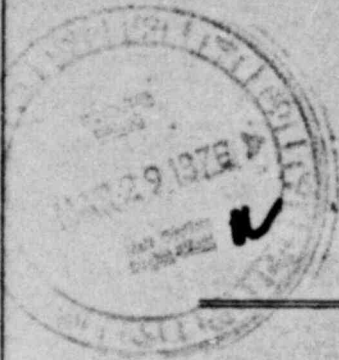


Regulatory Docket File

**NUCLEAR REGULATORY COMMISSION**



**IN THE MATTER OF:**

TOLEDO EDISON COMPANY and  
CLEVELAND ELECTRIC ILLUMINATING CO.

Docket Nos.

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

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

and

CLEVELAND ELECTRIC ILLUMINATING  
CO., et al.

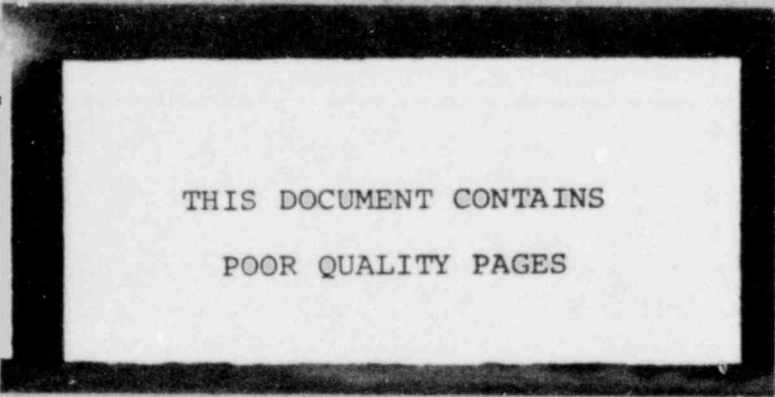
50-440A  
50-441A

(Perry Nuclear Power Plant, Units 1 and 2)

Place - Silver Spring, Maryland

Date - Thursday, 25 March 1976

Pages 7349 - 7469



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

First Floor Hearing Room  
7915 Eastern Avenue  
Silver Spring, Maryland

Thursday, 25 March 1976

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

BEFORE:

- MR. DOUGLAS RIGLER, Chairman
- MR. JOHN FRYSIK, Member
- MR. 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>
<u>Exhibits</u>			<u>For Identification</u>		<u>in evidence</u>
DJ-139-A (Deed and Bill of Sale.)			7367		
DJ-77					7369
DJ-80					7370
DJ-83					7370
DJ-139					7370
DJ-139-A					7370
DJ-146, 147, 148					7371
DJ-598 through 606					7375
C-1 (Map, "Service Areas of Ohio Electric Utility Institute Members.")			7431		
C-2 (Depositor D. Hauser, pp 200, 202, 203, 208, 209)			"		
C-3 (Document from R.J. Farling to R.W. Wynan, 12-18-72)			"		
C-4 (3-page document, City Nos. 12717 thru 12719)			"		
C-5 (Document, City pp. 49028 thru 49032, with final pp. 73409)			"		

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C O N T E N T S

	<u>Exhibits (Continued.)</u>	<u>For Identification</u>	<u>In Evidence</u>
1			
2			
3	C-6 (City No. 72856 dtd 9-30-64)	7431	
4			
5	C-7 (Document, City pp. 72856 thru 72857.)	"	
6	C-8 (Nos. 67576 thru 67583)	"	
7	C-9 (No. 73076)	"	
8	C-10 (73074)	"	
9	C-11 (69033)	"	
10	C-12 (68939)	"	
11	C-13 (78541)	"	
12	C-14 (68564)	"	
13	C-15 (68529)	"	
14	C-16 (72850)	"	
15	C-17 (72910)	"	
16	C-18 (69874)	"	
17	C-19 (68928)	"	
18	C-20 (28128)	"	
19	C-21 (27507)	"	
20	C-22 (3738)	"	
21	C-23 (27469)	"	
22	C-24 (20587)	"	
23	C-25 (20560)	"	
24	C-26 (6868)	"	
25	C-27 (6803)	"	

C O N T E N T S

1	<u>C O N T E N T S</u>		
2	<u>Exhibits (Continued)</u>	<u>For Identification</u>	<u>In Evidence</u>
3	C-28 (6804)	7431	
4	C-29 (27397)	"	
5	C-30 (6508)	"	
6	C-31 (6465)	"	
7	C-32 (12699)	"	
8	C-33 (27828)	"	
9	C-34 (26962)	"	
10	C-35 (4587)	"	
11	C-36 (8786)	"	
12	C-37 (5318)	"	
13	C-38 (12146)	"	
14	C-39 (18951)	"	
15	C-40 (52930)	"	
16	C-41 (5371)	"	
17	C-42 (5391)	"	
18	C-43 (68662)	"	
19	C-44 (4408)	"	
20	C-45 (51980)	"	
21	C-46 (6754)	"	
22	C-47 (27271)	"	
23	C-48 (27385)	"	
24	C-49 (68392)	"	
25	C-50 (6378)	"	

III

C O N T E N T S

	<u>Exhibits (Continued)</u>	<u>For Identification</u>	<u>In Evidence</u>
1			
2			
3	C-51 (28273)	7431	
4	C-52 (72949)	"	
5	C-53 (29289)	"	
6	C-54 (4093)	"	
7	C-55 (27988)	"	
8	C-56 (49168)	"	
9	C-57 (11015)	"	
10	C-58 (68084)	"	
11	C-59 (13941)	"	
12	C-60 (12315)	"	
13	C-61 (4508)	"	
14	C-62 (63393)	"	
15	C-63 (52363)	"	
16	C-64 (12681)	"	
17	C-65 (36094)	"	
18	C-66 (35658)	"	
19	C-67 (67507)	"	
20	C-68 (19663)	"	
21	C-69 (16385)	"	
22	C-70 (1116)	"	
23	C-71 (953)	"	
24	C-72 (24977)	"	
25	C-73 (16470)	"	

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C O N T E N T S

	<u>Exhibits (Continued)</u>	<u>For Identification</u>	<u>In Evidence</u>
1			
2			
3	C-74 (15624)	7431	
4	C-75 (20133)	7469	
5	C-76 (1014)	"	
6	C-77 (1032)	"	
7	C-78 (1033)	"	
8	C-79 (16303)	"	
9	C-80 (16136)	"	
10	C-81 (15571)	"	
11	C-82 (20108)	"	
12	C-83 (21390)	"	
13	C-84 (15612)	"	
14	C-85 (1148)	"	
15	C-86 (16458)	"	
16	C-87 (16499)	"	
17	C-88 (21499)	"	
18	C-89 (19684)	"	
19	C-90 (21524)	"	
20	C-91 (21511)	"	
21	C-92 (73930)	"	
22	C-93 (23265)	"	
23	C-94 (72996)	"	
24	C-95 (73899)	"	
25	C-96 (73912)	"	

C O N T E N T S

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<u>Exhibits (Continued)</u>	<u>For Identification</u> <u>In Evidence</u>
	C-97 (73910)	7469
	C-98 (72860)	"
	C-99 (23313)	"
	C-100 (73060 thru 73061 & 72917)	"
	C-101 (72866)	"
	C-102 (16213, 16217 & 16218)	"
	C-103 (19669)	"
	C-104 (73062)	"
	C-105 (22084)	"
	C-106 (22064)	"
	C-107 (173077)	"
	C-108 (720907)	"
	C-109 (22082)	"
	C-110 (21370)	"
	C-111 (1029)	"
	C-112 (73048)	"
	C-113 (16496)	"
	C-114 (16507)	"
	C-115 (15473, 15471 & 15472)	"
	C-116 (15476)	"
	C-117 (15482)	"
	C-118 (15495)	"
	C-119 (15499)	"



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C O N T E N T S

	<u>Exhibits (Continued)</u>	<u>For Identification</u>	<u>In Evidence</u>
1			
2			
3	C-120 (15501)	7469	
4	C-121 (15439)	"	
5	C-122 (10963)	"	
6	C-123 (10694)	"	
7	C-124 (25663)	"	
8	C-125 (15223)	"	
9	C-126 (15243)	"	
10	C-127 (1934)	"	
11	C-128 (73816)	"	
12	C-129 (15502)	"	
13	C-130 (23099)	"	
14	C-131 (73152)	"	
15	C-132 (19329)	"	
16	C-133 (15267)	"	
17	C-134 (17307)	"	
18	C-135 (17297)	"	
19	C-136 (10570)	"	
20	C-137 (73091)	"	
21	C-138 (17295)	"	
22	C-139 (73056)	"	
23	C-140 (69902)	"	
24	C-141 (72882)	"	
25	C-142 (73058)	"	

C O N T E N T S

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Exhibits (Continued)For IdentificationIn Evidence

3

C-143 (72874)

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C-144 (73055)

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C-145 (69894)

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C-146 (73859)

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C-147 (70216)

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C-148 (12712)

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C-149 (35685)

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C-150 (52145)

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C-153 (27183)

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MS. URBAN: The Department of Justice has a number of stipulations to enter into the record.

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First of all, we have asked Counsel for the Applicants whether they would stipulate whether Exhibits DJ-198 and DJ-104 were found in all of the CAPCO companies' files. We are still waiting for that stipulation, and we will be unable to close our case until we get it.

If we cannot get the stipulation, we would be forced to put in all of the copies of those documents found in each individual file.

We have received a stipulation from Toledo Edison that Exhibit DJ-106 was found in the files of Toledo Edison. Toledo Edison is not willing to stipulate that DJ Exhibits 113 and 114 were found in those files. However, the Department would urge the Board to make that finding for several reasons.

CHAIRMAN RIGLER: Which numbers?

MS. URBAN: 113 and 114. These documents were produced to us from documents from TS and we have so indicated by our internal numbering system on those documents.

Secondly, these documents are a part of a numerical system in terms of our internal numbers. That whole new numerical sequence deals with the Borough of Pitcairn.

The documents before and after those documents

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1 again in the Department's internal numbering are clearly  
2 from TE files. That is, they have the copy to Mr. Davis,  
3 TE checked off.

4 Also --

5 CHAIRMAN RIGLER: You are saying that the preceding  
6 documents and subsequent documents that were found in the  
7 TE files did relate to the same substantial matter, namely,  
8 the Borough of Pitcairn?

9 MS. URBAN: Right, By "in sequence" I mean  
10 in our internal number sequence. They haven't been put into  
11 evidence in exactly that same sequence.

12 If you look at the two documents preceding  
13 DJ-113 and 114 in the Department internal sequence, you will  
14 find that all of these documents are from or to Ohio  
15 Edison and that they are all in a reverse numerical order,  
16 chronological order.

17 MR. MELVIN BERGER: We would now like to pass out --

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1 CHAIRMAN RIGLER: Wait a minute.

2 MR. REYNOLDS: Mr. Chairman, can I respond.

3 CHAIRMAN RIGLER: I was going to ask you to.

4 MR. REYNOLDS: If the request of the Department  
5 is that this Board make a finding of documents being  
6 located in certain companies' files on the basis of the  
7 internal numbering system of the Department of Justice, I  
8 will object to that on the ground that I don't think that  
9 the internal numbering system of the Department of Justice  
10 is any basis, evidentiary basis for drawing any conclusion  
11 as to where the documents may have come from.

12 I guess if we want to get into a collateral  
13 issue on that we would be prepared to come in to this  
14 Board and present evidence concerning the internal  
15 numbering system of the Department of Justice and how ineffec-  
16 tive or inefficient it has been with respect to most of these  
17 documents for any basis -- in terms of drawing any conclusions  
18 that the internal numbering system should be used as a basis  
19 for concluding that the documents came from anybody's files.

20 If Toledo Edison is unable to enter into that kind  
21 of stipulation, it seems to me the Department has the  
22 obligation to come in with independent evidence to prove to  
23 the contrary if it can. But the way it may have internally  
24 numbered documents during discovery is that I can  
25 see for drawing any inference by this Board that the document

1 came from anybody's files.

2 I am prepared for the Applicants to tell you the  
3 problems we have had with the Department's internal numbering  
4 system, both in terms of order and on the identification of  
5 documents based on numbers.

6 CHAIRMAN RIGLER: Why is it Toledo Edison is  
7 unable to stipulate that the documents came from their files?  
8 Tell me how they went about dealing with the Department's  
9 request for a stipulation?

10 MR. REYNOLDS: With respect to all of the  
11 requests, they went back to the company and examined the  
12 files of the company another time to ascertain whether or  
13 not the original or copies of the documents in question  
14 were in fact in the company's files.

15 They were unable to locate those documents in the  
16 company's files.

17 CHAIRMAN RIGLER: When Toledo Edison produced  
18 its documents, pursuant to the discovery request, did they  
19 produce the originals, or did they produce copies which were  
20 then put in the depository?

21 MR. REYNOLDS: The originals, I think, were  
22 produced on location and then they were -- and the Department  
23 can correct me because I don't know from company to company,  
24 but I think the originals were produced on location that  
25 the Department and the other parties then went out to the

mm3 1 offices of the company and examined the documents and  
2 designated those that it wished to have transmitted to  
3 Washington. And then I believe that the documents  
4 were sent to the central depository in Washington.

5 MS. URBAN: Mr. Chairman, the Department believes  
6 that TE produced the original documents in Washington.  
7 And I would also like to add --

8 MR. REYNOLDS: That is not right.

9 I know that is not right because you were out  
10 in Toledo Edison at the same time I was, during depositions,  
11 looking at the original of documents. Because I helped  
12 put the documents together for you to look at Ms. Urban  
13 when you came out during depositions. It was Mr. Bosch's  
14 and Mr. Cloer's depositions.

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start 3 15 If we are arguing over the location, I think the  
16 originals were produced for the Department's inspection and  
17 then my understanding is that it was in Washington -- in  
18 Toledo, and then the Department designated which copies  
19 they wanted and they were forwarded to Washington.

20 My response to the Chairman, if there is a  
21 dispute between where the originals were produced, I don't  
22 think there is a dispute that the originals were produced  
23 and the Department had the opportunity to view the originals  
24 and copy the originals that they thought they needed for  
25 their purposes.

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1           The copies were kept in the central depository  
2 in Washington, because the originals were sent back to  
3 Toledo Edison.

4           CHAIRMAN RIGLER: When the Department selected  
5 documents on location which it asked to have copied, did it  
6 individually identify those documents?

7           MR. REYNOLDS: Individually identified. They  
8 were paperclipped, as I recall.

9           CHAIRMAN RIGLER: There is no running list that  
10 would specify the document by date or by author?

11          MR. REYNOLDS: No, there is none.

12          MR. MELVIN BERGER: I think there is confusion  
13 here.

14          I was involved in this. When we went out to  
15 the different companies a year ago January, we marked  
16 folders and some particular documents which we wanted to  
17 screen a little more closely.

18          Then some of these were shipped to the central  
19 depository in Washington.

20          As I recall it, some of the companies copied  
21 everything to be shipped and sent it in and some of them  
22 sent the originals. The paperclip marking that was just  
23 referred to was done at the central depository in Washington.

24          As I further recall, we realized it was very  
25 difficult to copy all of the documents at Mr. Reynolds' office



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1 because we had a problem with adequate Xerox facilities and  
2 personnel. We asked if we could take some of the documents  
3 out of his office in order to have them copied. At that  
4 point I believe an objection was made that they did  
5 not want us taking originals out of the office.

6 We agreed we would not do that. So we removed  
7 only those documents which were copies.

8 I believe we took the Duquesne documents and  
9 CEI documents out and had them reproduced outside of  
10 Mr. Reynolds' office.

11 The Toledo Edison and Ohio Edison documents were  
12 reproduced in Mr. Reynolds' office. That is not to say  
13 all Toledo Edison documents were originals, but I believe  
14 most of them were. I can't say specifically whether the ones  
15 we are talking about were originals or not. I don't know.

16 MR. REYNOLDS: I won't quarrel with Mr. Berger on  
17 that. That could well be.

18 The Department saw the originals, screened them  
19 and was able to copy them. I suspect probably they were  
20 copied in our office.

21 CHAIRMAN RIGLER: Were copies of DJ-113 and 114  
22 found in the files of any of the Applicant companies other  
23 than Toledo and other than Ohio Edison?

24 MS. URBAN: We don't know.

25 MR. REYNOLDS: Other than whom?

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1 CHAIRMAN RIGLER: Other than Toledo Edison, which  
2 I guess is the company in dispute, and other than Ohio  
3 Edison which being the addressee of the letter would be  
4 expected to have one in its files.

