Assuming you were to take 200 megawatts of  
20 capacity out of Davis-Besse or Perry, how would the City of  
21 Wadsworth and the other members of WCOE go about planning  
22 for the contingency of a forced outage of the Davis-Besse  
23 or the Perry unit or the down time that would be necessitated  
24 by virtue of having to maintain those units?

25 A Hopefully through interconnection agreements

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with the company, we would have no problem at all in that area.

Q How would you pay for it?

A How would I pay for it?

Q Yes.

A The same place I would pay for the power I get in through the collection of revenue.

Q You would contemplate paying wholesale power rates for whatever you would need in the way of reserves to back up that power?

A Oh, no. You asked me for stand-by or emergency outages or something like this. We would have to have a contractual arrangement with the company that would make available power in those circumstances and a method of payment. There wouldn't be any -- it is just as if we are in self-generation and we wanted to have an alternate connection with the company to supplement our supply. That alternative certainly would be open to us, I assume if the company was willing to cooperate with us and develop a program that --

MR. STEVEN BERGER: We have another document to put in, your Honor. I would like to move for the admission now of Applicant's Exhibit No. 14.

CHAIRMAN RIGLER: Hearing no objection, it will be admitted as Applicant's Exhibit 14.

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(The document referred to, heretofore marked Applicant's Exhibit No. 14(OE-PP), for identification, was received in evidence.)

MR. STEVEN BERGER: Your Honor, I would like to have marked for identification as Applicant's exhibit No. 15(OE-PP), Document No. OE-10, a letter dated October 22, 1975, which is from Mr. Thomas Kayama to Mr. Emerson Duncan.

CHAIRMAN RIGLER: It will be so identified.

(The document referred to was marked Applicant's Exhibit No. 15(OE-PP), for identification.)

BY MR. STEVEN BERGER:

Q Have you ever seen this document before, Mr. Rigler?

A No.

Q You haven't?

A No.

Q Did you ever discuss with Mr. Duncan the fact that there was outstanding the question of assenting of a letter of intent or memorandum of understanding, and that it was incumbent on Mr. Duncan to prepare such a letter?

A I don't remember discussing that with him. I do recall that that was one of the items of agreement at the end of our August 1 meeting. There were basically two



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items of agreement at that meeting. One was the company would visit R. W. Beck's Indianapolis office, review the data utilized in the preparation of their study, so that they could be in a position to affirmatively conclude with the recommendations and the alternatives.

The other element was to prepare some kind of memorandum of understanding or memorandum of contractual or conceptual agreement that was to be worked out between Mr. Kayuha and Mr. Duncan.

Personally, I felt that the former was by far the most important of the two happenings. I was satisfied with the company's principal acceptance of the report. That wasn't anything I cared to see reduced to writing, that they were agreeable in principle. I wanted them to get into the meat of the study, numbers of the study, to find out right now whether there is any assumptions or whether they had strong disagreements with the methodology employed or in the development of alternatives.

MR. REYNOLDS: Was that the end of the witness' answer?

CHAIRMAN RIGLER: No, the witness is giving the courtesy of the moment to Mr. Sarger, who is engaged in some independent discussion.

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

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THE WITNESS: That is fine.

MR. STEVEN BERGER: May I have a moment?

THE WITNESS: I have finished. Thank you. I will stop right there.

MR. STEVEN BERGER: Your Honor, I would like to move for the admission of Applicant's Exhibit No. 15 into evidence.

CHAIRMAN RIGLER: All right, 14 is in.

I don't hear any objection, so we will permit it to be received in evidence. I tell you that I have a problem with it. If you intend to rely on it for the matters inserted therein, I have a problem. I'm referring to the one, two, three, four, fifth line down. It discussed the Beck study where it says the Beck study recommended implementation of alternate A-1 and it is the phrase, and, therefore, proposed that I would have a little difficulty with based on the Applicant's previous exhibit, No. 14 and some of the others, I'm not sure that the conclusion that a proposal, a specific proposal was made, that that has been factually established at this time.

MR. STEVEN BERGER: You don't think the Beck study and documents coming in thusfar, and the witness' testimony in regard to the documents establish that a specific proposal was made?

CHAIRMAN RIGLER: As I understand the testimony --

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and you can correct us if we are wrong, but my understanding is that a recommendation favoring one of the alternates, the seven alternatives, was made in the Beck study and that a second letter dated August 19 from Beck reaffirmed that recommendation. But the witness has testified that the WCCB group wished to explore alternate proposals, that they were interested in a gamut of alternatives and, therefore, they did not adopt or propose alternative A-1 or any other special alternative as the only alternative. That is the minor quibble I have with taking this letter as evidence of a specific proposal being "the proposal."

MR. STEVEN BERGER: Perhaps the next document we are going to introduce may shed light on that for your Honor.

CHAIRMAN RIGLER: Do you understand my problem?

MR. STEVEN BERGER: Yes, I understand it.

CHAIRMAN RIGLER: It will be received.

(The document referred to, heretofore marked Applicant's Exhibit No. 15(OE-SP), for identification, was received in evidence.)

MR. STEVEN BERGER: I would like to have marked for identification as Applicant's Exhibit No. 15(OE-SP), Document OE-11, a letter from C. Emerson Duncan, II, to Thomas A. Kayuha, dated October 31, 1975.

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CHAIRMAN RIGLER: It will be so identified.

(The document referred to was  
marked Applicant's Exhibit  
No. 16(OE-PP), for identifica-  
tion.)

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BY MR. STEVEN BERGER:

Q Mr. Lyren, have you ever seen this document?

A I believe I have a copy of it. Although it doesn't show on the document, I believe I was sent a copy of the letter.

Q Did you authorize Mr. Danson to sign a letter of intent with the company for the plan recommended by R. W. Beck & Associates?

A Could you repeat the question, please?

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

THE WITNESS: I am not sure we took formal action on that yet. I haven't seen a letter of intent and the verbiage of it.

I am sure that we would grant a letter of intent if one was prepared, but I could not unless I have the document in front of me -- could not give you my personal opinion of it.

BY MR. STEVEN BERGER:

Q You are prepared to sign a letter of intent on the prepayment plan or have one prepared on your behalf and signed on your behalf?

A Yes, but I would like more than one plan to be considered.

Q I don't understand what you are saying now. You would not enter into a letter of intent that was limited to

1 the prepayment plan; is that what you are saying?

2 A Yes.

3 Q You would not?

4 A No.

5 Q Have you ever informed the company of what

6 A No, I haven't informed anyone of that. I am waiting

7 for a meeting with the -- the first thing I would like to

8 happen is have the company respond to the proposal or the

9 study that contained several alternative plans. What I

10 can foresee us selecting two or three of those alternatives

11 for screening as far as financial and legal feasibility.

12 I can -- the knowledge that I have today would  
13 give me some question as to the financial feasibility, for  
14 example, of the prepayment plan, particularly with regard  
15 to the marketability of the plan after talking with several of  
16 bond counseling, different people in the financing profession.

17 I would want to keep open, very much so, the  
18 other alternatives. We would like very much for the  
19 company to respond to the study.

20 What I am afraid of if we don't get that  
21 element out of the way, then later on they will not -- they  
22 will bring up items of disagreement with the survey and  
23 disagreement with the development of a certain alternative,  
24 disagreement with the numbers, et cetera.

25 I would like, since it is a joint study, like

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1 that done before we proceed, but I think we are in a position  
2 to proceed once the company fulfills that obligation.

3 Q are saying you are ready to agree in  
4 principle?

5 A Oh, absolutely not. We are willing to get down  
6 to specifics.

7 Q As to the prepayment plan?

8 A Prepayment plan and Alternate Number 1  
9 perhaps Alternate Number 3.

10 There are probably two alternatives and they've turned  
11 that should be carried at least to the next step.

12 What R. W. Beck has recommended is based on  
13 their analysis from an engineering standpoint and they have  
14 not taken into consideration the financial feasibility, the  
15 ability of that type of plan to be sold to the bond buyers or  
16 to the bond market. They have not taken into consideration  
17 any legal obstacles that might be there.

18 There is no sense in us going right now to the  
19 plan exactly without doing at least preliminary work in  
20 these other areas.

21 Q Has anybody in the company told you they would not  
22 consider the other alternatives set forth in the Beck report?

23 A No, I don't think they have.

24 I think they have said they agreed in concept. I  
25 don't know what that means. We have agreed in concept.

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1 along. That is how we got as far as we are today.

2 Q Did you indicate at the August 1, '75 meeting  
3 that it wasn't only the prepayment plan that you were  
4 interested in, but you were interested in all of the  
5 alternatives and that you weren't prepared to go forward  
6 on the prepayment plan but that you wanted further study  
7 conducted of all of the other plans as well?

8 A No. I think we indicated at that meeting that we  
9 were disappointed that the company was not in a position to  
10 speak on the alternatives that were posed in the study as  
11 well as the recommended plan by the company.

12 They were not in a position to speak because  
13 they could not verify the numbers either.

14 After we heard that I knew we would not hear  
15 much more than what we had heard before.

16 Q Were you in a position to speak to the  
17 other alternatives?

18 A Certainly. Our legal and engineering people  
19 were present at that meeting. They were in a position to  
20 speak to them.

21 Q Could you tell us what their positions were in  
22 regard to all of the other alternatives?

23 A No, I couldn't.

24 Q Of the alternatives that were discussed, which  
25 was the most economic for the NCOE?



A Of the alternatives studied the prepayment plan was the most economical.

Q Which one was most easily implemented?

MR. LESSY: That needs clarification. Easily implemented from what standpoint?

MR. STEVEN BERGER: From WCOE.

MR. LESSY: Engineering, technical, legal, feasibility.

MR. STEVEN BERGER: Yes.

THE WITNESS: According to the report, the number one plan was the most engineering feasible plan. The prepayment plan was the recommended plan and was -- had these features that you have explained.

MR. STEVEN BERGER: I think I am close, your Honor. I would like to have a few moments. If we could break for lunch, I think we could finish with Mr. Lyren quickly thereafter.

CHAIRMAN RIGLER: You have only a few more questions?

MR. STEVEN BERGER: Yes.

CHAIRMAN RIGLER: Does the Staff have the afternoon witness available?

MR. GOLDBERG: Mr. Halwig is here. I am not willing to say we would put him on right now, however.

CHAIRMAN RIGLER: I encourage you to have him

ready to begin testifying at 3:00 this afternoon.

MR. REYNOLDS: If we finish earlier, I would like to proceed with the next witness. We have had ample notice that that is the way we were going to proceed.

MR. LESSY: That will be all right. We will have a little redirect. As long as we can say it would be approximately 3:00, that is okay.

MR. STEVEN BERGER: I would like to move the admission of Applicant's 16 before we break for lunch.

MR. CHARNO: Could we object to that --

CHAIRMAN RIGLER: It will be admitted, Applicant's 16.

