

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and
CLEVELAND ELECTRIC ILLUMINATING CO.

Docket No.

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

50-400A
50-411A

and

CLEVELAND ELECTRIC ILLUMINATING
CO., et al.

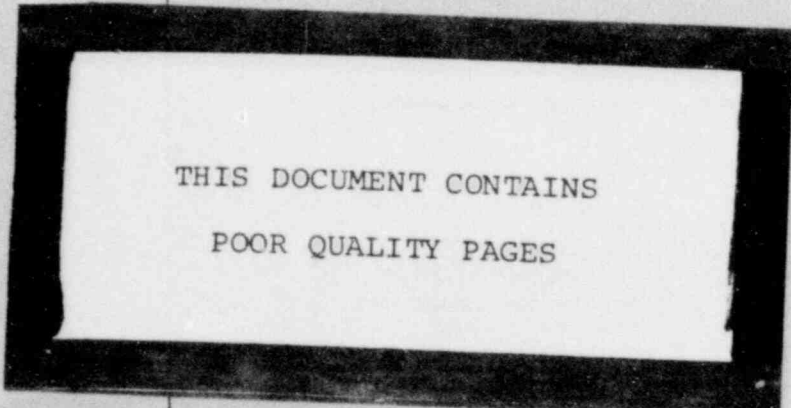
50-400A
50-411A

(Perry Nuclear Power Plant, Units
1 & 2)

Place - Silver Spring, Maryland

Date - Wednesday, May 19, 1976

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

OHIO BRISQ COMPANY and
CLEVELAND ELECTRIC ILLUMINATION CO.

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

and

CLEVELAND ELECTRIC ILLUMINATION CO.
et al.

(Perry Nuclear Power Plant
Units 1 and 2)

Before the Commission
John F. ...
Ivan Smith, ...

The hearing in the above-entitled matter
reopened, pursuant to adjournment, on ...

BEFORE:

- DOUGLAS RIGLER, Chairman
- JOHN F. ...
- IVAN SMITH, Member

APPEARANCES:

(As heretofore noted.)

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EXHIBITS

Witness Direct Recross

W. Joyce Moran 9028 8300

Exhibits

Mar. 1971 1971

Applicants Exhibit (TB) 120,
diagram of Toledo Edison
generation, transmission, and
distribution system

Applicants Exhibit (TB) 121,
map of Toledo Edison service
area

Applicants Exhibit (TB) 110,
ltr. dated Oct. 29, 1971,
from Joyce Moran to Robert
W. Sorgenfrei,

Applicants Exhibit (TB) 131
ltr. dated Dec. 26, 1972,
from John Davis to John C.
Eagle.

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1 from Purdue University, and I have acted as instructor
 2 of graduate level courses in the areas of public utility
 3 economics, financial accounting, and cost accounting. I
 4 attended the Public Utility Institute, Toledo, Ohio, and the
 5 University of Michigan.

6 Q And what is your present occupation, Mr. Moran?

7 A Presently I am retired but serving as a
 8 consultant to my former employer, Toledo Edison.

9 Q During what years were you employed by
 10 The Toledo Edison Company?

11 A Between 1937 and 1948.

12 Q Do you recall, Mr. Moran, what your various
 13 duties were during that period with the company?

14 A During my early career I was a junior auditor
 15 in 1937 until about 1940.

16 There were some unusual titles in that period.

17 In 1942 I entered the Armed Services Reserve
 18 away from the company until 1945.

19 From 1945 until 1948 I was a contract
 20 accountant, working in water power plant and transmission
 21 line construction projects.

22 In 1948 I became assistant secretary of the company
 23 and at that time the secretary of the company was the
 24 principal accounting and finance officer, as well as
 25 secretary, and my duties were principally involved in the

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In 1963 I was promoted to the position of vice president of the company and continued in that position until my retirement in 1973. About 1964, I became vice president and vice president of administrative services, which included a number of support functions throughout the company, including the purchasing and stockpiling activity, the system and development of paperwork-handling throughout the company, the data processing function, the administrative office services, including the building management, maintenance, vice, telephone communication, et cetera, including the ratemaking function.

This duty continued until 1971, when I became the first vice president of corporate planning, which had to do with strategic long-range planning. And I continued in that assignment until I retired in 1973.

Q During your --

MR. CHAMCO: If I may interrupt, I would like the record shows an inconsistency.

Originally, the witness testified he worked for the company in 1974.

MR. REYNOLDS: He was with the company from '73 to '74.

THE WITNESS: '74 was a misstatement. It was '73. Time marches on.

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BY MR. STILEY:

Q Now, Mr. Moran, looking at Exhibit 100, did you become aware of the fact that the...

A Yes. I was a general manager of the operation of the company.

MR. STILEY: I would like to see Exhibit 100 this time as Appellate Exhibit 114. In Exhibit 100 chart, the diagram was a...

BY MR. STILEY:

Q Mr. Moran, do you remember this diagram...

A Yes. I do.

Q Do you recall when it was prepared?

A It was prepared about a few years ago, and it was an enlarged version of a smaller chart. I think it was used as a handout for groups of people in various types of things. It was used in various ways for years for that purpose.

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MR. STILEY: Mr. Chairman, this is a reproduction of a smaller diagram which appears in the descriptive language. We have reproduced that language. The language has been attached to the back of this slide, but we are not using that specifically for the...

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testimony.

BY MR. PHILBY:

Q Mr. Moran, does this generally represent a system in which the Toledo Edison Company is by contract permitted to generate, transmit and distribute electrical energy?

A Yes. It is generally correct.

Q Are there any changes?

A There are some changes that we could illustrate.

At this point, we have a power plant, which is symbolized by a teakettle below the transmission line, which would feed that. And at this time Toledo Edison has a nuclear power plant that is in the final stages of construction. We could substitute a nuclear reactor as a source of power at this point, providing steam to drive a steam turbine. The system would be entirely the same from my standpoint.

That would be one change that we might illustrate. Also, this transmission line, which indicates the power line from the power plant, is designed to operate at a voltage of 133,000 volts, which was the normal voltage at the time when this picture was prepared. Currently, the voltage of the line going out of the power plants would be at a voltage of 345,000 volts.

At this point we have a transformer, a substation, a transmission substation, which lowers the 345,000 volt in the picture to 69,000 volts for a subtransmission

into the service area of the company.

Now, watching what I have done, I have done higher voltages here. This was probably the highest and this one would be 100,000.

We have a typical industrial service area here. We do have at this time a number of industrial consumers which receive their power directly from the 138 volt transmission line. I believe these are the only ones that might be changed.

MR. BRILEY: I would like to go to Exhibit 126 at this point Applicants' Exhibit 126 for Volts per Mile.

CHAIRMAN REILLY: Making no objection, we will receive Exhibit 126 into evidence.

(The Applicant's Exhibit 126, Volts per Mile, was received into evidence.)

MR. BRILEY: I would now like to go to Exhibit 127 as Applicants' Exhibit 127, Toledo Edison, copies of which have already been distributed.

(The document referred to was received into evidence.)

BY MR. BRILEY:

Q Mr. Moran, would you please identify this as Exhibit

1 A. This map is a representation of the area shown
 2 wherein the Toledo Edison Lines are shown, and is intended
 3 to provide a reference for the Board, in connection with the
 4 the lower left-hand corner of the map, and the area shown in
 5 area in the upper left-hand corner of the map, and the area
 6 is approximately the area which is represented by the
 7 enlarged version, with Lake Erie being located in the
 8 meandering blue-gray line showing across the map, and
 9 sents the Maumee River, and the lines shown on the map
 10 systems shown: the Ohio Turnpike solar system, the
 11 north-south expressway system, taking a X shape, and
 12 northerly into Michigan, following the Maumee River, and
 13 for that, the lines on this map represent the facilities
 14 The Toledo Edison Company.

15 Steam generating stations are shown by a
 16 circle, as the legend indicates. There are two such stations
 17 of Toledo Edison. The principal station is the Maumee
 18 Station. It is located here on the south shore of Lake Erie
 19 and the end of Lake Erie.

20 There is another steam power station, the
 21 Rome station, which is up the river a few miles and is shown
 22 at that point.

23 And there is one thing that the Board should know
 24 this map was prepared in June of 1975. That is, the
 25 steam generating station illustrated by a circle, and the

1 Water Street Station. That is an older plant, which at the
2 time this map was prepared was a steam generating plant. Since
3 that time, the generating facilities have been retired from
4 that station. The station is still in existence, but is used
5 solely for the purpose of providing steam heat in the downtown
6 business district of Toledo, a service which is in
7 addition to the electric service.

8 At the other end of the map, the Lake side, which
9 corresponds to the western part of the service area, there
10 is a substation named Richland, just outside of Toledo
11 at this point. And Richland, in addition to being an important
12 transmission substation, is the location for numerous
13 turbine peaking generating units, which are not indicated on
14 the map, but which are an important adjunct to the generating
15 facilities of the company, though they are not directly related
16 to the steam units. But they are quite important.

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1 then east to the Lenoyne

2 The next voltage which we are going to see
3 subtransmission voltage in our map is 69,000 volts.
4 we have a number of lower voltages, as you see, at
5 138,000 lines which are shown throughout the map, each marked
6 by a thin black line.

7 The lower voltage lines are distinguished by
8 a red color at 69,000 and 34,000 volts.

9 I believe that briefly describes this map.

10 Q Thank you, Mr. Moran.

11 MR. BRILEY: I would like to move for admission
12 into evidence at this time Appellate Exhibit 129,
13 Toledo Edison.

14 CHAIRMAN RIGLER: Hearing no objection, we
15 will receive Exhibit 129 into evidence at this time.

16 (Whereupon, the Court is
17 previously raised by the
18 Exhibit 129 into evidence for
19 identification, was admitted
20 in evidence.)

21 BY MR. BRILEY:

22 Q Mr. Moran, prior to your testimony today,
23 were you requested by Counsel to review the authenticity
24 of Mr. William Bingham appearing at pages 8155 through
25 8196 in the record in this proceeding?

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Q Mr. Norton, did you check the
record portions of what parts of the
reflect the note of operations of

A Yes.

Q You don't need to indicate that
Just give us the line numbers, like

A Mr. Bingham's testimony, page 11, line 11, or
page 1157, line 12 --

Q With respect to line testing, do you have
any qualifications to make?

A We have a few indications in regard to some of
the numbers. Would you like to give them?

Q Would you please describe it?

A Yes, Page 1154, line 12, and page 1155,
line 2; Mr. Bingham refers to the voltage of the
generators of Cleveland Electric as being
13,000 volts.

Toledo Edison is utilizing a number of
voltages, 13,000 to 20,000 volts, and the
I think, should be mentioned, since it is to be
completion, and it will operate at 25,000 volts.

Then we have another reference, page 1156, line 3,
where Cleveland step down voltage is indicated as 13,000
volts -- I am sorry.

That is step up voltage, that is the voltage

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1 beyond the power plant, which the voltage is stepped up and
2 voltage is increased to.

3 And the total number which would be added
4 to Mr. Bingham's 132,000 volts is 33,000 volts at
5 Acme Station.

6 132,000 volts at our Niagara station.

7 And 345,000 volts directly at the Indian
8 Besse Station.

9 On Mr. Bingham's testimony, 317, line 11,
10 6156, line 9, Mr. Bingham has a diagram of a line
11 for stepping up the voltage and he shows that as you
12 decrease the amount of energy that is lost, the more
13 kilowatt hours of energy that are lost in the
14 function.

15 I believe it would be also desirable to
16 out that overall dollar economies are weighed in
17 determination as well as the actual physical
18 hour losses.

19 It is a slight broadening of the line
20 has said. I have already mentioned the line 1271, line
21 to 12, Mr. Bingham describes certain large industrial
22 customers which are served at 132,000 volts, and in
23 describing our diagram, I pointed out that several
24 customers at that voltage, too, over there. Mr. Bingham
25 does not indicate it. And then 6171, line 4, which is

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second reference, by the way, qualifications in the first
reference, 1171, line 5, to 1171, line 12.

The qualifications in 1171, line 12, the
first one occurs at 1173, lines 6 through 11, where
Mr. Bingham is discussing subtransmission voltages.

Toledo Edison's subtransmission voltages are
138,000 volts, in the most modern lines, and in some of the
older lines, 69,000 volts, 34.5 Kv or 35,000 volts and
23,000 volts, and the 23,000 volt subtransmission is not directly
the underground transmission, which I believe Mr. Bingham
indicated was 11,000 to 13,000 in the Cleveland area.

The third reference is 1173, lines 13 through 18,
line 24, and we have some qualifications there.

On page 1175, lines 6 through 8, Mr. Bingham
mentions distribution voltages of 4,000 and 11,000.

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Toledo Edison...
nominal 7,200 and a...
depends to Mr. Binns's...
vary a little bit.

On 3178, line 4, Mr. Binns...
Cleveland has had 345,000 volt...
Edison's first 345,000 volt energy...

In page 3178, lines 1 and 2, there is
reference in Mr. Binns's...
very high voltage lines, which are...
what more esthetic in its design...
this type of construction is a low...

We do not regard it as...
but it does have a useful...
and the point at which we...
of the Maumee River at a point...
rated as a scenic river. Had...
environmental organizations...
character of that river, we...
felt would be beneficial to the...
because they are lower and...
this beautiful stream like the...
have used the tower at that point.

It is substantially...
right-of-way and is not...
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for normal installation.

On page 3122, line 11 above, I think, I think, Mr. Bingham discusses the effect upon the generator when a light is turned on in someone's room. I believe he said. And we believe that Mr. Bingham's concept is correct, as he describes the effect of that light.

We have also noticed in some later testimony by Mr. Dempster that there was reference to a dead band in the control mechanism of the generators, which seemed to imply that perhaps a single light did not affect the generators, and we fully concur with Mr. Dempster that there is a dead band in which the generator governors do not control. But I am not in a position to describe the technical implications of this.

But I have been led to believe through the circumstances that both of these concepts are correct. Both the dead band concept and Mr. Bingham's concept, and we would accept both of them.

When a light is lighted, the energy would be provided from from the innate system that is there, through some source or other. So we feel that both of these mechanisms could be well incorporated.

On the next reference, we have 3123, line 12, which is Mr. Bingham's general map description. And we would substitute our description, which I previously made, for that.

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The next reference was, page 819, line 10, a short reference was made to the design of Toledo Edison's standard system.

Also, pages 8204, lines 15 to 8214, line 3, and this is a reference to the control mechanism and the load bank used at that point by Mr. Dempster at that point.

8220, line 7 through 8221, line 11, Mr. Simpson is discussing the overload capabilities of substation transformers.

Now, generally, we consider that substation transformers are capable of withstanding substantial overloads without materially jeopardizing their life.

But we have looked with attention at a somewhat different method than Chevrolet Electric does, and we have a wide range of overloads that are permitted, which we have tested for every major sub station transformer at this point.

These are followed, and I would like to emphasize very strongly that we regard these as emergency overloads only, and that for normal operation we are very anxious to avoid any overloading of transformers.

The last reference to Mr. Simpson's testimony,

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is page 8260, line 9 through 8263, line 7. Did he have no qualifications for.

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Q Mr. Moran, did you at least review the testimony with respect to the other portions of Mr. Wright's testimony that you have just referred to?

A I did not draw any specific conclusions from that that they were very generally correct and I think that they were making specific reference to certain operations of the Cleveland system, which I think is representative of our system.

Q Mr. Moran, between September of 1971 and March of 1972, did you attend a series of meetings with Mr. William Lewis?

A We met with Mr. Lewis, yes.

Q What were the general purposes of those meetings?

A The two meetings that we had with Mr. Lewis in my office were programmatic meetings, because Mr. Lewis had been retained by the Harbors City Council to advise them and advise them in certain instances that they faced in conjunction with their electric power production system and one of the assignments for Lewis was the development of a program for further joint resources for that system, for a number of years into the future.

In doing this, he had developed several alternatives programs for power supply which we wanted to study and evaluate carefully.

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1 Several of these alternatives involved
2 varying arrangements for Toledo Edison power to be furnished
3 in part or in whole, and a lot of our discussions were
4 related to the detail of how we might respond to his request
5 for information on how we would price the power in these varying
6 combinations.

7 And I think that was the major thing discussed.

8 Q Where were the meetings held?

9 A They were held in my office.

10 Q Do you recall who was in attendance at those
11 meetings?

12 A At the first meeting, Mr. Harold Wagner who at
13 that time was the manager of the Napoleon system was
14 present with Mr. Lewis and also Mr. John Elear, who is
15 district manager for Toledo Edison in the area in which
16 Napoleon is located.

17 The second meeting I am not sure who was
18 present.

19 Q Do you remember approximately when these meetings
20 were held?

21 A I don't recall the date at this time.

22 Q What was your capacity with the Toledo Edison
23 Company when you attended these meetings?

24 A That was during the period in which I was vice-
25 president of administrative services and was responsible for

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1 the electric rate function, among other things.

2 Q Were you authorized to act on behalf of the
3 company at these meetings?

4 A Yes, I was.

5 Q Did that authority include the power to bind
6 the company?

7 A Yes, it did.

8 Q What was Mr. Cicer's position with the company
9 at the time of these meetings?

10 A Mr. Cicer was district manager for the Southern
11 District of the company.

12 Q Did Mr. Cicer's position also include the power
13 to bind the company?

14 A No. Only for very routine matters.

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1 Q Such as what?

2 A Such as negotiating air-railways, bus lines,
3 lines, things of that nature.

4 Q Mr. Moran, you have a document of some one identified
5 in this proceeding as Mr. Kenneth 117 -- identified as
6 the affidavit of Mr. William Lewis. Now you have it before you,
7 I think.

