



NUCLEAR REGULATORY COMMISSION

Regulatory Docket File



IN THE MATTER OF:

CONSUMERS POWER COMPANY
(Midland Units 1 and 2)

Docket Nos. 50-329
50-330

THIS DOCUMENT CONTAINS
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Date - Thursday, 10 February 1977

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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

In the matter of:

CONSUMERS POWER COMPANY
(Midland Units 1 and 2)

Docket Nos. 30-219
30-220

Room 2503
Evanston A. Dickson Building
222 South Dearborn Street
Chicago, Illinois

Thursday, 10 February 1977

Hearing in the above-entitled matter was recon-
vened, pursuant to adjournment, at 9:30 a.m.

BEFORE:

- FREDERIC J. COFFEE, Esq.
- DR. J. VERN LEEDS, Member
- DR. EMMETH LUEBKE, Member

APPEARANCES:

(As heretofore noted.)

Mar 17

COMMENTS

<u>WITNESSES</u>	<u>BARRETT</u>	<u>CROSS</u>	<u>EDWARDS</u>	<u>DEWINE</u>	<u>BOYD</u>	<u>BOARD</u>	<u>BOARD</u>
G. S. Kealey (Recused)		3003			3007		3011
Gordon L. Hains (Recalled)			3001	4030		4001	

EXHIBITSIDENTIFIEDRECEIVED

Licensee's 34 (Letter,
Ontario Hydro to
Detroit Edison)

Licensee's 35 (Agreement
for sale of portion of
generating capability of
Ludington Pumped Storage
Station.)

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P R O C E E D I N G S

CHAIRMAN COURAL: Good morning, ladies and gentlemen.

Let the record show that Mr. Cherry is here for the Interveners other than Dow; Mr. Hoefling, Mr. Tourballeto, and Mr. Brannar for the Staff; Mr. Ronfrow for the Licensee; and Mr. Nute, who lost the toss of the coin last night, for Dow.

Oh, yes, and Miss Bartelman, I'm sorry, also for the Licensee.

We have, for a change, some preliminary matters.

What we're going to do as an order of procedure for the rest of this proceeding is to finish the Licensee's direct case that came in on prefiled testimony, and take the redirect of Mr. Bickel and Mr. Heins.

We will then proceed to the Staff case which they have prefiled. We don't want to go into steam generator tubes. We think it's a collateral issue. And we think, further, that there's testimony in the Licensee's own case that makes that testimony on steam generator tubes irrelevant to this proceeding.

We won't hear any more new testimony of the licensee at this point.

We will then go to the Staff case as soon as the Licensee's case is finished. That is, in the manner that I've

set out. And we will continue that through the rest of this week.

If the Licensee isn't finished this week, we'll get into it next week. But we will begin on Tuesday morning at 9:30 in this room.

After next week, there will be a two-week hiatus due to the unavailability of the Board.

We will return on March 7 for Dr. Timm. We're assuming that Mr. Cherry's representation -- or not representation, but withdrawal of Dr. Timm's testimony, stands. And we feel that we can contact Dr. Timm and arrange for him to be here on the basis of that, Mr. Cherry, through whatever means we have.

By February 28 we expect the Licensee and the Staff and the Intervenor, if it applies to them, to have rebuttal testimony in the hands of the Board and in the hands of the parties, along with, so far as the Licensee and the Staff go, any testimony that they think should have been in on their direct case and wasn't, with a good cause shown why it wasn't prefiled last November when the prefiled testimony was supposed to be. Otherwise, forget it. And we'll rule on that, whether the good cause shown is sufficient.

All right. Following Dr. Timm we'll proceed with whatever testimony we're going to receive on the rebuttal

cases.

Now, with regard to the interrogatories that Mr. Cherry raised a question on that he got from the Licenses, the responses that were served I guess last Monday are deficient in that they did not list the documents nor the persons involved that were requested in the interrogatory. We think he's right in that in interrogatory number 3, last paragraph, on page 2 of that response, that the assumptions should be listed, the assumptions referred to in the last sentence of that paragraph.

We also think that the reference to the accounting changes referred to in the interrogatory or ... response -- what, Mr. Renfrow, do you remember?

MR. RENFROW: I believe it's 7, sir. No, it's interrogatory 3.

CHAIRMAN COUFAL: All right. The accounting changes referred to that have been requested from the Public Service Commission in Michigan should be set out.

All right, are you ready to proceed?

MR. CHERRY: Mr. Chairman, I just have one matter I'd like to raise.

Because of a personal problem I was unable to communicate with my clients yesterday on the matters the Board asked me to. I'll attempt to do that at the earliest possible moment.

Next, without reacting to any other portion of the Board's schedule order, I am set to argue a case of some significance before the First Circuit Court of Appeals in Boston on the 8th of March, which has been changed once by the Court and is a final date.

Lastly, it would be extremely helpful to me if I could have, at the earliest possible time, and hopefully by the end of the week, whether or not the Board is in a position to finance the presentation of the testimony of Dr. Timm, and is capable of doing that.

CHAIRMAN COUFAL: On the assumption, Mr. Cherry, that you have withdrawn his testimony you are no longer sponsoring Dr. Timm. We're going to endeavor to do that.

MR. CHERRY: What I need to know is -- the problem is much more complicated than just an airplane ticket.

CHAIRMAN COUFAL: Yes, I know.

MR. CHERRY: Dr. Timm has had a lot of bills outstanding which went into that testimony, and I don't think it's fair to Dr. Timm not to accommodate that whole problem. I don't know what his position would be, but I just want to know that if I can get an answer to at least the scope of those questions by the end of the week, that would help me in communications with Dr. Timm.

CHAIRMAN COUFAL: Well, there's no way that I can give you an answer to that by the end of the week, Mr.

Cherry.

MR. CHERRY: Well, the earliest possible time you can would be helpful.

DR. LEEDS: Well, Mr. Cherry, one of the problems we have is you're just asking for an open-ended discussion of what we might commit ourselves to do. I don't even know what amount of money you're talking about, what things were done, or anything like this. So I think, you know, you're going to have to give us some information also, and I don't want to take time this morning to get that information.

MR. CHERRY: Dr. Leeds, I'm not trying to discuss amounts. I'm only talking about whether or not the Board believes it has both the authority and the funds. I'm not going to negotiate Dr. Timm's fee, or anything like that. I'll provide whatever information is necessary.

DR. LUEBKE: Let's go forward with the hearing.

CHAIRMAN COUFAL: Mr. Cherry, I happen to know of your personal situation that you mentioned, and I'd like to express my sympathy with regard to the situation you're in.

Yes, Mr. Brenner?

MR. BRENNER: Just one very brief point on the Board's schedule, Mr. Chairman.

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In setting the time for filing rebuttal prior to the time that we would be entitled to cross-examine Dr. Timm, I take it -- and I hope that that rebuttal testimony does not

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include any rebuttal that we would have on the cross-examination of Dr. Timm.

CHAIRMAN COUFAL: You're going to have to make a showing. You will come in with your written rebuttal testimony on the date that we stated. If you've got some deviations from that, you're going to have to pound on the table.

MR. BRENNER: That's one of the problems, Mr. Chairman. That if we think we can get at certain points by cross-examination, if we file advanced rebuttal in the anticipation that we might not be able to get at those points, that would presage our cross-examination, so to speak.

CHAIRMAN COUFAL: Well, this is a tactical problem that you're facing, Mr. Brenner, and you do what you have to do to solve it for yourself.

DR. LEEDS: Do you have the direct now?

MR. BRENNER: Yes, sir, I just want to state my view that we're clearly entitled to file rebuttal on that one subject after the cross-examination, and not prior to the cross-examination.

CHAIRMAN COUFAL: All right, you've stated your case. Thank you.

Now, is Mr. Keeley here?

MR. RENFROW: Yes, Mr. Coufal, but I have a question. We're going to start again Tuesday of next week?

CHAIRMAN COUFAL: At 9:30, in this room.

MR. RENFROW: All right. At 9:30 in this room. And we'll continue until we plead what has gone in so far, is that it, what has been filed on November 5?

CHAIRMAN COUFAL: Yes, sir.

MR. RENFROW: At this time, Mr. Chairman, I have copies of the testimony I referred to yesterday, except for Mr. Boris on financial matters, and his testimony that's going to be based on answers to interrogatory number 3. With those two representations, we would be prepared if we finish up next week to go forward with those items that I will pass out today on financial matters, and on the Dow alternatives and the coal prices at the end of next week, leaving the only rebuttal, at least that I foresee right now, would be anything that we would file as to Dr. Timm.

CHAIRMAN COUFAL: We'll follow the schedule as outlined, Mr. Renfrow. Put Mr. Keeley on.

We're not saying we're going to receive the testimony of Mr. Boris, is what I'm saying. You've got some showing of good cause to do why it wasn't filed by the magic day, November 5.

Now, put on Mr. Keeley and let's shoot.

MR. RENFROW: Well, since I don't quite understand what we're doing, I'll not my objection to it and go to Mr. Keeley, because we'd like to get going too.

And, Staff, when Mr. Keeley finishes and we have a few minutes, I want you to address -- the Board wants you to address the question, if you will, as to your views on the proprietary claim of the Licensee on that fuel cycle stuff.

MR. BRENNER: Yes, sir.

DR. LEEDS: Mr. Cherry, I also want to express my comments with respect to the Chairman's mention of your personal problem. I join him in that.

MR. CHERRY: Thank you.

CHAIRMAN COUFAL: All right, where were we with Mr. Keeley? Who's doing what?

MR. RENFROW: I think we were finished, and Mr. Cherry said he had no further questions. The Board had not asked their questions yet.

MR. HOEFLING: The Staff has further questions of Mr. Keeley.

CHAIRMAN COUFAL: I thought you were finished with your questions.

MR. HOEFLING: Well, Mr. Keeley was to get some information on scaling factors.

CHAIRMAN COUFAL: On that Exhibit 33?

MR. HOEFLING: Well, he was to get some information on scaling factors that he used in developing his testimony on coal alternative, and we'd like to question Mr. Keeley

on that point. We have no questions on Exhibit 33.

CHAIRMAN COWFEL: Do you have any objection to its receipt?

MR. HOEFFLING: No.

CHAIRMAN COWFEL: All right, go ahead and talk about the scaling problems, whatever they were.

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Whereupon,

G. S. KERRLEY

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

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CROSS-EXAMINATION (Continued)

BY MR. HOFFLING:

Q Mr. Keelley, you were talking yesterday about the calculations, capital cost calculations, associated with the 1600 megawatt plant. And I believe in substance your testimony was that you chose that alternative because it was more conservative than the alternative of a somewhat smaller electric plant, plus a facility to supply steam to Dow.

Is that correct?

A That's correct.

Q And we were talking about how you got the capital cost for the smaller electric facility which you considered. Could you explain how you arrived at that capital cost?

A Yes.

I went back yesterday noon and I have to use some references here because I can't remember all of the numbers, but we what did was, we took a 1345 megawatt electrical net plant which is the output of the Midland plant when Dow is taking 2.8 million pounds per hour, which is what the Dow coal-fired steam boiler alternative was. And that Dow alternative also had 167 megawatts electrical. So we took the 1345 megawatts and subtracted 167 and that gave us 1178 megawatts electrical for an equivalent size plant.

Now the cost data that we had on alternatives was based on our Campbell 3 -- or two Campbell 3 units. I think I

arb2 testified yesterday that that is, we feel that is good data, because it is a plant that is in the process of being built.

So anyway, we ratioed that and that I think is the question of how did we ratio it. So we ratioed it by 1178 to 1600, raised it to a power of .9, which is the formula which we understand the Commission uses and then we multiplied that by the capital cost of the two 800s, the two Campbell plants, which is 1270, \$1270 million. So that gave us \$995 million.

And then in order to get a band width, because the ratioing or the exponent for ratioing, people can use in this range anywhere from .6 to .8. We also used an exponent on the ratio of .6 and again multiplied that by the \$1270 million and came up with \$1057 million. And to that we added the \$313 million which was the capital cost for the Dow alternative of actually 2.4 million pounds per hour of steam plus the 167 megawatts.

And so totalling those figures together, we came up with -- again, depending on which -- what power you raise that ratio to, we came up with \$1313 million for the one power, or \$1375 million if we use the other power factor.

And so that is actually slightly higher than the 1270 that we used in our comparison when we compared the alternative of two Campbell 3 units to the Midland plant.

(Pause.)

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Q Thank you, Mr. Keeley.

How were you in the hearing room yesterday when Mr. Cherry referred to the so-called Bechtel "hot item?"

A Yes, I was.

Q You heard the allegations that Mr. Cherry made?

A Yes.

Q Is there any truth in those allegations?

A I guess the allegations were rather general, but I personally am not aware of anything like that.

Q Now, on transcript page 3790, Mr. Cherry alleged --

DR. LEEDS: Excuse me, Mr. Hoefling; I don't think he has a copy of the transcript. Would you ask him to --

MR. HOEFLING: I don't know that he needs it --

DR. LEEDS: Okay. I am sorry.

MR. HOEFLING: -- at this point, Dr. Leeds.

BY MR. HOEFLING:

Q Mr. Cherry alleged that Bechtel and Consumers withheld information concerning the development of Consumers' budget forecasts.

I want to show you this page --

MR. RENFROW: If you will excuse me, I will provide him a copy of the transcript and you can keep your own for questioning from.

BY MR. HOEFLING:

Q Referring to Mr. Cherry's allegation contained in

the middle of that transcript page, lines number 9 through 16.

A. Yes, sir; I see it.

Q Is there any truth to that allegation, in your personal knowledge?

MR. CHERRY: Objection, Mr. Chairman. He is asking this witness to draw a conclusion based upon facts that haven't even been asked, but what Mr. Hoefling should do is inquire into the underlying conversations, if he wants to, and not have a witness tell us whether or not he believes based upon facts that are not in the record at all, that an allegation is true or untrue.

That is asking that witness for a conclusion of a legal nature, summarizing facts that are not in the record.

Now this question as well as the previous one are objectionable for that ground and the proper way to do it is to develop the relationship of meetings between Bechtel and Consumers on the budget forecast and let this Board determine whether or not there is truth to the allegations of information being withheld.

Because if this witness says no, or yes; there is no truth to it, how will you be able to evaluate that?

MR. HOEFLING: Mr. Chairman, Mr. Cherry has made allegations and the witness is here and Mr. Cherry hasn't pursued any of this. I am inquiring of this witness whether there is any truth in those allegations. If Mr. Cherry wants

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to pursue it, he is free to do it.

CHAIRMAN COUFAL: Let me see the transcript page you are talking about. I don't know what that transcript says.

(Handing transcript to Board.)

