

NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY and  
CLEVELAND ELECTRIC ILLUMINATING CO.

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

Docket Nos.

50-346A  
50-500A  
50-501A

and

CLEVELAND ELECTRIC ILLUMINATING  
CO. et al.

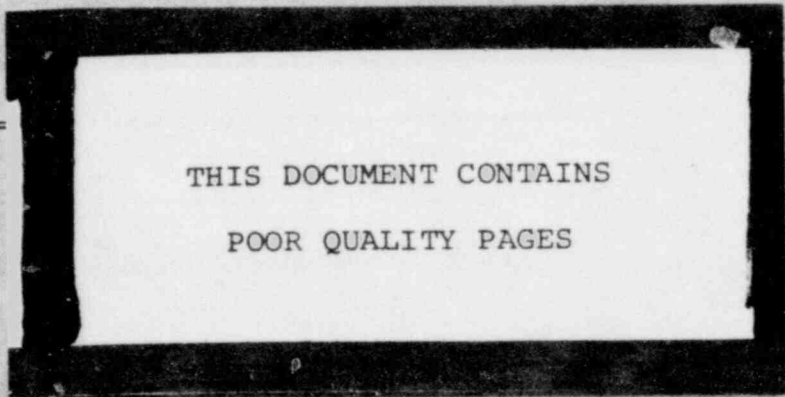
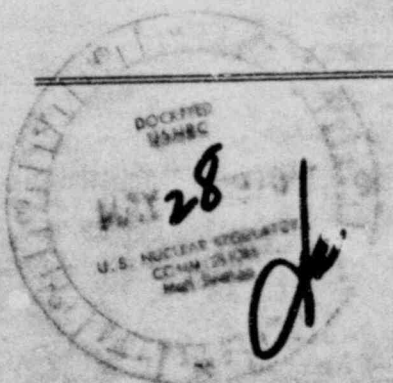
(Perry Nuclear Power Plants, Units  
1 & 2)

50-440A  
50-441A

Place - Silver Spring, Maryland

Date - Tuesday, May 25, 1976

Pages 10,550-  
10,721



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of	:	Docket Nos.
TCIBDO EDISON COMPANY and	:	
CLEVELAND ELECTRIC ILLUMINATING CO.	:	
(Davis-Besse Nuclear Power	:	50-346A
Station, Units 1, 2 and 3)	:	50-500A
	:	50-501A
and	:	
CLEVELAND ELECTRIC ILLUMINATING	:	
CO., <u>et al.</u>	:	
and	:	50-440A
	:	50-441A
CLEVELAND ELECTRIC ILLUMINATING CO.,	:	
<u>et al.</u>	:	

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First Floor Hearing Room  
7915 Eastern Avenue  
Silver Spring, Maryland  
Tuesday, May 25, 1976

The hearing in the above-entitled matter was reconvened, pursuant to adjournment, at 9:30 a.m.,

BEFORE:

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

APPEARANCES:

(As heretofore noted.)



C O N T E N T S

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	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Voir Dire</u>
1						
2						
3	Donald Hauser	10,552	10,644			
4	(Resumed)	(Cont'd)				
5						
6						
7	<u>Exhibits</u>			<u>For Identification</u>		<u>In Evidence</u>
8	Applicants 134 (CEI)		10,555			10,559
9	("Summary of Monthly Reports")					
10	Applicants 135 (CEI)					
11	(Letter from Mr. Hauser to Mr. Plumm, dated May 11, 1976)		10,560			10,562
12	Applicants 136 (CEI)					
13	("Report of the Public Utilities Committee, City Council of the City of Cleveland," Jan. 20, 1975)		10,577			10,578
14						
15	Applicants 137 (CEI)					
16	(Letter dated Mar. 26, 1976, from Mr. Pandy to Mr. Hauser)		10,597			10,648
17						
18	Applicants 138 (CEI)		10,599			"
19	(letter dated April 13, 1976, from Mr. Hauser to Mr. Cannon.)					
20	Applicants 139 (CEI)					"
21	(Letter dated April 17, 1976, from Mr. Cannon to Mr. Hauser)		10,601			
22	Applicants 140 (CEI)					"
23	(Graph, "Balances Owed by City of Cleveland")		10,615			
24	Applicants 141 (CEI)					"
25	(Newspaper advertisement from Plain Dealer, May 19, 1976)		10,626			

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## C O N T E N T S (Cont'd)

	<u>Exhibits</u>	<u>For Identification</u>	<u>In Evidence</u>
2	Applicants 142 (CEI) (letter dated Dec. 27, 1974, from Mr. Jan Kura, CEI, to Mr. Labas of the City of Cleveland.)	10,629	10,640
7	Applicants 143 (CEI) (letter dated Jan. 3, 1975, from Mr. Hauser to Mr. Goldberg)	10,630	"
9	Applicants 144 (CEI) (letter, dated January 22, 1975, from Mr. Hauser to Mr. Goldberg and others.)	10,630	"
12	Applicants 145 (CEI) (letter dated Jan. 23, 1975, from Mr. Hart to Mr. Hauser)	10,631	"
14	Applicants 146 (CEI) (letter dated Jan. 27, 1975, from Mr. Hauser to Mr. Hart)	"	"
16	Applicants 147 (CEI) (Letter dated Jan. 28, 1975 from Mr. Hart to Mr. Hauser	"	"
18	Applicants 148 (CEI) (Letter dated Feb. 28, 1975, from Mr. Hauser to Mr. Goldberg)	10,632	"
20	Applicants 149 (CEI) (Letter dated Feb. 27, 1975 from Mr. Hauser to Goldberg)	"	"
22	Applicants 150 (CEI) (Letter dated Mar. 10, 1975 from Mr. Goldberg to Mr. Hauser)	"	"
24	Applicants 151 (CEI) (Letter dated Mar. 21, 1975, from Mr. Hauser to Mr. Goldberg)	"	"

	<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
2	Applicants 152 (CEI)		
	(Letter dated Mar 29, 1975,		
3	Mauser to Goldberg)	10,632	10,648
4	Applicants 153 (C.I.)		
	(Letter dated April 8, 1975,		
5	Goldberg to Hauser)	"	"
6	Applicants 154 (CEI)		
	(Letter dated April 14, 1975		
7	Hauser to Goldberg)	10,633	"
8	Applicants 155 (CEI)		
	(Letter of April 21, 1975,		
9	Goldberg to Hauser)	"	"
10	Applicants 156 (CEI)		
	(Letter of April 24, 1975,		
11	Hauser to Goldberg)	"	"
12	Applicants 157 (CEI)		
	(Letter of April 24, 1975,		
13	Hauser to series of people)	"	"
14	Applicants 26 (CEI)		10,642
15	Applicants 158 (CEI)	10,642	
	(letter dated Jan. 15,		
16	1975, from Mr. Howley		
	to Mr. Whiting.)		
17	Applicants 159	10,649	10,654
18	(36-page document,		
	charts.)		
19	Applicants 160		
20	("Major Outage Report		
	of Division of Light		
21	& Power for 1971.")	10,652	
22			
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P R O C E E D I N G S

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2 Whereupon,

3 EDWARD HAUSER

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

## 6 DIRECT EXAMINATION (Cont'd)

7 BY MR. BUCHMANN:

8 Q Mr. Hauser, yesterday, we were talking about the  
9 load transfer arrangement with the City of Cleveland; do you  
10 remember that?

11 A Yes.

12 Q I don't want to leave a false impression on the  
13 record. We talked about switching the load to the City and  
14 then switching the load back to CEI. Do you recall that?

15 A Yes.

16 Q How continuous was the load transfer service?

17 A Actually, the load transfer service from its  
18 inception in February of 1970 until May 4, 1975, when the  
19 138 KV interconnection, interconnection, was pretty  
20 much a continuous service that was provided. It was only  
21 interrupted on those occasions when the City of Cleveland  
22 requested that the load transfer service be disconnected,  
23 because they had sufficient capacity to handle their loads.24 In addition, even -- there were a number of  
25 occasions in which we took back the load transfer service,  
because of requirements on our own system.



1           For example, we were in the process of building  
2 a transmission substation called Fox, and to do certain  
3 testing work there in the construction, it was necessary to  
4 de-energize load transfer service to accommodate that work.

5           But for this entire period, except for those  
6 periods when the City of Cleveland told us they had sufficient  
7 capacity, the load transfer service was in operation.

8           The load transfer points changed from the  
9 inception.

10           There were different ones. Really through the  
11 first two years. Then after May of 1972, the load transfer  
12 points remained essentially the same until it was terminated  
13 last May.

14           Q       Now, originally, this service was rendered under  
15 a filed tariff, I think you told us yesterday.

16           A       That is correct. FPC number 7 which consisted  
17 of the letter agreements between the City of Cleveland and  
18 ourselves. I should say agreement, as supplemented.

19           Q       Then there came a time when the service was  
20 rendered pursuant to an FPC order?

21           A       That is correct.

22           Q       When did that occur?

23           A       Really there were several orders. As I said  
24 yesterday, the FPC suspended our termination notice in  
25 December of 1971 for a five-month period. Of course, the

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1 load transfer service continued, pursuant to that order.

2 And then in May of 1972, the Commission ordered us to  
3 continue the load transfer service and established an interim  
4 rate for that service. And then, of course, in the initial  
5 decision of the administrative law judge in July of 1972  
6 and then January 11, 1973, the Federal Power Commission's  
7 order ordered that the load transfer service be continued  
8 until a 139 kv interconnection had been perfected.

per/d

9 Q Did you render reports to the Federal Power  
10 Commission on the performance of the load transfer  
11 arrangement?

12 A Yes.

13 Q How often did you do that?

14 A Once a month, report on the load transfer service  
15 that was provided during that -- actually billing period.  
16 Together with the amount of usage that had been taken.

17 Of course, the charges therefore and also the  
18 payments that were made.

19 Q Why did you render those reports?

20 A One, the FPC ordered us to do so.

21 MR. BUCHMANN: If the Panel please, I am  
22 marking Applicants Exhibit 134 (CEI), a document captioned  
23 with the caption which begins "Summary of Monthly Reports.)  
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(Whereupon, the document referred to was marked Applicants Exhibit 134 (CEI) for identification.)

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BY MR. BUCHMANN:

Q Do you have that exhibit in front of you, Mr. Hauser?

A What was the number, Mr. Buchmann?

Q 134.

A Yes, I do.

Q I ask you what that is.

A This is a summary of the monthly reports that I made to the Federal Power Commission. From the period indicated the billing period beginning on 5-31-72 and continuing really up to the last report which was dated May 11, 1976.

In many cases, these are actual quotes from portions of those reports.

Q By the way to who were the reports sent, besides the Federal Power Commission?

A They were sent to a number of people, including, of course, the City of Cleveland, Mr. Hart, Mr. Goldberg, their attorney.

They were also sent to Mr. Charno of the Justice Department, Mr. Vogler, who represents the NRC.

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7                   Of course, a number of lawyers employed by  
8 CEI, also representatives of the staff of the Federal  
9 Power Commission.

10           Q       By the way, was Exhibit 134 prepared by you or  
11 under your supervision?

12           A       Yes, it was.

13                   This shows substantially what I testified to  
14 earlier about the load transfer service being continuous  
15 during this period. It also describes those occasions  
16 when it was disconnected primarily at the request of the  
17 City, and then re-energized again at the request of the  
18 City.

19                   MR. BUCHMANN: I offer Exhibit 134.

20                   MR. CHARNO: Department would object to  
21 Applicants 134. As we understand the Witness' testimony,  
22 this document was not filed with the Federal Power Commission.  
23 It is not a verbatim record of what was filed with the  
24 Federal Power Commission, and the Department does not believe  
25 it is in receipt of the reports from the entire period  
1972 to 1976.

                  CHAIRMAN RIGLER: The Department does not believe --

                  MR. CHARNO: -- that it is in receipt of the  
reports from 1972 to 1976.

                  MR. BUCHMANN: I was intending to mark one of the  
reports, so you could see what they are like. That is a



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1 summary of the reports made by the man who made the reports.  
2 The Witness is here and he is entitled to do that.

3 CHAIRMAN RIGLER: Is it being offered for the  
4 truth of the matter contained therein or being offered  
5 merely as Mr. Hauser's summarization of the material contained  
6 in those reports?

7 MR. BUCHMANN: I fail to see the distinction.  
8 It is being offered for the truth of the matter contained  
9 therein.

10 CHAIRMAN RIGLER: Well, for example, turning to  
11 page 6, the first item, second sentence says, "After reviewing  
12 the situation, the City was advised that the company could not  
13 provide any additional service."

14 I might accept it for the truth of the fact  
15 that the company made that representation to the City.

16 If you are asking us to accept it for the truth  
17 of the fact that the company could not provide the service,  
18 I think you have a different problem.

19 MR. BUCHMANN: All that sentence says is  
20 what you said. That the City was advised. If someone wishes  
21 to cross-examine Mr. Hauser to establish the fact that  
22 we falsely advised the City, they are free to do so, but  
23 that is all it says.

24 MR. VOGLER: Mr. Chairman. I might say, if your  
25 Honor please, making an effort to try not to burden the record

bw7

1 to put in the original reports, when I believe they have  
2 been available all along -- all I'm trying to do is help.

3 CHAIRMAN RIGLER: I appreciate that. I'm looking at  
4 this document for the first time, and there is a great deal  
5 of what appears to be factual material which could be subject  
6 to substantial dispute here.

7 MR. BUCHMANN: That is why the witness is here  
8 to be cross-examined.

9 MR. CHARNO: Can we inquire whether this was  
10 prepared by the witness for the Federal Power Commission  
11 or for submission with his testimony in this proceeding?

12 MR. BUCHMANN: It was prepared for this.

13 MR. VOGLER: I just would like to note for the  
14 record that the Staff on this particular exhibit supports  
15 the Department under the best evidence rule as to when it  
16 was prepared and why it was prepared.

17 And the fact that it was obviously prepared for this  
18 proceeding by the witness.

19 We object.

20 MR. BUCHMANN: I think we prepared a lot of  
21 exhibits for this proceeding.

22 MR. HJELMFELT: The City would join in the  
23 objection stated by Mr. Charno and Mr. Vogler.

24 MR. CHARNO: Our objection would not extend to  
25 the original reports, however.

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1 CHAIRMAN RIGLER: Mr. Hauser, if your Counsel were  
2 to ask you questions relating to the reports to the FPC,  
3 would you answer in the same terms as you have answered  
4 in the prepared summary designated as Exhibit 134?

5 THE WITNESS: Yes, I would, Mr. Chairman.

6 I might point out the reports to the Federal  
7 Power Commission were under my oath.

8 MR. HJELMFELT: May I have that last sentence  
9 back, please?

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

12 CHAIRMAN RIGLER: The objections are overruled.

13 (Whereupon, the document  
14 heretofore marked Applicants  
15 Exhibit No. 134(CEI) for  
16 identification, was received  
17 in evidence.)

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arl 1 BY MR. BUCHMANN:

2 Q I have had marked as Applicant's Exhibit 135  
3 (CEI) a letter from you to Mr. Plumm of the Federal Power  
4 Commission dated May 11, 1976.

5 (The document referred to  
6 was marked Applicant (CEI)  
7 135 for identification.)

8 BY MR. BUCHMANN:

9 Q Do you have Exhibit 135 in front of you?

10 A Yes, I do.

11 Q What is that?

12 A Exhibit 135 is the last of the reports that I  
13 filed with the Federal Power Commission, as it indicates  
14 for the billing period 4-1-76 through 4-30-76.

15 Q I note that the third page is an affidavit.  
16 Is that what you meant when you said these reports  
17 were filed under your oath?

18 A That's correct.

19 I also would indicate the mailing list is shown  
20 at the bottom on page 3.

21 Q Is this typical of the reports that were  
22 summarized in Exhibit 134?

23 A Yes, it is.

24 Q Mr. Hauser, I noticed the extensive attachment  
25 which seemed to be computation of one sort or another.



1 Can you tell me what those are? 10,561

2 A This is a billing memorandum which is broken  
3 down to show the billings, charges, usages and  
4 payments for the three types of service there were provided  
5 since February of 1970.

6 The three types of service being the 138 kV  
7 interconnection, the 69 kV interconnection service, and  
8 the load transfer service.

9 This has been a part of the reports that have  
10 been filed -- the data, I should say, contained herein has  
11 been a part of the reports since the first one was filed  
12 in 1972, and has been updated or added to, if you will, with  
13 each new report.

14 So that you can refer to the billing memorandum  
15 and determine the mounts billed for any period of time  
16 or the payments during any billing period, and the usages for  
17 the three types of services.

18 Q From the beginning?

19 A From the beginning, that's correct.

20 MR. BUCHMANN: I offer Exhibit 135.

21 CHAIRMAN RIGLER: Hearing no objection, we will  
22 receive --

23 MR. VOGLER: May I inquire as to red-lining?

24 Are we submitting the whole exhibit for everything that is  
25 in there?

1 MR. BUCHMANN: Yes, sir.

2 Mr. Hanser --

3 CHAIRMAN RIGLER: Wait. It hasn't been received.

4 Hearing no objection, we will receive it.

5 (The document previously  
6 marked Applicant (CEI) 135  
7 for identification, was  
8 received in evidence.)

9 BY MR. BUCHMANN:

10 Q You were talking yesterday about phase 1  
11 service being rendered to the City of Cleveland.

12 What was phase 2?

13 A Phase 2 was a firmer type of load transfer  
14 service.

15 Q What do you mean, firmer?

16 A Phase 1 again was put into effect to take care  
17 of an emergency situation. It was contemplated that  
18 certain load transfer points would have to be changed and  
19 in the interim to devise load transfer points that could  
20 remain in service for a longer period of time.

21 For example, one of the initial load transfer  
22 points was at the Collinwood Substation of the Municipal  
23 System. And a mobile substation of CEI was used to provide  
24 service to that substation.

25 CEI system requirements were such that that

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1 mobile substation had to be removed in May of 1970. And  
2 so other load transfer arrangements were made.

3 Q For the record, what is the mobile substation?

4 A Well, Mr. Bingham described the function of a  
5 substation that was to either step down or step up current from  
6 one voltage to another.

7 A mobile substation is one of those on wheels  
8 that is used primarily for emergency or -- primarily for  
9 emergency work.

10 If a transformer bank blows at a permanent  
11 substation, the mobile substation is taken in to provide  
12 that service, on usually a temporary basis.

13 Q Until you can fix up the permanent one?

14 A That's correct.

15 Q Did you in fact go into phase 2 of the load  
16 transfer service?

17 A Yes, we did. The load transfer points  
18 changed particularly during 1970. And there were certain  
19 other changes during '71. But then from '72 to May of 1975,  
20 the load transfer points remained so somewhere in there we  
21 arrived at phase 2.

22 There might have been a transition from  
23 phase 1 to phase 2.

24 Q At what voltage was the phase 2 service rendered?

25 A Primarily at 11 kV.

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1                   Again, the mobile substation that I referred to  
2 stepped service down there from 33 kV to whatever the  
3 voltage was at Collinwood.

4           Q        What was phase 3?

5           A        Phase 3 was the permanent interconnection and this  
6 was part of the three-phase program that was developed  
7 beginning 1969, and is reflected in the letter agreements that  
8 became FPC No. 7.

9           Q        What is the voltage or what was to be the voltage  
10 of that interconnection?

11          A        I think pretty much from the beginning, everyone  
12 contemplated that it would be a 138 kV interconnection  
13 similar to that that is in fact installed. There was some  
14 discussion concerning a 69 kV permanent interconnection.

15                   I might say that was -- those discussions were  
16 completely different from the temporary 69 kV interconnection  
17 that was ordered by the Federal Power Commission in March  
18 of 1973.

19                   But those two voltages were discussed for a  
20 permanent interconnection, but I think everyone from the  
21 beginning really thought it would and should be a 138.

22          Q        When you say from the beginning, when did you  
23 start negotiating on that interconnection?

24          A        Actually in 1969. This was the third phase of a  
25 program and those negotiations really continued up until the



1 day the agreement was signed at a hearing before the  
2 Utilities Committee of Council in April 17, 1975.

3 Q Did you continue negotiations through 1971?

4 A Early in 1971, I think in April, at a meeting  
5 that Mr. Hinchee had asked our people to attend to bring  
6 him up to date on the 138 kV interconnection, he was advised  
7 that the company would not negotiate further with regard  
8 to the 138 kV interconnection until arrangements or a  
9 schedule was worked out for making payments currently  
10 for service provided and to reduce the past due indebtedness.

11 At that point the City owed us over \$1 million.  
12 We had filed a lawsuit in February of 1971 in the  
13 Common Pleas Court of Cuyahoga County to collect the  
14 amounts then owing for service.

15 In May the City filed its complaint with the  
16 Federal Power Commission, its initial complaint with the  
17 Federal Power Commission and CBI filed its notice of  
18 termination.