8 Have you had an opportunity to review this document?

9 A I have reviewed it in the past. Yes.

10 Q Does that affidavit refer to the meetings that you
11 just discussed?

12 A Yes. It does.

13 Q Do the dates set forth in that affidavit compare
14 with or refresh your recollection about the dates of those
15 meetings were held?

16 A I am sure they are correct.

17 Q Well, for purposes of the record, could you tell
18 us what those dates were?

19 A The first meeting was on September 2, 1971. It was
20 a two-hour meeting, Mr. Lewis says. The other meeting
21 referred to was on September 2, 1971 -- January 24, 1972.

22 There's a third meeting held in the council
23 chambers of Napoleon. And the other meeting that was held in
24 my office is March 6, 1972, a meeting of two and one-half
25 hours.

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Q Did Mr. Lewis see the...
the Toledo Edison Company...
Tri-County to serve... of

A He discussed with a... point...

Q What do you mean, he discussed...

A He discussed the possibility of...
at an RMA substation about... details of... of...

Q What was your response to... of...?

A Our response to this...
concur in such a delivery... that we would...
in every way that we possibly... would...

Q Do you recall... to Mr. Frank...
Edison would not agree to the...
point but would consider the...?

MR. CHERRY: Can you... the...?

MR. BRENNY: I asked...
to Mr. Lewis whether he said, on...
this affidavit, that Toledo Edison would...
establishment of such a delivery...
consider the matter.

THE WITNESS: I believe...
did make that statement, yes.

BY MR. BRENNY:

Q What was it that you wanted to...?

A One of the... was... to...

ch 3 1 that Mr. Lewis was proposing that his client, American,
2 construct a power line some 240 miles into the Toledo T&E
3 service area in order to obtain power at that point. He regarded
4 that as a very needless expenditure of money and a duplication
5 of facilities that were already in that area.

6 Q Do you have any engineering concerns with respect
7 to provision of this delivery point?

8 A We had some engineering concerns about paralleling
9 with another source, which we thought was a possibility. It
10 was not necessarily related to this specific delivery point,
11 however.

12 Q Can you describe what those concerns were?

13 A Yes. Some years before this, Toledo Edison was
14 operating in an electric hydro generating station at Madison,
15 about 50 miles west of Toledo. I can illustrate the point on
16 the map.

17 At this point, we had this electric hydro plant.
18 At that time transmission between companies, interconnection,
19 was in its infancy. We had a connection with the Ohio Power
20 Company operating at 69,000 volts at this point here. It
21 was that very line, and it was operating at 69,000 volts.

22 At our hydro plant, we had another connection from
23 the hydro plant south into the Ohio Power territory. And it
24 was erected with the thought that it would be a helpful
25 emergency source of power and would be very useful in

1 assisting the requirements of both power systems in that area
 2 of the service area. And it was found that there was a 10%
 3 factor differential which occurred between the line
 4 established source to the east and the line which was
 5 built to the west, about 50 miles.

6 That is, the power factor changed due to the mag-
 7 netic effect of the two systems on the Ohio Power side
 8 on the Toledo Edison side, so that this electric system
 9 was very unstable and unworkable. And it was not
 10 and was never used.

11 Our electrical engineers expressed a great deal of concern
 12 when they were advised that Napoleon was considering a tie-in with
 13 other systems, that we be very careful that we not have
 14 parallel operation unless there were adequate provisions
 15 that they would not obtain power from a third source,
 16 that was in my mind when I was talking to Mr. Lewis about a
 17 possible interconnection at that point.

18 Q Did you express that concern to Mr. Lewis,
 19 Moran?

20 A I believe I did.

21 Q Do you recall stating to Mr. Lewis that it is not
 22 Toledo Edison policy to wheel power to municipal customers?

23 A I think Mr. Lewis misheard what something that I
 24 said at that time. I told him that Toledo Edison had never
 25 wheeled power for municipal customers. We didn't have a

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policy because we had never been advised that...

So I told him we did not have such a policy.

I did not say that we would not have one.

Q. SHELBY: Would you read that for me, please?
please?

(The reporter read the record as narrated.)

end 3

1 BY MR. BRILEY:

9
bwl 2 Q Did the company at that time have any policy
3 at all on wheeling?

4 A I believe that we did, because we had stipulated
5 in the Buckeye agreement which was certainly a wheeling
6 agreement, and we had not openly opposed wheeling at any
7 time that I can think of.

8 CHAIRMAN RIGLER: What was the policy on
9 wheeling?

10 THE WITNESS: The policy, Mr. Rigler, was not
11 expressed, but I think our mode of operation and our
12 understanding within the management of the company was
13 that if there was an opportunity for wheeling, we would be
14 very willing to participate in it, if we could, to the
15 profit of the company.

16 But we wanted to be sure that the dollars
17 and cents of the proposition added up, and we were wary
18 of blank checks, of wheeling agreements, unless we
19 had specific figures and specific source and delivery points
20 to evaluate.

21 BY MR. BRILEY:

22 Q In your meetings with Mr. Lewis, Mr. Moran, did
23 Mr. Lewis have authority to act on behalf of Tri-County?

24 A So far as we knew at the time, and I think we
25 asked him if he was speaking for Tri-County, and he told

1 as he was not.

2 Q Would your response have been different if
3 he had been speaking for Tri-County?

4 A Yes.

5 Q How would it have been different?

6 A It would have been different, because Tri-County
7 was a party to the Buckeye agreement. That is, it is a
8 customer of ours, as a result of that, and the Buckeye
9 agreement provided for additional delivery with a meter
10 we would have provided.

11 Q Did Tri-County subsequently request Edison
12 Edison that they establish a delivery point for such as
13 Napoleon?

14 A Yes.

15 Q How did you respond to that request?

16 A We were prepared to honor that request.

17 Q Did you so state to Tri-County?

18 A Yes.

19 CHIEFMAN REGLER: Do you recall that the
20 company gave that information to Tri-County?

21 THE WITNESS: As a reminder, Mr. Reqler,
22 provided that information in a letter to the manager
23 of the Tri-County system, H. Workman.

24 I don't recall the name, but I
25 think that letter is probably in evidence.

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1 MR. BRINLEY: I believe that based on the
2 evidence, Mr. Biglow, if you will go to a record to
3 look for it.

4 Yes, the document is 1942 Exhibit 141. The
5 letter to Mr. Howard Cummings, Executive Manager, Buckeye
6 Power, Incorporated, from Marvin Holt, dated May 25, 1942.

7 BY MR. BRILEY:

8 Q Mr. Norton, going back to Mr. Lewis' affidavit,
9 do you recall having told Mr. Lewis that the Toledo Edison
10 Company was unhappy with the Buckeye arrangement?

11 A Yes, I do.

12 Q Would you explain why Toledo Edison was unhappy
13 with that arrangement?

14 A The reason that we were unhappy centered around the
15 fact. The Buckeye agreement provided a complex formula
16 for determining the amount of money that went to each of
17 the operating utilities in Ohio that was handling Buckeye
18 Power, and the starting point for that computation, the
19 amount of money that was to be distributed was substantially
20 inadequate, due to the inflation that had occurred and
21 transmission line expenditures, so the compensation was
22 smaller than it should have been and was much less than
23 any other business that we had.

24 That was the reason for our unhappiness.

25 Q Did you explain this to Mr. Lewis?

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A. I don't recall. I think we did, yes.

Q. You don't recall on your mind.

A. I believe we did.

Q. Do you recall also referring to any meetings with Mr. Lewis, Mr. Horna, whether or not Mr. Horna asked in these meetings if Toledo Edison would operate its system in continuous synchronization with the City of Napoleon, if Napoleon were to enter into a contract with Tri-County?

A. Yes, I do. And on that date we told him that we had concerns about synchronous operation under those conditions, and that concern was related to our work that I mentioned earlier, in regard to this instability which might develop if Napoleon were to tie into a third source of power, which was beyond our control.

If we had had full control of all the power, we would have not had that concern.

Q. Was Toledo Edison providing service to the City of Napoleon at the time they requested help?

A. Yes.

Q. Was Toledo Edison Company operated in continuous synchronization with the City of Napoleon?

A. Yes. We had that service for a number of years and also operated in synchronization.

Q. Are there any municipal wholesalers, or your

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knowledge of Toledo Edison they have their own
generation and with which the Toledo Edison Company does
not operate in continuous synchronization.

A. No. There are not.

CHAIRMAN RIGGS: May I hear from you?

ch 3

1 generating facilities.

2 THE WITNESS: I don't recall Mr. Paris on any
3 occasions.

4 BY MR. BRILEY:

5 Q Do you remember which meeting it was when he did
6 bring this up as he was leaving?

7 A No, sir, I do not.

8 Q Subsequent to your meetings with Mr. Paris, do you
9 remember whether or not anyone from the city of Napoleon
10 discussed with you the possibility of participating in a new
11 power plant?

12 A Yes.

13 Q Who discussed that with you?

14 A Mr. Dorsey, the new manager of Napoleon, discussed
15 it on more than one occasion.

16 Q What was the tenor of those discussions?

17 A Mr. Dorsey had indicated that he was interested
18 in establishing a new power plant at a new location for the city
19 of Napoleon. His concern with the present location was that
20 it was inconvenient and expensive to get fuel into the plant,
21 due to its location. And he was trying to acquire a site
22 which would be on a railroad and which would make possible a larger
23 and more efficient plant.

24 And he also was thinking seriously of tying this in
25 with the disposal of municipal waste, garbage and other

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1 refuse. And he thought he could perhaps have done better in
2 this way

3 I asked if Davis's advice would be indicated as
4 part of being in some of the power which would be indicated
5 in such a plan.

6 Q Do you recall what your response to this was?

7 A Yes. In my discussions, I told him that it
8 sounded like a reasonable thing to me. I talked to the law firm
9 with our president before he went further, and I did so.
10 And we subsequently indicated to Mr. Bessie that we would be
11 very happy to participate in such an arrangement, and if the
12 details could be worked out. He would certainly have to
13 consider it seriously.

14 Q Mr. Moran, I would like to have you look at a
15 document which is designated as NY 100-111111-111 in the
16 proceeding, a September 17, 1974, letter to Mr. Bessie, pres-
17 sumably from yourself.

18 Do you recognize this document?

19 A Yes, I do.

20 Q And --

21 MR. CHARNIO: Can you hold up a document which you
22 find the document?

23 MR. BRILEY: Certainly.

24 MR. CHARNIO: Thank you. We have it.

end 10 24

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BY MR. BRILEY:

Q Mr. Moran, would you kindly describe your purpose in writing this letter?

A This letter was the letter that was written in response to one of the discussions that Mr. Dorsey and I had regarding his power plant. And it was to state that we did have a serious interest in it.

Q Are you aware of any other inquiries with respect to this sort of proposal? Subsequent to this one?

MR. CHARNO: Is that inquiries by Napoleon or inquiries concerning joint development?

MR. BRILEY: Inquiries by Napoleon concerning joint development of a power plant, at a later point in time.

THE WITNESS: I do not recall any. I might not have heard them if they did occur, because I was not in the room function at a later date than this.

BY MR. BRILEY:

Q Do you recall any inquiries by anyone else concerning such a proposal?

A No, I do not.

Q Mr. Moran, did you have any discussions with Mr. Dorsey regarding the method by which Napoleon contemplated disconnection from Toledo Edison?

A Yes, I do.

Q Did Mr. Dorsey propose that Toledo Edison

1 disconnect in any particular manner?

2 A. You are referring to the fact that Mr. Wilson
3 was proposing to operate his power plant in connection with
4 Toledo Edison as a source of extra power at times, I think.

5 Q That is correct.

6 A. And Mr. Dorsey had suggested that it would be possible
7 to accomplish this by merely operating the disconnect switch
8 at Toledo Edison Napoleon substation. And it was then for
9 hoping this was that in the event there was any emergency and
10 his power plant got into trouble and he was unable to handle
11 the load of the Napoleon system, that by operating the switch
12 quickly we could, or he could have power restored in a very
13 short period of time.

14 Q Do you have any concerns with respect to that
15 manner of disconnection?

16 A. This was discussed with the operating people at
17 Toledo Edison, and it was their opinion that it would
18 would be hazardous, because if there was a momentary interruption
19 in Napoleon and this breaker or switch or disconnect
20 switch were closed quickly by someone the consequences of the
21 possible consequences, it could be very hazardous.

22 On the other hand, if the Toledo Edison system
23 were in trouble due to lightning or some other factor, this
24 might create a danger for our own employees. So for reasons
25 of safety, we declined to operate in this way.

1 Q Did you explain to Mr. Dorsey what those concerns
2 were?
3 A Yes, we did.
4 Q Did he agree with you?
5 A I believe he understood them.
6 Q Do you remember the time when the city of Napoleon
7 was contemplating disconnecting from Toledo Edison? Do you
8 remember when that was, chronologically?
9 A I don't recall the exact date.
10 Q If I told you that it was during the spring of
11 1973, would that sound accurate?
12 A That would be about right. Late summer, I believe,
13 wouldn't it be?
14 Q Do you recall within that time-frame the time
15 if during that time you were holding any discussions with the
16 city of Napoleon to negotiate a new wholesale contract?
17 A We were not holding any discussions during most
18 of the period that Mr. Dorsey was preparing to connect his
19 system independently, which went on during the winter months.
20 Q When were you holding such discussions?
21 A Such discussions occurred just before the period
22 in which he was proposing to disconnect, and I think, in
23 reference to what we were talking about, this must have been
24 September 1 when he planned to disconnect from Toledo Edison's
25 source.

1 and Mr. Dorsey's system had to be dismantled and
 2 just less than a week before the dismantling was to begin
 3 and the power plant had failed to be, and it took him some time
 4 to put it back together and get the organization of the
 5 system established.

6 As a result of that incident, Mr. Dorsey telephoned
 7 me and asked if we couldn't look further at this proposed
 8 contract and see if further negotiations would be desirable.
 9 At that time, Mr. Dorsey and I had a number of times on other
 10 meetings discussing this matter.

11 Q What was discussed at those meetings?

12 A Mr. Dorsey explained that he had always had
 13 excellent electrical service from Toledo Electric and
 14 except for our discussions over the contract, he had had
 15 very amicable relationships and he hoped that there was some
 16 way we could continue our parallel operations, but that there
 17 were certain impediments that had come about in negotiations
 18 which we would have to provide some relief or that we
 19 end 11 20 have to go forward with his plan to discontinue it.

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Q What were the arrangements for the remaining part

A Well, the major implication was always that we were insistent that we have a weather provision in the form of a stricter weather clause in the contract power outages.

We had insisted upon this, because the operating history of the Napoleon Power Plant had been so lamentably poor for a number of years, that they had had outages almost every month and according to the way the old contract was written, there was a provision that in case there was an emergency, the demand established was to be ignored or overlooked in computing the bill after the first month, and this was very discriminatory in comparison with our other customers who were on a standard rate, so we were insistent upon this weather clause.

Q Were there any other disagreements?

A That was the major one that I recall.

Q And how was that resolved?

A We elected after our discussions to provide Mr. Dorsey a more favorable weather clause, and also a provision for a planned maintenance outage.

One of our reasons for asking this was that the operating experience of the power plant had been vastly improved under Mr. Dorsey's direction, and we felt that the former history wouldn't be repeated, and that we

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1 could do this without jeopardizing our lives to the
2 extent that we had been.

3 Q Did Mr. Dorsey have any concern about the
4 rate that he would have to carry under the Buckeye
5 contract, if he took power from Tri-County?

6 A Yes. The Buckeye rate that had been proposed
7 to Napoleon by Mr. Lewis had a rather arbitrary method of
8 determining demand charges, and Mr. Dorsey recognized
9 that it was a highly risky rate, in that he might be
10 faced with substantial demand penalties which would extend
11 over the entire year, if he had power usage during the time of
12 the Buckeye system peak, which, of course, could not be
13 determined in advance, and so he felt that this rate
14 was much less attractive than it had been shown to be.

15 For this reason, he felt that Toledo Edison power
16 would be more desirable if this demand factor could be
17 adjusted.

18 Q Did he explain that to you?

19 A Yes. He did.

20 Q Did the City of Napoleon ever, in fact, disconnect
21 from Toledo Edison as planned?

22 A No. They did not.

23 Q Mr. Moran, do you ever recall anyone from the
24 City of Bryan, Ohio, requesting Toledo Edison to wheel
25 Buckeye Power or any other power to that municipality?

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1 A. No. I do not.

2 CHAIRMAN RIGLER: Would you?

3 MR. BRILEY: Bryan, Calif.

4 BY MR. BRILEY:

5 Q Had such a request been made, would you have been
6 aware of it?

7 A Because this type of contract was discussed
8 quite uniformly throughout our company. However, I can see
9 how the Bryan manager and our own district manager in that
10 area might have had some informal discussions which I
11 would have been unaware of.

Es12 12 Q Was any formal request ever made by the City of
S13 13 Bryan or by any cooperative to serve the City of Bryan?

14 A No.

15 Q During the period from 1965 to 1967, Mr. Hildeig,
16 were you involved in negotiations for a wholesale
17 power contract with the City of Bowling Green, Ohio?

18 A Yes.

19 Q Do you recall if Mr. Hildeig was involved in
20 those negotiations?

21 A Yes, he was.

22 Q In 1966 and 1967?

23 A Mr. Hildeig was not involved in that contract.

24 Q Do you recall when Mr. Hildeig started working
25 for the City of Bowling Green?

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1 A I think that Mr. Williams passed 1969

2 Q But you don't know who was representing the City of
3 the City?

4 A No, sir.

5 Q All right.

6 Now, referring to the period between 1966
7 and 1967, who were the officials that represented the
8 City of Bowling Green in those negotiations?