MR. CHARNO: Department has objection to that as an incomplete document, and we have no objection to it if it is completed prior to submission.

The last paragraph makes reference to an enclosure.

MR. STEVEN BERGER: It wasn't an attachment. It was an enclosure.

CHAIRMAN RIGLER: You don't have a good argument there.

MR. STEVEN BERGER: We will make it available and make the record complete, your Honor.

CHAIRMAN RIGLER: Applicant's Exhibit 16 for identification will be received as Exhibit 16 and the enclosure

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referred to in the exhibit is to be attached.

(Applicant's Exhibit Number 16 (CB-PP),  
previously marked for identification,  
was received in evidence.)

CHAIRMAN RIGLER: Mr. Berger, you have no new areas  
of cross-examination?

MR. STEVEN BERGER: I have no new areas.

I will be glad to offer my notes and checking.

CHAIRMAN RIGLER: All right. We will reconvene  
at 2:00.

(Whereupon, at 1:50 p.m., hearing in the above-  
entitled matter was recessed, to reconvene at 2:00 p.m.,  
this same day.)

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AFTERNOON SESSION

(2:10 p.m.)

CHAIRMAN RIGLER: You may proceed, Mr. Berger.

MR. BERGER: Mr. Lyren.

Whereupon,

WILLIAM J. LYREN

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

CROSS-EXAMINATION (cont'd.)

BY MR. STEVEN BERGER:

Q You testified there were two meetings held between Ohio Edison personnel and WCOE personnel on August 7, 1974, and August 1, 1975, for furtherance of a settlement agreement and more particularly in working toward a joint study. Were there any other meetings that took place between WCOE representatives and Ohio Edison personnel?

A Yes. I can't give you the exact dates. The first meeting was the October 7, '74, meeting. The last meeting was the August meeting. In between, I would say there was probably four other meetings of the committee and representatives of the company and then there were other meetings between consultants and staff of the company.

Q How many meetings did you personally attend?

A I can't remember the exact number.

Q Was there somebody there on behalf of

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Wadsworth, representing Wadsworth at all of the meetings?

A No.

Q Was there any meetings which Mr. Clevidence attended which you did not attend?

A No.

Q Were there any meetings which other service directors of other municipalities were present that you did not attend?

A I can't remember any other meetings where other Service Directors were there. There were utility superintendents. The committee assigned to the responsibility of developing this with the company was a set committee and we did not necessarily replace a committee member who could not happen to make a meeting that was scheduled. In fact, to my knowledge, we didn't attempt to replace that person for reason of not being able to attend.

Q Were there meetings that Mr. Duncan attended that you didn't attend, to your knowledge?

A Yes, I believe Mr. Duncan attended every meeting, to the best of my knowledge, and I know I missed at least one meeting. Not being there -- I am assuming he was there.

Q Were there several meetings at which there were R. W. Beck personnel in attendance at which you did not attend?

A That's right. There were meetings set up between

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R. W. Beck's staff and the OE staff for purposes of developing some technical information and data.

Q You testified that the study was financed by WCOE. Is it your testimony that Ohio Edison had no expenses or incurred no costs in working with the Beck personnel in order to give them the information which they needed for their purposes in connection with this joint study?

A I think that when they finished review of all of the data that is in the report and can give us their recommendations along with that of the engineers, that it will be a joint study. At this point in time, we have a little more expense into it than they. I have no firsthand knowledge of what their exact expenses are.

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Q You would agree that Chlo Edison had substantial input into the joint study, would you not?

A I can't characterize it as substantial. I know they have input. Substantial, in terms of the input that has been supplied by R. W. Beck, I would say it wasn't substantial. So I guess it is a matter of definition of the word "substantial."

I wouldn't care to use that term.

Q Let me ask you just a couple more questions, Mr. Lyren.

As to the Board's Exhibit Number 1, which is your notes -- do you have a copy of them in front of you?

A Yes, I do.

Q Would you turn to page 5 of the notes and referring specifically to the answer to Question Number 20, I ask you is that your handwriting?

A Yes, I believe it is. It should be.

Q Should be?

A Yes. I think it is my handwriting. Unless somebody added that after I did and closely assimilated my handwriting. But I do remember that.

Q On page 7 of the Board's Exhibit Number 1 there is a name at the top of the page. Did you write that name?

A No, I didn't write that.

Q Do you know the circumstances under which the name

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came to be written at the top of the page?

A No, I don't.

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MR. STEVEN BERGER: No further questions, your Honor.

CHAIRMAN RIGLER: Thank you.

Is there any redirect?

MR. REYNOLDS: The Applicants are not finished yet.

Mr. Lerach has cross-examination.

CHAIRMAN RIGLER: All right. That will be it for all Applicants other than OE.

MR. REYNOLDS: Mr. Lerach will be cross-examining on behalf of Duquesne Light Company.

MR. SAUSER: At the present time I have no questions on behalf of the Cleveland Electric Illuminating Company.

MR. REYNOLDS: I would like to also, for the record, notice the appearance of Mr. Paul Smart, Fuller, Henry, Hodge & Snyder, who is appearing on behalf of the Toledo Edison Company.

CHAIRMAN RIGLER: Has Mr. Smart filed a notice of appearance?

MR. SMART: I received a call in the night last night that Mr. Michael Briley was suddenly, unexpectedly and hopefully not permanently ill. I would like to file a notice



right now.

CHAIRMAN RIGLER: I understand, but I would appreciate it if you file a written notice.

MR. HJELMFELT: I would object to any cross-examination by Mr. Lerach as being in opposition or contrary to the agreement that the Applicants examine by one witness -- by one counsel.

CHAIRMAN RIGLER: You may proceed.

BY MR. LERACH:

Q Mr. Lyren, you have mentioned two meetings, one of October 7, '74 and one of August 1, '75 which you attended between Ohio Edison and WCOE representatives.

Was anyone from Duquesne Light Company present at either of those meetings?

A Not to my knowledge, sir.

Q And there have been other meetings alluded to which you may or may not have attended.

As to any of the other meetings between OE representatives and the Wholesale Consumers representatives, which you did attend, am I correct that no one from Duquesne Light was present?

A Not to my knowledge.

Q Is it true that the Wadsworth electric system is not interconnected with the Duquesne Light System?

A Very definitely correct to my knowledge. Unless

we are getting something through Edison.

Q To your knowledge they are not connected?

A That's right.

Q Is it correct that the City of Wadsworth during your tenure there in your present position has never asked Duquesne Light to sell it power for any purpose?

A Not to my knowledge.

Q Is it simply true that during your tenure with the city the city has never requested Duquesne Light to permit the city to have an ownership interest or other participation interest in a power station in which Duquesne Light has an interest?

THE WITNESS: Could I have the question back again, please?

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

THE WITNESS: No, the city has made no request of Duquesne Light.

BY MR. LERACH:

Q And, finally, is it true that the City of Wadsworth has no contracts with Duquesne Light that relate in any way to the City electrical system, city power system?

A Yes.

MR. LERACH: Thank you.

CHAIRMAN RIGLER: Is there any redirect?

MR. LESSY: Limited redirect, your Honor.

REDIRECT EXAMINATION

BY MR. LESSY:

Q Mr. Lyren, do you have page 2030 of the transcript available?

I am going to read in the form of a question lines 11 through 19.

This is direct examination by myself.

CHAIRMAN RIGLER: Why don't you hold up on that for one minute. The Board had a question about this particular testimony and we asked the reporter to reproduce the pages in which this was discussed during cross-examination.

If we are able to get it xeroxed, we will be able to distribute that to everyone and I think that might assist in this particular line of questioning.

MR. LESSY: Do you want me to hold off on any or go on?

CHAIRMAN RIGLER: You can go to a different area if you wish.

BY MR. LESSY:

Q Mr. Lyren, you have mentioned the negotiations leading up to the 1965 contract between the City of Wadsworth and Ohio Edison. My question is: were those negotiations conducted jointly or as a group with other entities?

A To my knowledge of the subject, they were negotiated as a group where all of the cities got together and talked about it and negotiated with the company separately.

It was not individual negotiations with the City of Wadsworth.

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Q To your knowledge, is the -- are similar contracts that were and are currently in effect between Wadsworth and Ohio Edison also entered into between Ohio Edison and other municipal electric entities?

MR. STEVEN BERGER: Could I have a clarification as to "were" and "presently are still in effect"? Is he referring to the contract or certain provisions thereof?

MR. LESSY: The contract as it was in '65, in '70, in '73. The question goes to the question of whether or not the municipal electric entities were treated in a similar manner in regard to contractual provisions. If the Board wants clarification, I can do it that way.

MR. REYNOLDS: I would like the question if it goes along those lines, that we break it up, and as to each date mentioned by counsel, that the witness respond in that -- in connection with that date. I'm not sure the way the question is couched now that I'm sure it is clear what it is he is asking for. If he wants to ask the witness about a specific contract and give a specific date, I have no problems with it. I have a problem if we have a generalized question the way it was framed.

MR. LESSY: I think there is a simple answer to this. The question is -- I will rephrase the question.

BY MR. LESSY:

Q To your knowledge, were contracts

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between Ohio Edison Company and municipal electric entities reasonably similar as of any period of time between 1965 and present?

MR. REYNOLDS: I will object to that. This witness has testified both on -- on direct and cross, that he doesn't have knowledge of what the contract is between Wadsworth and Ohio Edison from '72 to the present. He is in no position to give testimony as to that particular timeframe in response to that question. I have no problem with respect to his answer insofar as the contract he says he has knowledge of. I have a serious problem to the extent that counsel is asking with respect to matters that he has already testified he does not have knowledge of.

CHAIRMAN RIGLER: I think that might be a valid objection, Mr. Lessy.

BY MR. LESSY:

Q The limitation would be during the period 1965 to 1972 or 1973.

A To the best of my knowledge, the contractual provisions were very similar in all of the contracts of WCOE members, with the exception of those that had some generation. I believe the only one in existence at that time was the City of Oberlin.

Q Do you have any comfort that the type of restrictive provisions in existence in the 1965 contract until terminated

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would never be reinstated by Ohio Edison based on your dealings with Ohio Edison?

MR. STEVEN BERGER: That question has been asked and answered. To further go into it at this time will not be fruitful.

CHAIRMAN RIGLER: I tend to agree. I will permit that one answer and then go to a different line.

THE WITNESS: I have to have the question again.

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

MR. STEVEN BERGER: I object to it, that it is clear from the witness' testimony that until he began cross-examination, he didn't even know they were out. I don't think it is a proper question in terms of asking him as to whether or not he has taken comfort between last night and today that they are out. I don't think it has a place at this point.

CHAIRMAN RIGLER: What Mr. Leszy really means is, has Ohio Edison made any assurances with respect to whether it will try to reinstitute that type of provision? I don't know exactly how much weight or relevance we can give to the answer, but I will permit it for what it is worth.

THE WITNESS: The answer to the Chairman's question would be no.