19 Then through much of 1971, sometimes under  
20 the auspices of the staff of the Federal Power Commission,  
21 we had a number of meetings, negotiations, correspondence  
22 in an effort to work out again a suitable arrangement to  
23 pay off the past due balances and to make current payments.

24 Q You referred previously to the temporary 69 kV  
25 interconnection. When did that subject first arise?

1           A       That first arose in really February of 1972. In  
2       December of '71, as I said, we did not extend our notice of  
3       termination. The City filed a second complaint. A number  
4       of other pleadings were filed.

5                    Then in I think February 8, if my memory is  
6       correct, the City sustained another outage and we had a  
7       conference conducted by Mr. Gordon Gooch, who was general  
8       general of the Federal Power Commission at that time, which  
9       there was a record of that proceeding. As I say, to  
10      ascertain what relief could be provided for the latest emer-  
11      gency on the City's system.

12                   It was at that time that we, and I think there  
13      were Harold Williams, who testified here yesterday, came  
14      up with the thought that a temporary 69 kV interconnection  
15      could be arranged by utilizing the one of five cables from  
16      CEI's Newburgh Substation to the Lake Shore Plant area  
17      to provide up to -- it would be limited to 40 MVA.

18                   That could have, we thought at the time, been put  
19      into service in maybe six to eight weeks.

20                   However, as it turned out, it could not be  
21      energized until July of 1974.

22           Q       Did you proceed with the 69 kV temporary  
23      interconnection?

24           A       Yes.

25           Q       Did the FPC issue an order concerning that?

1           A       Yes, on March 3 of 1972, the Federal Power  
2 Commission issued its order on that, the first of its orders.  
3 Of course, its subsequent orders also referred to the 69 kV  
4 interconnection.

5           Q       I'm not clear as to why you proceeded with  
6 the 69 kV interconnection rather than the 138 kV at that  
7 point.

8           A       The 138 kV interconnection could not be built in  
9 less than two years to two and a half years, because of the  
10 lead time on certain of the hardware involved. Transformers,  
11 switch gear, that would have to be ordered, and the lead  
12 time was -- it wasn't possible to get the 138 kV inter-  
13 connection in sufficient time to provide for the needs  
14 of the customers of the Municipal System.

15          Q       Did the FPC proceed to hold hearings?

16          A       Yes, they did.

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1 Q When was that?

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2 A In April and May of 1972.

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3 Q Without going into the substance

4 can you tell me what the topics were that were being  
5 examined?

6 A Well, the issues that had arisen between CEI  
7 and the City of Cleveland, the load transfer, level of the  
8 load transfer rates under EPC Number 7, whether or not those  
9 load transfer rates should be increased.

10 The amounts owing to CEI for past service  
11 rendered, whether or not the Ohio excise tax on gross  
12 receipts should be included as an incremental cost in  
13 providing rates for the 69 kV and 138 kV services that was  
14 contemplated by the parties. There was also an issue as to  
15 the interest, what interest provisions should be provided when  
16 bills for service were not paid.

17 there was also an issue as to whether or not the  
18 69 kV service should be open switch, nonsynchronous or  
19 closed synchronous as argued by the City and then, of course,  
20 also at issue were the allegations of the City that CEI  
21 had been anticompetitive in its activities involving the  
22 City and contrary to the antitrust laws.

23 Q Did the Commission eventually issue an order, as  
24 a result?

25 A Yes, it did.

bw2 1 Q When was that?

2 A January 11, 1973, in which it adopted with some  
3 important exceptions, the administrative law judge's initial  
4 decision of July 12, 1972.

5 Q I thought you told me that the rates changed  
6 in May of '72.

7 A That is correct.

8 Q Have I missed an order or something?

9 A In case we did, remember the suspension, the five-  
10 month suspension was to terminate on May 17 of 1972.

11 It was obvious to everyone that the load transfer  
12 service could not be terminated as a practical matter, because  
13 of the requirements of the customers of the Municipal Light  
14 Plant. So we filed, as I recall, the Staff filed and  
15 I'm not so sure about the City of Cleveland, papers to,  
16 in effect, to establish rates beyond -- for service beyond  
17 that period of time, so that we would have some basis for  
18 providing the service and very importantly some basis to bill  
19 the City for the service provided and the Commission did  
20 issue an interim order.

21 I think the date was May 30, 1972, in which it  
22 provided a rate of, as I recall, and the order will  
23 speak for itself, 17 and a half mills as an interim rate, subject  
24 to refund.

25 Q Was that higher or lower than the rate you had



bw3 1 previously been charging?

2 A That was about twice as high as the original  
3 rate.

4 This, of course, was then modified in the  
5 Commission's order of January 11 of 1973, in which it  
6 provided a 15.2 mil rate which, of course, was applicable  
7 to service provided after May 30, 1972.

8 Then that rate was subsequently changed in March  
9 and April of 1975.

10 Q Going back to the temporary 69 kV line, you said that  
11 it was first energized in July 1974.

12 A That is correct.

13 Q What took so long?

14 A Well, again, we, for our part, had done most of  
15 the work at our end by early 1974. But the work at the  
16 City's end had not proceeded and we, of course, kept track  
17 of what was going on, the best we could.

18 As I recall, they didn't let the contract for  
19 certain communication and control equipment with Westinghouse  
20 until maybe April or March of 1973, and the work -- I think  
21 there is a letter already in the record from Mr. Pofock  
22 in December stating that they hadn't completed their work,  
23 but they anticipated that it would be completed.

24 As it turned out, as I say, this wasn't completed  
25 until the summer of 1974. Towards the end of that period,

1 we advised the City that we would not do the final work on  
2 the 69 kV until we had been reimbursed for our costs of  
3 work at our end which amounted to some \$65,000.

4           They paid us that, I think, in June and then  
5 the first time they asked for service was in July, when --  
6 that was concurrent with the explosion or, pardon me, the  
7 big puff in Boiler Number 6.

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arl 1 Q Did not the City ask for the service on that line  
2 prior to July 9, 1974?

3 A On two occasions in December of 1972 and again  
4 in January of 1973.

5 At that time the work at either end, CBI or Muni's  
6 end, particularly insofar as controls, communications, had  
7 not been completed, the line, the poles and the conductors  
8 between the two systems had been constructed so that it was  
9 physically possible, and in fact done, to energize that line,  
10 as really another load transfer of point.

11 This was not the 69 kV interconnection as  
12 ordered by the Federal Power Commission.

13 Q We have heard some testimony about -- what did  
14 you do when that request was made?

15 A We, of course, considered it. And as I say,  
16 after discussion within the company, I might say contrary to  
17 my recommendations, did agree to energize it.

18 Q Did you exact any additional consideration from  
19 the City?

20 A Yes. We had been serving the City of Cleveland,  
21 oh, about half the street lights in the City for over a  
22 year without a contract. We were having our usual difficulties  
23 in negotiating that contract. And we advised them that one  
24 of the conditions for our providing this service was that  
25 they take steps to get approved and execute a street light

1 contract.

2 Q By the way, do you have street lighting  
3 contracts with other communities in the CEI service  
4 territory?

5 A With all of them.

6 Q With all of them?

7 A Yes.

8 Q At that time was there any other municipality  
9 that refused to sign a contract?

10 A No. Only the City of Cleveland.

11 Q Was the contract you asked the City to sign  
12 any different as far as rates or conditions?

13 A The rates were the same. A few minor conditions.  
14 The City of Cleveland had a longer time to pay for street  
15 lights than any other communities, but those were minor  
16 variations.

17 Q When did you, if you did, submit an interconnection  
18 agreement, in final or draft form, to the City?

19 A In February 7, 1974.

20 Q To whom did you submit it?

21 A To Mr. Goldberg, one of the attorneys representing  
22 the City of Cleveland, and also, as I recall, we sent it to  
23 Mr. Hart.

24 Q And, for the record, if Your Honor please, I believe  
25 that is Department's Exhibit 191.

1           Then what happened?

2           A       Well, there followed a series of letters, primarily  
3 by myself, although there were some by Mr. Goldberg. And a  
4 number of conversations with Mr. Goldberg, and some with  
5 Mr. Hart in an effort to get some response from the City  
6 with regard to the proposed interconnection agreement.

7           This continued through really a whole series of  
8 conversations and correspondence through 1974.

9           Mr. Goldberg finally got back to us on behalf  
10 of the City of Cleveland with proposed drafts of three  
11 agreements in December of 1974.

12           One was an operating agreement; one was a  
13 facilities agreement; both of which were concerned with a  
14 138 kV interconnection.

15           We had combined both of those functions in the  
16 draft that we had submitted in February and then, of course,  
17 the participation agreement involved their proposals for  
18 participation in the nuclear units that they originally  
19 talked about -- wrote, proposed in August of 1973.

20           Q       Just so the record is clear, during the time  
21 you were working on the interconnection, you were also  
22 working on other things as well?

23           A       That's correct.

24           Q       By the way, for the record, the series of  
25 correspondence is already in evidence as Applicant's Exhibits

1 63 through 67, 69 and 70. So it is all in one spot.

2 Had you submitted a draft participation agreement  
3 to the City?

4 A Yes, we did. We submitted that with a letter  
5 of February 27, 1973, and those are already a matter of  
6 record.

7 Q Go ahead. What response did you finally get  
8 from the City with respect to the interconnection agreement?

9 Specifically, did the subject of a temporary  
10 construction to the 138 kV ever come up?

11 A Oh, yes, in November of 1974, right before  
12 Thanksgiving, as I recall, we had hearings, before the  
13 Federal Power Commission on a proceeding initiated by the  
14 City of Cleveland, and I think maybe in August or  
15 September on whether or not the 69 kV temporary inter-  
16 connection should be operated closed switch, and in synchron-  
17 ism, and that -- as I say, we hadn't had an interconnection  
18 agreement, but the City of Cleveland still had problems,  
19 and one of our engineers, Bill Masters, who testified at  
20 that proceeding, suggested a means by which CEI could provide  
21 service at 138 kV in early January of 1975.

22 After that hearing, the engineers of CEI and the  
23 City got together and they developed a modification of  
24 the original Masters proposal which contemplated installing  
25 the transformer at Muni's end on poles.



1 Q As distinguished from what?

2 A As distinguished from a concrete foundation.

3 Q Was that done?

4 A No, it wasn't. They discovered that that  
5 temporary installation would cost the City about \$30,000,  
6 whereas if they installed the transformer on the permanent  
7 foundation, it was hoped at that time that the 138 kV  
8 interconnection could be completed by March 15 of 1975.

9 Q Now did there come a time in 1975 when the Cleveland  
10 City Council became involved in this?

11 A Yes. Early in January of 1976, the Utilities  
12 Committee of Council initiated one of a number of investiga-  
13 tions of the Municipal Light Plant, its facilities, its  
14 operations, its finance and there were a number of days  
15 of hearings before the Utilities Committee.

16 Then there were weekly reports for a period of --  
17 time to the Utilities Committee.

18 Q What do you mean by weekly reports?

19 A One, they were in writing, and also every -- I  
20 think it was Monday at 1:30, Mr. Hart and I and some of our  
21 colleagues would appear at the Utilities Committee of  
22 Council and advise them as to what had transpired during  
23 the week.

24 And January, I think it was January 20, as a  
25 result of these initial hearings, a report and recommendation

1 of the Utilities Committee was submitted to council which  
2 in effect directed the administration and CEI to get with  
3 it on getting a 130 kV interconnection agreement negotiated  
4 and getting a 138 kV interconnection built and in operation.

5 MR. BUCHMANN: Mr. Chairman, I have marked  
6 as Applicant's Exhibit 136 (CEI) a multipage document  
7 entitled "Report of the Public Utilities Committee, City  
8 Council of the City of Cleveland," January 20, 1975.

9 (The document referred to was  
10 marked Applicant (CEI) 136,  
11 for identification.)

12 BY MR. BUCHMANN:

13 Q Mr. Hauser, is that the report to which you have  
14 just made reference?

15 A Yes, it is.

16 Q Would you look at the very last page? There is a  
17 sheet signed by Korman, K-o-h-r-m-a-n, and Jackson.

18 Should that be part of that?

19 A Yes.

20 Q It should?

21 A Yes.

22 I would add this copy we have here on page 10  
23 shows only the signature of Mr. Gaul. It was actually signed  
24 by the other members of the committee, including George  
25 Forbes, president of Council.

1 MR. BUCHMANN: I would like to indicate  
2 I wish to red-line the entire report.

3 I move the admission of Exhibit 136.

4 CHAIRMAN RIGLER: Is the utilities committee  
5 comprised of councilmen or citizens who are appointed  
6 by the council?

7 MR. BUCHMANN: Councilmen.

8 Am I correct on that?

9 THE WITNESS: That's correct.

10 CHAIRMAN RIGLER: Hearing no objection, we will  
11 receive Exhibit 136 of Applicants at this time.

12 (The document previously  
13 marked Applicants 136 (CEI)  
14 for identification, was  
15 received in evidence.)

16 BY MR. BUCHMANN:

17 Q As a result of what you have described, was the  
18 interconnection finally approved, finally completed?

19 A Yes, it was, after some negotiations from  
20 January until, as I say, actually the day it was signed  
21 at one of these meetings before the Utilities Committee  
22 of Council in April.

23 Even after this direction of council, there  
24 were a number of issues that had to be resolved, and as I  
25 think I stated yesterday, even at this, in March or April of

1 1975, there were still some people associated with the  
2 City of Cleveland that opposed an interconnection at 138  
3 on the basis that if this ever happened, the City would  
4 take more and more of its requirements from CEI and this  
5 would be the beginning of the end of the Municipal System.

6 This is the same type of position that had been  
7 advanced back into the 1960s when CEI first proposed an  
8 interconnection.

9 Q During this period leading up to the completion  
10 of the interconnection, what was the position of CEI? Was it  
11 for a 138 kV interconnection or against it?

12 A Oh, for it.

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1 Q Why?

2 A One, we had the order of the Federal Power Commission  
3 that said that the 138 kV interconnection should be energized  
4 by January of 1975. And we wanted to comply with the order.  
5 Also very importantly, the Federal Power Commission's  
6 order said that the load transfer service had to be provided  
7 by CEI until the 138 kV interconnection was energized.

8 So, with the 138 kV interconnection energized,  
9 we could terminate the load transfer service.

10 Q why did you want to do that?

11 A Because at 15.2 mil's rate, it was not compensatory.  
12 Remember Mr. Bingham testified that that rate did not have  
13 a fuel clause and everybody knows about the Mideast crisis  
14 in late 1973, which was followed by a tremendous increase  
15 in fuel prices, and for a substantial period of time we were  
16 losing money at the rate of about \$100,000 a month. By  
17 providing the load transfer service. We had a real economic  
18 incentive to get the 138 kV interconnection in as soon as  
19 possible.

20 Q Now, Mr. Bingham described the type of service  
21 being rendered over the 138 kV interconnection. What are  
22 the facts as to whether you were rendering firm service to the  
23 City of Cleveland?

24 A We have provided service, as Exhibits 134 and 135  
25 indicate, continuously since May 4 of 1975, with the exception

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1 26 minutes on Monday, September 22, 1975. That is in the  
2 second paragraph of Exhibit 105.

3 Q Do you have, in fact, what we would call a  
4 "firm power rate" on file with the FPC?

5 A No, we do not.

6 Q Have you offered to file a firm power rate for  
7 service to the City of Cleveland?

8 A Yes, we have.

9 Q Is that offer conditioned on the settlement of  
10 any of these other controversies?

11 A No, it is not.

12 Q Why don't you go ahead and file it with the  
13 FPC?

14 A We cannot do that unless we can advise the  
15 City of Cleveland that the service would be utilized and  
16 the City of Cleveland hasnot advised us that they would  
17 accept service under that schedule that we submitted to  
18 them.

19 CHAIRMAN RIGLER: Say that again. Explain that  
20 to me.

21 THE WITNESS: According to the rules of the FPC,  
22 we just simply can't file a firm power schedule with  
23 them, unless we can represent to the Commission that the  
24 service will be used within a certain amount of time. I think  
25 it is 30 or 60 days.



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Well, anyway, there is a stated period of time. So that we would have to, with the filing, say that someone was going to accept service.

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MR. BUCHMANN: Does that answer your question, Mr. Rigler?

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THE WITNESS: The City of Cleveland has not said they would accept service under that schedule.

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BY MR. BUCHMANN:

9

Q Now, going back, you referred before -- during most of this time, you were talking about other things with the City of Cleveland besides the interconnection?

10

11

A Yes.

12

Q You say you submitted a participation agreement?

13

A Yes, in February 27, 1974. That --

14

Q Excuse me a minute. That would be a letter

15

from Mr. Howley to Mr. Goldberg?

16

A Yes.

17

Q Department of Justice Exhibit 192 for the record.

18

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MR. CHARNO: I believe the record at this point has inconsistent testimony on the year. The first time Mr. Hauser mentioned that, he said 1973. And this time he said 1974.

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MR. BUCHMANN: I didn't think so, but whatever the fact is.

24

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1 THE WITNESS: The fact is 1974, that both the  
2 draft interconnection agreement and the participation  
3 agreement was submitted to the City. In December of 1973,  
4 in a letter from Mr. Howley, which we handed to Mr. Goldberg  
5 and Mr. Hjelmfelt and other City representatives, we advised  
6 them that the company would provide for participation in  
7 the amounts requested by the City of Cleveland.

8 But the first participation agreement we offered  
9 to them was February 27 of 1974.

10 If I said '73, I misspoke.

11 CHAIRMAN RIGLER: What was the exhibit number  
12 again?

13 MR. BUCHMANN: The exhibit accompanying the  
14 participation agreement, draft agreement, was Department  
15 of Justice 192.

16 The letter advising them that this would be  
17 forthcoming is the letter of Mr. Howley to Mr. Whiting of  
18 December 13, 1973, Department of Justice Exhibit 198.

19 BY MR. BUCHMANN:

20 Q Before we go any farther, what do you mean by  
21 participation?

22 A Either ownership in the nuclear units that they  
23 requested and in the amounts they requested, or unit power  
24 from those units, essentially, in the amounts they had  
25 requested in August of 1973.

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CHAIRMAN RIGLER: Let me back up a minute.

My notes show that CEI submitted an interconnection agreement in February '74, and then I show you testifying that eventually Mr. Goldberg came back with three agreements in draft form; one, the operating agreement, one, the facilities agreement, and one, a participation agreement.

THE WITNESS: In December of 1974.

CHAIRMAN RIGLER: But I did not get a February '74 participation agreement submitted by CEI. That occurred at the same time that you submitted the interconnection agreement?

THE WITNESS: No, the interconnection agreement was submitted on February 7, 1974. The draft participation agreement was submitted on February 27, 1974. I think the -- I know the February 27, '74 covering letter to the participation agreement refers to the interconnection agreement previously submitted.

BY MR. BUCHMANN:

Q Do I gather from that, that you didn't get a counterproposal until December?

A Of 1974, yes.

Q What happened on that as far as participation was concerned?

A Well, as I said earlier, we were negotiating and finally did get executed a 138 kV interconnection agreement

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1 in April of 1975, and then we arranged a -- we said, well,  
2 the next step, and this was Mr. Goldberg and myself, Mr.  
3 Mayben was at some of these negotiating meetings -- the  
4 next step is to sit down and discuss other schedules to the  
5 interconnection agreement such as limited term, short term,  
6 economy interchange, maintenance power, firm power, and  
7 also participation in the nuclear units.

8 And then in a meeting in May --

9 Q What year?

10 A Of 1975, I think it was May 13, we had a meeting  
11 at which Mr. Goldberg and Mr. Hart, Mr. Mayben, I think Mr.  
12 Chuplis was there, and we did discuss among other things  
13 limited term and short term schedules, but we asked them  
14 exactly what they wanted, both in the way of additional  
15 services under the interconnection agreement, and also  
16 very importantly, what participation did they want in the  
17 nuclear units.

18 Q What did they tell you about participation?

19 A They said at that time they were going to work on  
20 a package that they wanted. They said with regard to their  
21 interest in participating in the nuclear units, they  
22 required additional information, and Mr. Mayben -- we  
23 asked him what information. Mr. Mayben said he would  
24 confer with his staff when he got back to his home office and  
25 get back to us promptly with the specific information he

1 requested, he wanted.

2 He did get back to us within three or four days  
3 after that.

4 CHAIRMAN RIGLER: When was the meeting?

5 THE WITNESS: In May, I think May 13 of '75.

6 BY MR. BUCHMANN:

7 Q He got back and told you what information he  
8 needed?

9 A Yes.

10 Q What did you do about it?

11 A It was some 20, 21 questions. We collected the  
12 information or assembled it, I guess, and provided it to  
13 Mr. Goldberg and Mr. Mayben in June of 1975.