5 For example, do we know if 113 appeared in the  
6 files of either Duquesne or CEI?

7 MS. URBAN: Mr. Chairman, Mr. Berger is trying  
8 to check that right now.

9 MR. REYNOLDS: We can check that. I don't know  
10 off the top of my head.

11 CHAIRMAN RIGLER: Mr. Reynolds, turning your  
12 attention to DJ-115, which appears to be a followup to  
13 113, I notice that the other companies are shown as carbon-  
14 copy addressees. That is the chief executive of the  
15 other companies.

16 Certainly it would seem logical for Mr. Mansfield  
17 to have included the original of the correspondence. Why  
18 would he suddenly address the followup to these chief  
19 executives, if he hadn't made copies available for the  
20 original correspondence?

21 MS. URBAN: Mr. Chairman --

22 MR. REYNOLDS: Do you want me to answer the  
23 question?

24 I am not sure why Mr. Mansfield did, or did not  
25 either. Why would he have not shown the carbon copies on

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1 the other correspondence that he showed on the later  
2 correspondence, I don't know the answer to your question.

3 Why he did or didn't, or whether or not he did  
4 or didn't, is obviously something we will have to find out.

5 CHAIRMAN RIGLER: Do we have the original from  
6 the files of Ohio Edison for DJ-113?

7 MR. REYNOLDS: Do you have the original?

8 CHAIRMAN RIGLER: Right.

9 MR. REYNOLDS: I am sure Ohio Edison has the  
10 original.

11 CHAIRMAN RIGLER: Has anyone checked that?

12 MR. REYNOLDS: I am sure they do have the original.

13 CHAIRMAN RIGLER: Why not go back to that.

14 On 115 we see on their carbon copy they indicate  
15 addressees apparently not shown on the original. It seems  
16 it may be easy to find out by looking at the Ohio Edison  
17 files if they sent a copy of 113 to the other companies.

18 Another alternative might be to subpoena  
19 Mr. Mansfield and Mr. Mansfield's secretary at that time.

20 MR. REYNOLDS: I guess the only point I am  
21 making at this juncture, Mr. Chairman, I think if you look  
22 at the correspondence and the followup correspondence all  
23 the way through, that it is fairly clear that Toledo Edison  
24 received certain correspondence from the Borough, that  
25 involved the Borough of Pitcairn and its requests for

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1 discussions with CAPCO members as to the CAPCO pool.

2 I don't think that that is really something that  
3 this particular set of correspondence is very crucial to.

4 The problem I am having is that the Department  
5 has asked this Board to make a finding on the basis of the  
6 Department's internal numbering of documents that it selected  
7 from a massive document discovery process.

8 What I would object to is this Board making any  
9 finding on the basis of internal numbering by the Department  
10 of Justice as to where documents may or may not have come  
11 from if the company has undertaken in good faith to  
12 ascertain whether there is a copy of that document or  
13 the original of that document is filed and has come back  
14 and told the Department of Justice that it cannot ascertain  
15 that that is the fact. That is really the only point I am  
16 making.

17 In think in terms of these particular -- these  
18 two documents, I seriously question whether that stipulation,  
19 if it could be made, carries anybody any further than where  
20 they are anyway.

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1           CHAIRMAN RIGLER: I don't know where the stipulation  
2 would carry us. It seems to me the Department has some  
3 basis for supporting its inference. We can come to one of  
4 two conclusions. Either the document was in the Toledo  
5 Edison files or it wasn't.

6           Looking at the exhibit as a whole and listening  
7 to the representations of the Department, and listening  
8 to their representation that they believe they found it in  
9 the files of TE, weighing that against the fact that TE cannot  
10 locate these documents in their files, I suppose we could  
11 come to a conclusion this did come from the files of TE.

12           Before we do that, I suggest we go back to the files  
13 of Ohio Edison and take a look at not only the -- what I will  
14 call the formal original, but all copies of this document,  
15 this document being 113, and the same would be true of  
16 114, to show if any Ohio Edison copies indicate that the  
17 letter was circulated to other companies.

18           If it is necessary to subpoena Mr. Mansfield or  
19 secretarial personnel who would have that information, we  
20 would issue that subpoena.

21           MR. REYNOLDS: I have no problem with doing that,  
22 if necessary. I would assume -- I think the Chairman is  
23 trying to suggest that we are being obstreperous about this.

24           CHAIRMAN RIGLER: I didn't suggest that at all.

25           MR. REYNOLDS: I think there is no problem with

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1 going back and asking Mr. Mansfield and his secretary and  
2 representing to this Board what their response is as to  
3 the documents and to the extent we can find the originals  
4 and they show carbons or not, we are prepared to do that.

5 The Applicants have entered into a great number  
6 of stipulations of this sort, where we have been able to  
7 determine that the documents were, in fact, in the files.  
8 We are not reluctant to do it in any circumstance where we  
9 can determine it.

10 I have a problem if we do come up with a handful,  
11 and it is a handful on the basis of this whole discovery,  
12 the documents where we have been asked to enter into that  
13 stipulation and been unable to, and then be told because of the  
14 internal numbering of the Department that the company is  
15 not being straightforward in their determination.

16 CHAIRMAN RIGLER: I didn't understand the  
17 Department to make that charge.

18 Are you pleading bad faith on behalf of the Applicant?

19 MS. URBAN: Certainly not.

20 CHAIRMAN RIGLER: We have a fact question here.  
21 I have suggested a way we can resolve the factual dispute  
22 by going back to the Ohio Edison files.

23 MR. MELVIN BERGER: You asked for some facts a  
24 few moments ago, and I can provide them.

25 You asked whether or not those two documents, the

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1 two documents in dispute, 113 and 114, which are Ohio Edison-  
2 Pitcairn documents, whether they appeared in the files of  
3 any of the other CAPCO companies. The answer to that is,  
4 yes. We have the corresponding documents to these, which  
5 are NRC-3 and NRC-8.

6 We have a stipulation that those documents are in  
7 the files of the Duquesne Light Company. That has been entered  
8 into the record.

9 We also have a stipulation that those two documents  
10 were found in the files of CEI.

11 MR. REYNOLDS: Which is what I was saying.

12 To the extent we have been able to stipulate,  
13 we have done it. The point is that Toledo Edison has no  
14 indication in its record that these two documents came to  
15 Toledo Edison.

16 Why they didn't, whether somebody meant to send  
17 a copy and didn't -- all I'm saying is we can't make a  
18 stipulation that they were in Toledo Edison's files. We will  
19 have to make our decision on hard facts in this case.

20 CHAIRMAN RIGLER: We will make the decision  
21 according to the best available evidence. I have given you  
22 the Board's initial direction as to what to do.  
23 Namely, go back to Ohio Edison. I will direct you to do  
24 that and report back, and then we will make our ruling.

25 MR. REYNOLDS: In addition to that, I will  
report to Mr. Mansfield and his secretary at the time,

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1 and report to the Board what their recollection of the  
2 situation is.

3 MR. MELVIN BERGER: Mr. Chairman, the Department  
4 has passed out copies of certain exhibits which had earlier  
5 been marked for identification and to which I believe there  
6 was no objection, except for the fact that poor copies had been  
7 given out.

8 We obtained better copies from Toledo Edison.  
9 I would like to go through them and identify them one  
10 by one.

11 The first document is a two-page letter dated  
12 July 15, 1966. There is a stipulation that the author of  
13 this document is Mr. Les Henry. This is DJ-77. This  
14 should be inserted in place of the copy of DJ-77.

15 The next document is a six-page document which is  
16 a letter dated Jun 3 18, 1968. This entire document should be  
17 red-lined. There is a stipulation that the initials  
18 "JKD" on the second page are those of John D. Davis.

19 There is also a stipulation that the three pages  
20 appended to the end of the three-page letter were a part of  
21 the letter.

22 MR. BUCHMANN: What is the Department of Justice  
23 Exhibit number?

24 MR. MELVIN BERGER: This is Department of Justice  
25 Exhibit 78. The three pages attached to the letter, there



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1 has been a question raised as to whether or not they were a  
2 part of the letter. The stipulation now is that they were  
3 part of that letter.

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1 MR. MELVIN BERGER: The next document is a one-  
2 page document which is a copy of two Western Union telegrams  
3 which is DJ-79.

4 The stipulation on this document is that the  
5 initials "JKD" which appear near the bottom of the page  
6 are those of John D. Davis, who was then president of  
7 Toledo Edison Company.

8 CHAIRMAN RIGLER: What was the Department  
9 identification number?

10 MR. MELVIN BERGER: These documents themselves  
11 do not bear Department identification numbers, because  
12 they were produced by Toledo Edison to us.

13 We did not work from our own copy.

14 CHAIRMAN RIGLER: What was the exhibit number?

15 MR. MELVIN BERGER: The Exhibit Number is  
16 DJ-79.

17 MR. BUCHMANN: You misspoke, I think. You said  
18 two telegrams. It is only one telegram.

19 MR. MELVIN BERGER: Thank you. I stand corrected.  
20 The next document is a two-page document which  
21 is DJ-80. At the upper left-hand corner it states "rough  
22 draft." Then there is a date which has been partially cut off.  
23 That date is 6/21/68. The first line of this document  
24 reads "30 electric co-ops" at catara.

25 This is a replacement for DJ-80.

1 The next document is a two-page document for  
2 DJ-88. It is a March 11, 1974, memorandum. This is a  
3 replacement for DJ-88.

4 The next document is a replacement for DJ-139.  
5 It is a five-page document entitled "Liberty Center,"  
6 with a date of March 20, 1974.

7 This document should be red-lined in its entirety.

8 There is a second document which follows the  
9 first Liberty Center document. The second document is  
10 entitled "Deed and Bill of Sale." We originally thought  
11 these two documents were one document. We have been informed  
12 they are two separate documents. We would like to have the  
13 deed and bill of sale marked as DJ-139-A. On the deed and  
14 bill of sale we would like to have all of page 1 and the  
15 first paragraph of page 2 red-lined.

16 (The document referred to was  
17 marked DJ-139 -A for identification.)

18 CHAIRMAN RIGLER: Have admitted into evidence  
19 the pages designated DJ-139-A?

20 MR. MELVIN BERGER: No, its admission was  
21 deferred, pending more legible receipt of the copies.

22 The next document, an office memorandum dated  
23 January 18, 1973 is a replacement for DJ-146.

24 Only the first page of this document should be  
25 red-lined.

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1           The next document is an intracompany memorandum  
2 dated March 22, 1973, and it is a replacement for DJ-147.

3           And the last document in this pile is an intra-  
4 company memorandum, dated May 4, 1973, and it is a replacement  
5 for DJ-143.

6           CHAIRMAN RIGLER: You want to move these into  
7 evidence now?

8           MR. MELVIN BERGER: At this time I would like to  
9 move the following documents into evidence:

10           DJ-77, 80, 88, 118, 139 --

11           MR. VOGLER: What comes after 88?

12           MR. MELVIN BERGER: 118.

13           CHAIRMAN RIGLER: My notation on 118 is that it was  
14 withdrawn, because it was the same as NRC-53.

15           MR. MELVIN BERGER: We will not move 118 into  
16 evidence at this time, pending a check of our record to  
17 see if we are accurate or not. We would move in the ones  
18 I mentioned, plus 139, 139-A. 146 through 148, and there  
19 is one additional document, DJ-190, which was objected to  
20 as being incomplete. It is a two-page document, and  
21 body of that document indicates an attachment to it.

22           I would like to explain the problem we have with  
23 the attachment.

24           CHAIRMAN RIGLER: Let's deal with the ones you  
25 have designated thus far. Is there objection to any of the

1 documents moved into evidence by the Department this morning  
2 in the list Mr. Berger just read.

3 MR. REYNOLDS: I will make the continuing objection  
4 on behalf of all Applicants other than Toledo Edison for  
5 DJ-77.

6 CHAIRMAN RIGLER: Haven't these objections been  
7 made already?

8 MR. REYNOLDS: I don't know. We deferred ruling.

9 CHAIRMAN RIGLER: You can enter the continuing  
10 objection again.

11 MR. REYNOLDS: The continuing objection will  
12 be made, and I guess that they are on behalf of only --

13 CHAIRMAN RIGLER: We will take them one at a  
14 time. The continuing objection is overruled as to 77. It  
15 will be admitted into evidence at this time.

16 (The document previously marked  
17 DJ-77 for identification was  
18 received in evidence.)

19 MR. REYNOLDS: DJ-80 I will make the continuing  
20 objection on behalf of all Applicants other than Toledo  
21 Edison. I can state for the record that DJ-80 came from  
22 Toledo Edison files.

23 CHAIRMAN RIGLER: The continuing objection is  
24 overruled, and we will admit DJ-80 at this time.

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(The document previously  
marked Exhibit DJ-80 for  
identification was received  
in evidence.)

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MR. REYNOLDS: My next one is DJ-88. There the  
continuing objection goes to all Applicants other than  
Toledo Edison.

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CHAIRMAN RIGLER: The continuing objection is  
overruled, and we will admit 88 at this time.

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(The document previously  
marked Exhibit DJ-88 for  
identification, was  
received in evidence.)

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MR. REYNOLDS: The same holds true for DJ-139  
and 139-A.

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CHAIRMAN RIGLER: The continuing objection is  
overruled and we will admit 139 and 139-A.

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(The documents previously  
marked Exhibits DJ-139 and  
139-A for identification, were  
received in evidence.)

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MR. REYNOLDS: The continuing objection is the  
same for 146.

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1 CHAIRMAN RIGLER: 146 will be admitted, the  
2 objection is overruled.

3 MR. REYNOLDS: It is the same as to 147 and 148.

4 CHAIRMAN RIGLER: 147 and 148 will be admitted  
5 and the continuing objection overruled.

6 (The documents heretofore marked  
7 DJ Exhibits No. 146, 147 and 148  
8 for identification, were received  
9 in evidence.)

10 MR. MELVIN BERGER: If I may, I would like to  
11 go to DJ-190 at this point.

12 DJ-190 was objected to because an attachment  
13 referred to in the body of that two-page letter was not  
14 provided.

15 We have been provided with the attachment, but  
16 it is a multi-page document which is a brief on behalf of  
17 Cleveland Electric Illuminating Company. We feel that it  
18 is a very lengthy document to introduce into the record  
19 just to complete the exhibit.

20 CHAIRMAN RIGLER: Have you discussed it with  
21 counsel for CEI and the other Applicants?

22 MR. MELVIN BERGER: No, we have not.

23 CHAIRMAN RIGLER: Do that during the break and  
24 find out what their desires would be.

25 MR. MELVIN BERGER: I believe our records

mm2 1 indicate there are a number of exhibits on which rulings  
2 have been deferred.

3 CHAIRMAN RIGLER: Tell me what they are.

4 MR. MELVIN BERGER: DJ-200, 480, 512, and 536.

5 CHAIRMAN RIGLER: All right.

6 Do you have a ready reference to the transcript  
7 pages where we heard argument on those?

8 MR. MELVIN BERGER: No, I do not.

9 MR. REYNOLDS: I can give you that reference.

10 CHAIRMAN RIGLER: It would be helpful. We had  
11 not forgotten these exhibits.

12 MR. REYNOLDS: Neither have we.

13 MR. MELVIN BERGER: I believe there were a number  
14 of different days on which arguments were heard on these  
15 also.

16 MR. REYNOLDS: Exhibit 512 was actually marked --  
17 it was actually heard first, I think, at page 6273, and  
18 continuing through to 6278. Then it was picked up and the  
19 argument continued at 6313 and continued on to 6317. I  
20 think that is right.

21 Then again, and this time in connection with  
22 document 200 as well as a brief reference to 480 and 512,  
23 on pages 6536 through 6542.

24 Exhibit 480 was discussed at 6221 and it goes  
25 over to 6226. Then it picks up again at 6233. It goes over



mm3 1 to 6238, the bottom of 6238.

2 I believe that 586 was only referred to briefly  
3 at page 6542, and that is all.

4 I believe that is right.

5 CHAIRMAN RIGLER: 6542?

6 MR. REYNOLDS: Yes.

7 CHAIRMAN RIGLER: All right.

8 How about 200?

9 MR. REYNOLDS: That was the first series of page  
10 references I gave you, I believe.

11 CHAIRMAN RIGLER: 200 is the Bader affidavit.

12 MR. REYNOLDS: I'm sorry.

13 CHAIRMAN RIGLER: 512 is also the Bader affidavit.

14 MR. REYNOLDS: 200 is included in the reference  
15 6536 through 6542.

16 MR. MELVIN BERGER: At this time we would like  
17 to list, or we have still remaining on our list as  
18 being open, problems which we hope to solve in the next  
19 few days before the closing of our direct, certain stipula-  
20 tions from Toledo Edison with regard to maps.