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BY MR. LESSY:

Q Mr. White's answer that was given when Ohio Edison was presented with the study that there was agreement in principle, why does that bother you?

MR. STEVEN BERGER: I think this was covered on direct examination and it is not proper redirect.

CHAIRMAN RIGLER: I disagree with you on that. The discussion about agreement in principle came out primarily as a result of your cross-examination. I think it is a fair question.

MR. STEVEN BERGER: The witness testified on direct examination specifically on this matter. If the Board wants me to find a specific page reference and give me time before the witness responds, I will.

CHAIRMAN RIGLER: It won't do you any good because I will permit the answer.

THE WITNESS: Could I have the question again?

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

THE WITNESS: I believe what bothers me is that we have spent a lot of time and money and effort trying to develop a joint study to come to a point where we have to restate our agreement in principle just doesn't seem to be appropriate. I think the principles were what we were discussing all along in our meetings, as well as our concepts



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from the very beginning of what should be attained and how we should proceed to attain it. We negotiated the parameters under which the study would be made and the alternatives would be studied, so it was not encouraging to me in itself to hear a statement that they agreed with the study in principle.

BY MR. LESSY:

Q Other than the transcript page to which I referred, I only have one more question. Are you aware of any third party wheeling arrangements that have been recently concluded in Ohio, to your knowledge, and if you do, the parties that may be involved?

A I am aware --

MR. STEVEN BERGER: I question if that is proper redirect.

MR. LESSY: I think the question of third party wheeling and delivery of power is something that has been running all through this testimony, something that there has been testimony to as to Ohio Edison's position on. With respect to this one question, assuming, for purposes of argument, that there be wheeling arrangements between investor-owned utilities and others, to the witness' knowledge it would be relevant based on the statements that the government is trying to restructure the electric utility.

CHAIRMAN RIGLER: Your redirect should properly

6mil

relate to the cross-examination of the witness.

MR. LESSY: It is related to the line of questioning wherein it was stated that Ohio Edison would consider delivering power from a source, as long as the source was a source of power in which Ohio Edison had an interest, but would not consider or discuss matters relating to delivery of power from outside sources. He has talked about the bottleneck situation, if I may characterize it as such, within the town of Wadsworth. There is an arrangement that he could testify to in his area that would go to electric utility industry practice, a recent arrangement, although slightly beyond the scope of direct, is very relevant to the examination and direct cross-examination.

We did not ask on direct if he knew of third party wheeling arrangements. Desirability of wheeling was asked and possible sources of wheeling were asked and the answer to this question may indicate another desirability of source of such services.

MR. STEVEN BERGER: I object to the characterizations, several of the characterizations, all of which I can't recall at the moment without having them reread, but one for sure was the characterization that Ohio Edison refused to consider, rather than refused to discuss, in the context of a settlement -- in the context of carrying out the settlement agreement concept of the third party wheeling.

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Secondly, I think Mr. Lessy's comment itself demonstrates we are talking here about something far beyond that which third party wheeling involved, involving the City of Wadsworth, and WCOB, and Ohio Edison.

The question is broader than that, and for that reason, should be either limited or rephrased.

CHAIRMAN RIGLER: All right.

I will tell you the part of the cross-examination that I would consider it to relate to. That would be where you asked the witness about his investigation of alternate sources of power to Ohio Edison. It seems it could properly relate to those questions of yours, so I will permit it.

MR. LESSY: I would like to make one clarification.

CHAIRMAN RIGLER: It is not necessary.

MR. REYNOLDS: May I ask for a clarification?

Are you, therefore, saying that the witness may testify in response to this insofar as it relates to whatever investigations that he was asked about on the cross-examination? I believe you said it relates to the question of investigations of other sources of power.

Mr. Lessy's question, as I understand it, goes farther than that. My question is whether you are indicating that his response should also be tailored to the investigations he made with respect to other sources of power?

CHAIRMAN RIGLER: His response should be responsive

8mil           to the question as asked.

The weight, if any, the Board will accord to that answer, may be restricted, in our judgment, to the -- to cross-examination by Mr. Berger.

MR. LESSY: I think it would be helpful if the reporter read back the question.

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

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CHAIRMAN RIGLER: When I cut you off on your request for clarification, that was because I assumed you intended to continue the argument. If it is necessarily a clarifying question, I will permit you to ask it. But to the extent you were trying to continue an argument after the Board had ruled, we need not hear it.

MR. LESSY: The clarifications I made were for purposes of argument. When I referred to certain things it was in order to characterize the argument. I didn't mean to summarize or otherwise as counsel make conclusions about the testimony.

BY MR. LESSY:

Q Mr. Lyren, are you aware of any third-party wheeling arrangements arranged at between investor-owned utilities in Ohio and others that may be near the City of Wadsworth or near other cities who are members of the Wholesale Consumers of Ohio Edison?

A Yes, I am. The AMP-Ohio group that I discussed in cross-examination has entered into an agreement with Ohio Power to wheel power to third parties. They are presently constructing or completing the construction of a line into the City of Orville, which is about twelve miles south of Wadsworth, as I mentioned, who presently have total generation. So that is the only agreement for wheeling that I can think of that relates to my testimony today.

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CHAIRMAN RIGLER: Who has total generation?

THE WITNESS: The City of Orville.

MR. REYNOLDS: I just -- if I could -- I got a little lost in the days and who we were referring to. Maybe if the witness could go through that again and be more specific for the record it would be helpful.

CHAIRMAN RIGLER: All right.

THE WITNESS: AMP-Ohio has an agreement with Ohio Power. AMP-Ohio has an agreement with the City of Orville.

Does that set it up for you?

MR. REYNOLDS: You testified as to somebody building transmission lines. If you could tell us who was doing what. In terms of your prior response.

THE WITNESS: The City of Orville is building a section of line to the high power facilities and then the AMP-Ohio is handling the wheeling arrangements of Ohio Power to the City of Orville.

MR. LESSY: On the transcript page 2030 the Staff has no further redirect, your Honor.

CHAIRMAN RIGLER: All right. I would like to distribute from this morning's transcript pages 2244 through 2247 to the parties because I think this may assist all of us in this particular line of questioning.

Mr. Reynolds?

MR. REYNOLDS: Mr. Chairman, I did not and do not

intend to cross-examine the witness.

I am still a little confused as to his last response in terms of wheeling. I believe he said he left it that A. Ohio or Ohio Power has a wheeling arrangement with AMP-Ohio. I think it is important that this record is clear as to exactly what it is he considers the wheeling arrangement to be if we are going to characterize it as wheeling or else that we have the document he is talking about produced and have it a part of this record so we do know exactly what arrangement we are talking about.

I don't want to prolong the hearing, but I think it is important if they have something characterized that it is clear exactly what it is.

CHAIRMAN RIGLER: I will permit the witness to try to respond to your comment.

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THE WITNESS: AMP-Ohio went to Ohio Power and secured an agreement whereby they could purchase power from that utility and that utility would transmit the power so purchased over the utility's lines to any other source that AMP-Ohio wished to serve it to. AMP-Ohio, with this agreement inland, went to the City of Orville and made arrangements with the City of Orville to undertake the receiving of that power. It is that general situation that I referred to in my testimony.

MR. REYNOLDS: May I ask a following question.

CHAIRMAN RIGLER: It is a little irregular, but it might save time so I will permit you to do it, Mr. Reynolds.

MR. REYNOLDS: My question is whether, as you understand it, the power that AMP-Ohio is going to have "wheeled" to the City of Orville is power that is transmitted over the line that Orville has built to connect with Ohio Power. Is that what you are saying?

THE WITNESS: I'm not 100 percent clear myself on that particular part of the arrangement. I'm sorry. My inclination is that the City of Orville was building the line and -- but I'm not sure if there is any other arrangements in connection with that line extension or not on part of AMP-Ohio or OEP or Ohio Power.

MR. REYNOLDS: Is the arrangement that you are discussing or describing embodied in an agreement or contract?



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THE WITNESS: Yes.

MR. REYNOLDS: Is that agreement on file with the FPC, do you know?

THE WITNESS: It seems to me it would be necessary to have it so -- I'm not sure. I should say I'm not sure.

MR. REYNOLDS: Have you seen the agreement?

THE WITNESS: Yes.

MR. REYNOLDS: Do you have a copy of it?

THE WITNESS: I don't have it in my possession.

MR. REYNOLDS: But do you have one?

THE WITNESS: I could get ahold of one.

MR. REYNOLDS: The proper way to explore this would be to see if an agreement is on file with the FPC and if it is a public document, to proceed that way. If we determine there is an agreement in existence that is not on file, I would like to make a request at that time, if I could ask Mr. Lessy if he could see to it that we could get a copy of the agreement that has been discussed here from Mr. Lyron.

CHAIRMAN RIGLER: I think the agreement should be a part of the record. I direct Mr. Lessy to cooperate with you in obtaining one from the FPC or some other source and to introduce it as an exhibit.

MR. LESSY: We would be happy to cooperate.

MR. REYNOLDS: Thank you.

CHAIRMAN RIGLER: Mr. Lessy, while you are framing

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your question, would there be any objection if the Board asked its question? We had a substantial area of confusion with respect to the material that appears on page 2244 of this morning's transcript.

MR. LESSY: Certainly not, sir.

CHAIRMAN RIGLER: Have you had opportunity to read pages 2244 and '45 from this morning's transcript, Mr. Lyren?

THE WITNESS: Do you want me to read the whole thing?

CHAIRMAN RIGLER: The part I want you to read begins on 2244 at line 12 and continues through line 15 on 2245.

THE WITNESS: I think I'm ready.

CHAIRMAN RIGLER: This is, I think, perhaps a very important area, and the Board is in substantial confusion now with respect to your testimony. So it is important to us that we get it cleared up. If you refer to the earlier transcript at page 2014, lines 5 through 18 --

THE WITNESS: Okay.

CHAIRMAN RIGLER: -- you reviewed the testimony you gave on December 11 appearing at 2014?

THE WITNESS: Yes.

CHAIRMAN RIGLER: When I asked the question that appears on page 2030 and 2031, I was under the impression that

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your answers reflected discussions held in connection with the settlement agreement and the study. And the way I got that impression was from the testimony that was presented at page 2014 where you said, "We are talking about not purchasing in excess of our own individual" -- it says "nets." It may have been "needs." Earlier on line 8, page 2014, you said, "Just the needs of the WCOE members."

I thought the entire context there was these ongoing discussions between WCOE and Ohio Edison with respect to the settlement agreements, the study, and the seven alternatives.

When you answered Mr. Berger's question this morning, you said that you incorporated, in answering that question, the earlier agreement relating to rates and sale of electricity between Ohio Edison and the City of Wadsworth.

Do you see the source of my confusion?

THE WITNESS: Maybe I could make an explanation.

CHAIRMAN RIGLER: Do you see the source of my confusion?

THE WITNESS: Yes, I think I do.

CHAIRMAN RIGLER: All right. Please help us with an explanation.