14 Q That material is in evidence, if I remember?

15 A Yes, both Mr. Mayben's request and our response,  
16 and the answers -- I think we were able to answer all  
17 of the questions except one.

18 Q The question, if Your Honor please, is  
19 Applicant's Exhibit 71, and I don't have offhand the --  
20 the response is Applicant's Exhibit 72, which seems  
21 to fit nicely, with its attachment. The attachment to  
22 72 was the actual response to the question, is another  
23 exhibit somewhere else. If you want it, I will find the  
24 number.

25 After they sent you the information, what did they

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1 tell you they wanted?

2 A They didn't tell us what they wanted. Later  
3 this year we again met with the City and reviewed the  
4 comparative review of their draft participation agreement  
5 and our draft participation agreement.

6 They still hadn't come up with the package that  
7 they wanted, including what power they wanted from the  
8 nuclear units.

9 Also other types of services under the inter-  
10 connection agreement, and we haven't -- that was March,  
11 maybe April.

12 MR. VOGLER: Of?

13 THE WITNESS: '76.

14 BY MR. BUCHMANN:

15 Q They still haven't given you the quantity of  
16 power they want from those units?

17 A That's correct.

18 Q Is CEI's offer still outstanding?

19 A Yes, it is.

20 Q Is that offer dependent on the settlement of  
21 any of these various disputes between the City and CEI?

22 A No, it is not.

23 Q Your offer of participation had a reference in it  
24 to right of first refusal on surplus power?

25 A Yes.



1 Q What is the right of first refusal?

2 A The right of first refusal as we contemplated it  
3 in that agreement, and what I consider it generally is  
4 before they could sell it to someone other than CBI, they  
5 would first have to offer it to us at the same price.

6 Q How would that price be fixed? I don't quite  
7 follow you.

8 A However the price was determined, in a  
9 proposed transaction with a third party, we would have  
10 a right to buy that power at the same price.

11 Q At the same price?

12 A Right.

13 The reason for that, we did, and contemplate now,  
14 that we would actually seel a piece of the plant or a  
15 piece of the power out of our entitlement which had been  
16 planned to provide service to our customers.

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1 Q Now participation and interconnection were not  
2 the only topics under discussion, were they, between the  
3 City and the Illuminating Company?

4 A No.

5 Q Are you familiar with the unit of wheeling as it  
6 has been variously defined from time to time?

7 A Yes.

8 Q When did the question of wheeling to the City  
9 of Cleveland first arise?

10 A I think it first arose in 1973. I think that was  
11 a part of the original August 3 request of the City of  
12 Cleveland, but earlier than that, the first request that  
13 CEI ever had for wheeling was in November of 1972 when we  
14 received a request for commitment to wheel generally  
15 from AMP Ohio.

16 Q What do you mean by a request to wheel, generally?

17 A I'm not so sure this is in the record, but a letter  
18 asking that CEI would commit to wheel for AMP-O, power  
19 from any source to be delivered to any delivery point on CEI  
20 system or any of its interconnections. They wanted us to make  
21 a commitment similar to that contained in an agreement  
22 between the Ohio Power Company and AMP-O.

23 Q What was the company's responsibility?

24 A We had several meetings and some correspondence  
25 with the representatives of AMP-O in which it developed that

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1 they were -- their primary interest was a specific proposal  
2 for CEI to wheel PASNY power for delivery to the City of  
3 Cleveland.

4 Q What was your response to that request?

5 A In August, August 30 of 1973, in a letter of  
6 mine which is in the record, I advised them that CEI would  
7 not wheel PASNY power for delivery to the City of Cleveland.

8 CHAIRMAN RIGLER: I'm not clear about the  
9 original November '72 request. I thought you indicated at  
10 first that it was the City that made it. Now it appears  
11 that it is AMP-O that made the request.

12 THE WITNESS: It was AMP-O that made the  
13 request in November of 1972 and --

14 CHAIRMAN RIGLER: It was through negotiations  
15 that you discovered the intended beneficiary of the  
16 wheeling would be the City as a recipient of PASNY power?

17 THE WITNESS: That is correct. As I said,  
18 later in August the City made a general request for wheeling.

19 BY MR. BUCHMANN:

20 Q You told AMO-O you wou'nd't wheel PASNY power  
21 to the City of Cleveland?

22 A That is right.

23 Q Has the position of the Illuminating Company on that  
24 subject changed?

25 A No, it has not.

1 Q Then you said you got a request in August of  
2 '73 from the City itself?

3 A Yes.

4 Q What was the response to that?

5 A Our initial response was that we would not  
6 engage in -- would not commit ourselves to wheel, generally.

7 Of course, in the participation agreement that  
8 we offered to them, we agreed to provide transmission service  
9 for their entitlement in the nuclear units.

10 Q And in what direction would you wheel their  
11 entitlement in the nuclear units?

12 Where would you wheel it to?

13 A Any place.

14 Q We have used the phrase "in and out" here before.

15 Are you willing to wheel that nuclear power from their  
16 participation in or out?

17 A Yes.

18 Q Or up or down, I suppose?

19 I ~~withdraw~~ that. I'm sorry. As to the City of  
20 Cleveland, did you at any time offer to perform any wheeling  
21 service for the City?

22 A Yes, in 197 -- beginning in, I think it was July  
23 of 1975, we concluded and did offer to wheel any power to the --  
24 for the City of Cleveland, if CEI would have had access  
25 to that power under equal terms and conditions.

9 1 Q What does that mean?

arl 2 A Well, it means we won't wheel PASNY power because  
3 we don't have access to that. But we would wheel power  
4 from PENELEC, from Ohio Power.

5 Q From Buckeye?

6 A Buckeye.

7 Q City of Richmond, Indiana?

8 A Richmond. I might say with regard to Buckeye,  
9 there was some question as to whether or not either the  
10 City or ourselves would have access to that power, but if  
11 the City or ourselves would have access, we would wheel  
12 Buckeye power.

13 This has been talked about. We have never had a  
14 specific request to wheel power from any of our sources in  
15 PASNY.

16 Q Does the Illuminating Company wheel power for  
17 anybody else?

18 A No.

19 Q Is the offer which you have described to wheel,  
20 other than PASNY power, still outstanding.

21 A Yes, it is.

22 Q Is that offer conditioned on the settlement of  
23 the various disputes between the Illuminating Company and  
24 the City of Cleveland?

25 A No, it is not.

1           Q       By the way, this right of access which you have  
2 insisted on, is that similar to the right of first  
3 refusal or something of that sort? Do you want to  
4 have a right to take the power rather than let the City of  
5 Cleveland take it?

6           A       No. It is kind of a general principle. If  
7 the so-called pecking order -- if the City of Cleveland  
8 makes a deal with Ohio Power, we could have had access to  
9 that block of power, first come, first served. If the City  
10 was there first, then they would get the power and we would  
11 be second in line after they had obtained their entitlement.

12                   I might say the same principle has been applied  
13 in our relationship with the City of Cleveland.

14           Q       What was that mean?

15           A       As I say, the first come, first served. We have  
16 been providing service since 1970, so the City is always  
17 first, and anybody else like Ohio Power or Ohio Edison  
18 or PENELEC is after them.

19                   So this does --

20           Q       What does that mean, if anything, in connection  
21 with price?

22           A       Price, they get the cheapest power that we have  
23 available --

24           Q       Who is the "they" in that sentence?

25           A       The Municipal System. Because if Ohio Edison



1 or Ohio Power or somebody else comes later, and the  
2 incremental price is higher, the City has a better deal.

3 This, also, first come, first served, thing  
4 applies to providing service itself.

5 In fact, the City gets and is entitled to  
6 service before anyone other than our firm power customers.

7 We have in the past, for example, interrupted  
8 loads to our interruptable customers.

9 We have also asked for voluntary load curtailment  
10 before we curtail load to Municipal Systems.

11 Q You have interrupted your interruptable  
12 customers and continued to serve the City of Cleveland?

13 A Yes.

14 Q Now, Mr. Hauser, the City of Cleveland isn't the  
15 only municipal system within the CEI service area, is it?

16 A No, we also have the City of Painesville.

17 Q Can you tell us briefly what the situation with  
18 Painesville is in regard to interconnection?

19 A We entered into an interconnection agreement  
20 with the City of Painesville in January of 1975.

21 That interconnection is being built. At the  
22 present time we expect to have it in service some time this  
23 summer, possibly late summer.

24 Q What kind of interconnection? 133?

25 A This is 138, too.

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1 Q Has there been any request from Painesville for  
2 the wheeling of power?

3 A We have discussed -- I don't recall any written  
4 request, but we have discussed the wheeling of power with  
5 representatives of Painesville, and we have told them  
6 we would do the same thing for them as we have offered to do  
7 for the City of Cleveland.

8 Q Have they made any specific requests?

9 A No, they have not.

10 Q That offer is still outstanding?

11 A Yes, it is.

12 Q I was unclear yesterday. Are you aware of any  
13 requests from the City of Painesville for membership in  
14 CAPCO?

15 A Yes, I am. No membership in CAPCO. Request  
16 for participation in specifically the Perry Power Plant.  
17 No, we have had no request for membership in CAPCO.

18 Q When did you get a request for participation  
19 in the Perry Power Plant?

20 A The first request was a very general one.  
21 As I recall, in 1973, maybe April of 1973 -- anyway,  
22 it's kind of a general request from Mr. -- it is April 11.

23 MR. LESSY: Can I ask what the witness is  
24 referring to?

25 THE WITNESS: Yes, this is a chronology I

1 prepared, or my secretary prepared. both of us worked on it,  
2 that began back in, I think, early 1971, maybe in 1970, and  
3 was continued through '73.

4 I claimed work privilege on it, but the  
5 Special Master held against us on that. These are  
6 my chronology of the events that happened during '69, '70,  
7 '71, '73. It is part of the group of documents you  
8 received.

9 BY MR. BUCHMANN:

10 Q You got a request for participation?

11 A Yes.

12 Q What happened?

13 A We had some discussions with Mr. Milburn and --

14 Q Who is Mr. Milburn?

15 A He was the law director of the City of  
16 Painesville, and had been for many years.

17 We suggested that what they were really after  
18 was the type of service that they could get with an inter-  
19 connection agreement, that with all of the problems of  
20 participation in the nuclear units, that wasn't too  
21 practical, and Mr. Milburn, I think, agreed with that.

22 Q Did you get any subsequent requests from the  
23 City of Painesville?

24 MR. CHARNO: Could I have the last question  
25 and answer back, please?

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

BY MR. BUCHMANN:

Q With respect to participation?

A Yes. And just recently I received a letter  
from Mr. Pandy, dated March 26, 1976.

Q Wait a minute, Mr. Hauser. I'm making as  
Applicant's Exhibit 137 (CEI) a letter dated March 26, 1976  
from Mr. Pandy to the Illuminating Company, directed to the  
attention of Mr. Hauser.

(The document referred to was  
marked Applicants 137 (CEI)  
for identification.)

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2 MR. WJELMFELT: What was the number given to  
3 that?

4 MR. BUCHMANN: 137.

5 BY MR. BUCHMANN:

6 Q Is that the letter you have had reference to?

7 A Yes, it is.

8 Q I gather from this that you had had previous  
9 discussions with Mr. Pandy. Can you tell us what that was  
10 about?

11 A Last July Mr. Pandy's deposition was taken in  
12 these proceedings out in Bethesda, and he and I went back  
13 to Cleveland together and in the course of the deposition,  
14 or in our conversations afterward, I think in the course  
15 of the depositions, he indicated the City of Painesville,  
16 contrary to what our thing had been, was still interested  
17 in participating in the nuclear units, and I asked him what  
18 they had in mind.

19 And also I agreed to -- which I did -- transmitted  
20 to him the same technical and economic information that we  
21 had submitted to the City of Cleveland in June of 1975.

22 Q That is the material you gave Mr. Mayhen?

23 A Yes, and Mr. Goldberg.

24 Q When did you do that?

25 A July 24, 1975. Mr. Pandy indicates in his letter,

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and that is consistent with my recollection.

1 Q From that time until you received the letter which  
2 is Applicants Exhibit 137, did you hear anything from the  
3 City of Painesville on the subject of participation?

4 A No.

5 Q Did you respond to Exhibit 137?

6 A Yes. A letter of April 13, 1976.

7 Q A letter of that date from Mr. Hauser to  
8 Mr. Cannon, the law director of the City of Painesville has  
9 been marked as Applicants Exhibit 138(CEI).

10 (The document referred to was  
11 marked Applicants Exhibit 138(CEI)  
12 for identification.)

13 BY MR. BUCHMANN:

14 Q Is that the letter to which you have just had  
15 reference?

16 A Yes, it is.

17 Q I note you say you are enclosing a copy of a draft  
18 participation agreement.

19 A Yes.

20 Q What does that mean as to the position of the  
21 Illuminating Company with respect to participation in nuclear  
22 units of the City of Painesville?

23 A It would be the same as it has been with regard  
24 to the City of Cleveland.

25 Q And did you get any response to Exhibit 138?



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1           A       Yes, I did. From Mr. Cannon by letter dated  
2 April 17, 1976.

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arl 1 MR. BUCHMANN: I have marked a letter of that  
2 date from Mr. Cannon to Mr. Hauser as Applicant's Exhibit  
3 139 (CEI).

4 (The document referred to was  
5 marked Applicants 139 (CEI)  
6 for identification.)

7 BY MR. BUCHMANN:

8 Q Is that the letter to which you have had reference?

9 A Yes, it is.

10 Q Who is Mr. Cannon, by the way?

11 A Mr. Cannon is the present director of law for  
12 the City of Painesville. Mr. Milburn retired in -- right  
13 after we signed the interconnection agreement with the  
14 City of Painesville in January of 1975.

15 Q And have you heard anything from Mr. Cannon  
16 since the letter which is Applicant's Exhibit 139?

17 A No, I haven't.

18 MR. BUCHMANN: If your Honor please, I'm  
19 about to move on to another long --

20 CHAIRMAN RIGLER: This would be a good time for a  
21 break.

22 MR. VOGLER: Can we inquire as to the  
23 enclosure?

24 THE WITNESS: That is the same participation  
25 agreement that was forwarded to the City of Cleveland with

1 the letter of February 27, 1974.

2 CHAIRMAN RIGLER: Before you move to another  
3 subject, let me ask another question.

4 In connection with the 138 kV interconnection  
5 you are now constructing between CEI and the City of  
6 Painesville, what service schedules are associated with  
7 that interconnection?

8 THE WITNESS: They have emergency service, short  
9 term, limited term, maintenance and economy interchange.

10 We have also again indicated that we will  
11 provide any service we provide to the City of Cleveland  
12 to them which, of course, would include the transmission  
13 service schedule and also firm power. Anything they want  
14 for a price.

15 CHAIRMAN RIGLER: But there are schedules and  
16 tariffs governing the emergency, short term, limited  
17 term, economy and maintenance?

18 THE WITNESS: Yes, they were filed with the  
19 Federal Power Commission, together with the interconnection --  
20 no, I'm sorry, they have not been filed yet.

21 They will be filed, because again that rule  
22 that we have to advise the Federal Power Commission that  
23 service will be taken within 30 or 60 days before we can  
24 file it. I think there is a letter of mine in the file  
25 and in the record to Mr. Poth, telling him to file them with

1 the Federal Power Commission.

2 That is when I learned of this rule that you  
3 can't file it until you are ready to provide service under  
4 them.

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1 CHAIRMAN RIGLER: You can't file them until the  
2 interconnection is complete?

3 THE WITNESS: That is correct.

4 CHAIRMAN RIGLER: There is no disagreement  
5 between Painesville and CEI with respect to the terms and  
6 conditions of these schedules?

7 THE WITNESS: Not of the schedules. We still have  
8 one item to resolve as to who is going to pay for a leased  
9 telephone line between Painesville and our SOC center  
10 in Brecksville, Ohio. There is no argument about the schedules  
11 or the other terms and conditions.

12 MR. SMITH: Those schedules are precise and not  
13 estimates?

14 THE WITNESS: They are precise. The emergency  
15 schedule is essentially the same type of service and the  
16 price as ordered by the Federal Power Commission as Class  
17 One emergency service to be provided to the City of Cleveland.

18 The short-term and limited term schedules are  
19 very similar to Class Two and Class Three service in the  
20 Federal Power Commission's order, and it might say that  
21 they were the same type of schedules that were in effect  
22 back in 1972, when we were before the Federal Power Commission.

23 The rates for those services, since they were  
24 originally submitted, have been increased in our contracts  
25 with Ohio Power and others. But they are precise as to the

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1 rates that would be charged.

2 They have a limited term, short-term, have a  
3 demand component and energy component in them. The energy  
4 is essentially cost plus ten percent with a floor, or if it  
5 is purchases off of our system, it is cost plus fifteen percent.

6 MR. BUCHMANN: Mr. Smith, for your information,  
7 the agreement is Staff Exhibit 203. The note says that is  
8 the same as Staff Exhibit 140. That has attached to it  
9 all of the schedules.

10 You can see it has the dollar amounts and  
11 everything there.

12 BY MR. BUCHMANN:

13 Q You said one thing. You referred to your  
14 SOC Center. Spell it and tell us what it is.

15 A Capital S, capital O, capital C and it stands  
16 for "Systems Operation Center."

17 Q That is where you dispatch your system from  
18 there?

19 A That is correct.

20 Q Is that why you have to have a telephone line from  
21 there to Painesville?

22 A That is right.

23 CHAIRMAN RIGLER: Let's take 15 minutes.

24 (Recess.)  
25



ari 1 BY MR. BUCHMANN:

2 Q Mr. Hauser, just before the break, I had gotten  
3 out the interconnection agreement with Painesville, and I note  
4 that each of the schedules has something called a special  
5 provision.

6 Are you familiar with that provision?

7 A Yes.

8 Q Is there a similar provision in your schedules  
9 for service to the City of Cleveland?

10 A There is a similar provision. It is different  
11 in language, but the effect is the same, legal effect.

12 Q What is the intention of the company in including  
13 that kind of provision in its contracts?

14 A It's essential to have such a provision in the  
15 contract to permit the adjustment of rates, following the  
16 procedures before the Federal Power Commission or any other  
17 agency having jurisdiction, during the term of the contract  
18 or the term of the schedule.

19 This is required because of the so-called Sierra  
20 Mobile Doctrine.

21 Q What do you mean by that?

22 A This is a court-developed doctrine that if a  
23 contract for service is subject to the jurisdiction of the  
24 Federal Power Commission, does not contain a provision such  
25 as this, just a straight term of a contract, one party,

1 namely in this case CEI could not unilaterally go to the  
2 Federal Power Commission for a change in the rates or  
3 any other provisions of the tariff.

4 Q Well, does this provision mean that you can  
5 unilaterally cancel the agreement?

6 A No. Again this would be -- require the approval  
7 of the Federal Power Commission.

8 Q If you go to the Federal Power Commission for a  
9 change in rates, do you have to tell the City that you are  
10 going?

11 A Yes.

12 Q I ask you -- I show you what I believe is in  
13 evidence as Staff Exhibit 204, and ask you if the parallel  
14 provision is not paragraph 7.0 on page 20, this being the  
15 agreement with the City of Cleveland?

16 A This is a provision in the body of the agreement  
17 itself. You will find that there is also a provision to  
18 this effect in service schedule A, which is attached to  
19 Exhibit, Staff Exhibit 204, and that is provision 1.2, which  
20 is on the first page of that service schedule.

21 Q Did any of the FPC orders to which you have  
22 already alluded refer to this kind of provision?

23 A Yes. The January 11 order of the Federal Power  
24 Commission referred -- wait a minute.

25 Would you read the question back?

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

3 THE WITNESS: Yes, the January 11, 1973 order of  
4 the Commission referred specifically to a provision like this,  
5 and also to the Sierra-Mobile Doctrine.

6 As I recall, they cite the case.

7 BY MR. BUCHMANN:

8 Q What kind of reference do they make to this  
9 kind of provision?

10 A Let's get it out.

11 MR. VOGLER: Excuse me. Is this in evidence?

12 THE WITNESS: Yes. It is the January 11, 1973  
13 order of the Federal Power Commission, which is in evidence.  
14 I'm not sure what the exhibit number is.

15 MR. VOGLER: That is what I was after, the  
16 exhibit number. Do you know?

17 MR. BUCHMANN: I will check it for you.

18 Apparently Applicant's Exhibit 21 (CEI).

19 MR. VOGLER: Thank you.

20 THE WITNESS: The order begins discussing  
21 this on page 7, towards the bottom under terms of the  
22 agreement. CEI asks that the permanent interconnection  
23 agreement run for a period of five years from the time the  
24 interconnection is first placed in service. Cancellable  
25 thereafter at any time on one year's notice by any party.

1           Such a provision appears to be reasonable.

2           In setting a term of five years, on this agreement, it is  
3           not our intent that the parties enter into a contract with  
4           the fixed rate for that term.