9 A Principally, Mr. Douglas Macnight, who was at
10 that time the manager of the utility system.

11 Q and who represented the Toledo Edison Company?

12 A I did.

13 Q Did these negotiations result in a contract?

14 A Yes, they did.

15 Q I want to show you, Mr. Moran, TSD Exhibit 41,
16 and ask you if this is the contract that you, as far as
17 entered into with the City of Bowling Green.

18 A Yes, it is.

19 Q Mr. Moran, did this contract contain any
20 provision which would limit the areas in which both Bowling
21 Green and Toledo Edison could furnish service?

22 A Yes, it did.

23 Q Where is that provision contained?

24 A In paragraph 3.

25 Q During the course of negotiations which led to

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the 1967 contract, Mr. Lyman, did he indicate in any way
any desire for the inclusion of that language in this
contract?

MR. MELVIN BERGER: That question, I think, is
irrelevant. If it has a restrictive provision,
it doesn't matter who prepared it.

MR. BREWER: Mr. Lyman, I believe it is highly
relevant. I can go into my reasons, but I think they are
apparent. The whole thrust of the testimony of Lyman
here, and if this is something that he testified to
there, I think it is relevant, and I think it will become
more relevant as I develop Mr. Lyman's testimony.

CHARLES RIGBY: I think you've got to
respond more fully now.

MR. GOLDBERG: Can we have the witness
excused, if Mr. Lyman is going to respond further?

MR. BREWER: Yes. That is fine.

(Witness excused.)

MR. MELVIN BERGER: I would like to ask a question
when Mr. Lyman was testifying the parties agreed to the
issuance of an unconditional license was disallowed
from introducing certain evidence about the origin of
restrictive provisions with the Wadsworth contract with
Ohio Edison on the ground it was irrelevant.

MR. REYNOLDS: Mr. Lyman, I don't recall that

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1 in, except in direct response to the last paragraph which
2 Mr. Briley is not in a position to speak to, the objection
3 which was made with respect to Lynn was based on the
4 fact that he was not a party to the negotiations and, therefore,
5 did not have first-hand knowledge which is quite a different
6 situation than we have here, where Mr. Norton has already
7 testified he was party to and part of the negotiation of
8 the contract.

9 MR. BRILEY: I would like to state furthermore,
10 Mr. Rigler, that these paragraphs are something that
11 the Department has taken a position on, as evidence of
12 anticompetitive behavior.

13 Quite clearly, if there is business
14 justification for the inclusion of these contracts at
15 the time they were entered into, they would be very
16 relevant for the purpose of meeting these allegations.

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1 CHAIRMAN RIGLER: Well, that is a matter of their
2 objection. They seem to be saying that, particularly, if
3 cations are illegal per se, that a gather that are saying that
4 looking to the rule of Northern Pacific, it is not necessary
5 nor, indeed, desirable, to go through a rule of reason
6 rationale if the practice is, per se, illegal.

7 Is that your position?

8 MR. MELVIN BERGER: That is the department's
9 position.

10 CHAIRMAN RIGLER: I don't know if you would right
11 offhand that language in the Northern Pacific case, but it
12 seems to me, the Supreme Court was quite clear on the point
13 that it does not contribute to the efficiency of judicial
14 proceedings to take evidence with respect to the reasonableness
15 of a practice which is per se illegal.

16 MR. BRILEY: Well, I don't quarrel with your
17 reading of Northern Pacific. I do feel that it was a
18 judicial proceeding but an administrative proceeding.

19 The intent of the parties behind these agreements is
20 highly relevant for the purpose of this board's ability to
21 obtain an overview of what the methods of operations of the
22 companies were during relevant time periods.

23 MR. REYNOLDS: Mr. Chairman?

24 CHAIRMAN RIGLER: Mr. Reynolds?

25 MR. REYNOLDS: If this board is going to rule on

1 evidentiary ruling now on the question of admissibility.
 2 I would just like to mention that with respect to the matter
 3 of the Northern Pacific case, it is our position that there is
 4 a ruling that came down in the context that we are here. The
 5 same kind of regulatory background that we have in this context.
 6 And, therefore, it seems to me, on that is the question of
 7 whether the par se analysis should apply as a matter of fact, and
 8 I would in that regard cite the Pan American case, or call the
 9 Board's attention to the Pan American case, which was in a
 10 comparable setting, and in terms of regulatory background. It
 11 was in that case made clear that provisions of that kind
 12 were not subject to the par se analysis. The fact of the matter
 13 reasonable business justification would be a basis for
 14 looking into those kinds of provisions to determine if they
 15 could be maintained.

end 14

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16 CHAIRMAN RIGLER: Well, wasn't that regulatory
 17 tory scheme in which the agency was charged with weighing
 18 the public interest, comparative considerations, and the
 19 element of that public interest?

20 MR. REYNOLDS: I do not recall that I was asked
 21 directly that question, and I don't want to say or say
 22 without being sure of what I should be saying.

23 I would say that I am not altogether sure that
 24 that is the case, because I think that the regulatory framework
 25 work at that time was in the context of the case which was,

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therefore, that that was not an alternative.

I would also suggest that it is not the intention I don't see that that ideal of an authority is in any way different from the authority that this Board has to exercise the public interest in bringing similar conduct before the context of a competitive situation. It is not possible to sit under either side of that argument that you would think that case quite as readily in favour of the position that is now before the Board.

I would also suggest that it has to be what the Board is interested in developing an advisory Board which to make a considered judgment in this case and to have all the parties develop that record as fully as possible. I would submit that if the Board's ruling in the final ruling were that it was a per se violation, that it is really to make that ruling, notwithstanding the evidence here.

On the other hand, it does seem to me that if the Board should reach the opposite conclusion after hearing the legal arguments of all the parties, then perhaps it would be remiss at this juncture to prohibit the applicants from proceeding with a piece of testimony which would be highly relevant to the other analysis; that is the rule of reason analysis under the contract, if you will.

I guess, for that reason, I am really taking the position that it would be appropriate to proceed with this

matter and to avoid a disposition of the matter until after the parties have had a full opportunity to be heard. And I will say to you very candidly that I am in a position now to answer directly one of the questions put to me, simply because I do feel that there needs to be a little more research in the area before I can say that I should do so so I can give the proper response.

MR. CHURRO: If we can accept briefly the Chairman's remarking on Panagra, we have an extremely difficult legal standing of that case.

First, you are contracting in this proceeding, if you are looking at the regulatory structure, with that set by the Federal Power Commission with that of the FCC in Panagra. Not the NRC but the FCC.

CHAIRMAN RICHIE: And in case there is a question of public interest test, in the FCC, as against the anti-anticompetitive test.

MR. CHURRO: That's correct.

I believe the Supreme Court in the *Illinois* case felt there was absolute immunizing authority in that area and does not exist in the Federal Power Commission.

I would cite the *Illinois* case before the Supreme Court to indicate that. Further, that the FCC had received authority to directly deal with the anticompetitive activities, specifically monopolization, which was part of their act, and

1 for that reason, that agency had exclusive jurisdiction over
2 the anti-trust matters under the National Act.

3 Certainly that isn't the case when we refer to
4 territorial agreements before the Federal Board of Commerce.
5 Panagra is totally out of this.

6 CHAIRMAN RIGLER: I don't want to agree with your
7 interpretation of Panagra.

8 MR. MELVIN BERGER: I think the more appropriate
9 case to consider is Otter Tail, which concerned the electric
10 utility industry. In that case, the Supreme Court specifically
11 rejected the time of business justification defense, and
12 cited Arnold, Schwinn. We suggest that those cases are
13 appropriate.

14 CHAIRMAN RIGLER: However, I do not agree,
15 and the Board does tend to agree with the last observation
16 of Mr. Reynolds with respect to the advisability of reading
17 this testimony, since the Board has not made a determination
18 at this time with respect to whether the territorial agreements
19 are per se illegal.

20 We haven't come to a conclusion, did we say or
21 may not. But it should be on the record.

22 MR. MELVIN BERGER: The Lyren testimony was
23 excluded solely on the basis of relevance. That is the
24 staff position.

25 MR. PERI: That is not our recollection.

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1 Whereupon,

2 W. Foye Harris

3 resumed the stand and, having been sworn, the witness
4 was examined and testified as follows:

5 MR. BRILEY: Would the reporter please read
6 back the last question before the objection.

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

9 MR. BRILEY: For purpose of identification, the
10 language referred to in the question was the language
11 contained in paragraph 9.

12 THE WITNESS: Mr. McKnight, speaking for Bowling
13 Green, expressed an interest in having such language
14 in the contract.

DIRECT EXAMINATION (Cont'd)

15 BY MR. BRILEY:

16 Q What was the reason for his interest?

17 A Mr. McKnight was aware of the fact that the
18 Bowling Green State University which was the largest
19 customer of Bowling Green had been concerned about the
20 price that Bowling Green City was charging for electricity
21 and they had approached Toledo Edison and asked if there
22 was any way Toledo Edison could provide them power at a lower
23 cost.

24 He did not want to lose a customer or have the
25 threat of losing a customer.

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1 MR. LESBY: We are not making any
 2 speculation. The witness did not specify that Mr. [redacted]
 3 said this was the reason. The witness [redacted]
 4 opinion, Mr. McKnight was [redacted] [redacted]
 5 think we can give any weight to that [redacted] [redacted]
 6 Mr. McKnight stated to Mr. [redacted] [redacted] [redacted]
 7 was his concern.

8 What the other party [redacted] [redacted] [redacted]
 9 aware of, whether or not it was [redacted] [redacted]

10 CHAIRMAN LESBY: I understand your point.

11 MR. LESBY: Thank you.

12 BY MR. BRIDEN:

13 Q What was the basis of your [redacted] [redacted] [redacted]

14 A Mr. McKnight expressed this [redacted] [redacted] [redacted]

15 MR. LESBY: I withdraw my question.

16 BY MR. BRIDEN:

17 Q Did you participate in [redacted] [redacted] [redacted]
 18 with the City of Bowling Green in 1967 [redacted] [redacted] [redacted]
 19 renewal of the 1967 electrical supply [redacted] [redacted] [redacted]
 20 City of Bowling Green?

21 A Yes, I did.

22 Q Do you recall [redacted] [redacted] [redacted] [redacted]
 23 that purpose?

24 A The meetings were held in the [redacted] [redacted] [redacted]
 25 Bowling Green utility system in Bowling Green.

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BY MR. BRILEY:

Q Mr. Moran, during the course of your negotiations in 1972 with the City of Bowling Green, was there any discussion concerning the continued application of paragraph 8?

A Yes, There was.

MR. LESSY: Paragraph 8 of --

MR. BRILEY: Of the 1967 contract.

MR. LESSY: NRC-15?

MR. BRILEY: That is correct.

BY MR. BRILEY:

Q Was there any understanding reached between The Toledo Edison Company and the City of Bowling Green with respect to that language?

A No. There was not.

Q Would you describe what discussions were had with respect to that, what the result of these were?

A Mr. Hillwig outlined several things that he felt were unsatisfactory in the 1967 contract form which he would like to see changed, and this was one of them.

And we told him that we would entertain that, along with the other things, as we worked towards resolving our differences and developing a contract.

We did not assent or reject his proposal at that time.

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Q Were you able to negotiate a contract with the City in 1977?

A No. We stopped negotiating and did not negotiate further with the City at that time.

Q Why was that?

A The reason was that in the negotiations we had reached such an impasse that we felt that a contract could not be resolved successfully, and so we decided to develop an alternative form of contract. We filed rates and, therefore, we filed the contract with the Federal Power Commission, rather than entering an individual contract with each municipality.

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Q Does the present FPC tariff include or refer with the Federal Power Commission which is applicable to Bowling Green contain any language analogous to the language of the language of the 1967 contract?

A No, it does not.

Q Does it contain any language which in any way would restrict the area in which either the Toledo Edison Company or the city of Bowling Green could serve?

MR. MELVIN BERGER: Objection.

Is Mr. Briley asking Mr. Chernoff a legal opinion about whether it contains such a restriction?

BY MR. BRILEY:

Q As you understand the terms of the contract, is there any such provision in the present FPC tariff?

MR. CHERNOFF: Are you asking as to understand the terms of the tariff?

MR. BRILEY: Yes.

THE WITNESS: I am unaware of any restrictions.

BY MR. BRILEY:

Q Is there more than one FPC tariff on file?

A I believe there is one tariff, by FPC definition, but it embodies two rate schedules.

Q Can you please describe the differences between the rate schedules?

A The two rate schedules are principally differentiated

BY MR. BAZLE:

Q What is your understanding of the contract in contact, Mr. Morris?

A My understanding is that the contract provides that the company agree that they will not work in each other's respective service areas, in other words, the area of the respective service area, within the city limits of the other party.

Q During the period of 1917 through 1920, do you recall any instance when the city of Toledo gave Toledo Edison the right to work in a certain territory within the city limits?

MR. JESSE: Because by law so that would be the winner would be aware of it?

I would object since it is not in the record for the witness to answer the question.

CHAIRMAN RIGLER: Suggested.

MR. BRILEY: Would you mind the witness answer please?

(The reporter read the pending question.)

THE WITNESS: There are no instances that I am aware of.

BY MR. BRILEY:

Q Had such a request been made, Mr. Morris, would you have been aware of it?

1 A Paragraph 9 had no effect on all other Edison
2 Edison.

3 Q Why is that?

4 A Because it was later superseded by other provisions.

5 Q Mr. Moran, at the time Mr. Hillwig proposed that
6 paragraph be taken out of the contract, did he indicate to
7 you that that paragraph had any inhibiting effect on the sale
8 of Bowling Green?

9 A Mr. Hillwig expressed his opinion that it was
10 very strongly. He did not indicate that it had any
11 inhibiting effect in the past, but he indicated that it was
12 sure to compete actively for Toledo Edison customers in
13 the future.

14 Q Has Bowling Green in fact competed for Toledo Edison
15 Toledo Edison customers since that time?

16 A I am unaware of any competition.

17 Q What is the reason for that?

18 A I think the growth in that part of the Toledo
19 area has been minimal, and there have not been any inducements
20 for new customers.

21 CHAIRMAN RICHES: Let's back up a minute.

22 You said Mr. Hillwig did not indicate that that
23 provision had had an inhibiting effect in the past?

24 THE WITNESS: Yes, sir. That is correct.

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CHAIRMAN BREWSTER: ...
indicate that it had not had an ...

THE WITNESS: Yes, Sir. In 1918.

CHAIRMAN BREWSTER: ...
effect of the provision in the ...

THE WITNESS: Yes.

BY MR. BREWSTER:

Q Mr. Morgan, did the City of Bowling Green
ever construct a 30 kv line through the city?

A The City of Bowling Green ever a
transmission line through the heart of the City which
operates, I believe, at 33,000 volts. It first at 31,000
volts. It was constructed by Toledo Edison Company
ago and was then sold to the City of Bowling Green.

Q Do you recall when that transmission line was built?

A I do not recall exactly when the transmission line
occurred. It was in the period 1914 to 1918, and it
occurred progressively over several years, as the
grid was developed.

Q Were there any agreements or understandings
connected with these transactions?

A Yes. There were.

Q Will you please describe what they were?

A At that time, this was near the end of the
period of rapid growth. I should say, it was in the ...

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1 of this period of rapid growth in the City of
2 Bowling Green -- the City also had recognized the need for
3 the need for upgrading their facilities and power
4 source, and they were also concerned about the fact that they
5 were on the stub end of the Toledo Edison transmission
6 line and, therefore, did not have an adequate source
7 of power in the event that that the line were to develop
8 problems.

9 So it was agreed that Toledo Edison would operate
10 a substation that was owned by Toledo Edison in the City
11 of the City and would sell it to the City of Bowling Green,
12 and that at the same time, in conjunction with this, Toledo Edison
13 begin construction of a transmission line through the town
14 to the west, and would then build a transmission line on
15 the west and tie into Toledo Edison facilities in such a
16 way that there would be a loop transmission line which would
17 provided two-way feed to the City of Bowling Green, which
18 would give them better service than they had before.

19 Then, as a further development, the City of
20 Bowling Green built a substation of their own at a different
21 location, so that they now had two substations fed off of
22 this new transmission line, and they, at that time, and
23 from that time forward, had taken power at two locations
24 from this line.

25 The line was considered to be of joint benefit

bw3

1 to both parties and for this reason it was built
 2 and is still being used, and is in parallel with the
 3 Toledo Edison transmission system.

4 Q Was there any understanding reached with
 5 respect to payment for usage of this line by the Toledo
 6 Edison Company after it was transferred to Bowling Green?

7 A The agreement that was determined at that time was
 8 that the usage of the City of Bowling Green through the
 9 two substations would be by take-or-standby, amounting at one
 10 point and the City of Bowling Green would be considered
 11 as one customer rather than two, even though they were taking
 12 power at two locations.

13 Now, normally, they would be considered as two
 14 customers and would have to pay a substantial increase over
 15 the one customer arrangement for the power that they would

16 It was considered that this . . . compensation
 17 on the part of Toledo Edison was equitable compensation
 18 for the use of this transmission line, both to provide
 19 service to the City of Bowling Green and to provide
 20 possible power flows for Toledo Edison from time to time.

21 Q Was it agreed then, to the extent Toledo
 22 Edison Company would use that line they, in the future would
 23 not have to pay for such usage?

24 A Yes. Because the . . . compensation was for the
 25 ongoing benefit, which Bowling Green got in their monthly

power bills.

Q Mr. Moran, did you participate in a meeting in June of 1972 to discuss with Bowling Green and other municipalities the possibility of Toledo taking over power?

A Yes. I did.