THE WITNESS: The testimony that I reviewed on page 2014 is exactly correct in that and on that basis I will proceed to explain the connection between industrial loads and the question asked about prohibiting sale to industry within the city, that we currently do not, and that statement.

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At the time I first answered the question on 2030 and 2031 I was under the impression that also in existence at that time was a prohibitive section of our contract disallowing service of two industrial customers -- three industrial customers by the city.

I felt that that and the facts as they are related in 2014 was enough to definitely answer the question as it was answered, yes.

After yesterday's testimony and hearing the evidence that there has been in fact a withdrawal of those provisions, I felt that in response to Mr. Berger's question --

CHAIRMAN RIGLER: You mean Mr. Berger's question this morning.

THE WITNESS: This morning. That I had to agree that I had taken that into consideration in my answer on the previous day.

Does that in itself solve the problem?

CHAIRMAN RIGLER: Well, that helps to explain

some of the confusion, but it leaves us with the further question of whether during your discussions and negotiations following the settlement agreement in which you were discussing the seven alternatives proposed by the Beck organization whether Ohio Edison led the WCCS group to conclude that the only power they could get would be the power for their presently existing needs and not additional power which would enable them to go out and compete for customers outside of the city limits.

THE WITNESS: I think the way we structured our alternatives and study will indicate that there was a definite trend and also I can say in my opinion there was a -- we were influenced by the company to consider only our needs.

We got into the discussion of excess power and they made it very clear to us that they weren't going to make excess power available to us.

CHAIRMAN RIGLER: This was during the discussion and negotiations?

THE WITNESS: This was during the negotiations of the development of this power supply study, right.

CHAIRMAN RIGLER: This included the alternatives pursuant to which power from the proposed Davis-Besse or Perry units may have been included?

THE WITNESS: They are all as a group, right.

MR. STEVEN BERGER: Could I have -- unless the

Board wants to pursue it further, there is one point in the record -- I would like to have one question of clarification of the witness.

MR. LESSY: I have one question also.

CHAIRMAN RICLER: I had anticipated that both of you might have additional questions following the Board's questions.

Maybe I will take Mr. Lessey's first.

BY MR. LESSY:

Q Referring now, Mr. Lyman, to page 2039 of the transcript, the answer beginning on line 14 -- I will read the relevant part.

The answer is to my direct examination -- they haven't made that statement. They have said that we could participate in Perry as long as we did not exceed a 50 megawatt load and we also participate in all of the other plants that Ohio Edison is going to build. That was the condition under which the offer was made. It was an offer conditionally made with conditions applied.

My question is: with respect to that testimony does the 50 megawatt ceiling refer to Wadsworth or to that maximum amount that would be available to all of the Wholesale Consumers of Ohio Edison?

A It was all of the WCOE as a group.

Q How many present members of WCOE are there?

A Nineteen, twenty, in that area.

MR. LESSY: Tha completes my questioning.

CHAIRMAN RIGLER: Mr. Berger?

MR. STEVEN BERGER: Could I have one moment, your Honor?

CHAIRMAN RIGLER: You may.

(Pause.)

XXXX

RECROSS-EXAMINATION

BY MR. STEVEN BERGER:

Q Mr. Lyren, let me ask this question in regard to the Board's question. As to the question of excess capacity beyond the needs of WCOE, would you not agree that Ohio Edison did not in any way participate in that which is set forth in the study as to the growth rate of the WCOE members together or individually and that those were figures that were developed by WCOE and their individual members?

A I am not sure. This was to be a joint study. That is one of the reasons why we would like those numbers reviewed by the company to make sure that there is some substantial agreement to the study's content and the alternatives recommended.

There was meetings between the engineers of OE and our engineering consultants, meeting at which I was not present.

I am not sure here again to say that they were not

approved by the Ohio Edison or that they didn't contribute in any way to them. I don't know the answer to that question.

I do know they got information from all of the members of WCOE. I don't know what factors they applied to those numbers, if any, to come up with their end product.

Q To your knowledge did Ohio Edison participate at all in the establishment of a projected rate of growth of 9.4 percent for the City of Wadsworth?

A I do not have any knowledge that they did.

Q As to the question of excess capacity and the right to excess capacity, could you refer me to a meeting a discussion, a time and a place as to when it occurred and who said what to whom?

A The --

MR. LESSY: I wonder if we could break that down. It is a large question.

CHAIRMAN RIGLER: I think the witness can probably handle it.

THE WITNESS: I am not going to give you as good an answer if I could if I had kept track of all these things at the time they were happening, but to the best of my recollection, these discussions were held during the first, second and third meetings between WCOE and the management people.

It was at these meetings that we were discussing



alternatives of the company and most of the discussions that were held at these meetings involved direct discussion between our engineering consultants and the top officials of Ohio Edison, usually Mr. White, Mr. Firestone -- there were a couple of others that contributed in the discussion regularly.

It was one of those individuals.

There were a lot of people at the meetings that did not contribute anything at the meeting itself. That is as precise as I can be.

I am sorry I can't be more precise.

BY MR. STEVEN BERGER:

Q Are you representing to this Board that it was the position of Ohio Edison that the individual members or the Wholesale Customers of Ohio Edison as a group were not free to project whatever rate of growth they determined for themselves and to ask for that rate of growth to be included in the joint study?

A It was made clear to us from the very beginning that one of the reasons that they would consider talking to us about --

MR. STEVEN BERGER: I would like to get a specific response. I don't mean to cut the witness off. I would like to get a yes or no answer. If he wants to explain, to go on from there.

THE WITNESS: Could I have the question again?

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

THE WITNESS: No. I am not trying to represent to the Board that we did not have some input into our figures that are used in our analysis of alternatives.

What I would like to do is explain that first of all Ohio Edison has already anticipated in their program of power supply the servicing of all WCOE members.

In the process of doing that they have had also to make projections of need.

It was -- they stated to us that they were not in a position to exceed the capacity that they had already allocated for us.

It was on that assumption that we failed to consider the alternatives that would make available to us any excess in terms of our estimated need.

BY MR. STEVEN BERGER:

Q As far as the projects for WCO needs, isn't it always the case that WCOE provides Ohio Edison with their projected needs?

A I could not answer that question.

CHAIRMAN RIGLER: I have a clarifying question I want to ask of you, Mr. Berger.

As you discuss projected needs, you are talking about the load growth within the City of Wadsworth, are you

not?

MR. STEVEN BERGER: No, sir.

CHAIRMAN RIGLER: You are not. That is an important clarification.

MR. STEVEN BERGER: No load growth dealing with the load growth of the particular entity involved.

CHAIRMAN RIGLER: Your question may be a little off point in projecting the traditional load growth if you are talking about an attempt by Ohio Edison to discourage Wadsworth from going out into let's call it the "no-man's" land outside the city and trying to compete for new or even existing industrial customers?

MR. STEVEN BERGER: I know that to be the principal area of concern of the Board. I want it clearly understood, and I think the witness should be able to answer the Board's question in this regard, that isn't it clear, Mr. Lyren, when you talk about load projects that you are clearly talking about load projects that include the City of Wadsworth load inside and outside the city?

THE WITNESS: I would say so.

BY MR. STEVEN BERGER:

Q Isn't it also true that with regard to whatever load forecasts are made for the WCOE in connection with this study or others that there is no restriction whatsoever placed by Ohio Edison or no discussions that have been

had with Ohio Edison that would tell WCOE what limits they can have in terms of capacity in order to meet their needs or dictate what those needs may be?

MR. LESSY: The question has been asked and answered three times now.

CHAIRMAN RIGLER: It is extremely important, Mr. Lessy. I will let him explore it thoroughly.

THE WITNESS: Okay. I think the only way I can answer the question is that it was made very clear to us that if we were talking about purchasing capacity in excess of our needs for purposes of expansion beyond the limits or selling to third party sources they were not interested in that type of arrangement.

CHAIRMAN RIGLER: By "they" you mean Ohio Edison?

THE WITNESS: Ohio Edison.

That was made clear to us in our meetings with the company and we did not pursue that. We stuck then with our conventional approach of trying to estimate our loads based upon our previous history of development.

It was also made clear to us that Edison had somehow assembled some data either from the individual members and had capacity in these new units that were going to come on the line in the future programmed to include the needs of WCOE members.

Now, whether or not there has ever been any

comparison between what OE has incorporated in their planning for new construction and what loads they anticipate from -- to be coming from Wadsworth or WCOE, whether or not there is a match up there I don't know, but we probably would find out after the company has reviewed the load data that is in the study and then makes a comment that we agree with it or disagree with it, you are asking for too much or you are not asking for enough or whatever.

We have not heard any response to the technical aspect of the study from the standpoint of numbers yet.

BY MR. STEVEN BERGER:

Q First of all can you tell me of a specific occasion either when the City of Wadsworth or to your knowledge WCOE came to Ohio Edison and said we have a need for power to serve in a particular place and Ohio Edison said to the City of Wadsworth or to WCOE as a group, I am sorry that power will not be available to you for resale for that need?

A Outside of the context of our discussions in these negotiations and what I have already testified to, the answer to that question is no, we have not.

Q Would you define to me what you mean by needs and excess needs?

A I would say it would be power requirements that exceeded our projected normal rate of growth, in excess of that.

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CHAIRMAN RIGLER: That is a little confusing, I think. Would needs be what satisfied your current power demand plus anticipated growth for present customers?

THE WITNESS: That's right.

CHAIRMAN RIGLER: Excess would be power to supply additional customers which you don't presently serve.

THE WITNESS: I would think that our existing projects include a reasonable allowance for growth and the addition of some new customers also.

CHAIRMAN RIGLER: What would excess be, then?

THE WITNESS: Excess would be power that we could go out and try to market to another party that might be beyond the scope of our current system.

CHAIRMAN RIGLER: It was that excess power which they indicated would not be made available, which Ohio Edison indicated would not be made available to you?

THE WITNESS: That is exactly right.

MR. STEVEN BERGER: Could I get a clarification as to what excess power and to what other party you were talking about at that time?

MR. LESSY: Which time is that? I'm not clear.

MR. STEVEN BERGER: I'm referring to the Chairman's last question.

MR. LESSY: In terms of the definition of the terms -- could you read the question back, because now I'm

2mil confused.

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

CHAIRMAN RIGLER: Do you mean during the discussions and negotiations?

MR. STEVEN BERGER: That is what I think the witness is referring to.

CHAIRMAN RIGLER: Yes, all right. You are asking him if he has reference to any particular customer or particular use of the excess power?

MR. STEVEN BERGER: I'll leave that to the witness to respond to, your Honor.

CHAIRMAN RIGLER: I'm trying to get a little clarification myself. Now that I have heard it, I'm confused.

MR. STEVEN BERGER: Did he have a particular customer in mind, particular class of customers in mind, type of customer in mind, and also a particular block of power in mind in order to serve that particular class, type, or block of customer?