5           We have previously indicated our displeasure with  
6           the Mobile-Sierra rule, and our intent to require a  
7           showing that a fixed rate contract is in the public interest.

8           In our view, the objectives of regulation are  
9           best achieved when rates may be adjusted to reflect changes  
10          in cost conditions.

11          Recent experience indicates that such cost  
12          conditions may not be accurately foreseen. Particularly  
13          for periods as long as five years, and then they cite United  
14          Gas Pipeline Company vs. Mobile Gas Service Corporation,  
15          350 US 332, 1956.

16          FPC vs. Sierra Pacific Power Company, 330 US 366,  
17          and see, for example, Carolina Power & Light Company Opinion  
18          608, issued January 1972, and they cite Philadelphia  
19          Electric Company, Docket E-77260, order issued August 31,  
20          1972.

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1 BY MR. BUCHMANN:

2 Q To your knowledge, are contractual provisions,  
3 such as these we have been referring to in the Painesville  
4 and City of Cleveland contracts of CEI unique to CEI?

5 A No, they are not unique. That is my understanding.  
6 I might say, specifically, there is a provision in the AMP  
7 Ohio power contract which is labeled "Special Provisions"  
8 which both AMP Ohio and the City of Cleveland submitted to  
9 us. We have modified greatly that provision, but the effect  
10 of that -- they have a special provision thereto, which is  
11 to take care of the Sierra-Mobile Doctrine.

12 Q Why did they submit that to you?

13 A This, in both cases, they asked us to enter  
14 into an agreement similar to that that AMP-O and Ohio Power  
15 had entered into.

16 Q this was, in effect, their proposal?

17 A Yes.

18 Q when the Illuminating Company undertook to render  
19 the load transfer service to the City of Cleveland, did it  
20 condition or attempt to condition the rendition of that  
21 service on any particular rate level by which the City of  
22 Cleveland could serve its customers?

23 A No.

24 Q When the Illuminating Company started to render  
25 or went into -- when the Illuminating Company undertook to

1 render 69 kV service to the City of Cleveland, did it  
2 condition or attempt to condition that service upon any  
3 particular rate level which the City could or should use to  
4 serve its own customers?

5 A No.

6 Q If asked you the same question about the 158 kV  
7 service, what would your answer be?

8 A The answer would also be, no.

9 Q Now by rate level you understood me to mean the  
10 retail rates that the City of Cleveland charges its own  
11 customers?

12 A That is correct.

13 Q Going back over this, did the City of Cleveland  
14 contest the rate level which the Illuminating Company charged  
15 it from time to time for the load transfer service?

16 A Yes.

17 Q What form did that contest take?

18 A In two forms. They contested the level of the  
19 rates for the load transfer service prior to May 30, 1972.

20 With regard to the ratchet clause, the  
21 energy charged and also billing constant, plus also, as I  
22 testified this morning or yesterday, they contested --  
23 they said that from the load transfer bill, bills for service  
24 prior to that, an amount attributable to the excise tax  
25 should be deducted, although the letter agreements which



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1 became FPC Number 7 didn't refer one way or another to  
2 the cost increments.

3 Then they contested the level of the load  
4 transfer rates, subsequent to May 30, 1972, in exceptions  
5 to the administration law judge's initial decision. Also  
6 in their appeal from the Commission's decision to the Court  
7 of Appeals for the DC Circuit.

8 Q Did you finish?

9 I was going to ask if any of these disputes are  
10 still outstanding?

11 A The Court of Appeals sustained the Commission  
12 decision in all respects, except for the ratchet dispute  
13 for service provided prior to May 1972, and that was  
14 remanded to the Federal Power Commission.

15 Q How many dollars are involved in that?

16 A Oh, \$200,000 solely attributable to the ratchet  
17 dispute. The total in dispute prior to May 30, is \$571,000.

18 Q Of which the ratchet is part.

19 A The ratchet is part. The excise tax.

20 Q Did the City contest the rates which CEI  
21 charged it for the 69 kV service?

22 A The only provision -- no, they did  
23 not, except they challenged both an exception -- well, they  
24 challenged in their appeal to the Circuit Court, two things.  
25 The interest provisions provided by the Federal Power  
Commission in its order and also the FPC order permitting to

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1 to be included as part of the cost, the Ohio gross  
2 receipts tax.

3 Q Is that the same thing as the excise tax?

4 A Yes, they are the same.

5 Q Are any of those disputes still pending?

6 A No. The FPC was sustained by the Court of  
7 Appeals in those.

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arl 1 Q What about the 138 kV service? Was there  
2 any dispute as to the rates for that?

3 A The same as with regard to the 69 kV service. The  
4 interest provision and the excise tax being included as an  
5 increment of cost.

6 Otherwise, the City of Cleveland did not contest  
7 those rates.

8 Q Are those disputes now resolved?

9 A Yes. The Court of Appeals for the Circuit  
10 sustained the Federal Power Commission.

11 Q Mr. Hauser, directing your attention to  
12 Applicant's Exhibit 135, which is your report letter of  
13 May 11, 1976 to the FPC, using the information there, can  
14 you tell me what -- at least in the view of the Illuminating  
15 Company -- is the amount presently owed by the City of  
16 Cleveland to the Illuminating Company?

17 A If you turn to page 2, there is a summary of what  
18 is owing at the present, or was owing as of the date of the  
19 report. \$12,955,402.53, which is the total of electric  
20 service presently owed or was owing as of the date of the  
21 report for service over all three types of service.

22 I said owing as of the date of the report. I  
23 was advised when I called my office this morning that  
24 we had received a check of \$659,852.13 from the City of  
25 Cleveland as payment on account for the service provided

1 over the 138 kV interconnection during March.

2 I might say that the bill for March was over \$1  
3 million, so they still haven't paid us some \$500,000 for service  
4 during March.

5 CHAIRMAN RIGLER: You received a check?

6 THE WITNESS: Yes.

7 As I understand it, late yesterday afternoon.

8 BY MR. BUCHMANN:

9 Q Was it certified?

10 A No. I haven't seen the check.

11 CHAIRMAN RIGLER: I was curious because we have  
12 had a discussion about the vouchers which I believe Mr.  
13 Hart contended were essentially the equivalent of a check.  
14 In this instance they paid with a check?

15 THE WITNESS: Yes. And all of their payments  
16 have been by check.

17 BY MR. BUCHMANN:

18 Q Would you take a voucher in payment for this  
19 electricity?

20 A No.

21 Q From anybody?

22 A No.

23 CHAIRMAN RIGLER: On the other hand, if he had  
24 a voucher and all he had to do was walk it to the bank --

25 MR. BUCHMANN: I thought the evidence was pretty

1 clear that that isn't how the vouchers work in the City  
2 of Cleveland.

3 BY MR. BUCHMANN:

4 Q In that \$12,955,000, am I correct that only  
5 approximately \$200,000 relative to the ratchet is the only  
6 open matter?

7 A That is from CEI's standpoint.

8 Q Mr. Hauser, I have had marked as Applicant's  
9 Exhibit 140 (CEI) a one-page graph headed "Balances Owed  
10 by City of Cleveland."

11 (The document referred to was  
12 marked Applicants Exhibit 140  
13 (CEI) for identification.)

14 THE WITNESS: What number was that?

15 BY MR. BUCHMANN:

16 Q 140.

17 Can you tell me what that is?

18 A Yes. This is a graphic representation of the amounts  
19 of indebtedness outstanding from February of 1970 until  
20 April of 1976.

21 If you will, it graphically depicts a lot of the  
22 same information that is in Exhibit 135.

23 Q I notice that from time to time the accumulated  
24 balance decreases rather substantially. I direct your  
25 attention, for example, to November 1971. Are you familiar

1 with the circumstances there?

2 A Yes.

3 As I said before, we have been negotiating in  
4 an effort to get some suitable arrangements for payment  
5 prior to -- during the summer and fall of 1971.

6 This was just prior to a number of filings of  
7 the City of Cleveland with the Federal Power Commission  
8 and, of course, with the hearings that began early in February  
9 1972, and continued through April and March.

10 Q I notice there is another big drop in August 1973.  
11 Is there anything special about that?

12 A Yes. We had even after the Federal Power  
13 Commission's orders that indicate the City was slow in  
14 paying, several things happened in the summer of '73.

15 One, we filed a motion with the Federal Power  
16 Commission to enforce its orders because, among other  
17 things, the City was not complying with those orders in  
18 several respects.

19 Also, we had filed a -- we had a pretrial in the  
20 Common Pleas Court of Cuyahoga County, concerning the  
21 collections of those cases and it was indicated that the  
22 Court was going to go ahead and set those cases for trial,  
23 even though the parties were still pending before the  
24 Federal Power Commission.

25 Q I see you have another drop in April of '74. Is



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1 there any story to that?

2 A Yes. The Commission's order of April 8, 1974,  
3 which resulted from our filing in '73, ordered the City,  
4 among other things, to comply with its orders in a number  
5 of respects, but including payment to CEI for past due  
6 indebtedness and, as I recall that order said if they  
7 didn't, CEI could terminate the service. But the order will  
8 speak for itself.

9 Q Mr. Hauser, you have referred to actions in the  
10 Court of Common Pleas and you referred to motions before the  
11 FPC to ask the Commission to enforce its order.

12 Have you or anybody else taken any other steps  
13 to -- in an effort to collect these monies?

14 A Yes. Again in June of 1974, again the City is  
15 not paying. We filed another motion with the Federal Power  
16 Commission which resulted in the Federal Power Commission  
17 filing a complaint in the District Court for the District  
18 of Columbia to enforce its order against the City of  
19 Cleveland.

20 We subsequently intervened, were permitted to  
21 intervene in that case before the District Court. The City  
22 has filed answers and that is where that case stands.

23 We -- I mentioned two Common Pleas Court cases  
24 in Cuyahoga Common Pleas Court. One for service prior to May  
25 30, and one for service subsequent to May 30.

1 Q 1972?

2 A Yes.

3 Those cases are pending in the Court of Appeals  
4 for Cuyahoga County.

5 Q Just for the record, we are a long way from  
6 home. Is that the county in which Cleveland is located?

7 A Yes, it is.

8 Q Anything else?

9 A We, in the civil antitrust case that was filed against  
10 CEI in July of 1975, we filed a motion to enjoin the  
11 City of Cleveland from continuing to take CEI property,  
12 services without compensation.

13 The day of the hearing on that motion, which  
14 I think was January 12, Mr. Davis, the then-law director,  
15 handed us a check for \$400,000 in partial payment for service  
16 during January.

17 Then they paid the remainder of the bill for  
18 January service within the 45 days as established by the  
19 Federal Power Commission.

20 They also paid the February bill within the 45  
21 days.

22 As I said earlier, now they have paid a little  
23 over half of the bill for March.

24 Q Those payments other than the half of the bill  
25 for March payment are reflected in the 12 million 9?

1           A       That's correct.

2                    The other steps, other action that we have taken  
3 was to contest the application of the Ohio gross  
4 receipts tax, to receipts from Muni for service provided  
5 for the Tax Commissioner who for two years held that the  
6 Ohio gross receipt tax was applicable to those  
7 receipts.

8                    We then appealed that -- those decisions for a  
9 Board of Tax Appeals of Ohio, which sustained the Tax  
10 Commissioner's ruling that CEI did have to pay the tax on  
11 receipts from sales to Muni.

12                   Then we appealed that to the Supreme Court  
13 and the --

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1 Q The Supreme Court of Ohio?

2 A Supreme Court of Ohio which held there was  
3 no justifiable issue between the State of Ohio and CBI.  
4 So, therefore, it did not hear the appeal.

5 CHAIRMAN RIGLER: I have a question on the  
6 graph, Applicants 140.

7 There is a footnote by FPC, Docket E-9255.  
8 Subject to refund. Is that the ratchet clause you referred  
9 to earlier?

10 THE WITNESS: No, that is what we refer to as  
11 the mini rate case early in 1975.

12 We filed with the Federal Power Commission an  
13 application to increase the load transfer rates from the  
14 15.2 level to our out-of-pocket costs and the Commission  
15 permitted those rates to go in upon one day's suspension,  
16 subject to refund.

17 CHAIRMAN RIGLER: What is the maximum  
18 amount of the refund, assuming the City were completely  
19 successful. How would it affect the value shown on this  
20 this graph?

21 THE WITNESS: Well, the out-of-pocket costs  
22 were at around 30 mills, and the rate was 15.2 prior to that  
23 and the billings for load transfer service -- well, the rate  
24 was only in effect for two months, and I think the answer is,  
25 we were losing \$100,000 a month. So if we lose -- we would have

bw2 : to make a refund of about 200,000. I might say,  
2 they didn't pay us, so we don't own them a refund.

3 CHAIRMAN RIGLER: But, in other words, if the City  
4 were completely successful, the graph would not change in  
5 any significant fashion?

6 THE WITNESS: That is correct.

7 BY MR. BUCHMANN:

8 Q Mr. Hauser, in the last ten years, say, since  
9 1966, has the Illuminating Company made any offer to  
10 acquire the Cleveland Municipal Electric Light System?

11 A Not, it has not.

12 Q And we have had some testimony that at one time,  
13 or from time to time, the studies were made of the  
14 acquisition of the Municipal Electric Light Plant during that  
15 time span. Would that surprise you?

16 A No, there were a number of studies made by CEI  
17 on the possible acquisition of the Light Plant. There  
18 were studies or at least it was analyzed by agencies  
19 other than CEI. The question of the sale of Muni to CEI  
20 has been raised a number of times in that ten-year period.

21 Q Can you give me examples of other agencies that  
22 have raised the question?

23 A That was considered in -- by follow-up committee  
24 of the Citizens League. It was also considered by the City  
25 Planning Commission staff. It was considered in the -- in what

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1 we refer to as the Cresup report.

2 There are a number of matters.

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arl 1 Q Was it ever advocated by a candidate for  
2 mayor as part of his platform?

3 A Yes. Mayor Stokes, in his campaign, advocated  
4 the sale of the Municipal Light Plant to CEI. A number  
5 of other political figures in Cleveland have from time to  
6 time, as part of their campaign, said we shouldn't sell  
7 Muni Light to CEI.

8 I mentioned earlier that a number of them took  
9 the position that they should not interconnect with CEI.  
10 This has been a subject, recurrent during those years.

11 Q Has it ever been suggested that the City of  
12 Cleveland acquire CEI?

13 A Oh, yes.

14 Q When was the most recent such occurrence?

15 A The most recent was on May 10.

16 Q Of what year?

17 A Of 1976.

18 Q Just a couple of weeks ago?

19 A Yes. The council president, Forbes, had mentioned  
20 this on the prior Friday, but on May 10th he held a  
21 press conference at City Hall, in which he announced a  
22 proposal and a program that the City of Cleveland acquire  
23 CEI within the corporate limits of the City through the  
24 formation of a City Power Authority which would then  
25 acquire CEI and the Municipal Light Plant facilities

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1 through the exercise of the powers of eminent domain  
2 as provided in the Ohio Constitution, Article 18, Sections  
3 4 and 12.

4 He went into some detail at this press conference  
5 and did hand out a press release which I am looking at.

6 At the same time he announced other -- in effect, I  
7 think he said they were declaring war on CEI. The acquisi-  
8 tion of the plant.

9 They were also going to investigate the rates  
10 of CEI and he introduced that night and passed a resolution  
11 of council to do this and, in fact, there is a hearing going  
12 on right now before the Utilities Committee of Council.

13 Q With respect to what?

14 A With respect to CEI rates, as to whether or not  
15 they should be reduced.

16 He has followed up with a campaign supporting  
17 this proposal to take over CEI. The council took out a full  
18 page ad, Wednesday, May 19, issue of the Plain Dealer. I  
19 think this is of our package.

20 MR. VOGLER: What council?

21 THE WITNESS: The Council of the City of  
22 Cleveland.

23 MR. SMITH: The elected City Council?

24 MR. BUCHMANN: Yes, sir. We will mark it.

25 If your Honor please, I have marked as Applicant's

1 Exhibit 141 (CEI) and we are bringing in copies right  
2 away, a full page ad from the Plain Dealer, a newspaper of  
3 general circulation in Cuyahoga County, from May 19, 1976,  
4 page 17-A.

5 (The document referred to was  
6 marked Applicant's Exhibit 141  
7 (CEI) for identification.)

8 BY MR. BUCHMANN:

9 Q Is that the advertisement to which you have  
10 just been referring, Mr. Hauser?

11 A Yes, it is.

12 MR. SMITH: This is an ad by the individual  
13 members of the City Council, or this is an ad pursuant  
14 to a resolution and official act of the City Council?

15 THE WITNESS: As I understand it, this is an ad  
16 of the City Council, paid for by the Council, following  
17 up Mrs. Stokes' announcement --

end 18

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1 BY MR. BUCHMANN:

2 Q Mr. Stokes.

3 A Mr. Forbes' announcement of May 10.

4 MR. SMITH: Are you going to stay on this for a  
5 little while?

6 MR. BUCHMANN: I wasn't going to spend more time  
7 on this at all.

8 MR. SMITH: Do you think they could do that?

9 THE WITNESS: Yes. I referred to Article 18 --

10 MR. SMITH: I meant acquire the facilities  
11 of CEI, condemn the facilities of CEI?

12 THE WITNESS: The constitutional provision  
13 so authorizes a municipality to do so.

14 MR. SMITH: How about those features of CEI  
15 generation and transmission within the City which are  
16 employed in their business outside the City?

17 THE WITNESS: They could -- the  
18 constitutional provision, I think, would permit them to --  
19 or authorize them to do so. It would also authorize them  
20 to acquire property outside of the City of Cleveland for  
21 service within and without.

22 There is another constitutional provision that  
23 limits an Ohio municipality to service outside of its  
24 boundaries of 50 percent of service within.

25 MR. BUCHMANN: If your Honor, please, I would say  
this:

1                   This is a very complicated subject which  
2 has been burst upon us in the last few weeks. I would  
3 not want inference in the record that we would acquiesce  
4 willingly in something of this sort.

5                   I would suspect there would be litigation.

6                   MR. VOGLER: May I inquire, the names at the bottom  
7 is that the entire Council?

8                   MR. BUCHMANN: You bet.

9                   MR. VOGLER: There are 33 wards?

10                  THE WITNESS: Right.

11                  CHAIRMAN RIGLER: Is the proposal that the City  
12 acquire the distribution system, but not any part of its  
13 production facilities, or is there a proposal that generation --

14                  THE WITNESS: Both generation and the distribution  
15 facilities.

16                  BY MR. BUCHMANN:

17                  Q       CEI does have generation within the city limits  
18 of the City of Cleveland; does it not?

19                  A       Yes, our Lakeshore Plant is located within the  
20 City of Cleveland.

21                  Q       Do you know whether the Lakeshore Plant, plus  
22 the generating facilities of the Cleveland Municipal Electric  
23 Light Plant would be sufficient to render electric service  
24 to all of the citizens of the City of Cleveland?

25                  A       No, they will not be.

bw3

1 Q You were saying there was a hearing going on  
2 today at Cleveland City Council. Does CEI have a general  
3 rate case pending?

4 A Yes, before the Public Utilities Commission of  
5 Ohio.

6 Q When do hearings begin in that?

7 A They begin this Thursday.

8 Q Wherein in Cleveland?

9 A City Council Chambers.

10 BY MR. BUCHMANN:

11 Q I'm going to mark, if the Examiner please,  
12 as Applicants Exhibit 142, a letter dated December 27,  
13 1974, from Mr. Jan Kura, J-a-n K-u-r-a, of CEI to  
14 Mr. Labas, L-a-b-a-s of the City.

15 (Whereupon, the document referred  
16 to was marked Applicants Exhibit  
17 Exhibit 142, for identification.)

18 MR. BUCHMANN: As Applicants Exhibit 143,  
19 a letter of January 3, 1975, from Mr. Hauser to  
20 Mr. Goldberg.

21 (Whereupon, the document referred  
22 to was marked Applicants Exhibit  
23 143 (CEI) for identification.)

24 MR. BUCHMANN: As Applicants Exhibit 144, a letter  
25 of January 22, 1975, from Mr. Hauser to several persons,  
the first name being Mr. Goldberg.



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(The document referred  
to was marked Applicants  
Exhibit 144 (CEI) for  
identification.)

CHAIFMAN RIGLER: Stop there.

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arl 1 MR. BUCHMANN: I have marked as Applicant's  
2 Exhibit 145 a letter from Mr. Hart to Mr. Hauser, dated  
3 January 23, 1975.

4 (The document referred to was  
5 marked Applicants Exhibit 145  
6 (CEI) for identification.)