21 That was DJ-534 through 540. DJ-49 was a  
22 document where Ohio Edison was supposed to supply us with a  
23 contract to complete that document. That is still open.

24 There are stipulations on DJ-94 and 104, which  
25 we believe to be CAPCO documents.

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MR. REYNOLDS: Stipulations from all the companies.

MR. MELVIN BERGER: Stipulation from all of the CAPCO companies on that.

There is the question of Mr. Lewis' testimony that I believe is scheduled for next week, as well as the question of documents 118 and 190 which were raised this morning.

The documents we marked yesterday, which we hope to take up in a moment.

MR. REYNOLDS: Did I hear you incorrectly, or did you misspeak on the stipulation that you were waiting for from all Applicants?

I thought you said 94 and 104. My records indicate 98 and 104.

MR. MELVIN BERGER: You are correct, Mr. Reynolds. It is 98 and 104.

CHAIRMAN RIGLER: Is that it?

MR. MELVIN BERGER: That is it.

The next order of business, I guess, is to go to the document we marked yesterday.

CHAIRMAN RIGLER: Is there objection to 598 through 606?

MR. BUCHMANN: No objection.

MR. REYNOLDS: The Applicants other than Cleveland Electric Illuminating Company have a continuing objection to

mm5 1 that series of exhibits.

2 CHAIRMAN RIGLER: The continuing objection is  
3 overruled.

4 We would admit 598 to 606 at this time.

5 (The documents heretofore  
6 marked DJ Exhibit Nos. 598  
7 to 606 for identification, were  
8 received in evidence.)

9 MR. MELVIN BERGER: Mr. Chairman, the only further  
10 thing the Department can accomplish at this time, apparently,  
11 would be the resolution of the document on 190.

12 CHAIRMAN RIGLER: I asked you to discuss that  
13 on break, and we will get back to that.

14 MR. MELVIN BERGER: That is all at this time.

15 CHAIRMAN RIGLER: All right.

end 6 16 Mr. Hjelmfelt?

start 7

17 MR. HJELMFELT: The first document I would  
18 ask be marked is a map bearing the title, "Service Areas  
19 of Ohio Electric Utility Institute Members."

20 I ask that that be identified as City Exhibit 1.  
21 I would suggest an identification of C-1.

22 I would like to make a further statement with  
23 respect to this map. It is offered simply to show the  
24 general areas in which the companies served and it should be  
25 understood that there are areas in certain of the companies'

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1 territories in which REA Distribution Co-ops serve and which  
2 there would be no service offered by the investor-owned  
3 utility shown on here.

4 Neither are the boundary lines indicated here  
5 represented to be firm, fixed, accurate boundary lines.

6 I am offering this to show general location of  
7 areas in which the utilities serve.

8 MR. REYNOLDS: That would be as of 1967, is that  
9 right?

10 MR. HJELMFELT: Yes.

11 MR. BUCHMANN: You would agree there are  
12 municipal service areas within these territories?

13 MR. HJELMFELT: That is right.

14 The next document I would ask be marked as C-2  
15 is the portion and excerpt from the disposition of Mr. Donald  
16 Hauser. It consists of pages numbered 106, 107, 199,  
17 200, 202, 203, 208, 209 and an additional unnumbered page of  
18 transcript corrections.

19 The next document I would ask to be marked as  
20 C-3 is a document from Mr. R. J. Farling to Mr. R. W.  
21 Wyman dated December 18, 1972.

22 That document was produced under a claim of  
23 confidentiality. I just requested this morning that CEI  
24 reconsider its claim of confidentiality. I don't know if they  
25 have had the opportunity to do that.

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MR. BUCHMANN: Sure.

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We withdraw the claim.

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MR. HJELMFELT: I would ask that the underlining and marginal notes be disregarded.

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Off the record?

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CHAIRMAN RIGLER: Off the record.

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(Discussion off the record.)

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MR. HJELMFELT: Back on the record.

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MR. REYNOLDS: Could you give me an offer of proof on City Exhibit C-3?

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MR. HJELMFELT: C-3 is offered to demonstrate that with respect to competition for the Justice Center, that Mr. Rudolph, the president of CEI indicated that his concern in the City obtaining that load was that MUNY could get healthier and that therefore competition was not the normal competition for customers, but was a desire to injure the competitor.

Document C-4 would be a three-page document bearing the City's numbers 12717 through 12719.

MR. PERI: Can we have an offer of proof?

MR. HJELMFELT: This is offered to show Ohio Edison's recognition of the advantages of nuclear power compared to coal-fired units.

Proceeding to Book 4, I would ask that a document bearing the City's pagination 69028 through 69032, and the

ms8 1 final page being 73409 be marked as C-5. The numbers are  
2 49028 through 49032, with a final page numbered 73409.

3 MR. BUCHMANN: May I have an offer of proof on  
4 this please.

5 MR. HJELMFELT: This is offered to show that CEI  
6 was recognizing the benefits of coordination and recognized  
7 that systems of any size can attain the benefits of the  
8 economies of scale through pooling and coordination.

9 MR. BUCHMANN: Is that all?

10 MR. HJELMFELT: Yes.

11 The next document I would offer for identification  
12 as C-6 bears the City's number 72858.

13 MR. REYNOLDS: Could you give us an offer of  
14 proof on this document?

15 MR. HJELMFELT: This shows a consideration by  
16 CEI of the effect of rate equalization or efforts to increase  
17 the rates by the City.

18 MR. REYNOLDS: What is it being offered to prove?  
19 I can read what the document says.

20 MR. HJELMFELT: It is being offered to show a  
21 part of the efforts by CEI to cause the City to increase its  
22 rates to a level which would eliminate rate competition.

23 It is contemporaneous with the efforts by CEI  
24 to offer an interconnection predicated upon a rate-fixing  
25 scheme.

1 MR. REYNOLDS: What is the date in the corner?

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2 MR. HJELMFELT: The date is September 30, 1964.

3 I would like to mark C-7, which contains the City  
4 page numbers 72856 through 72857.

5 MR. BUCHMANN: May I have an offer of proof on  
6 this document?

7 MR. HJELMFELT: Incidentally, for the record, I  
8 will object to Mr. Buchmann participating in these  
9 proceedings.

10 CHAIRMAN RIGLER: What is the basis for the  
11 objection?

12 MR. HJELMFELT: The basis is that the City is  
13 prejudiced by having a member of the firm of Equite, Saunders  
14 and Deepsey participating on behalf of CEI in this proceeding  
15 due to the conflict of interest.

16 CHAIRMAN RIGLER: All right.

17 I think all parties are aware of the Board's  
18 rulings and the fact that the Board has certified this  
19 question to the Appeal Board which has now established a  
20 briefing schedule for resolution of this issue.

21 I think all parties are aware that the Board  
22 has not put its order of suspension into effect pending  
23 resolution by the Appeal Board.

24 So the objection is overruled.

25 Mr. Buchmann, when you were here with us last,

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1 you indicated that your activities with your firm had not  
2 included any representation or advice to the City.

3 I assume that has continued to hold true?

4 MR. BUCHMANN: I made no such indication.

5 Your question was whether I had given financial or  
6 bond advice to the City.

7 CHAIRMAN RICLER: That continues to hold true?

8 MR. BUCHMANN: The City has not consulted me on  
9 financial or bond matters since the last time I was here,  
10 your Honor.

11 MR. HJELMFELT: An offer of proof was requested  
12 on C-7. It involves a matter of whether the City's  
13 water and sewer utility could install its own generation  
14 enich could have been used in effect to coordinate  
15 or supply power to the City electric system.

16 It would have been another means by which the  
17 City could have expanded its generating capacity or improved  
18 its reliability. It shows that -- I would offer it to  
19 show that CEI was intent to prevent the City from improving  
20 or expanding its electric system.

21 I would ask that a document bearing the numbers  
22 67576 through 67583 be marked for identification as C-8.

23 MR. BUCHMANN: May I ask for an offer of proof  
24 on this document.

25 MR. HJELMFELT: Yes.



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2 This relates to efforts by CEI to have MELP  
3 provide services for street lighting at a low cost.  
4 Revenues would thereby have to be made up by the rates to  
5 the private customers.

6 It again goes to the efforts to eliminate price  
7 competition between CEI and the City.

8 MR. REYNOLDS: Just by way of clarification, as  
9 I understand this document, Mr. Chairman, that offer of  
10 proof goes to those portions that have been redlined?

11 Is that correct?

12 And only to that portion of the document?

13 In other words, the City does not intend to  
14 rely on any portions other than the redlined, and when we  
15 asked for the offer of proof, the City's offer of proof  
16 was addressed to the redlined portions?

17 MR. HJELMFELT: That is my understanding.

18 CHAIRMAN RIGLER: All right.

19 I don't know when the City did its redlining,  
20 because of course we now have the three-page redlining rule  
21 and this document is only three pages in length.

22 MR. BUCHMANN: It is 8 pages. It goes from 76  
23 through 83.

24 CHAIRMAN RIGLER: I beg your pardon.

25 Obviously then the redline rule would be in  
effect.

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MR. REYNOLDS: I wanted to make sure so I knew what the offer was related to.

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MR. HUELMFELT: I might state for the record that there are documents less than three pages in length, which have been redlined.

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The City, of course, was prepared to present its case at an earlier time, before the redlining rule was in the shape it is now.

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I would next offer as C-9, a document bearing the number 73076.

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MR. BUCHMANN: Could I have an offer of proof on C-9?

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1 MR. HJELMFELT: This again would be offered to show  
2 efforts by CEI to prevent the City from expanding or  
3 improving its ability to sell electric service. C-10  
4 I would offer the pages 73074 through 730705.

5 MR. BUCHMANN: I ask for an offer of proof again.

6 MR. HJELMFELT: This again would go to the question  
7 of whether the City could install generation for its  
8 water system and if it did, whether that generation could  
9 also be used to enhance the ability of the electric system  
10 of the City to produce and sell power.

11 MR. REYNOLDS: But what is the offer of proof,  
12 not what the document states. What are you going to use it  
13 to prove?

14 MR. HJELMFELT: Might I have a statement as to  
15 who Mr. Reynolds is representing at this point in the  
16 proceeding?

17 MR. REYNOLDS: I'm representing all of the  
18 Applicants and, as I understand the Board ruling, documentary  
19 evidence is to come in -- unless the continuing objection  
20 is sustained -- as against all of the Applicants in this  
21 proceeding.

22 I'm, therefore asking for an offer of proof as  
23 to what it is you intend to prove by this document.

24 MR. HJELMFELT: Mr. Reynolds is representing all  
25 of the Applicants at this point. Then I object to

bw2 1 Mr. Buchmann participating for CEI.

2 MR. REYNOLDS: He is representing CEI.

3 CHAIRMAN RIGLER: Right, the objection is  
4 well-taken. I'm going to permit only one attorney to speak  
5 for CEI. You may represent the other four Applicants,  
6 and Mr. Buchmann may represent CEI, but you may not both  
7 represent CEI for purposes of making objections.

8 MR. REYNOLDS: I agree to that clarification  
9 for purposes of making objection.

10 additional request is on behalf of all  
11 Applicants other than CEI.

12 MR. HJELMFELT: It goes to show the -- it will  
13 be used to prove the continuing efforts by CEI to prevent the  
14 expansion or improvement of the City's electric ability to  
15 market and produce electricity in competition with CEI.

16 I would ask that document pages 69033 through  
17 69038 be marked as C-11.

18 MR. BUCHMANN: That was 69033 to 69038?

19 MR. HJELMFELT: That is correct.

20 MR. BUCHMANN: Can I have an offer of proof on  
21 this document, please?

22 MR. HJELMFELT: This goes to show the CEI  
23 relied upon the Mury outage rate as a tool in selling  
24 conversions and also used the fact that the City lacked  
25 interconnections and in that way goes to show the

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1 disadvantages that the City was placed in in not being  
2 able to operate interconnected with other systems, and  
3 the fact that the denial of an interconnection was related  
4 to the competitive effects. Document pages 68939  
5 through 69940, I ask that be marked as C-12.

6 MR. BUCHMANN: May I ask for an offer of proof  
7 on this?

8 MR. HJELMFELT: This document also demonstrates  
9 the effect of outages on conversions of customers from  
10 the City to CEI. And is thereby tied in with the effects  
11 of the inability of the City to obtain an interconnection.

12 I would offer as Document C-13, pages 78541 through  
13 68563.

14 MR. BUCHMANN: Could I have an offer of proof  
15 on this document, please?

16 MR. HJELMFELT: This document demonstrates  
17 that in competing for customers, that CEI relied upon the  
18 fact that it had interconnections, and the City did not  
19 not and that CEI was going to have nuclear power and that  
20 that would be of a benefit to its customers. This would  
21 demonstrate the injuries to the City from being denied  
22 membership in CAPCO with opportunity to engage in nuclear  
23 power production, and the inability of the City to obtain  
24 interconnections and pooling arrangements.

25 MR. REYNOLDS: Could I have that read back,

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1 (The reporter read the record as requested.)

2 MR. HJELMFELT: I would add to that that CEI  
3 there uses as a selling point, its joint participation  
4 in units with CAPCO partners.

5 I would ask that pages 68564 through 68577 be  
6 marked as C-14.

7 MR. BUCHMANN: Could I have an offer of proof  
8 on this?

9 MR. HJELMFELT: The offer would be basically  
10 the same as for the previous document. It also indicates  
11 that the interconnection which the Federal Power Commission  
12 did order, did not give CEI or MELP the reliability,  
13 and it was still unable to compete, and that CEI pointed  
14 out to prospective customers that the Federal Power  
15 Commission order would still permit CEI to cut off power  
16 to MELP and, therefore, the MELP system was still not  
17 reliable.

18 I would ask that a document bearing the  
19 identification 68529 through 68538, be marked as C-15.

20 MR. BUCHMANN: May I have an offer, please.

21 MR. HJELMFELT: Again, it is offered to show  
22 that the fact that CEI had interconnections and access to  
23 nuclear power was used to solicit customers in competition  
24 with the City, and that the fact that CEI was engaging in  
25 joint construction with its CAPCO partners was used as a

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1 competitive argument.

2 Document 72850, I ask that that be marked as C-16.

3 MR. REYNOLDS: I would like an offer of proof  
4 on this.

5 MR. HJELMFELT: I'm offering this to show the  
6 magnitudes of the municipal and REA loads in Ohio  
7 in 1971 and with a 1981 estimated peak.

8 MR. BUCHMANN: Is it suggested that that is  
9 a list of all of them?

10 MR. HJELMFELT: I would understand it to be a list  
11 of the generating municipalities.

12 MR. BUCHMANN: I will wait later on until you  
13 offer it, but I don't see how you can draw that conclusion  
14 from the document.

15 MR. HJELMFELT: I would ask that document 72910  
16 through 72911 be marked as C-17.

17 MR. BUCHMANN: Can you tell me what this is offered  
18 to show?

19 MR. HJELMFELT: It is offered to show that CEI  
20 was attempting to attack the credibility of Mr. Hinchee,  
21 while he was the Commissioner of Utilities, with respect  
22 to the regard which the Director of Utilities would have  
23 for Mr. Hinchee and as part of CEI efforts to destroy and  
24 acquire the City electric system.

25 I would offer 69874 through 69875 as Exhibit  
C-18.

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MR. BUCHMANN: May I have an offer of proof?

MR. HJELMFELT: This document would show that CEI was desirous of preventing the City Electric System from selling bond to finance improvements to its system and was part of its overall attempt to acquire the City's system.

I would offer pages 68928, 68931 for identification as C-19.

MR. BUCHMANN: Excuse me a minute.

Could you give me an offer or proof on this?

MR. HJELMFELT: This document would go to show the CEI knowledge of the relationship between reliability and conversions and the effect of an interconnection on many conversions and goes to show the reasons by which CEI attempted to avoid a parallel interconnection with the City and that that was done for anticompetitive purposes.

MR. BUCHMANN: Could I have read back what starts with "and also"?

MR. REYNOLDS: Let me have the whole thing back.

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

CHAIRMAN RIGLER: Shall we take a ten minute break at this point?

MR. HJELMFELT: This would be a good time.

(Recess.)



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1 MR. HJELMFELT: I would ask that, referring to  
2 booklet 6 now, ask that pages 28128 through 28130 be marked as  
3 C-20.