CHAIRMAN RIGLER: Good.

THE WITNESS: We didn't have any particular customer in mind, but we wanted to explore that. We wanted to explore and develop a quantity of power that we wanted to have made available to us. We did not pursue it because the

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company position was that this was not an arrangement that they could live with in terms of their CAPCO arrangement, et cetera. They wanted to pursue a different line in developing alternatives than allowing any excess power to flow to the WCOE. So we stopped. We didn't define it. We didn't proceed with those developments that would answer these more specific questions.

As to when, who said this and who said that, I cannot recall specifically. It kind of flows together as a general discussion. We talked four or five meetings. I don't have the recollection. It appears to me it was in the early part of our discussions, first, second, third meeting, and that is as specific as I can be.

BY MR. STEVEN BERGER:

Q Our basic problem is this, Mr. Lyren: --

MR. LESSY: Is this going to be a question?

MR. STEVEN BERGER: Yes, it will be, Mr. Lessy.

BY MR. STEVEN BERGER:

Q Our basic problem is this: There has been a problem of communication here and there may very well have been, would you not agree, breakdown in communication at the time the discussions took place that you are talking about?

A I have no reason to believe people can talk and not communicate.



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Q Who did you expect -- forget particular customer. Where was this excess power going to go? Was it going to go to another utility?

MR. LESSY: I object. I think the witness has clarified a situation here. This is certainly beyond the scope of redirect that I went into. If the Board wants to hear it, I will withdraw my objection.

Now we are trying to hone into greater and greater detail in a certain area.

CHAIRMAN RIGLER: That certain area happens to be a vital area because, as the Board understands the witness' testimony, one conclusion is that power from the very nuclear plants under consideration was the subject of a proposed anticompetitive arrangement whereby the purchasers of that power would be forbidden to resell it into certain areas or to certain customers or to certain markets. There is clear nexus and there would clearly be a situation inconsistent with the antitrust laws. I will give Mr. Berger great latitude to go into the details on it.

MR. LESSY: My objection, then, would be to an argumentative type of cross-examination question. It appears to us that Mr. Berger is arguing with the witness. It is not proper form of cross.

CHAIRMAN RIGLER: We will overrule that.

MR. SMITH: Mr. Lyren, for my benefit --

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MR. REYNOLDS: Excuse me. I don't mean to interrupt you, Mr. Smith, but I want to make sure -- there is a question pending that was not answered. I wonder whether you want us to get an answer to the question.

MR. SMITH: No, I don't intend to interrupt.

MR. REYNOLDS: I want to know if you were aware there is a question pending that he had not answered.

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

MR. SMITH: You had indicated that normal load growth would anticipate new customers and these would be customers served within your primary lines?

THE WITNESS: Yes, I think basically --

MR. SMITH: But that wouldn't be the definition of it?

THE WITNESS: No.

MR. SMITH: But there would be new customers under normal load growth and the company had talked in terms of providing sufficient power for normal load growth, including new customers?

THE WITNESS: Right.

MR. SMITH: But not sufficient for expansion and you have used the word expansion.

THE WITNESS: I would like to clarify that. I think what we were talking about and maybe it relates to

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the last question that was asked, we were talking about a situation where the cities as a group, WCOE, might have power available for -- as a group to some other parties outside of their organization. In other words, not a customer in terms of a customer within Wadsworth or Wadsworth line extension, but a customer, the City of Orville, who generates all of its own power that might want to -- might have a use for power and if we had excess, perhaps we would be able to supply it to them or some other market might open up that would be available to us to dispose of this or use it.

I think that is more of the context that we were talking about rather than the company trying to inhibit our normal growth patterns of our respective municipalities.

Does that clarify it?

MR. SMITH: That helps me.

CHAIRMAN RIGLER: Let's go to Mr. Berger's pending question.

MR. STEVEN BERGER: I believe he has answered that question now, your Honor. Can we just have a moment?

CHAIRMAN RIGLER: Yes.

BY MR. STEVEN BERGER:

Q Mr. Lyren, you earlier testified that the total load of WCOE is approximately 200 megawatts; is that correct?

A I think that is the present figure, yes.

Q Am I to understand your testimony that with regard

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to the question -- perhaps this is rec

CHAIRMAN RIGLER: This just questioning. I don't believe Mr. Lessy due Mr. Lessy.

MR. LESSY: That's correct,

MR. MELVIN BERGER: The Day two questions on redirect.

CHAIRMAN RIGLER: We are le matter, Mr. Berger, unless Mr. Melvin it.

MR. STEVEN BERGER: My ques 50 megawatt question Mr. Lessy asked a of recross. If Mr. Berger wants to go that would be fine.

MR. STEVEN BERGER: Perhaps line and try to make it clear now and

CHAIRMAN RIGLER: Then if M anything else, we will give you one mo yourself to Mr. Berger's questions and with Mr. Lyren.

BY MR. STEVEN BERGER:

Q Mr. Lyren, am I to understa to Mr. Lessy's question in regard to 5 participation in the plant, that it wa load out of that single plant and that

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A No, I think that what we were talking about, what context we were talking about in the context of the question you referred me to was the company did not want to permit us to pick and choose the unit and size of participation in those units. If we wanted 200 megawatts of power from Davis-Besse and Perry and 200 megawatts from another unit, that would not be acceptable. They required that we take a small portion of a number of units scheduled for construction in the company's construction schedule. I think the report estimates over a 10-year period that the needs under current projects of 500 megawatts. So our proposal was to take one-tenth of our needs each and every year for the 10 years to try to match the philosophical request that the company had made as to apply and it is that 50 megawatt load that Mr. Lessy referred to in his question to me.

Q But it was 50 megawatts out of each unit, was it not?

A We hoped that we could get 50 megawatts out of each unit, yes.

Q Over the time frame you may be talking about 12 or 14 units and maybe 600 or 700 megawatts of capacity; is that not correct?

A I think the hope was that we could reach total generation within 10 years and it would require 500 megawatts. So what we are shooting for is an ultimate acquisition of 500

9mil

megawatts. We perhaps would have liked to have purchased them a little quicker and little cheaper units. Because of the company's requirement we spread this out, we selected one-tenth each year. The company suggested one-tenth of our requirement type of thing so this is how we kind of came up with an agreement on 50. One of the alternatives uses 45 and one 50.

Q You brought up again the concept of picking and choosing. I want to make it as clear as I possibly can. Wasn't what the company was saying in regard to picking and choosing that merely it would be foolish from the standpoint of planning and reliability for the WCOE to pick and choose from among individual units, large blocks of power instead of purchasing participation in all of the units as a blend?

MR. LESSY: Objection. The fact this is an important area is more important reason for enforcing the rules of evidence and cross-examination. This is quadruple repetitive.

MR. STEVEN BERGER: I believe this is an important question that the witness should answer.

CHAIRMAN RIGLER: We will sustain the objection. I agree we have been over this particular area repeatedly.

MR. STEVEN BERGER: Just give me one moment,  
your Honor.

(Pause.)

MR. STEVEN BERGER: No further questions, your  
Honor.

MR. HOELMPELT: Mr. Chairman, I have questions  
based on the discussion generated by the Board's questions  
and I wonder since we seem to be going out of order here  
if you wanted these all in the same place or shall I wait  
for the Department of Justice to complete their redirect.

CHAIRMAN RIGLER: I think we will take the  
Department.

MR. MELVIN BERGER: Can we have a moment? I  
think we have only one question. We want to get it right.

MR. STEVEN BERGER: While we are waiting for the  
Department to phrase their question, could we straighten out  
the enclosure to Applicant's Exhibit Number 16?

CHAIRMAN RIGLER: I will note for the record that  
you are handing it out now.

XXXXX

FURTHER REDIRECT EXAMINATION

BY MR. MELVIN BERGER:

Q Mr. Lyren, did WCOE envision that an arrangement  
with Ohio Edison for participation in Ohio Edison generating  
capacity was compatible with and to be supplemented by third-  
party wheeling by Ohio Edison?

ally I think that we , hopeful being  
 at aspect of the alternatives to power  
 that the refusal on thant of company  
 in the study would not exhibit us  
 an improved bulk power sily arcent  
 xisted.

ink the answer to your question i wa  
 e any technical difficulties and fact  
 having that incorporated as part<sup>r</sup> studies.  
 it all.

o I answered your question?

MELVIN BERGER: I think so.

ink that is all we have.

IRMAN RIGLER: Mr. Hjelmfelt?

REYNOLDS: Excuse me. I believe is

on. This is not a witness design by the

HJELMFELT: He is not my witness

#### FURTHER RECROSS-EXAMINATION

MR. HJELMFELT:

Lyren, I understood you totestihat  
 orecasts were based on historical ad growth:  
 ?

IRMAN RIGLER: Were references to the forecasts  
 Beck study?



MR. HJELMFELT: Yes, sir.

THE WITNESS: I cannot honestly say that that was the only method employed to project the load. I don't have first-hand knowledge of the technique used to project the load. I do know that load data was secured from all of the WCOE members and to the engineering firm doing our work and they in turn made the project.

The exact method of project I would have to honestly say I am not sure of.

BY MR. HJELMFELT:

Q Was that data -- did that data include load growth for each on a yearly basis for a number of years showing a historical growth?

A Yes, we supplied our figures to the company. I believe in a historical fashion.

Q Do you know if that included load growth data for years in which the contract contained restrictions on where the city could serve?

A Oh, I am sure it did.

MR. STEVEN BERGER: Your Honor, could I have some kind of understanding and clarification from the Board? I know there have been orders issued in regard to the City of Cleveland and their rights in this proceeding to involve themselves into the relationships between Ohio Edison and its relations with the small systems in its area and likewise

as to all of the other Applicants.

Do I understand from the Board that Mr. Hjelmfelt's cross-examination must relate in some way to his case or else he has no right to cross-examine?

And may I add if that is the case I would like to have the witness excused and like to have Mr. Hjelmfelt lay that foundation for the Board.

CHAIRMAN RIGLER: I believe we previously have referred to the Prairie Island decision which indicates that his questions must relate to his interest in the case.

MR. STEVEN BERGER: Okay. I ask that the witness be excused before any further questioning continues so that Mr. Hjelmfelt can for the benefit of the Board and other parties give us an indication as to where he is going and show that it in fact does involve his interest in this case.

CHAIRMAN RIGLER: Do you have a response, Mr. Hjelmfelt?

MR. HJELMFELT: I have no objection to making that showing either with the witness here or without him here. I am at the Board's disposal.

CHAIRMAN RIGLER: Mr. Berger, the Board is familiar with the interest as articulated in the petitions of the City of Cleveland and we are ready to let Mr. Hjelmfelt proceed at this time.

MR. REYNOLDS: The Applicants note an exception for the record.

CHAIRMAN RIGLER: You may.

BY MR. HJELMFELT:

Q Is it necessary, Mr. Byron that the Ohio Edison Company approve or agree with the data and the computations in the joint study?

