

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING
CO.

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

-and-

CLEVELAND ELECTRIC ILLUMINATING
CO., et al,

(Perry Nuclear Power Plant, Units 1 & 2)

) Docket Nos.

) 50-346A

) 50-500A

) 50-501A

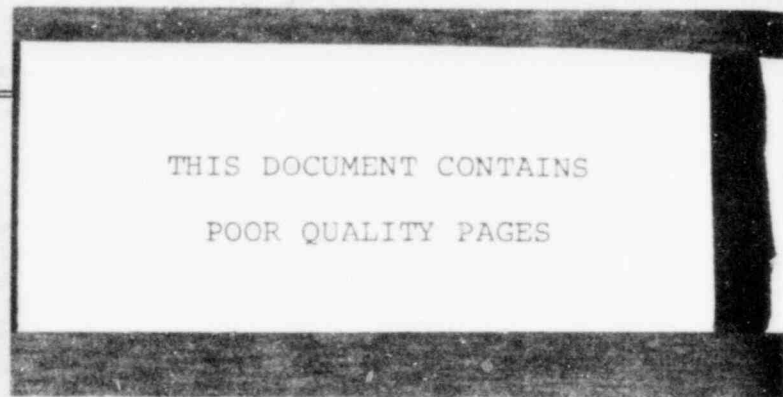
) 50-440A

) 50-441A

Place - Silver Spring, Maryland

Date - Friday, January 16, 1976

Pages 3506- 3631



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UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

In the matter of:

TOLEDO EDISON COMPANY and CLEVELAND
 ELECTRIC ILLUMINATING CO.

Docket Nos.

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

50-3468

50-3008

50-5017

-and-

CLEVELAND ELECTRIC ILLUMINATING CO.,
 et al.

50-449A

50-4417

(Perry Nuclear Power Plant, Units 1
 and 2)

First Floor Hearing Room
 7915 Eastern Avenue
 Silver Spring, Maryland

Friday, January 16, 1976

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

BEFORE:

MR. DOUGLAS REGLER, Chairman.

MR. JOHN FRYSTAK, Member.

MR. IVAN SMITH, Member.

APPEARANCES:

(As heretofore noted.)

C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECLOSE</u>
Harold M. Moser (resumed)		3509	3559	3595
Dale F. Heisel	3522	3629		

<u>EXHIBITS:</u>	<u>OFFERED</u>	<u>RECEIVED</u>
Applicants Exhibit 45, letter to file from Mr. Moser, dated July 12, 1974	3537	3558
Applicants Exhibit 46, memorandum to file from Mr. Moser, dated July 12, 1974	3539	"
Applicants Exhibit 47, "Outline of Proposed Testimony," dated August 6, 1974	3540	"
Staff Exhibit 206, Chapter 4906 of the Ohio Code	3573	3537

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BY MR. REYNOLDS:

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At these points --

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MR. REYNOLDS:

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At these points the cross-examinations went to

the operations or the activities of the contracting

committee under certain interconnection coordinating type

contracts. During discovery, the City of Cleveland requested

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the minutes of any committee, committee or any organization
to which the Applicant is affiliated.

It appears from the minutes of the Board of Directors
of the Applicant, dated 10/10/50, that the Applicant is a

corporation organized under the laws of the State of New York.

It is further stated that the Applicant is a

corporation organized under the laws of the State of New York.

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1 MR. HUTTENFELDER: Applicants objected and
2 argument was had on September 16, 1974, which appears at
3 the transcript pages 17 through 30. Applicants argued that
4 these documents could be by intent or by accident
5 other than CARCO agreements.

6 On October 15, 1974, the Board issued its order on
7 objections to discovery. Referring to that order, page 13,
8 paragraph b(6) which refers to the City's request number
9 23 to CEI, the Board noted that CEI objected to the document
10 request on the basis of relevancy and it is argued that it was
11 a fishing expedition.

12 The objection was sustained as to all documents,
13 except for operating committees and committees under the
14 CARCO or TCAR.

15 With respect to document request 13, with respect
16 to the other applicants, the Board adopted the ruling,
17 it made to our request to CEI.

18 Now Applicants are asking the Witnesses if they
19 are aware what is in these documents. We think there is an
20 air of unfairness to the other parties, certainly to the
21 City of Cleveland, because we do not know what may be done
22 in rebuttal or recross or how to handle that situation.

23 We think the only remedy at this point is to strike
24 the cross-examination.

25 MR. SMITH: Are you referring to the Board order

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1 of October 15, 1975?

2 MR. HUBBARD: Yes, sir, 1975.

3 MR. SMITH: This does not relate to the earlier
4 discovery request regarding to FRO?

5 It is a separate matter.

6 MR. HUBBARD: This doesn't go to DOD contracts.
7 This goes to non-FCM contracts.

8 MR. REYNOLDS: This witness chose to testify
9 on certain matters. In the course of cross-examination, it
10 is more than appropriate for Counsel to explore his knowledge
11 and familiarity with respect to those matters.

12 I don't think that any of the rulings on the
13 document discovery would have in any way precluded this
14 witness to have made any inquiries into this area.

15 I have not asked for what was contained in
16 minutes. I have asked him what his personal knowledge is as
17 to the activities and operations of the companies under
18 the agreements he has referenced.

19 I don't see that there is anything that Mr. Hjeltnes
20 motion addresses that would begin to be a basis for a motion
21 to strike that cross-examination.

22 CHAIRMAN PYGLER: Mr. Hjeltnes, were the contracts
23 themselves, that is, the series of contracts listed in
24 HW-4 were those contracts the subject of discovery?

25 MR. HUBBARD: I believe the contracts themselves

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1 I had asked you whether the individual members
2 of CAPCO are authorized to make outside power purchases
3 and to bring such purchases into their systems over
4 transmission owned by other CAPCO members.

5 A My answer to the question is yes, they are.

6 Q And would you tell me the basis of your answer?

7 A In the basic operating agreement -- I'll need
8 to make several references. They all seem to tie
9 together.

10 On page 2, in Section 3.01, on line 4, Section
11 2.01 discusses the actual capacity of a party to
12 this agreement.

13 Included in this definition on line 4 is a
14 defined term called individual capacity.

15 On page 5, Section 2.12 is a definition of
16 the individual capacity of the parties and
17 several of the subitems under 2.12 are non-CAPCO generation
18 which is available to the parties, and I have to presume
19 that that is available to the parties over the transmission
20 system of CAPCO.

21 Item A is any capability prior to September 14,
22 1967. That may be non-CAPCO capability.

23 Item B is CVT's capacity, which is non-CAPCO.

24 Item C refers to some power committed to Toledo
25 Edison under an agreement between it and Ohio Power and the

1 B. F. Goodrich Company. It is additional capacity, which
2 I assume is non-CAPCO.

3
4 Item B is a rather illusive term, however, as
5 it talks about the effect of individual purchases and
6 sales pursuant to the generating agreement and it is a
7 understanding that the generating agreement has not been
8 executed.

9 At this point I have to assume it is wide open
10 and very well could include non-CAPCO capacity.

11 Furthermore, on page 18 at the bottom of the
12 page, item 5, in a discussion of the amount of operating
13 reserve, it explicitly provides for capacity provided
14 under agreements with other systems outside the CAPCO
15 group.

16 That is the end of my answer.

17 Q As I understand your answer, you pointed to
18 provisions which you believe permit the purchase of
19 non-CAPCO capacity?

20 A That's correct.

21 Q By members.

22 My question was whether or not the individual
23 members under this agreement could bring such purchases
24 into their system over transmission owned by other CAPCO
25 members as opposed to owned by -- as opposed to bringing
it in over the CAPCO transmission lines?

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1 A I'm not sure how that power would flow to the
2 system. The CAPCO transmission system is fully inter-
3 connected network. You can't define the path of the
4 power flow.

5 Q Is it your understanding that a purchase by an
6 individual member of CAPCO of capacity outside of CAPCO
7 could be transmitted to that member through -- over lines
8 which are non-CAPCO lines?

9 A Power may flow over lines which are non-
10 CAPCO lines. I know of no prohibition to bring that power
11 in, inasmuch as it is provided for in the power arrangement
12 agreement. They apparently could use it.

13 Q Did you look at the transmission facilities
14 agreement?

15 A Yes, I reviewed that in the course of responding
16 to this question.

17 Q Well, in terms of the question asked, wouldn't
18 that be necessary to look at to determine the extent to
19 which use of the individual member lines were permissible
20 for purposes of bringing outside power in -- power outside
21 of CAPCO into any of the systems of the individual
22 members?

23 MR. LESSY: I thought the question referenced
24 the operating agreement. If you want the witness to refer
25 to another agreement in an appropriate question, he could

respond to it.

MR. REYNOLDS: The question that I have is with
the witness appears on page 1301 and I have read the
manuscript. That is what I mean by the fact that the
testimony at lines 11 to 12, the point that the
operating committee is authorized to make outside
purchases for the O-30 group.

BY MR. REYNOLDS:

Q Are individual members of O-30 authorized
to make outside direct purchases and to bring
purchases into their system over purchases made by
other O-30 members?

A The question is whether the individual members
of O-30 are authorized to make the outside purchases
and bring those purchases into their system over pur-
chases made by other O-30 members.

A I shall refer to the operating agreement
which says the various kinds of outside purchases.
In order to determine the specific -- I think
assuming that inasmuch as the operating agreement is part
of a package of agreements that the members had
arrangements for transmission to get this done.

In individual cases the exact and conditions
may be spelled out in other agreements, perhaps agreements
in addition to the operating agreement.

1 Inasmuch as the question goes to the possibility
2 of bilateral agreements between individual CAPCO members
3 with respect to non-CAPCO transmission capacity, I could
4 reference all of the individual bilateral agreements to find
5 out the terms and conditions of the transmission, but
6 I have inferred from the operating agreement that inasmuch
7 as that power is an authorized part of the power supply
8 under the operating agreement that they could get it there.

9 Q Well, is it your response, Mr. Moser, that
10 you don't know whether they are authorized -- CAPCO members
11 are authorized to make the outside purchases and bring
12 them into their systems over transmission owned by other
13 CAPCO members?

14 A I believe the CAPCO members are authorized
15 to make the outside purchase. That is the first part of
16 the question. I think that is clear in the operating
17 agreement.

18 The question of bringing their purchase into
19 the systems over the transmission lines is implicit in the
20 operating agreement. The specific terms and conditions
21 of that transmission transaction wasn't asked and I would
22 have to refer to other documents to provide that answer.

23 It is my answer that I have inferred from the
24 operating agreement that they are authorized to use CAPCO
25 transmission or the transmission facilities of other

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1 workers in order to fulfill the provision in the operating
2 agreement, which does authorize them to make the outside
3 purchases.

4 Q That infers to me without reference to
5 the transmission facilities agreement.

6 A I looked only at the operating agreement which
7 was the nature of the question.

8 Q Could you tell us which of the agreements
9 that you have listed on your Exhibit H-1 are agreements
10 between parties which are not directly connected by
11 transmission facilities owned by those parties. Which
12 of the agreements, if any of them listed there, are
13 implemented by wheeling over a third party's transmission
14 system?

15 A You say the agreements are implemented by
16 wheeling. Some of the agreements provide for wheeling
17 in themselves.

18 Q Isn't it a fact, Mr. Moser, that there are no
19 agreements listed there that are not between parties
20 that are directly interconnected by transmission
21 facilities that are owned by those parties?

22 A I believe all of these agreements are basically
23 among the CAPCO members and their immediate members and
24 they are all interconnected through a transmission net-
25 work which I have already discussed.

1 Q Do you see any agreements there where the
2 parties are not directly connected by transmission
3 facilities that are owned by those parties to the agree-
4 ment?

5 A I am going to have to go down there through
6 each agreement quickly and refresh myself.

7 MR. CHARNO: Could I have the question read
8 back?

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

11 MR. CHARNO: May I inquire whether counsel's
12 question asks whether there is any interconnection between
13 any of the parties to the agreement or each party to the
14 agreement is connected to every other party?

15 I have a question clarifying Mr. Reynolds'
16 question, if I may.

17 MR. BENBOW: Is it appropriate to interrupt for
18 this purpose if the witness is prepared to go forward,
19 Mr. Chairman?

20 CHAIRMAN RIGLER: I will let him clarify it.

21 BY MR. REYNOLDS:

22 Q How did you understand the question as you were
23 going through the list?

24 A As I understand the question, I'm to look at
25 each agreement independently and see whether or not the

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parties are directly interconnected or rely on wheeling
to accomplish the services provided.

Q All right.

A Is that the correct interpretation?

Q That is the correct interpretation.

A As far as I can see, each of the parties have
a direct interconnection or the agreement provides for a
direct interconnection, such as the Gainesville agreement,
which has not been implemented yet, and provides for an
interconnection.

Q How many of the agreements that are shown on
that exhibit between CAPCO members and outside systems
provide for the purchase or sale of long term dependable
capacity?

A I would have to go through and analyze each
agreement again. I think I have got --

Q Do you recall that any of these do?

MR. LESSY: The witness said he would like to
review the list again. It is a comprehensive question.
I would like to give him opportunity to do that.

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1 I wonder if you could give us some better feel of
2 where you are going on this line of questioning.

3 Mr. Reynolds.

4 As I see it, the point you may be driving at
5 is that Applicants, the members of the CAPCO pool, do not
6 have contracts for long-term dependable power with outside
7 entities, while at the same time they are offering long-
8 term dependable power contracts to the smaller municipalities
9 within the CCCT area.

10 Is that where you are trying to go?

11 MR. REYNOLDS: I think the witness has character-
12 ized the contracts as firm power contracts.

13 Applicants take exception to his characterization
14 and the basis of his characterization, as we understood his
15 testimony, is to say that if Applicants have all of the
16 options available to them, they should be afforded to the
17 small entities in the CCCT area.

18 What we are exploring now is the conclusion that
19 has been reached by this witness as to what options, indeed,
20 are or not available to the Applicants through the agreements
21 he says he has reviewed.

22 The basis for his conclusion that that is a
23 transaction that, in fact, the Applicants have entered into.

24 CHAIRMAN REGLER: I see.

25 MR. REYNOLDS: This is the -- I don't anticipate

concluding this list.