4 MR. BUCHMANN: Are you discarding the first  
5 page?

6 MR. HJELMFELT: Yes. The first page of that  
7 book is also discarded.

8 MR. REYNOLDS: Could I have an offer of proof  
9 on this document?

10 MR. HJELMFELT: C-20, is offered -- for one  
11 thing it is background as to the early meetings of the parties  
12 with respect to the formation of CAPCO. It is offered to  
13 show the parties' interest in coordinated development.

14 Basically, it is offered to show there were  
15 different philosophies of reserve-sharing among the  
16 parties.

17 Document 27507 through 27509, I ask that that be  
18 marked as Exhibit C-21.

19 MR. REYNOLDS: Let me have an offer of proof on that  
20 too, please.

21 MR. HJELMFELT: This document is offered to show  
22 that Duquesne Light recognized the increase in reliability  
23 from coordination without any increase in capacity.

24 Document 3738 through 3753, I ask that that be  
25 marked as Exhibit C-22.

1 MR. REYNOLDS: Could I have an offer on this.

2 MR. HJELMFELT: This shows that Duquesne  
3 recognized the economic benefits of coordination of Buckee  
4 power production and transmission. It shows a proposal  
5 to save reserves in CAPCO on an equal percent of load  
6 basis.

7 I would offer pages 27469 through 27470 as C-23  
8 for identification.

9 MR. REYNOLDS: What is the offer on this?

10 MR. HJELMFELT: It shows that Ohio Edison was  
11 interested in joining other parties to achieve the economies  
12 of scale which it would not achieve by itself.

13 Pages 73993 through 73996 will be discarded.

14 Pages 20582 through 20587, I would offer  
15 as C-24.

16 MR. BUCHMANN: Could I have an offer of proof  
17 on C-24?

18 MR. HJELMFELT: Yes. C-24 demonstrates that  
19 if there were no CAPCO pool, CEI and OE would have to install  
20 more capacity and thus shows the benefits of coordination  
21 to CEI and Ohio Edison.

22 I will leave it at that.

23 Pages 20560 through 20572 I would offer as  
24 C-25 for identification.

25 MR. BUCHMANN: May I have an offer on C-25, please?

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1 MR. HJELMFELT: C-25 shows that the parties  
2 recognize the need for a transition period during the  
3 inception of the pooling area, with a pooling system.  
4 That is after they came into the pool with differing  
5 situations for each company, before they went to a full  
6 reserve situation on the P/W situation they needed a  
7 transition period.

8 Pages 6868 through 6874 I ask to be marked  
9 as C-26 for identification.

10 MR. BUCHMANN: May I have an offer of proof on  
11 C-26, please?

12 MR. HJELMFELT: Yes. C-26 will be offered  
13 to show that Mr. Fleger of Duquesne Light was worried  
14 that if the companies, CAPCO companies applied for a nuclear  
15 unit, they might have a challenge from the municipals.

16 That would go to show that CAPCO companies were  
17 concerned that municipal light systems might be able  
18 to obtain participation in nuclear units and that they didn't  
19 want that to occur.

20 MR. RIESER: Could you read back the last part  
21 of that statement, please?

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

24 MR. HJELMFELT: I would ask that page 6803  
25 be marked as C-27 for identification.

1 MR. BUCHMANN: Could I have an offer on this?

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2 MR. HJELMFELT: Yes. C-27 will be offered to  
3 show CAPCO companies considered a variety of methods  
4 of allocating reserves and in making those studies it  
5 considered the effects that those methods might  
6 have on a smaller system coming into the pool.

7 MR. REYNOLDS: Could I have that read back?

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

10 MR. HJELMFELT: I would offer page 6804 for  
11 identification as C-28.

12 MR. BUCHMANN: I thought that was the prior  
13 one. That was not?

14 MR. HJELMFELT: They were incorrectly stapled  
15 together.

16 MR. REYNOLDS: Could we have an offer for C-28?

17 MR. HJELMFELT: The offer for C-28 would be the  
18 same as that for C-27.

19 I would offer pages 27397 through 27401, and  
20 I ask that that be marked for identification as C-29.

21 MR. BUCHMANN: Can I have an offer of proof  
22 on C-29, please?

23 MR. HJELMFELT: C-29 shows that Duguesne Light  
24 considered the benefits it would derive from pooling power,  
25 permitting it to go to a larger size unit.

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1 MR. RIESER: Excuse me, Mr. Hjelmfelt. How  
2 far did that exhibit run?

3 MR. HJELMFELT: Through 401.

4 MR. RIESER: Thank you.

5 MR. HJELMFELT: 6503 through 09, I would  
6 offer for identification as C-30.

7  
8 MR. REYNOLDS: What is this being offered to  
9 prove?

10 MR. HJELMFELT: It is being offered to show  
11 that the original allocations in Period A and B in the  
12 CAPCO pool were made on an arbitrary basis, rather than  
13 a formula application.

14 Pages 6466 and 6467, I ask they be identified  
15 as C-31.

16 MR. REYNOLDS: Is this the same offer as  
17 the prior one?

18 MR. HJELMFELT: Yes, it shows that they  
19 were the result of negotiations, rather than application of  
20 a formula.

21 Pages 12899 through 12901. I ask that that be  
22 marked for identification as C-32.

23 MR. REYNOLDS: Can we have an offer on this?

24 MR. HJELMFELT: This is offered to show that  
25 Toledo Edison, recognizing that joining the CAPCO pool

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1 would enhance its economies and its reliability and that  
2 power from new generating units would be made available  
3 from a strengthening of the 345 kv system which would indicate  
4 that the 345 kv system was changed -- was strengthened or  
5 extended as a result of it in connection with the pooled  
6 units.

7 Pages 27828 through 27833, I ask that that be  
8 marked as C-33 for identification.

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1 MR. RIESER: Could we have an offer on that,  
2 please?

3 MR. HJELMFELT: This is offered to show the  
4 economies of size with respect to nuclear generation in  
5 both CAPCO costs and operating costs.

6 26962 through 963 I ask that that be identified  
7 as C-34.

8 Pages 4587 through 89, I ask that those pages  
9 be marked for identification as C-35.

10 MR. REYNOLDS: Wait just a minute.

11 MR. BUCHMANN: Can I have an offer of proof on  
12 this one?

13 MR. HJELMFELT: This demonstrates that economies  
14 of scale exist with respect to fossil plants also,  
15 and that Toledo Edison and Ohio Edison studied the economies  
16 of scale in light of worries about antitrust problems.

17 MR. REYNOLDS: You are moving too fast for me.  
18 Can you go back and give me an offer on C-34?

19 MR. HJELMFELT: Yes.

20 C-34 is offered to show that Pitcairn's request  
21 for membership in CAPCO was discussed at CAPCO Engineering  
22 and Operating Task Force meeting. And that this demonstrates  
23 that the response to Pitcairn's request for membership in  
24 CAPCO was formulated on a joint basis.

25 Document 8788 through 8790, I ask that that be

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1 marked as C-36.

2 MR. RIESER: Could we have an offer of proof on  
3 that, please?

4 MR. HJELMFELT: This would indicate that the  
5 CAPCO method of reserve allocation imposes a reserve  
6 burden on the smaller members of CAPCO.

7 CHAIRMAN RIGLER: What is the significance of that?

8 MR. HJELMFELT: Well, the problem is that the  
9 reserve allocation method developed by CAPCO imposes  
10 reserve obligations greater on smaller systems, and the  
11 smaller the system the more unequal or disproportionate the  
12 reserve obligation is.

13 Here is a demonstration that even among the  
14 CAPCO members it works disproportionately.

15 We will argue that it is not an appropriate formula  
16 for allocating reserves in a coordinating system because  
17 it does impose unequal economic burdens.

18 CHAIRMAN RIGLER: So that --

19 MR. HJELMFELT: It would be anticompetitive  
20 even among the CAPCO parties if they competed with each  
21 other, and even more so in applying it to the City of  
22 Cleveland.

23 CHAIRMAN RIGLER: If Cleveland as part of its relief  
24 obtained membership to CAPCO, would it then seek to change  
25 the reserve allocation formula?



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MR. HJELMFELT: That is correct.

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CHAIRMAN RIGLER: You have argued also that CAPCO never intended to include municipals, so the design of this formula couldn't have been said in that instance to include anticompetitive intent toward municipals, could it?

MR. HJELMFELT: The evidence and the documents I will be offering later on show that while they intended to admit municipals or never wanted to admit municipals, they were not certain that municipals would not be admitted.

MR. REYNOLDS: Since we have interrupted on this particular document, I would simply like the record to show that Mr. Hjelmfelt indicated that this document showed that Duquesne Light had a disproportionate share of reserves, as I understand his statement with respect to that portion of the share of reserves that the other CAPCO companies had.

I would like to point out that the document does not address that subject.

You asked what the significance of his offer was, and since he gave you that as the significance, it seems to me it might also be significant to point out that that is not what this document shows.

CHAIRMAN RIGLER: Which document now?

MR. REYNOLDS: C-36.

That is discussing reserve burdens in terms of

mm4 1 Duquesne's situation before and after becoming a member of  
2 CAPCO.

3 MR. HJELMFELT: Mr. Reynolds is correct. I  
4 did misstate and to that extent the offer of proof should  
5 be changed in that this document demonstrates the increased  
6 burden of reserves that Duquesne might have obtained through  
7 other -- or carried prior to joining CAPCO.

8 This shows the economic burden, an additional  
9 economic burden imposed upon Duquesne in exchange for its  
10 being admitted as a participant in the pool.

11 Document 5318, I ask that that be marked as  
12 C-37.

13 MR. REYNOLDS: Can I have an offer of proof on  
14 this?

15 MR. HJELMFELT: This demonstrates that although  
16 there was a formula, the parties within CAPCO differed on  
17 how the formula should be applied, and the formula itself  
18 was by no means concise and that again would go to show  
19 the inappropriateness of the application of this formula  
20 to the City of Cleveland, should it be granted relief of  
21 becoming a member of CAPCO.

22 Document 12146 through 48. I ask that that  
23 be marked as C-38.

24 MR. REYNOLDS: What is this document being offered  
25 to prove?

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1 MR. HJELMFELT: Offered to prove the desirability  
2 of nuclear power plants as compared to fossil-fired plants.

3 MR. REYNOLDS: The desirability generally, or  
4 the desirability among the CAPCO companies, or what?

5 MR. HJELMFELT: The desirability among the CAPCO  
6 companies based on the studies of what is desirable for  
7 generation in their area.

8 Document 18951 through 57. I ask that  
9 that be marked for identification as C-39.

10 MR. BUCHMANN: May I have an offer on that,  
11 please.

12 MR. HJELMFELT: This shows that the CAPCO parties  
13 made studies of possible reallocation of the investment  
14 responsibility in the first four CAPCO units and that again  
15 goes to show that as among themselves, they were not bound,  
16 did not consider that they were bound irrevocably to an  
17 application of their P/N allocation method or any formulary  
18 method of allocating.

19 Document 52930 through 39, I ask that that be  
20 marked as C-40.

21 MR. REYNOLDS: What is the numbers on this?

22 MR. HJELMFELT: 52930 through 39.

23 MR. REYNOLDS: What is the offer on this?

24 MR. HJELMFELT: Same offer as the preceding  
25 document, C-39.

run6 1 With respect to 5371 through 73, I ask that  
2 those pages be marked for identification as C-41.

3 MR. REYNOLDS: Is this the same offer?

4 MR. HJELMFELT: Same offer, and it shows that  
5 Toledo Edison conducted a study of possible changes in the  
6 method of allocation.

7 It would show that the parties were not entirely  
8 satisfied even among themselves.

9 Pages 5391 through 95, I ask that that be  
10 marked for identification as C-42.

11 MR. REYNOLDS: Is this the same?

12 MR. HJELMFELT: It is the same and it also shows  
13 evidence that Duquesne Light believed that the procedure  
14 was not equitable.

15 MR. REYNOLDS: You meant to say not equitable  
16 to some areas, is that right?

17 MR. HJELMFELT: They regard it was inequitable.  
18 The results to Duquesne Light were inequitable.

19 MR. REYNOLDS: All right, we will save it until  
20 later.

21 MR. SMITH: Do we know yet what P/N means?

22 MR. HJELMFELT: I am not certain that the  
23 details -- maybe you don't.

24 MR. SMITH: When I say we, I mean I don't.

25 MR. HJELMFELT: When I use the term P/N method,

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1 I mean the method by which the CAPCO companies allocate  
2 the units that they construct among themselves.

3 MR. REYNOLDS: The Applicants are offering  
4 expert testimony addressed to that point, Mr. Smith.

5 MR. HJELMFELT: Document 68662, I ask that that  
6 be marked as C-43.

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7 MR. REYNOLDS: What is your offer on C-43?

8 MR. HJELMFELT: My offer on C-43 would be that  
9 Toledo Edison also believed that the CAPCO formula imposed  
10 an inordinately high reserve margin on it as a price of  
11 being a member of the pool.

12 Proceeding to book number 7, pages 4408 through  
13 4430, I ask that those pages be marked as C-44 for  
14 identification.

15 MR. REYNOLDS: Wait a minute here.

16 Let me have an offer. I am just looking through  
17 this lengthy document to see what you have redlined.

18 I would like an offer.

19 MR. HJELMFELT: C-44 is offered to show that the  
20 early allocations were negotiated rather than the result  
21 of application of a formula; that the parties in CAPCO  
22 recognized that some of their allocations were inequitable  
23 and that CAPCO operating as a pool would be in a stronger  
24 negotiating position than would individual systems in  
25 negotiating with other pools or systems.

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1 MR. BUCHMANN: In negotiating with what?

2 MR. HJELMFELT: Other pools or systems.

3 CHAIRMAN RIGLER: It is not being offered then  
4 to show the contemplated purchase of power from Michigan  
5 by the CAPCO pool to satisfy its requirements?

6 MR. HJELMFELT: It would be offered as evidence  
7 of the fact of a purchase or an attempt to purchase,  
8 interest in purchasing.

9 MR. BUCHMANN: Mr. Chairman, could you direct  
10 our attention to what you are looking at?

11 MR. HJELMFELT: It is not offered with respect to  
12 the Michigan purchase.

13 CHAIRMAN RIGLER: It is not.

14 I looked at page 1 of the document.

15 MR. REYNOLDS: My copy is not redlined. That is  
16 why I can't look at page 1.

17 CHAIRMAN RIGLER: That is why I asked the  
18 question.

19 MR. REYNOLDS: My question is going to his  
20 affirmative answer and not to your question.

21 CHAIRMAN RIGLER: He is not offering it with  
22 respect to the purchase from the Michigan pool. So we are  
23 all on the same wavelength.

24 MR. HJELMFELT: Pages 51980 through 84, I  
25 ask that that be marked for identification as C-45.

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MR. REYNOLDS: What is your offer there?

MR. HJELMFELT: It is offered to show that the CAPCO companies encountered financing difficulties and considered thereby the deferral of certain CAPCO units.

MR. REYNOLDS: What is the significance of that?

MR. HJELMFELT: It goes back to the lengthy hypothetical put to Dr. Hughes, which on recross I asked him whether this would change the situation under the hypothetical.

MR. REYNOLDS: Whether what would change the situation under the hypothetical?

MR. HJELMFELT: If units were deferred because the CAPCO companies were having problems financing construction of those units.

MR. REYNOLDS: Could you read me back the offer now?

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

MR. HJELMFELT: Turning to book 10, I offer pages 6754 through 6778 for identification as C-46.

MR. REYNOLDS: What is your offer on this document?

MR. HJELMFELT: It shows that prior to formation of CAPCO, the CAPCO companies considered the effects of their proposed allocation formula on a system having the

mm10 1 characteristics, small system having the characteristics  
2 of the City of Cleveland should such a system join CAPCO  
3 and it shows that the effect was to assign the disproportionate  
4 measure of shares to the small system.

5 MR. REYNOLDS: My copy has no redline on it.

6 Could you point to me where it is in this document  
7 we are supposed to address our attention in order to respond  
8 to your offer?

9 MR. HJELMPFELT: There should be redlining.

10 If I might defer after the luncheon break, I  
11 will notify the parties of the redlining.

12 CHAIRMAN RIGLER: What was the last page of this  
13 document?

14 MR. HJELMPFELT: It extended through 6778.

15 Pages 27271 through 27272, I ask they be marked  
16 for identification as C-47.

17 MRE. REYNOLDS: Is this the same offer?

18 MR. HJELMPFELT: It would be the same offer and  
19 also, I offer it to show that Duquesne was considering  
20 whether or not such a formula, with the results that this  
21 formula would have, would be considered equitable by the  
22 FPC.