Q Do you recall who was present at that meeting?

A The meeting was attended by Mr. Lawrence B. representing an organization known as the Ohio Municipal Association of Municipalities concerned in water power distribution and Mr. Ludwig, who was associated in SMP Ohio, and Toledo Edison was represented and by Mr. Wendell Johnson, who at that time was general manager for that area.

Q Do you recall what was discussed at that meeting?

A Mr. Luce explained what SMP Ohio was and the organization, it was in the formative stage and he told us who the municipalities in our service area, who were associated with it, were.

I do not recall the name of the organization. I think there were only a small number of them.

and he expressed the purpose of this organization to provide a lower cost source of power and that Toledo Edison would have an interest in installing power for all of the municipalities.

Q What was your response?

A. At the time my response was drafted, I was explained to Mr. Hilkey by Mr. Hilkey that what I would want to discuss this with was the of Toledo Edison.

We did so and after the meeting regarding the conditions under which we would be interested in an arrangement.

MR. BRENN: I would like to know Applicants Exhibit 111, Toledo Edison, a letter December 26, 1973, from John Davis to Mr. John B. President, American Municipal Workers, Ohio, Inc.

(The document referred to was not entered into the exhibit (111) file.)

BY MR. BRENN:

Q Is this the letter to which you were referring, Mr. Moran?

A I believe this is a letter which Mr. had written to Mr. Davis, I think, at a following earlier meeting and had asked specific questions regarding possible wheeling arrangements.

Mr. Davis had consulted with me and with our counsel and this letter was drafted as a result of that meeting, as an answer to Mr. Davis.

Q Did you participate in the drafting of that
response?

A I participated in the drafting of that
drafting; yes.

MR. BRINLEY: I would like to refer
into introduction of evidence of application of
Toledo Edison.

MR. HERVEY WEAVER: I would like to ask
question on this document.

There is some handwriting in the top right
corner, and the copies we have are not clear. We
can ask what that handwriting says.

MR. BRINLEY: We do not have the original
document. All we have is a copy. It is illegible
too.

CHARLES WEAVER: Does it say "sent to"
and then have a series of names?

MR. BRINLEY: It would appear we have "sent to"
sent to" and then names. We have no idea who they are
and we have made an effort to find the original but
can't do it.

CHARLES WEAVER: The last one of the names
"Ray Williams." Is that correct, Mr. Brinley?

Are you familiar with any of these names?

MR. WEAVER: Mr. Brinley, I do not know any of

those people. I cannot find any other names that I know.

CHARLES H. BARNETT: I do not.

MR. BARNETT: Now, I have a photograph of a man

am not 100 percent sure, but I believe it is the man

looking at appear to be, I am not sure, but I believe it is

Howard Duce is the name of the man. I am not sure of the

name. The name now looks like Duce, but I am not sure

sure that that is right, and I do not know if I have any

lowing the one I am looking at, I believe it is the man

does look like Ray Williams.

I think that may be the best we can do with

the copies we have in our files. I think it is important

that somebody else might be able to identify it, so

can amend the record.

It does seem to me that, as far as I know, the

copy I have here, that the name I have written down

set forth here.

CHARLES H. BARNETT: I have some other photographs

readings. I am not sure that I have the same man in the

same place that you do.

Is there objection to the admission of this

exhibit?

MR. MELVIN BERGER: No.

MR. CHAMBER: Can we call this in as an exhibit?

ch 3

admitted for the illegible handwriting in the letter filed
hand corner?

MR. BRILEY: Certainly.

MR. CHAMBER: Fine.

No objection.

CHAIRMAN RIGLER: Exhibit 131 of Applicants will
be admitted at this time.

(The document submitted by
Applicants Exhibit 131, 132
for identification was
received into evidence.)

BY MR. BRILEY:

Q Apart from the meeting that you just testified
about, Mr. Moran, were you aware of any other contact
from AMP-O regarding wheeling?

A No. I am unaware of any others.

CHAIRMAN RIGLER: When you say the letters
resulted from discussions with you, Mr. Davis
and counsel, do you recall which particular lawyer was
involved?

THE WITNESS: Yes. It was Mr. Leslie Henry.

BY MR. BRILEY:

Q Since the September 26, 1972 letter, which is now
Applicants Exhibit 131, Toledo Edison, are you aware of
any instance where AMP-O ever contacted Toledo Edison again

ch 4

with respect to this request?

A. I am unaware of any.

Q. Had such a response -- had such a request ever been made, would you have been aware of it?

A. I should have been, up through 1974.

Q. There was none you were aware of until 1974?

A. No.

Q. Through 1974. Is that your testimony?

A. Yes.

Q. What position did you hold with the company in 1966; Mr. Moran?

A. I believe that was about the year I became vice president of administrative services.

Q. What was your title immediately prior to that?

A. Prior to that I was comptroller.

Q. What were your duties as comptroller?

A. As comptroller, I was the principal supervising officer of the company, responsible for all aspects of accounting, and this for most of the period involved with the preparation of financial reports, such as registration statements for financing, and it included the filing of annual reports to the commission reports which were substantial. And also, I was in a custodial position for the archives of the company at that time.

Q. When did you become the director of administrative

services?

A. About 1964.

Q. Do you recall specifically what in 1963?

A. No, I do not.

Q. Do you recall what your duties were as director of administrative services?

A. Well, my duties involved a number of departments. And the ratemaking function was one of them. The office services and the central filing system was another one. And the purchasing operation and the secretarial operations, the data processing function, and the systems administration operation were included in that.

We were also beginning to develop some utility planning during part of that period.

Q. Are you aware of any request having been made of the Toledo Edison Company by the Southeastern Indiana Electric Cooperative in late 1963 or early 1964 to obtain service from the Toledo Edison Company?

MR. MELVIN BERGER: Objection.

MR. BRILEY: What basis?

MR. MELVIN BERGER: There is no indication that this witness's duties would make him familiar with that.

CHAIRMAN RIGLER: Overruled.

MR. BRILEY: Would you reread the question?

(The reporter read the pending question.)

THE WITNESS: I am aware that Southeastern Michigan expressed an interest in some additional services at about that period in time. I am not aware of the specific dates, however.

BY MR. SMITH:

Q Was the company providing service to what cooperative at that time?

A Southeastern Michigan Coop had distribution lines in Ohio as well as distribution lines in Michigan, and the Ohio part of their system was operated independently of the Michigan system. And Toledo Edison had provided electrical energy for the Ohio system for a number of years.

Q Then I assume when you say they were interested in service, you mean with respect to the Michigan portion of their system?

A I believe they were, yes.

Q Do you recall what the Toledo Edison Company's response was to that?

A At that time, Toledo Edison was unwilling to provide any service across the state lines.

Q And how do you know that that is what the company's response was?

A I don't recall whether we had a discussion to that effect or not. I was aware of our concern about interstate

ch 7

1 service.

2 Q Mr. Moran, are you aware of what the regulations were
3 why the company did not want to provide service across the
4 state line at what time?

5 A Yes.

6 Q Could you please tell me what date that was?

7 A Toledo Edison at that time was an unregulated
8 company, not subject to Federal Power Commission jurisdiction
9 and we were confident if we had an interstate obligation,
10 would be subject to FPC regulation, which we wished to avoid.

11 Q Did The Toledo Edison company ever have any distribu-
12 tion facilities in the state of Michigan?

13 A Many, many years ago, before the Federal Power
14 Commission assumed active regulation of interstate utilities,
15 we did have a subsidiary company in the state of Michigan.

16 MR. MELVIN BECKER: Mr. Chairman, I would like to
17 move to strike that last question and answer, since the latter
18 predates the September 1965 cutoff.

19 CHAIRMAN RIGLER: Confirmed.
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MR. MELVIN BERGER: Mr. Chairman, I would like

to -- excuse me. Perhaps I should say that I had a question
prior to this. I would like to point out in Mr. Moran's
deposition, the passages indicated here which were
was a section of that deposition which was deleted in response
to what Mr. Moran has testified to right now, and which was
stricken in response to Applicant's objection.

We would, therefore, suggest that those passages
be struck also.

CHAIRMAN RIGLES: What was the basis of the
objection?

MR. MELVIN BERGER: The basis of the objection
at that time was that this testimony related to events
which occurred prior to the cutoff date for this hearing.

MR. PEMWELL: If you can give me a date, I
have to find what you are talking about.

MR. BERGER: Chairman Ricles, this is the question
that I really intended to probe. I just have a
question with respect to this area. I will leave it
if you want me to, although it would be helpful to have
the board with a complete overview.

CHAIRMAN RIGLES: What is your pending question?

MR. BAILEY: My pending question is, would
Mr. Moran -- why don't you read it back, please, if you
would.

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

MR. MELVIN BERGER: I believe I had tried to strike the last question and answer.

MR. BRILEY: Please ask a question pending the go.

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

CHAIRMAN RIGLER: Give me the last question and answer, and then the pending question.)

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

CHAIRMAN RIGLER: You have one more question in this line?

MR. BRILEY: Yes.

CHAIRMAN RIGLER: Ask that, so I can hear the entire line before I rule on the motion to strike.

BY MR. BRILEY:

Q My next question, Mr. Howan, did you have facilities in the State of Michigan, were you not at that time not being subject to FCC jurisdiction in 1947?

A The reason that we were concerned was that in developing a system that we believed would eliminate us from Federal Power Commission jurisdiction, we had sold all of the Michigan properties and had very rigorously gone to the two systems to be sure that there were no shows

of power across the state line at any point.

MR. BRILEY: That is the question I am questioning on that.

CHAIRMAN RIGLER: All right.

I am going to deny the motion to strike the deposition to the extent that Mr. Horn's testimony with respect to the subject matter on deposition, I will permit the opposing parties to go back into that area during cross-examination. Introduction of those deposition pages, 23 pages, will be desirable.

BY MR. BRILEY:

Q. All right. Mr. Horn's words were: "The company is presently subject to FPC jurisdiction."

A. Yes, it is.

Q. Do you know when the company became subject to FPC jurisdiction?

MR. CHAMBERLAIN: Is that sufficient for a proper interpretation? Are you asking for time to ask him for the first time?

MR. BRILEY: I am asking what his interpretation is about when the company became subject to Federal Power Commission jurisdiction.

CHAIRMAN RIGLER: Off the record.

(Discussion off the record.)

THE WITNESS: May I have the question, please?

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

THE WITNESS: The company is under Federal Power Commission jurisdiction at the time of the completion and energizing of the 110,000 volt transmission line with Detroit Edison, which occurred in the middle of 1970.

BY MR. DRILEY:

Q Mr. Moran, were you aware in 1968, or have you since become aware at any time of any understanding or agreement, written or oral, between the Toledo Edison Company and Consumers Power Company of Michigan, the effect of which was that the Toledo Edison Company agreed not to cross the state line into Michigan and Consumers agreed not to cross the state line into Ohio?

A I am unaware of any such agreement.

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1 Q Had any such agreement existed, would you have
2 been aware of it, in your opinion?

3 A I would consider it highly probable that I would
4 know of any agreement of that type.

5 Q What is the basis for your statement, Mr.
6 Moran, that you probably would have had some idea of it?

7 A In the area of rate administration, such agree-
8 ments would probably show up, and also in connection with
9 our filing of the regulatory territorial reports. I think
10 have been aware of it, and I had a personal knowledge of all
11 of our general files where corporate customers of that
12 type were maintained.

13 Q For that reason, would you have also been aware of
14 any other territorial agreements with any other utility?

15 A Yes, I would.

16 CHAIRMAN RIGLER: Suppose there were an
17 understanding between executives of United Edison and a
18 power company?

19 THE WITNESS: Mr. Rigler, I obviously
20 not have had knowledge of that. I think even if that
21 thing, we would have been aware of it in our operations.

22 BY MR. BRILEY:

23 Q Are you aware of any other territorial agreements
24 that the company has or has had with any other utility?

25 A I do not think of any such thing, except the

other instances which goes into very early history.

Q Toledo Edison how long you have been in this city's --

A Royce, how early history would suit you?

Q Well, this is prior to 1890 I am inferring to. Would you like a description of that?

MR. BRILEY: It is pre-'69. If you would like him to go into it, we would be happy to have him go into it.

CHAIRMAN RICHER: It is not necessary.

BY MR. BRILEY:

Q Do you know, Mr. Royce, whether Toledo Edison is either serving or negotiating to serve southeastern Michigan Rural Cooperatives?

A I understand negotiations are in progress right now toward developing a supply of Toledo Edison power into the Michigan system.

CHAIRMAN RICHER: Mr. Royce, can I direct your attention to the Toledo Edison service section which is entitled 129.

THE WITNESS: Yes, sir.

CHAIRMAN RICHER: It shows 345 kv connection to Consumers Power at the Allen junction.

My first question is, does Toledo Edison own that portion of the line extending up into Michigan at the Allen?

THE WITNESS: No, sir. Our ownership ends at the

ch 3

state line. What would be true also for the other line, which was completed in 1970, which India was connected to.

CHAIRMAN RIGLER: My next question is, going to the building of the 345 kv line, were there any other connections either Consumers Power or Dominion to some other company?

THE WITNESS: No, Mr. Rigler. Those were the first connections.

CHAIRMAN RIGLER: Was there prior to 1970 there was no connection between the Sulaco system and any other in 1971?

THE WITNESS: That is correct.

CHAIRMAN RIGLER: Was that for other purposes?

THE WITNESS: No, sir.

CHAIRMAN RIGLER: Thank you.

MR. BREWSTER: Mr. Chairman, I have no further questions of this witness. We do not wish to proceed with examination.

MR. REYNOLDS: Can we take five minutes?

CHAIRMAN RIGLER: All right.

Do you have any questions, Mr. Reynolds?

MR. REYNOLDS: Yes, I do.

CHAIRMAN RIGLER: We will take five minutes.

MR. CHARNO: Mr. Chairman, we have to review the Bingham testimony before we can cross-examine Mr. Bingham on that. I was wondering if this might not be an appropriate

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spot for a lunch break.

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CHAIRMAN RICHMOND: Well --

MR. CHAMBERLAIN: It would be better to go ahead.

CHAIRMAN RICHMOND: Let's have the public opinion examination first and then report for lunch.

Are you prepared to go ahead with it?

MR. REYNOLDS: I will like five minutes. I don't think I will take much more.

CHAIRMAN RICHMOND: All right.

(Recess.)

end 20

CROSS-EXAMINATION

BY MR. REYNOLDS:

Q Mr. Moran, when Mr. Hellwig testified and testified, as indicated that the provision in paragraph 3 that you referred to was, in fact, a matter no restrictive impact, because there was no occasion for competition with United States customers in the period in question and also in 1972.

MR. GOLDBERG: Can I have the witness reference to that?

MR. REYNOLDS: 2023 through 2023

BY MR. REYNOLDS:

Q Do you agree with that statement?

MR. GOLDBERG: Just a minute, please.

I object.

I object to the characterization of the testimony. It is my position that Mr. Hellwig, if it not been for provision 3, Bowling Green did not compete for customers outside the geographic area of the City of Bowling Green.

MR. REYNOLDS: Well, his testimony was for itself. If you want me to elaborate on that, I will say, if Mr. Hellwig had testified he thought that would you have agreed with that statement, Mr. Goldberg?

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Mr. Hillwig's testimony will speak for itself. It is
a matter of record.

CHAIRMAN REGLER: You may answer.

THE WITNESS: Yes. I believe Mr. Hillwig is
correct. There have been very few opportunities, if any.

BY MR. REYNOLDS:

Q All right. Now, let me ask you with respect
to the municipalities in the Toledo Edison area which
had contracts with Toledo Edison from the public utility
having as a provision of those contracts paragraphs in
similar language, was there occasion for some direct contact
customers between those municipalities and Toledo Edison
during the period 1965 to the present?

A I would say there was extremely limited
opportunities. Practically none.

Q All right, sir.

Would you, by reference to Exhibits 1, 2,
indicate to us which utilities are adjacent to the Toledo
Edison service area?

A We have Consumers Power Company serving
at retail along the Michigan border. We have Northern
Indiana and that public service company here, and for a
short distance, Indiana and Michigan Company.

CHAIRMAN REGLER: For the record, let's indicate
you are referring to the left-hand side of the map at the

Ohio-Indiana border.

THE WITNESS: Yes. In Ohio we would have Ohio Power - clear along here.

CHAIRMAN NICKLES: Indirectly of the power, two of the m. p.

THE WITNESS: The south part of the area, and to the east we about the distribution system of Ohio Edison.

BY MR. FENHOLESS:

Q What about in the extreme northeast corner? Is that Detroit Edison?

A The extreme northeast corner is Cleveland Electric, so far as the retail goes.

Detroit Edison is a little ways north of that.

Q I see. All right, looking, say, starting at the extreme south, where the Toledo Edison system is adjacent to the Ohio Power System, is there competition for competition for customers between Toledo Edison and Ohio Power in that area?

A The opportunities for competition are somewhat limited, except in one point. That is around the city of Fremont, which is served by Ohio Power, even though it is surrounded on three sides by lines of Toledo Edison.

And as Fremont is expanding, there is active competition for new customers in that area, with Ohio Power.

Q All right, sir.

Q Has that service ever existed for some period of time?

A Yes, it has.

Q As far back as 1949?

A Yes.

Q Thank you.

A All right.

Q Moving around toward the northern part of the area on the area where -- the fringe area, is now the Toledo Edison and Ohio Edison, is there any competition for customers in that area?

A There are practically no opportunities for competition in that area.

Q Why is that?

A Because it is an area where growth has been limited.

Q And why has growth been limited in that area?

A Because there are no customers within that area.

Q Is it not a fact that what is in that particular land area?