7 MR. CHARNO: Can we go back and identify these  
8 again?

9 MR. BUCHMANN: We will go off the record.  
10 (Discussion off the record.)

11 MR. BUCHMANN: I have marked as Applicant's  
12 Exhibit 146 a letter of January 27, 1975, Hauser to Hart.

13 (The document referred to was  
14 marked Applicants Exhibit 146  
15 (CEI) for identification.)

16 MR. BUCHMANN: As Applicant's Exhibit 147 a  
17 letter of January 28, 1975, Hart to Hauser.

18 (The document referred to was  
19 marked Applicants Exhibit 147  
20 (CEI) for identification.)

21 MR. BUCHMANN: As Applicant's Exhibit --

22 MR. HJELMFELT: May I have a moment, please?

23 MR. BUCHMANN: Sure.

24 Applicant's Exhibit 148, a letter of February  
25 24, '75, Hauser to Goldberg.

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(The document referred to was  
marked Applicant's Exhibit 148  
(CEI) for identification.)

MR. BUCHMANN: As Applicant's Exhibit 149, a  
letter of February 27, 1975, Hauser to Goldberg.

(The document referred to was  
marked Applicant's Exhibit 149  
(CEI) for identification.)

MR. BUCHMANN: As Applicant's Exhibit 150, letter  
of March 10, 1975, Goldberg to Hauser.)

(The document referred to was  
marked Applicant's Exhibit 150  
(CEI) for identification.)

MR. BUCHMANN: As Applicant's Exhibit 151, a  
letter of March 21, 1975, Hauser to Goldberg.

(The document referred to was  
marked Applicant's Exhibit 151  
(CEI) for identification.)

MR. BUCHMANN: As Applicant's Exhibit 152, a letter  
of March 28, 1975, Hauser to Goldberg.

(The document referred to was  
marked Applicant's Exhibit 152  
(CEI) for identification.)

MR. BUCHMANN: As Applicant's Exhibit 153, a  
letter of April 8, 1975, Goldberg to Hauser.

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1 (The document referred to was  
2 marked Applicant's Exhibit 153  
3 (CEI) for identification.)

4 MR. BUCHMANN: As Applicant's Exhibit 154, a  
5 letter of April 14, 1975, Hauser to Goldberg.

6 (The document referred to was  
7 marked Applicant's Exhibit 154  
8 (CEI) for identification.)

9 MR. BUCHMANN: As Applicant's Exhibit 155, a  
10 letter of April 21, 1975, Goldberg to Hauser.

11 (The document referred to was  
12 marked Applicant's Exhibit 155  
13 (CEI) for identification.)

14 MR. BUCHMANN: As Applicant's Exhibit 156, a  
15 letter of April 24, 1975, Hauser to Goldberg.

16 (The document referred to was  
17 marked Applicant's Exhibit 156  
18 (CEI) for identification.)

19 MR. BUCHMANN: Finally, as Applicant's Exhibit  
20 157 a letter of April 24, 1975, Hauser to a series of  
21 people, the first name being Mr. Charno.

22 (The document referred to was  
23 marked Applicant's Exhibit 157  
24 (CEI) for identification.)  
25

1 BY MR. BUCHMANN:

2 Q Mr. Hauser, do you have copies of those  
3 letters with you or before you?

4 A Yes, I do.

5 Q You are familiar with them, aren't you?

6 A Yes, I am.

7 Q Mr. Hauser, we have previously been introducing  
8 correspondence, a series of exhibits, Department of Justice  
9 191, Applicant's Exhibits 53 through 67, 69, 70, and  
10 Department Exhibit 315.

11 I am giving you those in chronological order.

12 Do Exhibits 142 through 157, inclusive, plus  
13 the others to which I have referred constitute the whole  
14 range of the correspondence concerning the interconnection  
15 agreement or substantially all of it?

16 A Substantially all of it.

17 Q These documents that you have now before  
18 you illustrate the negotiation you have described generally  
19 beforehand?

20 A That's correct.

21 Q Is there any particular items in here you wish  
22 to bring to our attention?

23 A Well, I notice on the first one when I testified  
24 earlier that the cost of this temporary 138 was \$30,000,  
25 this letter says it was \$50,000.

1 Q That is Exhibit 142?

2 A 142.

3 I will rely on Mr. Jancura.

21 4 Q I note on Exhibit 144, there is a reference to  
5 the report of the Public Utilities Committee of the City  
6 Council. Is that the document we have previously marked  
7 as Applicant's Exhibit 136?

8 A Yes.

9 Q Finally, I notice that Exhibit 157 encloses an  
10 agreement with it. That is the letter that goes to a number  
11 of people?

12 A That's right.

13 Q What is that agreement to which reference is made?

14 A That is the interconnection agreement between the  
15 Cleveland Electric Illuminating Company and the City of  
16 Cleveland of April 17, 1975, which has been filed by the  
17 Federal Power Commission.

18 That agreement, I believe, was also --

19 Q Staff Exhibit 204?

20 A Okay.

21 MR. BUCHMANN: I move the admission of Applicant's  
22 Exhibits 137 through 156, inclusive.

23 MR. CHARNO: Could we inquire as to the purpose  
24 for which the newspaper clipping and Exhibit 152 are being  
25 offered?



1 BY MR. BUCHMANN:

2 Q Mr. Hauser, looking at Exhibit 152 and the  
3 second paragraph on the first page of that reference to the  
4 article in last night's Press -- Press, by the way, is  
5 the evening Cleveland newspaper?

6 A That's correct.

7 Q Is the article to which you refer in your letter  
8 the clipping which is attached to Exhibit 152?

9 A Yes.

10 Q So it is complete.

11 CHAIRMAN RIGLER: Mr. Buchmann, I notice that  
12 almost all of my copies of the 150 series have a stamp at  
13 the bottom which indicates they are Defendants Exhibit  
14 CEI and that is followed by a number.

15 I take it we are to ignore those stamps?

16 MR. BUCHMANN: Yes, sir. I don't think they are  
17 much evidential value. Where were those exhibits from?

18 THE WITNESS: You can ignore them. These exhibit  
19 numbers were filed as exhibits to pleadings that were filed  
20 in the civil antitrust case in the District Court in  
21 Cleveland.

22 It was easy to find these documents there.

23 CHAIRMAN RIGLER: We will disregard the stamps.

24 MR. CHARNO: Could we further ask for the  
25 documents which have been omitted from this series of

1 correspondence since it is the purport of counsel's question  
2 to the witness that he is producing a completed series of  
3 correspondence and that is the reason the documents are  
4 being moved in?

5 The witness responded these are substantially  
6 all, but I assume not all of the documents in that series.

7 I think it would be appropriate to examine the  
8 omitted documents to see if they give objection to any of  
9 the documents in the series.

10 MR. BUCHMANN: I started putting these documents  
11 in, in the cross-examination of Mr. Hart. Out of 25 or more  
12 letters in the series, the Department of Justice introduced  
13 only two.

14 As far as I know, there is nothing omitted from  
15 the series.

16 THE WITNESS: As far as I know, and when I  
17 responded before, you gave exhibit numbers, and you know  
18 I couldn't tie up the exhibit numbers with a specific  
19 document. If I could -- that is why I had a small  
20 qualification.

21 MR. BUCHMANN: I do have on my offer one caveat  
22 when I move these documents in. I do not wish to be  
23 understood as offering Applicant's Exhibit 142 for  
24 the truth of the facts stated therein. That is the City  
25 Council letter.

1 CHAIRMAN RIGLER: You would move 137 through 158  
2 into evidence at this time?

3 MR. BUCHMANN: That's right.

4 MR. HJELMFELT: So far I haven't been able to locate  
5 all of these exhibits. I would like to defer objections  
6 until after the lunch break.

7 MR. BUCHMANN: I have no objection to that.

8 CHAIRMAN RIGLER: All right.

9 MR. BUCHMANN: I think I may be done.

10 CHAIRMAN RIGLER: In case it was not clear on the  
11 record, the objection to the Department of Justice relating  
12 to the completion of the series is overruled.

13 Referring to Exhibit 14, the newspaper article,  
14 I notice there is a quotation from what is related to a  
15 CEI interoffice memorandum.

16 Is that an exhibit in these proceedings?

17 MR. BUCHMANN: Somebody has to give me a copy of  
18 the ad.

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MR. HJELMFELT: What was the question?

CHAIRMAN RIGLER: I asked whether the interoffice memorandum of CBI, which is referred to or quoted in the newspaper article, is an exhibit in these proceedings.

MR. BUCHMANN: I have no idea.

MR. HJELMFELT: I believe it is, but I can't tell you which number right now.

CHAIRMAN RIGLER: Could somebody check on that, please.

MR. CHARNO: That is Exhibit DJ-331, and that quotation would appear on page four of that exhibit.

BY MR. BUCHMANN:

Q Mr. Hauser, I show you what has been previously marked for identification, Applicants Exhibit 26 (CBI) which, for everybody's information, is a draft of a letter dated July 6, 1971; are you familiar with that document?

Do you have it?

A I have this. I was looking for something else.

Q Are you familiar with that document, Applicants 26?

A Yes, I am. I prepared it.

Q What is it?

A This is a draft of a letter agreement that I thought accurately covered tentative agreements that we had reached with the City of Cleveland representatives, subsequent

bw2 1 to one of the meetings with the Federal Power Commission  
2 and this was presented to the City at a meeting, I believe,  
3 on July 8, which was covered in a memorandum of Mr. Hinchee  
4 that has been introduced into the record as ---

5 Q Department of Justice Exhibit 6.

6 A I will take your word for it. As Department of  
7 Justice 6. I was trying to look for that in my pile  
8 before.

9 Q In any event, is the Applicant 26 that I put before  
10 you, in fact, the document discussed with Mr. Hinchee?

11 A That is correct.

12 MR. BUCHMANN: I move Applicant's Exhibit 26 into  
13 evidence.

14 MR. VOGLER: The Staff would like to object.

15 It is obviously incomplete. It ends on page  
16 6. Is there anything more to it? Was it ever sent?

17 THE WITNESS: It was delivered to the  
18 representatives of the City of Cleveland as reporting Mr.  
19 Mr. Hinchee's memorandum of that meeting on the 8th.

20 It was handed to them. This was a draft which  
21 we hoped would be the basis for discussion at that  
22 meeting.

23 MR. VOGLER: Is there a reason for it  
24 just ending at the bottom of page 6 with no signature?

25 THE WITNESS: It was only a draft, Mr. Vogler.

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1           It was not intended to be complete. I  
2 prepared it.

3           BY MR. BUCHMANN:

4           Q     There wasn't anything more to it, was there?

5           A     No.

6           MR. VOGLER: Was there anything subsequent to  
7 this, was there ever a final pleading or letter?

8           THE WITNESS: Not following up this. There  
9 were other letters, but not a final letter covering the  
10 same -- all of the same subject matter that was contained  
11 herein.

12           As you will recall, Mr. Hinchee had a different  
13 idea of what transpired at that meeting

14           BY MR. BUCHMANN:

15           Q     Different from whom?

16           A     From mine and Mr. Howley's. There was a letter  
17 following that meeting of Mr. Howley's, in which it  
18 stated our understanding of the meeting.

19           MR. VOGLER: Staff would object on the basis of  
20 incompleteness.

21           MR. BUCHMANN: He just testified it was complete.

22           CHAIRMAN RIGLER: Overruled.

23           We will admit Applicants Exhibit 26.  
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1 (Whereupon, the document  
2 previously marked Applicant's  
3 Exhibit 26 (CEI) for  
4 identification, was received  
5 in evidence.)

6 MR. BUCHMANN: I have marked as Applicants  
7 Exhibit 158 a letter from Mr. Howley to Mr. Whiting, a  
8 letter dated January 15, 1975.

9 (The document referred to  
10 was marked Applicants  
11 Exhibit (CEI) 158 for  
12 identification.)

13 THE WITNESS: What was the exhibit number?

14 BY MR. BUCHMANN:

15 Q 158.

16 A I have it.

17 Q Here too, we can ignore --

18 MR. VOGLER: Staff doesn't have it.

19 MR. MELVIN BERGER: Wait a minute.

20 MR. VOGLER: The Exhibits were given to us out  
21 of sequence and we are having difficulty locating them.

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BY MR. BUCHMANN:

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Q Mr. Hauser, on this exhibit, as well as on the previous ones we can ignore the sticker down in the lower right-hand corner, can't we?

A Yes, we can.

Q Are you familiar with this letter?

A Yes.

Q What is it?

A This is a letter from Mr. Howley to Mr. Whiting following up on a meeting that we had with representatives of the City on December 13, requesting them to tell us how they were going to come up with the money that would be required to fulfill their financial obligations if they participated in the nuclear units in view of their past payment record, and indebtedness.

Q Did you ever get an answer to that question?

A No.

MR. BUCHMANN: Thank you, Mr. Hauser.

I have nothing further.

I want to move that one into evidence.

MR. CHARNO: We object. Our records indicate it is in evidence as DJ 190.

MR. BUCHMANN: Oh, I apologize. It is DJ 190.

MR. CHARNO: Right.

MR. BUCHMANN: Okay.

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1 CHAIRMAN RIGLER: That concludes your examination?

2 MR. BUCHMANN: I don't want to burden the record.

3 I will withdraw 158, because it is in evidence as DS 190.

4 That concludes my examination of Mr. Hauser.

5 CHAIRMAN RIGLER: Mr. Reynolds?

6 CROSS-EXAMINATION

7 BY MR. REYNOLDS:

8 Q Mr. Hauser, you gave some testimony yesterday,  
9 I believe, in connection with the length of time it took  
10 to implement the load transfer.

11 Do you recall that?

12 A Yes.

13 Q And I believe you indicated that records were  
14 kept as to that lapse in time both by yourself and by the  
15 City of Cleveland; is that correct?

16 A That's right.

17 Q Your testimony on that matter was that the  
18 outages were in the area of a minute, sometimes less, and  
19 sometimes a few seconds more.

20 What was the basis for that testimony?

21 A Both -- well, my personal knowledge on a  
22 current basis concerning such things and in part one of the  
23 records I referred to is Exhibit 134.

24 In addition, in the discovery process, the City  
25 of Cleveland turned over to us what I think were called

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1 monthly outage reports and I asked that these reports  
2 be analyzed and reviewed for me, and this was done.

3 Q Was it on the basis of your analysis of the  
4 City's record that you were able to state that the  
5 outages were in the area of a minute?

6 A In part.

7 This analysis confirmed what my personal  
8 knowledge of the transactions as they were occurring were.

9 The analysis of their records confirmed that  
10 knowledge.

11 Q Is that analysis available?

12 A Yes, I have it right here.

13 Q Could I see it?

14 A Yes.

15 Q Is this the only copy you have of this?

16 A Yes.

17 MR. REYNOLDS: Mr. Chairman, maybe we ought to break  
18 for lunch and I can get some copies run of this. Then we can  
19 all look at it.

20 CHAIRMAN RIGLER: How much examination will you  
21 have?

22 MR. REYNOLDS: There are one or two other  
23 questions, but if we break, I may be able to eliminate  
24 them and be very brief coming back afterwards.

25 CHAIRMAN RIGLER: Off the record.

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(Discussion off the record.)

CHAIRMAN RIGLER: We will come back at five of.

(Whereupon, at 12:55 p.m., the hearing  
was recessed, to reconvene at 1:55 p.m.,  
this same day.)

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AFTERNOON SESSION

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(1:55 p.m.)

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Whereupon,

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DONALD HAUSER

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resumed the stand and, having been previously duly sworn,

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was examined and testified further as follows:

7

CHAIRMAN RIGLER: Shall we start with the motion  
to admit Applicant's Exhibits 137 through 157?

9

Other than the Justice Department objection to  
the possible lack of list of complete file, is there any  
other objection?

10

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MR. VOGLER: I didn't hear what you said, sir.

13

CHAIRMAN RIGLER: I was addressing the motion  
to admit Applicant's Exhibits 137 through 157 and I  
wondered if there were any other objections?

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MR. VOGLER: Other than the Department's?

end 24

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1 CHAIRMAN RIGLER: The Department objected that  
2 the file may be incomplete.

3 MR. VOGLER: Regarding the sequence of  
4 exhibits. The Staff joins in that. And we inquire as  
5 to the advertisement. If it is not put in for proof  
6 of fact, what is it put in for?

7 I take it you put it in to show that the  
8 Council advertised such and no more.

9 MR. BUCHMANN: The Witness testified as  
10 to this, and I offered it at that point. I offer it  
11 to show that the Council took the ad and not that what  
12 the Council said is true.

13 MR. HJELMFELT: I object to 141 on the ground  
14 of relevancy.

15 MR. VOGLER: I do too.

16 CHAIRMAN RIGLER: The objections are overruled,  
17 and we will receive 137 through 157 into evidence.

18 (Whereupon, the documents  
19 previously marked  
20 Applicants Exhibits (CMI)  
21 137 through 157 for  
22 identification, were received  
23 in evidence.)  
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1 MR. REYNOLDS: I would like to  
2 mark as Applicants Exhibit 159, a document containing 26  
3 pages, each of which is in chart form and ask you Mr. Hauser  
4 whether that document is the one which you referred to just  
5 prior to the break as containing the analysis of the records  
6 of the Municipal Light Plant, regarding the matter of outages  
7 on the load transfer.

8 THE WITNESS: That is correct.

9 (Whereupon, the document  
10 referred to was marked  
11 Applicants Exhibit 159  
12 for identification.)

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13 CROSS-EXAMINATION (Cont'd)

14 BY MR. REYNOLDS:

15 Q Could you go across the top of the page and  
16 explain each of the columns to me briefly? Looking at page  
17 1.

18 A Let's take the second item. The first column  
19 is date, 1-6-71. The outage under the column outage, that  
20 was Clinton Substation.

21 The municipal system. By the way, CEI also has  
22 a Clinton Substation. The cause of the outage was, as it says,  
23 to effect a load transfer switch.

24 In this case, if you look to the second column  
25 from CEI to MELP. The first time of the outage was 12:13 a.m.  
and duration, the next column over is one minute, and then

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1 the next column, length of time to effect a load transfer,  
2 the time of 12:03 a.m., time on, 12:04.

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2 As I indicated before, it was a transfer from  
3 CEI to MELP. There was no entry in the City's reports as  
4 to how many customers were affected as there is in connec-  
5 tion with a number of them. This is not only outages  
6 associated with load transfer, as you will note in going  
7 through these, there are certain other outages referred to.

8 Take the first item. There was 11 kV municipal  
9 feeder tripped off. The cause was because of a blown splice.

10 Outage first occurred at 12:50 a.m. And when  
11 the duration, there was no entry, of course, under the  
12 length of time to effect a load transfer because that  
13 wasn't involved.

14 There was no direction of transfer, of course,  
15 and then the last column, none, this was the entry in the  
16 reports that the basic data was taken from.

17 I would guess when that tripped off, another  
18 feeder took care of the load so that no customers were  
19 affected in that period.

20 Q Looking at the fifth column, is the 1/4 and  
21 the 1/5 that follow the time period stated in that period  
22 representative of the date?

23 A Yes. That would be January 4, 1971, and  
24 January 5 of 1971.

25 Q Now, I will mark as Applicant's Exhibit 100 for  
identification what is labeled a major outage report of the

1 Division of Light & Power for 1971.

2 (Applicant's Exhibit 160  
3 was marked for identifica-  
4 tion.)

5 MR. REYNOLDS: Let me show this to counsel.

6 MR. CHARNO: Is the purpose in identifying  
7 this to give an example of the materials?

8 MR. REYNOLDS: Right. I want to ask if this is the  
9 backup for it.

10 MR. VOGLER: Do we have a copy of this?

11 MR. REYNOLDS: I only have one copy. I have  
12 no problem making it available to you if the City hasn't  
13 already done so, a full set.

14 MR. VOGLER: I don't believe the City has.

15 MR. HJELMFELT: The City has made no occasion to  
16 make a copy available to the Staff.

17 MR. VOGLER: We don't have a copy available at the  
18 Staff.

19 BY MR. REYNOLDS:

20 Q Mr. Hauser, let me show you what I have marked  
21 for identification as Applicant's Exhibit 160, and ask if  
22 that is the report which serves as the backup for the  
23 information that you just referred to in Applicant's 159?

24 A This is part of the backup for this report.  
25 If you will refer to page 1 of Applicant's

1 Exhibit 160, you will see under date of January 4, the  
2 item on Applicant's Exhibit 159 for January 4, '71, and  
3 then the next paragraph, January 6, 1971, load transfer of  
4 Clinton Substation to CEI, accompanied to MELP off 3:03  
5 a.m., on 3:04 a.m. To repair leaky splice.

6 Q Is what is marked as Applicant's Exhibit 160  
7 representative of backup material used to prepare  
8 Applicant's Exhibit 159?

9 A Yes, some of the backup material, a principal  
10 source.

11 Q What other source was used?

12 A There were other reports that, as I recall,  
13 were labeled monthly outage reports again of the City of  
14 Cleveland.