A I think it would be very important that that procedure be followed by the pure nature of our memorandum of agreement and the joint aspect of that study that is to be made.

I feel the company should become affiliated to the study at least from the standpoint of approving or disapproving of the methodology used in developing the alternatives or the technical data used and the methods of employing that technical data.

I don't want the company to come back at a later date and say they don't have that much power available for us to purchase because they don't agree with our projections for growth.

I think now is the time to have the company address itself to the study and to the numbers that are in there and have common agreement on what we disagree with, if there is some point of disagreement.

MR. HJELMFELT: I have no further questions.

CHAIRMAN RIGLER: Thank you.

MR. REYNOLDS: Mr. Chairman, I would like to ask for a ruling from the Board under Rule 105 of the rules of evidence that Mr. Lyren's testimony not apply to or be considered in connection with any determination of whether a situation inconsistent with the antitrust law exists with respect to the Duquesne Light Company.

MR. SMITH: What was that rule?

MR. REYNOLDS: Rule 105. When evidence is admissible for one party or one purpose but not admissible for another party or purpose is admitted the Court shall restrict the evidence to its proper scope and instruct the jury accordingly.

CHAIRMAN RIGLER: We will take it under advisement. It is not necessary for us to make a ruling prior to the time we sit down and start deciding the case.

MR. REYNOLDS: I would like to make a similar request as to Cleveland Electric Illuminating Company and a separate request as to Toledo Edison Company.

I would like to request we are given a ruling, if possible, before it is time for the different Applicants to put their direct cases on.

CHAIRMAN RIGLER: All right. Remind us of it if we don't have it by then. That is not to say we will forget about your request.

MR. REYNOLDS: I will.

CHAIRMAN RIGLER: Thank you very much, Mr. Lyron.

(Witness excused.)

CHAIRMAN RIGLER: We will take a five-minute recess at which time we will begin with the next Staff witness.

MR. LESSY: Mr. Hillwig.

(Recess.)

lmil

CHAIRMAN RIGLER: Are you ready to proceed?

MR. GOLDBERG: Yes.

Whereupon,

J. ROBERT HILLWIG

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

XXX

## DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Please state your name and business address.

A My name is J. Robert Hillwig, 515 East Worchester Street, Bowling Green, Ohio.

Q What is your occupation?

A I'm transmission and distribution engineer, and employed by the City of Bowling Green, Ohio.

Q Will you summarize your formal education, please?

A Grade school, high school, and one year of engineering school

Q Would you please name the engineering school you attended?

A Keystone Engineering School in north side of Pittsburgh.

Q What is the extent of your education at Keystone?

A Drafting and fundamental engineering, basics in mechanical at that time.

2mil

Q Would you summarize your employment from the time you completed your formal education until the present time?

A 1939 until 1942, I worked for the Railway Industrial Engineering Company in South Greensburg, Pennsylvania. '42 to '45, armed services. '45 to '50, 1945 to 1950, I worked for Emery, Markel & Emery Consulting Engineering Firm in Toledo, Ohio. In 1950 to 1962, I worked for Collier Construction Company, Electrical Contractors, in Strongsville, Ohio. 1962 until 1967 I worked for Gross, Pyle, Shomer & Burns, Akron, Ohio, Consultants and Architects. 1967 to the present day, City of Bowling Green, Ohio.

Q Will you please describe your duties and responsibilities in your present position in the Bowling Green municipal system?

A To design and describe materials, lay out new work for the transmission, distribution, and substation system that the City of Bowling Green has.

Q What is your title in your present position?

A Transmission and distribution engineer.

Q Would you please describe in general terms the Bowling Green electric system?

A Yes. We own everything within the city limits in the way of distribution, transmission, and three substations.

Q Does Bowling Green generate electricity?

3mil

A No, sir, we do not. We purchase power.

Q From whom does Bowling Green purchase that power?

A The Toledo Edison Company.

Q Does Bowling Green get all of its power from Toledo Edison?

A Total.

Q Are you familiar with AMP-Ohio?

A Yes, sir, I am.

Q What is AMP-Ohio?

A It is a nonprofit organization to furnish power to municipals in the State of Ohio at the least cost.

Q Have you personally ever held a position in AMP-Ohio and if so, would you please state the position and the dates, please?

A Yes, I was an original incorporator and I am one of the directors of AMP-Toledo.

Q Mr. Hillwig, I would like to now show you a document which is marked Staff Document No. 127, and I ask that it now be marked for identification as WRC Exhibit No. 45.

(The document referred to was marked Staff Exhibit No. 45, for identification.)

BY MR. GOLDBERG:

Q I show you this document which is a Toledo Edison



4mil            wholesale contract with Bowling Green, Ohio, dated May 3, 1967, and ask you if you recognize this document?

A            Yes, I do.

MR. HJELMFELT: Mr. Chairman, may I inquire whether I could obtain a copy of that document?

MR. GOLDBERG: Copies of this document were distributed to all parties this morning. I was not aware of our overlooking the City of Cleveland. If so, it was an inadvertent mistake.

CHAIRMAN RIGLER: The City of Cleveland's counsel was not with us this morning. Off the record.

(Discussion off the record.)

BY MR. GOLDBERG:

Q            Who negotiated this contract on behalf of Bowling Green?

A            I think the manager at that time was Mr. Doug McKnight. To my knowledge he negotiated this agreement with Toledo Edison in '67.

Q            What was Mr. McKnight's position with Bowling Green at the time he negotiated this contract?

A            He then was manager of the utilities.

Q            Where is Mr. McKnight presently? Is he still with the City of Bowling Green?

A            No, he is not. He is with the City of Rossford, Ohio.

5mil

Q Is this contract which I have shown you still in force today?

A No, sir.

Q Is there a contract now in force between Bowling Green and Toledo Edison?

A No, sir.

Q I would like to refer you now to provision 7 of the contract which you have before you. Would you please review this provision and tell us if you are familiar with it?

A Yes, I'm familiar with that paragraph 7.

Q Could you please tell us who paid for the construction of the city's transmission line, which is mentioned in provision 7?

A City of Bowling Green.

Q Who paid for the construction of the city's transmission line which is mentioned in provision 7?

A The City of Bowling Green.

Q Does Toledo Edison have any connection to the transmission line mentioned in provision 7?

Yes.

Q How many places does Toledo Edison connect through that transmission line?

A This transmission line in this paragraph 7, two places, east and west.

6mil

Q How long is that transmission line?

A Approximately four miles.

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

A Possibly. I have no way of knowing, really.

Q Could you explain why you have no way of knowing?

A We have never had the proper meters on it to check any voltage that may be being transmitted through this particular section of line.

Q To your knowledge, can you state as a fact that Toledo Edison does not use that transmission line?

A No, sir, I can't.

Q Has Toledo -- Mr. Hillwig, would you please define the term "wheeling" in your own terms?

A Wheeling, to me, is the transporting of power over an electrical system from one place to another and also somebody else's power or the second party being involved with the first party's ownership of transmitting power over the owner's lines.

Q Okay. Now, keeping that definition in mind, I would like to ask you if Toledo Edison has ever approached the City of Bowling Green and offering to pay for the use of the transmission line which is mentioned in provision 7, which we discussed before?

A Not to my knowledge, no, sir.

7mil

Q To the best of your knowledge, does Toledo Edison -- has Toledo Edison ever offered to compensate you in any way for the use of that line?

CHAIRMAN RIGLER: Mr. Reynolds.

MR. REYNOLDS: I object to the question. There is not any foundation laid for the fact that that line was used by Toledo Edison.

CHAIRMAN RIGLER: I think we will move faster if I allow it. Subject to some future factual basis for the fact that Toledo Edison did in fact use the line.

Do you intend to establish that? Is that your contention?

MR. GOLDBERG: Simply because the witness does not know if, in fact, they have used it, he may have knowledge as to whether or not Toledo Edison may have approached him with an offer to pay for its use.

CHAIRMAN RIGLER: Do you intend to establish that Toledo Edison uses that line to transmit its own power?

MR. GOLDBERG: Not at this time through this witness.

CHAIRMAN RIGLER: Do you intend to establish it at any time in these proceedings? Are you going to get a stipulation? Will you get an admission? Will that be a fact before the Board?

MR. GOLDBERG: Yes. We will attempt to prove that fact.

BY MR. GOLDBERG:

Q With respect to Provision 7 in the contract -- and again keeping in mind the definition of wheeling which you have given us -- would you characterize that as a provision whereby Bowling Green wheels for Toledo Edison?

A Yes, sir.

Q I would like to now refer you to Provision 8 of that same contract. Would you please review that and tell us if you are familiar with it?

A Yes, I am familiar with that.

Q Would you please describe in your own words what Provision 8 provides?

CHAIRMAN RIGLER: Does it provide for something other than what the clear language indicates, Mr. Goldberg?

MR. GOLDBERG: No, it doesn't. I was trying to have the witness relate what he believes he was operating under in the Bowling Green Municipal System.

CHAIRMAN RIGLER: Ask him if he was operating under that provision. I think the provision is pretty clear.

jon2

BY MR. GOLDBERG:

Q Mr. Hillwig, during the time when this contract was in force were you operating under Provision 8?

A Yes.

Q Does Bowling Green compete with Toledo Edison for customers outside the corporate limits of Bowling Green?

A No, we are restricted by this Provision 8.

Q If it were not for --

MR. REYNOLDS: Mr. Chairman, I don't want to raise a lot of objections and I am afraid we are getting into an area of confusion. I believe the witness has testified this is not the contract in effect at the present time and the last two questions and answers have been in the present tense.

If we could be careful in terms of what tense we are talking in, it would avoid having to interrupt.

CHAIRMAN RIGLER: I agree with you. I understood the questions to relate to the time period during which the contract was effective.

If the Board -- if the Chairman was mistaken as to that, we should go back and correct it.

MR. REYNOLDS: I would also point out I believe that we may be getting into a similar confusion that we were in with respect to a prior witness when we are pointing to one provision and asking a line of questions which could

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perhaps better relate somewhere else.

I think we ought to be careful that we are clear as to what provision it is that we are talking about, both the witness and counsel.

CHAIRMAN RIGLER: In answering the last two questions relating to your ability to compete for customers outside of the Bowling Green city limits were those answers confined to the period of time during which the contract referred to as Exhibit 45 was in effect?

THE WITNESS: Yes, up until '72.

BY MR. GOLDBERG:

Q During the time when this contract was in effect between Toledo Edison and Bowling Green, if it were not for Provision 8 would you have competed with Toledo Edison for customers outside the corporate limits of Bowling Green?

A Yes, I believe so.

Q Under which portion of Provision 8 do you believe prevented your competing with Toledo Edison for customers outside the corporate limits?

A I believe the section requiring their written consent.

Q Would you please give us a page and paragraph number that you could point to?

A Page 3, the second paragraph down.

Q You mean the first --

A First full paragraph.

Q Thank you.