A The northern part of it is unshipped, and the southern part is thinly populated rural area.

Q All right.

ch 2

moving up to the north... Toledo Edison is subject to jurisdiction... had that prior to the time... subject to FPC jurisdiction... Michigan. Is that correct?

A. Yes.

Q. Now, since the time that... become subject to FPC jurisdiction... serve customers across the... Michigan?

A. We have expressed this... to southeastern Michigan... jurisdiction.

Q. Which is power to be... area: is that correct?

A. Yes.

CHAIRMAN RICHES: The... have assumed that Toledo Edison was... jurisdiction. And I understand... Toledo Edison structured its operations... claim that it was subject to FPC jurisdiction.

But is in a contested issue as to whether... the company had, in fact, removed itself from the jurisdiction... of the FPC?

MR. REYNOLDS: I guess I will have to let the... parties speak to that. I would say that our position... Edison's position --

CHAIRMAN NICHOLS: Well, and could you go to that with Mr. Bailey here.

Mr. Bailey, would you care to go to that?

MR. BAILEY: Yes, I did.

It is clearly the position of the Board of Commissioners that they were not subject to FPC jurisdiction.

CHAIRMAN NICHOLS: I understand that is the position Edison's position but does the opposition agree with the truth of that position?

MR. REYNOLDS: As far as I know, I am prepared to say that they agree with the position that is accurate.

MR. GOLDBERG: We can't agree at this time that right now.

MR. KEVIN BROWN: I think we should take the position as the city and staff as well.

MR. REYNOLDS: Does your position answer the question?

I assume while the other parties are still uncertain as to their position, prior to that time we agree that following that time that Edison is subject to FPC jurisdiction.

CHAIRMAN NICHOLS: I see Mr. Bailey speaking tentatively. I don't know that there is any disagreement here.

MR. REYNOLDS: All right.

BY MR. REYNOLDS:

Q Moving on again to the western portion of the Toledo Edison service area that is Indiana --

A Northern Indiana Public Service and Toledo Edison, Michigan, two companies.

Q All right, sir.

Thank you.

Is there any occasion for overlapping of customers between Toledo Edison and the fringe area, where they are adjacent?

A There is no overlapping there, because that is a very thinly-populated rural area, and there is no wayward of people into that area.

end 23

begin 24

Q Mr. Moran, let me ask you to look at, first, second, at NRC Exhibit Number 107, which is the affidavit of Mr. William Lewis.

Would you indicate for me, focusing it on the September 2, 1971 meeting which lasted two hours, to what portion of that meeting was devoted to the matters that are set forth in Mr. Lewis's affidavit as being discussed, or being topics of discussion in that meeting?

A I am looking for a breakdown as to how much of the two-hour period was spent. Maybe it might be easier to just take them one item at a time.

1 Can you recall how much of the September 1, 1931
2 meeting was occupied with a discussion regarding a transfer of
3 power from the Ohio power system to the system of the city
4 of Napoleon?

5 A When you say from the Ohio power system, you are
6 referring to Buckeye Power? Is that correct?

7 Q That is correct, sir. I was paraphrasing Mr.
8 Lewis' language.

9 A That was an item of some discussion. This is a
10 long time back, but I think maybe we talked about that for
11 or 15 minutes this time.

12 Q Looking at page 4 and the context that is the subject
13 matter that relates to continuous synchronous operation, I
14 how much of the two-hour meeting was occupied with that
15 discussion?

16 A It was somewhat less than the other one. It was
17 perhaps five or ten minutes.

18 Q All right.

19 Going over to page 5, the topic of joint ownership
20 of large-scale generating facilities, what would be the
21 amount of time devoted to that topic?

22 A That was a very incidental thing. That covered only
23 a few seconds of discussion, as I recall.

24 Q Let me ask you to look for a minute at that last
25 referenced portion of the affidavit on page 5. Then also

01
02 to look over on the next page, page 7, at what is identified
03 as paragraph (b).

04 Can you recall some description in the affidavit
05 at which of those meetings, but looking back on
06 there, this topic was brought up while Mr. Lewis was already
07 his briefcase?

08 A I believe the briefcase incident would have been
09 in this first meeting.

10 Q I see.

11 And looking at the statement on page 4 of Exhibit 1
12 to the same subject matter in a March 3, '76, meeting, C. 100,
13 by reading that, have any recollections that discussion during
14 that meeting?

15 end 21 A No. I do not.
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Q So if I were to ask you how much time might have been devoted to that topic, you don't have any recollection of that?

A No, sir.

Q All right. In the January 25, '73, meeting, do you have any recollection -- that was a four-hour meeting, it looks like.

A I am now referring to page 3 of Mr. Lewis' affidavit which indicates a four-hour meeting. Do you have any recollection as to how much of that four-hour meeting was occupied with the subject of the exercising of the power for the City of Napoleon?

A This was a public meeting involving the citizens of Napoleon, as well as the City Council and Mr. Lewis and representatives of Bell Telephone.

Q And I don't recall specifically that the subject mentioned at that meeting at all.

Q Do you have any recollections as to how much of that four-hour meeting was occupied with the subject of synchronous interconnections?

A No. I do not.

Q Were there a large number of topics that were discussed at that four-hour meeting before the City Council?

A Yes, there were.

Q Was that an open public meeting?

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A Yes.

Q Can we ask you the first question with respect to the March 6th meeting, which I have like a one and a half hour meeting, according to the exhibit.

Mr. Lewis indicates that the matter of "Building Buckeye Power was a topic of discussion at that meeting.

Do you recall how much of that meeting was occupied by that subject matter?

A No, I do not recall.

Q Do you recall whether it was more than half the meeting or less than half the meeting?

A I am sure it was substantially less than half, because Mr. Lewis had a great many details of his studies that he was going over at that time.

Q Could it have been as much as a half of it?

A I am sure it would be less than that.

Q All right, sir. And what is your recollection as to the discussion of continuous synchronous at the March 6, '72 meeting?

A I don't recall that that was mentioned at that meeting, specifically.

Q You don't. Did you meet with Mr. Lewis subsequent to the last meeting that is referred to in this affidavit, on matters relating to the City of Dayton?

A No. I had no meetings with him. I recall two or

b7c

three instances after those meetings in which he telephoned and in one instance, one of his employees telephoned and asked certain additional questions about the interpretation of Toledo Edison rates or matters of that type.

MR. REYNOLDS: I don't have any further questions.

CHAIRMAN RIGLER: Off the record.

(Discussion off the record.)

CHAIRMAN RIGLER: We will recess for lunch.

MR. MELVIN BREMER: Can we have one hour?

CHAIRMAN RIGLER: Yes.

(Whereupon, at 1:00 p.m., the hearing was recessed, to be reconvened at 2:00 p.m., this same day.)

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INTERVIEW

(100 p. 1)

Whereupon,

W. MORAN MORAN

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

CROSS EXAMINATION (cont'd)

BY MR. MELVIN BERGER:

Q Mr. Moran, I believe in some of your earlier
testimony today you used the term "rate function" a number
of times. Could you please define what you mean by "rate
function"?

A By "rate function," I mean the administration of
the rate and tariff of the Toledo Edison Company and its
administration insofar as it involved relationships with
those outside the company. This would be regulatory agencies
and customers, to the extent that rate policy considerations
were involved.

MR. MELVIN BERGER: Can I have that question and
answer?

(The reporter read the record as requested.)

BY MR. MELVIN BERGER:

Q I believe in your testimony this morning you also
referred to some testimony by Mr. Bligher from CEI. I would
like to ask you if the lines and pages of the testimony which

1 you read to us, rather the pages and illustrations you read to
2 us, is the portion of the affidavit which you are objecting to?

3 A Yes, it is.

4 Q That is the only part of you are objecting to?

5 A Yes.

6 Q Mr. Moran, prior to testifying today, did you have
7 a chance to refresh your recollection about the three meetings
8 which are discussed in the Lewis affidavit which is WAC 4477?

9 A I reviewed the affidavit and discussed that with
10 counsel.

11 Q You said you reviewed the affidavit and discussed
12 them with counsel. Was there more than one affidavit?

13 A There's more than one affidavit. It relates to
14 more than one meeting.

15 Q Did you review any other material relating to these
16 three meetings?

17 A Not relating to those meetings, no.

18 Q Mr. Moran, at the three meetings referenced in the
19 Lewis's affidavit, do you recall expressing to anyone your
20 disagreement with statements made by Mr. Clear?

21 A No, I did not.

22 Q At any of these three meetings again, which are
23 covered by the affidavit, do you recall indicating to anyone
24 that Mr. Clear did not have the authority to make statements
25 that he was making?

1 A No. I do not.

2 Q Mr. Moran, prior was the time that Toledo Edison
3 filed the revised tariff with the Federal Power Commission, I
4 believe you referred to that this morning, filed that
5 tariff -- well, strike that.

6 I think I indicated this morning that Toledo
7 Edison had filed a tariff with the Federal Power Commission
8 rather than continue to attempt to negotiate new contracts
9 with municipal wholesale customers. Is that correct?

10 A Yes.

11 Q Prior to the time that tariff was filed with the
12 FPC, did Mr. Clear attend any meetings with officials of Toledo
13 Napoleon, meetings which you did not attend?

14 A I believe he would have in his normal administrative
15 tive capacity, in that district. He would be discussing
16 technical matters, such as the maintenance of relaying
17 equipment and things of that kind, and that is going on all
18 the time. I am sure he would have had meetings with them
19 during that period.

20 Q Mr. Moran, was Mr. Clear's authority the same
21 both before and after the Toledo Edison tariff was filed with
22 the Federal Power Commission?

23 A Yes. I would say it was.

24 Q Do you recall telling Mr. Dorsey of Napoleon that
25 because of the rate filing, Mr. Clear was no longer free to

ch 4

1 negotiate in an unlimited fashion.

2 BY MR. BERENSON: Can I inquire whether you are
3 (The reporter and the plaintiff agreed.)

4 THE WITNESS: I believe I made that statement to
5 Mr. Dorsey, not in reference to Mr. Stone alone but in reference
6 to the Toledo Edison Company, because I am not obviously
7 to be bound by the Federal Power Commission's interpretation
8 interpretation or rejection of our contract as final. That
9 was what I meant by that. If I said that.

10 BY MR. MELVIN BERST:

11 Q Do you recall making it specifically with respect
12 to Mr. Clear?

13 A No, I do not.

14 Q Mr. Moran, at the time of the three systems
15 referred to in the Lewis affidavit, wasn't it true that
16 Toledo Edison was interested in acquiring the particular
17 municipal electric system?

18 A That the Napleton through some of its citizens had
19 requested that Toledo Edison take a bid on it, yes.
20 That was one of the things being considered at that time,
21 yes.

22 Q You say the citizens requested?

23 A Certain citizens of the community had requested
24 this, and I believe they acted through the mayor.

25 Q Was there a written request for Toledo Edison to

ch 5

1 make a bid on the system?

2 A It seems to me there was I am not positive. I
3 think we would ask them to put it in writing if they had
4 that interest.

5 Q Do you recall when that request was made?

6 A No, I do not.

7 Q Mr. Moran, do you have a copy of the affidavit
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9 A Yes.

10 Q I would like to ask you a few questions about it,
11 if I may.

12 Mr. Moran, I would like to refer you to the first page
13 of that affidavit, the 11th line down, although it is in the
14 middle of a sentence, states, "Affiant" -- meaning Mr. Davis --
15 "consulting electrical engineer for Napoleon, asked whether
16 the Toledo Edison would establish a delivery point for Wal-
17 County Electric Cooperative, Inc., a member of Buckeye Power
18 Inc., at the present interconnection point of Toledo Edison's
19 transmission system and the electric system of Napoleon for
20 the purpose of Tri-County's delivering supplemental
21 power to Napoleon, provided that Napoleon would enter into a
22 contract with Tri-County to furnish supplemental power that
23 is made available from excess capacity on the Buckeye system.

24 "Mr. Cleer responded that Toledo Edison would not
25 establish such a delivery point and would further resist every

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effort by Napoleon to obtain more such ordinary and
 "junkies."

Now, just referring to the portion which is being
 quoted, Mr. Moran, does that state the basis upon which the
 Toledo Edison took at that meeting?

MR. REYNOLDS: I will object. Do you state the
 basis of my objection?

I don't have any problem based on the foundation
 of the question asking whether that was the position Mr. Moran
 took, but if he is going to phrase the question as it is phrased,
 then I think we should have a full reading of the rest
 of the paragraph.

He conveniently halted right before the testimony
 beginning, "Mr. Moran responded," and the question which goes
 to the position of Toledo Edison. I think it is fair to
 the witness and the record, if we are going to have that
 broad a question, we ought to incorporate into the record
 the full paragraph.

MR. MELVIN BERGER: I believe the full paragraph
 is already in the record.

MR. REYNOLDS: Not read in, Mr. Berger.

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CHAIRMAN RIGLER: Well, certainly, it is before
 the Witness, and he can refer to the entire document,
 he frames his answers, but the question was primarily as to
 to the boundaries described by Mr. Morgan.

You may answer Mr. Morgan's question.

A. The position of Toledo Edison at that time
 was that such a delivery point would need to be considered
 very carefully. We did not say we would not establish it.
 My recollection is somewhat different in this particular
 point, though this is a very -- this is a general position
 and I am not positive, but I was under the impression
 that at this meeting Mr. Lewis upon, principally, raised the
 delivery point two miles outside of our end that it was
 Toledo Edison that said if you are going that far for
 Buckeye power, why don't you take it where you the
 or words to that effect.

BY MR. MELVIN BERGER:

Q. So Mr. Moran, it is your recollection that the
 quoted section does not represent the Toledo Edison position
 at that time expressed at that meeting?

A. Toledo Edison's position is if the delivery
 point at the present substation were to be considered, then
 we would want to study it carefully before we make
 a decision, which is what the record says.

CHAIRMAN RIGLER: You said Toledo Edison's

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1 position is. Did you mean "yes" at the time of the deposition?

2 THE WITNESS: Was on the side of not answering.

3 BY MR. MELVIN BERMAN:

4 Q I guess I am still having a little trouble
5 understanding your answer to that. Are you saying that
6 Mr. Cleer did correctly state the Toledo Edison position
7 at that meeting or that he did not correctly state the
8 Toledo Edison position at that meeting?

9 MR. REYNOLDS: I will object. This has been asked
10 and answered twice now.

11 CHAIRMAN REIDER: Sustain it.

12 THE WITNESS: I don't remember what Mr. Cleer
13 correctly described the position of Toledo Edison.

14 BY MR. MELVIN BERMAN:

15 Q Mr. Moran, do you recall the taking of your
16 deposition in May of last year?

17 A Yes. The first time that I met you.

18 Q Do you recall testifying at that time that, in
19 quote -- excuse me, in response to a question that I asked
20 the same language I have just quoted from the affidavit,
21 do you recall responding "I think that was our best
22 position which Mr. Cleer expressed"?

23 A I do not recall that statement, no.

24 Q Well, perhaps I can show you the deposition.
25 I will be referring specifically to page 43, lines 3 and 4.

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the question starts at page 13, line 13.

A I have the disclosure in question with this reference here was to the delivery of the goods at the town and not the one at the disclosure concerning.

Q Mr. Moran, is that distinction reflected in your deposition?

A That was what I was referring to in my deposition.

Q But is that distinction reflected in that deposition?

MR. REYNOLDS: I will object. The deposition speaks for itself. I have no problem with asking the Witness what he intended at the deposition or what he intends now.

If he is asking him what the deposition testimony, in fact, reflects, it seems to me the best evidence is that testimony.

CHAIRMAN RIGLER: I will sustain the objection.

BY MR. MELVIN BERGER:

Q Mr. Moran, is it your testimony that at the time your deposition was taken...

CHAIRMAN RIGLER: Get rid of the word "and" because that is going to be ambiguous.

MR. MELVIN BERGER: Okay.

BY MR. MELVIN BERGER:

Q Mr. Moran, is it your testimony that at the time

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1 your deposition was taken, the position expressed by
 2 Mr. Closs in the Lewis affidavit was that Toledo Edison
 3 Company position with respect to the line was that the
 4 built ten miles out of town?

5 A I believe that would be Toledo Edison's position
 6 at that time, referring to that line.

7 Q I would like to refer you now again to page 1,
 8 the first paragraph, last sentence which states, "Edison
 9 said that Toledo Edison would, in fact, be the first to
 10 from Ohio Power to Napoleon and that it is not Toledo
 11 Edison's policy to wheel power to a municipal customer."

12 Is that statement a correct statement of what
 13 occurred at that meeting?

14 MR. REYNOLDS: Objection. It has not been
 15 answered, with specific reference to that specific
 16 sentence, this morning, or direct.

17 CHAIRMAN RICLER: Overruled.

18 THE WITNESS: That is not a correct statement
 19 Toledo Edison's position in regard to wheeling power to
 20 a municipal customer.

21 BY MR. MELVIN BERGER:

22 Q That is as expressed at that time, is that
 23 right?

24 A Not as expressed at that time.

25 At that time Toledo Edison had never had a wheeling

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arrangement with a municipal authority, and had we had a
request for one, so we do not have a policy.

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Q I would like to refer you now to paragraph 1(c) of the Lewis affidavit which refers to the March 6th, 1972 meeting. The last sentence in that paragraph reads as follows:

"Mr. Moran responded by saying it was not Edison's policy to share power to municipal governments and other than he could not give affiant any further answer."

Mr. Moran, do you agree with that statement?

A I do not believe that that was exactly what was stated. It certainly was not what was intended.

Q Do you recall testifying on deposition in answer to virtually the same question about this paragraph -- do you recall testifying that you at that time thought you correct?

A No, I do not.