MR. BRENNER: The lines quoted by Mr. Cherry -- that Mr. Hoefling referred to -- are 9 through 16 of transcript page 3790.

(Board conferring.)

CHAIRMAN COUFAL: I am going to overrule the objection to that question, but the Board expects you to dig deeper than that, Mr. Hoefling, or we are going to have to. Just asking if there is truth to the allegations and getting an answer no is not satisfactory. If you are not going to ask questions on that, I am going to.

MR. HOEFLING: I think, Mr. Chairman, that Mr. Cherry has raised this issue and that Mr. Cherry presumably has some basis for the allegations that he has made.

Now I am requiring of Mr. Keeley whether, to his personal knowledge, there is any truth to these generalized allegations that Mr. Cherry has made.

And I think that if Mr. Keeley tells us that to his knowledge these allegations have no substance, that then it is Mr. Cherry's burden to go forward.

CHAIRMAN COUFAL: You are saying you are not going to go forward?

MR. HOEFLING: No, sir.

CHAIRMAN COUFAL: Go ahead and ask your question.

MR. BRENNER: Mr. Chairman, if I may add: The problem is that when one of counsel is going to pursue a line of inquiry like that, presumably he has some basis. Mr. Cherry claimed he had some hot inside information.

You know, in order to pursue that line, you have got to have some idea of where you are going and what you are inquiring about, based on these general allegations.

The questioner can't even pursue it because he doesn't know where he is going and he doesn't know when the witness is going in a direction contrary to his information.

We would pursue it in further detail if Mr. Cherry would be willing to tell us some of his information. If he wants to do it out of the hearing of the witness, I can certainly understand that, and then that would be fine.

But you have got to get something to be going somewhere instead of just --

CHAIRMAN COUFAL: You have made your point. You are making the same point Mr. Hoefling made. I don't know why we are beating that to death.

I said: Allright; ask your question and get your answer.

MR. BRENNER: There was an implication there that it was a matter of choice not to go into it. And I think that

167 there is a good underlying basis as to the answers Mr. Hoefling gave you. And I wanted to point that out on the record.

CHAIRMAN COTLER: Go ahead, Mr. Hoefling. And from now on, let's let counsel say at a time from any of the parties address each objection. We don't need a round robin around the table about making objections to questions.

And that applies to all the parties, not just the Staff.

MR. HOEFLING: I think we have a question pending. Can we have it read back?

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

THE WITNESS: There is no truth to any allegation that I am aware of that we or anybody else has tried to hide the blue sky estimate, which Mr. Temple called about now any of the forecast information.

We go through our normal -- we got a forecast; we go through our normal review. So I am not aware of any attempt to hide anything.

BY MR. HOEFLING:

Q I want to direct you to transcript page 3790, lines 19 through 25. Do you have that before you?

A Yes, I do.

Q Would you read that portion?

(Pause.)

a. I guess I am not aware of any attempt along that line.

q. I want you to reflect for a moment, Mr. Hoefling. And to the best of your knowledge, was there any attempt -- and I emphasize any; any attempt, any conversation, any discussion wherein there was an effort or which had the purpose to produce a less than honest budget forecast for presentation in these proceedings?

MR. CHERRY: Objection, Mr. Chairman. The question was: Was there any conversation or any attempt. This witness has not been asked the underlying questions of what relationship he has had to the budget forecast, who he has talked to, what meetings he has been in.

It is like asking a scientist who closes his eyes: Do you see anything? He says: Based on what is before me, I don't see anything.

CHAIRMAN COOPER: I agree with what Mr. Cherry. I understand that. But I am going to let him finish asking his questions this way and then we are going to resolve it one way or another, how we are going to work this out.

Go ahead, Mr. Hoefling.

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

MR. HOEFLING: I will restate it.

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BY MR. HOEPLING:

Q To the best of your knowledge, Mr. Kaeley, were there any conversations in which you participated, any discussions? Do you have any information, any information, which would lead you to believe that a less than honest budget forecast has been developed for presentation in this proceeding.

A Not to my knowledge, no.

Q I want you to reflect again to the best of your personal knowledge: was there any -- were there any conversations, any efforts to present to this Board a witness who was not knowledgeable in the area of budget forecast?

A Not to my knowledge, no.

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Q Could you tell us, Mr. Keeley, what your role is in the development of budget forecasts?

A As project manager I have several people working for me who are responsible for putting the budget together.

When we get an estimate from Bechtel which is called the forecast of the costs and schedule, we review that in house. It is reviewed by the project, with other service organizations, people in the area of estimating and scheduling expertise, our construction people, they review these numbers, see if they agree with them and then we put together a study, or the results of the study and present this to management for their decision on budgeting.

Q Are you the responsible individual for the preparation of this budget?

A I am responsible for the budget on Midland, which includes the Bechtel costs, the Consumers costs, subcontracts to Consumers, yes.

Q How do you relate to Bechtel in developing this budget?

A How do we relate to them?

Q How do you work with Bechtel in developing this budget?

A We receive from Bechtel the forecast of manpower, commodities, equipments, materials, subcontracts which they have responsibility for, and for engineering manpower, that is,

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working directly for Bechtel, and construction labor, construction manpower.

So we receive this information from Bechtel, and as I said, we review it to see if we agree with it.

Q Are you responsible for supervising the effort which results in Bechtel providing you with this budget information?

A We do not supervise directly to the Bechtel information, no.

Q How do you receive this information?

A This information is received in a book, in a forecast book, which includes a great deal of detail.

Q Who is Mr. Markowitz?

A Mr. Markowitz is the cost and scheduling person for Bechtel, supervisory type.

Q Do you have discussions with him on budget matters?

A Yes, he sits in on forecast reviews and on some of the cost meetings.

Q Who else from Bechtel participates at these meetings?

A Mr. Martinez who is the project manager, Mr. Bill Olsen and some of the people, some of the other people that work for them; the project engineer for Bechtel sits in because he also provides engineering input into the budget.

Q Is it a fair question, Mr. Keeley, to say that you are knowledgeable --

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A I consider myself very knowledgeable.

Q I am not finished yet -- that you are the knowledgeable individual in regard to conversations or contacts with Bechtel in the area of budget forecasting?

A My contact is usually directly to my counterpart, Mr. Martinez, and the cost and scheduling supervisor for Consumers usually contacts directly with Mr. Markowitz and Mr. Olsen.

Q Mr. Keeley, when was the 1.67 budget figure developed?

A That figure was developed -- there was a forecast issued in June, and it usually takes us about two months to complete our review, present it to management and add Consumers overheads, Consumers contracts, subcontracts that Consumers is handling. So it was in August, I believe, when the final budget was put together.

Q The 1.67 figure was formally approved in August of '76?

A Well, when we went to management it was August or September, something like that, yes.

It was approved along in there.

Q Now do you have a periodic review of your budget forecasts?

A We have one every six months when the forecasts, the new forecasts come out.

Q When is the next review scheduled?

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A We are in the middle of that right now.

Q This is the forecast --

A The Forecast No. 2 was just issued in December, so we have started our company internal review on that forecast.

Q Has there been any effort, to your knowledge, to delay the Dow development of that forecast?

A Not to my knowledge.

It normally takes us a month to two months.

Due to the press of the hearing here, some of our people, including myself, haven't been able to, you know, do it as expeditiously as we should. We were shooting to try to have it done by March 1st.

Q Now, Mr. Keeley, if there were an attempt to delay the development of the budget, or to delay your periodic review of the budget, or to make less than an honest representation of that budget, are you in an official capacity where you would likely know about that?

MR. CHERRY: Objection.

Calls for a conclusion and no foundation.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: Yes, I would know about it.

I guess I wouldn't agree with it. I know I wouldn't agree with it.

BY MR. HOEFLING:

Q You would know about it?

A Oh, yes.

MR. HOEFLING: No further questions, Mr. Chairman.

CHAIRMAN COUFAL: Do you have any followup on that subject, Mr. Cherry?

MR. CHERRY: Yes.

BY MR. CHERRY:

Q Mr. Keeley, your testimony on alternatives and costs was prepared during what week in 1976?

Or what period of time?

A That was prepared along in October.

Q Do you recall the dates in October?

A No, I don't.

Q Was it in early October?

A Yes. In fact -- well, it was even before October because the submittal was -- the writeup was available October 5th, I believe.

Q Do you remember a meeting which was held in the third week in September, and again in the first or second week of October wherein the cost figure that Consumers would use in its definition of alternatives was discussed among Consumers Power people and/or Bechtel people?

MR. RENFROW: Objection, Mr. Chairman.

What alternative are we talking about?

MR. CHERRY: Well his delay case is an alternative testimony.

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BY MR. CHERRY:

Q In other words, were the subject of what figure Consumers Power Company would use in your testimony, as a cost for the Midland plant where that subject was discussed during the periods I have just suggested?

A I guess I can't remember. We had discussions and the figures which we have always figured we should use was the budgeted figures.

Q Mr. Keeley, are you suggesting to me that at no time did you participate in a meeting where there was ever consideration as to whether the suspension proceeding, at least as far as Consumers' testimony is concerned, should consider other than a \$1.67 billion figure for the cost of the Midland plant in the September, October, November period?

A I guess I honestly can't remember.

I can't remember a meeting. I know we have had discussions amongst ourselves to the fact that -- all, right, you know, if the new forecast comes out we will have to factor that into the budget costs whenever we finish our review. And that was the decision and has been the decision all along.

Q Mr. Keeley, where in your direct testimony is it revealed that Bechtel has a scoping estimate of 1.5 up from \$1.123 billion?

A It is not in my testimony.

Q When were you aware of that scoping estimate?

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A Oh, I can't remember the exact date. It was last summer sometime, I believe. It is on the letter. We talked about this before, at Midland.

Q When was that information forwarded to the Regulatory Staff? Promptly upon receipt of it by Consumers Power Company?

A No.

I don't know that it was forwarded to the Regulatory Staff. It was a request by somebody that worked for me to Bechtel, and said, if we took the most conservative view on everything, what is a blue-sky figure of what this project could possibly cost?

CHAIRMAN COUFAL: What is a "blue-sky figure"?

THE WITNESS: It is a very rough estimate assuming a lot of things happen, which were spelled out in a document.

CHAIRMAN COUFAL: Is a blue-sky figure like ballpark figure?

THE WITNESS: Yes.

It is a ballpark figure plus factoring in every conservatism that people could think about.

CHAIRMAN COUFAL: Excuse me, Mr. Cherry.

Go ahead.

BY MR. CHERRY:

Q You are not suggesting that the 1.6 figure given you by Bechtel was a guess, are you?

A I think it was an educated guess.

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Q Based upon the analysis which Consumers Power asked Bechtel to make, correct?

A It was not a firm analysis such as the forecasts put together, which are issued every six months.

Q What was the purpose of Consumers Power asking for a figure from Bechtel if they didn't want Bechtel's realistic appraisal of this conservative figure?

A It was just to give management an idea of what the possible, highest possible figures of capital costs would be on the plant.

Q So you intended to solicit from Bechtel something that you could rely upon to the extent it was necessary to have that figure available to management.

Is that correct?

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A Well, I guess that's correct, because management periodically says what is the highest possible cost that this plant could go to, because they see the increases coming along due to regulatory changes, codes and standards changes, things like that.

Q Has the Regulatory Staff ever asked that question of Consumers at any time, what is the highest cost that Bechtel and Consumers believe this plant could cost?

A Not that I'm aware of.

Q But your management thought it was sufficiently important to solicit Bechtel for that opinion and, I take it, pay Bechtel for it?

A Yes.

Q Now, you received that information sometime in the summer of 1976, is that correct?

A Sometime, yes.

Q Why wasn't that figure revealed in your direct testimony, Mr. Keeley, in order to give us the same kind of data base that your management felt sufficiently necessary to have for itself?

MR. RENNOCW: Objection, Mr. Chairman. It calls for a legal conclusion by Mr. Keeley as to what is relevant and material to this proceeding.

CHAIRMAN COUFAL: I can't hear you.

MR. RENNOCW: I'm sorry. I have a cold.

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I object to that. It calls for a legal conclusion by Mr. Keeley as to what is relevant and material to this proceeding.

CHAIRMAN COUFAL: Overruled.

BY MR. CHERRY:

Q Mr. Keeley?

A Well, again, it was the highest level estimate that people could come up with, which we don't necessarily agree with.

Q But you don't necessarily disagree with it, either?

A I think if we got into a review of it we would take issue with several of the items.

Q Why didn't you get into a review of it, Mr. Keeley?

MR. RENTROW: Objection. Asked and answered, Mr. Chairman.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: Because we felt that the budget, the Forecast 1, and the upcoming forecast, the way we set up to estimate cost was a more realistic way in my mind.

BY MR. CHERRY:

Q But if you didn't get into the 1.5 figure by Bechtel, i.e., analyze the underlying data -- I assume that's what you meant by "getting into it"?

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A Yes.

Q If you didn't do that, how do you know that the 1.67 billion is more realistic than the higher figure that would result from taking the Bechtel figure of 1.5?

A Because I think the 1.67 in the forecast -- and a lot of thought and effort goes into these. We include cost trends. We include allowances. And I just think those are realistic figures.

Q Mr. Keeley, I assume that Consumers Power Company didn't ask Bechtel to prepare the \$1.5 billion before you had the 1.670 budget. That was after, right?

MR. RENFROW: Objection, Mr. Chairman. That document was served on all the parties. It's got a date on it. He can give it to the witness and ask him when it was prepared.

CHAIRMAN COUFAL: Do you know, Mr. Witness?

THE WITNESS: No, I do not. I would have to look at the date.

BY MR. CHERRY:

Q Isn't it a fact, Mr. Keeley, that you were aware of the 1.670 figure sometime in the summer of 1976?

A I believe it was the summer, yes.

Q And isn't it a fact that you asked Bechtel for the figure that was generated and resulted in 1.5 after you became aware of the 1.670 figure?

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A Well, again, I would have to have the dates, because by the time the 1.67 figure was put together it was around August because that includes Bechtel plus Consumers. So I'd have to have the date of the letter.

Q You don't know what prompted the management of Consumers' Power Company to ask for the 1.5 figure or ask for the data base and the questions that resulted in that figure?

A NO, I do not.

Q And it's your testimony, Mr. Keeley, that you believe the 1.5 figure for Bechtel is unrealistic as compared to the 1.123 figure, but you haven't analyzed the 1.5 figure?

MR. RENFROW: Objection, Mr. Chairman. It characterizes the witness' testimony.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: Could I have that question again, please?

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

CHAIRMAN COUFAL: I think there's a misstatement of a number in there, probably inadvertently.

MR. CHERRY: Let me rephrase it.