CHAIRMAN RIGLER: ... its significance, and ...

MR. REYNOLDS: I will ... the rest of the morning.

CHAIRMAN RIGLER: ... witness?

(Recess.)

CHAIRMAN RIGLER: ... Mr. Hoyer? Waive upon.

HAROLD M. HOSER

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

THE WITNESS: Yes, I am.

Agreement Number 12, covering the operation of agreement between Toledo Edison Company and Ohio Power Company, dated December 1, 1975; Schedule A of that agreement provides for a firm power sale by Ohio Power Company to Toledo Edison for a period effective December 1, 1975, through November 30, 1976, a period with in excess of five years. The amount of power is 8,000 kilowatts.

BY MR. REYNOLDS:

Q Is that the only one?

A That is the only specific firm power agreement I

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1 found. I found several references to what I would term
2 agreements to agree.

3 In other words, provisions for the sale of firm
4 power, but requiring separate agreements to implement the
5 proviso.

6 I have no evidence at least of any separate
7 agreements, but then I have never represented that this list
8 is a conclusive list relating to the contractual
9 relationships among the Applicants.

10 Q You indicated that early in your testimony you
11 believe that you also reviewed agreements that are not
12 listed in HMM-4; is that correct?

13 A Yes.

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arl 1 Q Did you ever see any supplementary schedules
2 with regard to firm power or any supplementary agreements
3 in your review of that material?

4 A I can't answer that conclusively. It has been
5 probably over a year since I saw most of those other
6 agreements. I concentrated on those in the most recent
7 period of time.

8 Q And you cannot state today that there were any
9 can you?

10 A I cannot state that there were.

11 Q On page 48 of your testimony, which is in the
12 response to question 136, that is on the preceding page,
13 you are describing the relationships between CEI and MELP
14 and in the concluding portion of your response, you state
15 that MELP would require the transmission services of CEI
16 and possibly other CAPCO members to obtain access to a
17 selection of power supply sources and power supply services
18 to allow MELP opportunities to select what it considers to
19 be the best power supply arrangement and technology at any
20 time.

21 What power supply sources and services could be
22 reached by MELP only via Duquesne Light's transmission
23 lines?

24 A I again have not made a power supply study to
25 examine the options. The testimony says possibly the use

1 of transmission lines of other CAPCO members. I don't
2 know if there are any available sources or if those sources
3 would be worthwhile if they were available.

4 Q Why then did you insert possibly other CAPCO
5 members in your conclusory statement?

6 A For the reason that I don't know where the
7 power supply sources might come from. They might come
8 from some place up in Michigan, perhaps, or in Southern
9 Pennsylvania.

10 I have no idea where these power sources might
11 be available for use by MELP.

12 Q You could have also stated possibly other CAPCO
13 or non-CAPCO Members.

14 A Yes, I could have.

15 Q Do you know what the distance is from
16 Dugessne Light Company to the Municipal Electric Light
17 Plant of the City of Cleveland?

18 A Not offhand. I could scale it on a map.

19 Q On page 78, after discussing your Exhibit HMG-10,
20 which is a generalised diagram of an electric utility
21 power supply relationship, the question you were asked
22 was what is the effect of this control which the Applicants
23 have over the other CCCT entities? And from the line of
24 questions preceding it, I believe this control would
25 refer to the hypothetical depicted on the diagram.

1 Would that be accurate?

2 MR. LEBBY: Would you refer to a question or
3 page?

4 BY MR. REYNOLDS:

5 Q Page 70 and 71, the questions are 186, 188,
6 187.

7 A I'm sorry. Would you repeat the question now,
8 please?

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

11 BY MR. REYNOLDS:

12 Q I believe in your discussion on page 70 with
13 respect to the EMM-10 exhibit, that you are stating that
14 that exhibit would indicate that Applicants have control
15 over power supply options available to other CCGT
16 entities on the basis of your diagram?

17 A I have indicated that the diagram block which
18 I have entitled "large electric utility" would correspond
19 to the Applicants, and if they chose to exercise it,
20 they could have control over the power supply of the
21 other CCGT entities, yes.

22 Q To your knowledge, has the Duquesne Light
23 Company ever chosen to exercise that so-called control?

24 A I don't know whether they have actually
25 exercised any control or not. The only thing I have

1 observed is the absence of any relationships between
2 Duquesne and the other CCEP entities in a broad power
3 supply sense, such as wheeling arrangements.

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Q Which --

A I can't specifically say what arrangements they have made at the moment, but I can say that they have a retail distribution system, which covered everything that they sell.

Q Which other COOP utilities have you observed when you say you have observed the absence of any such utility company?

A I have not to my recollection seen any interchange agreements between Duquesne and COOP utilities. I have seen -- I would have to refer to Dr. Cox's testimony as to what he says on the specific arrangement.

Q In general, they would amount to requirements, purchases and I don't recall whether one or more of the small generating utilities is in the Duquesne service area or not.

Q Then, as I correct in concluding that the answer to my question of whether Duquesne has ever chosen to prevent other COOP entities from developing or maintaining a reliable and economic power system is that you do not know?

A I do not know. I have seen no overt action.

Q So you -- if I ask the same question with respect to the Toledo Edison Company?

A I have no knowledge of any overt actions of Toledo to restrict anybody's power supply.

Q What about Ohio Edison?

A Same answer.

1 Pennsylvania Power?

2 A Same answer.

3 Q What about the Cleveland Electrical Illuminating
4 Company?

5 A I believe I have seen a letter indicating a refusal
6 of Cleveland Electrical Illuminating Company to wheel pass
7 any power.

8 Q Is that the only instance that you can recall?

9 A It is the only over act that I am personally
10 aware of?

11 Q Are you personally aware of any covert acts by
12 any of those companies?

13 A Not that I have been involved in anything. Anything
14 that I might comment on would be hearsay, and I don't think
15 that would be appropriate.

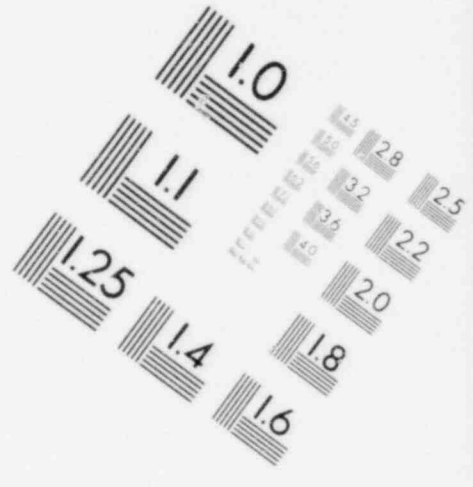
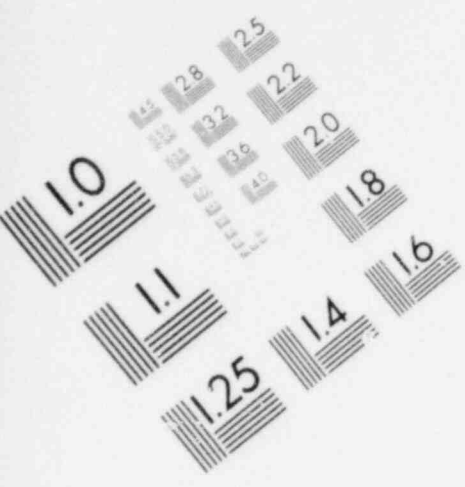
16 Q With respect to the options that you refer to in
17 your testimony, as ones that you believe should be available,
18 to be utilities, how long, in your view, should these
19 options be made available. 20 years? 5 years?

20 A I think that these options, if they are practical,
21 should be available indefinitely.

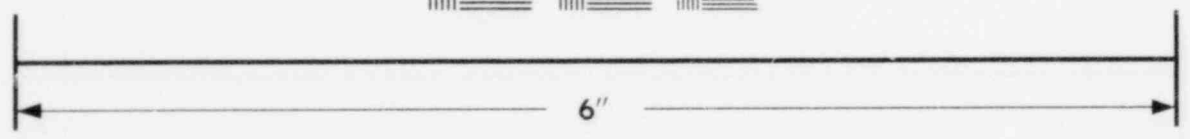
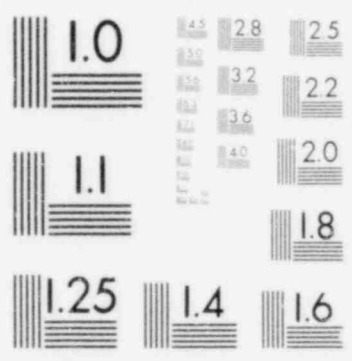
22 Q What -- strike that.

23 What sort of lead-time should be required, in terms
24 of the availability of those options?

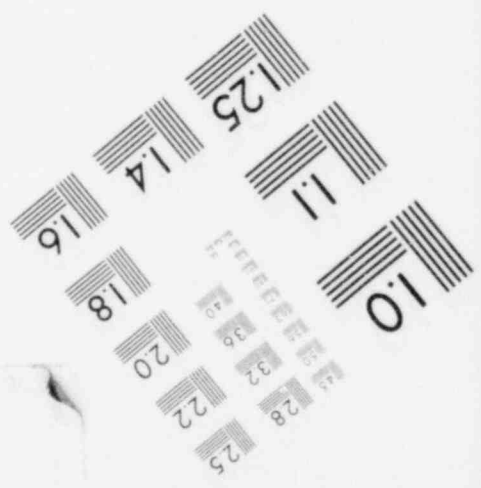
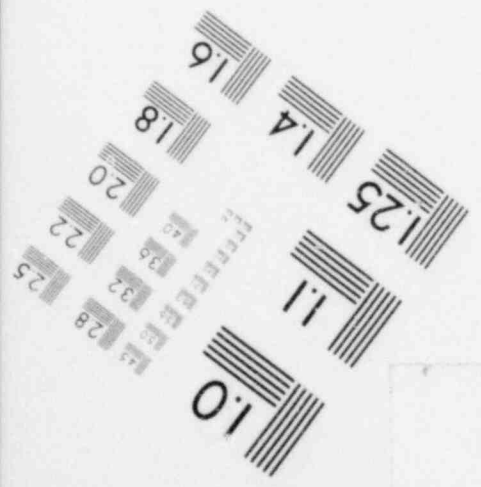
25 MR. LESSY: I think that requires specificity.

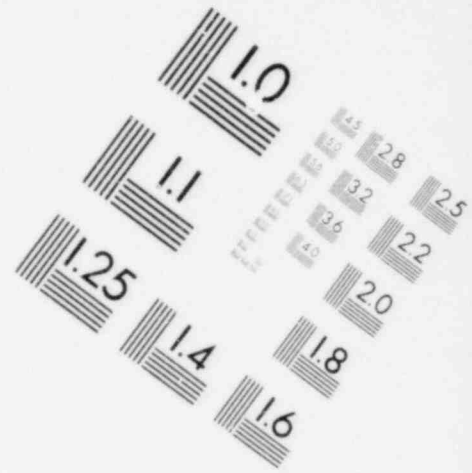
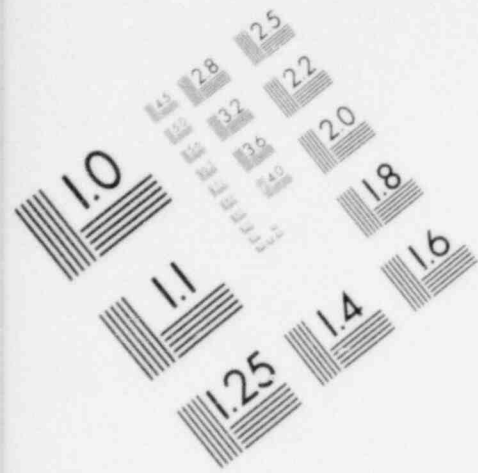


**IMAGE EVALUATION
TEST TARGET (MT-3)**

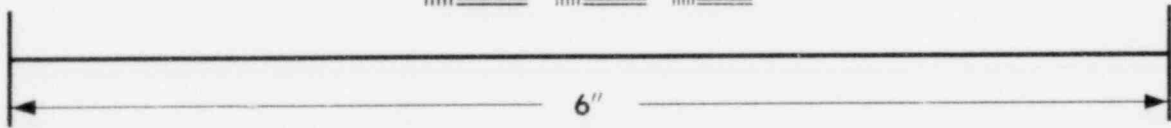
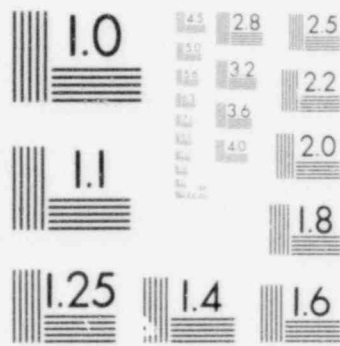


MICROCOPY RESOLUTION TEST CHART

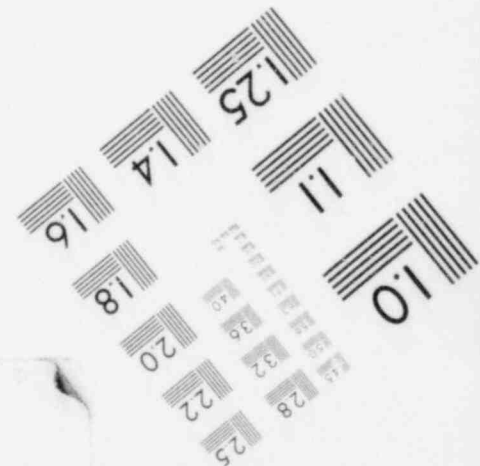
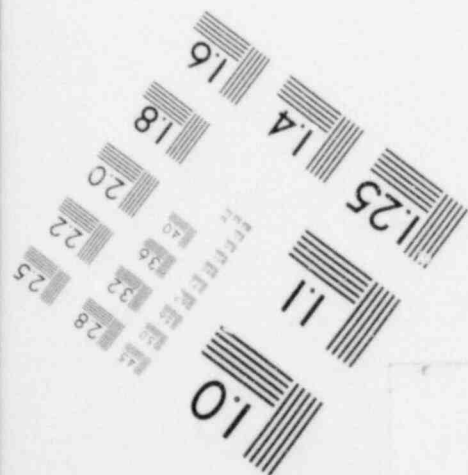




**IMAGE EVALUATION
TEST TARGET (MT-3)**



MICROCOPY RESOLUTION TEST CHART



1 Which options are you talking about, and from the to what?

2 I think that is a very general question.

3 or Mr. [unclear]

4 A That's right, which is a clear point.

5 A I can't answer that on a general basis. This
6 would vary from plant to plant, in situation to situation.
7 Maximum lead-time would be in the order of ten years, which
8 would be the planning time for a new power plant.