Q I would like to refer you to page 46, specifically line 20 of your deposition and ask you if that reflects your recollection?

A I think my statement then should be read in context with the additional question and answer, as stated. I state that we never had the question asked of us before, but we felt it would not be desirable to us, which was our position at the time.

Q Which question and answer are you referring to?

A The one that you have referred to in the

deposition on page 46?

2 MR. REYNOLDS: Give him the line reference,
3 Mr. Moran.

4 BY MR. MELVIN BERGER:

5 Q Can you give a line reference?

6 A Line 15.

7 MR. REYNOLDS: Line 23?

8 THE WITNESS: The additional number that I
9 believe should be included is line 23 and following.

10 BY MR. MELVIN BERGER:

11 Q Did you express to Mr. Lewis that you felt that
12 it would not be desirable for Toledo Edison to wheel power
13 to its municipal customers?

14 A I am not sure that I did. I am not sure that I
15 didn't. We had some hesitations about entering into
16 this field, but we also recognized that it could have poten-
17 tial for good business if it were properly handled. We
18 were quite uncertain at that time just what course we did
19 want to follow on.

20 Q Well, Mr. Moran, at the time of the March 6th
21 meeting, hadn't you already had that request before you?

22 A We had had Mr. Lewis' discussion, yes.

23 Q Wasn't that discussion six months before the
24 March 6th meeting?

25 A Several months before, yes.

1 Q So then it is correct to say that as of the
2 September -- I am sorry. As of the March 6th meeting, the
3 question had been before Volade Wilson for about six months,
4 is that correct?

5 A This question had been before Volade Wilson along
6 with a great many other factors that were related to this
7 matter. It was not being considered in conjunction with
8 a specific request.

9 Q Well, hadn't Mr. Lewis made a specific request
10 at the September meeting?

11 A He had made a specific request for delivery 10
12 miles out of town.

13 Q Is it your testimony then that Mr. Lewis at the
14 December meeting did not make a request for a delivery
15 point for the Tri-County Rural Cooperative at the present
16 interconnection, the point of Volade Wilson's interconnection
17 system and the electric system of Napoleon?

18 A I do not recall that it was discussed specifically
19 as a request. It was suggested and talked about some.

20 MR. REYNOLDS: Could I have the question and
21 answer read back, please?

22 (Whereupon, the reporter read back the
23 record, as requested.)

24 BY MR. MELVIN MERCER:

25 Q Mr. Moran, wouldn't the establishment of a

1 delivery point for Tri-County to be used to serve Napoleon.
2 have required that Toledo Edison wheel power to Napoleon?

3 A I am not sure that I understand the question.

4 Q If Toledo Edison were to have established a
5 delivery point for Tri-County Rural Co-op to enable Tri-
6 County to serve Napoleon, wouldn't that have required that
7 Toledo Edison wheel power to Napoleon under the Buckeye
8 agreement?

9 A Yes. Under the Buckeye agreement this would
10 have been a wheeling transaction.

11 Q Wouldn't the beneficiary of that wheeling
12 transaction have been a municipal system?

13 A What do you mean by beneficiary?

14 Q Person that receives the power that is being
15 wheeled.

16 A If Napoleon were to be a customer of Tri-County,
17 then Napoleon would be the beneficiary and presumably Toledo
18 Edison -- not presumably, certainly Toledo Edison would be
19 a beneficiary for a larger payment for wheeling Buckeye
20 power.

21 Q Mr. Moran, in these meetings with Mr. Fovis,
22 weren't you discussing the wheeling of power in the context
23 of the -- the wheeling of power to municipal systems in
24 the context of the Buckeye arrangement?

25 A Yes, we were.

Q So how'd he take the... power up municipal system... September '71 meeting?

A It was... delivery point. I know. I... one, about the one at Napoleon.

Q I would like to refer... the Lewis affidavit which... by saying:

"Representatives... stated on three occasions that... their system in continuous... the City of Napoleon is... with Tri-County Rural Electric Co.

Mr. Moran, is that...?

A That statement is... tions.

Q What are those qualifications?

A Qualifications are... this morning in which... people had expressed concern... with Napoleon, if there was... tying in power from another source.

And they wanted to be... reasons and the integrity of our...

provision was not possible.

Q Did these questions, or a further question, that concern at the time meeting, or the meeting, in 1971?

A I don't recall precisely what the question was in an informal discussion I had with Mr. Lewis, of the positive who it was I recalled. I believe I recall that in any negotiations with Napoleon along these lines, we should be sure of this electrical problem which undoubtedly exists.

Q Was this discussion held at the time of the meeting with Mr. Lewis?

A I believe it was before that meeting.

Q So then you know the request was coming prior to the September 2nd, '71 meeting, is that right?

A We knew that Mr. Lewis had been talking to Napoleon. We knew that something of this nature was in the offing. We did not know specifically what he had in mind.

Q You mentioned a third source as having given an answer to one of the questions. What do you mean by a third source?

A If an electrical system, such as Napoleon, which operates at a considerable distance outside of the community, might obtain future customers near the very far boundaries of their system, when their ability to

1 deliver power was limited. They might well use to obtain
2 power from a third party who had some nearby, such as
3 one of the other co-ops which was obtaining power
4 from a different utility than Toledo Edison.

5 Q Did Mr. Lewis suggest this?

6 A No, he did not. He never mentioned it.

7 Q Is it your testimony that you told Mr. Lewis
8 that you were concerned about this?

9 A I believe that when we discussed our position
10 in regard to synchronous operation that we gave him some
11 indication why we had that concern. I am not sure that I
12 believe we did.

13 Q What was his reply?

14 A I don't recall. I am not even positive that he
15 mentioned it to him.

16 Q Do you have any reason to believe that someone
17 was considering taking power from a third source?

18 A No, we did not, but we recognized that this
19 type of thing does happen with smaller distribution systems.

20 Q Mr. Moran, are you aware of any case where parallel
21 operation was not the standard procedure between Toledo
22 Edison and a Buckeye member co-op, when the co-op requested
23 parallel operation?

24 A We had no other Buckeye customers, which had
25 generation of any kind.

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Q Is there any system that you did not operate in parallel with when it was requested?

A No. Apparently not.

Q Did Toledo Edison ever require the addition of certain equipment before they would agree to operate in parallel with a Buckeye member co-op?

MR. REYNOLDS: Can I have that question read again please?

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

THE WITNESS: I don't believe that there was any instance when a Buckeye member co-op requested parallel operation, because there were none that had any generation.

BY MR. MELVIN BERGER:

Q So the answer to the question then is what you are not aware of any; is that correct?

MR. REYNOLDS: I object. He's answered.

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

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

CHAIRMAN RIGLER: Sustained.

FP30
ch 1

BY MR. MELVIN BERGER:

Q Mr. Moran, were there any, while that the engineering problem you just related to us, was there any problem, any legal problem with Toledo Edison operating in continuous synchronism with Napoleon?

MR. BRILEY: Objection. It calls for conclusion and legal opinion. The witness is not qualified to render legal opinions.

CHAIRMAN RIGHER: Overruled.

MR. MELVIN BERGER: We will withdraw the question, then.

MR. LESSY: His objection was overruled.

BY MR. MELVIN BERGER:

Q Mr. Moran, was there any managerial policy of Toledo Edison which prevented the operation of the Toledo Edison system in continuous synchronism with the Napoleon system?

A Toledo Edison had operated in synchronism with Napoleon for many years, and this was no problem.

Q Mr. Moran, isn't it true that eventually Toledo Edison determined that there was no engineering reason which prevented Toledo Edison from operating in continuous synchronism with Napoleon?

MR. BRILEY: I object to that question, the characterization of it. He already testified that Toledo

Wilson did operate in continuous synchronization. Question makes no sense.

MR. MELVIN BERGER: Not a question.

BY MR. MELVIN BERGER:

Q Isn't it true Toledo Edison determined that if they had purchased power from the Company that there would be an engineering reason which would prevent Toledo Edison from operating in continuous synchronization with Niagara?

A There was an engineering concern of the nature that I have mentioned previously, that we discovered to our embarrassment that the Exchange agreement already had a paragraph that gave us protection in the event of a shortage delivery. And for this reason we had no further objection.

Q I would like to direct your attention now to paragraph 3 of the Lewis affidavit. I believe your testimony this morning was that you did not recall having the meeting at which the topic of joint ownership of Niagara generating facilities was discussed with Mr. Lewis. Is that correct?

A Yes.

Q And I am not sure which of the two meetings Mr. Lewis has in this section of the affidavit. You do not recall discussing this matter -- is that the September meeting or the March meeting?

A No. I have trouble differentiating between those two meetings. I know they both occurred, but the trouble

matter in the two is intermingled. I don't know which is which.

Q With regard to the affidavit, the affidavit starts at the bottom of page 6, Mr. Cleer responded by saying it was completely impossible and impractical. With regard to that quote and the other references therein, do you recall whether that statement was made by Mr. Cleer?

A I do not recall this specific statement. I do recall that Mr. Cleer made some remarks that I regarded as somewhat injudicious and inflammatory.

Q Did you caution Mr. Cleer to refrain himself?

A No. I did not.

Q I would like to refer you now to paragraph 3(b) of that affidavit. The first sentence.

"On March 6, 1972, between the hours of 10:15 and 11:35 at the offices of Toledo Edison in Toledo, specifically in the office of Mr. Moran, and in the presence of Mr. Moran and Mr. Cleer, Affiant" -- meaning Mr. Radin -- "inquired whether or not Toledo Edison would consider joint financing of large-scale generating facilities by Toledo Edison and Napoleon and other municipal electric systems in the State of Ohio. Mr. Cleer responded by saying 'Impossible.'"

Do you recall whether or not Mr. Cleer made such a statement?

A No.

1 I previously explained that these meetings were
 2 charged in my mind, and I am not sure whether they were held
 3 in both of these Mr. Lewis's offices in the city.

4 Q So you do not recall? You don't recall either
 5 or the other?

6 A Not specifically.

7 Q I believe you testified earlier that you
 8 that you felt that Mr. Lewis did not have authority to act
 9 behalf of Tri-County and that just because he was making
 10 requests which were made in his office that they were
 11 different if Mr. Lewis had spoken as an individual?
 12 Is that correct?

13 A Yes.

14 Q Did you ever tell Mr. Lewis that if he spoke
 15 would be different if he represented Tri-County?

16 A Yes. I believe we did.

17 Q When was that?

18 A At one of those two meetings.

19 Q Is that two meetings or three or four or five?
 20 Two meetings are you referring to?

21 A The two meetings in my office.

22 Q You don't recall which one?

23 A No.

24 Q Mr. Moran, does Toledo Electric have a building in
 25 Wheeling today?

26 A Yes, it does.

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Q Now did the policy you mentioned in your
earlier testimony, that the policy was to
what is the subject matter of the policy?

A Yes, I believe it was a policy to
to municipal customers in Toledo Edison.

Q With that, could you tell me, is that the
policy today?

A Yes, I believe it is.

Q Now, I believe you testified that you were
generating no actual witness testimony, that you were
not a customer of Toledo Edison.

THE WITNESS: Yes, sir, that is correct,
hypothetical. I am sure in that case, if we
we would be willing to support our side of the case.
Mr. Dorsey is asking some questions, I believe
led to that sort of situation, and I am sure
with him on.

CHAIRMAN FORD: Now, I am going to ask you
Toledo Edison system for another period, was it
Toledo Edison's service area?

THE WITNESS: This is a question that I am
very willing to accomplish. It was a matter of fact
on which to base any pricing of 10, but that.

BY MR. HENRY FORD:

Q I believe in your testimony, this is the

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Q. ... there are no ...
synchronous or operate in synchronism ...
is that correct?

A. Yes.

Q. Are you familiar with the ...
Interlake Iron?

A. Yes.

Q. Do you know whether that ...
with Toledo Edison?

A. Presently that generating ...
operating at all. We do have ...
whereby their generation could be ...
emergency purposes and by our ...
of that equipment.

Presently it is not ...
It hasn't been for a year and ...

Q. In the past when ...
generation was operating, did ...
synchronism with ...?

A. Yes. In the past years, ...
operated in synchronism with Toledo Edison, ...
purchases excess capacity from Interlake.

Q. I believe you stated that ...
of Napoleon ...
that Mr. Donsey of Napoleon ...

operation of the circuit, it is not a...

Q

A Yes.

Q The independent operation of the circuit in order to comply with a Nevada law which requires the preconditions for Nevada's public utility law...

A Yes.

Q Did the Nevada law require the Nevada law of that 30-day provision?

A Yes, they did.

Q Had that law been in effect before the...

A Toledo Edison's response was that it would not waive this right of ours.

Q I believe you have had some other cases which reached which Mr. Dorey suggested the Nevada law Napoleon system from which Edison's system was derived. That is the opening of a switch...

A Yes.

Q Can you explain how the Nevada law suggested a business enterprise?

A Yes. It is a very simple device, it consists of a lever at the bottom of this switch to operate the circuit and provide power, and it has some special operating rules, as all utilities are regarding the operation of switches on our system...

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system load dispatcher or our own service dispatcher
in the lower voltage lines and in the high voltage lines
life of our workmen depends upon getting these switches
thrown only on conditions of safety and in the event of an
accident, where we have generalization in the lines or this
switch, there is really double jeopardy. There should be
in either direction.

So we did not want a switch which could be
actuated by Mr. Borsary's employees who might not be knowledgeable
about the importance of taking all the safety precautions
that were required.

Q Couldn't the switch have been locked open?

A It could have been locked open, but none of the
people that work around power switches have keys to that.

We have had cases where they have been locked open
where the locks have been out of alignment and in an
emergency we could visualize a locked employee who, while
not realizing the jeopardy he might be placing people in or
equipment in, and for this reason we did not want to proceed
under that condition.

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arl 1 Q What was Toledo Edison's suggestion as far as
2 isolating the Napoleon system?

3 A The suggestion of Toledo Edison was that one
4 span of wire be removed so that this inadvertent connection
5 of the air brake switch could not occur.

6 Q When you say "one span," what do you mean by
7 one span?

8 A The wires which go between two supports.

9 Q So you would physically remove the transmission
10 wires; is that correct?

11 A The transmission connection. I am not sure
12 in this substation whether it was a short pole span or
13 whether it was just wires coming down a pole.

14 CHAIRMAN RICHER: What was the location of
15 the switch?

16 THE WITNESS: The switch, Mr. Richer, would be
17 at the edge of the Toledo Edison substation, which
18 supplies power to Napoleon.

19 CHAIRMAN RICHER: Whose personnel operate the
20 substation?

21 THE WITNESS: Normally Toledo Edison's personnel
22 operate the substation, but upon request I believe
23 Napoleon Electrical System people were also authorized to
24 operate it under certain conditions under my direction.

25 CHAIRMAN RICHER: Does Toledo Edison have

employees there on a round-trip basis.

THE WITNESS: Yes, sir.

CHAIRMAN RIGLER: How many employees would have employees there?

THE WITNESS: I believe that if I know of his employees controlling this area, probably, two or three times a week, and he would be employed by Toledo office, located within 10 miles of this location. He would be available by mail in the event of an emergency.

CHAIRMAN RIGLER: Is there a house at that station?

THE WITNESS: Yes.

CHAIRMAN RIGLER: Is it located?

THE WITNESS: It is located -- but the Napoleon operating personnel had access to it.

CHAIRMAN RIGLER: Is the house located in the area of the fence?

THE WITNESS: I don't know. It would be adjacent to it. I believe it would be.

BY MR. HERVEY BRUBER:

Q Mr. Moran, could you have contacted the access of some of these employees of Napoleon's office, that is, to the substation?

A It perhaps could have been done. And it is a

1 difficult thing to do.

2 Q Why is it difficult to do?

3 A It is a difficult thing to do because at the
4 working level, the employees, other than the individuals
5 which their bosses are concerned with, and we are very concerned
6 about the situation at Regalton.

7 CHAIRMAN RIGLER: Is it your contention that
8 the City's employees had access to what substances, etc.,
9 in the absence of Toledo Edison's employees?

10 THE WITNESS: Yes, under some conditions, Mr.
11 Rigler, they were authorized to go in.

12 CHAIRMAN RIGLER: Now, these radioactive materials
13 located inside the compound?

14 THE WITNESS: Yes, there are. We have
15 other loads served out of there also.

16 CHAIRMAN RIGLER: I am having some difficulty
17 rationalizing your safety concerns. What was to prevent
18 these municipal employees from inadvertently energizing
19 or deenergizing other switches?

20 THE WITNESS: I believe, as I indicated in the
21 operation, that the employees that were authorized to
22 enter that were only a very small number of Mr. Harney's
23 employees, who were qualified and understood the necessity
24 for contact with Toledo Edison.

BY MR. MELVIN BELMONT:

Q Are you saying that these employees who were in the state earlier that you mentioned were not authorized by Napoleon's employees because they were not authorized to be allowed to go into the substation?

A Yes. That has a restriction. I don't know what there are employees around any substation who are working in other capacities and may be authorized to be allowed to throw the wrong switch at the wrong time.

Q Mr. Brown, weren't the ones who were authorized by Napoleon to enter the substation were authorized by Toledo Edison to enter the substation and employees who would not be the employees to be operating by error, mistake, and throw the wrong switch?

A I am sure they were.

Q They were what?

A Employees who understood the need for this and were known to be reliable and would know what they were doing.

Q Aren't they the only ones who would be authorized to the open switch?

A That is what we were not sure of.

Q Well, I thought you just testified there were only a few Napoleon employees who are authorized to enter the substation?