BY MR. CHERRY;

Q It is your position that the 1.123 figure --

CHAIRMAN COUFAL: I think that's a misstatement

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of the figure.

MR. CHERRY: No, that's Bechtel's figure. It gets up to 1.67 by adding Consumers' costs.

CHAIRMAN COUFAL: But in the transcript it is 1.23.

BY MR. CHERRY:

Q What is it, 1.123 or 1.23?

A I'd have to look at the figure. I know what you meant. You meant the figure provided by Bechtel in Forecast 1.

Q Yes.

All right, I'll use the 1.23 figure, but when I mentioned 1.123 in our conversations earlier you were referring to the same figure whether I was off or not, is that correct?

A Correct.

Q Okay.

Isn't it a fact that it is your position that the 1.23 figure of Bechtel is more realistic than the 1.5 figure of Bechtel, but you haven't analyzed the 1.5 figure?

A We have not analyzed it in detail like we do forecasts; that's correct. But it includes some general rough estimates of what possible costs could go to.

Q Mr. Keeley, when you testified on November 1976 and you stated that your testimony was true and correct to

the best of your knowledge and belief, did you mean to infer that Consumers Power Company had never considered increasing the cost estimate today for the Bechtel plant or the cost estimate as of the date of your testimony in November from 1.670 billion dollars?

MR. RENNROW: Objection, Mr. Chairman. That question is improper.

He's testified that as of the date of his testimony his testimony is true and accurate, and there's nothing in the record to show that it is not.

CHAIRMAN COUFAL: Read the question back, please.

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

CHAIRMAN COUFAL: You may answer, Mr. Keeley. Do you understand?

THE WITNESS: Not quite.

MR. CHERRY: Let me try it again in another way, Mr. Keeley.

BY MR. CHERRY:

Q You testified that your testimony was true and correct as of November 1976, correct?

A Yes.

Q The figure you gave in your testimony for the cost of the Midland plant was \$1.67 billion, correct?

A 1.67, right.

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Q \$1.67 billion, correct?

A That's correct.

Q My question is, by stating that the cost of the Midland plant was \$1.67 billion, by stating that in your November testimony, did you also mean to state that Consumers Power Company had never considered prior to November 1976 the fact that the cost of the plant might be higher than \$1.67 billion? Did you mean to state that as well?

A I meant to state that as of the time of that testimony I feel, and everybody else in Consumers -- not everybody, but the budget was based on a management decision, based on various inputs from a lot of people--that the 1.67 was a figure that we could build this plant to.

Now, people realized that it's possible the costs could increase. It's also possible the costs could decrease. But at the time I wrote that we felt, based upon management input and budget approval, that we could get this plant built for 1.67 billion.

Q Mr. Keeley, I'm not talking about a formal adoption by the Board of Directors of a budget. I'm talking about more practical things. I want to ask you the question again.

Was it your testimony when you gave us the figure for the Midland plant in November 1976, was that figure

meant to represent to the suspension proceeding that Consumers had never contemplated any higher figure for the cost of this plant prior to November 1974 and after August 1976?

MR. PEMPERON: Objection. Asked and answered.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: I guess -- can I ask the question the way I think he's asking it?

Are you saying did we ever contemplate that the cost could go higher than the 1.67?

BY MR. CHERRY:

Q No. What I'm asking you is, by stating that the cost was \$1.67 billion without explaining anything else, did you mean to suggest to this hearing that Consumers Power Company had no doubt whatsoever, formally or informally, about that figure?

A No. I guess, again, there could be doubts in some people's minds. It could go up; it could go down.

Q All right.

Why, Mr. Keeley, was it decided that those doubts would not be set forth in your testimony?

MR. PEMPERON: The same objection, Mr. Chairman.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: I guess I can't answer that. The 1.67 is what we agreed on in the project with Mr. Howell

would be a realistic figure that we could build this plant for.

BY MR. CHERRY:

Q. Haven't you directed, either formally or informally, by Mr. Youngdahl and Mr. Howell that there should be no analysis of the 1.5 figure so Consumers could be in a position to say their actual figure is 1.67 billion dollars?

MR. BENTROW: I'm going to object to that question. I'm going to allow him to answer, Mr. Chairman, but this is getting ridiculous.

CHAIRMAN COUFAL: Do you have an objection or are you just making a speech?

MR. BENTROW: Yes, sir, I do. You've overruled every one of them. I'll just make it continuing and let him answer the question.

CHAIRMAN COUFAL: You may answer, Mr. Kealey.

THE WITNESS: Could I have the question again?

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

THE WITNESS: I guess to the best of my knowledge I can remember no direction to not review that figure.

BY MR. CHERRY:

Q. Let's go about it a different way, Mr. Kealey.

Is Consumers Power Company concerned in connection with the cost of this plant?

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A. Yes, they are. I'm concerned.

Q. And the difference between 1.23 billion and 1.5 billion is a significant figure, is it not?

A. Yes.

Q. And management got that figure, did they not, as a result of their concern as to high figures?

A. I didn't hear the last part.

Q. I say management solicited the Bechtel figure, 1.5, because Consumers' management was concerned sufficiently to get an estimate from Bechtel as to what the outer bounds of the cost of the plant could be. That was a real concern of Consumers in the summer and fall of '76, isn't that right?

MR. RENFROW: Objection, Mr. Chairman. He hasn't established yet when that estimate was done. Now, he's got the letter. I served the document on all of the parties. He has to establish the facts.

It's the same objection made to Mr. Hoefling's question. It's the same objection I've been making to you since Day 1.

MR. CHERRY: He said it was in the summer of '76. That's sufficient.

CHAIRMAN COUFAL: I think that's in the record, Mr. Renfrow.

Go ahead, Mr. Kaeley.

THE WITNESS: Could I have the question again?

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(Whereupon the Reporter read from the record as follows:

"QUESTION: I say management solicited the Bechtel figure, 1.5, because Consumers' management was concerned sufficiently to get an estimate from Bechtel as to what the outer bounds of the cost of the plant could be. That was a real concern of Consumers in the summer and fall of '76, isn't that right?"

THE WITNESS: Yes, I would say that's correct. Management has been and continues to be worried about the cost increasing.

BY MR. CHERRY:

Q Are you telling me, Mr. Keeley, that it was a real concern of Consumers Power Company and you paid Bechtel to do an analysis, and then you decided not to examine the underlying data? Is that your testimony?

A We did not examine it in detail, because, again, we thought that the 1.67 was within the bounds of a realistic figure of what we could build this plant for.

Q I appreciate that, but that statement that you've just made about the realistic figure is made notwithstanding your admission that you have not examined in any detail the data provided by Bechtel with respect to the 1.5 figure. Isn't that correct?

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A That's correct.

Q All right.

Now, I'll try to ask the question again, Mr. Keelley.

As project manager of this plant, do you think that it is a prudent thing to be sufficiently concerned about the cost of the plant in the summer and fall of 1976, to ask, receive and pay for Bechtel to do a scoping estimate, and then not review it in detail?

A We reviewed it and had discussions with them, very preliminary discussions, to see what they had in mind and that they had some very conservative estimates; and our formal review is made on the more detailed forecast, which includes cost trends which people see are coming, which are fairly hard numbers, allowances, and we felt that the 1.67 was the proper number to use.

Q Wasn't it a fact that as a result of discussions which you had with other persons at Consumers and at Bechtel after receipt of the 1.5 billion dollar figure that you determined to await the formal version of Bechtel's forecast and sometime in the spring or late spring of '77 to do your analysis? Isn't that what Consumers determined to do in the fall of 1976?

MR. RENFROW: I'd like the question read back, Mr. Chairman.

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

MR. WENBROW: I object to that question, Mr.
Chairman.

One, it's already been established that that was
a request. It was not a formal report.

Two, there is no basis of any kind in this record
of a review in the late spring of whatever report it is that
he's talking about.

So I object on those grounds.

CHAIRMAN COUFAL: There are all sorts of things
in this record about a review in the spring of '77 of the
Bachtel 2 forecast, so it's not a figment of someone's
imagination.

Overruled.

You may answer the question.

MR. WENBROW: Mr. Chairman, it's not the forecast
he's referring to, though.

CHAIRMAN COUFAL: All right. Mr. Kealey can tell
us, then.

BY MR. CHERRY:

Q Mr. Kealey?

A I guess to the best of my knowledge I am not
aware that we were ever told to wait until the spring of
'77 to do a review of this I.S. figure.

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Again. Forecast 2 -- these forecasts are issued every six months. They include future cost trends and allowances that people see are coming up and which they think are good figures.

This was issued in December, and our review -- hopefully we will complete our review by March 1st.

Q Mr. Keeley, have you begun that review for the Bechtel forecast?

A Yes, we have.

Q When was it begun?

A It was begun about the first part of January.

Q But you knew about the figure of 1.67 billion dollars in August. That's what you told me, didn't you?

A The 1.67?

Q Isn't that what you told me, Mr. Keeley?

A The 1.67 is our budgeted figure based on Forecast

1.

Q Okay.

Now, you knew about that figure in August, correct?

A We knew about the Bechtel Forecast 1 in June.

Q But I'm talking about -- you knew about Bechtel's figure. But you knew about Consumers' increases in August of 1976, isn't that correct?

MR. RENFROW: Objection, Mr. Chairman. I don't know what increases he's talking about.

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MR. CHERRY: Over the Bechtel budget.

MR. RANFROW: Mr. Chairman, I object to those questions. They're confusing in the record. This whole question is not even related to what the man's testified to.

He's got his facts confused. If he wants to start back, he can; but it's unfair to the witness to allow him to jumble the facts and expect the witness to straighten it out.

It's the Board's job to require the statements to be put in line in accordance with the record; not the 'expert witness', as this Board seems to have ruled.

CHAIRMAN COUFAL: I'm grateful to you for pointing out to me the Board's responsibilities, Mr. Ranfrow. I'm sure I'll learn a lot.

Now, read the question back.

MR. CHERRY: Mr. Chairman, I'll withdraw the question because I want to ask two final questions of Mr. Keeley.

BY MR. CHERRY:

Q Mr. Keeley, you have never been at a meeting and you have never discussed with anybody at Consumers Power Company, either formally or informally, the fact that Consumers did not want to reveal the 1.5 figure in your testimony. Is that true?

A To the best of my knowledge, that's correct. I

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don't remember.

Q You don't remember?

A That's correct. To the best of my knowledge, I have never been in a meeting or verbally told to hide any figures.

Q I'm not talking about someone using the word "hide" any figures. I'm talking about where it was decided not to use the 1.5 figure or reveal it at all.

I'm not talking about someone using words like "hide," but nonetheless a conscious decision was made not to put the 1.5 figure in your testimony.

A Again, frankly, to the best of my knowledge, I don't.

Q You never heard of anything like that?

A I don't remember ever hearing of anything like that.

Q If I substitute the word "Bechtel" for "Consumers" and ask the same question, I take it you'd have the same answer, that you've never been in a meeting with anybody at Bechtel where it was determined to keep the 1.5 figure out of your testimony?

A Again, to the best of my knowledge, that's correct.

Q Mr. Keeley, why wasn't a Bechtel witness proffered for the cost of this plant?

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A Because the costs -- we are responsible for the costs and for the budget.

Again, we receive the Bechtel cost estimates for the things they're responsible for, but a Consumers project is responsible for cost and scheduling on this plant.

Q Mr. Keeley, I want to ask you another question about a subject matter as to whether or not it was ever discussed in either September, October or November in connection with the preparation, to your knowledge.

Isn't it true that there were discussions of which you are aware, that it was decided not to place a witness from Bechtel on the witness stand because if Bechtel were asked whether the 1.67 billion dollars was a hard figure they would have to say no, but if Consumers were asked that question they could say, "Well, that's the last formal price I've received from Bechtel"? Was that subject ever discussed?

A Again, to the best of my knowledge, not that I'm aware of.

Q And, finally, Mr. Keeley, I just want to state again, management was sufficiently concerned about the rising costs in the summer and fall of 1976 to ask and pay for a Bechtel scoping study which resulted in \$1.5 billion, but you didn't analyze it.

Now, that's still correct at the end of your

13 testimony? Now, is that correct, Mr. Keeley, what I just said?

MR. RENNOW: Objection. Asked and answered.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: As far as a detailed analysis, that is correct, because, again, as these forecasts come out they are much more definitive, they are much firmer numbers. We consider it's more realistic to use those numbers.

BY MR. CHERRY:

Q Mr. Keeley, do you know how this hearing board found out about the \$1.5 billion figure?

A I believe it came out from Mr. Temple's testimony.

Q Mr. Temple's direct testimony or his cross-examination?

A This I don't know.

Q Was it in Mr. Temple's direct testimony?

A Oh, no.

Q Oh, no.

Mr. Keeley, would you please take a look at the information I asked you to prepare yesterday? We'll go to Exhibit S-6 on page 1.

A Yes.

Q Now, have you put a check mark beside each one that is the subject of an actual letter letter from the Regulatory Staff?

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A. I have done it the opposite way. I have put a check mark beside each one that is not a subject of a letter.

Q. All right.

A. On -- directly on the Midland Plant.

Then in addition I have put a second check mark if the item has been handled by another desk or a licensing process upon which we based our decision.

(Mr. Cherry examining document.)

Q. Then I still can't determine what I want to determine, that is, how many of these are not the subject of a communication from the Staff with respect to the Midland Plant. Can I determine that from what you've got?

A. Yes, you can.

Q. How would I do that?

A. By looking at these check marks. Again, the first check marks --

Q. The first column, you mean?

A. The first column of check marks.

Q. So I would add up everything in the column that does not have a check mark, and that would be the answer to my question?

A. No. You would add up every check mark, and what indicates -- every check mark indicates that we don't have a Staff or ACRS approval in total via a letter.

Q. All the check marks in column 1?

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A. That's correct.

Q. How many check marks did you make in all these exhibits, do you know?

A. No. I'll have to count them.

Q. Go ahead.

A. And some of these check marks have been accepted, or some of the items have been accepted, except for one part of the Reg. Guide or something like that.

Q. I don't want to confuse this question, Mr. Kaeley. My question was for you to put a check mark next to every item where you did not have a definitive response with respect to the Midland Plant by the Regulatory Staff.

Now, have you done that?

A. Yes.

Q. Will you please add up the checks?

(Pause.)

A. Forty-three, I count.

Q. Forty-three; out of how many items, Mr. Kaeley?

A. Oh, I think there's around eighty-six, something like that.

Q. So 50 percent of the items that you listed as "complied" in your original answer to the interrogatory are in fact Consumers' versions and you have not yet received a definitive answer from the Regulatory Staff or the ACUS, isn't that correct?

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MR. BENTROW: Objection, Mr. Chairman. What's not correct based on the answer that Mr. Keesley gave when he told him what he'd done and tried to explain.