9 On the other hand, it is could be demonstrated
10 that there is temporary surplus capacity or perhaps load
11 changes have taken place during the course of planning and
12 construction, that lead-time might practically be considerably
13 less.

14 They do subscribe to certain characteristics in
15 the utility industry. You do need lead-time as implied
16 in the question. It could cut systems from a few weeks,
17 if the interconnection is there and the capacity is available,
18 to about ten years, which is the current planning time for
19 any nuclear generation.

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1 Q On page 11 of your prepared direct testimony,
2 you indicate that no one of the Applicants individually
3 can build a Perry or Davis-Besse unit without arrangement
4 equivalent to that afforded by CAPCO to dispose of the
5 excess power.

6 MR. LESSY: Could we have a line reference,
7 Mr. Reynolds?

8 BY MR. REYNOLDS:

9 Q It is 21 to 25.

10 MR. LESSY: As I read page 11, lines 22 to 25,
11 I don't see that statement that you referred to, 22 to 25
12 say, "If CEI alone would have tried to construct the
13 1200-MW Perry Units, it would have had excess capacity"
14 of thus and so.

15 MR. REYNOLDS: If you read on, 25 says,
16 "This undesirable result is avoided by joint one-system
17 planning of CAPCO."

18 MR. LESSY: That is not what you referenced.
19 You referenced a statement -- read the question back.

20 CHAIRMAN RICLER: It is not necessary. You
21 said the answer to the question indicated that the
22 Applicant alone could not build a plant. Mr. Lessy is
23 correct. There is a difference between being unable to
24 build a plant and having a lot of excess capacity in the
25 event one of the CAPCO Applicants by itself built the

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1 plant.

2 BY MR. REYNOLDS:

3 Q All right, why don't we look at page 11
4 instead of having a semantics argument on the prior
5 question and answer, and see -- on page 12, question 27,
6 you were asked, "Could any one of the Applicants
7 individually build the Perry or Davis-Besse Units without
8 the CAPCO arrangement?"

9 Your answer is:

10 "Only if they had arrangements equivalent to
11 that afforded by CAPCO to dispose of the excess power.
12 Also, they would need means to finance the units, and
13 to provide associated reserves and transmission."

14 Is that correct?

15 A That's correct.

16 MR. LESSY: My point is for the convenience
17 of counsel and the parties, if you reference a page
18 number and line number.

19 CHAIRMAN RIGLER: He has done that, Mr. Lessy.

20 Let's proceed.

21 BY MR. REYNOLDS:

22 Q Now on page 11, at the bottom of that page,
23 you state that CEI forecasted a need for only 349 megawatts
24 in 1979 from Perry 1, and another 349 megawatts from
25 Perry 2 in 1980.

1 Is it your testimony that CEI could not have
2 efficiently built a 7 or eight hundred megawatt unit on
3 its own and absorb that power in a two-year period of time?

4 A That is not my testimony. My testimony is directed
5 to a 1200 megawatt unit.

6 Q Would you expect that CEI would be able to
7 build a seven or eight hundred megawatt unit on its own?

8 MR. LESSY: When?

9 BY MR. REYNOLDS:

10 Q Before 1979 or '80?

11 A I'm not sure what "would be able to" means.
12 Physically, financially, economically, in the best interest
13 of the customers?

14 Q In all respects.

15 A I don't think they would be interested in
16 building that. It is evidenced by the fact that they are
17 not.

18 Q The question I asked you was is in your
19 understanding that they would not be able to do that, or
20 they would not be interested in doing that?

21 MR. LESSY: Objection on the ground of lack of
22 clarity. When or at what point in time?

23 CHAIRMAN RIGLER: I think he said his time frame.
24 I understood it to be before 1979. I see Mr. Reynolds
25 nodding affirmatively.

1 THE WITNESS: I'm still a little hesitant on
2 the word "ability." They might not be able to simply
3 because the stockholders might object to the construction
4 of an uneconomically sized power plant. They could not do
5 so in that case if they couldn't get the stockholders to
6 invest in that sort of an arrangement.

7 BY MR. REYNOLDS:

8 Q Do you know if there are any 800 megawatt
9 nuclear units being built today?

10 A I believe Davis-Besse is around the 800
11 megawatt class.

12 MR. REYNOLDS: Could I have one minute, please?

13 (Pause.)

14 MR. REYNOLDS: Thank you.

15 BY MR. REYNOLDS:

16 Q Mr. Mozer, in your earlier testimony on cross-
17 examination, I had asked you about your trips to the
18 Municipal Electric Light Plant and to the Cleveland
19 Electric Illuminating Plant, I believe in July 1974.

20 I had asked you what condition you found the
21 Municipal Electric Light Plant generating system to be in.
22 I believe your response was that you had some general
23 impressions, but you had some general impressions, but
24 you did not have a clear recollection of the physical
25 condition of the light plant as you saw it at that time;

1 is that correct?

2 A I believe so. I didn't refer to my notes at that
3 time in response to that question.

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1 Q Let me show you a memorandum which I will mark as
2 Applicants Exhibit 45, which is from Harold M. Koser to
3 file, dated 17 July 1974.

4 The subject matter is visit with the Division of
5 Light and Power, City of Cleveland, IRLP, 10 and 11 July
6 1974 and ask you, if you would tell me if that is the report
7 you made on your visit to the City Light Plant that we have
8 heard you discuss earlier?

9 A This is my report:

10 (Applicants Exhibit 45

11 was marked for identification.)

12 BY MR. REYNOLDS:

13 Q Is that an accurate statement of the visit to the
14 light plant?

15 A It is an accurate statement of my impressions on that
16 visit.

17 MR. REYNOLDS: I would like to move that Applicants
18 Exhibit 45 be admitted into evidence.

19 MR. LESSY: We have no objection, but we would
20 like you to state for the record where you obtained the
21 document.

22 MR. REYNOLDS: Do you want me to state it?

23 CHAIRMAN RIGLER: What is the point in that?

24 MR. LESSY: This was one of the documents that
25 was in the package that was delivered to Mr. Reynolds yesterday.

1 that was contained in the handwritten notes -- or was dis-
 2 noted in Mr. Meyer's green book.

3 CHAIRMAN: Would you please read the exhibit.

4 MR. CHURCH: With respect to the time the Board acted
 5 on the motion to pre-empt the document into evidence, it
 6 would be preferable if the parties who have not yet had
 7 before had a chance to examine it in detail.

8 Perhaps we could rule on the motion to admit after
 9 lunch without delaying the cross-examination at this time.

10 CHAIRMAN: We will temporarily withhold
 11 admitting it until all parties have had an opportunity to read
 12 it.

13 Remind me, Mr. Reynolds, after the next break.

14 MR. REYNOLDS: I have a couple more documents.
 15 Perhaps the review could be done at the same time on all
 16 of them.

17 Mr. Meyer, let me show you a memorandum, which I
 18 will identify as Applicants Exhibit 43, which is a memorandum
 19 prepared by Harold H. Meyer to filed dated July 13, 1974,
 20 and the subject matter is report on visit to CMI, 5 July 1974.

21 (The document referred to was
 22 marked Applicants Exhibit 46
 23 for identification.)

24 MR. REYNOLDS:

25 Q I ask you the same question with respect to this

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1 document. Is this an accurate report of your impressions
2 of the trip that you made to the Cleveland Electrical
3 Illuminating Company, which you testified to earlier?

4 A. This is my report on the subject trip. It is
5 accurate, to the best of my knowledge.

6 MR. REYNOLDS: I also move Applicants Exhibit
7 46 into evidence.

8 CHAIRMAN RIGLER: I hear no objection, but we will
9 defer ruling until all parties have had an opportunity to
10 examine the document.

11 BY MR. REYNOLDS:

12 Q In your testimony earlier, you had made reference
13 to an outline of proposed testimony which you received in
14 connection with your first assignment for preparing
15 testimony in this case; is that correct?

16 A I made an outline of my testimony, yes.

17 MR. REYNOLDS: Let me show you what I will mark
18 as Applicants Exhibit 47, which is headed, "outline of
19 Proposed Testimony," dated 6 August 1954 and has in the upper
20 right-hand corner the word "draft."

21 I ask you if that is the outline you were referring
22 to?

23 THE WITNESS: Yes, this is an outline which I
24 prepared. It is a draft and has some of my own marks on it.

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(The document referred to
was marked Applicants Exhibit
#7 for identification.)

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1 BY MR. REYNOLDS:

2 Q Do you recognize the handwriting in the
3 margin of that draft?

4 A The handwriting in the margin is mine, as far as
5 I can tell.

6 Q Is that true with respect to the handwriting on
7 all of the sheets?

8 A Yes.

9 MR. REYNOLDS: I will move Applicant's Exhibit
10 47 into evidence.

11 MR. CHARNO: Could we have the same reservation
12 on this one?

13 CHAIRMAN RIGLER: We will reserve ruling at this
14 point.

15 Mr. Reynolds, are those the only three documents
16 you will be marking as exhibits?

17 MR. REYNOLDS: Those are the only three.

18 CHAIRMAN RIGLER: We will take five minutes.

19 (Recess.)

20 BY MR. REYNOLDS:

21 Q Mr. Moser, will you turn for a minute to
22 Applicant's Exhibit 45, please.

23 A That is my --

24 Q That is your memorandum of July 12, '74 that
25 discusses the visit with the Division of Light & Power, City

1 of Cleveland.

2 A I have it.

3 Q On page 2 of that memorandum, the third full
4 paragraph, you state with that reference to a map, you
5 state what is not readily seen from the map is that in
6 virtually all of the area which MSEP has service, service
7 is also available from CEI.

8 In many areas, some of which we observed in
9 the field, CEI and MSEP had distribution lines on opposite
10 sides of the street. We observed one case in which MSEP
11 and CEI has a distribution line on the same back lot line.

12 Is that, in your view, an unusual situation,
13 to find in a municipal area?

14 A Yes, I would have to call that unusual at the
15 distribution level.

16 Q Would you say --

17 A It is not unique, but it is unusual.

18 Q Have you seen instances of that kind of competi-
19 tion in municipal areas elsewhere in the country?

20 A Yes. My firm has been involved with two such
21 matters in recent -- within the last year and currently.

22 Q Where were those?

23 A Springfield, Oregon to Dallas, Oregon, and not
24 too long ago a similar occurrence existed in the City of
25 Portland, Oregon between two investor-owned utilities.

1 Q Do you know any other areas where that
2 situation exists?

3 A Not from personal knowledge.

4 Q In the following paragraph in your memorandum,
5 page 2, the one following the paragraph I just referenced,
6 you stated, "It is interesting to note that even with lower
7 rates, MELP has been unable to expand its system in recent
8 years. The MELP explanation for this lack of growth is
9 that MELP has had so many well-publicized problems with its
10 power supply that its service is considered unreliable.
11 Therefore, customers have preferred to obtain service from
12 CEI:"

13 Is it your impression, or was it your impression
14 from your visit that well-publicized problems were in-
15 accurate or accurate?

16 A I have no basis for judgment on the statement
17 other than the information that was told to me and that
18 I reported here.

19 Q Who gave you that information?

20 A I can't identify the individual of the firm
21 that we met with. The question of accuracy goes to the
22 question of power supply.

23 I guess my observations at the power plant would
24 indicate some personal observation of the accuracy of this
25 statement, but not over any long period. I was there only

1 one day.

2 Q And -- from that one-day observation,
3 what was your impression?

4 A There was an indication that as reported in a
5 prospectus, that they had had maintenance or actually
6 physical problems that caused outages in their generating
7 units.

8 There were generating units out of service
9 apparently being maintained at the time I was there, which
10 tended to substantiate the information that I had heard.

11 Q On page 4, the last full paragraph, first
12 sentence, you state, "The MELP staff I met with was
13 openly critical of the decision to install an 85 megawatt
14 machine in 1967 when the total additional generating
15 capacity was only 75 megawatts and the total load was
16 around 100 megawatts."

17 Who was it that you met with in the MELP staff
18 that was openly critical of that decision?

19 A Here again, my handwritten notes, I believe,
20 didn't identify the individual of the several that I have
21 identified that I met with. So my recollections aren't good
22 enough as to which one of the several people that I talked
23 to actually made that statement as I have reported it in
24 here.

25 Q Did any of the other individuals quarrel with

1 that statement?

2 A I don't recall any quarreling.

3 MR. BESSY: Just a point of clarification:

4 None of these documents have been red-lined.

5 Staff is assuming that they are all relevant; is that

6 correct?

7 MR. REYNOLDS: That would be correct.

8 BY MR. REYNOLDS:

9 Q Do you recall whether that was the view of
10 Mr. George Chuplis?

11 A I couldn't identify that as being his view.

12 Q What about Mr. Hal Ackmann?

13 A I have already indicated I can't tell you who
14 provided that information to me. I don't recall anybody
15 quarreling with it, and I don't remember who made the
16 statement. Perhaps more than one.

17 Q You say that it is obvious that there was
18 inadequate back-up for the 85 megawatt unit. What do you
19 mean by that?

20 MR. BESSY: Would you reference, please?

21 BY MR. REYNOLDS:

22 Q I'm sorry. That is the next, third
23 sentence in the paragraph that I directed the witness'
24 attention to at the bottom of page 4.

25 A The meaning there is if the 85 megawatt unit was

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1 operating at the time of peak load, which was 100 megawatts,
2 and the other generation available in total was only 75
3 megawatts, that in the event of an outage of the 85
4 megawatts unit, there would have been only 75 megawatts
5 available to carry a peak load of 100 megawatts.

6 Q In that same paragraph, you also state that
7 maintenance on the 25 megawatt machines up until the last
8 couple of years was apparently negligible and in recent
9 years these machines have been plagued with difficulties,
10 most of which can apparently be attributed to long overdue
11 maintenance.