A That would be if an emergency condition where
 might be circumstances where the employees were
 were not on duty and were not in the area and
 himself to take this action. This is a very
 safety hazard, and it may be a severe one under
 about that. And yet with the fact that the
 involved in the electrical system we have very
 safety requirements of which they are not aware
 are attempting to continue the work of the
 this manner as well as the lives of the employees
 Mr. Dorsey's employees.

CHAIRMAN: Right? I don't understand how
 hazard is any different during the period when you are
 in synchronous operation or during the disconnection
 You have the same employees with the same access to the
 same group of switches.

THE WITNESS: The train normal operation, Mr.
 Rigler, this air brake switch will be closed and
 operated within our normal operating procedures. In
 this instance, when it was open, it was closed
 inadvertent or accidental operation of it when we were
 unaware of it.

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ch 1

CHAIRMAN RIGLER: Now in the Edison area, the switch
to the city system?

THE WITNESS: When the switch is closed, the line is
connected. One side of the switch is the city system, the
other side of the switch is the Edison system.

CHAIRMAN RIGLER: So you don't want Edison people
up to the switch?

THE WITNESS: Yes.

CHAIRMAN RIGLER: In that case, all of Edison
personnel wouldn't be working on that section of the line in
any event, would they?

THE WITNESS: Yes, Mr. Rigler, in the case of this
type of this voltage has an interlocking of the switch, that
both the utility and certain representative persons
normally have access.

CHAIRMAN RIGLER: I don't think that's quite
responsive. You are suggesting that the city's personnel
might be inside the compartment working on the first
part of the line.

My question was, with respect to the Edison
Edison personnel wouldn't have anything to do with the city's
line which extended from the switch into the city.

THE WITNESS: Yes. There would be circumstances
when Toledo Edison personnel would have access to them.
Some of the relaying is joint on either side of the switch.

ch 2

and the metering equipment, of course, is what's in the

CHAIRMAN RIGLER: And what is the light that is

the component, isn't it?

THE WITNESS: All of this equipment is in the

compound.

CHAIRMAN RIGLER: So is the telephone area

personnel were there doing their work. Whether they be they

would hardly be in jeopardy of somebody else's work

and throwing the switch which is right there in the work

work area?

THE WITNESS: I think I should mention, Mr. Rigler,

thing, Mr. Rigler, which is significant. Some time ago, I think

was to my company, that normally planned switching operations

are carefully coordinated, sometimes the ahead of time

ahead, when we are switching a number of things.

and are coordinated with the proper people in the area

the work at the location at the time. And we have no problem

with that type of operation as a rule.

But we were concerned about this particular area, which

had had a history of frequent breakdowns. And, in fact, when

the power plant collapsed in the middle of the night, we were

standing all of these requirements, and we were in a bind,

that was our concern.

CHAIRMAN RIGLER: Okay.

The company had a 24-hour maintenance crew located

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1 within ten miles of the substation?

2 THE WITNESS: We have a cable car. Located throughout
3 our service area. And they are the oldest cars that
4 everyone else works. They have a small line track with a
5 high trolley bucket, which they keep at their home,
6 and they have radio contact. In an emergency, they are
7 called out during the night.

8 CHAIRMAN RIGLER: Couldn't the company have
9 simply have denied access to the compound of all of the
10 personnel and left the switch in an open position to be
11 utilized only by Toledo Edison personnel?

12 THE WITNESS: If we had assurance this would not
13 happen, it would be the way we go. We did not think
14 we had that assurance.

15 BY MR. MELVIN BECKER:

16 Q Are you suggesting that that was an alternative?

17 A It would have been an alternative, yes.

18 Q Did you suggest that to Mr. Boushey?

19 A No, I did not.

20 Q Could you have just changed the lock on the entrance
21 of the substation and thereby denying access to the Napoleon
22 employees?

23 A This has some difficulties, too, because Napoleon
24 has equipment in that substation.

25 CHAIRMAN RIGLER: I didn't hear the last answer.

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(The reporter read the record as requested.)

BY MR. MELVIN BERGER:

Q Mr. Mowen, would that equipment have been used, and Napoleon equipment have been used during the 1960 period of isolated operation?

A I don't know whether it would have or not. I am not sure how it would tie in with their system. I think it might well have been.

CHAIRMAN RIGLER: What would that equipment be?

THE WITNESS: I am not sure. I would have to study the wiring diagram to know precisely, and this is outside my normal area. I can recognize it.

It seems that Napoleon has a distribution system whereby they had picked up some load directly out of that substation, due to a growth period in part of that town. But I am not positive about that.

MR. MELVIN BERGER: Is this a good place for an afternoon break?

CHAIRMAN RIGLER: Yes.

Off the record.

(Discussion off the record.)

CHAIRMAN RIGLER: We will take ten minutes.

(Recess.)

end 33

1 and MR. CHAPNO: Mr. Chairman, in view of the changes
2 in scheduling of witnesses that have taken place, the fact
3 we being the Department and the City of Cambridge, and
4 ourselves with some difficulty in meeting the schedule that
5 that the Board has set for responding to the Applicant's
6 Joint Motion to Dismiss all charges against them. At
7 this time I would like to request an additional week for
8 the City and the Department to respond.

9 The Staff, as you know, filed our paper which
10 was responding to both the individual and the joint
11 motions. The Department and the City had not yet
12 responded to the joint motion.

13 CHAIRMAN RIGLER: The request seems reasonable
14 in view of the schedule. Is there deposition?

15 MR. REMOLDS: They have had 14 or 17 days since
16 the filing of our paper in which to visit on this ground
17 and I guess I should characterize it, unincorporated days
18 as compared to -- I believe there were 11 unincorporated
19 days that Applicants had to prepare the motions, and I
20 would submit that on the balance of the days available to
21 work on this, that there seems to be no excuse why it
22 can't be filed on time.

23 CHAIRMAN RIGLER: Okay. The current due date is
24 the 21st?

25 MR. CHAPNO: Yes, sir.

1 I would only note that much of the material
2 in Applicant's motion could have been compiled by 11/15 or
3 December, and further note that there is no prejudice and
4 no delay in this hearing that will result from granting
5 the extension.

6 MR. REYNOLDS: No delay -- decision of the Board
7 which I think certainly does have an adverse effect.
8 We had hoped to get that somewhat close to
9 the time that we were to put on our case or shortly
10 thereafter.

11 It now looks like, by looking in my another way,
12 that it is going to be closer to the time that the entire
13 case is in, by the Applicants.

14 CHAIRMAN RIGLER: Okay. I would be inclined to
15 cut back on you, except that the Board at least I, and
16 the other members can consider it. I could not advance
17 myself to the papers earlier than the 26th, so that even
18 if I cut them back to the 24th or so, for listening, it
19 wouldn't help all that much.

20 So for that reason, I am going to give them the
21 full week that they request. The 29th.

22 MR. PERI: Your Honor, if we might, can we have
23 some preliminary indication as to when there might be a
24 Board ruling on the individual responses filed?

25 CHAIRMAN RIGLER: No. As soon as possible --

1 MR. PERI: If you included that, if you would
2 address yourself to the papers --

3 CHAIRMAN RYLAND: The papers filed yesterday
4 we can begin to consider, obviously. I did some
5 preliminary reading. I don't know about the other members
6 of the Board. Yes. We would be looking to them, starting
7 immediately.

8 MR. PERI: Thank you very much.

9 BY MR. NELVIN MERZEL:

10 Q Mr. Moran, I believe in some testimony this
11 morning you referred to a September 23rd, 1971 letter
12 which you wrote to Mr. Dorsey.

13 Do you have that in front of you? I just want
14 to make a brief reference to it.

15 A Yes, I have that letter.

16 Q I believe you indicated that you and Mr. Dorsey
17 had discussed joint generating facilities; is that correct?

18 A Yes.

19 Q Do you recall when you started to discuss this
20 with Mr. Dorsey?

21 A No, I do not, because it was the subject of
22 informal discussions during several of our meetings. So
23 I believe it was some time before the meeting of September
24 9th, which I was responding to here. It was mentioned three
25 or four times, I know.

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Q I notice that there is a copy of this letter which was sent to three people in Toledo, Ohio, including

Mr. Smart, Hupendecker; why did you send copies to these three gentlemen?

A Mr. Williamson was the president of the company with whom I had discussed the possibility before the letter was sent, and he concurred we should go forward in this direction.

Mr. Smart was legal counsel and also the vice-president who at that time was in charge of the rate activities.

I felt that he should be aware of this.

Mr. Hupendecker is in charge of the normal rate administration.

Q Mr. Smart is a vice-president of Toledo Edison?

A Yes.

Q I believe earlier today I had asked you if you recalled the approximate date on which the City Council for Napoleon asked Toledo Edison to submit bids on the system and you were at that time unable to give us a date.

I would like to show you a document now, perhaps to refresh your recollection. It is a letter from Harold Wagner to John B. Cloer, dated June 29, 1971.

MR. BRILEY: Which number is that, please?

MR. MELVIN BERGER: It is not in evidence.

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MR. REYNOLDS: Can we have a copy?

MR. BRILEY: I hadn't seen it.

BY MR. MELVIN BERGER:

Q Mr. Moran, does this help you refresh your recollection as to when the City Council of Toledo requested Toledo Edison to submit a bid on this system?

A I recall this instance, but it also seems to me that there were subsequent requests, at least one subsequent request, in addition to this.

Q This was the first one?

A I don't believe it was the first one. I think there may have been earlier ones, too.

Q Were the earlier ones formal requests from City officials?

MR. REYNOLDS: Mr. Chairman, I am going to object. I held off, because I thought Mr. Berger might have been jumping in and out of something. I don't recall this subject matter being discussed in any way on the direct case.

MR. MELVIN BERGER: I believe it is relevant to determine Toledo Edison's motives for responding as they did to Mr. Lewis, as well as to responding, in the way they did, to other requests by MR. Dorsey.

MR. REYNOLDS: If they want to link it up in that respect, I would suggest there is a different line of question than the one we are now pursuing.

1 CHAIRMAN RIGLER: I don't see how the mere
2 request by Napoleon for consideration would furnish
3 adequate insight into the cost policies in water
4 situations.

5 You would have to link it up better than that,
6 if you want to pursue it.

7 Do you intend to do so?

8 MR. MELVIN BERGER: Can we answer the witness
9 for a moment?

10 CHAIRMAN RIGLER: Sure.

11 (Witness resumed.)

12 MR. MELVIN BERGER: I believe what we are
13 attempting to do now is tie down the date upon which
14 Napoleon City Council indicated to Toledo Edison that they
15 were representative to receiving bids on the system, and what
16 other evidence to demonstrate that Toledo Edison's interests
17 in acquiring the Napoleon system predates the requests
18 by Napoleon to bid on the system. And that it is
19 contemporaneous with the initial refusals contained in the
20 Lewis affidavit.

21 MR. BRILEY: I have got a question. I don't
22 understand what allegations of the September 9 filing that
23 has any relation to whatever.

24 There is absolutely no evidence on the record to
25 even support this. NOT even from your own witness.

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MR. MELVIN BERGER: I think this goes to show the intent of Toledo Edison to acquire the Napoleon system, and it goes a long way toward explaining why Toledo Edison has responded in the way it has to various requests of Napoleon.

MR. BRELEY: That is a broad-based allegation. As far as we are concerned, Mr. Highler, and this matter wasn't even raised with Mr. DeLoach, when he testified.

MR. MELVIN BERGER: The intent to acquire, I don't believe is an allegation. It is the motive behind the refusals.

CHAIRMAN RIGLER: Perhaps you could direct the Board's attention to that portion of the September 3 filing, to which this pertains.

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1 MR. MELVIN BERGER: I believe it would pertain
2 directly to all allegations, and not be relevant specifically,
3 and I believe -- if we may return to the subject of the
4 the September 8th filing.

5 There is a specific allegation in the September
6 5th filing which reads as follows:

7 "Toledo Edison has had a long history of
8 acquiring entities in its general service area, thus
9 lessening competition."

10 I said before it would also relate
11 directly to the allegations involving Napoleon as providing
12 a motive for Toledo Edison's activities.

13 CHAIRMAN RIGLER: I have some difficulty with
14 that, as I read the answers directed to the City of
15 Napoleon. With respect to the long history of acquisition
16 point, clearly it would be relevant to what, subject to
17 the earlier objection that it may exceed the scope of
18 direct.

19 The witnesses' testimony is direct to the point.

20 MR. MELVIN BERGER: I believe it is relevant
21 to the witness' testimony with respect to the dealings
22 he had with Mr. Lewis.

23 CHAIRMAN RIGLER: But Mr. Lewis and Mr. Lewis
24 refer to the subject of acquisition.

25 MR. MELVIN BERGER: That's correct, it does not

refer to the acquisition of the service.

However, Colonel's report is correct. As we contend, is a native son returned and a vote to Mr. Lewis at these meetings.

CHAIRMAN HIGLER: You say again, were the reasons given were not good for the cause?

MR. MELVIN BYSSER: Yes, in which was in your statement.

CHAIRMAN HIGLER: Colonel's report is correct.

MR. REYNOLDS: Can we say that's a blanket order, because I do not read clear now.

Is the Department's position what respect to the City of Napoleon, that matters that are being put into evidence all go to the ultimate system of acquisition that system and are reflective of Colonel's efforts to accomplish that end, or are we looking at matters which Department is claiming are in line of transaction which of an anticompetitive nature?

It seems to me we ought to have some idea as to at least at this stage in which direction the Department feels it is going on that point.

CHAIRMAN HIGLER: It could be going both ways.

MR. REYNOLDS: I had assumed up to this point that the matters having to do with Napoleon had nothing to do with the general matter of acquisition. Is the

Department is telling us not that is their intent, it is something that should have been...
now, and we should at least get...
time.

MR. MELVIN BRADY: I think the Department's position would be that Toledo Edison has a right of dominance in various ways, and that the allegations in the September 26th filing with respect to Niagara are those in which Toledo has alleged a...
in which Toledo has alleged a...

The motivating...
an intent to acquire the system...
show the intent, to show the issue.

CHAIRMAN RIGLER: Suppose after we reviewed all the evidence, we decided that the Department would have motive or an intent, to acquire Niagara.

What would be the source of the...
allegations relating to Niagara?

MR. MELVIN BRADY: I think they would...
visible allegations in that it would show a...
nance. I believe I stated that.

We do not believe that you have to show...
to show abuse, but it certainly is...
way Toledo Edison behaved in a certain manner.

MR. RICHMONDS: I don't want to argue it, but it does seem to me, Mr. Rigger, that you...
it does seem to me, Mr. Rigger, that you...
it does seem to me, Mr. Rigger, that you...

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use a basis for looking into the acquisition where I
determine whether or not there was a bad faith aspect in
Toledo with respect to -- or bad faith refusal with respect
to certain matters that Napoleon had requested.

If the Department is now telling us about
assuming that there was no motivation to acquire, or that
Board could not find any motivation to acquire, then I
would assume that would negate the bad faith aspect of our
refusal, and yet the Department is telling us that they
want it both ways.

I just don't understand now -- if the law were such
you can play that game.

16

1 CHAIRMAN BIGLER: On the 22nd of March, 1971, you
2 perceived that the elements of law, which are, I believe,

3 MR. NEWHOLDS: I don't remember it well enough to
4 get into this, because I was expecting that they would
5 exclusivity. I had a hard time understanding what you were
6 related to any of the direct testimony.

7 If we want to open the door on a somewhat by Regis
8 to meet the cost of the system, so that you could see directly
9 what I was addressing, I don't really understand that Regis-
10 tant's response to you, in saying the reason they can't
11 get into it. And, assuming they aren't successful with that
12 reason, they want to come back around and sustain their
13 position on the mutual exclusivity. I can see some inconsis-
14 tency there.

15 CHAIRMAN BIGLER: Not necessarily. I think it
16 is time to recall the witness.

17 Whereupon,

18 W. ROYCE MORAN

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

21 CROSS EXAMINATION (cont'd)

22 BY MR. MELVIN BERGER:

23 Q Mr. Moran, I believe we had handed you the June
24 29, 1971 letter. Is that correct?

25 A Yes.

1 Q To your knowledge, is that the direct request by the
2 Napoleon city council to Toledo Edison, I wish to ask to
3 submit a proposal for acquisition of the plant?

4 A No. I cannot say in as far as the direct request
5 Napoleon is a situation similar to others we have seen, where
6 there was a group within the city that was very interested
7 in acquisition and had been talking about it for many years.
8 There were other people who were interested in providing
9 the municipal plant.

10 MR. MELVIN BERGER: I would like to have to clarify
11 that answer as being nonresponsive.

12 CHAIRMAN RICHER: Briefly.

13 Also, before the witness was asked, he testified,
14 I thought anyway, that the letter did not refresh his recol-
15 lection as to whether this was the direct request.

16 It seems to me your pending question just came
17 around that same answer here. I think the witness is trying
18 to give us a clear description of what was going on, and I
19 think he was generally responsive to your question.

20 I will permit you to rephrase it, if there is
21 some specific point you want to make to the Board.

22 MR. MELVIN BERGER: There is one specific point
23 here.

24 BY MR. MELVIN BERGER:

25 Q Mr. Moran, in the request that you just mentioned

ch 3

1 in your answer to the last question, were those requests of
2 the Napoleon city council?

3 A That is the thing I do not recall. Whether they
4 were citizens groups acting independently or whether it was
5 through the city council itself. Both have occurred.

6 Q Were you aware of any requests by the city
7 council which had been made, aside from this one, at the time
8 that you bid on the system?

9 MR. REYNOLDS: Can I have the question back?

10 (The reporter read the pending question.)

11 MR. MELVIN BERGER: I will withdraw that. That
12 is not quite what I intended.

13 BY MR. MELVIN BERGER:

14 Q Mr. Moran, at the time, had there been any prior
15 bids by Toledo Edison on the Napoleon system, prior to the
16 1971 bid?