He's again trying to distort the record. The correct question is did he have direct communication from the Regulatory Staff by virtue of the Reg. Guides.

BY MR. CHERRY:

Q Mr. Keesley, I don't want this record confused, so I'm going to ask it again.

The forty-three checks represent items which are unresolved by the Regulatory Staff and the ACRS and Consumers in the sense that you have not received a definitive response regarding the Midland Plant from either the ACRS or the Regulatory Staff, isn't that correct?

A That's correct.

Q Now, was the resolution of those forty-three items what you set up the \$24 million figure for?

A No. Some of those items are already in the budget as Reg. Guide allowances. They're in the budget and plant design.

Some of the other ones are part of that \$24 million.

Q And I take it when you say "in the budget," they're in the budget on the basis that those items have in effect been resolved in accordance with your interpretation.

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A That's correct.

Q So that as to many items in the budget there isn't even a recognition that the Regulatory Staff or ACRS might disagree with you.

A That's not correct, because the indication is, from looking at other dockets and ACRS meeting minutes. That is a part of our evaluation, also, as to how it affects design and construction.

Q Have you ever looked at a docket and formed an opinion and then found out that the Regulatory Staff didn't agree with you? Has that ever happened?

A There perhaps have been cases, yes. I can't list them.

Q But you agree that has happened?

A Yes.

Q Have you ever looked at an ACRS minute, formed an opinion, and then found out that your opinion wasn't the one that was going to prevail?

A Yes, that's true.

Q It happens all the time, doesn't it, Mr. Keeley?

A Yes, it happens.

Q And in fact the reason why it happens is because a utility goes into the Regulatory Staff by trying to give as little as possible, so that the process of negotiation through that operates so that Consumers Power never goes

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in to the Regulatory Staff stating what they believe their true position is because they know they're going to have to give up something, anyway. Isn't that right?

MR. RENFROW: Objection, Mr. Chairman. There is no basis for that.

CHAIRMAN COUFAL: He's asking him. He's asking him if that's the position of Consumers Power Company.

You may answer, Mr. Keeley.

THE WITNESS: No, sir, we do not, and I think Consumers Power has been very responsible. I stated this before. We have gone in before the fact and had discussions with them on the Reg. Guides which we would not have had to have, so that we figured it was only proper that we should do that.

BY MR. CHERRY:

Q Mr. Keeley, you answered this interrogatory and stated that it was true and correct to the best of your knowledge and belief.

A That's true.

Q Did you ever give consideration to the fact that the hearing board and the other parties might like to know that 50 percent of the items are still unresolved?

MR. RENFROW: Objection, Mr. Chairman. If you look at Exhibit 33 you'll know that, because he's stated what the positions are.

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BY MR. CHERRY:

Q Did you ever give consideration to that, Mr. Keeley?

CHAIRMAN COUFAL: I don't even understand that objection, Mr. Renfrow.

Overruled.

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

BY MR. CHERRY:

Q In connection with the answer to the interrogatory, where you provided those charts and put the check marks on, where you did that last night, did you ever give consideration to the fact that in connection with the answer to that interrogatory, which you swore to, that the hearing board and the parties might like to know that forty-three of the items that you listed as "comply" are in fact matters that are unresolved as of this date?

A That is why we provided this, based upon your previous question, this other document, which indicates that. It spells out what I have done with these check marks.

Q What you did was provide a 127-page document in order to do what you did with a couple of checkmarks on the exhibit, which would have been more readily ascertainable. Isn't that correct?

A No. The reason we provided this backup document

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was to provide a reference source of information, provide
more detail, so if anybody wanted to check the documentation

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they could use this document for that.

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Q Yes. If someone wanted to take Exhibit 33 and go to the Washington Public Document Room and read every one of those documents you relied upon in order to find out which you believed were applicable, and then read your FDAR in all of those documents, and then have privy to all the ACRS documents, yes, I agree with you, we could have gotten the same information that I got by putting a check on that exhibit by spending about seven weeks going through Exhibit 33.

I don't have any other questions.

MR. RENTROW: I move that be stricken, sir.

CHAIRMAN COUFAL: We will strike the speech at the end of the question, Mr. Cherry. You can say that in your final argument.

Now, does Mr. Nute have any questions?

MR. NUTE: No questions, Mr. Chairman.

EXAMINATION BY THE BOARD

BY DR. LUEBKE:

Q I'm referring generally to your testimony in Part III pages 3 and 4, and Part IV page 6, which has to do with the dollar costs of suspension or abandonment.

These costs are quoted in millions of dollars, and we would like to have them translated into the dollar impact on people, such as the ratepayers or the investors.

In the case of the ratepayer, maybe by classes,

residential, commercial, industrial. And then we would like to have this related to present normal electrical bills.

For example, if such a calculation turns out that the suspension costs a customer say \$20 a year, and his present light bill is \$200 a year, then his effect is plus 10 percent, if you get the idea I'm getting at.

So my question is: have you or your associates done such calculations?

A No.

Q Could you or your associates do such calculations?

I realize -- I tried to ask you this question earlier in the proceedings, and I couldn't get it in edgewise. Could you do this, and report to the Board in the future some information along these lines?

A Yes, sir, we could.

DR. LUEBKE: I think that's all I have.

MR. CHERRY: Dr. Leeds, before you start, could I just make one observation?

Dr. Luebke, I think that to the extent you're interested in finding out the information about impact on the consumers, that the best way to get that information is from the Michigan Public Service Commission, and not

Consumers Power Company, because there's a running dispute between Consumers Power Company and the Michigan Public Service Commission as to what goes in the rate base and what

does not. And the figure that you get will be Consumers Power Company's allegation as to what they think should go into the rate base and how it should be computed from an accounting standpoint.

I do not believe it will be a reliable figure, if you're really interested in what the impact on the ratepayers are.

DR. LUECKE: Well, I'm interested in not out to five or six figures, I want kind of a ballpark figure.

MR. CHERRY: Yes, but, Dr. Luebke, what I'm suggesting to you is that the assumptions that Consumers Power Company generally use will be in conflict with the Regulatory Staff of the Public Service Commission, because these issues as to what goes into the rate base are presently the subject of a vigorous dispute, and what you'll get is Consumers' argument. And if you make an attempt to suggest that that in fact is what the State of Michigan consumers really will pay, you'd be flat out wrong.

And I'm suggesting that if you're really interested in the information that the request be made of the Michigan Public Service Commission, and I'll be glad to help you if you're interested in that information.

You can have Consumers do it, but I do not think that you will get a figure that anyone can rely upon.

CHAIRMAN COURAL: All right. We've asked Consumers

to do it and we want it from Consumers. Dr. Luebke can consider if he wants it from anybody else, and we can get into that then.

BY DR. LUEBKE:

Q In the case of the investors, Mr. Keeley, I don't know if it's possible that you can come up with some impact on earnings per share, or dividends on the stock, that kind of thing, but I think we're also treating that category of people in this situation.

A Yes, sir.

DR. LEEDS: Maybe, since the point has been raised by Mr. Cherry, it sounds like if we don't have the assumptions clearly set out we may not be able to interpret what was done.

So, when you do the calculations, we'd sort of need to know what went into them, I guess. I'm not asking that you give us all the work papers. But, you know, if it comes out to be a dollar, then 20 cents of this is so much for -- break it down that way. I think that would help us.

Excuse me.

DR. LUEBKE: That's all I had for Mr. Keeley.

BY DR. LEEDS:

Q Mr. Keeley, I'd like to pick out a couple items that I'm not completely clear on with you sir.

If you would look at page 3-6 of your testimony --

A Yes, sir.

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Q -- I'm looking at the February 4 version of it --

A Yes.

Q -- item (d) on that page talks about allowance for funds used during construction.

Could you explain to me what that is?

A Well, the allowance for funds used during construction is the interest that Consumers has to pay on the money they borrow to finance construction and other parts of the Company business.

Q So it represents actual cash paid out by Consumers Power Company?

A It represents interest, yes, that we have to pay on loans.

Q So, in other words, it's interest you pay to bond holders and to banks, or to whoever loans you money?

A Yes, sir.

Q It's not a computed interest?

A No, it is paid value.

Q In other words, if you had no borrowed money you'd have no AFUDC?

A That's right. If we didn't borrow money for this part of the construction there would be no AFUDC.

Q Okay.

Now, could you turn to page III-9, and I guess it starts a couple pages before that, but it's in general

discussing the effect of shutdown, and in particular, page III-9 talks about the effect on the Midland community.

I'd like to refer you, for example, to item e.

Am I supposed to interpret that to mean that if there was a delay that 36 retail establishments might go bankrupt?

A This information was due to this job having had the experience of two slowdowns in construction that have had an impact on that community. So the possibility of it occurring again has bothered me and a lot of other people.

So we contacted, for instance, the Chamber of Commerce, the County Board of Commissioners, and some people like that, to ask them for what, in their opinion, would the effect be.

Now, this particular information was provided by the Chamber of Commerce, and it's based on a formula that they use for computing effects.

Q Okay. I guess what my problem is I don't really understand the formula. The formula represented an indication of what kind of things that would happen to a community if you had 1200 jobs added to a community, and you've just taken it in reverse?

A That's correct.

Q It's not a formula that -- go ahead.

A No, I was going to say the formula is based on, I guess, experience of the Chamber of Commerce over various

parts of the country. It was, I think, a 1971 formula, and for these various -- or these are various results which the Chamber of Commerce in their formula, when they multiply these factors by the particular item -- for instance, 1200 jobs, there are so many people for each wage earner would be the first item, and so many school children.

So it's based on that.

Q But my problem, I guess, is -- and let me try to get at my problem, so you'll understand why I ask the questions I ask.

I understand oftentimes there's a multiplier effect if you add jobs to a community.

A That's correct.

Q Did these numbers come from that kind of a formula, the effect of adding jobs, and you've just taken it in the reverse?

A That's correct.

Q My question is: Is there any basis for making the assumption that they would go down as well -- in equal amounts? For example, is there any evidence of shutdowns in the recent depression, of plant dropoffs, say in Michigan, which indicate that if you lost 1200 jobs in the community that 36 businesses would close?

A As far as I know, this is based on Chamber of Commerce people's evaluation. And, again, they provided

the facts. We asked them for what the effect would be, and this was what they gave us.

Q Well, the reason I was asking is because it seems like with unemployment compensation, social security benefits that would continue on, and other things -- availability of small business loans, perhaps, and all the kinds of things that a government does for a region when there's a difficulty, whether there might be a difference in direction or amount, that if you went down, you wouldn't lose as much as you'd gain if you went up?

A Well, sir, I guess I can't answer that. I think the other pertinent fact of this presentation is that for instance not everybody that is laid off is going to stick around. Some of them are going to move out.

Now, if those move out, you can make an assumption that rather than 1200 people losing out, maybe 600 would. Then you can apply the formula in any way you wish.

There's also some dollar values estimated here for unemployment. Now, the people that don't stay wouldn't collect unemployment, and so, you know, these factors can be . . .

Q Okay. Did Consumers Power essentially suspend construction on this plant once before?

A We suspended construction in 1970, and we slowed down construction in 1975. It wasn't a complete suspension,

but we went down to approximately 80 crafts people, which is practically none.

Q Versus how many were on the job before you slowed down?

A I'm guessing, but I think it was around six or seven hundred.

Q So, let's say six hundred to 80, is a drop of 500. And 500 out of 1200 is a little less than half.

A Yes.

Q About . . . did, say, about 13 businesses disappear when you slowed it down in '75?

A This I cannot answer.

Q Has any effort been made to check these numbers out?

A This I can't answer, either.

Q Okay. Because I have the same kind of problem with respect to page III-12. There's an indication there that a community religious leader, unknown, unidentified, said that there would be a devastating effect on community morals if there was a suspension, and --

A It's morals, I believe.

(Laughter.)

Q Morals. I'm sorry. If they end up in jail, I guess it's also morals.

(Laughter.)

Q My bifocals slipped a line there. Thank you for correcting me.

Anyway, morals.

And then there's an indication that the crime rate had been rather spectacular in Midland County. The jail was full in '75.

Who was this religious leader?

A This was Dr. North.

Q And who was he?

A He's a member of the Midland community, and has been active in promoting the Midland nuclear plant.

Q And is there any statistical data, studies or anything, indicating the relationship between unemployment either in Midland or in Michigan or anywhere in the United States with respect to crime rates and so forth, that this is based on?

A No. I believe this was based on the facts as stated for the various states. I can't answer so far as the U. S.

Q The thing that's sort of missing here is if there's 1200 jobs lost there, how much would that add to the unemployment rate?

MR. RENNROW: Dr. Leeds, let me state one thing. I'll stipulate to you this is not a socio-economic study. We have not been able to relate 600 people staying or 600

people leaving, and tell you that's what going to happen.

What we've attempted to do with this testimony is just say, look, here are the things that could happen; not here's what's going to happen.

For example, not everybody is going to stay and collect unemployment, or we don't know how many. Not everybody is going to leave. Obviously you're not going to have that. So this is not a socio-economic study in the sense that you can take and say this is it, nor is it presented as such.

DR. LEEDS: Well, sir, my problem is that I have to make an evaluation of the effects of delay, if I understand the Commission's order correctly. And this is the only piece of evidence I've seen so far that's in the record that talks about the effect of delay on the Midland community in terms of people.

So, I'm trying to find out, probe it a little bit, if you will, what kind of weight to give it.

MR. REMFROW: I just wanted to make clear that it's not represented to you as a socio-economic study at all. As Mr. Keeley says, it's just a compilation of facts that were given to us by the City of Midland.

DR. LEEDS: Yes, but you see, I read sentences in here like on page XII-9:

"While the socio-economic impacts of the loss

-12

of these jobs cannot be identified with certainty,
it has been estimated that a loss of ..."

And they were estimates. I presume they were estimated by
a person who knew something about it, and that's what I'm
trying to find out.

I don't remember seeing it. If you can point out
to me what 1200 jobs would be with respect to the unemployment
rate, because how else am I to relate it to the jail population
rate?

MR. RENFROW: Look at III-10.

DR. LEEDS: Okay.

MR. RENFROW: You'll see what the unemployment
compensation rates would be for 1200 workers.

DR. LEEDS: That's dollars.

MR. RENFROW: That's right.

DR. LEEDS: But the problem is your jail population
is in percent of unemployed.

MR. RENFROW: Yes.

DR. LEEDS: I don't know how many workers are in
Midland, Michigan.

MR. RENFROW: Look on page III-11, and you'll see
what the number of Midland Project workers having Midland
addresses is, 261.