12 Who provided you with that information?

13 A I'm not sure whether it was in a meeting or in
14 the prospectus where there was an indication or tabulation
15 of outages that they have had.

16 This is a proper reporting of my impressions
17 at the time. I can't pinpoint where I got the information.
18 There was a whole host of things that I read and
19 observed and were discussed orally.

20 Here again, I commented earlier that a lot of
21 this stuff is from hearsay. It would have to be considered
22 hearsay.

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Q You, in the next sentence state "It is beyond the scope of my investigation at this time to try to determine the reasons for the apparent inattention to proper maintenance for a long period of time."

Was it your conclusion that there has been apparent inattention?

A It was my conclusion that apparently there was inattention; that is correct.

I was not prepared to say precisely that there was inattention, because I didn't examine their maintenance manuals or maintenance procedure. I only observed machines that were out of service and had some indication of the recorded difficulty.

Whether there was manufacturing trouble or not, I didn't know. I attributed it to apparent difficulties in maintenance. I had neither the information nor am I fully qualified to comment on the maintenance of mechanical equipment, so I don't want to be more specific than that.

Q On top of the next page you discuss the 85 megawatt machine. You say the 85 megawatt machine has been an unusual source of difficulty for MS&P. The City Staff questioned whether the boiler was ever in proper working order. The turbine generator has given no difficulty, but virtually ever since the machine has been operating, some difficulties have been experienced with the boiler. There

1 have been boiler tube failures and difficulties with the
2 coal-feed.

3 Who was it that advised you of that?

4 A The next sentence answers most of that question.

5 Q I believe the lead-in there was the City Staff
6 questioned whether the boiler was improper working
7 order?

8 A Again, I can't identify which of the three or
9 four people on the City Staff. There weren't very many of
10 them. They are all listed in the first paragraph of the
11 memorandum.

12 MR. LESSY: The same type of question as to who
13 said what and when has been asked, and the Witness' answer
14 is always the same.

15 It is not fruitful to continue with that type
16 of question. He doesn't remember who said what, other than
17 the facts he has identified in the memorandum.

18 To some extent, the memorandum speaks for itself.
19 If there are any additional facts that Mr. Reynolds would
20 like to bring out, that is acceptable, but to ask who said
21 that, I think we are already there.

22 BY MR. REYNOLDS:

23 Q Looking at the top of the next page, page 6, you
24 were talking about the Lake Road generating plant. You say,
25 at the time of our visit, generator number 8, a 25 megawatt

1 unit was operating. We were told that this unit had a
 2 governor problem which permits it to operate at only a few
 3 megawatts, or in its intermediate.

4 Apparently, this unit cannot be operated over
 5 a range of load. Do you know how long the 25 megawatt unit
 6 would have to operate in these conditions, or how long it
 7 would operate in another way? Was the repair of that unit dependent on the
 8 \$9.3 million bond issue?

9 A I wouldn't be able to answer that without looking
 10 at the specific items covered in the bond issue.

11 Q Who was it that went to the Lake Road generating
 12 plant with you?

13 A I apparently didn't see all of the people and I
 14 can't remember. I think there was only one carful, but
 15 I don't recall the parties.

16 Q Were the parties, some of those who are listed in
 17 the first paragraph, Mr. George Couplis, Mr. Hal Johnson,
 18 Mr. George Pofik, Mr. Sigler Titus and Mr. Russell Hunt?

19 A To the best of my recollection there would
 20 have been probably more than one of the people listed there,
 21 and probably nobody else.

22 Q You don't recall which of the people listed there?

23 A Not precisely.

24 Q Do you recall who it was not?

25 A No.

system was as reliable or more so than CEI, except for the problems they had been having with their generating equipment.

Would you explain what you were -- what the intended meaning of that statement is?

MR. LESSBY: Objection, that language speaks for itself.

Mr. Reynolds just read in one sentence. It said in general discussions the MELP staff said they felt their system was a reliable or more so than CEI, except for the problems they have been having with their generating equipment.

Mr. Reynolds asked Mr. Mozer what he meant by that sentence.

I think the meaning is pretty clear.

CHAIRMAN RIGLER: I will permit him to answer.

THE WITNESS: I think the qualifying word would be distribution system.

BY MR. REYNOLDS:

Q I'm sorry.

A The MELP staff felt their distribution system was reliable or more so than CEI. I differentiate between the power supply system and the distribution system.

CHAIRMAN RIGLER: It doesn't say the distribution system.

THE WITNESS: That is my clarification, I think, in response to Mr. Synclair's question.

BY MR. SYMCOCK:

Q Was that what the NSEP Staff said in their general discussion on this point?

A As I read this, my recollection is refreshed, because I do differentiate between system and the generating equipment.

My recollection of the NSEP system is that basically it is a generation system and distribution system, except for the short interconnection with GAT, they have no transmission system.

I can recall from my own document that having excluded generating equipment, the only thing we can be talking about has to be the distribution system.

arl 1 Q Over on the last page, about halfway up from
2 the bottom, there is a sentence that starts, "MELP
3 has already had some difficulty in trying to market
4 its \$9.8 million bond issue. The Moody rating of Baa
5 for this bond issue does not make this issue especially
6 attractive to investors."

7 Where did you get that information?

8 A That is my own opinion.

9 Q Where did you get the information as to the
10 Moody rating? Did they advise you of that?

11 A I got it probably from one of two individuals
12 at MELP and I don't recall specifically which one. It
13 would probably be Mr. Chuplis or one of their financial
14 people. I asked the question and was given an answer,
15 and I don't recall who responded.

16 In reviewing the people I talked to, I would
17 have to guess it was Mr. Chuplis. We were meeting in his
18 office.

19 Q I thought I heard you say that it might have
20 been some financial people you met with.

21 A I was reconstructing that I would have gotten
22 that information from either the manager or some financial
23 person. If my notes are accurate, and to my recollection
24 they are, I didn't meet with any financial people.

25 Q Is it your recollection you didn't meet with any

1 people other than those listed in the first paragraph?

2 A Except for perhaps a casual introduction,
3 I believe I met with these people in connection with
4 any substantive matters.

5 Q In the next sentence, you say, "I understand
6 there is a statutory interest ceiling of about 8
7 percent." Parenthetically, "I don't know if this is a city
8 or state requirement," close paren, "but in the bond market
9 as of today it is questionable whether this issue with the
10 Moody's rating it has could be marketed with an effective
11 interest rate of under 8 percent."

12 Is that your personal opinion or is that an
13 opinion conveyed to you by somebody from MELP during your
14 conversations?

15 A I would like to refer to the content of this
16 paragraph indicating that these are basically all my
17 impressions through here. That particular opinion is my
18 personal opinion based on my own experience.

19 Q Do you recall discussing that with anybody
20 at the Municipal Light Plant during your visit?

21 A No, I have not been a consultant to the city
22 on their bond issue. They have had other consultants.

23 Q In your last sentence you say, "But even if
24 MELP sells its bonds and proceeds with the planned system
25 improvements, it is not unreasonable to question whether

are

1 the economic and political factors in Cleveland will
2 result in MELP achieving the load growth rate projected
3 in the bond prospectus."

4 "What do you mean by that sentence?"

5 A It means I had the offhand impression, and I
6 again want to reiterate, these are all pretty offhand
7 impressions -- I indicated earlier in that paragraph that
8 it was the objective to develop the analysis or conclusions
9 regarding these systems.

10 For purposes of recording my notes and thoughts
11 on the subject, I indicated that I had some question that
12 perhaps the load growth rate projected in the bond
13 prospectus was a too high rate.

14 Q What economic and political factors do you have
15 in mind there?

16 MR. HOEMFELT: I recognize my objection earlier
17 to questions on the financing of the system -- I know it
18 was overruled. I would like to note a continuing objection
19 and ask that I have it without popping up each time.

20 CHAIRMAN RIGLER: All right.

21 MR. REYNOLDS: There was a question pending.

22 THE WITNESS: There appeared to be again from
23 impressions and hearsay information that the MELP system
24 was having some difficulties obtaining sufficient funds to
25 perform its operation. This is fairly well indicated in

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1 the bond prospectus. I heard vague grumblings of political
2 factors in the city as to the operation. I think it is not
3 unusual that any municipally-owned system is subject to
4 political changes in the community in which it serves.

5 In this particular case, there seemed to be
6 political factors at work. I formed general impressions.
7 They weren't the basis of any definitive study. I had
8 no assignment to reach any definitive conclusions on these
9 points.

10 BY MR. REYNOLDS:

11 Q What specific political factors at work do you
12 have in mind?

13 MR. HJEMFELT: I object. We were precluded
14 on discovery from getting into any sort of political
15 questions, questions about political influence on the
16 basis of Noerr-Pennington objection.

17 Under the circumstances it is unfair to the
18 City of Cleveland.

19 MR. LESSY: He indicated it was beyond his
20 assignment and we are in the area of speculation.

21 CHAIRMAN RIGLER: Any response, Mr. Reynolds?

22 Mr. Hjempfelt's point on Noerr-Pennington is
23 quite well taken. You can't have it both ways.

24 MR. REYNOLDS: I'm not sure I see any relation-
25 ship with regard to the Noerr-Pennington matter. The

witness testified he had impression of political factors.

I'm not asking him about any activities specifically by any of the parties to -- here within the political forum. I'm asking what the basis was for his opinion that he had formed with respect to his observations in the City of Cleveland area.

CHAIRMAN RIGLER: I think he has answered that. I will sustain Mr. Hjermfelt's objection.

I am going to take a two-minute break. Don't go far, please.

MR. REYNOLDS: Is now the time to move the exhibits in?

(Recess.)

CHAIRMAN RIGLER: You wanted to move Applicant's Exhibits 45, 46 and 47 into evidence at this time, Mr. Reynolds?

MR. REYNOLDS: Yes, please.

MR. HJERMFELT: If the exhibits are being introduced for any purpose other than impeachment, the City will object.

MR. REYNOLDS: The exhibits are being introduced for all purposes.

CHAIRMAN RIGLER: They will be admitted into evidence.

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1 (Applicant's Exhibits 45, 46,
2 and 47, previously marked for
3 identification, were received
4 in evidence.)

5 MR. REYNOLDS: That is --

6 CHAIRMAN RIGLER: That is 45, 46, and 47.

7 MR. SMITH: May I ask a few questions of
8 Mr. Mozer now, please?

9 Mr. Mozer, is there a difference between
10 installed capacity and generating capacity of a unit?

11 THE WITNESS: Your question goes to the
12 rating of equipment and it is one in which you are in a
13 difficult area. A piece of generating equipment will have
14 a name plate rating. It is the rating a manufacturer
15 gives it in effect, certifying that it will perform
16 continually at that rating under certain conditions of
17 temperature and so forth.

18 Generators' actual capacity to produce power
19 is related largely to heat dissipating factors and
20 generators can be run in excess of name plate rating for
21 short periods of time to produce peaking.

22 Various power pools have their own procedures
23 and they aren't all the same for rating generating
24 equipment for the purposes of either continuous operation
25 or peaking operation. And so sometimes these words --

1 there might be a difference. Installed capacity refers
2 to the name plate capacity.

3 MR. SMITH: What is what the 85 megawatts refers
4 to?

5 THE WITNESS: That is the name plate for that
6 unit, as I recall.

7 MR. SMITH: Has this unit been referred to as
8 a 75 megawatt unit?

9 THE WITNESS: No, the 75 megawatts is the total
10 capacity that they had -- adding up the capacity of
11 several units at the time the 85 was installed. That is
12 the reference to the 75.

13 At least it is in my final memorandum, as I
14 recall, Exhibit 45.

15 MR. REYNOLDS: Mr. Smith, for clarification,
16 I believe -- and Mr. Hjermfelt can correct me if I am
17 wrong -- I believe that in prior testimony the reference
18 to a 75 megawatt unit has been to the same unit as
19 has been referenced as an 85 megawatt unit by Mr. Mozar.

20 MR. HJEMFELT: You are referring to testimony
21 from Mr. Hinchee?

22 MR. REYNOLDS: Right.

23 MR. HJEMFELT: I assume that would also be correct.

24 MR. SMITH: I want to know if we are talking
25 about the same thing. Is a gas turbine the same as a

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combustion turbine?

THE WITNESS: The term "gas turbine" came into being largely because the most desirable kind of fuel to use in that type of equipment is natural gas. Natural gas is in short supply and not available any more.

The term "combustion turbine" is a more general term when such equipment is used with other fuels.

end 11

1 MR. SMITH: We had testimony that Newton Falls
2 uses diesel units.

3 THE WITNESS: That is mechanically a different
4 type of equipment than combustion equipment.

5 MR. SMITH: What does CH2M Hill mean?

6 THE WITNESS: It is our corporate name now. The
7 evolution of the CH2M is from the names of the four founding
8 partners and Hill is the name of a firm we merged with in
9 1972.

10 MR. SMITH: To counsel, would the prospectus
11 be introduced into evidence? Does anybody propose to offer
12 the prospectus in evidence?

13 CHAIRMAN RIGLER: The prospectus for the \$9.8 million
14 bond issue.

15 MR. SMITH: Do you propose to?

16 MR. REYNOLDS: I believe it is on the designated
17 document list.

18 MR. HJELMFELT: I am not at all certain it is on
19 my designated document list and I can't tell you for sure
20 that it is or that I intend to put it in.

21 MR. SMITH: I would like it in evidence, if we
22 can arrange for that. Thank you.

23 CHAIRMAN RIGLER: Does that conclude your examination
24 Mr. Reynolds?

25 MR. REYNOLDS: Yes, it does.

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1 CHAIRMAN RIGLER: Is there any redirect, Mr. Lessy?

2 MR. LESSY: Yes, but I would like to do that after
3 a luncheon break. Since we have had two-and-a-half days
4 of cross-examination. Unless I am given an opportunity to
5 consult with the witness, it will be a long redirect.

6 I could have an opportunity pare it down and
7 consult perhaps I can pare it down to a level that I know
8 the Board will be happier with.

9 CHAIRMAN RIGLER: Don't we have another witness also?

10 MR. LESSY: Yes, we have Mr. Haisel and he is
11 present. I don't expect that that will take long at all.

12 CHAIRMAN RIGLER: Let's go off the record.

13 (Discussion off the record.)