A I am sorry, it is the top paragraph. It is the partial top paragraph on page 3.

Q Would you please read, beginning reading the portion of Provision 8, would you believe restricts the City of Bowling Green from competing with Toledo Edison outside of the corporate limits?

A Any request by the Edison Company for the consent of the city to serve any premises shall be in writing. The city shall respond in writing within fifteen days after receiving such request.

Q Would you continue and read the next paragraph, the one that begins on the top of page 3?

A The first full paragraph?

Q Yes.

A The city agrees it will not without the written consent of the Edison Company supply electric energy for resale to customers located outside the present corporate limits of the city except the village that we had furnished power to previously.

That is also a part of the restrictions that I say would have normally stopped us during this period. Because it is a contract.

CHAIRMAN RIGLER: Would the first paragraph have



stopped you?

THE WITNESS: The first paragraph, would it have stopped us from serving?

CHAIRMAN RIGLER: The first paragraph doesn't impose any restriction on the city, does it? It is the city that would be giving the consent?

THE WITNESS: That is correct. No restrictions in the first paragraph.

CHAIRMAN RIGLER: The restrictions to which you refer, if any, are those that occur in the second paragraph.

BY MR. GOLDBERG:

Q Is Bowling Green dissatisfied with Provision 8?

MR. REYNOLDS: I will object to that question.

If he wants to rephrase it, perhaps I can withdraw my objection, but as stated, I don't believe there is a foundation.

CHAIRMAN RIGLER: That will be sustained.

You are confusing your tenses.

BY MR. GOLDBERG:

Q During the time when this contract was in effect, was Bowling Green dissatisfied with Provision 8?

A Yes.

Q Why has Bowling Green agreed with Toledo Edison -- why has Bowling Green contracted with Toledo Edison for power under a contract which contains this Provision 8 with which you just testified you were

dissatisfied during the time this was in force?

MR. REYNOLDS: I will object unless we can first lay a proper foundation that the witness was present at the time the contract was entered into and has knowledge with respect to the question that was asked.

CHAIRMAN RIGLER: I think I will sustain that, too.

BY MR. GOLDBERG:

Q Mr. Millwig, were you City Engineer during the period when this contract was in effect?

A Yes, I was, '67 to '72.

Q While you were City Engineer during the time this was in effect, did you operate under this contract and in particular under Provision 8?

A Yes, we did.

Q During the time you operated under this contract, under Provision 8 in particular, what was your experience with it?

A I considered it restrictive to our betterment, our expansion of our own system.

Q Why?

A If you can't expand, you don't grow and this was the idea that they hired me for as an engineer in the city. They never had one before. They wanted to build their system up and expand it.

CHAIRMAN RIGLER: Did you participate in the

negotiation of this contract?

THE WITNESS: No, sir, I did not.

MR. GOLDBERG: At this time I would like to introduce NRC Exhibit Number 45 into evidence.

CHAIRMAN RIGLER: Hearing no objection, it will be accepted into evidence as NRC Exhibit 45.

(NRC Staff Exhibit Number 45, previously marked for identification, was received into evidence.)

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CHAIRMAN RIGLER: Mr. Reynolds.

MR. REYNOLDS: There is the continuing objection of the Applicants other than Toledo Edison Company with respect to this document.

CHAIRMAN RIGLER: The objection will be overruled.

MR. REYNOLDS: I also would like to -- I realize the Chairman asked me to repeat on every occasion, but the continuing objection of the Applicants other than Toledo Edison would pertain to the testimony by this witness.

CHAIRMAN RIGLER: In matters not affecting other Applicants on the face of the testimony?

MR. REYNOLDS: That's right. That will be a continuing objection.

CHAIRMAN RIGLER: Fine.

BY MR. GOLDBERG:

Q A point of clarification, Mr. Hillwig. If I did not ask you before, I would like to now ask you if it were not for provision 3 during the time this contract were in effect, would you have completed with Toledo Edison outside of the corporate limits of Bowling Green?

A Yes, sir.

Q Has Bowling Green ever attempted to negotiate a contract with Toledo Edison, which contract did not have a provision like provision 3?

A Not to my knowledge.

2mil

Q Have you ever -- let me repeat the question, Mr. Hellwig. Let me rephrase that question.

Did you ever, on behalf of Bowling Green, suggest to Toledo Edison that you would prefer to enter into a contract with Toledo Edison for power under a contract which did not contain a provision such as provision 8?

A Yes, I did.

Q Can you tell us approximately how many times you have attempted to negotiate a contract with Toledo Edison which did not contain a provision like provision 8?

MR. REYNOLDS: I object only in that the prior question, as I understood it, did not pertain to whether he attempted to negotiate, but whether he had suggested. I think there is a significant difference. I have no problem if we want to ask a prior question as to negotiate, but I don't think we can make the assumption on the basis of the prior question and answer.

CHAIRMAN RICLER: Now that the witness has heard your distinction, let's see if he can answer, keeping that in mind.

BY MR. GOLDBERG:

Q Did you ever attempt to negotiate a contract with Toledo Edison for power which did not contain a provision such as provision 8?

A I attempted to negotiate one without provision 8

3mil in April of '72.

Q Was that attempt in April of '72 at a meeting?

A At my superior's office in Bowling Green, yes.

Q Could you please tell us the name of your superior?

A Mr. Robert Sorgenfrei.

Q Would you please tell us who was present at that meeting?

A Mr. Royce Moran from Toledo Edison, Mr. Wendell Johnson from their Fremont Division.

Q At that meeting when you attempted to negotiate a contract which did not have a provision such as provision 6, would you please describe to us the response of Toledo Edison to your attempt to negotiate that contract?

A At the first meeting, the response was negligible because it was the rate schedule that they were more interested in. We did not get into it until a little later on.

Q Could you please tell us who you are referring to when you say "they"?

A At the first meeting, Mr. Moran and Mr. Johnson.

Q Was there a second meeting?

A Yes.

Q Can you tell us when that meeting took place?

A In the middle or latter part of May with Mr. Moran, Mr. Rupenbecker.

4mil

Q Is that May of '72?

A Yes, sir.

Q Were those the only people present at that meeting?

If not, tell us, please, who was present.

A Myself and my superior, four of us.

Q Was Mr. Paul Smart present at that meeting?

A Oh, no, sir.

Q In that case, what was Toledo Edison's response to your request to negotiate -- your attempt to negotiate a contract without provision 8?

A At the second meeting, if I may, we took their proposal of April's meeting and I outlined several dislikes and crossed out and made some corrections, changes, requested changes and at that meeting it was when we from Bowling Green submitted it to Mr. Moran. As we know, we never signed it. They apparently never agreed to it because they didn't sign it.

CHAIRMAN RIGLER: What was it you submitted to Mr. Moran?

THE WITNESS: His original proposal, contract proposal to the City of Bowling Green marked up by me.

CHAIRMAN RIGLER: Thank you.

MR. GOLDBERG: I would like to show you a document now and ask you if you recognize this document. I would ask it be marked for identification as Staff Exhibit No. 46.

5mil

This exhibit has the document no. 236.

(The document referred to was marked Staff Exhibit No. 46, for identification.)

BY MR. GOLDBERG:

Q Will you look at that and tell us if you are familiar with it?

A Yes, sir, I am.

Q Would you please explain what this document is?

A This is the document or contract that the Toledo Edison Company wanted Bowling Green to sign in order to continue receiving power for another five years. And plus the rate schedule.

Q Would you please explain on page 3 of -- page 3 and 4 of that document, the provisions which contained penciling which crosses out some of the typewritten words on those pages.

A This was at my suggestion to be deleted, omitted.

Q Who made the markings on the document that crossed out the typewritten portions of page 3 and 4 of the document?

A I did.

Q Why?

A I disagreed with them. I didn't care to sign another contract with those being a part of it.



6mil

MR. GOLDBERG: At this time, I would like to introduce into evidence NRC Staff Exhibit 46 marked for identification as such.

MR. REYNOLDS: Continuing objection of the Applicants other than Toledo Edison with respect to this document.

CHAIRMAN RIGLER: The objection will be overruled. It will be received as Exhibit NRC Staff 46.

(The document referred to, heretofore marked Staff Exhibit No. 46, for identification, was received in evidence.)

BY MR. GOLDBERG:

Q Mr. Hillwig, at the time when you presented this document, which has just been introduced into evidence, to Toledo Edison with your markings crossing out the typewritten material on pages 3 and 4, what was their response?

A As I recall, Mr. Moran couldn't understand why I wanted these deleted. That was about the only response I got.

Q Did they agree to delete these provisions?

A Not to my knowledge, no.

Q I would like to now show you a document which will be marked for identification as NRC Staff Exhibit 47. It is marked as NRC Document No. 237. It is a letter from W. R.

7mil

Moran to Mr. J. P. Williamson dated April 18, 1972. I would like to ask you if you are familiar with this letter, this memorandum.

(The document referred to was marked Staff Exhibit No. 47, for identification.)

xxx

THE WITNESS: Yes, I have seen this.

BY MR. GOLDBERG:

Q Will you tell us who Mr. J. P. Williamson is?

A President of Toledo Edison Company.

Q Will you please again tell us who Mr. W. R. Moran is?

A He is the vice president of Toledo Edison Company.

MR. REYNOLDS: Could we wait a minute until we have an opportunity to look at the document before we proceed?

CHAIRMAN RIGLER: Yes. Off the record.

(Discussion off the record.)

BY MR. GOLDBERG:

Q Mr. Hillwig, does the document which I have just shown to you refer to the meeting as to which you have just testified where you proposed to delete the materials on page 3 and 4 of the contract to which we referred?

A Yes, sir.

MR. GOLDBERG: At this time, I would like to

8m11

introduce this document into evidence as NRC Exhibit No. 47.

MR. REYNOLDS: I will have the continuing objection as to the other Applicants. I also will object to the introduction of this document through this witness. As I see the document on its face, I doubt the witness has ever seen it until now. If I could have an offer of proof from Mr. Goldberg as to why he wants to put it in, I have no objection.

CHAIRMAN RIGLER: There is no objection as to its authenticity.

MR. REYNOLDS: No, sir. But I don't understand how it comes in through this witness.

MR. GOLDBERG: I'm offering it as an unsponsored exhibit.

CHAIRMAN RIGLER: On its face, the relevance is apparent to the testimony the witness has been giving. It refers directly to the negotiations affecting what used to be contract clause No. 8 in the 1967 contract. We overrule your objection and receive it into evidence as NRC Exhibit No. 47.

(The document referred to, heretofore marked NRC Staff Exhibit No. 47, for identification, was received in evidence.)

9mil

BY MR. GOLDBERG:

Q Mr. Hillwig, I would now like to quote a statement to you which appears at page 21 of the prehearing fact brief of the Toledo Edison Company.