23 Document 27385 through 27396, I ask that that  
24 be marked for identification as C-48.

25 MR. REYNOLDS: What is the offer there?



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MR. HJELMFELT: This again goes to show the arbitrary allocation of capacity in the early CAPCO units, and it shows that the CAPCO companies considered the desirability of changing to a strict formulary approach to allocation because in the event -- in the event they were forced to admit municipal systems to CAPCO they would rather face them with a strict formula approach to allocation than permit the municipals to negotiate their shares as did the original CAPCO members.

10 The location of the units in the CAPCO system was not based on economics. That again relates to the lengthy hypothetical put to Dr. Hughes.

13 Pages 68392 through 68425. I ask that that be marked for identification as C-49.

15 MR. REYNOLDS: What are you offering this document for?

17 MR. HJELMFELT: The document again shows that the parties did not, among themselves in allocating at least the early units, did not stick to a strict formulary allocation.

20 It demonstrates that the CAPCO companies were afraid that municipals would intervene when they made filings with the Federal Power Commission, and would try to join the pool.

24 It demonstrates their desire to keep the municipals out of the CAPCO pool. It shows that CEI recognized that the

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City of Cleveland would be seeking an interconnection with  
CEI.

And it shows that the parties desired to avoid  
federal regulation of coordination.

It would show that the reliability criteria used  
by the CAPCO company was a compromise. Thus, that there would  
not be any set, perfect reliability that they chose.

end of 11

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1 CHAIRMAN RIGLER: If that is your offer, why  
2 do you have the underlining on page --- the redlining on 68403  
3 relating to the inclusion of the Allegheny Power system  
4 in the pool?

5 MR. VOGLER: What page?

6 CHAIRMAN RIGLER: 68403.

7 MR. HJELMFELT: It also demonstrates that while  
8 they wanted to keep municipal systems out of the pool,  
9 that at least Duquesne thought that the APS system would like  
10 to join or might want to join and that the same expressions  
11 of undesirability were not associated with that possibility.

12 MR. REYNOLDS: I wonder if it might be appropriate  
13 to raise a question with regard to this document which  
14 contains, at least as to the red-lining portions, various  
15 statements during a meeting that were made by various  
16 individuals of the company to raise a question, whether  
17 the offer of proof should be couched in terms that this  
18 document demonstrates, or it would be more accurate to  
19 request Mr. Hjelmfelt to revise his offer in the  
20 same manner that the Board instructed Mr. Buchmann at  
21 an earlier time to revise his offer, from demonstrates  
22 to intends to demonstrate.

23 CHAIRMAN RIGLER: Or will attempt to demonstrate.

24 MR. REYNOLDS: Yes.

25 CHAIRMAN RIGLER: I think that would be appropriate.

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MR. HJELMFELT: I so amend my offer.

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Pages 6378 through 6416, I ask that these pages

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be marked for identification as C-50.

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MR. RIESER: Excuse me?

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MR. REYNOLDS: I would like an offer on this.

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MR. HJELMFELT: Through this document the City of

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Cleveland will attempt to demonstrate that the CAPCO

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companies were concerned with getting Federal Power

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Commission approval to a memorandum of understanding and

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that part of that concern was generated by a fear that muni-

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cipals, such as Hiram, Oberlin and Cleveland might file

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objections and try to get into the pool.

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That the original allocations were not based

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on a formula, but by judgment, in an attempt to get

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over a sticky period.

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That the parties were negotiating allocations,

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that the reserve formula applied was arbitrary

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also, and agreed-to figure and not something that

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could be derived.

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That the allocation of units -- locations of

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units was made on a basis, other than strict

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engineering and desire of the parties to have units in

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their territory, that the construction of transmission

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was associated with the construction of the units, that

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the CAPCO companies considered that the fossil fuel

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1 era had passed and that nuclear fuel was the future  
2 economic production of electricity.

3 Pages 28275 through 28279, I ask that they be  
4 identified as C-51.

5 MR. BUCHMANN: Mr. Chairman, this may not be an  
6 appropriate, and you may have ruled on this, and I  
7 missed it, but in these long documents, both of the last  
8 two, I see what has been red-lined is Mr. so and so said  
9 such and such.

10 Does that come in as to the proof of the  
11 such and such or just the fact he said it? Mr. Williams  
12 said no one else in this country does certain things.  
13 What is the page I'm looking at.

14 If this comes in, does it come in to show only  
15 that Mr. Williams said it, or that no one else in the  
16 country does certain things?

17 CHAIRMAN RIGLER: Only that Mr. Williams said  
18 it.

19 MR. REYNOLDS: Subject to what Mr. Williams might  
20 say on the stand.

21 MR. HJELMFELT: I believe I marked pages  
22 28275 through 28279 as C-51.

23 MR. REYNOLDS: What is your offer on that?

24 MR. HJELMFELT: Through C-51 the City will  
25 attempt to demonstrate that the CAPCO members agreed

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1 that municipalities should not be admitted to CAPCO  
2 prior to the time that they had signed the memorandum of  
3 understanding.

4 Pages 72949 through 72954, I ask they be marked  
5 for identification as C-52.

6 Pages 29289 --

7 MR. REYNOLDS: Wait a minute.

8 We haven't moved beyond C-52, have we?

9 I would like an offer on that.

10 MR. HJELMFELT: Through Exhibit-52

11 for identification, the City will attempt to demonstrate  
12 that the CAPCO companies were concerned that the Federal  
13 Power Commission would raise questions as to why municipals  
14 and systems or public power bodies were not admitted to  
15 CAPCO and that they formulated a response or explanation  
16 which they would give to the Federal Power Commission  
17 in an attempt to preclude the Federal Power Commission from  
18 attempting to force them to permit municipals to  
19 enter.

20 Also to show that one of the reasons or the  
21 rationale they were giving for excluding municipals'  
22 systems was that those systems could participate through  
23 wholesale sales or wholesale purchases from the CAPCO  
24 companies.

25 MR. REYNOLDS: What is the significance of that?

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1 MR. HJELMFELT: The significance of that would  
2 be tied in with other evidence will demonstrate that at that  
3 time, prior to that time, and after that time the various  
4 members of the CAPCO pool, in fact, refused to sell  
5 wholesale power to certain municipal systems.

6 MR. REYNOLDS: I will let that pass for the  
7 time being.

8 I'm asking for what is the significance of the  
9 offer of proof that you give.

10 MR. HJELMFELT: The significance again is that it  
11 shows that the parties in CAPCO were concerned with and did  
12 not want municipals or public power bodies as members of  
13 CAPCO, and that they were afraid they would have to put  
14 them in and that as an explanation for not letting them  
15 in, they were saying they were selling power when, in fact,  
16 they were not, which demonstrates again that their  
17 attempt was not only to not let them in, but to preclude  
18 them from being able to compete.

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1 MR. HJELMFELT: This is not a good faith reason  
2 for not letting them in.

3 Pages 29289 through 29290. I would ask that they  
4 be marked as C-53 for identification. And the reason I am  
5 marking that for identification is simply that it is a suggestion  
6 of changes to the preceding document. I am just including it  
7 for a full record.

8 4903 through 4904, I ask they be marked for  
9 identification as C-54.

10 MR. BUCHMANN: Do you want to include 4905?

11 MR. HJELMFELT: That is correct, 4905 should be  
12 the last number.

13 MR. PERI: I would like an offer of proof on this  
14 please.

15 MR. HJELMFELT: The City will, through C-54, attempt  
16 to demonstrate that Ohio Edison considered means by which  
17 the pool should assign the capacity rating to various units  
18 in a method which would be disadvantageous to municipal  
19 systems should they be admitted to CAPCO, and providing an  
20 economic disincentive for such systems to participate in the  
21 CAPCO pool. That they recognized that the fact that they  
22 did not apply the CAPCO formulas between Ohio Edison and  
23 Pennsylvania Power was a possible problem in arguing the  
24 method of application or of allocation which should be applied  
25 to other small systems who might join the pool.



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1 And that application of the CAPCO formula to  
2 Pennsylvania Power would be economically disadvantageous.

3 Pages 27988 through 27995, I would ask they be  
4 marked as C-55.

5 MR. BUCHMANN: Can I have an offer of proof on  
6 this one?

7 MR. HJELMFELT: Through C-55, the City would attempt  
8 to demonstrate that the CAPCO parties were desirous of  
9 avoiding FPC regulation of the pool for fear that it would  
10 give the municipal systems greater opportunity to attempt to  
11 obtain admission to the pool and obtain the benefits of  
12 coordination thereby.

13 CHAIRMAN RIGLER: Is the author of this document  
14 Mr. Greenslade?

15 MR. BUCHMANN: Yes, sir.

16 CHAIRMAN RIGLER: Directing your attention to  
17 page 37989, doesn't this also relate directly to the  
18 lengthy objection and argument Mr. REynolds made on behalf  
19 of all Applicants during the testimony of Dr. Wein when he was  
20 attempting to strike that portion of Dr. Wein's testimony  
21 dealing with the effectiveness of federal regulation? And I  
22 note here that Mr. Greenslade is arguing that the ability of  
23 the regulatory agency to cope with these new concepts is  
24 another question.

25 And he continues to suggest that in some instances

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1 the FPC has denied regulatory authority over some minor  
2 facets -- except over minor facets of the arrangement.

3 Doesn't this document bear directly on those  
4 points?

5 MR. BUCHMANN: That relates to tenancy in common,  
6 if your Honor will note.

7 CHAIRMAN RIGLER: Yes, but it seems to me it is  
8 inescapably related to the very arguments that Applicants  
9 were making as they attempted to strike some of Dr. Wain's  
10 testimony.

11 MR. HJELMFELT: It goes directly to the scope of  
12 regulation by the Federal Power Commission and that is the  
13 thrust of Mr. Greenslade's argument as to why they should  
14 avoid being an entity, to avoid that regulation.

15 MR. REYNOLDS: I am not sure I understand the  
16 point the Chairman was making.

17 It seems to me this goes to the scope of jurisdic-  
18 tion rather than to the effectiveness of the operation of the  
19 Commission within those areas which are within its jurisdiction.

20 CHAIRMAN RIGLER: But you agreed yesterday  
21 that your argument was that the options that the Applicants  
22 make available coupled with the presence of various  
23 regulatory schemes prevented the existence of a situation  
24 inconsistent.

25 MR. REYNOLDS: That is right.

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Were you suggesting that there is something here inconsistent with what I was arguing?

CHAIRMAN RIGLER: I have nothing further.

MR. HJELMFELT: I would ask that page 49168 be marked for identification as C-56.

MR. REYNOLDS: Could we have an offer of proof on this document?

MR. HJELMFELT: By document number C-56, the City will attempt to demonstrate that Duquesne Light recognized that one method used to avoid wheeling was to dress it up in the frame of a buy-sell agreement which is the same thing, in fact.

Pages 11015 through 11024, I ask that they be marked for identification as C-57.

MR. RIESER: Excuse me, may I inquire of Mr. Charno whether City 56 was not introduced as a Department of Justice Exhibit?

MR. CHARNO: The offers of proof requested from the Department differ in some respects from the offers of proof requested by -- pardon me, made by the City of Cleveland.

So that in fact, no.

MR. BUCHMANN: Could I have it read back, please?

CHAIRMAN RIGLER: I didn't hear the question either.

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1 (Whereupon the reporter read from the record  
2 as requested.)

3 MR. REYNOLDS: Maybe the Chairman can refresh  
4 my recollection.

5 My recollection was to the extent the offers of  
6 proof were to be different on documents that the parties --  
7 if the documents the parties were relying on were the same,  
8 the offers of proof would all be made at the same time so  
9 that objection to introduction of those documents by  
10 Applicants could be addressed at that time.

11 Now I am hearing we have an identical document  
12 already in evidence, and we are getting a new offer of  
13 proof.

14 MR. CHARNO: The Staff and the Department obviously  
15 made offers at different times and the City is apparently  
16 doing the same thing.

17 Mr. Reynolds' understanding is not accurate.

18 MR. REYNOLDS: This was done specifically in  
19 trying to coordinate documents and pare down the City's  
20 projection as to how many unsponsored documents it would  
21 have, and the Department's projection, and there would be  
22 an effort so that the Applicants would have an opportunity  
23 at the time of the introduction of documents with respect  
24 to the offers to object.

25 MR. CHARNO: That is true with respect to

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1 the depositions, but not documents.

2 CHAIRMAN RIGLER: My recollection is  
3 Mr. Hjelmfelt did, in fact, on behalf of the City, add to  
4 the offers of proof of the Department with respect to some  
5 documents.

6 MR. HJELMFELT: I may have. I don't recall one  
7 way or the other.

8 I did not recall also, that Document C-56 had  
9 been offered by the Department.

10 If I proceed at this time, and when it comes  
11 time to offer it into evidence, maybe we can deal with  
12 this problem then.

13 CHAIRMAN RIGLER: I think so.

14 MR. HJELMFELT: I believe I have just had marked  
15 for identification C-57.

16 MR. REYNOLDS: What is your offer of proof in  
17 that regard?

18 MR. HJELMFELT: Through Document C-57 the City  
19 will attempt to demonstrate that Duquesne Light at a point  
20 became concerned that new companies entering CAPCO may  
21 come out with allocations better than they would like them  
22 to have, and that they proposed changes in the allocation  
23 procedure which would make membership in CAPCO for MUNY  
24 members more economically disadvantageous.

25 Pages 68094 through 68097. I ask they be marked

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1 for identification as C-58.

2 MR. REYNOLDS: What is your offer on that?

3 MR. HJELMFELT: It shows a concern by CAPCO  
4 executives that the City will attempt to demonstrate by  
5 this document that CAPCO executives were concerned that under  
6 their one proposed allocation method, it would be beneficial  
7 to the municipal system, and that would be no good.

8 It demonstrates that the parties wanted to  
9 impose the greatest economic burdens upon the City should it  
10 be permitted to join.

11 Document 18941 through 18942, I ask that that  
12 be marked for identification as C-59.

13 MR. REYNOLDS: Let me have an offer of proof  
14 on this.

15 MR. HJELMFELT: Through Document C-59, the City  
16 would attempt to demonstrate that although Duquesne's  
17 Proposal number 2 was proposed in 1971, that in 1973  
18 after the City of Cleveland had requested membership in CAPCO,  
19 that in part the Proposal number 2 was adopted and would  
20 impose greater burdens on the City should it be admitted.

21 Pages 12315 through 12316, I would ask that they  
22 be marked for identification as C-60.

23 MR. BUCHMANN: Could I have an offer of proof  
24 on this, please?

25 MR. HJELMFELT: This is offered, and through

mm8 1 this document the City will attempt to demonstrate that  
2 Mr. Rudolph's proposal to the City of Cleveland, the  
3 proposal was cleared through the other CAPCO members and  
4 thus demonstrates a joint action.

5 MR. HJELMFELT: Document 4508, I ask it be  
6 marked for identification --

7 MR. REYNOLDS: Can I ask for a clarification,  
8 Mr. Hjelmfelt?

9 You would agree, would you not, that these  
10 conversations were in connection with talks that were going  
11 on with the Department of Justice at the same time?

12 MR. HJELMFELT: Yes.

13 It refers to talks with the Department of Justice.

14 MR. REYNOLDS: All right.

15 Thank you.

16 MR. HJELMFELT: Page 4508, I request that  
17 that be marked for identification as C-61.

18 MR. PERI: I would like an offer of proof. I  
19 would be interested to know whether the handwritten  
20 notations are offered.

21 MR. HJELMFELT: The handwritten notations are  
22 not offered.

23 It is offered to show that the response of the  
24 CAPCO companies to the City of Cleveland in its request  
25 for membership in CAPCO, was a joint formulated response --

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joint action by the CAPCO companies, including Ohio Edison and Pennsylvania Power.

MR. REYNOLDS: Wait a minute.

I think I want that read back.

(Whereupon the reporter read from the record as requested)

CHAIRMAN RIGLER: Is there agreement as to who DEM is, and as to whether he is the author of this memorandum?

MR. PERI: We have not been previously asked for stipulation, but DEM is D. Bruce Mansfield. The Department of Justice has that. We have no problem that he authored this document.

end 113



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1 MR. HJELMFELT: Page 63393, I ask that that be  
2 identified as C-62.

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3 MR. BUCHMANN: Could I have an offer of proof  
4 on that?

5 MR. HJELMFELT: Through Document C-62, the City  
6 of Cleveland will attempt to demonstrate further that  
7 the action denying the City membership in CAPCO was a  
8 joint action of the CAPCO companies.