14 CHAIRMAN RIGLER: Mr. Charno, what are your plans
15 with respect to the length of any recross examination.

16 MR. CHARNO: The Department has approximately 15
17 minutes of recross.

18 CHAIRMAN RIGLER: Mr. Hjelmfelt, have you any
19 recross?

20 MR. HJELMFELT: 15 minutes at the very most.

21 CHAIRMAN RIGLER: Mr. Reynolds?

22 MR. REYNOLDS: I would like to raise a question
23 as to whether we are talking about recross on redirect, which
24 I believe would be the only area of permissible cross at this
25 stage in this proceeding.

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1 We have gone through with everybody having had
2 their opportunity for cross. If there is redirect, I think
3 that that is appropriate and any recross would then be
4 limited to the scope of the redirect.

5 CHAIRMAN RIGLER: Mr. Charney

6 MR. CHARNEY: Mr. Chairman, this question
7 previously arose in the context of Mr. Minchew's testimony.
8 When the Applicants were recrossing upon the Department's
9 cross-examination. At page 2034 of the transcript on January 6,
10 the Department inquired as to whether cross or recross would
11 be permitted in the proceeding and you replied that it
12 would. It was on the basis of that ruling that we did not
13 exercise our right to cross-examine Mr. Moser initially.

14 We have had no opportunity to interrogate this
15 witness.

16 CHAIRMAN RIGLER: Is it your recollection with
17 respect to Mr. Minchew's testimony that the Applicants
18 were in favor of cross or recross and proposed that to the Board?

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This case

MR. CHARNO: It is my recollection that they proceeded to do cross-examination when I objected. My objection was overruled without comment from them. It is certainly a privilege they have exercised previously in this proceeding.

MR. REYNOLDS: I guess the difficulty I am having is that that means we are going to open up another round of cross after we are finished the recess of the redirect so that Applicants can cross on that whole area of interrogation.

The Justice Department did not choose to do its cross originally. It seems to me what we are hearing is that Justice wants to do redirect and Justice has already indicated to us that they do not have an identity of interest sufficient to preclude them from cross. I'm having a hard time understanding how they should be in a position to recross outside the scope of the redirect.

MR. CHARNO: It is simply the Department's position that we would like the same procedural fairness extended to the Applicants.

CHAIRMAN RISTER: We will let you know when we come back from lunch at 1:30.

(Whereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 1:30 p.m., this same day.)

AFTERNOON SESSION

11:35 p. m.

CH. IRVING RIGLER: Before you proceed, the Board has taken under consideration the question about the extent of recess which we would allow parties other than the Staff, and we have decided to allow Justice to examine on the subject of the examination of the Applicants.

We intend to control that very carefully and closely. If it does necessitate Applicants to ask an even more limited set of questions pertaining to the Justice recess, we will permit that.

We will not go back and forth ad infinitum, but in view of the extensive nature of the cross-examination and in view of the fact that privilege was extended to Applicants earlier, that would be appropriate.

MR. CHAMHO: Could I inquire at this time whether that will be the Board's policy with respect to future witnesses, or would the Board care to make a ruling with respect to future witnesses?

CHAIRMAN RIGLER: It is premature. We would not care to make a ruling. We may even have to change this if the practice gets out of hand. We will not keep going back and forth, back and forth with the same witness.

If we watch carefully as to the nature of the questions and their scope, it would be useful in further

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MR. REYNOLDS: I had an occasion to review that transcript and what occurred. What objection is that the argument of Justice went into areas in cross-examination which Applicants objected to as being beyond the area of the direct examination.

The objection in those situations was overruled. Justice was permitted to have its examination in those areas, and the areas where the transcript referred to cross on cross by Applicants was cross-examination by the Applicants in those areas where the Justice Department had cross-examined beyond or outside the scope of the direct, in our view.

It was in that context that Applicants had been involved in a ruling which seemed to permit cross on cross. It is with that kind of a restriction in mind that I think it is appropriate to ask for some very severe restrictions on the extent of cross-examination by Justice.

CHAIRMAN RIGLER: We intend to keep it limited. That should be clear, I hope, from our remarks.

MR. REYNOLDS: I would like to also, if I might, make one other observation.

I am a little distressed, if we are getting into a situation where the Department is intending to waive initial cross, in order to save that cross for some period of time after the Applicants have had their opportunity to cross,

especially with the expert witnesses. I don't think it is
 really by the court to be done. It is a matter that is
 on a whole present.

CHAIRMAN: We will have to discuss this
 on an ad hoc basis. I agree it would not be appropriate
 for other parties to have what should have been their
 initial cross-examination until after the Applicant has
 conducted its cross.

The countervailing consideration is if there
 has really been adequate cross-examination that has undeter-
 mined part of the expert or another witness' testimony, it
 is possible that limited cross might serve to refine that or to
 restore a balance in some way. I don't know.

As I say, it would be approached on an ad hoc
 basis.

Whereupon,

HAROLD N. MOZER

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

REBUTEL EXAMINATION

BY MR. LESSY:

Q Mr. Mozer, in addition to the discovery and other
 materials provided to you by the NRC Staff, did you have
 occasion to review all of Staff's documentary files per-
 taining to the matter at hand?

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A. As far as I know, I had free access to all of the materials that were available. In the framework I was given drawers or bins of material to review at my leisure.

Q. How many times did this review of the materials at your leisure occur?

A. I believe I was in Bethesda four or five times before I completed my testimony. I went through a great deal of material the first time and any succeeding time I inquired as to additional material.

Some additional material was given to me. I also requested data that wasn't available, if I didn't see it.

Some data, I think, was provided on discovery on the basis of my request to see if such data existed.

Q. With respect to your field investigation to Cleveland, Painesville and CEF, in July of 1974, under what precise nuclear license application was that trip undertaken or in connection with which applications?

A. At the time that trip was taken, I was still operating under what I believe was determined as work directive number one, which the Perry plant was the only nuclear plant under consideration.

Q. Was Mr. William Bradford Reynolds present during part of that field investigation undertaken?

A. Yes.

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Q Was he present when he was interviewed by the FBI, if you had?

A It was an understanding that I was not to speak on behalf of or least not use company names. I was aware specifically of my recollection.

Q Now focusing on your visit to IRT in July of 1974, have you had an opportunity to refresh your recollection as to whether or not you inquired at IRT about its policies concerning wheeling?

A Yes, I have had an opportunity to refresh myself.

Q What did you use to refresh your recollection?

A I used my report in the file dated July 1974. I believe that is referred to as Applicant's Exhibit 43.

Q Do you have reference to any particular provision?

MR. REYNOLDS: Does counsel have any other paragraph? You said provision.

BY MR. LESBY:

Q I'm sorry.

to any page and paragraph?

A In Applicant's Exhibit 43, on page 4, the second paragraph, I will read it, says:

"In response to my question, I was advised that IRT at present has no wheeling arrangement with any other utilities." My recollection from this language is precisely

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such as it says. I indicated the subject matter of the question, and the response is that the subject matter is Davis-Besse Units 1, 2, 3 and the Lesby Unit-1 and 2. Do you know if there are any participants other than the Duganite Light, Toledo Edison, Ohio Edison and American Power in any of these units?

A I'm not aware of any other participants.

MR. REYNOLDS: Now we have that the idea that if I may.

I would object to the question with respect to Davis-Besse unless it can be rephrased.

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

CHAIRMAN RIEBER: I think the answer is accurate as to that.

I see your point, Mr. Reynolds.

MR. LESSY: I wasn't trying to suggest that each of these was involved in all units.

BY MR. LESSY:

Q What does your answer to my previous question tell you about access to participation in nuclear units in the CCOTF?

MR. REYNOLDS: I object to that. I don't see the question that he asked has any relevance to the prior

answer, as to what it tells us.

If you want to go back and examine the answer, it doesn't seem there is any relationship to the next question.

MR. LESSIE: The last question established that the only participants in the appropriate units were in essence the Applicants in this proceeding.

Now the question was what does that tell you about access in fact to nuclear units within the COG?

CHAIRMAN RIEGER: I will permit the answer to that one.

THE WITNESS: To my knowledge, there is no access by any parties other than the five utilities that were mentioned in the previous question to these nuclear units.

BY MR. LESSIE:

Q Do you view interconnection as equivalent to direct access to a nuclear plant, either through ownership or a contractual pre-purchase of power?

A The term "interconnection" is kind of general. Do you mean just an interconnection?

Q An intertie between two utilities.

A It is not necessarily the same thing.

Q Why is it not necessarily the same?

A Well, an interconnection agreement and a

physical interconnection might provide the means for participation in certain types of supply contracts or contracts which would have to include provisions for a nuclear unit just located for use as interconnection.

Q Do you consider a wholesale power sale which includes cost components of a nuclear unit preferable to direct access to a nuclear unit?

A No.

Q Would it be a desirable option for consideration in power supply planning for a full requirements customer to shift to partial requirements by direct participation in a nuclear unit?

A It would be a desirable option.

Q Why?

A Full requirements customer, of course, as subject to a single entity, its power supplier, in terms of the cost and the physical nature of its supply. A supply having an option to make a change gives the utility an opportunity to consider perhaps lower cost power supply, to give them a certain amount of independence of selection of power sources.

Q Are you aware of any contracts, draft contracts or rate schedules filed with the Federal Power Commission affording any entities in the CCCT other than Applicants access to Perry and Davis-Besse Nuclear Plants along with

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back-up services, access in any form?

A I have never noted that any materials had been indicated as filed with the Federal Power Commission, noted that in any materials that had been indicated as filed with the Federal Power Commission.

Q With reference to answer to the question 188 of your direct filed testimony, which appears on page 71, when you testified on cross-examination that certain power supply options such as those listed in the answer to question 188 of your direct testimony would be ideally desirable, what did you mean by the term "ideally desirable"?

A I mean as a power supply planner, I would have an opportunity to develop a more economical, perhaps more reliable, and perhaps more environmentally sound power supply if I had as much freedom of choice as possible.

The power supply arrangements possible from the power supply arrangements from which I could consider.

Q Are these options or the bulk of these options generally available to the Applicant in this proceeding, in your view?

A I believe I have seen evidence of all of the arrangements except I don't know that any of the Applicants are selling full requirements firm power to another Applicant or partial requirements for power. They are

selling certain specified amounts of this power.

I think all of the other proceedings were covered by this and these are contracts indicating those whose operations are indulged in.

Q In addition to analyzing contracts, to illustrate the power supply options and circumstances among Applicants which you have testified to, what does Exhibit 8 of your testimony add to your analysis?

A Exhibit 8 represents the filings --

MR. FAYWOOD: I would object to that at least as getting beyond the scope of anything in cross-examination.

MR. LESSEY: Well, the implication on cross-examination is that Mr. Nozer just read contracts. Exhibit 8 has a direct bearing on --

MR. REYNOLDS: Excuse me, Mr. Chairman.

If we are going to get a dissertation from Mr. Lessey as to where he is going, I think the witness should be excused so it doesn't have any effect on the testimony he might be giving in the event Mr. Lessey is allowed to go into this area.

CHAIRMAN RIGLER: I agree.

(Witness temporarily removed.)

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MR. LESSY: There was an implication made during cross-examination that the Witness merely read contracts. There was also an implication made as to what happens in the real world of CAPCO. Exhibit 8 directly pertains to examination of energy within the real CAPCO world, the extent to which contracts providing for certain services were implemented in the kilowatt hours transferred, for example.

If we are going to delve into that area, it is pertinent for the Board. In addition, since these extracts from certain FPC forms, which are technically in nature, I don't feel the numbers themselves will be self-explanatory without a brief description of what they represent by the expert witness in this proceeding.

MR. REYNOLDS: I thought you were finished. I am sorry.

MR. LESSY: It will not be an extensive line either.

MR. REYNOLDS: Mr. Chairman, I have no differ with Mr. Lessy's characterization of what the material is that is contained in Exhibit 8. As I see that material and go through it, I don't think that there is anything in that material that would indicate what contract it might be related to, what kind of transactions might have been involved, which contracts the transactions or the power exchanges might have occurred under. I don't see anything that is in

This material that begins to appear on the ...
...
... consideration of whether it is ...
... Mr. Lacey's line ...

CHAIRMAN WIGGANS: This is an exhibit on
page 5 (B) (2).

This is a page from the annual report of ...
... Light Company which indicates ...
... CAPCO transmission facilities ...

It seems to me, Mr. Reynolds, that ...
... related actual operations after the ...

I would permit a question as to whether ...
... examined or made reference to those particular ...
... in connection with the preparation of his testimony.

Beyond that, I would ...
... Mr. Reynolds is directed not to get into ...
... areas. But I would allow you to establish ...
... that does bear on his questions with respect to his knowledge
of the operating procedures under the agreement.

Whereupon,

HAROLD K. NOYER

recused the stand and, having been previously ...
... was examined and testified further as follows:

REPTER'S EXHIBITARY RECORD

043

BY MR. [REDACTED]:

Mr. [REDACTED], in addition to the [REDACTED] with respect to the preparation of your testimony in [REDACTED] power supply of [REDACTED] and [REDACTED] between application and between [REDACTED] and [REDACTED]. Did you also rely on certain FPC data which is contained as Exhibit 3 to your testimony?

A Yes.

Q Can you tell us briefly in what way Exhibit 3 contributed to your preparation?

A Exhibit 3, are summaries and portions of annual reports to the Federal Power Commission by the Applicants illustrating certain power supply, power exchange, wheeling, transmission transactions, and [REDACTED] after the fact activities that presumably actually occurred.

In spot-checking through the material in Exhibit 3, I was able to confirm that certain transactions which I found contracts presumably occurred or were reported to have occurred by one or more of the Applicants to the Federal Power Commission.

Q Do you have in front of you a copy of Applicants Exhibit 44?

A Yes.

Q Is the transmission agreement in that exhibit

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similar in scope to other transactions which are not
to be considered as a transfer of power.

A. No.

MR. HENNING: Would you like to ask Mr. Lesby?

Could I have the document that you are referring to?

(The reporter asks the witness to produce the document.)

BY MR. LESBY:

Q. In what ways is it different from other provisions
which you have examined?

A. I consider this a limited transmission of power.
It provides for the transmission of specific kinds of
power as provided for in this agreement. But it is not
what I would consider a general transmission of power.
Limited is the word that I would typify this type of
power.