15 I can't recall exactly whether it was a meter  
16 bureau.

17 In any event, there were monthly reports that also  
18 had data concerning outages and the lengths of time.

19 Q And was this material that you have referred to,  
20 both the report and the other material, furnished to CEI  
21 by the City in the course of discovery in this proceeding?

22 A In this proceeding and in the civil antitrust case  
23 pending in the Federal District Court.

24 Q When was Applicant's Exhibit 159 prepared?

25 A Within the last week or 10 days.



1 Q And that was --

2 A It took some work before that, of course, but  
3 this came into being, as I say, in the last week or 10  
4 days.

5 Q It was prepared under your direction?

6 A Yes.

7 MR. REYNOLDS: I move Applicant's Exhibit 159  
8 into evidence.

9 CHAIRMAN RIGLER: Hearing no objection, we will  
10 receive 159.

11 (The document previously marked  
12 Applicant's Exhibit 159 for  
13 identification, was received  
14 in evidence.)

15 MR. REYNOLDS: I don't have anything further at  
16 this time.

17 CHAIRMAN RIGLER: What do you want us to do with  
18 160?

19 MR. REYNOLDS: At the moment I would submit we just  
20 leave it marked for identification. There are a number of  
21 these documents which were used as backup. If the other  
22 parties wish to --

23 CHAIRMAN RIGLER: Do you want to offer it or  
24 withdraw it?

25 MR. REYNOLDS: I will for the moment leave it

1 marked for identification as Exhibit 160.

2 Would the Board like copies?

3 CHAIRMAN RIGLER: The Board wants copies of all  
4 exhibits, yes.

5 MR. REYNOLDS: I don't have copies now, but I  
6 will make them available.

7 CHAIRMAN RIGLER: Mr. Charno.

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1 MR. CHARNO: This would probably be an appropriate  
2 point to note that we requested the backup materials for  
3 Applicants Exhibits 134 and 159, and Applicants have consented  
4 to provide those.

5 BY MR. CHARNO:

6 Q Mr. Hauser, did you testify that prior to your  
7 present position with CEI you were corporate solicitor  
8 from 1972 until 1975?

9 A That is correct.

10 Q Could you describe the duties of that  
11 position?

12 A They were essentially the same as my duties as  
13 general attorney.

14 Q And to whom did you report at that time?

15 A To Lee C. Howley, Vice-President and General  
16 Counsel.

17 Q And to what extent, if any, did your duties  
18 involve the applications made to the Nuclear Regulatory  
19 Commission or the information furnished to the Commission  
20 under those applications?

21 A This would be under my responsibility, as well.

22 Q Did you testify you were managing attorney of  
23 CEI from 1964 to '72?

24 A Yes.

25 Q And would your duties have been comparable to those

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1 as corporate solicitor?

2 A I had the same duties as managing attorney, as I  
3 had as corporate solicitor and also as general attorney.

4 During the period I was managing attorney of the  
5 legal department, I also had reporting to me the claims  
6 section and the real property section.

7 Q And to whom did you report as managing attorney?

8 A Lee C. Howley, Vice-President and General  
9 Counsel.

10 Q Are any of the position you have held designated  
11 as positions of officers with CEI?

12 A No, they are not.

13 Q Did you prepare or review the answers to the  
14 so-called 20 questions propounded by the  
15 Attorney General with respect to any of the applications  
16 which are the subject of this proceeding?

17 A Yes.

18 Q With respect to all or less than all?

19 A I can recall, certainly, the Perry applications.  
20 I am fairly certain of the Perry applications. I can't  
21 recall Davis-Besse 2 and 3. And I'm also not sure about  
22 Beaver Valley 2. Or Davis-Besse 1.

23 In any event, some one in reporting to me  
24 would be responsible in-house for preparing those  
25 answers, of course, with the assistance of outside counsel,

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1 as well.

2 Q Am I correct that you can't recall with respect  
3 to the Davis-Besse 1 and Davis-Besse 2 and 3, or was  
4 it only Davis-Besse 1 that you can't recall?

5 A I can't recall with regard to either one of  
6 chem. And the portions that -- well, that is the best  
7 that I can recall at the moment.

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ari 1 Q Do you know whether you reviewed certain parts of  
2 either of those sets of answers to the 20 questions for  
3 the Davis-Besse 1, and Davis-Besse 2 and 3  
4 applications?

5 A I can't recall.

6 Q Yesterday you testified that CEI had approached  
7 the Municipal System, offering interconnection on several  
8 occasions.

9 Would you have been referring to Mr. Lindbeth's  
10 offers in 1962 and '63, and Mr. Besse's offers in 1965 and  
11 1966?

12 A Yes, those were among the references.

13 Q What other references were there?

14 A Well, in addition to those letters, of course,  
15 we appeared at council meetings concerning the proposed  
16 construction of the 86 megawatt unit. And then a little  
17 bit later, the proposed constructions of the three combustion  
18 turbines at which we would have repeated those orally.

19 Q Would the -- when would this have occurred? Can  
20 you give us a rough time frame?

21 A Well, from '62, and then I think the last Besse  
22 letter -- that was maybe '67.

23 Then, as I say, it was in 1968 when the Burns  
24 and Rowe report recommended as -- that the City install and  
25 acquire three combustion turbines. So from '62 to '68.



1 Q Did these offers you have just referred to as  
2 being an addition to the letters, differ in terms of  
3 conditions from the offers contained in the letters?

4 A No, they were essentially the same.

5 Q Was it CEI's official policy as late as 1969  
6 that there would be no interconnection with the Municipal  
7 System without a rate increase by the Municipal System?

8 A Yes, as reflected in the letters from Mr.  
9 Lindseth and Mr. Besse.

10 Q When was the decision made within Cleveland  
11 Electric Illuminating Company to go forward with low  
12 voltage 11 kV load transfer service?

13 A Well, we decided to go forward and study the low  
14 voltage load transfer service early in 1969, as I testified,  
15 to enable them to do maintenance work for the installation of  
16 air pollution control facilities.

17 Then when the system outage or a substantial  
18 part of the system was out, the Municipal Light System  
19 between Christmas and New Year's in 1969, it was decided to  
20 go forward with the load transfer service to help the  
21 customers of the Municipal Light Plant.

22 Q Isn't it the fact that in June of 1969, CEI had  
23 settled on load transfer, had done the engineering work  
24 and was then contemplating a September 15 date for the  
25 implementation of load transfer service?

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1           A       That sounds about right. The work had been  
2 completed, but then nothing happened through the fall  
3 there until the outage during the holidays in which those  
4 plans were dusted off or put into use by February 7.

5           Q       Well, is it safe to say, then, that a decision  
6 had been made to proceed by load transfer service before  
7 the Christmas outage and before the lights went out?

8           A       This was studied, and we had decided to provide  
9 this assistance while they did the work on the air pollution  
10 control.

11                   But, of course, that was up to a certain point,  
12 and then, as I say, nothing happened during the fall of '69,  
13 until the outage, and then, of course, these plans were --  
14 we decided to proceed with them.

15                   The City decided also to proceed. This was a  
16 mutual thing.

17           Q       Is it then your testimony that the decision had  
18 been made to provide what the company referred to as load  
19 relief to MELP through low voltage transfer service rather  
20 than through a 138 kV interconnection as early as June of  
21 1969?

22           A       This was the first phase of the three-phase  
23 program that I talked about. Even when -- this was part  
24 of the program even when it was being considered for taking  
25 certain of their units out for the installation of air

1 pollution control facilities.

2 Q Sir, if the decision was made prior to the time  
3 the lights went out, I'm not sure that I understand your  
4 testimony concerning the two-year lead time and the fact  
5 that it was impossible to wait for those two years when the  
6 lights were already out in making the decision of 11 kV service  
7 as opposed to the high voltage permanent interconnection?

8 MR. BUCHMANN: Your Honor, I object, simply to  
9 the "as opposed to" in this sentence. The witness testified  
10 over and over again that that was a three-phase program.

11 MR. CHARNO: I believe the witness testified on  
12 direct that the reason the 138 kV interconnection was not  
13 practical and that they decided on 11kV service was  
14 because the lights went out and MELP needed the power  
15 immediately, and they couldn't wait for two years.

16 CHAIRMAN RIGLER: What is your question now?

17 MR. CHARNO: My question is if the decision was  
18 made before the lights went out, then what impact does the  
19 two-year lead time have on the making of that decision?

20 MR. BUCHMANN: I have no objection to that  
21 question.

22 THE WITNESS: Well, the lead time would have an  
23 impact at several points in time:

24 One in July of -- whenever that date was in  
25 '69.

1 We also had a lead time to be concerned with  
2 in December of '69 and January of '70.

3 And you also had a lead time to be concerned with  
4 in March of '72, when the temporary 69 kV interconnection  
5 was ordered and you had a two-year lead time from the  
6 January 11, 1973 order of the Federal Power Commission.

7 MR. CHARNO: Could I have my question and the  
8 answer back, please?

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

11 MR. CHARNO: I move to strike the witness'  
12 answer as nonresponsive. The question was what impact, not  
13 when or the difference -- when might there be impacts  
14 from lead time.

15 CHAIRMAN RIGLER: Granted.

16 THE WITNESS: Would you read the question again?

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

19 MR. BUCHMANN: May I ask what decision is being  
20 referred to?

21 MR. CHARNO: The decision that you objected to my  
22 including in my question between 11 kV service and 138 kV  
23 interconnection.

24 MR. BUCHMANN: Then I renew my objection, because  
25 there was no such decision.

1                   CHAIRMAN RIGLER: Explain that one more time,  
2 Mr. Buchmann.

3                   MR. BUCHMANN: The question is in effect why  
4 did you -- as originally phrased, why did you decide  
5 to do 11 kV load transfer as opposed to 138.

6                   The witness clearly testified they went forward  
7 at that time with the 11 kV because they needed it, but  
8 they had not decided not to have a 138.

9                   On the contrary, that was phase three of the  
10 same decision. It is in evidence.

11                   MR. CHARNO: That is not my recollection of the  
12 witness' testimony at all.

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CHAIRMAN RIGLER: Was this yesterday's testimony?

MR. CHARNO: Yes, we are getting a transcript.

CHAIRMAN RIGLER: We better go to the transcript and resolve this dispute before the Board rules.

MR. BUCHMANN: There is an exhibit in evidence about the three phases.

CHAIRMAN RIGLER: I recall that, Mr. Buchmann. I'm not sure that is necessarily inconsistent with the question posed by Mr. Charno.

I do recall the testimony relating to a three-phase program.

MR. BUCHMANN: On 10539 of the transcript the Witness says, "And we were able to energize the load transfer point early in February 1970. I might say this was part of a three-phase program. Phase One was a temporary load transfer service. Phase Two was to be a firmer load transfer arrangement, and Phase Three was to be a permanent interconnection between the two systems."

MR. CHARNO: On 10541, the question was "Why go through these steps? Why not go directly to a permanent interconnection?"

He answered, "A permanent interconnection was not possible in the time required. At that time the lead time on equipment for a permanent interconnection was something in the order of two years, 30 months, something like that."



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1 "Question. And the lights were already out?

2 "Answer. That's correct."

3 CHAIRMAN RIGLER: I see the point Mr. Charno  
4 is driving at.

5 MR. BUCHMANN: I have no objection to the  
6 inquiry on this subject. Only to the inference in the  
7 question that this decision meant they decided to do 11 kv  
8 and not to do 138 kv.

9 That is my only objection.

10 CHAIRMAN RIGLER: Mr. Charno's question is,  
11 why didn't they go directly to the 138 kv, because at the  
12 first consideration of the interconnection the lights were  
13 not out at that time; is that correct?

14 Is that what you are driving at, Mr. Charno?

15 MR. CHARNO: That is.

16 CHAIRMAN RIGLER: Can you answer that question?

17 THE WITNESS: I will try. The original question  
18 was to provide service for this work that was to start  
19 in a period of months for the air pollution control  
20 facilities.

21 And it was anticipated that that would be of a  
22 short duration and no longer than it took to get the three  
23 combustion turbines into service.

24 The other reasons, the engineering and the  
25 design of a 138 kv interconnection had not been completed

1 at that time in 1969.

kwg 2 CHAIRMAN RIGLER: At what time in '69.

3 THE WITNESS: Well, you had a date before September.  
4 Actually, at no time in '69, but the date in '69, that  
5 Mr. Charno referred to go forward with the load transfer  
6 service.

7 Have I answered your question?

8 BY MR. CHARNO:

9 Q Mr. Hauser, was there any reason that preparations  
10 to install 138 kV permanent interconnection did not  
11 then begin in 1969?

12 A Yes.

13 Remember. I said before that the plans were  
14 worked up to that point and then nothing happened until  
15 the outage in December of 1969.

16 There just wasn't any activity by the City,  
17 the discussions --

18 CHAIRMAN RIGLER: I thought that testimony  
19 related to the load transfer and not to the 138.

20 THE WITNESS: That would be applicable to the  
21 138 kV as well during that period of time.

22 CHAIRMAN RIGLER: Are you saying that nothing  
23 went on or that some plans had been made and then they were  
24 shelved for awhile, concentrating now on the 138 kV.

25 THE WITNESS: During this period nothing happened

bw 1 with regard to the 69 or the 139 k7.

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1 CHAIRMAN RIGLER: So there were no initial plans  
2 formulated? There were for the load transfer, but  
3 nothing was done for the 69 or 138?

4 THE WITNESS: Certainly nothing for the 69 and  
5 the 138 kV, there was some very rudimentary concepts  
6 developed. But certainly they weren't very far along on the  
7 138 kV.

8 CHAIRMAN RIGLER: That was the question that took  
9 us down this track. Why not? Why was nothing more done  
10 on the 138?

11 THE WITNESS: There was no interest shown during  
12 this period on behalf of the City to move forward from  
13 that point.

14 BY MR. CHARNO:

15 Q In the testimony you just gave concerning the  
16 138 kV permanent interconnection, would that be an apt  
17 description of what you characterized this morning as starting  
18 negotiations on a 138 kV permanent interconnection in 1969?

19 A Yes.

20 Q If your testimony should be in conflict with the  
21 answers to the 20 questions that CEI submitted under the  
22 various applications, which ones should we follow?

23 A I would say that you should follow what I have  
24 just testified to.

25 Q So that if the Davis-Besse 1 set of answers to the

1 20 questions said that you had not received a request  
2 for a permanent interconnection or 138 kV permanent inter-  
3 connection in 1969, or omitted listing such a request  
4 when you were enumerating all of the requests you had  
5 received, that would be an error in the answers to the 20  
6 questions.

7 MR. BUCHMANN: I'm objecting. You're asserting  
8 that is inconsistent with what he said.

9 MR. CHARNO: I asked the question I asked.

10 THE WITNESS: No, I don't think so. As I  
11 said, phase three was a part of this program, and this  
12 developed with regard to the 138 kV over a period of years,  
13 even, for example, in the fall of 1971.

14 The City stated that they were probably more  
15 interested in a different type of firm load transfer  
16 service than a 138 kV interconnection because the estimated  
17 costs at that time were something like \$3-5 million.

18 I think I said '71. That should be 1970.

19 And then -- it should be 1970.

20 And then the next thing that happened was that  
21 Mr. Hinchee became commissioner of Light & Power and asked  
22 to be brought up to date on the 138 kV interconnection, what  
23 had gone on before, and then there was that meeting in April  
24 of 1971.

25 CHAIRMAN RIGLER: Mr. Charno, do you have the question

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1 and response from the 20 questions?

2 MR. CHARNO: Yes, I do. I don't have multiple  
3 copies, unfortunately.

4 CHAIRMAN RIGLER: How long is it?

5 MR. CHARNO: It is one page. Perhaps we would  
6 get several copies run.

7 MR. REYNOLDS: What page is it?

8 MR. CHARNO: D-20 of Exhibit NRC 152.

9 BY MR. CHARNO:

10 Q As I understand your testimony, Mr. Hauser, you  
11 had been requested to provide a permanent interconnection  
12 at 138 kV, and that in 1969 a three-step program was  
13 decided upon to grant this request; is that correct?

14 A I think it would be more accurate to state that  
15 it was decided to pursue negotiations on a three-phase  
16 program, would be a little more accurate.

17 Q Had a request for a permanent interconnection  
18 been made in 1969?

19 A Certainly I considered it to be a request. We  
20 didn't have a letter from the mayor, Mr. Stefanski, will  
21 you provide a 138 kV interconnection.

22 They first came to us to talk about helping them  
23 install the air pollution control facilities, and then we  
24 talked about that continuing for the entire period.

25 And we would have to then talk about phase two

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1 and then it was also we will talk about phase three, a  
2 permanent interconnection.

3 Do you know, I think both --- I would like to  
4 see that, but I think we could both be right. I'm  
5 basing my answers again on my personal knowledge.

6 Q The 11 kV continuing for the whole period, I  
7 believe you said in your last answer?

8 A The first phase, this was true in the summer  
9 or fall of 1969.

10 Q What whole period do you have reference to in  
11 that answer?

12 A The original period that was contemplated to  
13 provide service while they put in the air pollution control  
14 equipment.

15 Q Didn't you testify just previously that was a  
16 very brief period?

17 A Yes. It was only -- of course, as it turned out,  
18 it was a brief period because it was only between February  
19 of 1970 until May of 1970, and there were changes that  
20 were made in providing load transfer service, and there  
21 were really changes until they more or less became  
22 solidified around March, May of 1971, and then 1972, and then  
23 the load transfer points remained constant until they were  
24 terminated, more or less constant until they were terminated  
25 in May of 1975.

1 Q Could you describe, sir, which period was the brief  
2 period you just referred to? Just give me the dates.

3 A We knew that the mobile substation that was  
4 to be utilized at the Collinwood substation would be  
5 required for our use during the summer and late spring of 1970.

6 Q So what are the dates of the brief period you  
7 referred to? The spring and summer of 1970?

8 A No. We didn't start service until February of  
9 1970. And we had to make changes, as it turned out -- I  
10 think it was in mid-May of 1970. That was the actual  
11 brief period, but even before that, say in this date in 1969,  
12 we knew that if we had started in, say, October of 1969  
13 to provide this assistance for the installation of the  
14 equipment that we would need that mobile substation in --  
15 before the summer of '70.

16 But as I recall, and I can't be any more  
17 specific, there were a couple of other points maybe that  
18 had to be modified, too, other than the one I referred to.

19 Again we have a system peak and possibly the  
20 cables that could be used during the winter months would be  
21 so loaded that they couldn't continue to provide that  
22 service during the summer peak.

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MR. BUCHMANN: What is it you showed the Witness?

2 MR. CHARNO: The Witness has been handed a copy  
3 of page D-20 of NRC Exhibit 152.

4 THE WITNESS: Oh, okay.

5 BY MR. CHARNO:

6 Q Mr. Hauser, can you tell us whether that lists  
7 all requests for interconnection and/or coordination by  
8 CEI between the period 1960 and the date that these answers  
9 were filed, which is March of 1971?

10 A Let me try to answer it this way. And I think  
11 this will explain it for us.

12 This reference here is to letters, I think, of  
13 Mr. Stefanski and possible Mr. Turkel in January of 1970,  
14 possibly they are already a part of the file, although  
15 I can't -- the record, but I can't be sure of that.

16 We had talked about a personal interconnection  
17 before we received these letters in January of 1970.

18 I can't recall of any similar letter being  
19 received in the period of your dates.

20 As I say, it was prior to that date we had,  
21 the Lindseth letters and Besse letters, offered an inter-  
22 connection with the City, but until 1969, there was no  
23 interest expressed in an interconnection of any kind with  
24 CEI, and then these discussions and that is what they were.

25

1 began in '69.

bx2 2 So that this -- okay. Did I answer your question?

3 MR. VOGLER: Can I have his last question  
4 back?

5 (Whereupon, the reporter read the  
6 record as requested.)

7 BY MR. CHARNO:

8 Q Is there some reason you're omitting the  
9 expressions of interest by Mayor Locher in 1966 in an  
10 interconnection with CEI?

11 A I'm not familiar with the expressions of Mayor  
12 Locher.

13 Q Isn't it true that Mr. Besse in 1966 wrote a letter  
14 in July to Mayor Locher in response to Mayor Locher's  
15 expressions of interest in an interconnection with CEI?

16 A I think that is right. I'm not so sure it was an  
17 interconnection with CEI. I think maybe it was an inter-  
18 connection with Painesville and Orrville, rather than CEI.

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ES 32

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arl 1 Q Does seeing page D-20, which is before you,  
2 refresh your recollection as to whether or not you reviewed  
3 the answers to the 20 questions with respect to Davis-Besse 1?