17 A I do not recall.

18 Q Who would be in a position to know if Toledo
19 Edison had bid on the system prior to 1971?

20 A I am not sure whether Mr. Clear would have been
21 active in all of these or not. I think he is about the only
22 person that would be.

23 Q He would be the person most familiar with these
24 bids?

25 A With the continuing history of them, yes.

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Q Who does Mr. Cloer report to?

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A I believe he reports to Mr. Wendell Hatton in

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our organization.

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1 CHAIRMAN RIGLER: Does he, or did not

2 MR. MELVIN BERGER: That is my next

3 question.

4 BY MR. MELVIN BERGER:

5 Q At the present time he reports to Mr. Johnson?

6 A Yes, I believe so.

7 Q And who is Mr. Johnson?

8 A I think Mr. Johnson is entitled "Executive
9 Vice-President" at this point.

10 Q and who does Mr. Johnson report to?

11 A The President.

12 Q Now, in 1971, '72, who did Mr. Clegg report to?

13 A I think Mr. Clegg at that time was -- He
14 probably was reporting to Mr. Schwalbert^v at that time.

15 Q Did Mr. Schwalbert report to you?

16 A No.

17 Q Who did Mr. Schwalbert report to?

18 A He reported to the President.

19 Q I believe earlier this morning you testified
20 or you testified that Toledo Edison had never submitted
21 a formal request for wheeling from Bryan; is that correct?

22 A Yes.

23 CHAIRMAN RIGLER: Wait a minute.

24 BY MR. MELVIN BERGER:

25 Q Mr. Moran, what is the --

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1 CHAIRMAN RIGLER: Wait a minute. Refresh
2 my recollection as to your testimony.

3 Did you testify that you were aware of any
4 requests for wheeling and then distinguished between
5 formal and informal requests?

6 My recollection right now is that you had no
7 recollection of any requests for wheeling from Bryan,
8 which may be slightly different from you were able
9 to testify that no formal request was received.

10 THE WITNESS: I believe there was also a question
11 which I answered to the effect that I was also reasonably
12 sure I would have heard of a formal request, but there was
13 a possibility that there had been informal discussion with
14 our district manager.

15 CHAIRMAN RIGLER: That is my recollection.

16 BY MR. MELVIN BERGER:

17 Q Who is the district manager who would have
18 covered Bryan, Ohio?

19 A 1971, I believe it was Mr. Grant.

20 Q Who did Mr. Grant report to in 1971?

21 A Mr. Grant would report to Mr. Schwalbert at that
22 time.

23 Q Mr. Moran, then you cannot definitely say that
24 Toledo Edison was not aware of Bryan's desire to obtain
25 power from Buckeye; is that correct?

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1 A I cannot definitely say, but I don't believe
2 there was any request made.

3 Q Were you aware that Bryan had an
4 interest in Buckeye power?

5 A No, I was not.

6 Q Would you have expected to be aware of such
7 interest if Bryan had such an interest?

8 A Yes, I would.

9 MR. REYNOLDS: Can I have the last question
10 and answer back again, please?

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

13 BY MR. MELVIN BERGER:

14 Q I believe you testified this morning about
15 Toledo Edison's wholesale contract with Bowling Green
16 is that correct?

17 A Yes.

18 Q Your testimony dealt primarily with provision C
19 of that agreement.

20 Did Toledo Edison have a number of other wholesale
21 contracts with Municipals in the service areas?

22 A Yes, it did.

23 Q Each one was a separate contract?

24 A Yes. At that time.

25 Q Do you know about how many there were in

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1 1979 or so?

2 A I would estimate these were about 15.

3 Q Did most of these have a provision incorporated
4 to provision number 9 in the Bowling Green contract?

5 A Yes, they did.

6 Q Mr. Moran, is Bowling Green State University
7 located within the City of Bowling Green?

8 A Yes. It is near the eastern border within the
9 City limits.

10 Q Mr. Moran, is Bowling Green State University
11 is located within the --- strike that.

12 Doesn't the City of Bowling Green have the right
13 to serve all electric customers located within the
14 city limits?

15 A Yes.

16 Q That would be exclusive of the contract?
17 Is that the way you understood my question?

18 A I don't know what you mean by exclusive of the
19 contract..

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arl 1 Q Putting the Bowling Green-Edison Wholesale
 2 contract aside, WRC 43, the one as referred to this morning,
 3 does the City of Bowling Green have the right to serve
 4 all electric customers within the city limits?

5 A I can't think of any place where their rights
 6 are defined in that area, but certainly I would agree
 7 that they did have that right.

8 Q Could Toledo Edison serve within the city
 9 limits of Bowling Green without permission of Bowling Green?

10 A Not in accordance with the contract.

11 Q Outside the contract, assuming the contracts
 12 were not in force?

13 A Probably a franchise would be required before
 14 we had any service within the city limits of Bowling Green.
 15 Certainly it would be required if we were occupying any
 16 of the public thoroughfares with our property.

17 Q Mr. Moran, were some of the 15 contracts you
 18 referred to, the wholesale contracts you just referred
 19 to, executed prior to the Bowling Green contract?

20 A I don't recall the timing. I do know that in
 21 the period of 1966-67, when the Bowling Green contract
 22 was signed, that we went through all of the service areas
 23 and obtained new contracts for all of the customers, but
 24 I do not recall the timing.

25 I do not recall whether Bowling Green was the
 first or whether there were others before them.

1 A No, I don't recall the sequence.

2 Q Do you know if a provision comparable to
3 Provision 8 in the Bowling Green contract was requested
4 by the municipal systems with which Toledo Edison had
5 wholesale contracts?

6 A Most of the communities did not express any
7 interest in that provision, either for or against. I
8 don't recall specifically, but most of them expressed no
9 interest either way.

10 Q Was Toledo Edison using a form contract at that
11 time?

12 A Let's say that Toledo Edison was not using a
13 form contract, but tended to adopt the standard pattern and
14 tended to use it for all of the communities unless there
15 were special circumstances which justified a deviation.

16 MR. SMITH: Was it your testimony that paragraph
17 8 was in the Bowling Green contract because Bowling Green
18 asked for it?

19 THE WITNESS: I don't believe, Mr. Smith,
20 that Bowling Green requested it specifically. I think it
21 sort of arose from a mutual interest in maintaining the
22 integrity of each of the systems, and Mr. McNight, who
23 was the manager, felt that it would be desirable and Toledo
24 Edison also felt that it would be desirable.

25 MR. CHARNO: Could we have the last answer

1 back, please?

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

4 BY MR. MELVIN BERGER:

5 Q So, then, Mr. Moran, would it be fair to say
6 that the provision was designed to prevent, originally
7 was designed to prevent competition for a customer?

8 A It was not designed so much to prevent
9 competition as it was to provide a balance of order in
10 the department of customer loads on the two distribution
11 systems. The distribution system of the Municipal
12 and that of Toledo Edison.

13 Q Did it prevent other utilities from taking
14 customers away from Toledo Edison?

15 A I think --

16 MR. REYNOLDS: Objection.

17 CHAIRMAN RIGLER: Overruled.

18 MR. REYNOLDS: If you are waiting for me to state
19 the reason for my objection --

20 CHAIRMAN RIGLER: I was.

21 MR. REYNOLDS: Asking the witness what the effect
22 of this contract was on the other party to the contract,
23 it seems to me he is in no position to testify to that.
24 He has already given testimony to that effect.

25 I think if the question is rephrased, I would

1 have little objection, because I think I know what
2 counsel is aiming at, but the way he was phrased, I don't
3 see how this witness can possibly answer that question.

4 MR. MELVIN BERGER: Let us withdraw it and
5 rephrase it.

6 BY MR. MELVIN BERGER:

7 Q Mr. Moran, was this provision designed to
8 prevent other electric utilities from taking customers
9 away from Toledo Edison?

10 A I believe it was the intent, when it was drafted,
11 to prevent either utility from being forced in the
12 position of fielding requests from customers back and
13 forth, which occasionally have happened in the past.

14 Q So that it would prevent others from taking
15 customers away from Toledo Edison?

16 MR. REYNOLDS: Objections asked and answered.

17 CHAIRMAN RIGLER: Overruled.

18 THE WITNESS: That would be one of the purposes
19 of the provision.

20 BY MR. MELVIN BERGER:

21 Q Was it designed to prevent that?

22 MR. REYNOLDS: Objections asked and answered.

23 CHAIRMAN RIGLER: Overruled.

24 THE WITNESS: It was designed to provide for
25 orderly department of the distribution system of both

1 utilities.

2 BY MR. MELVIN BERGER:

3 Q Was that orderly department -- the
4 orderly department have an order of the fact that the
5 electric utilities would be prevented from taking
6 Toledo Edison's customers?

7 MR. REYNOLDS: I object, asked not the question.

8 CHAIRMAN RIGLER: Overruled. The witness has
9 not correctly addressed the question in his answer.

10 THE WITNESS: It was our understanding that the
11 provision had no effect whatsoever on any of the
12 properties.

13 MR. MELVIN BERGER: I move to strike that answer.

14 CHAIRMAN RIGLER: Granted.

15 MR. MELVIN BERGER: Could the reporter put the
16 question back?

17 (Whereupon, the reporter read the proper
18 question, as requested.)

19 MR. REYNOLDS: Mr. Rigler, I respectfully submit
20 that was precisely responsive to the question of that
21 -- as to one of the features --

22 CHAIRMAN RIGLER: I will let the ruling stand.

23 BY MR. MELVIN BERGER:

24 Q Mr. Moran, I believe you testified about --

25 CHAIRMAN RIGLER: Wait a minute. You have a

1 pending question, don't you?

2 MR. FENHOLD: No, sir.

3 CHAIRMAN HIGDON: You asked a question,
4 got an answer. You asked the Board to strike that answer
5 on the grounds it was nonresponsive.

6 Now where does that leave the pending question?

7 MR. MELVIN BERGER: Still pending.

8 BY MR. MELVIN BERGER:

9 Q Would you like the question read back?

10 A I think we better have, if we want to clear matters.

11 (Whereupon, the speaker read the pending
12 question, as requested.)

13 THE WITNESS: I don't believe they would be
14 prevented from taking away customers. In doing, there
15 would have been circumstances under which they might
16 been inhibited from taking away customers.

17 BY MR. MELVIN BERGER:

18 Q I believe you testified this morning with
19 regard to a 69 kV line, that went through the City of
20 Bowling Green. Do you recall that testimony?

21 A Yes, I do.

22 Q You gave us a history of the construction of
23 that line and how its present ownership came to be.
24 You mentioned there was an agreement with regard to the
25 construction of that line and subsequent sale of part of

1 the line to the City of Bowling Green. Is that correct?

2 A Yes.

3 Q Is that a written agreement?

4 A No, it was never reduced to writing. I am
5 aware of.

6 Q In some of your testimony this morning you
7 discussed Southeast Michigan Cooperative, and I believe
8 you said that in late 1963 or 1966, a request came from
9 that cooperative to Toledo Edison, requesting that they
10 sell wholesale power to the co-op for use in Michigan. Is
11 that correct?

12 A I was not very positive about the specific time,
13 but I know there were requests along there, yes.

14 Q Do you recall who made the request?

15 A No, I do not.

16 Q Who in the company had primary responsibility
17 for dealing with this request?

18 A That specific time, this type of request
19 was frequently handled by Mr. Marvin West and I believe he
20 was involved in this specific instance.

21 Q Was anyone else involved?

22 A Perhaps the district manager was for that district.
23 I am not sure who it was at that time.

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ch 1

- 1 Q What was Mr. Keck's position at that time?
- 2 A Mr. Keck at that time was in charge of system
3 design and planning and providing consultation. I think
4 for this kind of thing would be in his territory. He was the
5 system operator for the company before that, and he was
6 well-versed with the power flows and their complexities and
7 problems.
- 8 Q Who did Mr. Keck report to?
- 9 A I think he probably reported to the executive
10 vice president.
- 11 Q Do you know who that was at that time?
- 12 A Probably it was Mr. Hoefle or Mr. Flahin.
- 13 Q You stated you didn't know who the district
14 manager was at that time. Do you know who the district
15 manager would have reported to?
- 16 A I think the district manager would have reported
17 to the executive vice president at that time.
- 18 Q That would be the same person as Mr. Hoefle?
- 19 A Yes.
- 20 Q Would there have been anybody between the district
21 manager and the executive vice president?
- 22 A No, there was not.
- 23 Q Do you know if Toledo Edison people met with a
24 representative of the Southeast Michigan Coop at that time?
- 25 A Yes. I believe they did.

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Q What represented Toledo Edison?

A I do not know.

Q You don't. I have it also what you did not represent Toledo Edison?

A No, I did not.

Q Do you know who the Toledo Edison representative met with?

A No, I do not.

Q How did you become aware of this request?

A I became aware of this request when it was discussed in one of our staff meetings.

Q What level of personnel attended these staff meetings?

A Staff meetings were attended by -- this included the president's staff, and it included all of the vice presidents and the district managers.

Q Do you recall who brought the subject up in the staff meeting?

A No, I do not.

Q Are you aware of any request by Powhatan Michigan Coop for wholesale service from Toledo Edison at some time subsequent to this 1968-'69 request?

A I believe there was a request about 1970. I am not sure, but I believe there was.

Q Would you accept 1971 as an accurate date?

ch 3

1 A Yes. That would be a possibility.

2 Q Do you recall who made that request?

3 A No, I do not.

4 Q Do you know which Toledo Edison employee handled
5 that request?

6 A No, I do not.

7 Q Do you know what Toledo Edison's response was
8 to that request?

9 A I believe at that time we expressed reluctance to
10 cross the state line.

11 Q Do you know what reasons were given for reluctance
12 to cross the state line?

13 A At that time, we had a capacity limitation which was
14 of concern to us. The transmission line which would be involved
15 in power deliveries in that corner of our system was
16 reaching its upper limit of capability.

17 I might explain that we have a practice of maintaining
18 these lines at lower voltages just as long as is possible,
19 in order to minimize the investment in facilities. This
20 line was reaching the point where the addition of even a small
21 amount of load would make service difficult and perhaps would
22 jeopardize the continuity of service for some of our other
23 customers. So we did not want to get involved in additional
24 load at that time, at that location, when we had an opportunity
25 to avoid this situation.

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Q How did you become aware of this limitation?

A This limitation became evident through a number of studies and reviews of load flow on our system. We are aware of this limitation in order to determine the position of our system and find out where expenditures are needed to upgrade the system.

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Q Who told you about this problem?

A I don't recall specifically. It was one of the items that we mentioned in our staff work and we were not aware of it as we were reviewing transmission facilities expenditures and deciding when it would be appropriate that we upgrade that line.

Q Are you sure that you are talking about 1971 and not 1974?

A Yes. I believe this was a limitation in 1971.

Q Are you aware of any other limitations in 1971?

MR. REYNOLDS: Excuse me. You were asking limitations on transmission facilities? The question is not clear as it is phrased.

BY MR. MELVIN BERGER:

Q Any other reasons for not being able to or not desiring to serve in Michigan?

MR. REYNOLDS: I am not sure how to answer the question we have before the Witness. Clearly there are two distinct questions. Can we get a rephrase so it is clear to the Witness which question he is being asked.

MR. MELVIN BERGER: I withdraw the question. Perhaps I better start from the beginning.

BY MR. MELVIN BERGER:

Q Were there any other reasons why Toledo Edison, in 1971 said that they would not serve Southwestern

1 Michigan Co-op?

2 A I am not aware of any other reasons.

3 Q Would you have been made in charge of any of
4 reasons?

5 A Yes, I would expect to be.

6 Q Mr. Moran, who would be the person in Toledo
7 Edison who would be most familiar with the competitive
8 situation in the Fremont area?

9 A The Fremont area is in the Eastern District
10 of the Company.

11 I should expect the Eastern District manager
12 to be.

13 Q Who is that now?

14 A Presently, the Eastern District Manager is
15 Mr. Stanley Zabel

16 Q Do you know who the district manager was in 1971?

17 A In 1971 that would be Mr. Russell Johnson.

18 Q Who did Mr. Johnson report to at that time?

19 A Mr. Johnson would report to Mr. Schulberg.

20 Q Who does Mr. Zabel report to, Mr. Johnson?

21 Q And what is Mr. Johnson's present position?

22 A Mr. Johnson is executive vice-president. This is
23 a newly-created post.

24 Q When was this post created?

25 A Perhaps six months ago.

Q Prior to that time who did Mr. ...

A This is about the time Mr. ...
District Manager. Mr. ...
before that.

Q Prior to that time, what is Mr. ...
became District Manager, who did the District ...
Manager report to?

MR. SHILBY: I object, Mr. Chairman. ...
just going on and on and on in developments, and I can't
understand the purpose for any of these questions.

MR. MELVIN BERGER: I think we are trying to
establish the line of authority.

MR. SHILBY: It's been established and
re-established twice on the record already.

CHAIRMAN RICHER: Absolutely not. ...
to what part of the District does it relate?

MR. MELVIN BERGER: Mr. Moran has testified
about competition in the Fremont area. ...
attempting to -- Mr. Moran had testified about a
number of things he has heard at street meetings, ...
we are attempting to determine the people in the vicinity
who actually dealt with some of the things that Mr. Moran
has testified about.

CHAIRMAN RICHER: That sounds a little weak, but I
will hear it first thing in the morning.

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It is clear we are not going to finish...

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so we will break here for the day.

(Whereupon, at 4:35 p. m. the House
recessed, to be reconvened at 9:30 a. m., on
May 20, 1976.)

End S42