DR. LEEDS: All right. I've got that. 261 Midland
addresses. But on page III-12 you see when the unemployment

rate was 15.2 percent, the jail was full. And my question is: What is the percent based on? And you tell me that there are 351 Midland workers. That doesn't fill it out. The unemployment compensation doesn't do it. I don't know how many workers are in Midland. That's my problem.

MR. RENFROW: Nor do we know whether it was the economic slump, or the layoff at the Midland plant, nor do we represent that.

All we're saying is it was 15.2 at one time and now it's gone down to 10.2. I don't know what impact this would have directly to it, Dr. Leeds. That's what I'm trying to say to you.

DR. LEEDS: Then don't I have the same kind of problems with saying, well, the price of eggs, wherever, versus the price of oranges somewhere else?

I'm trying to tie this together.

MR. RENFROW: And I don't have a socio-economist to put on the stand for you, to tie it together for you, sir.

DR. LEEDS: Well, okay. Well, I think I've looked at it enough for my purposes.

BY DR. LEEDS:

Q Mr. Kesley, I want to look at Board Exhibit number 4, and the reason for doing that is to ask you a single question about it.

I understand Table 3 is a coal steam plant, and

wel 14

it's going to come on line scheduled at something like May of 1980.

Would you like to look at that to see if that's correct?

A No. We had a discussion on that point yesterday.

Q Fine.

And I gather your testimony says that a coal plant is very expensive compared to a nuclear alternative?

A No, I have not said that.

If you take some costing -- are you looking at -- if you look at Exhibit number 20, and you compare the bottom line figure on the alternatives, for instance -- well, Figure 21 is the cheapest alternative. That is high-sulfur coal. But it shows total generation cost of \$6,794,000,000 over the 34-year lifetime of the plant.

And you go right above that, total generation cost for Midland is \$4,889,000,000.

Now, if you look at the capital cost upon which that \$4 billion is based, it's the cost to go 1.258, and the capital cost on the alternative is 1.270, for two 800-megawatt coal-fired.

Q Maybe I've misinterpreted this data, but what I was doing was backing out the following items: salvagable material, dual purpose cost reimbursement, cancellation cost of material, so on and so on. Site restoration cost, and

wel 15

purchased power.

It looked like to me that the two in brackets sort of cancelled out the two items that weren't bracketed immediately below that, and it looked like about \$661 million was the basic stuff that was added in the alternative. So that would make the bottom line about 6,000, if you took out the 661 plus those other three items.

Now, there's another point 1 which doesn't even get added in at the bottom.

end 5

A I think if you add those figures up, they should sum to \$1,210,000,000.

Q It is not considering your estimate. What if you trying to do was back up the things that were associated with the cancellation. In other words, the materials are gone, the fuel purpose is gone, the cancellation cost is gone, site restoration cost is gone and the purchase power was gone.

And if I just looked at the numbers, that would be the cost of the coal plant; would it not?

A Yes, sir.

Q And that would be roughly 3800 at the bottom?

A Yes.

Q Very rough, I mean?

A Yes.

Q If I added it up I would get some different numbers?

A Yes.

Q And then if I just then look at 3800 there versus 4000 at the top of the page, I gather that a coal plant would cost 50 percent more.

A That's correct. Again, pointing out that the capital cost shown on the top part are to go. They do not include sunk cost.

Q Okay. So I would have to add some more to that?

b2

A. That's right.

Q. 400 more, right?

A. That's right.

Q. So that would be roughly 4500?

A. That's correct.

Q. Versus 5000?

A. Yes, sir.

Q. It is a third more?

A. Yes.

Q. Well, my question then is, now that we have got something settled; the capital costs are higher on the nuclear than the coal plant, but the operating costs are less?

A. Yes.

Q. Fuel and so forth.

A. Yes.

Q. My question, then is:

Why is Consumers building coal plants? Is that a legitimate question? If it not a legitimate question, please tell me, but I am trying to get an evaluation of this.

A. I guess I can give you my opinion. It is primarily because of the lead time on getting a coal plant built is shorter than the nuclear.

Q. Okay. Because it was scheduled to come on-line in 80 or something like that?

A. Yes.

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Q And I have one more question:

I think you testified yesterday that if you speeded up construction -- or maybe it was not yesterday, but it was earlier -- that you would probably have some extra costs because you have third shift differential. You have to bring people in or you pay overtime and so forth. It will probably cost more if you try to speed up?

A Yes, sir.

Q Okay:

If I speeded up and I get the plant on-line earlier, don't I get some net cost because I start getting revenue off the plant instead of just paying out interest on borrowed money, and I don't have to use high priced fuels? Have you all netted out that kind of thing; have you done any calculations like that to net off the difference? Am I making myself clear?

A Yes.

No; it is correct. If we wanted to throw in unlimited manpower, assuming we could get it, we could get the plant on sooner, but it would cost more money. For instance, in forecast number 2, Bechtel has estimated that if we spent an extra \$30 million, we could recover roughly a five-months estimated delay, but we have not done any studies as far as doing a detailed economic evaluation, because the schedule was set to get the plant commercial in '81 for the

b4

first unit and '82 -- and I guess that is our marching orders.

Q Do you know what the average length of construction is for a nuclear plant? I understand there are licensing delays and hearing delays and other kinds of delays like this, but this plant, I understand, is roughly 30 percent finished and it is now projected to take four years to get the first unit on-line.

Do you have figures for how long it takes to get a nuclear plant on-line after the construction permit has been issued and construction is started; what is the average time now?

A I guess I had made an estimate at one time during this hearing, and frankly, I can't recall the number.

Q Is it in the record?

A The estimate? It is in the record some place.

Q Thank you very much. I am not trying to trick you there. I had just forgotten that you had given it.

CHAIRMAN COUFAL: Does anyone have any cross on Dr. Luebke's or Dr. Leeds' questions?

MR. CHERRY: I have a couple of questions.

CHAIRMAN COUFAL: So we don't get out of order, Mr. Hoefling, do you have any?

MR. HOEFLING: No, sir, Mr. Chairman.

CHAIRMAN COUFAL: Go ahead.

CROSS ON BOARD EXAMINATION

BY MR. CHERRY:

Q Mr. Kealey, I didn't understand what you meant by marching orders in the answer to the last question. You said that it would take \$30 million expenditure based on Bechtel's estimate to you in order to maintain the March '82, March '82 date without a five-month approximate slippage.

But you haven't made an economic analysis of that \$30 million, and I take it you haven't determined to spend the \$30 million; isn't that correct?

A That is correct. That is in our review going on now on Forecast 2.

Q If you don't spend that \$30 million, then you are not going to meet your schedule in effect?

A Bechtel -- I believe the words in Bechtel's forecast are; there is a high probability that there might be a five-month delay.

Q I appreciate that, but if Bechtel is right that there is going to be a five-month delay and you don't spend the \$30 million, you are never going to make the March dates; anyway, isn't that right?

A That's correct.

Q Well, if you are coming to this proceeding suggesting that you really need that plant on-line in March, why would there be any question as to whether you would spend that \$30 million?

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A Because some of this we -- this five-month delay, some of it may be picked up as we continue construction.

As I said yesterday, productivity has increased on that site the last six or seven months. And if we continue to hold that productivity, we probably will not have that five months estimate by Bachtel on additional schedule. And that is what we are going to try to do.

Q But if you really believe that there is going to be a five-month slippage and you couldn't pick it up, would that mean you automatically would spend the \$30 million, or would you still think about it.

A No; we would -- you don't just automatically spend \$30 million.

Q So that you can't represent that you are really going to do everything and spend all the money you can to make the March '81 schedule, because making a particular schedule is not only a function of meeting what you assert is a demand but is a function of economics; isn't that right, Mr. Keeley?

A It is a function of economics, correct, and availability of money, correct.

Q Well, even if you had the money and it was available, would you still make that cost-benefit economic determination as to whether or not you wanted to spend the extra \$30 million; right?

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A That's correct. Because it ups everybody's costs, including Dew's. And I just don't think it would be fair to arbitrarily spend the money, \$30 million or what ever, without doing an evaluation and discussing it with Dow because their steam costs would go up likewise.

Q But you think it is fair to spend \$100 million without evaluating the \$1.5 billion figure you got from Bechtel. That you think is fair?

MR. RENFROW: Objection, Mr. Chairman.

CHAIRMAN COUFAL: I don't follow the question. What \$100 million are you talking about?

MR. CHERRY: Mr. Chairman, the witness has just testified that he did not think it was fair to --

CHAIRMAN COUFAL: I get that part of it. I just don't understand the \$100 million.

MR. CHERRY: They are now spending money. The approximate amount of money they will spend from September '76 to September '77 is about somewhere in the neighborhood of \$90 to \$100 million. They have spent a lot of money since the date they got their \$1.5 billion figure from Bechtel. They haven't analyzed that.

So I am now saying to them: If you thought it was fair to everybody involved to analyze the \$30 million, why didn't you think it was fair to everybody involved to analyze the \$1.5, get a hard figure on the cost of the plant at the

rb8

outside before you started spending more money.

THE WITNESS: Because I think we have a good hard figure right now, and I think Forecast 2 and going through our review is going to give us another hard figure, which is in my mind, is better to use than this figure of \$1.5 billion.

BY MR. CHERRY:

Q Even though you haven't analysed it?

A That's correct; in detail.

Q Mr. Keeley, utilities make a great deal about -- and I think Mr. Mosely said it -- about your responsibility to meet demand; isn't that right?

A That's correct.

Q But utilities don't always go out and meet demand on the date they believe it will occur without considering the economics of it; isn't that correct?

A Well, again, I -- we are trying to get this plant built by 1981 and 1982. We are trying to get it built as economically as we can. So I guess economics does enter into meeting the schedule; yes.

Q That isn't what I said. I said utilities make a habit of stating, as Mr. Mosely has stated here, that they have this overriding responsibility to meet demand. And you have testified, I take it, with some implicit suggestion that there are going to be some dire consequences to your system if you don't meet this by March 1981.

MR. RENFROW: Objection, Mr. Chairman. That is far outside of what Mr. Keeley is testifying to in this proceeding.

BY MR. CHERRY:

Q Mr. Keeley, do you understand Consumers' position in this case, that it matters to their system in a significant way, that is, meeting demand, and what you presume your obligations are if you don't get this plant on-line by 1981?

MR. RENFROW: Same objection, Mr. Chairman.

CHAIRMAN COUFAL: I think you are going beyond the question --

MR. CHERRY: I am going into the cost of meeting that. I am trying to lay a foundation as to whether he has an understanding of that before I can go back into the question of his cost analysis.

It is just that one question: If he has an understanding as to whether it is Consumers' position in this case that failure to have Unit 1 on-line in March '81 and Unit 2 in March '82 -- or vice versa; the way it is scheduled now, will have serious adverse consequences to Consumers' system.

CHAIRMAN COUFAL: You may answer, subject to a motion to strike if we don't tie it up.

BY MR. CHERRY:

Q Do you understand that to be Consumers' position?

A Again, serious consequences, I do not know what

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that means. All I know is --

Q I will tell you what it means --

MR. RENNOW: Mr. Chairman, just a minute.

MR. CHERRY: I am going to define my --

CHAIRMAN COUFAL: What do you want, Mr. Rennow.

MR. RENNOW: He has a right to finish answering his question before he is interrupted.

CHAIRMAN COUFAL: Go ahead, Mr. Keeley.

THE WITNESS: I do not know what he means by serious consequences, and again, as Project Manager, I am told that we should get a plant built and operating for the sake of getting power to the customer and steam to Dow.

Those are -- that's what I am told and that is what I am attempting to do.

BY MR. CHERRY:

Q Now, Mr. Keeley, I am going to attempt to get the answer to my question as to what you understand Consumers' position to be so I can tie it up for you, but I want to define now serious consequences to Consumers' system:

Brownouts, blackouts, serious load shedding, problems that you can't handle, serious energy problem in Michigan, et cetera.

Do you understand that it is Consumers' position in this case that if Unit 2 is not on-line by March '81 and Unit 1 is not on line by March '82, that there will be

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serious adverse conditions to Consumers' service area as I have defined them. Is that what your understanding is of Consumers' position in this proceeding?

MR. REMFROW: I am going to object to that question, Mr. Chairman. I don't believe that those terms appear in Mr. Heins' testimony or anybody else's testimony.

CHAIRMAN COUFAL: All right, we will let Mr. Heins answer, but it will be subject to the motion to strike.

MR. REMFROW: That's Mr. Keeley.

CHAIRMAN COUFAL: Mr. Keeley.

Mr. Keeley, do you understand that to be --

THE WITNESS: I guess I don't feel I am qualified to answer that. I don't -- it is our power planning people who do that planning, not me.

BY MR. CHERRY:

Q I didn't ask you whether you were qualified to do anything, Mr. Keeley. I just asked you whether you understood that on the basis of your intimate familiarity with this hearing, as to whether or not that is your company's position. Do you know whether that is your company's position.

MR. REMFROW: He just answered the question.

BY MR. CHERRY:

Q Are you telling me you are not qualified to tell me whether you have an understanding of what your position,

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or your company's position, is?

MR. RENTFROW: Same objection. If he wants to back off and try again, he can, Mr. Chairman.

CHAIRMAN COUFAL: Sustained.

Go ahead and ask him a question.

THE WITNESS: I would like to have the question again, please.

CHAIRMAN COUFAL: On the last question, there was an objection sustained to it.

BY MR. CHERRY:

Q Mr. Keeley, are you tell me that based on your intimate familiarity with this proceeding, that you do not know whether or not the company has taken the position that I have just described?

MR. RENTFROW: Same objection.

CHAIRMAN COUFAL: He can answer if he wants.

THE WITNESS: I don't have an intimate knowledge of the power planning and what is going to result in blackouts or brownouts or what have you.

I know that we are trying to get that unit on the line in 1981.

BY MR. CHERRY:

Q Has anyone ever told you: Gill, you have got to have that unit on-line by March 1981 and March 1982, or we are going to have serious problems to our system?

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MR. RENFROW: I would object to that question, Mr. Chairman. One, it is beyond the scope of his testimony; two it is far beyond any questions that Dr. Leeds or Dr. Luebke asked.

CHAIRMAN COUFAL: It is a foundational question. I suppose you are still trying to lay a foundation for your ultimate question, Mr. Cherry?

MR. CHERRY: That's right.

BY MR. CHERRY:

Q Has anyone ever told you that?

A Serious problems? No, I don't think anyone has ever told me that.

Q Mr. Keeley, isn't it true that based upon your knowledge and belief, the question of meeting a particular date for Consumers' Midland nuclear plant insofar as this suspension hearing is concerned, is by-and-large solely a function of money, period?

MR. RENFROW: Objection, Mr. Chairman.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: It is not my knowledge, no.