9 Page 52363, I ask that that be marked for  
10 identification as C-63.

11 MR. RIESER: Could I have an offer on this,  
12 please?

13 MR. HJELMFELT: By agreement, the request for  
14 an offer on C-63 will be deferred until after lunch, if  
15 that is agreeable with the Board.

16 CHAIRMAN RIGLER: It is.

17 MR. HJELMFELT: I would offer page 12691 as C-64.

18 MR. BUCHMANN: Could I have an offer of proof  
19 on that one?

20 MR. HJELMFELT: It is offered to show that CEI  
21 was concerned that an agreement to wheel PASWY power would  
22 establish a dangerous precedent with respect to wheeling  
23 in the CAPCO area.

24 And we would attempt to demonstrate that the  
25 CAPCO companies and CEI did not want any dangerous

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1 precedents.

2 MR. REYNOLDS: Could we get the significance  
3 of that?

4 MR. HJELMFELT: The significance of that is that  
5 the CAPCO companies did not want power wheeled into the  
6 CAPCO territory from municipalities which could be used  
7 by the municipalities or other bodies to compete with the  
8 CAPCO companies. It would enable them to gain some of  
9 the benefits of coordinated operations and perhaps develop-  
10 ments.

11 MR. HJELMFELT: Pages 36093 through 36094, I ask  
12 that they be marked for identification as C-65.

13 MR. BUCHMANN: Can I have an offer on that? Does  
14 this go in for the handwritten material on 36094.

15 MR. HJELMFELT: It would go in for the handwritten  
16 material on 3609.

17 MR. BUCHMANN: Could I have an offer, please?

18 MR. HJELMFELT: The offer is that CBI made  
19 a proposal to MELP based on what it considered what  
20 authorized by CAPCO at the special meeting to be called to  
21 consider Cleveland's request for membership in CAPCO on  
22 12-7-73 and the City would attempt to demonstrate from  
23 this document that the response to the City's request  
24 was a joint action of all of the CAPCO members and that it  
25 was the intent of the CAPCO companies to impose restrictions

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1 on what MELP, the City would be able to obtain by  
2 way of coordinated operations and development.

3 MR. REYNOLDS: Let me have the first part of  
4 that offer again.

5 (Whereupon, the reporter read the record as  
6 requested.)

7 MR. REYNOLDS: It is your intent to prove that the  
8 December 7, '73 meeting was called to consider the City's  
9 request for membership in CAPCO. Is that what you are  
10 saying?

11 MR. HJELMFELT: Yes, that the CAPCO --

12 MR. REYNOLDS: The document doesn't go to that  
13 at all.

14 MR. HJELMFELT: I'm not attempting to show that  
15 the meeting was called for that purpose, this document.

16 MR. REYNOLDS: You indicated that in your offer  
17 and that is why I was asking.

18 MR. HJELMFELT: Pages 12285 through 12286 may be  
19 discarded.

20 Page 35638. I ask that that be marked for  
21 identification as C-66.

22 MR. REYNOLDS: I would like an offer on this.

23 MR. HJELMFELT: Through C-66 the City will attempt  
24 to demonstrate that the responses to the City's request  
25 for membership in CAPCO and access to participation in nuclear

1 units was a joint response by all of the CAPCO members.

2 MR. REYNOLDS: You mentioned membership  
3 again. Are you going to use this document for that purpose?

4 MR. HJELMFELT: This document would go solely  
5 to the participation.

6 MR. HJELMFELT: Thus it would affect the City's  
7 ability to engage in coordinated development.

8 Pages 50705 should be omitted.

9 Pages 67507 through 68512, I ask that that be  
10 marked as C-67.

11 MR. REYNOLDS: What is the offer on this  
12 document?

13 MR. HJELMFELT: Through C-67, the City will  
14 attempt to demonstrate that the CAPCO companies did not  
15 want to engage in wheeling transactions with municipal  
16 systems or other small entities, and thereby deny to  
17 them the benefits of coordinated operation and development.

18 MR. REYNOLDS: Let me have that offer again,  
19 please.

20 (Whereupon, the reporter read the record  
21 as requested.)

22 MR. REYNOLDS: I think you misspoke on your last  
23 offer.

24 I know what you intended to say, but I think  
25 because of your double negatives and this business, you

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1 wound up saying something different than you thought  
2 you said.

3 MR. HJELMFELT: If it turns out I said a  
4 negative, when I should've had, the offer is that each of  
5 the companies was opposed to granting wheeling to small  
6 entities, including municipalities and that the  
7 refusal to grant wheeling would be a means of preventing,  
8 and we will attempt to demonstrate thereby, further the  
9 attempt to prevent the small entities from achieving  
10 coordinated operation and development.

11 I will withhold at this time from  
12 identifying pages 21856 through 57.

13 Page 19663 through 65 --

14 MR. REYNOLDS: Do you want us to hold on to this?

15 MR. HJELMFELT: Yes.

16 I ask that that be marked for identification  
17 as C-68.

18 MR. BUCHMANN: I can't make out the date.  
19 Can you on your copy?

20 MR. HJELMFELT: I believe the date is 1963.

21 I offer pages 16385 through 95 for identification  
22 as C-69.

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1 MR. REYNOLDS: Let me go back for a minute.

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2 C-68, how can that be a '63 date, when in the body  
3 of the memorandum we are talking about '64 and '65 data?

4 It has been updated at least to '64, and they  
5 also make reference to sales as approved in '65.

6 MR. HJELMFELT: That appears to be correct.  
7 The date on here looks like '63, but it  
8 could be a '65, I guess.

9 MR. BUCHMANN: It makes a difference. May I have  
10 an offer on 68, then, if you are going to change the date?

11 MR. HJELMFELT: 68 is again offered to show that  
12 CEI was attempting to eliminate rate competition between  
13 the City and CEI through urging free street lighting  
14 by the municipal system which revenues would have to be  
15 made up by increasing other rates and that this was  
16 again contemporaneous with the entire position of  
17 CEI that there would be no interconnection without a price  
18 fixing scheme. And it was part of the overall plan to  
19 eliminate the city electric system.

20 I would ask that Document 1116 through 18 be marked  
21 for identification as C-70.

22 MR. BUCHMANN: I think I interrupted you, and you  
23 never got through with 69, did you?

24 MR. HJELMFELT: Yes, I think I did. I marked it.

25 MR. BUCHMANN: What is the offer on 70?

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MR. HJELMFELT: 70 would be offered in an attempt to demonstrate that CEI was considering opposing a financing plan that might reduce the financial obligations of the City Electric System and that this would demonstrate or we would attempt to demonstrate this is part of CEI overall plan to eliminate the City System by insuring that it incurs the heaviest financial burden.

Pages 953 through 59, I ask that they be marked for identification as C-71.

MR. BUCHMANN: Could I have an offer of proof on 71?

MR. HJELMFELT: I'm not offering it for the writing on the bottom of page 954, the handwriting. This is offered to show offers by CEI to purchase the city electric system.

And again it is evidence of offers to interconnect contingent on rate equalization or price fixing.

MR. BUCHMANN: Does that complete your offer?

MR. HJELMFELT: It would be offered also to demonstrate thereby that the CEI was desirous of obtaining, purchasing, acquiring the city system and in the alternative, at least in the shorter run of achieving a price-fixing situation.

MR. BUCHMANN: I notice there is handwriting on 955 and 939, as well. Are you offering, for example,

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that thing at the top of 855?

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MR. HJELMFELT: No.

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MR. BUCHMANN: Is it red-lined on 855, I'm

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not sure.

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MR. HJELMFELT: 955, the red-lining should start

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with the paragraph starting "Background," and running to

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the bottom of the page.

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MR. REYNOLDS: 959.

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MR. HJELMFELT: I'm talking about 955.

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MR. BUCHMANN: WE are on 959.

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MR. HJELMFELT: In 959, the red-lining should

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be the entire page.

13

MR. BUCHMANN: Including the handwritten?

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MR. HJELMFELT: Including the handwritten.

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Page 24977 through 25002, I ask that that be

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marked as C-72.

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MR. BUCHMANN: Can I have an offer on C-72?

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MR. HJELMFELT: I offer this to demonstrate,

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attempt to demonstrate that CEI was concerned not

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merely with acquiring customers from MELP, but was also

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studying the effect of the loss of revenues to MELP

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from the conversion of those customers.

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We would, to thereby, attempt to demonstrate

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the intent and desire of CEI to acquire the City's

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system. That would tie in with the actions taken by



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1 CEI to enhances their ability to convert the  
2 City's customers.

3 Page 16470 through 71. I ask that that be  
4 marked for identification as C-73.

5 MR. BUCHMANN: May I ask for an offer of proof,  
6 after all.

7 MR. HJELMFELT: Through Document C-73, the City  
8 will attempt to demonstrate that in considering  
9 whether or not to interconnect with the City of Cleveland,  
10 CEI was concerned not only with the effects on Cleveland,  
11 but the effect on its relationship with the other  
12 system with which it competed, Painesville, and that  
13 its desire to avoid interconnections was based on these  
14 competitive considerations.

15 And that, among the considerations, of course,  
16 was that they also wanted to acquire Painesville.

17 Pages 15624 through 57, I ask that be marked as  
18 C-74, and the margin notation, which is portion the  
19 red-line is relevant to, I have entered into a stipulation  
20 with CEI that that was written by Mr. Borthwick.

21 MR. BUCHMANN: What page?

22 MR. HJELMFELT: That is on page 15649.

23 His name is spelled B-o-r-t-h-w-i-c-k.

24 He is the party receiving the carbon copy on  
25 the first page of the document.

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1 MR. BUCHMANN: Is that the only red-lining?

2 MR. HJELMFELT: That is the only red-lined  
3 portions, I believe.

4 (Whereupon, the documents referred  
5 to, were marked Exhibits C-1  
6 through 74 for identification.

7 Whereupon at 1:15 p.m., the hearing was  
8 adjourned, to be reconvened at 2:05 p.m.)

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MR. CHARNO: Mr. Chairman, before we begin with documents again, you asked this morning for transcript references to the argument on the deferred exhibits.

I would like to add some additional pages to those supplied by Applicants.

Pages 6320 through 24 --

CHAIRMAN RIGLER: Which document?

MR. CHARNO: This would be Exhibits 200, 480, 512 and 586.

CHAIRMAN RIGLER: Which one?

MR. CHARNO: This transcript reference goes to 200 and 512. It is 6320 through 24.

There is discussion of 200 and 512 again in 6543 and 44.

MR. HJELMPELT: With respect to document marked for identification as C-46, that is the first document in book 10, I would ask that page 6754 be redlined and that page 6756 be redlined. The entire pages.

With respect to Document C-74, CEI and the City have entered into a stipulation that Mr. Borthwick is a senior specialist employed in the Office of the Controller of CEI.

MR. BUCHMANN: I don't recall whether I asked for

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1 an offer of proof on C-74 and if I did not, I do so now.

2 MR. HJELMFELT: C-74 is offered to show the  
3 continuing consideration by -- to show that -- we will  
4 offer it in an attempt to demonstrate that CEI was interested  
5 in acquiring the City electric system.

6 The Applicants have responded to the City's  
7 requests for admissions, referring to Exhibit marked  
8 C-63 for identification.

9 Duquesne Light would admit that the letter  
10 referred to what Mr. Arthur's letter of December 10 to the  
11 City of Cleveland that an employee of Duquesne Light made  
12 a telephone call to Mr. Hauser after the letter was sent,  
13 and read the contents of that letter to Mr. Hauser.

14 CEI would admit that Mr. Hauser received that  
15 phone call and that a letter of Mr. Arthur -- Mr. Arthur's  
16 letter was read to him over the telephone and that from that  
17 conversation the Department of Justice Exhibit 186 was typed  
18 by an employee of CEI.

19 Is that correct?

20 MR. BUCHMANN: Yes.

21 MR. RIESER: That is correct.

22 MR. REYNOLDS: That is correct.

23 MR. HJELMFELT: The request for admission was  
24 satisfactorily answered as far as the City is concerned.

25 With respect to document 20132 through 134

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1 I would ask that that be marked C-75 for identification.

2 MR. BUCHMANN: Could I ask for an offer of proof  
3 on this.

4 MR. HJELMFELT: This is offered to show -- it  
5 shows the shifts in customers for an approximately two-year  
6 period, 1968 to 1970, and thus shows the trend of the  
7 customers and the City will attempt on this document by  
8 itself -- the City will be showing there was a trend of  
9 customers from CEI to MELP during that period.

10 1014 to 1019, I ask that that be marked as  
11 C-76.

12 MR. BUCHMANN: That is 14 to 19?

13 MR. HJELMFELT: Yes.

14 Document 1032, I ask that that be marked as  
15 C-77.

16 MR. BUCHMANN: I guess I will ask for an offer on  
17 this.

18 MR. HJELMFELT: This document shows that CEI  
19 recognizes the effect on MELP's costs from the large 85  
20 megawatt unit and from that we will attempt to demonstrate  
21 with other evidence that CEI was interested in preventing the  
22 City from making effective utilization of its large  
23 unit and thereby increasing the costs to the City and making  
24 it easier for CEI to acquire the system and to reduce  
25 competition.

mm4 1 Pages 1033 through 1038, I ask that that be  
2 marked as C-78.

3 MR. REYNOLDS: Let me have that last offer of  
4 proof back again, please?

5 (Whereupon the reporter read from the record  
6 as requested.)

7 MR. HJELMFELT: Pages 16483 through 85. I ask  
8 they be marked for identification as C-79.

9 MR. BUCHMANN: Was there a 78?

10 MR. HJELMFELT: C-79 were pages 1033 through 38.

11 MR. BUCHMANN: What is the offer on 78?

12 MR. HJELMFELT: This document would be offered to  
13 demonstrate the enormous benefits that can be obtained  
14 through economies of scale in the production of electricity  
15 as recognized by CEI. And that these benefits are reflected  
16 in rate comparisons.

17 Pages 16186 through 16187, I ask they be marked  
18 for identification as C-80.

19 79 was marked as 16483 through 85, I believe.

20 MR. BUCHMANN: What is that offered to show?

21 MR. HJELMFELT: It is offered to show that CEI  
22 was seeking an excuse to disconnect certain load service  
23 transfer points.

24 CHAIRMAN RIGLER: Mr. REynolds, I will caution  
25 you about the continued smiles or laughter each time there is

mm5

1 an offer of proof.

2 MR. HJELMFELT: Pages 15571 through 15611 will  
3 be identified as C-81.

4 MR. BUCHMANN: Wait just a minute so I can check  
5 this, please.

6 MR. REYNOLDS: Can I get an offer on C-80?

7 MR. HJELMFELT: C-80 is offered to show the  
8 types of considerations that go into rate design and there-  
9 fore are relevant to much of the examination of the witnesses  
10 with respect to flowing through of costs and rates in the  
11 regulation of utilities.

12 Document 20108 through 20111 will be marked  
13 as C-82 for identification.

14 MR. BUCHMANN: What is the offer on that?

15 MR. HJELMFELT: Offered to show that the CEI  
16 position was that the load transfers -- that under the  
17 load transfer arrangement, the CEI system and MELP system  
18 would under no condition be parallel and it will show the  
19 method of operating with respect to communications between  
20 the systems.

21 MR. BUCHMANN: I understand that is what the  
22 document says.

23 What conclusion are we to draw from that, is my  
24 question, if any?

25 MR. HJELMFELT: One conclusion that the City

mm6 1 would hope to demonstrate from that document is that CEI  
2 was interested in avoiding operating in parallel with the  
3 City's electric system.

4 Document 21390 through 21393 will be offered as  
5 C-83.

6 MR. REYNOLDS: I would like an offer.

7 MR. HJELMFELT: The City would offer this to  
8 demonstrate CEI recognition of the price sensitivity of  
9 the retail market.

10 15612 through 15621, I ask they be marked for  
11 identification as C-84.

12 MR. REYNOLDS: Is that all you are attempting to  
13 use C-83 for?

14 That is not a disputed issue in this case. I  
15 don't understand.

16 Go ahead.

17 MR. BUCHEMANN: Is there a proffer or offer on  
18 C-84?

19 If not, I would like one.

20 end 716

21

22

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1 MR. HJELMFELT: The City will offer C-84 to  
2 demonstrate that CEI anticipated that there would be  
3 more FPC pressure to compel interconnections between  
4 investor-owned utilities and government-owned utilities  
5 and also to show that CEI was aware of an increasing  
6 difficulty in obtaining land rights or sites and rights-of-  
7 way, which is relevant to the ability of small systems to  
8 obtain rights-of-way for the construction of transmission  
9 facilities.

10 1148 through 49, I ask those be marked for  
11 identification as C-85.