MR. REYNOLDS: I will object, Mr. Chairman. I believe we have gone through this discussion before. I have no problem if the Staff wishes to ask questions that they formulate on the basis of what they read. I think it is inappropriate to refer to and quote from material that is not in the record in this proceeding and was prepared as a prehearing brief for this Board.

CHAIRMAN RIGLER: Let me see the reference without showing it to the witness, please. You can state for the record what line it is so that all parties will know what we are looking at.

MR. LERACH: What line is it?

MR. GOLDBERG: I want to question the witness about --

MR. CHARNO: Not the line of questioning, the line in the brief.

MR. GOLDBERG: About two statements that appear in page 21 of the prehearing fact brief. The first statement is the first sentence of the paragraph which says Bowling Green. The first sentence of that paragraph and the last sentence of that paragraph.

10mil

CHAIRMAN RICLER: We have looked at those two sentences. The objection is well taken. You can ask about the facts, but it is not necessary to refer to this or read it to the witness.

BY MR. GOLDBERG:

Q Mr. Hillwig, has Bowling Green ever requested Toledo Edison to wheel power to Bowling Green?

A Yes, sir.

Q How do you know that Bowling Green has requested Toledo Edison to wheel power?

A I was there many times when the question was asked of them about wheeling power to the City of Bowling Green.

Q Has Toledo Edison in fact refused to wheel power to Bowling Green?

A Yes, sir.

Q How do you know that?

A I was there.

Q You were there when they refused to wheel?

A The statements made, yes.

Q Did you attend a meeting with Toledo Edison representatives on June 2, 1972?

A Yes.

Q Where was that meeting held?

A That was a meeting I requested of Mr. Moran and it was held in the Holiday Inn in Bowling Green, Ohio.

llmil

Q Who was present at the meeting and whom did those present represent?

A Mr. Powers Lewis, executive director of AMP-Ohio, myself as president of OMEA. Mr. Royce Moran and Mr. Wendell Johnson.

Q To what does OMEA refer?

A Ohio Municipal Electric Association.

Q At that meeting on June 2, 1972, did you personally request that Toledo Edison wheel power?

A Yes, that was one of the purposes of the meeting.

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

A Quite negative. They had a bad feeling for wheeling power because of an existing contract with the Ohio Power Company for wheeling Buckeye power.

The contract they had was very unsatisfactory. They didn't care to get into another one.

Q That was the response of Toledo Edison to your request?

A Mr. Moran, yes.

Q Mr. Moran is the person who related that response to you?

A Yes, sir.

Q At that meeting did you also suggest that all of the present municipal customers of Toledo Edison purchase power from Toledo Edison under a single contract?

A Yes, that was the purpose. The other purpose of the meeting. To get wheeling and to get one rate for the northwest Ohio municipals that receive power from Toledo Edison Company for the purposes of AMP's negotiations

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in contracts with them?

CHAIRMAN RIGLER: Identical rate for each individual customer or a single rate that would cover the total consumption of the customers as a combined rate?

THE WITNESS: We were in hopes of a total rate for one customer, but it became impractical to serve from one point so we didn't get any rate.

CHAIRMAN RIGLER: But all of the communities would have counted as one customer?

THE WITNESS: Yes, sir.

BY MR. GOLDBERG:

Q Would you please tell us what the response of Toledo Edison was to that request?

A Mr. Moran's response at that time was that it was almost an impossibility to come up with a flat rate or one rate for all of the municipalities.

I have stated the reasons for them not wanting to wheel or transmit for us. It was a negative answer that was received but it had physical problems, I agree.

CHAIRMAN RIGLER: It had some physical problems?

THE WITNESS: In arranging one service point, yes, sir.

BY MR. GOLDBERG:

Q I would like to now show you a document which would be marked for identification as NRC Exhibit



Number 48. Presently it bears the NRC Document Number 238 and 239. It is a letter with an attachment.

CHAIRMAN RIGLER: Let's make it two exhibits. NRC Document 238 would be NRC Exhibit 48. NRC Document 239 would be marked for identification as NRC Exhibit 49.

All right. Before we get to that I had a question about the meeting in 1972 in which you requested wheeling and you said they referred to the experience they had had with Ohio Power Company and Buckeye.

THE WITNESS: With the Ohio Power Company wheeling Buckeye Power.

CHAIRMAN RIGLER: You said that they said there was an unsatisfactory arrangement. Did they indicate how it was unsatisfactory?

THE WITNESS: No, not exactly. I just assumed it was a financial dissatisfaction.

CHAIRMAN RIGLER: They were dissatisfied at the rate they received for transmitting the power?

THE WITNESS: I would have to say that was my assumption.

Mr. Moran did not state that specifically.

CHAIRMAN RIGLER: Did he state any other reasons for the dissatisfaction of Ohio Power with its wheeling arrangements?

THE WITNESS: Not at that time, no, sir.

(The documents referred to were marked  
NRC Staff Exhibits Numbers 48 and 49,  
respectively, for identification.)

BY MR. GOLDBERG:

Q Mr. Hillwig, the two documents which you now  
have before you, the first of which is a letter from  
Mr. Powers Luce to Mr. Phillip Artery dated January 8, 1972 --

A That is not correct.

Q Would you correct me?

A It is 1973; January 8, 1973.

Q On NRC Exhibit Number 49 I notice the date is  
January 9, 1973. That in fact is the correct date, is it not,  
of the letter as well as the attachment?

A Yes, sir.

Q Is it your testimony, then, that that is a  
typographical error on the date of the letter?

A I assume that after I have received it and read  
it.

MR. REYNOLDS: That is fine. Just so the record  
is clear.

BY MR. GOLDBERG:

Q Would you please tell me if you are familiar  
with these documents?

A Yes, sir.

Q Does the memorandum which is attached to the

letter accurately reflect what took place at the June 2, 1972 meeting which you discussed shortly, not too long ago?

A Yes, sir, it does.

CHAIRMAN RIGLER: Is Document NRC Number 239, which is now NRC Exhibit 49, the enclosed affidavit referred to in Exhibit 48, NRC Document 238?

THE WITNESS: Yes, sir.

CHAIRMAN RIGLER: Does anyone know if there is just a loose use of the term affidavit or if there is a notarized copy of this somewhere?

MR. GOLDBERG: I can question the witness on that. I believe it is an incorrect use of the word.

CHAIRMAN RIGLER: All right.

Was that what you were going to ask, Mr. Reynolds?

MR. REYNOLDS: Yes.

BY MR. GOLDBERG:

Q Mr. Hillwig, who prepared this memorandum?

A The memorandum which is the minutes of our meeting of June was prepared by Mr. Powers Luce, the Executive Director of AMP-Ohio.

MR. GOLDBERG: I would like to now move into evidence NRC Exhibits 48 and 49.

MR. REYNOLDS: Continuing objection as to the Applicants other than Toledo Edison.

CHAIRMAN RIGLER: That will be overruled. It

will be these two documents which will be received into evidence as NRC Staff Exhibits Numbers 48 and 49.

(NRC Staff Exhibits 48 and 49, previously marked for identification, were received into evidence.)

CHAIRMAN RIGLER: Let's pause for a minute and give me a chance to read Number 239.

(Pause.)

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CHAIRMAN RIGLER: Before you leave this document, I have a question. In the fourth paragraph down on Exhibit 18, there is reference to Toledo Edison's dissatisfaction with the wheeling arrangement that they had with Buckeye. I am getting confused as to who was wheeling for whom.

This suggests it is Toledo Edison that is doing the wheeling. Can you clarify this confusion?

THE WITNESS: It is my understanding that it is Buckeye Power being wheeled by Ohio Power and Toledo Edison.

CHAIRMAN RIGLER: By both companies.

THE WITNESS: Yes, sir.

CHAIRMAN RIGLER: Did this dissatisfaction relate to the arrangement between Buckeye and Ohio Power or did Toledo Edison's dissatisfaction relate to its own arrangement for wheeling of Buckeye Power?

THE WITNESS: It was Toledo Edison's arrangement with Ohio Power Company that was distasteful.

CHAIRMAN RIGLER: What arrangement was that?

THE WITNESS: Whatever financial contractual arrangements for wheeling Buckeye Power was.

CHAIRMAN RIGLER: It was the Ohio Power Company that compensated Toledo Edison for wheeling the Buckeye Power?

THE WITNESS: That is my understanding.

CHAIRMAN RIGLER: There was no direct compensation

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THE WITNESS: Not to my knowledge. I am not knowledgeable on that end of it.

BY MR. GOLDBERG:

Q           I would like to now show you a letter from W. R. Moran to Mr. Powers Luce and yourself, J. Robert Hillwig dated July 3, 1972, and ask you if you are familiar with this letter. I would ask that this be marked for identification as NRC Exhibit No. 50. The present NRC Document No. is 240.

(The document referred to was marked NRC Staff Exhibit 50, for identification.)

THE WITNESS: I haven't read the whole thing but I know what it is, yes.

BY MR. GOLDBERG:

Q           Is the June 2 meeting mentioned in this letter, the June 2 meeting to which you were just testifying?

A           Yes, sir.

Q           I would like to introduce this letter into evidence as NRC Exhibit 50.

MR. REYNOLDS: Continuing objection for the other Applicants.

CHAIRMAN RIGLER: Continuing objection will be overruled. We will admit it into evidence as NRC No. 50.

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(The document referred to, marked NRC Exhibit No. 50, for identification, was received in evidence.)

MR. GOLDBERG: Mr. Chairman, I am about to move into a new line of questioning which might take a little while and I think that this might be an appropriate time to break. It is five of five now.

CHAIRMAN RIGLER: Before we do, I have a question or two of the witness. How large is Bowling Green in terms of population?

THE WITNESS: Population. We I would say that could be either 24,000 or 29,000. They have never made up their minds whether there are 6,000 living off campus or not that should be counted as population.

CHAIRMAN RIGLER: How many customers does Bowling Green have outside of its city limits?

THE WITNESS: I would guesstimate around 400.

CHAIRMAN RIGLER: Does Bowling Green have any industrial customers?

THE WITNESS: Yes, sir.

CHAIRMAN RIGLER: Are these customers inside or outside the city limits?

THE WITNESS: Inside.

CHAIRMAN RIGLER: There are no industrial customers outside the city limits?

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THE WITNESS: No, sir.

CHAIRMAN RIGLER: What is the present peak load of the Bowling Green system.

THE WITNESS: Last month it was 25,000.

CHAIRMAN RIGLER: Units?

THE WITNESS: KVA load.

CHAIRMAN RIGLER: Okay. I think we can break for the evening. We will reconvene at 9:45 on the button.

There are a number of floating exhibits, that is exhibits which have been identified and never offered into evidence in addition to which we have exhibits which were not even identified so that parties should consider what they want the Board to do with these various exhibits in terms of perhaps returning the unidentified exhibits and what disposition should be made with respect to the ones not offered into evidence.

We are adjourned.

(Whereupon, at 5 p.m., the hearing was adjourned, to reconvene at 9:45 a.m., Wednesday, 17 December 1975.)