BY MR. CHERRY:

Q That is not your knowledge?

A No. We are trying to get the plant on the line in 1981 and 1982.

Q Mr. Keeley, would you answer this question:

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You told Dr. Leeds that the reason you were building Campbell 3 was because the lead time in coal is shorter than a nuclear plant; right?

A That is my opinion. I gave it as my opinion, but again, I am not in power planning or make management decisions as to whether to go coal or nuclear. That is my opinion, and I think that is the way I expressed it.

Q I take it you were telling Dr. Leeds what your opinion was as to why you were building Campbell, as to why the company was building it. Isn't that what you were answering Dr. Leeds, as to what your opinion was, as to why Campbell 3 was being built?

A The question was, I believe: Why are you building Campbell 3 as a coal unit instead of building a nuclear unit? And I said it is my opinion, because of the shorter lead time.

Q You didn't tell Dr. Leeds that you don't know anything about that, you answered his question directly.

Now what I want to know, Mr. Keeley, is: If that was the reason why you are building Campbell 3, why don't you always build coal instead of nuclear, because coal is traditionally shorter in lead time than nuclear, because coal generally doesn't have guys like me around; there is no regulation of coal in that sense.

So if the relationship between coal and nuclear as to the lead time for a coal plant is always shorter, why

rb15

don't you always build a coal plant?

A An economic evaluation and a timing evaluation is done evidently by the power planning people. And based upon that, a decision is made by management which way to go. I am not involved in those decisions.

Q Mr. Keeley, if coal has a shorter lead time than nuclear, isn't it a fact that if you put your resources together and you begin to beef up your schedules, et cetera, that you probably; that is, Consumers, could build an 800 megawatt coal plant between now and whenever it got built quicker than finishing these two Midland units; wouldn't you agree with that? One 800 megawatt coal plant quicker than building these two units, nuclear?

A Oh, that's correct, but it would cost more money to the customer in the end-run.

Q One coal plant would cost more than two nuclear power plants? One 800 megawatt coal plant?

A No.

Q It would cost less money?

A If you take an equivalent energy on an equivalent plant basis, the nuclear over 30-40 year life, should prove less.

Q We get into those assumptions at some point later on.

You will agree with me that if Dow goes its own

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way and builds its own facility for steam and electricity, then based upon analyzing alternatives, all Consumers' needs is something less than an 800 megawatt plant?

MR. WINTERROW: I will object to that. What is totally far beyond what Consumers Power needs for its system.

CHAIRMAN COUFAL: I think this is repetition.

Mr. Cherry from days ago.

MR. CHERRY: No, I have never asked this question.

CHAIRMAN COUFAL: It has been asked by someone else. It has been around.

MR. CHERRY: I can't get an answer to this question?

CHAIRMAN COUFAL: No.

BY MR. CHERRY:

Q Mr. Keeley, would you turn to the conclusion of III-12 of your testimony. You see the last paragraph that says:

"Thus, while the actual social economic impacts cannot be specifically quantified, it is clear that suspension of construction and the resulting layoff of 900 workers would have a significant adverse impact on the community."

Do you see that?

A Yes.

Q Would that conclusion be more correct than it is

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now if I added the following:

According to data from the Midland Chamber of Commerce, which we haven't analyzed and don't know anything about, and according to statements from Reverend North which we haven't analyzed and don't know anything about, would that then make that conclusion be more correct?

MR. REMFROW: Objection, Mr. Chairman.

CHAIRMAN COUFAL: Give me a foundation; give me a reason to overrule it.

MR. REMFROW: One, it is mischaracterization of what he said; two, it is argumentative, and three it is improper cross-examination.

CHAIRMAN COUFAL: I don't think it is improper cross because it relates to questions that Dr. Leeds asked. I think it may be argumentative. I will sustain it on that grounds.

BY MR. CHERRY:

Q Mr. Keeley, in light of what you testified to to Dr. Leeds, do you believe that you should qualify the conclusion insofar as Consumers' personal knowledge is concerned, page III-12?

A I think it is my opinion, and I wouldn't have put this in testimony if I didn't feel that there would be an impact on that community. There already is an impact on people working on this project because of this hearing.

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People have quit and moved on to other jobs. I feel there is going to be an impact on the Midland community if this plant is suspended.

Well, people move out of the country because they don't like the foreign policy sometimes, but that doesn't mean we go -- well --

MR. RENFROW: I move to strike that.

CHAIRMAN COUFAL: It is stricken.

BY MR. CHERRY:

Q My question is very simple. Isn't it correct that all of the data upon which you rely, that that is the data which is set forth in section III. I am not talking about what you may have that you haven't told us about, but what is set forth in section III that is asserted to support that conclusion, is data that has never been seen or analyzed by Consumers Power Company?

A No, sir. I have seen the data.

Q What data did you see from Reverend North?

A I have seen a letter. We have some letters from these various people, the Chamber of Commerce.

Q I know you got letters from them telling you who their position is. But it is true that all of the information that supports the conclusion in III-12, that was relied by these people who sent you letters, presumably you or Consumers has neither seen nor analyzed the underlying data;

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isn't that right?

A. That's correct. I have checked some of the arithmetic calculations, out --

Q. So the Midland -- by the way, was the Midland Chamber of Commerce ever an active intervenor in this proceeding in support of the plant?

A. An active intervenor? I believe they made a limited appearance.

Q. Would you call them less than objective persons in connection with the nuclear power project?

MR. RENFROW: Objection, Mr. Chairman.

CHAIRMAN COUFAL: I think you can ask him what point of view they took on the limited appearance, Mr. Cherry.

MR. CHERRY: I want to ask him if based upon his understanding, he believes that the Midland Chamber of Commerce is completely objective in connection with their views as to the Midland nuclear power plant.

CHAIRMAN COUFAL: Sustained.

BY MR. CHERRY:

Q. Do you believe that Dr. Reverend Noxnt, based on what you know, is completely objective in connection with the Midland nuclear power plant?

MR. RENFROW: Same objection, Mr. Chairman. I don't believe this man is qualified to sit here and tell you who is objective and who is not objective, or what that word

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means or how it is being used.

CHAIRMAN COUFAL: Ask him what leads him to what ever conclusion he has, if you like, Mr. Cherry, but I am going to sustain the objection.

BY MR. CHERRY:

Q Mr. Keeley, the people who gave you information upon which you relied which you relied without looking at their underlying data, have all been very active supporters of the Midland nuclear power plant almost since the initiation of the project; isn't that correct?

A That's correct.

Q And most of those people have been at times vitriolic in their comments about my clients and me?

A Vitriolic?

Q Wasn't I called a communist in the papers in '71, by Reverend North, for --

A I guess I don't know that.

Q You don't know.

Now, Mr. Keeley, do you think it would have been a more fair presentation of the conclusion in section III-12 of your testimony to have revealed what you now told us, that Consumers neither saw nor analyzed any of the underlying data that the Chamber of Commerce or the Reverend North put together. Do you think that would have been more fair, in your judgment?

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MR. RENTFROW: That's the question that we started this with. He has given his answer as to why he put that in there. It is opinion; it has been asked and answered. And we have gone around, and back to it again. Perhaps we could get through with this and get on to another witness and get this over with. We are getting nowhere.

CHAIRMAN COUFAL: Overruled.

BY MR. CHERRY:

Q Mr. Keeley?

A I have looked at what was furnished. It is my personal feeling that it is pertinent, that it would have a definite effect on that community. That is my personal feeling.

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Q That is not my question.

My question was, simply, in light of the fact that you told us that Consumers neither analyzed nor examined the underlying input that formed the conclusions of those people who wrote you letters, in light of that fact: do you think that your testimony, in terms of wanting to give information to the parties would have been more fair had you disclosed the fact that you told me that.

That is my question.

If you don't have an opinion on what you think would have been more fair, then you tell me, I just have no opinion.

MR. RENFROW: I am going to object to that, Mr. Chairman.

One, it has been asked and answered.

Two, it has been set forth quite clearly he is not qualified.

Three, where has this information come from?

I object on all those grounds and ask that we don't have any more questions on these, and ask that we go on.

CHAIRMAN COUFAL: Overruled.

BY MR. CHERRY:

Q Mr. Keesley?

A May I have the question, please?

CHAIRMAN COUFAL: Read it back, please?

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

THE WITNESS: I suppose I could have added words to indicate that we had not analyzed all the backup material.

BY MR. CHERRY:

Q You mean any of the backup material, Mr. Keeley, don't you?

A That's right.

The material was given to us by these people who felt they could look at the effects.

Q Why didn't you rely on Bechtel's \$1.5 billion estimate without analyzing the underlying data?

A We took a quick look at it, and we, based on having better data, harder data in the forecasts which are more meaningful, we go with the forecast.

Q Mr. Keeley, do you find it inconsistent that you don't analyze data whose conclusions at least assertedly, have a tendency to help you, and then you give us those conclusions and then you -- with respect to conclusions that might hurt you like the 1.5 billion you say you are really going to take a lot of time to analyze that before you accept it.

Do you find any inconsistency between those two approaches that you have testified to?

MR. RENFROW: I am going to object to that because

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that is not his testimony.

CHAIRMAN COUFAL: I think he has testified he hasn't analyzed either one of the pieces of data, either the \$150 million or the data from socioeconomic studies.

MR. CHERRY: But the point that the witness testified to is that they feel that there was no need to analyze the favorable conclusion, but a great deal of need to analyze the asserted unfavorable conclusion.

MR. RENNROW: That is the objection.

Because what was stated was the reason he didn't do the 1.5 was because he had much better data on the 1.23 figure and that is what they would evaluate and they would get evaluated somewhere else.

And that is the way he has mischaracterized it, he is continuing to do that, Mr. Chairman. That is not his testimony.

CHAIRMAN COUFAL: I am going to cut you off on it, Mr. Cherry, you could argue it, but ---

MR. CHERRY: Fine.

BY MR. CHERRY:

Q The last question, Mr. Keeley, have you analyzed what the delay case would be compared to the alternatives if you really had to spend the kind of money that you may have to spend in order to keep that March schedule?

MR. RENNROW: I am going to object to that question.

I don't know what amount of money he is talking about. The question is awfully vague.

CHAIRMAN COUFAL: I don't follow it either.

Can you state it again, Mr. Cherry.

MR. CHERRY: Yes.

BY MR. CHERRY:

Q I take it you will agree with me that your analysis of the delay case in meeting the schedule does not necessarily reflect all of the increased costs that may be now associated with meeting that schedule?

MR. RENFROW: Can I hear that again, Mr. Chairman.

I'm sorry.

MR. CHERRY: I will withdraw the question.

I'm sorry. I have nothing else from Mr. Keeley.

CHAIRMAN COUFAL: Do you have any redirect --

MR. HOEFLING: Mr. Chairman, Staff has one or two clarifying questions.

CHAIRMAN COUFAL: All right.

Go ahead.

MR. CHERRY: Mr. Chairman, can I have just five minutes, I would like to make a phonecall.

CHAIRMAN COUFAL: Maybe we all ought to take a break.

MR. RENFROW: I would like to ask a couple of clarifying questions on Mr. Cherry's --

CHAIRMAN COUTER: Do you have any questions --

MR. CHERRY: They both have questions.

We will probably go another 15, 20 minutes.

MR. HOEFLING: I only have one or two questions.

DR. LEEDS: Let's try two, and then break.

BY MR. HOEFLING:

Q Mr. Keeley, did I hear you testify in response to a question from Mr. Cherry, that you felt you could put an 800 megawatt electric coal plant in service by 1981?

A No.

He asked me if it would be cheaper or faster. I think the question was, would it be faster to put in a coal-fired plant, an 800 megawatt plant, than to build a nuclear plant.

MR. CHERRY: No, than finish the nuclear plant is what I asked you.

THE WITNESS: Than to finish the nuclear plant.

BY MR. HOEFLING:

Q That is my difficulty, Mr. Keeley.

The nuclear plant completion date is taken as 1981.

Your response --

A No, because our estimates are seven years for starting from scratch on a coal-fired plant.

Q Which would be a completion date of when for the coal-fired plant?

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2. Well, as our testimony has talked about, 19 -- seven years from now -- 1964.

MR. HOLZBERG: Thank you.

That is all we have, Mr. Chairman.

CHAIRMAN COUFAL: Do you have any questions?

MR. REMFROW: I don't believe so, Mr. Chairman.

If I do, it would be one or two, but I will also called and ask for another witness to be brought over here during this break.

Before you break, Mr. Chairman, we have never formally had the sequestration order removed as to the Dow issues.

Will you remove that order at this time, please?

CHAIRMAN COUFAL: Yes, it is removed.

Mr. Cherry, before you leave, I forgot to mention this this morning; for the purpose of whatever you are going to do in the Court of Appeals, the D. C. Court of Appeals that you mentioned yesterday, we are overruling your motion that we immediately, as distinguished from eventually, suspend the construction permit on the Midland plant.

MR. CHERRY: And the grounds for that?

CHAIRMAN COUFAL: The grounds for that is -- there are many grounds, but the most important ground is that we feel it is the obligation of this Board to develop the total record with regard to suspension or not.

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MR. CHERRY: Thank you.

(Recess.)

CHAIRMAN COUFAL: Back on the record.

Do you have any questions, Mr. Renfrow?

MR. RENFROW: No, I have no questions of Mr. Keelley.

CHAIRMAN COUFAL: Where is Mr. Keelley?

MR. RENFROW: He is still outside.

CHAIRMAN COUFAL: Well, he needn't return.

(Witness excused.)

CHAIRMAN COUFAL: Do you want to break for lunch now?

MR. RENFROW: I think we can handle one item very quickly and then I will leave it to the Board.

First, it was my understanding this morning that you said we could complete with Mr. Dickel and Mr. Heins for the rest of our direct, and that was your order.

Was that correct?

CHAIRMAN COUFAL: Yes, sir.

MR. RENFROW: Okay.

And with that understanding, I have talked to the three Parties, and I will represent to the Board, I believe that I have their agreement to stipulate into the record Mr. Dickel's testimony, that was the outline that was given to all the Parties.

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I will provide a copy to the Court Reporter to just type it into the record.

I would have no questions of Mr. Bickel, and as I understand it the other parties do not have any questions of Mr. Bickel. And that would take care of that.

We would then go to Mr. Reine for his redirect, who is here.

I believe I stated that agreement of the parties correctly.

CHAIRMAN COUFAL: Is there any disagreement?

MR. CHERRY: No, that is not quite a fair statement, Mr. Chairman.

If it gets to the point where the Board permits this rebuttal testimony in now, then I would it to go in as if read. But I have a very strenuous objection to the some 30 pages of Mr. Bickel's testimony being filed, because it was not part of the prefiled testimony.