12 MR. BUCHMANN: May I ask for an offer on 85?

13 MR. HJELMFELT: The City will attempt to demon-  
14 strate from C-85 that CEI was aware of the effects on WELP's  
15 finance from customer losses.

16 Page 16458, I request that be marked for identifi-  
17 cation as C-86.

18 MR. REYNOLDS: I would like an offer on this.

19 MR. HJELMFELT: From Document C-86 the City  
20 will attempt to demonstrate that there are advantages  
21 which can accrue to a large system from interconnecting  
22 with a small system.

23 It will also be offered to demonstrate CEI  
24 desire to avoid competition with other systems in its  
25 service territory.

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1 Document 16499, I ask that that be marked  
2 for identification as C-87.

3 MR. BUCHMANN: Is that the same offer as the  
4 preceding offer?

5 MR. HJELMFELT: It is offered to attempt to  
6 demonstrate that a large system, such as CEI could  
7 obtain some benefits from interconnecting with a smaller  
8 system, such as Painesville or the City of Cleveland.

9 Document 21489 through 21491 will be marked  
10 for identification as C-88. It shows the -- I better  
11 not.

12 MR. BUCHMANN: I will ask you then.

13 MR. HJELMFELT: It demonstrates, shows the  
14 greater efficiency from larger units.

15 It also shows that the MELP 75 megawatt unit could  
16 have been expected to be more efficient than the CEI  
17 system average at a time when CEI was not operating  
18 a large number of units greater than 250 megawatts.  
19 And what you might draw from that is that when CEI was  
20 opposing the MELP expansion with the argument that they  
21 could sell power to the City more cheaply than the City  
22 could produce it itself, CEI knew or should  
23 have known that that was not the case.

24 MR. REYNOLDS: Let me have the last statement  
25 back, please.

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

3 MR. HJELMFELT: Document 19684 through 94 will be  
4 marked for identification as C-89.

5 MR. BUCHMANN: What is the offer on 69?

6 MR. HJELMFELT: This is offered to show that  
7 CEI interconnected itself directly in the  
8 financing of the Cleveland municipal electric plant.  
9 That again shows CEI attempt to lessen the ability of the  
10 City electric system to compete.

11 Document 21524 through 21533, I request that that be  
12 marked for identification as C-90.

13 MR. BUCHMANN: I assume this is the same offer  
14 as C-84 or is there more?

15 MR. HJELMFELT: It is the same offer, but it  
16 also would be offered to show that the rates were designed  
17 to reflect matters other than strict cost of service.

18 Pages 21511 through 21533, I request they be  
19 marked as C-91.

20 MR. BUCHMANN: Is this the same as 90 in the  
21 offer?

22 MR. HJELMFELT: This would have the same offer  
23 as C-90.

24 Proceeding to book 12, pages 73930 through 73941,  
25 I request that that be marked for identification as C-92.

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1 MR. BUCHMANN: May I have an offer of proof  
2 on this one?

3 MR. HJELMFELT: This is offered to demonstrate  
4 the interest of CEI in acquiring the City electric system.

5 Document 23285 I request that that be marked  
6 as C-93.

7 MR. BUCHMANN: What is the offer on 93?

8 MR. HJELMFELT: C-93 would go to show the  
9 interest of CEI in acquiring the City electric system.

10 It would also go to show that CEI interest in  
11 acquiring the municipal system was not purely a reaction  
12 to public pressure that it make such an acquisition.

13 Document 73070 through 73 should be disregarded.

14 CHAIRMAN RIGLER: That is a throw-away?

15 MR. HJELMFELT: Throw-away.

16 Document 72896 through 97, I ask that that  
17 be marked as C-94.

18 MR. BUCHMANN: Will you give me an offer on  
19 Exhibit 94.

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2 MR. HJELMFELT: The City would offer C-94 in an  
3 attempt to demonstrate CEI opposition to the City's  
4 proposed interconnection with the Orrville and Painesville  
5 municipal systems and its opposition to the expansion  
6 of the municipal light generating plant.

7 The City would attempt to demonstrate therefrom  
8 that CEI wished to prevent the City from obtaining the  
9 benefits of coordinated operation or development with  
10 other municipal systems as well as to prevent the City from  
11 expanding its generating facilities which would be used  
12 to compete with CEI.

13 I request that page 73889 through 900 be marked  
14 for identification as C-95.

15 MR. BUCHMANN: Do you have a date or author for  
16 this one?

17 MR. HJELMFELT: CEI and the City would stipulate  
18 that C-95 is a CEI document, came from CEI files.

19 MR. BUCHMANN: That is correct, and no more.

20 Given that stipulation, what is the offer of  
21 proof?

22 MR. HJELMFELT: We offer this to show that CEI  
23 was promoting the rate equalization program and as an  
24 alternative or the method of achieving that, the reduction  
25 of the street lighting charges to the City which would  
force the increase in the other rates charged by the City.

mm2 1 With respect to document 73912 through 913, I  
2 ask that that be marked as C-96.

3 Again we had a stipulation that that document  
4 was a CEI document from CEI files, and was prepared on the  
5 date indicated, 10-18-63.

6 Is that correct?

7 MR. BUCHMANN: I am sure it was prepared at or  
8 about the date indicated. It was typed on this date, I  
9 am sure, which is October 18, 1963.

10 Is that the date you have?

11 MR. HJELMFELT: Yes.

12 Document 73910 through 73911 will be marked  
13 for identification as C-97.

14 There is a stipulation, being that it was a CEI  
15 document from CEI files prepared at about 10-18-63.

16 MR. BUCHMANN: I agree to that.

17 What are the offers on 96 and 97? I assume the  
18 are the same?

19 MR. HJELMFELT: Mr. Greenslade didn't tell me  
20 who the authors were.

21 MR. BUCHMANN: No, the offer.

22 MR. HJELMFELT: The City would attempt to  
23 demonstrate from C-96, CEI opposition to the expansion of  
24 the City light plant and attempt to prevent that expansion  
25 through the offered interconnection predicated upon rate

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1 equalization in an attempt to prevent the City from  
2 installing competing generation.

3 With respect to Document C-97, the City would  
4 again attempt to demonstrate CEI opposition to expansion  
5 of the competing generating facilities of the City.

6 MR. BUCHMANN: Does the record show who  
7 DeMelto is, who is referred to in 96 and 97?

8 MR. HJELMFELT: I don't believe it was in the  
9 record.

10 MR. BUCHMANN: Can we agree it was the  
11 Commissioner of Light and Power of the City of Cleveland  
12 at that time?

13 MR. HJELMFELT: Yes.

14 Document 72680, I ask that that be  
15 marked for identification as C-98.

16 MR. BUCHMANN: May I have an offer on 98?

17 MR. HJELMFELT: The City will attempt to demon-  
18 strate through document C-98, CEI opposition to expansion  
19 of the competing generation -- of the generating facilities  
20 of the City of Cleveland.

21 Document 23313 through 23315, I request that that  
22 be marked for identification as C-99.

23 Document 73060 through 73061 and 72917 through  
24 72922, I request that that be marked for identification as  
25 C-100.

1 MR. BUCHMANN: Did you include the memo?

2 MR. HJELMFELT: Yes.

3 I would ask permission to indicate redlining  
4 after the break.

5 MR. REYNOLDS: We will withhold the request for  
6 offer until after we see the redlining.

7 MR. HJELMFELT: Document 72866, I ask that that be  
8 marked as C-101.

9 MR. BUCHMANN: Could I have an offer on this one?

10 MR. HJELMFELT: The City would attempt to demon-  
11 strate from C-101 CEI desires to acquire the City  
12 electric system.

13 Document 16213, 16217, and 16218. I would ask  
14 that that be marked as C-102.

15 MR. CHAPMAN: Can the City tell us who the addressee  
16 is of this memorandum?

17 MR. HJELMFELT: The City believes the addressee  
18 is Mr. Durr, D-u-r-r.

19 MR. HAUSER: That is right.

20 MR. BUCHMANN: Whose is the marking in the corner  
21 which says, "not relevant?"

22 MR. HJELMFELT: It could be CEI markings.

23 The corner indices were placed on the document  
24 by CEI when they are identifying which document request  
25 they were responsive to.



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1 MR. BUCHMANN: Is it suggested that CEI wrote  
2 "not relevant" on it and then produced it?

3 It doesn't seem likely.

4 MR. HJELMFELT: It would not surprise me.

5 MR. BUCHMANN: Are you offering it for that  
6 notation?

7 MR. HJELMFELT: I am not offering it for the  
8 notation.

9 MR. REYNOLDS: Are you offering it for the truth  
10 of the matters asserted therein?

11 MR. HJELMFELT: Pages 19669 through 73, I ask  
12 that that be marked for identification as C-103.

13 and 118  
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1 MR. BUCHMANN: Can I have an offer on 103?

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2 MR. HJELMFELT: C-103 will be used by the City  
3 in an attempt to demonstrate that again CEI advocacy of  
4 methods relating to -- which would end rate competition between  
5 the City and CEI by raising the City's rates, that the  
6 City was offered some of the benefits of coordinated  
7 operation in exchange for price-fixing, that in  
8 situations which would be noncompetitive CEI would be willing  
9 to wheel power for the City.

10 Document 73062 through 67, I ask that that be  
11 marked for identification as C-104.

12 MR. BUCHMANN: I will ask for an offer on that  
13 one, as well.

14 MR. HJELMFELT: Additional evidence of CEI --  
15 or the City would attempt from Document C-104 to demonstrate  
16 that CEI had a continuing interest or interest in acquiring  
17 the City light plant and in the alternative, in an  
18 equalization of the rates which would eliminate rate  
19 competition and in that respect, we would ask that the first  
20 page be red-lined, that the second page be red-lined, third  
21 page be red-lined, the fourth page be red-lined and the  
22 remaining two pages be red-lined.

23 With respect to document 22084 through 86, I ask  
24 that that be marked for identification as C-105.

25 CHAIRMAN RIGLER: Which one?

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MR. HJELMFELT: C-105.

2

MR. BUCHMANN: May I have an offer on 105?

3

MR. HJELMFELT: Yes, this document shows that CEI

4

had statistics on the sales price of various municipal

5

electric systems, and that the City would attempt to

6

demonstrate therefrom, the interest of CEI in acquiring

7

municipal systems in its service area.

8

On page 22084, the initial CCC are those of

9

Mr. Chopp and I have been informed that the writing under-

10

neath there is probably that of Mr. Bingham.

11

MR. BUCHMANN: I don't know for sure, but it

12

probably is and it is certainly done at CEI.

13

MR. REYNOLDS: Was it your intention that that

14

writing on the first page is to be regarded or disregarded?

15

MR. HJELMFELT: It is to be regarded.

16

I ask that document pages 22064 through 22072

17

be marked for identification as C-106.

18

MR. BUCHMANN: Can I ask for an offer

19

on that one?

20

MR. HJELMFELT: Yes, Through C-106, the City would --

21

the City will withdraw C-106.

22

Document 73077 through 73082, I ask that that

23

be marked as C-107.

24

Also, I would offer a stipulation between CEI

25

and the City that the Mr. Vale referred to in the first

1 line on page 73077 is now the editor of the Cleveland  
2 Plain Dealer, but was at that time an employee of the Plain  
3 Dealer. His position we are not certain of.

4 Document 720907 through 76 be marked for  
5 identification as C-108.

6 There is a stipulation that this was a CEI document.

7 MR. BUCHMANN: Did you reach any agreement on the  
8 date.

9 MR. HJELMFELT: We have no agreement as to the  
10 dates.

11 MR. BUCHMANN: What is it offered to show?

12 MR. HJELMFELT: Offered to show that CEI was  
13 anticipating an interconnection with it -- that the City  
14 would be asking for an interconnection and the City would  
15 attempt to demonstrate from this other document CEI attempts  
16 to avoid such interconnection.

17 Document 22082. I ask that that be marked  
18 for identification as C-109.

19 Document 21370 through 2174, I ask that that be  
20 marked for identification as C-110.

21 CHAIRMAN RICLER: Through what?

22 MR. HJELMFELT: It should be 374 -- it should  
23 be document pages 21370 through 21373.

24 Document 1029 through 1030, will be marked  
25 for identification as C-111.

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CHAIRMAN RIGLER: Why don't we take a ten minute  
break at this point.

(Recess.)

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1 MR. HJELMFELT: Document 73048 through 73054,  
2 I request that that be marked C-112.

3 MR. BUCHMANN: What is the offer on this?

4 MR. HJELMFELT: I would attempt to demonstrate  
5 through C-112 in a recognition by CEI that the offering  
6 of free or low-cost street lighting service by the city  
7 might require increased rates to private customers. And  
8 that the CEI, as part of its effort to bring this about  
9 investigated the legal requirements of the City's bond  
10 indenture. And that the desire to have the City engage in  
11 free street lighting, through this document and others, I  
12 would attempt to demonstrate was to reduce price competition  
13 between CEI and the City.

14 Document 16436, I ask that that be marked as  
15 C-113.

16 Document 16507 through 08, I ask that that be  
17 marked as C-114.

18 MR. REYNOLDS: Am I correct, Mr. Hjelmfelt,  
19 that you have now got the next series of documents which  
20 relate to the same subject matter?

21 MR. HJELMFELT: Yes.

22 MR. REYNOLDS: We will wait to ask for an offer.

23 MR. HJELMFELT: Document 15473 and, I believe  
24 15471, and 15472 would properly be attached to 15473.

25 MR. BUCHMANN: You are putting them all in together.

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MR. HJELMFELT: Yes, as Document C-115.

2

Document 15476 through 78 will be identified

3

as C-116.

4

Document 15482 through 84 will be identified as

5

C-117.

6

Document 15495 will be marked as C-118.

7

Document 15499 through 15500, I ask that that be

8

marked as C-119.

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Document 15501, I will mark that as C-120.

10

The attachment referred to in C-120 are documents identified  
as C-115, C-116 and C-117.

11

12

CHAIRMAN RIGLER: Off the record.

13

(Discussion off the record.)

14

MR. SMITH: What did you say about C-120?

15

You said something about C-120. I didn't follow when you  
identified it.

16

17

MR. HJELMFELT: Document identified as C-120

18

indicates there were attachments to it. The documents which  
were attached are C-115, C-116, C-117.

19

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MR. KEYNOLDS: Can we have an offer on that whole  
group now.

21

22

Let me ask you, as I understand what we have  
before us, C-113 through 118 and C-120 are a part of one  
package and C-119 looks to me might be a little different.

23

24

Is that correct?

25

103

1 MR. HJELMFELT: That is correct.

2 MR. REYNOLDS: Could we have an offer on 113  
3 through 118 and 120, and then an offer on 119?

4 MR. HJELMFELT: The City will reply on Document  
5 113 through 118, and C-120 in an attempt to demonstrate CEI  
6 desire to acquire the municipal electric light system of  
7 the City of Cleveland. And it is planning to do so, I  
8 guess. Positive action in that regard.

9 With regard to C-119, the City would attempt to  
10 demonstrate from that document that CEI considered itself  
11 able to provide capacity to back up the City's 75 megawatt  
12 unit.

13 Document 15439 through 15459 will be marked  
14 as C-121.

15 MR. BUCHMANN: I guess I ought to have an offer  
16 of proof on that.

17 MR. HJELMFELT: This document would be offered  
18 to show that CEI believed plant sites and locations were  
19 becoming more difficult to obtain, that there was a  
20 recognition of the need to get greater reliability in the  
21 industry, and that the industry achieves reliability through  
22 interconnections, that CEI was able to obtain this  
23 reliability through membership in ECAR and CAPCO. And  
24 as a result of CAPCO joint construction projects, that the  
25 industry has taken these steps to provide reliability through



1 interconnection, coordination on its own, without the  
2 prodding by government agencies, that CEI had a desire to  
3 acquire a municipal electric system that did not arise from  
4 public pressure, that CEI believed reliability could be  
5 achieved without any intervention by the federal government.

6 Document 10693 --

7 CHAIRMAN RIGLER: Wait a minute.

8 I think that Mr. Hjelmsfelt has alluded to this  
9 twice in his offer. First when he talked about response to  
10 the prodding of government agencies, and second when he  
11 talked about achieving the reliability without the  
12 intervention of government agencies.

13 The Board will be looking at page 15446 in  
14 connection with the arguments that Applicants made yesterday  
15 in connection with striking Dr. Wein's testimony that the  
16 options they offer, coupled with effective regulation  
17 prevent the existence of a situation inconsistent from  
18 arising.