4 A No, it doesn't and as I indicated, that answer and  
5 my testimony are consistent. While we have been talking here,  
6 I have found the letter of January 15, 1970 from Mr.  
7 Stefanski to Mr. Howley, and in the second last paragraph  
8 on page 2, it says, "In addition, the City wishes to  
9 memorialize its understanding with CEI that this temporary  
10 tie-in arrangement is but the first of a three-phase  
11 project between CEI and the City which, when completed,  
12 will provide a permanent tie-in."

13 Then the next sentence, "The City understands  
14 further that to this end, CEI has pledged its good faith  
15 and has committed itself to continuing negotiations with  
16 the City in order to effect such a permanent tie-in between  
17 our respective facilities."

18 I'm not sure that is a part of the record yet or  
19 not. Would you like to look at it?

20 Q Would you consider that language you just quoted  
21 into the record to constitute not only a request, but a  
22 confirmation of a request for a permanent interconnection?

23 A Yes.

24 Q Is there any reason that wasn't listed in your  
25 answer to question 13? Your answer states, if I may --

1           A       It refers to this as January 1970, and I have said  
2 that this is the first written request that we had. We had  
3 talked about a permanent interconnection in 1969.

4           Q       Let me ask you first if the answer to question 13  
5 was taken to be only written requests for interconnection, and  
6 that all was interpreted in that context to mean all written  
7 requests?

8           A       I would answer Question 13 today the same way,  
9 the same as it was, whenever it was.

10          Q       Let me go further then.

11                   The answer says the City of Cleveland,  
12 Department of Public Utilities, made a request to the  
13 Applicant for temporary switching and load transfer  
14 service capability service in January 1970.

15                   The Cleveland Electric Illuminating Company  
16 responses, evidenced by its rate filing with the Federal  
17 Power Commission, identified as FPC No. 7, herein referred  
18 to in answer to question 8.

19                   There have been no other requests for service.

20                   Now would you say that that answer indicates a  
21 request for a permanent interconnection, as opposed to  
22 temporary switching and load transfer service?  
23  
24  
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1           A       It possibly could have been phrased better.  
2           It does refer to FPC number 7 which referred to the latter  
3           agreements which again talked about Phase 3 as a permanent  
4           interconnection.

5                   CHAIRMAN RIGLER: There is nothing in the answer  
6           that refers to a three-phase program, is there?

7                   THE WITNESS: No, there isn't.

8                   MR. SMITH: Were are you picking up this  
9           language "permanent interconnection"?

10                   MR. CHARNO: The Witness , quoted it out of a document  
11           tat he had before him that -- is it your testimony that that  
12           document that you quoted previously was the basis for the  
13           company's answer to question 13?

14                   MR. REYNOLDS: I will object to that.

15                   MR. BUCHMANN: May I have that read back?

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

18                   CHAIRMAN RIGLER: Which document?

19                   MR. CHARNO: The document in January of 1970.

20                   CHAIRMAN RIGLER: Overruled.

21                   THE WITNESS: I was trying to explain why the  
22           answer to Question 13 was consistent with the testimony  
23           that I have given previously here. And, as I point out, the  
24           answer refers only to the load transfer service.

25                   The question refers to an interconnection.

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It speaks for itself.

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CHAIRMAN RIGLER: That is nonresponsive.

3

BY MR. CHARNO:

4

Q Was the January 1970 letter, which you quoted,

5

the basis for the company's answer to Question 13?

6

MR. REYNOLDS: I will object.

7

CHAIRMAN RIGLER: Overruled.

8

MR. REYNOLDS: The Witness has already indicated

9

he has no recollection of preparing the answer to this

10

question and, therefore, I don't know that he is in any

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position to answer whether or not that letter was the basis

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for it.

13

CHAIRMAN RIGLER: I thought he indicated he had

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supervisory authority over the personnel preparing

15

the answers.

16

MR. REYNOLDS: I don't believe that was his

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testimony. I believe he had no recollection --

18

MR. BUCHMANN: Yes, he did.

19

CHAIRMAN RIGLER: Which is it, Mr. Hausen?

20

THE WITNESS: I have no personal recollection.

21

The response to this, would be under my supervision.

22

MR. REYNOLDS: I guess we better have the

23

question read back. I misunderstood him, I'm sorry.

24

(Whereupon, the reporter read from

25

the record, as requested.)

b73 1

THE WITNESS: I don't know.

2

BY MR. CHARNO:

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Q Mr. Hauser, do you have before

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you any other documents dated January 1970 which might

5

deal with requests for interconnection and/or coordination

6

from the municipal system to Cleveland Electric Illuminating

7

Company?

8

MR. REYNOLDS: Let me have that again, please.

9

(Whereupon, the reporter read

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from the record, as requested.)

11

THE WITNESS: Yes. Using those terms very

12

broadly.

13

BY MR. CHARNO:

14

Q Well, if the question was too broad, let me

15

narrow it a bit.

16

Do you have any other documents dealing with

17

temporary switching load transfer services or a permanent

18

interconnection in that time frame?

19

A Yes. There is one dated January 2, 1970, which

20

is a memorandum or a letter to Carl B. Stokes, Mayor, from

21

Mr. Arnold Turkel, Executive Commissioner of the Administration

22

Department of Public Utilities.

23

MR. CHARNO: Could we take a brief break at this

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time to allow us to examine that letter, or we can

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just go over it.

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CHAIRMAN RIGLER: Off the record.

(Discussion off the record.)

(Recess.)

arl 1 CHAIRMAN RIGLER: I may have to interrupt.

2 BY MR. CHARNO:

3 Q Immediately before the break, you mentioned a  
4 letter from Mr. Turkel to Mr. Stokes. That was not a  
5 communication to CEI, was it?

6 A No, it was not.

7 Q Are you aware of any other communication in  
8 January 1970 which requested interconnection or coordination  
9 which was addressed from the City of Cleveland system  
10 to the Illuminating Company?

11 A I can't recall that I am.

12 Q Sir, are you aware of a July 19, 1966 request  
13 for interconnection again from the City of Cleveland system  
14 to the Illuminating Company?

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

17 THE WITNESS: I don't remember.

18 BY MR. CHARNO:

19 Q Would it refresh your recollection if I indicated  
20 that request was made in writing by Mr. Demelto,  
21 D-e-m-e-l-t-o, to Mr. Besse?

22 A No.

23 Q Did you just testify earlier that there was  
24 some interest in an interconnection between Painesville-  
25 Orrville and the City of Cleveland in 1966?

1           A       I couldn't pin it down to a specific year. But  
2 some time between '62 and '68, there were some discussions  
3 about such an interconnection.

4           Q       That well might not have been in 1966?

5           A       Could have been, right.

6           Q       When representatives of the City first approached  
7 the Illuminating Company concerning assistance in removing  
8 generation in order to install precipitators, did they  
9 request load transfer service?

10          A       I don't really know. I don't think so. I think  
11 they just asked can you help us solve this problem.

12          Q       Do you recall whether load transfer service was  
13 something that was initiated -- initially suggested by the  
14 Illuminating Company to the City's representatives?

15          A       I don't know.

16               MR. REYNOLDS: I didn't hear that answer, I'm  
17 sorry.

18               THE WITNESS: I don't know.

19               BY MR. CHARNO:

20          Q       If a 138 kV interconnection had been begun  
21 in 1969, would it have been necessary in 1972 to install a  
22 temporary 69 kV interconnection?

23          A       I don't know. As I said, the load time, as I  
24 understood it, was two years to 30 months.

25          Q       So that if such an interconnection had been begun



ar3

1 in June of 1969, it would have been completed by March of  
2 '72?

3 A Possibly.

4 Q Sir, yesterday you testified that the reason  
5 that MELP's requests for load transfer service were referred  
6 to you were principally so that a determination could be  
7 made whether the MELP system could handle its own load, and  
8 whether CEI could provide the service requested by MELP.  
9 Is that correct?

10 A Yes.

36 11 Q Were there any other reasons, in addition to  
12 that, that you were contacted?

13 A Yes, I think I also said that I was the person  
14 in CEI to coordinate day-to-day activities involving the  
15 City of Cleveland and CEI.

16 We were also involved in litigation with the  
17 City of Cleveland in various forums. And the knowledge of  
18 matters involving CEI and the Municipal System.

19 Q With respect to your function as coordinator  
20 of the day-to-day activities involving MELP and CEI,  
21 what was it about those activities that required you to be  
22 in a position to give permission to activate load transfer  
23 service?

24 A Would you read the question again?

25 Q Let me withdraw it and try to ask it a bit

1 more cogently.

2           What was it about your activities as coordinator  
3 of the day-to-day relations of MELP and CEI that required  
4 you to be in a position to permit activation of the load  
5 transfer service?

6           A       I'm still not sure I understand your question.

7           Q       You have given us one of the reasons that  
8 these requests for activation of the load transfer  
9 service being referred to you was the fact that you  
10 coordinated activities between MELP and CEI.

11           What about your coordination required you to  
12 pay on activation of the load transfer?

13           A       This was one of my jobs as coordinator and also  
14 as a lawyer representing the CEI in matters involving  
15 Cleveland and the Municipal Light Plant.

16           Q       What aspect of the litigation required you to be  
17 in the position to give permission to activate the load  
18 transfer service?

19           A       Well, one, remember, the litigation started in  
20 1971, both before Common Pleas Court, Cuyahoga County, and the  
21 Federal Power Commission, and the issues among the parties  
22 that were raised even before the Federal Power Commission  
23 rulings or orders.

24           We, of course, had filed FPC No. 7, and that was a  
25 schedule that was applicable and certainly we wanted to make

1 certain that we complied fully with that rate schedule  
2 and later with the orders of the Federal Power Commission.

3 Q Is it your testimony then that it was necessary  
4 for you to be informed and give permission for the activa-  
5 tion of load transfer in order to comply with the schedule  
6 that was on file with the Federal Power Commission, and  
7 subsequently to comply with the orders of the Federal Power  
8 Commission?

9 A Certainly that was a reason why I was given  
10 the job of coordination.

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1 Q What aspect of either the schedule or the FPC  
2 orders specifically bears upon the question  
3 of whether or not load transfer should be activated?

4 A Again, principally as to whether or not CHX  
5 could provide the service without adversely affecting the  
6 service to its customers and whether or not the service  
7 was, in fact, required by the municipal system.

8 Q Is there anything other than that which you have  
9 characterized as the principal reasons?

10 A Certainly, during a part of the period from ---  
11 a good part of the period between 1970 and 1975 and, in  
12 fact, to date, was the fact that the municipal system was  
13 not paying bills for the service that we provided.

14 That was another factor.

15 Q And that was taken into account in  
16 determining whether or not to activate the load transfer  
17 service?

18 A Yes.

19 Q And that began at what period in time?

20 A Well, almost from the beginning, they became  
21 delinquent.

22 Q At what point did that become a factor in  
23 determining whether or not to activate the load transfer  
24 service?

25 A Again, almost from the beginning and continued

S37  
bwl

b2 1 throughout most of the period.

2 Q Did CEI refuse to activate the load transfer  
3 service, based upon nonpayment at any time?

4 A No.

5 Q Mr. Hauser, isn't it true that -- first, let me  
6 ask you, who requested permission of you to activate the  
7 load transfer service, what person within CEI?

8 A It would be one of a number of operating  
9 personnel who would advise of a request from their counter-  
10 parts at the Municipal Light Plant.

11 Q Shortly after the time that you were advised  
12 of such a request, wasn't that operating person within  
13 CEI also to supply you with a statement as to whether the  
14 MELP system could handle its own load and whether CEI  
15 could provide the service that was requested?

16 A This was information that if they didn't have  
17 when they contacted me, I would ask them what  
18 situation was and what was the situation on CEI system.

19 Q I'm trying to remember your testimony. Did you  
20 testify you had an engineering background?

21 A No, I do not.

22 Q What factors did you take into account, other  
23 than the information supplied you by the operating personnel,  
24 when you decided whether or not to activate the load transfer  
25 service?

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1           A       Well the FPC Number 7 and the orders of the  
2 Federal Power Commission.

3           Q       And the impact of those is as you have previously  
4 testified. Is there a further impact as to which you  
5 have not yet testified?

6           A       If I understand you right, the only other one  
7 I can think of was the two instances, one in December of  
8 1972 and in January of '73, when we were requested by the  
9 City to provide service over and above the load transfer  
10 service and which I think I said at that time we had no  
11 applicable order of the Commission or agreement with the  
12 City.

ES37 13

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arl, 1 Q Yesterday you testified that you had terminated  
2 the load transfer service after filing a notice of termina-  
3 tion with the Federal Power Commission.

4 Was there any other time that you terminated the  
5 load transfer service that you recall?

6 A If I said that, I misspoke myself.

7 Q It was probably me.

8 A Because after we filed the notice of termination  
9 with the Federal Power Commission, we extended it for  
10 periodic periods through the summer and fall of 1971, and  
11 then when we didn't extend whatever the termination date  
12 was in December, the Federal Power Commission suspended for  
13 five months our notice of termination. And then the May  
14 orders and the other orders which required us to continue  
15 the load transfer service until May of 1975.

16 Q Prior to the time you file the notice of  
17 termination, was there any time at which you terminated  
18 service over a load transfer point which was not at  
19 MELP's request?

20 A I can't recall that we did that. We threatened  
21 in April to do that, but I can't recall. As I said,  
22 there were some changes in the load transfer service that  
23 was provided during that period. But I can't recall of  
24 any instance in which we terminated service without  
25 consulting with the Municipal Light Plant.

1 Q Do you recall at one point asking your operating  
2 people if they could provide a substantiation for  
3 termination of specific service?

4 MR. REYNOLDS: May I have that back again?

5 MR. CHARNO: I will withdraw it and re-ask it.

6 BY MR. CHARNO:

7 Q Do you recall asking your operating people if  
8 they could provide an operating rationale sufficient to  
9 substantiate the discontinuation of service?

10 A I could have, yes.

11 As I recall, that was when they were talking  
12 about, for example, doing the work on Fox Substation, as I  
13 referred to. They would ask can we terminate service.

14 Again I asked them to justify, or could they  
15 justify that this was required for service to our customers.

16 Q Can you tell us when in the period between May  
17 and September of 1973 you began to worry over the state of  
18 your coal stockpiles?

19 A Certainly. During the period of the -- well, we  
20 worried about our coal stockpiles all during that period.

21 As I recall, at times it was more critical than  
22 others. I think the most critical period was in the middle  
23 of that strike. At the beginning of the strike, of course,  
24 we had a full stockpile and these things don't happen  
25 overnight. We would order shipments of rail coal to have

1 as much on hand as possible. And usually it would take  
2 the strikers some time to get organized, to interfere with  
3 our operation, and then in the middle of the strike, after  
4 it was going on for some period of time, as I recall,  
5 it was the most critical period.

6 Then we go to court and we get injunctions to  
7 open up access to the plants and our properties so that  
8 towards the end of the strike, our situation had been  
9 alleviated.

10 It is still not an ideal situation whenever  
11 you are on strike.

12 Q Did CEI fear that it might be unable at some  
13 point to meet the requirements of its customers?

14 A Yes.

15 Q If that was the case -- first, are you aware  
16 of an offer by MELP to exchange power with you on July 23,  
17 1973?

18 A Yes.

19 Q If you feared your ability to supply power to  
20 your own customers, why would you be adverse to accepting an  
21 exchange agreement, if, as, and when available basis?

22 A We didn't seriously consider Mr. Kudukis'  
23 offer. Remember, we were supplying power to the Municipal  
24 System through most of the strike, and we were buying large  
25 blocks of power from our interconnections. Really, we didn't

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take that seriously.

Q Was it your testimony that the City of Cleveland would have been unable during the period of the strike to supply you power on an exchange basis?

A Yes.

S39  
bwl

1 Q Throughout that period at no time could they  
2 have supplied power on an exchange basis?

3 A I can't recall -- the answer is no. They were  
4 taking power from us for that entire period and,  
5 also, remember the 69 kV interconnection was not completed  
6 until the summer after that in '74, and frankly, I'm not  
7 sure that power could have been supplied to us over that,  
8 anyway.

9 So, one, from the standpoint of their own  
10 generation and their ability to get power to us, they  
11 couldn't supply us.

12 CHAIRMAN RIGLER: That is something that has  
13 been on my mind since yesterday.

14 During this period, in essence, you were supplying  
15 the City with power obtained from outside the CEI system, were  
16 you not?

17 THE WITNESS: As Mr. Bingham says, you can't trace  
18 the kilowatts.

19 CHAIRMAN RIGLER: I understand that.

20 THE WITNESS: We were supplying the City power  
21 while we were purchasing large blocks of power, as much as  
22 we could purchase.

23 CHAIRMAN RIGLER: Why during periods of the load  
24 transfer arrangement, did you give as your reason for a  
25 delay in furnishing service or an inability to furnish

bw2  
1 service, insufficient power on the CEI system?

2 Why couldn't you have either wheeled for the  
3 City or help them by allowing them to purchase outside  
4 the system and moving that in on some sort of  
5 exchange?

6 THE WITNESS: We were purchasing all of the power  
7 that was available and, as I say, supplying the City during  
8 this period.

9 Again, we --

10 CHAIRMAN RIGLER: I'm not confining it to this  
11 particular period of the strike now. I'm talking about the  
12 entire period of load transfer.

13 I understood from time to time service was  
14 declined on the basis that it would jeopardize CEI service  
15 of its own customers.

16 THE WITNESS: We would and did supply power  
17 to the municipal system when they could not carry their  
18 own load during this period of time.

19 CHAIRMAN RIGLER: That is not my question.

20 THE WITNESS: Try me again, I guess.

21 CHAIRMAN RIGLER: You have indicated that from time  
22 to time you declined to furnish service to the City under  
23 the load transfer arrangement, because it would jeopardize  
24 service of CEI customers, who came first in order of the  
25 CEI priorities.



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1                   Why wouldn't CEI assist Cleveland without  
2 jeopardizing its customers merely by purchasing extra  
3 power from outside its system and either wheeling it to  
4 Cleveland or selling it to it through some other type of  
5 arrangement?

6                   THE WITNESS: We actually did that through most of  
7 that period. We actually did do that.

8                   CHAIRMAN RIGLER: Mr. Buchmann?

9                   MR. BUCHMANN: I don't see how we could wheel,  
10 because we didn't have an interconnection. This is  
11 by definition the time when there was no interconnection.

12                   THE WITNESS: We actually did that. Take, for  
13 example, again, the Fox Substation, that was not a bulk  
14 power supply problem, per se. I can also recall when we had  
15 at Avon Lake, a plant, we had units go out at one time  
16 there, so that we had an imbalance on the system, which was  
17 complicated by transmission capacity, and in the western  
18 end of our system we couldn't.

19                   During the period of the load transfer service, we  
20 did purchase power and, if we could purchase it, they would get  
21 it.

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ar. 1 CHAIRMAN RIGLER: Mr. Buchmann, in response to  
2 your comment, I'm not sure that is a complete answer,  
3 because Cleveland was asking for power over the load transfer  
4 service and if the reason was there is insufficient power  
5 on the CEI system, then whether you call it wheeling or  
6 whether you call it purchase and resale, the power could have  
7 been available, could it not?

8 MR. BUCHMANN: I'm not quarreling with that, but  
9 I wanted to make sure you recall there was a place where  
10 there was no interconnection.

11 CHAIRMAN RIGLER: Yes, but I'm not sure that  
12 entirely answers the concern I expressed, however.

13 MR. REYNOLDS: I might clear it up. You asked  
14 Mr. Hauser the question as to what specific periods of  
15 time during this period we are talking about CEI did not provide  
16 the City of Cleveland with power due to an insufficiency of  
17 power available to CEI.

18 That might clear it up.

19 CHAIRMAN RIGLER: Do we get that from any of the  
20 exhibits? Would that show in Applicant's Exhibit 134?

21 MR. BUCHMANN: Would you get that from Exhibit 134,  
22 Mr. Hauser?

23 THE WITNESS: If that happened, that would be from  
24 Exhibit 134 that refers to in narrative form transactions  
25 between the parties.

1 CHAIRMAN RIGLER: For example, on page 3 of 134,  
2 in the last entry, it says, after reviewing the company's  
3 operations, the City was advised the company would be  
4 able to pick up any additional load for its noon peak.

5 That would be a situation of the type I had in  
6 mind.

7 THE WITNESS: At that time that was again during  
8 the strike and we were buying all of the power that was  
9 available to us and generating everything that we could on our  
10 own system.

11 CHAIRMAN RIGLER: You weren't buying any PASNY  
12 power during that time because that was not available to  
13 CEI?

14 THE WITNESS: No, that was not available to CEI.

15 BY MR. CHARNO:

16 Q Mr. Hauser, were you contacted by the company's  
17 operating people concerning activation of the load transfer  
18 service prior to the commencement of the strike in 1973,  
19 in the month of May?

20 A I think we had a request to activate the load  
21 transfer during that period.

22 Q I'm sorry, I'm not sure you have the thrust of  
23 my question.

24 Were you contacted for permission by CEI  
25 operating personnel prior to May 1973?

ar?