MR. LESBY: I would like to have called for
identification Chapter 4906 of the Ohio Code, entitled
"Power Siting," and it would be marked for identification
as Staff Exhibit 206.

(The reporter referred to was
was marked Staff Exhibit 206
for identification.)

MR. LESBY: There are certain underlines
in Mr. Nozer's copy of this exhibit which are not deletions
but are emphasis lines.

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CHAIRMAN RIGLER: Who put them there, Mr. Lessey?

MR. LESSEY: Mr. Jones.

THE WITNESS: Small Exhibit 136 is a Xerox copy of a copy of the "His Sinking Act," which I had in my possession, and what appears to be delusions are yellow pencil highlight marks on my original copy which are translucent. I can see through them. I put the yellow marks on the exhibit.

CHAIRMAN RIGLER: So the significance of this exhibit is that this is what you had as reference material at the time you were drafting your expert testimony?

THE WITNESS: That is correct.

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CHAIRMAN RIGLER: But we will not take judicial notice that this is a current or amended copy of the Ohio Code because we may have had subsequent additions and modifications.

In other words, we will limit the purpose of this exhibit. If you want to get for us the actual provisions of the code, you will have to give us the current provisions or the provisions in effect as of a particular date and explain why you selected that date.

MR. LESBY: I will be happy to. That is not consistent with the Home Rule Statute that Mr. Sanger introduced into evidence during the cross-examination of Mr. Iyren.

I would be happy to do that.

MR. BENSOW: I understood that Mr. Lesby provided us with the material that Mr. Bozer was relying on. I notice it does have this three-ring hole indicated on the Xerox that was typical of the materials that were provided to us yesterday, but we did not receive this.

I wonder if there are any other such materials that we have not been provided.

CHAIRMAN RIGLER: I will ask Mr. Lesby to respond to that.

However, I want you to funnel your questions through Mr. Reynolds.

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MR. LESSY: There are no other materials. This is something that was extracted because he had referred to it in testimony.

BY MR. LESSY:

Q Mr. Moxer, can you identify --

MR. REYNOLDS: May I ask one clarifying question? It is in connection with what your question was, Mr. Chairman, with regard to the markings.

I wonder if the witness could tell us at what point in time he put the yellow markings on the document.

THE WITNESS: Prior to the time I prepared my testimony. I can't tell you exactly the date.

MR. REYNOLDS: Is Mr. Lessy's statement with regard to this particular document, do I understand him correctly that there is no other material taken out of the book that was not provided, but for that which we had discussed at the break yesterday?

MR. LESSY: That's correct.

MR. REYNOLDS: Thank you.

BY MR. LESSY:

Q Can you identify this document for us, Mr. Moxer?

A This document, Staff Exhibit 266, is a Xerox copy that I have of what is referred to as Chapter 4906, Power Siting, which I understand to be a statute in the

State of Ohio.

Q Can you indicate to me what language you feel should be considered by a power supply planner concerning or relating to the construction of a transmission line by a municipal or any other utility?

A Yes.

The language that I would rely on to cause me to believe that this code would apply to a municipal facility would follow these lines:

On the second page of the --

MR. REYNOLDS: I object, Mr. Chairman. I don't believe that that was the question. If we could have the question re-read.

CHAIRMAN RIGLER: The question was which portion of the statute which the power supply planner relied upon.

MR. BERSON: That's right.

CHAIRMAN RIGLER: The answer is --

MR. LESSEY: Concerning the construction of a transmission line by a municipality or other.

CHAIRMAN RIGLER: I'm not sure I follow the objection. He was asked to identify what a power supply planner would consider to be the relevant portions of this statute for analysis purposes, for purposes of construction of a transmission line.

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MR. REYNOLDS: I am going to have the same address addresses to a different person.

THE WITNESS: I am going to have the same address

I am going to have the same address to be a municipal utility. If I wish it, I can have it contained in it.

BY MR. LESBY:

Q Why don't you do that?

MR. REYNOLDS: I object. That is a legal interpretation.

THE WITNESS: Page 69 of the Civil Code Code under Section 4905.04, language reads:

"No person shall commence to construct major utility facility in this state without first having obtained a certificate for the facility."

I emphasize the word "person."

Then go back to the first page of the Civil Code Section 4906.01 under definitions:

Definition 2 defines a person as several different things. Including, but not limited to, a political subdivision of the state or any other entity.

As an engineer, I would immediately believe that any other entity would apply to a municipal electric utility system.

Having made that determination, I would then

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consider all aspects of the act and particularly Section 4906.10 to be applicable and to which I would have to concern myself in the design or planning of a transmission facility for the municipality.

MR. LESSY: I would like to move into evidence Staff Exhibit --

MR. REYNOLDS: Mr. Chairman, I will move to strike the witness' response.

CHAIRMAN RIGLER: And the basis?

MR. REYNOLDS: The basis is that it is clearly an interpretation that has nothing to do with his expertise, but is a legal interpretation that he is not qualified to make.

CHAIRMAN RIGLER: We will disagree with you. I don't believe the statutory interpretation is restricted or confined to lawyers.

As a matter of fact, if we look at the statute itself in this instance, we will see that the Commission which is created and which is deciding these questions is composed of non-lawyer members and if non-lawyers can be interpreting the statute and making law and rules and regulations under the statute as the statute itself provides, then surely a power supply planner can give his interpretation of what would be relevant from a power supply point of view.

MR. REYNOLDS: I respectfully take exception with that. But she's talking about red lines.

I would like to know if we are going to have for the introduction of this. I would like to know if it is a clarification necessary as to the other markings on the document besides those that Mr. Dwyer has described as the yellow highlights, and I would just like to have a clarification from the witness as to what the other markings are on the document.

MR. LUSBY: The witness didn't provide the other markings.

MR. REYNOLDS: I would like the witness account of that, if I could.

MR. LUSBY: I would like to respond to that.

MR. REYNOLDS: I object.

CHAIRMAN REGLER: Are you talking about the red-lining?

MR. REYNOLDS: I don't have red-lining. I have underlining, marginal lines. If it is red-lined, then that would be helpful, but I don't have that, and I'm entitled, I think, to --

CHAIRMAN REGLER: My copy has red lines. I will permit you to ask the witness what the marginal lines are.

MR. REYNOLDS: If they are red lines -- I have

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a copy which shows some black lines, underlines, and black lines in the margin.

I have not been advised that those are red lines on the original copies. Was put -- are they your markings?

THE WITNESS: The only markings I put on here are the ones I described as yellow highlighting lines. The underlining and marginal lining was not provided by me.

They happen to be red on the copy that was taken from me to Xerox it.

MR. REYNOLDS: I apologize for the confusion. Mine was not red-lined.

MR. LESSY: I would like to move into evidence as Staff Exhibit 206 the chapter 4905 of the Ohio Revised Code which was in the witness' possession, and to which he refers in his direct testimony.

CHAIRMAN RIGLER: We will receive it into evidence.

(Staff Exhibit 206, a document previously marked for identification, was received in evidence.)

MR. LESSY: What would the Board require in the form of an unsponsored exhibit by Staff as to the current provision of the Code, if the current provision

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is any different from this?

CHAIRMAN FRYER: We would require nothing more than your representation that it is the correct provision of the code, absent objections from the Applicant.

MR. REYNOLDS: I'm not sure we are talking about in the way of unsponsored exhibits, provisions of statutes. I can see the purpose of this Document because it has markings on it which this witness made. If we are getting to a question of testifying to the Board and putting in, in the way of exhibit, copies of statutes, I guess I need a clarification because I don't understand that or see the need for it.

MR. LINSKY: The Board indicated it would not take judicial notice of this as Chapter 4906. I don't recall that Chapter 4906 of the Ohio Code would be something that would be helpful for the Board to have before it in forming its consideration.

Since this witness is leaving the witness stand today, I hope we can get that in front of the Board. Since he will not be here, it would have to be as an unsponsored exhibit.

I would endeavor to make the current copy available. I will make the representation now that this is the current copy of the statute that appears in the

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Library of the Executive Legal Director of the NRC Staff.

CHAIRMAN RIGLER: We will consider the provisions of Chapter 4906. All we require is that the copy that we do consider be a currently-amended copy.

MR. REYNOLDS: I appreciate that. I wasn't suggesting otherwise. I was trying to understand what the label unsponsored exhibit meant with respect to that particular document.

MR. SMITH: Mr. Lessy, does that also include the pocket parts, do you know?

MR. LESSY: To my recollection, the statute is so new that there were no pocket parts in the copy that we have.

However, I will recheck it again before we recommence on Tuesday.

On Tuesday morning I will make a firm statement as to whether or not this is a current copy. If there is a current copy, I will offer it to the Board as an unsponsored exhibit.

CHAIRMAN RIGLER: It would be preferable to give us a clean copy in any event as a different exhibit.

MR. LESSY: All right.

BY MR. LESSY:

Q Mr. Moser, in the hypothetical that Mr. Reynolds

used yesterday where a small system interconnected with a hundred megawatt system and the peak power reserves for reserves from 30 megawatts to 20 megawatts respectively, do you believe there would be any benefit to the smaller system as a result of the interconnection?

MR. REYNOLDS: I believe that is your proper statement of the hypothetical that was given yesterday. If you will give me a minute, we will get the transcript page. Or if you have a transcript page, you could refer me to it and we will correct the hypothetical.

MR. LESSY: Since it is your hypothetical, I would prefer if you provided the transcript page.

MR. CHAMBO: For the convenience of the rest of the parties, the hypothetical begins on page 282. It runs to 85.

MR. REYNOLDS: If you could refer to that and rephrase your question, Mr. Lessy, we could go forward from there. I object to your question as it is now phrased because I think it misstates the hypothetical.

BY MR. LESSY:

Q We are getting technical in our objections, and I will read the statement to you.

The question that Mr. Reynolds asked you, Mr. Mozer, is -- let me ask you to assume for a minute a System A that is 100 megawatts of capacity, loss of load probability

of one day in 10 years, it says 20 percent. Now we
 we requires 37 percent. Now we have a system which
 following industries. Now we have a system which
 has the same loss of load probability as one day in 10
 years and it can reduce its reserve requirement to
 20 megawatts.

My question to you, based on that hypothetical,
 is do you believe there would be any benefits to the larger
 system as a result of the interconnection?

MR. REYNOLDS: Could I have a clarification?
 The hypothetical says nothing about a larger system.

Are we changing the hypothetical or does Mr.
 Lessy have something else in mind?

BY MR. LESSY:

Q Let's assume --

CHAIRMAN RIGLER: Let's say the other system
 and proceed with the answer.

MR. LESSY: I constitute this as interruption.
 I'm trying to proceed as fast as I can. I consider this
 as an interruption of this witness.

CHAIRMAN RIGLER: Let's proceed.

BY MR. LESSY:

Q Do you understand the question, Mr. Mozert?

A The question is would there be any benefits
 to the other system.

I would have to say there could be benefits
to the other system.

Q What could the benefits be?

A The benefits could be a reduction in the other system reserve requirements, as a result of operating reserves on the basis of a larger system.

I don't know the size of the other system. There could be a benefit to the other system from the interconnection simply because the point at which the interconnection takes place might be one which the addition of generation might reinforce the other system's transmission and distribution system -- transmission for distribution system. These are two prominent benefits and perhaps there are others I hadn't thought of.

Q Mr. Noyer, on Exhibit 224-6 the following is your terminology for economy power. The first page of 224-7. The terms are defined in alphabetical order and it appears at the bottom of the first page of that exhibit. Economy power is described as the capacity and/or energy available from source or sources in one system, used as a substitute for a less economical source or sources on another system.

Do you believe that Applicants might benefit from an economy power arrangement with a small utility or a group of small utilities in the COGEE?

A Yes.

Q In what way?

A Assuming in this case that the Applicants were

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selling economy power to another entity or group of entities, the process of -- the normal process of selling the economy power is to sell the power at a cost which is about half way between the cost of its production and the saving that the receiving entity would get.

Therefore, the selling entity, in this case I have assumed the Applicant would get its out-of-pocket cost, plus half the difference between what it would have cost the receiving entity. That is a benefit in that direction.

If the flow is in the other direction, where the Applicant was the recipient or purchaser of economy energy, they would get benefit of being able to save the use of higher cost power.

They would base a little more than the cost of production by the supplying entity at less the cost they would have spent to produce the power themselves.

It is a two-way street in every instance, virtually.

Q Do you recall a question asked you by Mr. Smith regarding whether opportunity for small electric utilities to coordinate with one another could result in a shift from one type generating capacity to another, for example from peaking capacity to intermediate load capacity?

A I recall the question.

Q Could you describe how the combining loads of several

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small utilities would impact on the need for peaking capacity?

A Normally, we expect that when small utilities combine and form a larger entity, by joint operating agreements or mergers or any one of several ways that the combined load of the group of utilities would tend to have a higher load factor than the load of the individual utilities separately. To put that another way, for the same amount of energy consumption the peak of the utilities operating in a combined fashion would tend to be less than the sum of the peaks of the individual utilities operating on an individual basis.

Q Would a reduction in peaking capacity normally result in a better use of existing resources?

A Would either result in either a better use of existing resources or avoid the addition of resources in the future.

Q During the day-to-day operations of an electric utility having its own generating facilities, would the idle capacity that serves as the system reserve be peaking capacity, intermediate capacity or base load capacity?

A Reserve capacity would normally be peaking capacity or at least allocated to peaking capacity at that time.

MR. LEESY: That would be the redirect examination.

CHAIRMAN RIGLER: Has that eliminated your need for recross, Mr. Charno?

MR. CHAMBERLAIN: Not entirely, but it has been it
has been directed.

CHAMBERLAIN: Yes.

CHAMBERLAIN: Yes.

BY MR. CHAMBERLAIN:

Q Mr. Moran, could you please go back to the hypothetical
the Mr. Leszy read into the record.

Let me ask you if Utility A, according to the
hypothetical was the utility having the interconnection
whose reserves were lowered, and pay any benefits or
revenue to Utility B, the utility providing the
interconnection, as the price for the interconnection,
does Utility A come out without any net benefits at all from
interconnecting?