It is in the nature of rebuttal testimony and it ought to be subject to the February 20th order which indicates why apparently what is a more detailed statement of the short-term forecast which is described in Mr. Reine's testimony, is necessary.

CHAIRMAN COUFAL: Okay, if it is rebuttal testimony that is right.

I don't know whether it is or not.

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MR. CHERRY: I would ask the Board to examine a copy of it, and ask Mr. Renshaw to state whether or not this in effect is rebuttal testimony, because it was not questioned direct.

It is in response to matters on cross-examination and ergo, is rebuttal.

CHAIRMAN COUFAL: Ergo, it is rebuttal.

MR. RENSFROW: It is redirect, Mr. Chairman.

That is all it is, was in response, just to correct Mr. Cherry, the long-term forecast of questions that were asked, and this was his outline. We have given it to everybody.

CHAIRMAN COUFAL: Do we have copies of it somewhere?

DR. LEEDS: Yes.

MR. RENSFROW: This is just his redirect, it is not rebuttal.

CHAIRMAN COUFAL: All right.

Refer us, since there is a dispute whether it is rebuttal or redirect. We will face that. Refer us -- do you know where in the transcript he was examined, the only time he was examined?

MR. RENSFROW: He starts at page 1866 and was cross-examined at 1867. That is the transcript of Friday, January 21.

We got into how Mr. Bickel did -- the term now is

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the long-term forecast, confirmatory study which was done.

We had a long discussion about that. A number of questions were asked.

Mr. Cherry took the book from which Mr. Bickel did that study and entered those exhibits into evidence.

This was the question that we had on the redirect which started this week. An outline was given to all of the parties just merely for procedure sense. Instead of going through and asking him questions, we just have the outline as if read.

CHAIRMAN COUFAL: If it is redirect, Mr. Renfrow in our opinion, if it is redirect, we will permit it.

If it is not, why we won't.

And we will compare -- we will look at them.

MR. RENFROW: Right.

Maybe it is time for us to take a lunch break and do that.

CHAIRMAN COUFAL: First I want to hear from Mr. Brenner or Mr. Hoefling, or whoever. from the Staff, with regard to what you think about that proprietary claim on the nuclear fuel costs.

MR. HOEFLING: Okay, Mr. Chairman.

CHAIRMAN COUFAL: I would also like to hear from Dow.

I guess, Mr. Cherry, you never received it.

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MR. CHERRY: I have some comments to make, Mr. Chairman, just to button up that other thing.

My stipulation for "as if read" would control if you determine that it is appropriate redirect. But it would not if you determine, as I believe, that it is rebuttal testimony.

Also, if it comes in, my stipulation only refers to the copy that has the yellow markings on it, and all the handwriting on it. It does not refer to anything that is less than the original that Mr. Bickel had with all the handwriting, including the references to me and everything else, and the yellow on it, so I have a complete copy of that.

But that is what my stipulation goes to, not a copy without the yellow or the handwriting on it.

CHAIRMAN COUFAL: All right.

Go ahead, Mr. Hoefling.

MR. HOEFLING: Okay, Mr. Chairman.

I have looked at -- I have two packages of material and two affidavits.

The first affidavit was given to us on the 7th, affidavit of Mr. Bayless that covers certain cost projections, as I understand it, that Consumers has documented in the materials that it is claiming to be proprietary.

Looking at the Appeal Board's standard in Wolf Creek, the standard seems to call for a showing of significant

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commercial injury in order for a proprietary claim to be sustained.

And in my view, I don't think Mr. Bayless' affidavit comes anywhere near laying the basis for a claim of significant commercial injury.

What he says, basically, is that in some fashion public exposure of these projections would impair Consumers' ability to get an economic price.

I don't really know what he means, I don't know what his concerns are, I don't know what timeframe he is talking to. It may be that Consumers is intending to go out into the market at some future time when these projections would be dated. I am not even convinced that if someone had this information right now it would affect the marketplace or the influence on the pricing that Consumers gets.

So I think first of all, for this material, there is not enough basis in this affidavit to make a showing of significant commercial injury.

Wolf Creek went on to say that even if it did make that showing, it still had to consider whether there is a countervailing consideration in the public interest.

And I think that that standard applied to the materials that Consumers has in its claimed proprietary, would also require disclosure of this information.

We are dealing here with fuel cost projections which

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go to the heart of the need analysis, and Applicant has made an analysis of alternatives and those vital costs essential to that analysis. And I think the material should be available and should be open for probing and for examination.

CHAIRMAN COWFAL: Have you gone through this material?

MR. HOEFLING: I have looked at the material, yes.

CHAIRMAN COWFAL: Can you characterize the material and what it is in your opinion, and what sort of thing is it?

MR. HOEFLING: I would characterize it as Consumers Power's projections of nuclear fuel costs in terms of dollars or cents per energy output, which is -- all of the information either goes to that or is displayed in that form which is almost identical to the form that the information is used in making your analysis of alternatives; fuel cost component expressed in cents per million Btu, mills per kilowatt hour, or whatever.

CHAIRMAN COWFAL: Does that conclude your --

MR. HOEFLING: No.

Do you have a question, Dr. Leeds?

DR. LEEDS: You are going to another area, or are you still on fuel costs?

MR. HOEFLING: I am going to the second package which we got yesterday.

DR. LEEDS: Let me ask you a couple of questions

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about that.

Did you see anything in there, that if we released it it would harm the public?

MR. HOEFLING: Would harm the public?

DR. LEEDS: Would there be any injury to the public if it was released?

MR. HOEFLING: The only way that I could see the public being injured would be injury to the ratepayers of Consumers' service area in the event that a relationship could be shown between the use of this information and the pricing that Consumers -- that would result for Consumers for fuel, which would potentially raise the cost of the ratepayer of the electricity.

But as I say, I haven't seen enough information to establish that this relationship exists.

There may be a relationship, and if that is shown, then there may be an effect on the ratepayer through higher fuel costs.

I don't think the affidavit makes out the case.

DR. LEEDS: Is there any other way that this Board could do its cost-benefit balancing without having that information released?

MR. HOEFLING: Well the Board could rely on the Staff's analysis. The Staff has performed a separate analysis in which it has projected fuel costs and come to a conclusion

as to the comparison between the nuclear alternative and the coal alternative.

The Board could rely on that analysis.

DR. LEEDS: But we have no way to compare theirs with yours, unless that were released.

MR. HOEFLING: Well, you would have the comparison of the material that the Applicant presents in the ER versus the material that the Staff presents.

And you have the bottom-line conclusion.

And to what extent you can probe the Licensee's information without utilizing or requiring this material, I suppose that you could rely to some degree on Staff's.

DR. LEEDS: Does the Staff believe that in performing its duty, as we all know it, believe that they need this information to be publicly released?

MR. HOEFLING: One moment.

(Staff counsel conferring.)

MR. HOEFLING: The Staff has performed a separate analysis in this area. We don't think that this material is required for the Staff to perform its analysis or to support its conclusions.

This information may be of a confirmatory nature, but its worth would be simply that, to be confirmatory.

Now to what extent a proprietary order would or would not affect that, if we had a proprietary order which

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limited the use of this material to the bounds of this proceeding, then we could achieve the confirmatory aspect that I am talking about.

I don't believe that is what Mr. Cherry is talking about. I believe he needs, or he feels he needs -- he has got to go beyond the proceeding and consult with others to analyze the material.

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So I think even the confirmatory aspect I am talking about with regard to the Staff could be achieved with a proprietary order.

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DR. LEEDS: Do you need to go outside of the Staff?

MR. HOEFLING: To discuss these materials? No, I don't believe so. Let me check.

(Pause.)

We do on occasion go outside the Staff to examine fuel cost material that we have. We wouldn't know whether we have to do that until we examine this material and saw what the general nature was and what type of consistency it had with the information that we're using.

DR. LEEDS: Do you know of any other utility that keeps this kind of information -- does the Staff know of any other utility that keeps this kind of information confidential, their own in-house estimates, which is, I guess, what this really is?

(The Staff conferring.)

MR. HOEFLING: We can't identify any other instance where this type of information has been claimed proprietary.

CHAIRMAN COUFAL: Would you have reason to know? Is that just because you've never looked into it or it's never come up before, or what?

MR. HOEFLING: I've never looked into it. I've had a brief conference with Mr. Brenner and Mr. Feld, and we can't identify any instance where a claim was made for

a proprietary order covering this type of material.

CHAIRMAN COUFAL: Can you identify the converse, or the reverse, the material has been disclosed, or not?

MR. HOEFLING: We have identified the Wolf Creek case, claims covering contracts, but I think that's a different question.

We're talking here about internal projections and computations by a utility.

CHAIRMAN COUFAL: Okay.

MR. BRENNER: Excuse me. Let us have a moment.

(The Staff conferring.)

MR. HOEFLING: There is one instance -- we give this to the Board for whatever benefit it may have -- one instance where certain uranium projections were claimed to be proprietary based on the fact that an outside consulting firm was used, and that consulting firm employed certain proprietary escalation factors in developing these uranium prices.

In that instance an arrangement was worked out whereby the proprietary nature of those formulas -- those formulas were not disclosed but information adequate to make the determination was disclosed.

Again, that's a different situation from where we are now.

DR. LEEDS: In other words, it was an outside firm

143 which did its own estimates of what the future cost would be, and it sold those estimates commercially. And disclosure of that to everybody would ruin their economic interests in their own work product.

MR. HOEFLING: I take it that's where that one came out.

DR. LEEDS: Was that Stohler?

MR. HOEFLING: It was the Callaway proceeding.

MR. BRENNER: Yes, Dr. Leeds. It isn't exactly this point, as Mr. Hoefling pointed out, because it involved precisely what you just said. It was also complicated by the fact that it was alleged to involve ongoing contract negotiations with other utilities by the same uranium supplier, also utilizing Stohler for the escalation rates.

DR. LEEDS: So if you released it Stohler would have lost what they had worked on.

MR. BRENNER: We never reached the point, Dr. Leeds, and I want to emphasize that. It was negotiated out between all the parties prior to the hearing, because the parties got the bottom-line information that they deemed that they needed, which was the estimates of the bottom-line prices.

DR. LEEDS: Callaway and Wolf Creek are hung together in the same way?

MR. BRENNER: Yes, sir, they were the SNUPPS

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utilities, and the contracts were all signed by Westinghouse. And you know what happened to those contracts.

It's a different point than the point which was litigated in Wolf Creek. I should make that clear.

DR. LEEDS: I understand. Thank you, sir.

MR. HOEFLING: We have a second package of materials which was given to us last night and another affidavit from Mr. Bayless. I think this material is divided into two different categories.

One category, again, appeared to be Consumers Power internal cost projections and cost data. With regard to that information, my comments would be the same. I don't think the affidavit makes out a showing of significant commercial injury. Even if it did, it would appear that Consumers is here as an applicant and this particular portion of the case is significant, and that the public interest would seem to warrant Consumers to make this information publicly available for scrutiny.

Now, the second part of this affidavit covers the computer program NM². I think here we do have a basis for reaching the finding that it would be a significant commercial injury to Consumers if this particular computer program were released.

They intend to market this program presumably. If this information were put into the public domain, they

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would not be able to market it and would suffer commercial injury.

Now, that doesn't end the discussion, because there still may be the public interest consideration which would demand that this computer program be disclosed. But I think we'd have to go and really search that question, and perhaps Mr. Cherry could assist us here. I'm not sure that he really wants this program to be in the public domain. It may be adequate for him to receive it under a proprietary order to do whatever he feels he has to do with it.

But I think we need more factual information as to what his intent is before we can sign off on that question. So on that -- as to that particular computer program, I don't think we have enough information yet to say that a proprietary claim can or cannot be sustained.

CHAIRMAN COUFAL: Mr. Cherry.

MR. CHERRY: I agree with Mr. Hoelling on the uranium prices and the cost data. I would only have the following to add.

It cannot as a matter of economic theory be made out that when a potential purchaser reveals his estimates into the future that he will have an adverse effect into purchasing, because what a potential purchaser believes the prices will be has no relationship to how prices are set. What a potential purchaser will pay is also unrelated to what

he believes the prices will be for the following reason.

There is not either a monopolistic or oligopclistic or an oligopsony on either the buyers or the sellers. In other words, there is not a monopolistic marketplace where a seller has a unique control or total control over the supply of uranium, so once having known that a particular buyer believes the prices will be this can withhold that product in order to achieve that price.

That kind of a showing can't be made on this record at all because of the multiple sellers of uranium and multiple purchasers of uranium. So that no matter what price Consumers believes the price will be in the future, a seller wanting to maximize his profits will ultimately make a sale that is judged by the economic marketplace. If a seller does not believe that the economic marketplace will in effect be the same as Consumers' projections, he will sell to the highest bidder he believes he has. He will gain that information from the marketplace.

So as a matter of economic theory there can be no connection between those prices and the ultimate prices paid by Consumers Power Company except by coincidence; and then the factors will be set by the marketplace and not by what Consumers believes the prices will be, because Consumers' real belief is no more than what they would be willing to pay for any particular situation and what they would be

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willing to pay is not the determining factor, or what they would be willing to buy it for.

Point NO. 2, uranium fuel cost is significant and important for the following reasons:

This Commission, in my judgment erroneously -- and I characterize it even stronger than that -- has prohibited inquiry into one of the most significant underlying facts of the Aeschliman decision. We took that case up to the Court of Appeals, and we were told that we could discuss fuel costs in the absence of a rule. There is not a rule, but we're still told we can't discuss fuel costs.

So with that limitation the Commission has self-imposed a limitation on the kind of information that will go in this record, which I think is illegal, but nonetheless it's a limitation already of the kind of information that will get into this record.

For that reason, it seems to me that any information which is available must be made public so that the greatest amount of analysis can be made.

Finally, no one that I have talked to on the question of fuel costs will assist me if they are bound by a claim later on that they may be responsible for some damage that Consumers Power Company may lay at their doorstep by virtue of having breached the proprietary order.

In other words, for me to effectively analyze

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nuclear fuel cost with a proprietary order means that the kinds of people I would talk to won't talk to me in terms of fuel cost.

In connection with the computer program -- oh, I want to say one other thing about fuel costs.

The Staff said two things which I consider inconsistent. I only want to call this to your attention.

The Staff said that we have no reason to use the Consumers data to look at their conclusions because it would be a confirmatory data, based presumably on their assessment last night that whatever Consumers has concluded agrees more or less with what the Staff has concluded. That's how I took Mr. Hoefling's remark that the data would only be confirmatory.

Yet when the Board asked Mr. Hoefling whether he had to go outside the Staff to get an analysis, Mr. Hoefling said, "Well, I don't really know. We haven't reviewed the information sufficiently to know whether we have to go outside."