19 It seems to me that this speaks not to the  
20 effectiveness of regulation, but the scope of regulation  
21 and CEI's either recognition of inclination with respect  
22 to limiting that scope.

23 MR. HJELMFELT: Document 10693, I ask that that  
24 be marked as C-122.

25 MR. BUCHMANN: Could I have an offer of proof on

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1 122, please?

2 MR. HJELMFELT: The City will attempt to demonstrate  
3 from C-122, CEI desire to acquire municipal systems, in  
4 particular MELP and Painesville.

5 Document 10694, I ask that that be marked as  
6 C-123.

7 MR. BUCHMANN: Is the offer the same?

8 MR. HJELMFELT: The offer would be the same.

9 Document 25653, I ask that that be marked as  
10 C-124.

11 Document 15223 through 229, I ask that that be  
12 marked as C-125.

13 MR. BUCHMANN: Do we have any indication of who  
14 the author is?

15 MR. HJELMFELT: I believe the author would be  
16 the initials SPD.

17 MR. BUCHMANN: Is this supposed to have come  
18 from CEI files?

19 MR. HJELMFELT: This is a CEI document.

20 MR. BUCHMANN: I have no idea.

21 Can I have an offer on it?

22 MR. HJELMFELT: The City will attempt to demonstrate  
23 from C-125, that CEI recognized the variety of ways in which  
24 it could interconnect with the City and provide backup for  
25 the City's generation in amounts greater than 30 mva.

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1 Document 15243, 15244, I ask that that be  
2 marked for identification as C-126.

3 MR. BUCHMANN: May I have an offer on that one?

4 MR. HJELMFELT: The City would attempt to  
5 demonstrate from C-126 that CEI could interconnect with the  
6 City in such a manner that it could provide backup for the  
7 City in excess of 40 mva.

8 MR. HJELMFELT: Document 1934 through 35, I ask  
9 that that be marked for identification, C-127.

10 MR. BUCHMANN: May I have an offer, please?

11 MR. HJELMFELT: The City will attempt to  
12 demonstrate from C-127 that the City in 1968 was seeking a  
13 full interconnection, not a load transfer service, and  
14 that CEI was desirous of avoiding a parallel interconnection  
15 with the City, thereby precluding the City from obtaining  
16 the benefits of coordinated operation and perhaps development.

17 MR. REYNOLDS: Will you read back the last part?

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

20 MR. HJELMFELT: Document 73816 through 73820,  
21 I ask that that be marked for identification as C-128.

22 I think the document 73823 is the attachment  
23 referred to by the first sentence of that document, is it  
24 not?

25 Now I have been informed that I am not correct

mm7

1 on that.

2 Document 73823 in that event, may be discarded.

3 Am I correct the next document was admitted this  
4 morning as one of the CID documents? That would be document  
5 15502 through 15505.6 Document 15502 through 05, I ask that that be  
7 marked for identification as C-129.8 MR. BUCHMANN: Can I have an offer on this one,  
9 please?10 MR. HJELMFELT: The City would attempt to  
11 demonstrate from this document, and I would ask that the first  
12 two pages be redlined, the desire of CEI to acquire the  
13 City's electric system.14 MR. BUCHMANN: When you make these offers,  
15 Mr. Hjelmfelt, about the desire of CEI to do this or  
16 that, I presume you mean the desire at the time of the  
17 memorandum?

18 MR. HJELMFELT: That is correct.

19 Document 23099 through 23100, I ask that that be  
20 marked as C-130.21 MR. BUCHMANN: I presume that would be the same  
22 offer?

23 MR. HJELMFELT: The same offer.

24 Document 73152 through 73160, I ask that that  
25 be marked as C-131.

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1 The initials, the okay and initials in the upper  
2 right-hand corner, the initials are those of Mr. Miller  
3 of CEI.

4 MR. BUCHMANN: That is right.

5 What is the offer on this?

6 MR. HJELMPFELT: The offer on this is recognition  
7 by CEI of the benefits of coordination, the fact that  
8 pooling makes -- permits economies of scale, that pooling  
9 makes possible a move to nuclear generation and shv  
10 transmission and that pooling provides operating economies.  
11 And that the industry will put increasing reliance on the  
12 formation of power pools and technological developments to  
13 meet the challenges of the future.

14 Document 19329 through 19330, I ask that that  
15 be marked for identification as C-132.

16 Document 8319 through 8321 should be  
17 discarded.

18 Document 15267, I ask that that be marked as  
19 C-133 for identification.

20 MR. BUCHMANN: Request you read the last line in  
21 your copy.

22 MR. HJELMPFELT: It reads, "Please note all items  
23 of this conceptual plan will be treated as radial CEI loads,  
24 no parallel operation."

25 MR. BUCHMANN: What is the offer on 133?

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MR. HJELMFELT: The City will attempt to demonstrate from C-133, CBI desire to avoid a parallel interconnection with the City which would permit the City to obtain some of the benefits of coordinated operations.

Document 17307, I ask that that be marked for identification as C-134.

MR. BUCHMANN: Can you give me an offer on this?

S21

bwl

1 MR. HJELMFELT: The City will attempt to  
2 demonstrate from C-135 that CEI was desirous of acquiring  
3 the municipal system. I also note that the bottom left-  
4 hand corner, it would appear that the initials SPD are those  
5 of S. P. Dobler.

6 MR. BUCHMANN: A, we don't know who Dobler  
7 is. I would stipulate that S. P. Dobler has the initials SPD,  
8 but I will not stipulate that the SPD necessarily means Dobler.

9 MR. SMITH: What document?

10 MR. HJELMFELT: 134 has the name in the lower  
11 left-hand corner S. P. Dobler. There was a prior document  
12 where the initials S. P.D occurred. That was Document C-125.  
13 Document 17297 through 17299, I ask to be marked as  
14 Exhibit C-135.

15 MR. BUCHMANN: Can I have an offer on this,  
16 please?

17 CHAIRMAN RIGLER: Isn't 300 and 301 part of this  
18 document, Mr. Hjelmfelt?

19 MR. HJELMFELT: Yes, that is correct.

20 CHAIRMAN RIGLER: It should be 1729 through 301.

21 MR. HJELMFELT: That is correct.

22 MR. REYNOLDS: I don't see alternates D and E,  
23 do I?

24 All right, I'm sorry.

25 MR. HJELMFELT: I would ask that the first three

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1 pages of that document be red-lined.

2 And the City will attempt to demonstrate  
3 from C-135 the desire of CEI to acquire the City's system.

4 Document 10570 through 10581, I ask that that be  
5 marked as C-136.

6 MR. BUCHMANN: Could I have an offer on that one?

7 MR. HJELMFELT: The City will attempt to demonstrate  
8 that CEI was considering a leasing of the City's municipal  
9 electric plant as an alternative to a purchase as a  
10 means of acquiring that system.

11 Document 73091 through 92, I ask that that be  
12 marked as C-137.

13 MR. BUCHMANN: Can I have an offer on that?

14 MR. HJELMFELT: Document C-137 will be offered  
15 by the City in an attempt to demonstrate CEI interest in  
16 acquiring other municipal systems, particularly, the  
17 Painesville system and the Cleveland City electric  
18 system.

19 MR. BUCHMANN: Are you suggesting that it has  
20 an interest in acquiring municipal systems other than  
21 Cleveland and Painesville.

22 MR. HJELMFELT: The only ones I'm aware of that it  
23 wants to acquire are those two.

24 MR. REYNOLDS: What is the internal document  
25 number?

MR. HJELMFELT: 73091 and 92.



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1 Document 17295 and 96, I ask that that be  
2 marked for identification as C-138.

3 MR. BUCHMANN: Can I have an offer on that?

4 MR. HJELMFELT: The City would attempt to  
5 demonstrate from Document C-138 that in considering  
6 methods of interconnection, if CEI should be required to  
7 interconnect with the City, considered methods by which  
8 the highest possible burden could be imposed on the City.

9 Document 73056 through 57, I ask that that be  
10 marked or identified as C-139.

11 MR. BUCHMAN: Could you give me an offer on that  
12 one?

13 Mr. Hjelmfelt: The City will attempt to  
14 demonstrate through Document C-139 that CEI was considering  
15 the leasing of the municipal electric system as an  
16 alternative to a purchase.

17 Document 69902, I ask that that be marked for  
18 identification as C-140.

19 Document 72982, I ask that that be marked  
20 for identification as C-141.

21 Document 73058 through 59, I ask that that be  
22 identified as C-142.

23 MR. BUCHMANN: May I ask what 142 is offered for?

24 MR. HJELMFELT: The City would attempt to  
25 demonstrate straight from Document C-142 that CEI studies

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1 of the acquisition of the City electric system  
2 did not result from the impetus of outside pressures, but  
3 quite the contrary, the outside interest in the acquisition  
4 was promoted by CEI.

5 Document 72874 I ask that that be marked as  
6 C-143.

7 MR. REYNOLDS: Can we have an offer on this,  
8 please?

9 MR. HJELMFELT: I offer this to demonstrate  
10 that AMP Ohio also requested participation in generation  
11 with CEI.

12 Document 73055 --

13 CHAIRMAN RIGLER: Wait a minute.

14 On 143 can you read the last paragraph?  
15 Mine fades out on the right-hand margin.

16 MR. HJELMFELT: "I also informed  
17 Mr. Rudolph that the subject of the letter directly involves  
18 what measures Howley and Hauser are working on with Muny  
19 and that both of them should be consulted."  
20

ES21

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1 MR. HJELMFELT: I ask that Document 73055 be marked  
2 as C-144.

3 Document 69894 through 96 I ask that that be marked  
4 for identification as C-145.

5 CHAIRMAN RIGLER: Do we know who wrote it?

6 MR. HJELMFELT: No, I do not know who the  
7 author was. Apparently, the addressee is Perry, Solvar,  
8 Titus and Missick are believed to be all in the operations  
9 branch of CEI.

10 MR. BUCHMANN: Can we have an offer on this  
11 one?

12 MR. HJELMFELT: It is offered to show that CEI  
13 required the City to utilize all of the 11  
14 kv load transfer points before getting anything over the 69  
15 kv and CEI would desire the City to run all of its possible  
16 equipment to serve its own load, and that the City should  
17 have all available equipment in service before CEI would  
18 even energize the 69 kv.

19 And that the City will attempt to demonstrate  
20 through this document and other evidence that CEI operated  
21 the load transfer at 69 kv in such a way as to make the  
22 operation of the City system more burdensome.

23 Document 73859 through 73860, I ask that that  
24 be marked or identified as C-146.

25 MR. BUCHMANN: What is this offered for?

MR. HJELMFELT: This is offered to demonstrate

bw2 1 some of the benefits that would accrue to the City  
2 system from a membership in CAPCO that would be more  
3 advantageous than simply under a two-party contract  
4 with CEI. Including better access to better alternative  
5 bulk power supplies, such as Niagara, the Cardinal plant  
6 and it would demonstrate a recognition by CEI that the City  
7 might not find itself adequately protected by the Federal  
8 Power Commission.

9 CHAIRMAN RIGLER: Mr. Hjelmfelt, your offer was that it  
10 would prove certain benefits obtainable by the City. It  
11 doesn't prove those benefits, does it? It proves CEI  
12 perception of benefits.

13 MR. REYNOLDS: Mr. Greenslade's perception of  
14 benefits.

15 CHAIRMAN RIGLER: Are you saying it is  
16 Mr. Greenslade's perception or CEI?

17 MR. HJELMFELT: I believe it shows CEI perception,  
18 certainly, as well as Mr. Greenslade's.

19 MR. BUCHMANN: I hesitate to ask this, but is  
20 my recollection correct on a two-page document which has been  
21 partially red-lined, and I understand why this was done,  
22 that the red-lining has no significance.

23 CHAIRMAN RIGLER: That is correct. We will consider  
24 the entire document.

25 MR. BUCHMANN: I wanted to mark a

1 couple of paragraphs.

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2 CHAIRMAN RIGLER: On the second page?

3 MR. BUCHMANN: Not the second paragraph of the  
4 first page which was skipped.

5 CHAIRMAN RIGLER: We will consider the entire  
6 document. You are correct.

7 MR. REYNOLDS: The offer was an indication of  
8 CEI perceptions, as well as Mr. Greenslade's perceptions.

9 CHAIRMAN RIGLER: That is what I understood  
10 Mr. Hjelmfelt to state.

11 MR. HJELMFELT: Yes. Document 70216, I ask that  
12 that be marked for identification, C-147.

13 MR. CHARNO: Mr. Hjelmfelt, can you read the  
14 handwritten notation at the end of the first paragraph?

15 MR. HJELMFELT: The handwritten notation at  
16 the end of the first paragraph reads "Don Hauser will  
17 make the decision to tie or not to tie."

18 MR. BUCHMANN: May I have an offer as to what this  
19 is intended to prove?

20 MR. HJELMFELT: Through Document C-147,  
21 the City will attempt to demonstrate that in operation of  
22 the 69 kv intertie, CEI was considering other than simply  
23 operational matters and the decision was not being made  
24 on an operational basis, but on a competitive basis.

25 I will withdraw that last statement.

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1 MR. BUCHMANN: May I inquire as to what Counsel  
2 means by "operational matters"?

3 The word is technical in some senses and I would  
4 like to know what he means.

5 MR. HJELMFELT: The City will be attempting  
6 to demonstrate that the decision was not made on the basis  
7 of the operational factors, such as the ability to carry the  
8 load, the availability of power, but rather on non-  
9 operational factors.

10 MR. REYNOLDS: Exclusively, is that what you are  
11 talking about?

12 MR. HJELMFELT: Not exclusively in all  
13 situations, certainly.

14 MR. HJELMFELT: I'm ready for what is  
15 identified as Book 32.

16 Page 12712 through 12715 I ask that that be marked  
17 for identification as C-148.

18 MR. REYNOLDS: What is the offer on this  
19 document?

20 MR. HJELMFELT: The City will offer this  
21 document to demonstrate Toledo Edison's consideration of the  
22 and Capco's consideration that nuclear power is more  
23 beneficial, economically better than fossil-fired generation.

24 MR. REYNOLDS: Do you have a date on this?

25 MR. HJELMFELT: No, I don't have a date on this.

Book 33, Document 35685 through 19, I ask

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1 that that be marked for identification as C-149.

2 MR. REYNOLDS: What is the offer on this  
3 document?

4 MR. HJELMVELT: From C-149 the City will attempt  
5 to demonstrate that Duquesne Light, Pennsylvania Power and  
6 Ohio Edison were concerned with the possibility of municipal  
7 systems attempting to operate with the CAPCO companies in  
8 the generation of electricies.

9 Document 52146 through 147, I ask that that be marked  
10 for identification as C-150.

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MR. RIESER: Could I have an offer on that,

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please?

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MR. HJELMFELT: The offer on C-150 is to show that

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the CAPCO pool deferred construction of certain units in

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order to reduce their capital spending requirements and

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this is relevant to the lengthy hypothetical that was

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given to Dr. Hughes during cross-examination.

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Document 60471 through 72, I ask that that be

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marked for identification as C-151.

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MR. RIESER: What is your offer on this?

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MR. HJELMFELT: The City will offer Document

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C-151 in an attempt to demonstrate that Duquesne Light

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recognized that by participating in a pool, it could build

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larger and more economical generating units than they could

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construct on their own, while maintaining a reliability of

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service.

17

Large units through pooling keep costs down.

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Document 27425 through 68. I ask that that be

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marked for identification as C-152.

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MR. REYNOLDS: Can we have an offer on this?

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MR. HJELMFELT: Through Document C-152, the City

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would attempt to demonstrate that Duquesne Light Company

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made a study of and recognized the values of economic

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benefits of pooling in that pooling would make it economically

25

feasible for Duquesne Light to attain the economies associated



mm2 1 with nuclear generation in the 800 megawatt size.

2 Document 27175 -- .

3 MR. REYNOLDS: Wait a minute.

4 Is that the extent of your offer?

5 MR. HJELMFELT: Yes.

6 Pages 27175 through 27183, I ask that that be  
7 marked for identification as C-153.

8 MR. RIESER: Could I have an offer on this,  
9 please?

10 MR. HJELMFELT: The City, through Document C-153,  
11 would attempt to demonstrate again -- the offer would be  
12 the same as for 152.

13 (The documents referred to  
14 were marked Exhibits C-75  
15 thru 153 for identification.)

16 CHAIRMAN RIGLER: We will break for the day.  
17 9:30 tomorrow.

18 (Whereupon, at 4:45 p.m., the hearing in the  
19 above-entitled matter was recessed, to resume at 9:30 a.m.  
20 on Friday, 26 March 1976.)

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