A I don't know of the case where Utility A would
actually pay Utility B any revenue based on the benefits
received. The answer, depending on the amount of revenue
payment that you have hypothesized, they might or might not
have benefits.

Q What types of benefits are paid in connection
with an interconnection agreement?

A Normally, I would expect to see a payment made
by the utility based on negotiations. The utility expecting
to get the most benefits would probably pay the out-of-
pocket or physical costs of the interconnection, all or
some allocated portion of it. It has not been my

experience that any further arguments would be made just for the privilege of interconnecting.

Q Let me pose a variation of that hypothetical and ask you apply the same logic that you said to it. So I can understand what you are saying. If Utility A were an isolated utility and it carried 100 percent reserves and Utility B were an extremely loose utility and carried, say, 20 percent reserves, and after the interconnection, Utility A carried 10 percent, therefore, everybody reduced its reserves, collectively by 20 percent and Utility B carried 15,000 having infinitesimally reduced its reserve obligation.

What costs would have to be paid in balancing the benefits of that interconnection?

A Under that arrangement I would expect Utility B to argue probably very successfully that they should make no payment at all.

They wouldn't expect to receive any. Utility A would be expected to pay the entire cost of the physical facilities that would make up the interconnection. This would amount to, probably, in the typical case, transmission facilities, substation facilities, communications, power control facilities.

Q Would Utility A be expected to make additional payment for the savings of 80 percent of its reserve capacity?

16 A. Not simply for the saving of the reserve capacity.

If from time to time during the operations of the inter-connected systems, they called upon the reserves of Utility B, they would expect to make a compensatory payment for the use of the capacity.

Q That payment wouldn't be made if I understood your testimony correctly - unless they actually existed from the reserve capacity?

A That's correct. I would not require a specific payment to be made simply for the purpose of interconnecting Utility A to Utility B.

Q Let me refer you back to Exhibit LNC 106. If your interpretation of that - these statutory provisions as a power supply engineer were found to be legally completely erroneous, would you feel that duplicative transmission lines should be constructed?

A That doesn't change my fundamental opinion as an engineer. This just adds frosting to the cake, as far as Ohio is concerned.

Q With respect to Applicant's Exhibit No. 41, which I believe is your report on your visit to OHI of 9 July 74, were all of the individuals with whom you met at OHI listed in the second paragraph of that report?

A I don't think all of the individuals, because we visited power plants, and there were probably personnel around there that I didn't take note of their names.

Q Is the information that is contained in the report information that was supplied to you by the individuals listed in the second paragraph of that memorandum?

A Not necessarily. I may have gotten nickles

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of information in my notes from inquiring of people at the power plant. I did have handwritten notes in my notebook. I think I transcribed that and I thought it was significant.

I didn't think the sources of the information were as important as the information itself for purposes of my visit.

Q Is it possible for you to determine which portions came from CEI employees and which portions came from other sources?

A I would think that virtually all of the material in this report came from CEI sources or my own observation.

I can't tell you precisely who the CEI sources would have been.

Q Is it possible to tell which of the comments contained in that report are your own observations as opposed to the material supplied by CEI?

A I would have to go line by line.

On page 4, I make reference to a specific individual who made comments. It would take a pretty thorough review of both the final report, which was based on dictation from some very scribbled notes which were in the notebook, which was discussed yesterday.

Q Sir, may I direct your attention to page 3 of

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that report and can you tell me if the copy preserved on that page is a result of your observations or information supplied by Mr. Masters of CIA?

A Top paragraph appears to my recollection as based on the first sentence of that paragraph and it appears to be information that Mr. Masters provided, as I recall now, probably in response to both a lecture that he delivered and questions interjected by me at the time, just to clarify my own thoughts on the factual data.

Q Sir, let me direct your attention to the paragraph beginning on the bottom of page 6 and proceeding onto and concluding on page 7.

Can you tell me whether the information contained in that paragraph is a result of your observation or whether it was supplied to you by Mr. Hauser?

A Bottom of page 6, could you tell me what paragraph you want to start with?

Q I believe there are two lines on the bottom of page 6, and then it goes on to page 7.

A Last two lines. I'm explicit there. I asked a question and Mr. Hauser provided a response.

Q Is the remaining material on page 7 also supplied by Mr. Hauser? Can you determine that?

A I can't determine that precisely. I think this

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material was written either riding in the automobile or perhaps standing at the Perry site with several people in discussions, where I don't indicate an individual. I would attempt to respond about the way I did this morning to Mr. Reynolds regarding the other report, that I didn't consider the source of the information explicitly to be as important as the nature of the information for this purpose.

In general, the source came from CEI people who were in attendance at our discussions.

Q Mr. Mozer, in response to cross-examination by the Applicant, you testified that if a wheeling arrangement put additional power over a transmission grid, the arrangement might lead to the need for additional transmission capacity by the transmitting company.

I would like to ask you if it is not also possible -- pardon me, strike that.

Is it also possible for a wheeling arrangement to result in the transmitting company's need for additional transmission capacity being deferred or entirely eliminated?

A Yes, I think I discussed that a little bit in the transcript. I have had some experience whether a wheeling arrangement actually brought a power supply onto a system at a point such that after the new power supply

which was to be wheeled to a local market in a reversal of transmission flows over most of the transmission system thereby virtually eliminating demands to the transmission system and not requiring additional capacity.

Q Let me see if I understand you correctly.

Are you saying that, for example, you could have a transmission line where you had a normal power flow at the capacity of the transmission line, the full capacity from east to west, and if you wheel out a wheeling arrangement from west to east, that you would be reducing the amount of capacity that was being utilized in the line?

A Yes. The term "displacement" is used in the industry to describe the situation such as this. A wheeling arrangement conceivably could reduce the transmission flows overall or portions of the transmission network over which -- from what it would be without the wheeling arrangement.

Q Would such a result be a benefit to the utility that was doing the wheeling?

A In the sense that it reduced or eliminated the need for new facilities, yes, it would be a benefit.

MR. CHARNOW: I have no further examination.

CHAIRMAN RIGLER: Mr. Noser, you indicated that where there is an interconnection agreement, traditionally

the power expecting to receive the power would be the one to pay for the interconnection agreement.

That may be a generalization.

Is that true?

THE WITNESS: Usually, particularly in the cases of smaller utilities with respect to larger utilities, it is the small utility that obviously has the greatest interest in the interconnection.

If it can be shown that there are few or virtually no benefits, immediate benefits that can be quantified easily to the larger utility, the smaller utility often pays 100 percent of the cost of the interconnection, the physical cost of the physical facilities to make up that interconnection.

CHAIRMAN RIGLER: Suppose the interconnection allows the smaller utility to purchase partial firm power, would the interconnection still be paid for traditionally by the smaller entity?

THE WITNESS: In that case, there would probably be a negotiation because generally the rate, tariff for the partial firm power would include the cost of delivering that energy to a certain point.

It is conceivable that the sale of firm power would inherently include the cost of some of the interconnection.

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CHAIRMAN RIGLER: Which might reduce the cost of the interconnection to the smaller entity?

THE WITNESS: This would be a negotiable position. If the smaller utility decided to purchase half of its power requirements, from the larger utilities, they might agree that half of the cost of the facilities in the interconnection would be recovered by the larger utility in the rates that it charged for the partial firm power requirements.

The other would be covered in the payment of half the cost at the time of the construction by the smaller utility.

CHAIRMAN RIGLER: Suppose the smaller utility intends to continue as a distributor to its customers; but intends to go out of the generation business and use the interconnection to obtain a full requirements contract with another utility; who traditionally would pay the cost of the interconnection under those circumstances?

THE WITNESS: It would be subject to the negotiations and subject to the policies and tariffs serving the utilities.

Some utilities provide bulk power supply for resale only at high voltage busses at a rate accordingly, and require the receiving utility to construct the

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receiving subsection from the high voltage to the low voltage.

Other utilities provide you power at the distribution voltage which would be 12,000 volts. Their rate would include the cost of those facilities as they are and you would expect the power rate for power delivered by the bulk power supplier to the receiving utility at lower distribution to be higher.

If the receiving utility in the same area had to pay for the substation, they would pay less for the power and they would have to pay for the substation.

You have a variety of arrangements possible as far as the payment of the interconnection facilities.

CHAIRMAN NISLER: Does the fact that the larger entity is acquiring a new customer enter into it as a factor in who pays for the interconnection or at least how the costs are distributed between the two?

THE WITNESS: The fact they are acquiring a new customer would be reflected in the total power rate situation and ultimately would become a rate matter in terms of the effect it would have on their load factor.

If they acquired new customers and their load factor improved and their cost of service thereby decreased somewhat, I would presume that the regulatory bodies, and in this case it would be the FPC, inasmuch

as it is a wholesale transaction, would see that reflected in a cost of service.

CHAIRMAN RIGLER: What a power company is serving a large industrial customer, let's say a customer whose needs are as great as those of a small municipality, who traditionally pays for the interconnection necessary to supply power to the industrial customer?

THE WITNESS: I don't think the word "traditional" probably is applicable here. Industrial power is sold often with optional rates as to whether they take a utilization voltage or high voltage delivery.

Again it is a rate matter because the rates become compensatory. Ultimately the customer pays for everything, either by providing the facilities or paying for it in the rate.

BY MR. HUMPHREYS:

Q You used the term "load factor" on several occasions.

Would you state what you mean by load factor?

A Load factor is a mathematical quantity which is defined as the ratio of the average load in the case of an electric utility divided by the peak load.

Q You testified that with respect to a nuclear plant already planned and sited, no scale benefits would accrue from granting access to a smaller utility.

Suppose that when the Applicants were planning the Davis-Besse plant at 100 megawatts, they would have made offers of equity to local municipalities in the area; would there have been an opportunity at that point to have obtained additional proceeds of capital?

A: If I may assume that there was enough power sales to raise the equity enable up to the level of 10 or 100 megawatts, then I would say they could have produced or constructed a somewhat more economical power plant in terms of cost per kilowatt.

Q: Suppose that a group of large utilities had agreed to build a nuclear generating unit of a certain size, and then encountered financing problems which caused them to defer the unit for a year; might those large utilities obtain some benefits from providing such utilities to have ownership access to that plant and shoulder some of the financing burden?

MR. REMOLD: I will object to the question. I think that it is outside the scope of anything on record or cross, for that matter.

MR. BENEFIT: On cross, the Applicants were asking about the benefits that could accrue to utilities which had already ascertained the size and fixed the size of a particular unit. Then granted access --

CHAIRMAN RIGLER: Overruled.

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THE WITNESS: I can envision or I'm aware of one situation where there are about some benefits by bringing in additional parties to help finance a unit. Getting the power plant on schedule and avoiding a year's delay is a very money-saving proposition these days, with inflation rates being what they are.

A year's inflation is pretty expensive. I don't have specific numbers at hand, but there is a lot of published data on the subject.

BY MR. HEMFELT:

Q With respect to peak load arrangements, if a large utility had an afternoon peak and a small utility with which it was interconnected had an evening peak, would there be a possible financial benefit to the large system from purchasing peaking power from the small system?

A There could be some financial benefit. You have described a situation where I would use the term "diversity." There is a diversity in the kind of the peak loads of the utilities. There could be a benefit to the larger utility from obtaining peaking power from the smaller utility.

Q Suppose the City of Cleveland system had available 20 megawatts of firm hydro power from PPSW and had among its resources 50 megawatts of firm power for our dependable power from a nuclear unit, and had some other

generating resources and that the city had a base load of 50 megawatts; is it possible that the city might be able to sell excess energy to the Aggregators?

A I think from the situation you described, yes, there would be that possibility.

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Q Could you tell me whether it would be more or less reliable to transmit 50 megawatts of power to the City of Cleveland from Penn Electric over a single radial 138 kV transmission line, or over the CBI transmission network?

MR. REYNOLDS: I object to that. This witness has already testified that he made no study in that regard and does not have any expertise in that area.

BY MR. HEMFELT:

Q Let me ask this question:

Would you have to make a transmission study to respond to that question?

A I could certainly respond to it as a hypothetical question. I think the response would be very easy. I don't think I have to make a study to answer that particular question.

Q Might I have the answer to my question, then?

A To transmit 50 megawatts of power from Penn Electric to Cleveland over a network, any kind of network, in this case from CBI would be more reliable than a single

radial 138kv line.

Q You were asked some questions with respect to pages 70 and 71 and questions 185 through 187, and other references to HMM-10.

Pages 70, 71, questions 185 to 197, and also of HMM-10.

Basically the questions went to question 187, whether the Applicants could effectively prevent other COGT entities from developing and/or maintaining reliable and economic power supply systems, because of their control over access to transmission.

You were asked whether -- what I want to find out is whether a refusal by Applicants to wheel power would have been an exercise of the power you speak of?

A Yes, it would.

Q Would a denial of ownership access to a nuclear power plant be such an exercise of power?

A I understand denial to be an overt act, something that was done.

Yes, I would understand that to be an exercise in control.

Q Would you consider a refusal to permit a small entity to join CAPCO to be such an exercise of control?

A Yes.

MR. HJENFELT: Thank you. I have no further

questions.

CHAIRMAN RIGLER: Mr. Reynolds?

MR. REYNOLDS: Mr. Chairman, could we take five minutes for purposes of coordinating things among all counsel? I don't think I would have very much.

CHAIRMAN RIGLER: I think that is a good idea.

Mr. Lessey, let's speed some of that five minutes with your witness.

I remember that. Just make part of that now.

(Recess.)

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BY MR. REYNOLDS:

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Q Mr. Moser, are you at all familiar with Article 18 of the Ohio Constitution, which is known as the Home Rule Provision?

MR. LESBY: I will object. How in your records?

CHAIRMAN RIGHER: It's going to permit it. I think that may bear -- I suspect Mr. Reynolds is going somewhere around 4906 with it.

THE WITNESS: No.

BY MR. REYNOLDS:

Q Pardon me?

A No.

Q In connection with a question you were asked by Mr. Hjelmfelt regarding the possibility that CBY could obtain economy power from the City of Cleveland in the event that the City of Cleveland received 20 megawatts of PASHY power, 50 megawatts of nuclear power with a 50 megawatt base load, is it your understanding that the PASHY power would be available for resale to a private utility?

A I can't even think in those terms, I don't know that it would be.