1 A Okay.

2 MR. REYNOLDS: Did you finish the question?

3 THE WITNESS: I think if you will refer to page 3  
4 of Exhibit 134, it shows that from billing period 3-30-73  
5 through 4-30-73, no load transfer service was requested, was  
6 not provided.

7 Then the next entry, 4-30-73 to 5-31, we were  
8 contacted early in the morning on May 2 to reconnect the  
9 load transfer points and they were reconnected.

10 Then they were disconnected on May 13. The  
11 Western Substation load transfer point was reconnected on  
12 May 21.

13 To Clinton Substation, on May 23, and to Arctic  
14 on May 24.

15 Then on May 25 and 29, the City dispatchers  
16 requested that the City be provided additional assistance.

17 Then it goes on, the City was advised that additional  
18 power could not be supplied because of the company's  
19 situation, and then at 12:01 a.m., the utility workers, our  
20 Local 270, went on strike.

21 CHAIRMAN RIGLER: When was that strike finished?

22 THE WITNESS: September 22, 1973.

23 I think that is right. It was September, and I  
24 think 22 is the right date.

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BY MR. CHARNO:

Q Did load transfer service begin in --

CHAIRMAN RIGLER: Look on page 6 at the top entry, which is October -- essentially it is the month of October 1973, when apparently there was no labor dispute and where the 69 kV interconnection was operable.

It indicates that on two occasions during that period, the City was advised that the company couldn't provide any additional service.

Why couldn't the company have assisted by getting power outside of its system and bringing it in to meet the City's needs?

THE WITNESS: Again, if we could, either through outside purchases by CEI, or our own generation, we would have provided the service.

But having purchased all we could, and generating all we could, the exact reason --

CHAIRMAN RIGLER: You are testifying in October of 1973 there simply was no power available which could have been obtained off-system from -- by CEI and transmitted to the City?

THE WITNESS: Yes. I can't recall the specific circumstances, but that is what I'm testifying to.

CHAIRMAN RIGLER: Mr. Buchmann, this October '73 period --

1 MR. BUCHMANN: Isn't it November?

2 CHAIRMAN RIGLER: I guess it is November, yes --

3 THE WITNESS: If I might, Mr. Chairman, refer  
4 you also to the bottom of the page 5 which also covers the  
5 same period.

6 CHAIRMAN RIGLER: Right, there were exchanges back  
7 and forth.

8 THE WITNESS: And we did provide load transfer  
9 service during that period of time.

10 CHAIRMAN RIGLER: My question was going to be  
11 is this load transfer, if we are talking about the 69 kV  
12 connection. You have made the point technically it wasn't  
13 wheeling, if we were talking about load transfer.

14 MR. BUCHMANN: There is the period, if you will  
15 recall, to which the witness has testified, I believe,  
16 and I'm sure the witness will correct me, before completion of  
17 the 69 kV interconnection in accordance with the order of the  
18 Federal Power Commission.

19 Therefore, there is a period where we don't  
20 have a tariff on which to serve them over that.

21 CHAIRMAN RIGLER: You have refreshed my recollec-  
22 tion. Thank you.

23 Of course, if I suppose if you are being asked to  
24 purchase power off system and transfer that through, and  
25 supply that power to the City, it becomes all the more



1 important that the City compensate you promptly because  
2 you are expected to pay your off-system supplier for that  
3 power?

4 THE WITNESS: That is right. They don't give  
5 us credit.

6 BY MR. CHARNO:

7 Q When did CEI first provide load transfer service  
8 to MELP?

9 A I think the date was February 8 of 1970.

10 Q 1970?

11 A Yes.

12 Q So that Applicant's 134 does not cover the first  
13 several years of load transfer service, is that correct?

14 A That's correct.

15 Q Now, between 1970 and 1973, did CEI operating  
16 personnel contact you to obtain permission as to  
17 requests for activation of the load transfer services?

18 A Yes.

19 Q During the strike, did you, and up into the  
20 period of November 1973, did CEI make any approaches on  
21 behalf of MELP to any other utility to secure power for MELP?

22 A No. Again, no. We secured all of the power  
23 that we could to supply our own needs and the Municipal's  
24 needs.

25 Q Did you approach any suppliers of preference

1 power?

2 A No.

3 Q You wouldn't have approached that kind of  
4 supplier for your needs, would you?

5 A We might. I can't recall at the time as to  
6 whether or not we were -- we were trying to get power  
7 from wherever we could. PASNY power would not be available  
8 to us. If TVA, for example, would have had some power  
9 available, just because it was TVA, we wouldn't turn it down.

10 Q Did you, at any point, inform MELP you would be  
11 willing to wheel power if they could find a supplier, that  
12 couldn't or wouldn't supply power to you, you being CEI?

13 MR. BUCHMANN: May I inquire over what you want us  
14 to wheel the power, when we don't have an interconnection?

15 MR. CHARNO: Is the witness simply puzzled?

16 THE WITNESS: Yes, I am.

17 BY MR. CHARNO:

18 Q Would it be possible for you to transmit power  
19 across your system and deliver it across the low voltage load  
20 transfer points?

21 A Yes.

22 Q Did you inform MELP during the period we have been  
23 discussing that you would be willing to do that if they could  
24 find another supplier?

25 A Well, one, we did do that during whatever period

1 we are talking about, whether it is '73 or outside of that.  
2 We did do that.

3 And as I said before, when either our system  
4 requirements called for it or it was needed to supply the  
5 customers of the Municipal Light Plant, we would buy  
6 power and transmit it and deliver it over the 11 kV.

7 Again, as I said, you can't put numbers on these  
8 kilowatts. But we would either, on our own resources, or  
9 other sources of power, obtain power that was required to  
10 meet our needs as well as the Municipal System's.

11 Q Did you inform MELP at any time that you would  
12 be willing to wheel power from another source and deliver  
13 it over the 11 kV low voltage transfer points?

14 A No.

15 Q When is the most recent offer by CEI to acquire  
16 MELP's system of which you are aware, sir, public offer  
17 made formally?

18 A I don't know of any. Of CEI to acquire MELP?

19 Q Yes.

20 A I don't know of any offer to acquire MELP?

21 Q Would your answer be the same if the question  
22 were an offer to discuss the acquisition?

23 A No. Maybe back in '65 or '66, I think maybe  
24 in one of the Besse letters, it was stated that we would --  
25 something to the effect that we would be willing to discuss

1 the acquisition of MELP.

2 Q I believe you testified this morning that you  
3 had offered to sell firm power to the MELP system; is that  
4 correct?

5 A Yes.

6 Q Is there more than one such offer?

7 A We -- I would say yes. The answer is yes.

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Q When was the first such offer?

A In certainly May of 1975, we said that we would offer to sell you anything for a price. And then there have been several offers, and I think there is some correspondence in through --

Q Could we track them through one by one?

When was the second offer, if you can recall?

A I can't recall, specifically.

Q Was there more than two or were there more than two?

A The subject of firm power was discussed and included in correspondence from May of 1975 through really up to the present time.

Q And there have been a succession of offers in that period?

A Firm power was offered. I can't remember when the first schedule or draft of a schedule was submitted by us to MELP. Off-hand I think maybe it was some time in December of '75.

Q Is that in evidence in this proceeding?

A I'm not sure. Maybe some of those December letters were -- I can't recall any schedule as such being in evidence.

Q Can you tell us what the terms and conditions of that offer were?

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The December '75 schedule.

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MR. BUCHMANN: Would it be easier if I found a copy and provided it to you.

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THE WITNESS: It would be easier for me.

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MR. CHARNO: That would be helpful.

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CHAIRMAN RIGLER: Mr. Charno, what time period is covered by this series of questions, going back to the beginning. You are asking about the requests for the sale of firm power?

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MR. CHARNO: That is correct.

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CHAIRMAN RIGLER: From?

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MR. CHARNO: The opening date wasn't specified.

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CHAIRMAN RIGLER: In other words, all that the Witness can recall. That was the intent of my question. Did you understand it that way, Mr. Hauser?

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THE WITNESS: Yes. Firm power was first really discussed at that May meeting.

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Prior to that we were talking as in the inter-connection draft that we submitted on February 7, that referred to emergency power, as I recall, short-term, limited term, maintenance and economy energy.

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It contemplated other possible schedules.

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But the first time I can recall that we talked about firm power was in May of 1975.

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MR. BUCHMANN: Could I direct everybody's attention



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1 to Applicant's Exhibit 97, which is a letter of December 29,  
2 1975, from Mr. Rudolph to Mr. Davis of the City, attaching  
3 a firm power service schedule. That must be the one you  
4 are thinking about. It is in evidence.

5 THE WITNESS: I may say there was some debate  
6 between the City of Cleveland and ourselves throughout the  
7 FPC proceedings as to what the load transfer service was,  
8 whether there was emergency power or maintenance power or  
9 something else.

10 BY MR. CHARNO:

11 Q This morning you testified with respect to the  
12 participation agreement that CEI proposed to MELP, concerning  
13 a right of first refusal to MELP's surplus. Would that  
14 right of first refusal preclude coordination between  
15 MELP and any entity other than CEI, with respect to any  
16 nuclear surplus power that it received under the participation  
17 agreement?

18 A I don't know.

19 Q You indicated the reason for that right of first  
20 refusal was because you were making a sale of power from  
21 your entitlement to the units. You contemplated making  
22 such a sale.

23 Was that correct?

24 A Could I have the question repeated?

25 (Whereupon, the reporter read the

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pending question, as requested.)

THE WITNESS: We contemplated that that entitlement was required to meet the requirements of our retail customers.

BY MR. CHARNO:

Q Hadn't it been agreed that you were going to be made whole for the part of your entitlement that went to the City of Cleveland?

A No.

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1 Q The other CAPCO members weren't going to adjust  
2 the allocations so that -- pardon me.

3 The other CAPCO members didn't agree to adjust  
4 the allocations and the buy-sells so that you didn't come  
5 up power-deficient in order to meet your needs?

6 A No, they didn't agree to that. There was  
7 some discussion that after we had solved our problems with  
8 the City of Cleveland to come back and talk to them.

9 Q You didn't feel you could have some assurance  
10 to go ahead on the basis that you weren't going to come up  
11 power-short?

12 A The way the part of the advantages of being in  
13 the pool is assurance that you are going to get help from  
14 each other.

15 Q I'm asking you specifically with respect to that  
16 portion of your entitlement which would be going to MELP,  
17 didn't you know you were going to be made whole?

18 A We didn't know, but we certainly thought we would  
19 be helped.

20 I mean it hadn't been agreed upon, but we  
21 expected that they would help us.

22 Q Sir, I believe you testified that the participa-  
23 tion agreement provided for wheeling in and wheeling out  
24 of power. Is that your testimony as you recall it?

25 A I don't recall it exactly that way. I think what

1 I said was that CEI would wheel power in and out from the  
2 nuclear units. I think the --

3 Q Would you give me an example of how that would  
4 work, from where to where you would be willing to wheel?

5 MR. REYNOLDS: What would work? Wheeling in  
6 or out, or both?

7 MR. CHARNO: Both.

8 THE WITNESS: Well, of course, we would wheel  
9 the power from the nuclear units to the City of Cleveland  
10 for its own use.

11 BY MR. CHARNO:

12 Q Would that be wheeling in? The terms have  
13 been used by you and counsel. In order to keep the record  
14 straight, perhaps we can define them.

15 A Well, I would say that would be wheeling out from  
16 the nuclear unit. We would also be willing to wheel in back-  
17 up power for that nuclear unit and as we have said, we will  
18 wheel anything from any place to anywhere as long as we would  
19 have equal access to that power.

20 In other words, we won't wheel PASNY power or  
21 anything like it. That was the only limitation that we put  
22 on wheeling.

23 BY MR. CHARNO:

24 Q Now all of these provisions regarding wheeling  
25 are in the participation agreement?

1 A No.

2 Q What provisions are provided for in the participa-  
3 tion agreement?

4 A In the participation agreement, Article 3,  
5 transmission on page 13, 14, 15, 16. Article 3 deals with  
6 this. This does not provide -- a draft does not indicate  
7 that all of the wheeling services that I have just  
8 described --

9 Q Which wheeling services does the participation  
10 agreement indicate would be provided?

11 A Well, Section 3.1, CEI will provide transmission  
12 service on its 345 kV network within its service territory  
13 and will use its best efforts to make mutually satisfactory  
14 arrangements for the use of 345 kV transmission facilities  
15 owned by others and located outside of CEI service territory  
16 to transmit City-owned or unit-purchased power from Davis-  
17 Besse No. 1, Beaver Valley No. 2, Perry No. 1, and Perry No.  
18 2 units to interconnection points as set forth in Section  
19 3.3 and Section 3.3 -- these delivery points would be the  
20 Fox, Harding and Inland Substations of CEI in the proposal  
21 of the City of Cleveland of August, they had proposed  
22 those three delivery points.

23

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1 CHAIRMAN RIGLER: Do I understand the transmission  
2 services being offered were limited to 345 KV transmission?

3 THE WITNESS: In the participation agreement.  
4 Our offer to wheel is not limited to that.

5 CHAIRMAN RIGLER: Where is the broader offer to  
6 wheel that you described this morning contained?

7 THE WITNESS: I think in the -- it began in the  
8 July 22 letter from Mr. Rudolph to the City and then remember,  
9 the series of letters, exchanges between Mr. Hart and myself  
10 that are in the record, as part of his cross-examination and  
11 then there have since those letters -- the subject of wheeling  
12 has been further discussed.

13 MR. HJELMFELT: Might I ask what year?

14 THE WITNESS: 1975.

15 CHAIRMAN RIGLER: I am sorry to interrupt you  
16 but I want to get a fix on what is contained in the  
17 wheeling offer.

18 MR. BUCHMANN: Do you want us to identify those  
19 exhibits for you?

20 CHAIRMAN RIGLER: That would be helpful.

21 MR. BUCHMANN: I direct your attention to  
22 Applicants Exhibit 75, letter of Mr. Rudolph to Mayor  
23 Perk of July 22, 1975 and then the correspondence which  
24 follows after that which would be the -- well it comes in  
25 and out of those exhibits up through at least Exhibit 94 and  
probably later.



eak] 1 CHAIRMAN RIGLER: Suppose the City had some  
2 part of the Perry Units and during a period of small load in  
3 the City's operations, they had an opportunity to sell to  
4 one of the largest partial requirements customers of Ohio  
5 Edison. Does that mean you would help them get that power  
6 from Perry down to that customer of Ohio Edison?

7 THE WITNESS: Yes, the right of first refusal.

8 CHAIRMAN RIGLER: I do.

9 THE WITNESS: Then, yes.

10 CHAIRMAN RIGLER: Suppose they had an opportunity  
11 to sell that power to Bowling Green. You would help to get it  
12 over to the Toledo Edison system for further transmission  
13 to Bowling Green?

14 THE WITNESS: We are not interconnected with the  
15 Toledo Edison Company but we would transmit it on our  
16 system for delivery to Ohio Power or Ohio Edison, both of  
17 which are interconnected with, I think, Toledo and then, of  
18 course, Bowling Green.

19 BY MR. CHARNO:

20 Q To follow up on the Chairman's last question,  
21 what if the City wanted to exchange that power with the City  
22 of Bowling Green. The first question, would your right of  
23 first refusal apply to the exchange of surplus power?

24 A Surplus power to the City?

25 Q That is correct, from the nuclear plant.

eak. 1           A       I hadn't really thought about that until you  
2           asked the question.  The only time I thought about it  
3           earlier was that they were going to sell the power to  
4           someone else for a price and the right of first refusal --  
5           we would be entitled at the same price to buy the power.

6           Q       What if there was a diversity which made it  
7           very profitable for them to exchange power rather than sell  
8           it?

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Would the right of first refusal apply then?

A I hadn't really --

MR. BUCKMANN: I will object, unless there is some evidence of which I'm unaware or there is going to be some about such a situation, because I don't mind pursuing hypotheticals, but I don't understand that one.

CHAIRMAN RIGLER: Well, I will permit clarification, so that we all understand it.

But I think he testified on direct with respect to the scope of the company's policy on wheeling and I think it is important that we understand what the limits and boundaries of that policy are.

I will permit inquiry into that area, but I will permit clarification. What don't you understand about it?

MR. BUCHMANN: I don't know if there is any such situation like that.

THE WITNESS: The question of exchange of power, I hadn't thought about it and no one within the company had thought about it. I don't know what the ramifications of that might be.

MR. REYNOLDS: I would like, since we are asking for clarification my problem is, I'm not sure what is being exchanged on Bowling Green's side. Are we assuming another entity with its own generation, or are we assuming that it likewise purchased some power out of the same nuclear unit?

1 What is being exchanged? That might help clarify the  
2 hypothetical.

3 BY MR. CHARNO:

4 Q Let's make it purely a hypothetical and talk  
5 about another generating system.

6 MR. REYNOLDS: Now, what is the question?

7 BY MR. CHARNO:

8 Q Does CEI commitment to wheel power extend to  
9 the wheeling of power on an exchange basis?

10 A This hypothetical company possibly would have what,  
11 winter peak, and the City of Cleveland would want us to  
12 wheel that power to them in the winter and the City of  
13 Cleveland has a summer peak, that instead of paying for that  
14 power in the winter, the deal would be that the next summer  
15 they would return an equivalent amount of power from  
16 the hypothetical company's surplus generation.

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arl 1 Q Would you be willing to wheel under these  
2 circumstances?

3 A I don't know. I think I would have to talk to a  
4 few people that could explain the ramifications of that  
5 association with our system.

6 Q Going back to the participation agreement that  
7 you testified about a little earlier, was that the document  
8 that was sent on February 27, 1974 to the City of Cleveland?

9 A That's correct.

10 Q Was that also the document that was sent to the  
11 City of Painesville at some point?

12 A Yes.

13 Q Do you recall when that was? I don't.

14 A Yes. It was in my letter to Mr. Cannon of  
15 April 13, 1976, in response to Mr. Pandy's letter of March  
16 26, 1976, both.

17 Q Now was exactly the same draft sent in accompanying  
18 both letters?

19 A Yes.

20 Q Would I be correct in saying this participation  
21 agreement provides for wheeling over your 345 kV system from  
22 specific nuclear units to the City of Cleveland and road  
23 for the City of Cleveland certain of your substations in  
24 the City of Cleveland?

25 A That's correct.

1 Q Does it provide for any other wheeling?

2 A No, I just hurriedly read it. I don't think it  
3 does. My recollection is that it doesn't.

4 Q Was it your testimony that you didn't recall a  
5 request for wheeling from Painesville?

6 A That's right, I don't recall a request. I mean we  
7 have talked about wheeling with Painesville and that we would  
8 provide the same wheeling for Painesville that we would provide  
9 for the City of Cleveland.

46 10 Q Do you recall during the '74 negotiations of the  
11 CEI-Painesville interconnection agreement their request  
12 for a transmission service schedule?

13 A Yes, I think now I do.

14 Q Do you recall Mr. Howley rejecting that  
15 request as being third-party wheeling to which CEI would not  
16 agree?

17 A I think that is right.

18 Q Can you tell us when you changed your policy  
19 with respect to wheeling power for Painesville?

20 A In 1975, essentially at the same time we  
21 changed the policy with regard to the City of Cleveland.

22 Q I can't remember your testimony. Was it your  
23 testimony that prior to 1975, there had been a request  
24 for wheeling by the City of Cleveland?

25 A There had been requests by AMP-Ohio for the benefit



1 of the City of Cleveland. There had been the general  
2 request in for -- that was PASNY power. There were  
3 general requests for wheeling of -- that was actually  
4 contained in the August 3, '73 request to the City of  
5 Cleveland.

6           There might have been others, but those are the ones  
7 I can remember. The only -- I think I also testified that  
8 the only specific request for wheeling was the wheeling  
9 of PASNY power, although there had been some talk about  
10 Richmond, Indiana and Buckeye.

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CHAIRMAN RIGLER: Is this a good break point for the day?

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MR. BUCHMANN: May I inquire whether we expect to finish Mr. Hausser tomorrow?

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MR. CHARNO: Tomorrow is a half day?

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CHAIRMAN RIGLER: Tomorrow is a half day.

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MR. CHARNO: We have not yet seen the documents that underlie Applicants Exhibits 134 and 159. I am not sure how extensive the cross on that is going to be. I have several hours more in general. Mr. Hausser made a large number of general statements.

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MR. HJELMFELT: At present, I think I have at least an hour.

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MR. VOGLER: Staff is going to be dependent upon Mr. Charno. We don't want to cover the same ground twice but we do have substantial cross-examination.

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CHAIRMAN RIGLER: 9:30 tomorrow morning.  
(Whereupon, at 4:30 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., Wednesday, 26 May 1976.)

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