Q What would, in the hypothetical you were given, what would be the economy power that you had reference to that would be exchanged?

Q What I had in mind was the possibility that during

off-peak hours there might be some surplus nuclear capacity. I think that the hydro capacity would probably be used when it was available, and nuclear power, perhaps, be used as an offset against some by coal-coal-fired generation.

Q Would that be any more economical than the nuclear generation that was available to IRT out of that same facility?

The presumption I had was that the hypothetical circumstances that could very well occur where IRT was using all of its nuclear, perhaps, could have offset some of its coal-fired generation, with nuclear generation.

CHAIRMAN RIGBY: You may proceed. Mr. Smith will read your question and answer carefully.

BY MR. REYNOLDS:

Q I believe in response to a question by Mr. --

CHAIRMAN RIGBY: Let the record reflect Mr. Smith hasn't missed anything. He is right here.

BY MR. REYNOLDS:

Q The question you were asked by Mr. Cierno, he postulated a situation where you could have loading which would reduce the amount of capacity on a transmission facility; is that right?

A I think my response at least addressed itself to the power flow on the transmission facility. In that understanding the answer is yes, to your question.

Q Would reduce the power flow on the facility?

Q Yes.

Q In SSI-6, you define transmission service as wheeling, as an electric operation wherein transmission facilities of one system are utilized to transmit power of another system.

How does the reducing of the flow of power comport with your definition of wheeling?

A I don't see any conflict in the definitions. Perhaps I could add a qualification to the definition that the wheeling -- the power that is transmitted off event is a displacement operation.

There is no conflict between the reduction in power flows, as a result of a scheduled wheeling transaction and my definition.

Q Well, if you are talking about a displacement, it is not a power flow over transmission, is it?

A Power flows by displacement over the transmission system. I don't know if you want to discuss that last. A wheeling operation is simply where a system agrees to provide generation at one or more points and has load to absorb that generation at one or more other points and power flows into the transmission grid and out of the grid.

Precisely how it flows over the grid is not a real consequence, except that you want to be sure that the

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operation doesn't overload any of the facilities. But it might reduce the transmission or power flow in some of the facilities.

Q Is wheeling nothing more than a fictitious pricing device?

A I wouldn't characterize it as any kind of fictitious pricing device. I would characterize it as a power service transaction. Bulk power supply transaction.

MR. SMITH: Is all power at the same voltage fungible? It's identical?

THE WITNESS: Yes. You can identify a kilowatt. They are mixed together in terms of the electrons on a transmission line.

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MR. SMITH: You have circles and squares?

THE WITNESS: Yes. You possibly have to do what we call scheduling of power flows. For example, some certain flows are going to flow into a point that divide to three or two different parties and yet they are blended together at one voltage.

If you put a single meter on there to measure a single flow, you can't tell whose flow is whose, except by the agreements you have as to the ownership.

BY MR. REYNOLDS:

Q I believe in response to a question by Mr. Bjrefelt, you indicated that perhaps there could be savings gained in terms of scale of economies if there were additional participants at the time that the Devine-Besse Plant had been planned. Is that correct?

A I think I said that, yes.

Q Doesn't that assume that the investor utilities would have had a commitment from any other participants, a firm commitment at that time?

MR. LESBY: Doesn't that assume? I'm not clear as to the question.

CHAIRMAN RIGLER: I think it is clear.

MR. CHARNO: I have an objection also. I believe that mischaracterizes the question and answer.

The question was if the Applicants had made an

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offer at the time Davis-Besse I was planned, and I don't think that that assumption is necessarily included within the question as originally asked.

If counsel wants to ask a different question, I certainly have no objection.

CHAIRMAN RICLER: Do you want to amend it or take care of Mr. Chavno's comment?

BY MR. REYNOLDS:

Q I will, for purposes of the question, assume there had been an offer and at the time the Davis-Besse Plant was planned, and the question is whether in order to achieve the savings, the interior utilities would have had to have a commitment from any of the other participants?

A If I understand the word "commitment" to not necessarily mean a signed contract, I would agree.

Q Well, what would you understand would be the nature of the commitment that would be necessary?

A Commitment would be a good faith interest in effecting an agreement to purchase the power. I qualify my answer simply because I have seen these things where they have proceeded on the premise that there was going to be a contract executed, but there might not be one at the time of the initial financing.

MR. REYNOLDS: Thank you.

Mr. Chairman, that concludes my cross-examination --

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BY MR. REYNOLDS:

Q Mr. Moser, let me ask you one more question:

When is it that you first saw Applicant's

Exhibit 447

A 447

MR. LEESY: I object to that. It is beyond the scope of redirect.

CHAIRMAN RIGLER: I will let him answer it.

THE WITNESS: Essentially, to the best of my recollection, I first saw it when it was handed to me at this witness stand, the day before yesterday.

MR. REYNOLDS: Mr. Chairman, that concludes the recross-examination of Applicants, but for one outstanding matter, which concerns the transcript of the Duke testimony, which had been requested and which the Staff has sought to obtain, and I think due to the delay in mail in that alone we have not yet received it.

For that reason I would like to reserve the right, if it does become necessary, for recalling Mr. Moser for the limited purpose of cross-examination that would be directly related to that particular document.

CHAIRMAN RIGLER: We would take that under consideration. I would think that it would be of extremely limited value. We will approach it if it becomes relevant to this consideration.

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MR. REYNOLDS: I have no way of knowing whether it would be necessary until I see the material. I do want to reserve the right.

CHAIRMAN REICHER: We shall have under consideration the City of Cleveland's motion to strike.

Mr. Lessy, do you want your 10 more minutes with your next witness now?

MR. LESSY: I would like 10, and if I can beat the deadline, maybe I will only need five; but I would like 10.

CHAIRMAN REICHER: I would like to have everyone assemble this time. I don't like the idea of losing 20 minutes a day waiting for people to drift back into the room.

MR. CHIANO: If I may make a statement concerning Mr. Reynolds' utilization of the Duke testimony: In May of 1974, the Department of Justice and the then-NRC Staff entered into a settlement agreement with the Duke Power Company in the Oconee, MacGuire and Catawba proceedings.

The Department of Justice decided not to pursue a prosecutorial role in that proceeding and would not make its testimony available to intervenors in that proceeding. Although the Department has not determined how that agreement relates to the Board's order that

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Mr. Mozer make his Duke testimony available to the parties in this proceeding. We felt because of the agreement we should follow the Duke's request of the Board's order.

Duke chooses not to raise any objection it may have to the order in question.

In taking this position, Duke advises us that it is not waiving any rights it may have under the settlement agreement in any other circumstances, either before this Board in this proceeding, or in any other forum or proceeding.

CHAIRMAN RIGLER: Thank you very much.

(Witness excused.)

CHAIRMAN RIGLER: We will see you with your next witness as soon as possible, Mr. Lessy.

(Recess.)

MR. LESSY: Staff's next witness is Mr. Dale F. Helsel.

Whereupon,

DALE F. HELSEL

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

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DIRECT EXAMINATION

BY MR. LESSY:

Q State your name, please.

A Dale Halsel.

Q By whom are you employed?

A I'm the city manager of Middletown, Ohio.

Q Prior to your employment -- how long have you been the city manager of Middletown, Ohio?

A Since October of 1970.

Q What position did you hold before that?

A I was the city manager of Painesville, Ohio.

Q How long were you the city manager of Painesville?

A Nine years.

Q From 1961 to 1970?

A Yes, sir.

Q Mr. Halsel, I show you a document dated April 12, 1962 which is Staff Exhibit No. 144, bearing the Staff document number 460 and ask if you can identify it for us?

A Yes, that is the memorandum I prepared for the City Council of Painesville.

Q The memorandum on top indicates in capital letters Memorandum First Draft.

Do you have any knowledge as to why it indicates it is a first draft?

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A Yes, in 1962, the city did not have an inexpensive copy machine. We wrote memos with original and six carbons or mimeographs. We used the first draft and it was corrected for the copy rather than try an original and seven copies.

Q I will ask you to read the memorandum to yourself and then I will ask you a few questions about it.

A Yes, sir.

Q Was this memorandum in fact sent by you to the City Council?

A Yes, it was.

Q Memorandum references a meeting on Wednesday, March 21, 1962 between yourself and Mr. Carl Rudolph of CEI.

Do you recall that meeting?

A Yes, I do.

Q Are the remaining provisions included within the memorandum as stated in the memorandum accurate according to your recollection?

A Yes, they are.

Q This memorandum refers to "an exchange of customers." Was this proposal for an exchange of customers -- strike that.

Whose proposal was it to exchange customers?

A This was Mr. Rudolph's proposal.

Q Do you recall what position Mr. Rudolph held with CEI at this time?

A No, I don't. He was a high corporate officer. I don't know what his title was.

Q You characterize the exchange in the second paragraph as an agreement for an exchange of customers and it continues down to later CEI would then operate exclusively in the rest of Painesville Township, Concord Township and Perry Township.

Was that language part of Mr. Rudolph's proposal?

A Yes, that was the proposal.

Q The next sentence which is the last sentence of the second paragraph, the agreement would preclude either utility from operating in a territory assigned to the other.

Is that part of Mr. Rudolph's proposal?

A Yes.

Q The next paragraph talks about setting up exclusive customers in the first sentence.

In the second sentence in the event there were more customers in one territory than another, the agreement would provide for a direct payment in cash for the extra customers.

Is that part of Mr. Rudolph's proposal?

A Yes.

Q Who made up the territories which are described in the memorandum?

A Mr. Rudolph did.

Q What position did you have, personal position did you have with respect to the proposal?

A I was opposed to it.

Q Can you tell us why?

A Yes, the rural lines in Perry Township and Painesville Township were the only place I could see where there would be growth of the Painesville system.

The territory that was to be transferred to us had been largely built up and was not likely to have growth. The growth potential was in Perry and Painesville Township and parts of Concord.

Q What action, if any, did the -- you testify that you submitted this proposal to the City Council.

What action, if any, did the Painesville City Council take on Mr. Rudolph's proposal?

A They took no action. In order to accomplish this, someone would have to have made a motion to enter into this agreement and no such motion was ever made.

Q The proposal was dropped at that time?

A Yes.

Q During your tenure as city manager, did this

same proposal ever come up again?

A Yes, it came up on another time.

Q Who introduced it on that time?

A That was Mr. Lee Rowley.

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1 Q Do you know approximately when that was?

2 A It was around '64 or '65. I don't know the exact
3 time. It was around that time.

4 Q Did Mr. Howley make the proposal to you as
5 city manager at that time?

6 A Yes.

7 Q Also, at that time, did Mr. Howley discuss with
8 you the possibility of CEI acquiring the Painesville
9 electric system?

10 A We had discussions about what would happen if
11 they did but he never made an offer or a suggestion. If CEI
12 bought us out, this is what it would be like. He said that.

13 Q What did he say?

14 A The City would receive X number of dollars, certain
15 valuation and we could use that for any public improvement
16 we wanted. It would produce the same amount of income. We
17 would be just as far ahead as we are right now. My reaction
18 was that I was still looking for growth and I said even if we
19 could work out a dollar for dollar exchange based
20 on that year, five years from now we would be at the same
21 level and I would prefer to have been in a growing situation
22 because I felt that was the future of the plant.

23 MR. BENBOW: Mr. Chairman, I wish to offer a
24 question more than an objection but I will frame it as an
25 objection, if I may. I was not present the day that it was

eak determined that Mr. Helsel was to testify. As I look at the transcript, I see where Mr. Lesby represented he would have approximately four questions for Mr. Helsel. It was my understanding from merely reading the record that the examination was to go solely to the memorandum of April 22, 1962.

I haven't said anything this far because I thought maybe he would say last question. It seems to be going on and I thought it might be appropriate to raise this problem to the Board.

CHAIRMAN RIGLER: The current subject matter is currently within the original contemplation of the original proposal. I think it is highly relevant testimony and we will hear the line of its conclusion.

MR. REEDS: Mr. Chairman, while we are at the stopping point, I would like to make one objection on behalf of all Applicants other than CHE with respect to this testimony of this witness coming in as against any of them.

CHAIRMAN RIGLER: Overruled.

MR. LESBY: No further questions.

CHAIRMAN RIGLER: Mr. Helsel I have a question for you. When you were describing Mr. Rowley's proposal, was that proposal identical to the proposal made by Mr. Rudolph which you discussed in the April 1962 memorandum?

THE WITNESS: We didn't talk as specifically as we did with Mr. Rudolph. Mr. Rowley just said this would include an exchange of customers between Perry and Gainesville Townships.

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CHAIRMAN RICLER: Did it provide for territorial exclusivity with respect to service areas?

THE WITNESS: It didn't discuss it on the point that I did with Mr. Rudolph, so I would say when we say the word "exchange," I assumed it was meant that the exclusivity that we talked about previously was included. He did not use those words.

CHAIRMAN RICLER: Mr. Charno?

MR. CHARNO: The Department had no cross-examination.

MR. WINDFELT: The city has no questions.

MR. REYNOLDS: Could I have one minute?

CROSS-EXAMINATION

BY MR. GREENSLADE:

Q Mr. Heisel, do you know whether Mr. Rudolph at the time of your meeting with him was a member of the marketing group of the illuminating company?

A No, I don't know.

Q If I could turn your attention, Mr. Heisel, to the second from the final paragraph of your memorandum of April 12, 1962, you refer there to the -- or you use the words in the last two lines roughly of that paragraph, the agreement would provide for a direct payment in cash to be made for the excess customers.

Was there any indication at that time as to how

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much that direct payment would be in cash?

A No, that was to be worked out later.

Q I believe you testified that you became city manager of Painesville in 1961. Would that have been early in 1961?

A August 1, 1961.

Q So you had been city manager approximately one year?

A Eight or nine months.

Q A little less than a year at the time of the offer?

A Yes.

Q Am I correct, Mr. Haisel, that you as city manager under the charter of the City of Painesville, are responsible directly to the City Council?

A Yes, sir.

MR. GREENSLADE: I have no further questions.

MR. REYNOLDS: To further questions on behalf of the other Applicants.

I would like to make the same motion with respect to the testimony of Mr. Haisel that has been made with respect to the fact witnesses that preceded him in this hearing under Rule 105, to limit the scope of his testimony to that Applicant against which it is directed.