I think those two statements are inconsistent, and I think it goes to the question of whether or not the Regulatory Staff is doing the kind of search that is necessary pursuant to the Regulatory Staff's responsibility.

They cannot stop looking for information merely because they feel they have enough, if there is significant

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information. Surely the Applicant's estimate is significant.

Lastly, with respect to the EMC computer code, it is not true that there is a sufficient showing, in my judgment, in the Bayless affidavit. What the Bayless affidavit says is that the EMC² is undergoing modification and revision in aid of an ultimate contract with, I believe, Nuclear Fuel Assurance to sell the computer code.

There is no allegation or statement that a contract has been signed. There is no statement as to what those modifications might be, which in effect might change drastically the computer code that is here.

And, finally, I've tried enough computer code cases to know that if you place a copyright on a computer code it then becomes a violation of federal criminal law as well as civil law to use that computer code, and that is the way that commercial practices are protected with respect to computer codes, is that they are copyrighted; the software is copyrighted.

All we're talking about here is output. There is no allegation that you can work back and get the code on the basis of the output, so that there hasn't been a showing made that if you release this information someone will be able to get the program.

Point No. 2, that if they could they could use it if there were an appropriate copyright on it. If

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Consumers Licenses or sells this particular code to someone else, what is going to prevent that person from going out and selling it? A contractual restriction and the copyright laws.

So Consumers will be on the judicial principles of trademark and copyright law fully protected by just following what traditional people in the computer business follow all the time.

CHAIRMAN COUFAL: Does Dow have anything to say?

MR. NUTE: Yes, Mr. Chairman.

I have not had a chance to look at the original material that was passed out. Mr. Duran is bringing that back to me. Instead of arriving at my office he is in the hospital. I haven't seen it yet.

CHAIRMAN COUFAL: He arrived where?

MR. NUTE: He is in the hospital.

CHAIRMAN COUFAL: What happened to him?

MR. NUTE: He has a kidney stone.

But I guess the point I wanted to make is that in the past we have always relied upon Consumers Power for nuclear fuel prices. In certain circumstances or certain situations of which I was aware those were shown to us and we would keep them proprietary.

Therefore, I'm a little reluctant to say anything about releasing whatever is in that packet if on some other

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occasion we had agreed to keep it proprietary on behalf of Consumers Power Company. So we do have that in the background, and I'm unable to take a position on that right now.

CHAIRMAN COUFAL: Mr. Renfrow?

MR. RENFROW: Yes, I'd like to respond briefly, Mr. Chairman.

Let me take the material in the first part of the affidavit, the first affidavit, and make the statement that Consumers is in active negotiations now for the purchase of uranium, so that there would be an impact.

While Mr. Cherry's theories on economics are nice, if you've ever been out in the marketplace to buy coal or nuclear fuel you will know that they will charge you what the traffic will bear. If they think you're looking at \$43, that's what the market price is going to be and that's what you will pay. If they believe it's something else, it will be something else.

We've had that problem in the utility industry for years, especially as to coal prices. The Public Service Commission has recognized that. For example, they do not print different coal prices, because as soon as they come out and say that Consumers is buying coal at X price everybody that's selling it for X-minus wants to come in and renegotiate their contracts and bring it back up to whatever the top price is. Therefore, the ratepayers have to pay

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the increased cost. So there are protections put on those.

Second of all, I'd like to address the question that the Board put to the Staff as to whether or not the material -- that you could reach a decision without the material. I'd like to address that two ways.

First of all, the Staff's information is public; it's available.

Second of all, even if you grant my request for a proprietary order you would have that information, and so would the parties, so that you could prepare to reach your decision.

The only request that we are making is that it be limited to the parties and their technical advisor and that it not go out into the public arena, where everybody can get to it. So you would have it even under a proprietary order to make your decision.

Second of all, the Staff's data would be in the public arena. Therefore, I believe there is a distinction.

Last but not least, as to the affidavit of Mr. Bayless on NM², the material that has been turned over includes the program, the outputs and the inputs, and we are claiming that proprietary.

At the current time we are in negotiations with a utility to sell that program to them.

Second of all, I would like to take that program

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and relate it to the material of the first affidavit. NM² will give you the inputs to go to the CONFUCY runs, which are the runs that are applicable to the Consumers system; so that the output of NM² can be obtained from CONFUCY, and the output of NM² is what is salable. So to get the -- excuse me. I'll go back. Once you get the CONFUCY run, the output of the CONFUCY, which is in the first part of the document, is that portion applicable to the Consumers system. It does not include only uranium prices. It includes enrichment, fabrication, storage, transportation -- all those costs which Consumers expects to pay. They are not contract prices.

We have agreed to turn over, and have done so, all of the contracts applicable to Midland which relate to fuel. We've turned over the ERDA contract. We've turned over the B&W contract. We've turned over other uranium contracts. That material, insofar as it is a negotiating price between two private companies, has been turned over.

What we have not turned over is that portion as to what we believe, based on our experience in the market, we will be required to pay for all of the services in the future.

We do believe that's proprietary. We do believe that there is a distinction between that and the situation where you have a contract which has been negotiated and now

you have a set term. So we have not made a proprietary claim as to those contracts; we have turned those over. This is a distinction that we do believe is applicable.

We do believe you can reach a decision using the Staff's data, so that would be in the public record, and that you could compare that in a proprietary session with the data that we've submitted to you and come to a decision.

So I would request that the Board grant our motion for proprietary treatment, and I would also make the offer that if you have questions of Mr. Dayless he is in Chicago and will be happy to answer those questions for you as to exactly how those computer runs work and interrelate.

MR. CHERRY: Mr. Chairman, can I just add one thing?

DR. LEEDS: Let me ask a question.

MR. CHERRY: Sure.

DR. LEEDS: Mr. Renfrow, could not your argument about when you have several parties in a hearing apply to a complete hearing, i.e., we could close the whole hearing and hold it all in camera and all the parties would know. It's the public interest that's the problem here. It's the public interest in having an open hearing and having the data available to the public, isn't it?

MR. RENFROW: It's the balancing, Dr. Leeds. What I'm suggesting to you is that you have a way to balance

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that now. You have the information available from the Staff, which could be released publicly. You then have to balance the information, the second set of information, which you have, which is the Consumers internal information, and determine whether or not that should be released to the public.

It seems to me there is a distinction where there is no other data available, none, so that the public would have no data available to them. It's not the case in this instance. They do have data available to them, and this Board would have data available to them.

On the proprietary order, it's just a balancing act. That data would not be reduced to the public at large. That's my distinction, Dr. Leeds.

DR. LEEDS: I didn't get your point about the connection between this data on fuel cycle cost and the computer code. Are you claiming that if we release the data on fuel cycle cost that that would be tantamount to releasing the computer code, also?

MR. RENNEN: I didn't say the computer code, Dr. Leeds. The inputs to CONFUCY are the outputs to the computer code. The outputs from the computer code are necessarily what you want when you run the computer program, because they will give you the input that you can use to run your own program for your own system.

DR. LEEDS: What are you going to sell? Are you

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going to sell a computer code, or are you going to sell your estimates?

MR. RENNROW: You're going to sell to other utilities the program itself, the code, and along with that as necessary the outputs.

DR. LEEDS: I'm not understanding you.

I've got a computer code. Let's call it A.

MR. RENNROW: All right.

DR. LEEDS: Now, what I want to know, that computer code, the one you're referring to, are you going to sell the data that goes in that computer code? And are you representing that that data is the data in the fuel cycle cost? Are they separable, or are they not separable?

That's my problem. I thought you tied them together in your argument.

MR. RENNROW: I did, because, Dr. Leeds, you're now getting into exactly how it works and why this is a good program, which gets me into an area that I don't want to reveal. It's difficult.

The program itself will give you the outputs, which you can then use for a second utility's program, those inputs, into their specific fuel cycle programs, and they could come up with what their cost would be for their system.

The program is also important because of what you can do with the program the way it's set up to adjust to

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your particular situation -- "you" being the utility.

So we are negotiating to sell both a program, because that's necessary, and the outputs, as it now is.

Does that help you, sir?

We have not ever released the outputs of MM² outside of the company. We have released, for example, the results of CONFUCY, which is the results on fuel costs on our own system--for example, as Mr. Nute mentioned, as to Dow under a proprietary agreement so Dow could see the output from CONFUCY, which would be the output for Consumers' system.

DR. LEEDS: Is the uranium market a competitive market?

MR. RENFROW: I don't want to be flippant, but I guess there is a judge deciding that question, Dr. Leeds.

DR. LEEDS: If a judge decided it, it would not be a flippant decision.

MR. RENFROW: I'm sorry?

DR. LEEDS: I say if a judge decided it, I take it the judge would not be flippant.

MR. RENFROW: I said I did not want to be flippant. I said that is what he is going to decide.

Is uranium a competitive market? To the extent that there is more than one supplier, yes, sir.

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DR. LEEDS: That doesn't answer my question. I asked you specifically in the United States of America is the uranium market for fuel a competitive market, and you just answered me to the extent that there is more than one it's competitive.

That doesn't tell me whether there is or isn't more than one. So I'm asking you the question: is it competitive?

MR. RENNERTON: Dr. Leeds, you're asking me a question on which there is more litigation going on right now than I can imagine. I will answer you from my own personal opinion that there is to the extent that you can buy for different prices within a range uranium in this country. That is my own opinion.

I'm not an expert in the area of buying uranium. It's only what I read. I'm not representing that on behalf of my client. I'm limiting myself to uranium that is mined from the mill.

To that extent, yes, sir, there is a competitive market with all those qualifications.

DR. LEEDS: What's the Staff's position on whether it's a competitive market?

(The Staff conferring.)

MR. KOEPLING: We have gotten some brief comments from our expert on this. Basically our position is that in

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the future, as the price of this material increases, that will attract new suppliers to the market. At that point in time the market will be a truly competitive market, so the market is moving in the direction of a competitive market.

To the extent that we're talking here about the forecast, it would be applicable at some later point in time. It appears that we're moving toward a competitive market. What we've got right now -- we're having some trouble, I guess, in this brief period of time characterizing it as a truly competitive market. We don't know what we would characterize it as.

DR. LEEDS: Like an oligopoly, for example.

MR. HOEFLING: I suppose it might be, yes.

CHAIRMAN COUFAL: Mr. Cherry, you said you had another comment.

MR. CHERRY: Yes.

The question that the Staff and the Applicant responded to about what this Board can rely on is, it seems to me, not the appropriate question. We're not here to determine whether or not you can issue a decision which is going to be justified by the Staff having said it's sufficient to do that.

We're here ultimately to do a remanded cost-benefit analysis, which has to be put in a document and circulated to a whole lot of people like the President of

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the United States, the Council on Environmental Quality,
just about anybody who might want to comment on that, et
cetera.

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In light of my experience, both in this hearing and with the Commission, I react with a bit of a spur to the suggestion that because the Staff has done an analysis, the Board has sufficient to rely on. I mean I don't find that that assumption meets the conclusion that the Staff's is reliable information, and it cuts out very significant additional parties' ability -- and it's the Applicant's license, and not the Staff's license -- at least theoretically.

The last point I want to make is that I do not believe Mr. Renfrow answered your question directly, that the fuel cost information is what they're selling. He gave you a convoluted statement that referred to output, input, et cetera. He never said, nor do I believe he will say, that the fuel cost information is what they are selling. And if he does say that, what's more important: having a public utility who's in the business of generating electricity for a service area become a millionaire by selling computer codes, or having the information -- I mean Consumers Power is not in the business of creating and selling computer codes. So even if that were true by Mr. Renfrow, when we're talking about commercial injury to the business of Consumers Power, that business cannot deal with the buying and selling of computer codes, because at best that's incidental to their obligation under the franchise from the State of Michigan.

So I think it's irrelevant. It's not a question

of somebody making money in that situation.

MR. HOEPLING: Mr. Chairman, I think part of the Staff's position is that to make a determination on the computer code, we've got to examine why we need this particular code revealed to the public light, what Mr. Cherry has in mind, and why he can't proceed, either without the code itself or with the code in some proprietary order.

I don't think Mr. Cherry has ever answered that question.

If we've got the fuel cost information and the projections available, certainly that would give Mr. Cherry a starting point to do whatever he feels he has to do. And until such time, I would think, that he could identify some particular problem that he has with that computer code, I don't think we could really make a decision.

CHAIRMAN COUFAL: Two o'clock?

MR. CHERY: Do you think you could make it 2:10, Mr. Chairman?

CHAIRMAN COUFAL: All right. Let's make it 2:15 to make it a nice even number.

(Whereupon, at 1:55 p.m., the hearing was recessed, to reconvene at 2:15 p.m., this same day.)

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AFTERNOON SESSION

(2:50 p.m.)

CHAIRMAN COURTAL: On the record.

Your objection, Mr. Cherry, that this is more properly rebuttal than redirect. We find it to be proper re-direct. I don't know where that leaves your stipulation, if anywhere.

MR. CHERRY: My stipulation is that if it has the yellow markings on it exactly as the original with the handwritten on it, then it can go in as if read.

MR. RENNISON: To satisfy Mr. Cherry, to give the court reporter a copy that we can read, I would be happy to present him with, or have him just look at this document. It is the same one that we gave to all of the parties. It has the handwritten inserts in it.

(Handing document to counsel.)

MR. CHERRY: This doesn't have the yellow in it.

MR. RENNISON: Mr. Chairman, here is the difficulty. On the Xerox, yellow does not show up.

MR. CHERRY: Well, it doesn't have to be bound into the record today; it can be bound into the record at any point, and it seems to me that you can take your 30 copies and you can put your yellow on it.

MR. RENNISON: I am not going to give them 30 copies. I am going to ask them to type it in. And with the

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Board's permission, what we are having done, we are having the material that is in yellow typed so that you can tell it is in yellow by underlining.

I would give Mr. Cherry a copy of what we intend to put in and he can then compare it with his yellow, and if it meets his approval, then the reporter can type it in at that point in the transcript.

CHAIRMAN COUFAL: What we are talking about now is a stipulation, Mr. Renfrow?

MR. RENFROW: That's right, and what I would like to do is get that taken care, and then if there are no questions of Mr. Bickel, I can send him home and we can reach the mechanics at a different time.

CHAIRMAN COUFAL: All right.

If you can work out your stipulation with Mr. Cherry, why go ahead. If you can't, we will do it another way.

MR. RENFROW: Just give me a minute.

(Pause.)

Mr. Chairman, we have worked it out. I will have the yellow portions underlined and I will note on the front of the document that the underlining in the copy that will go to the reporter was done in yellow magic marker. So that anyone reading the record can tell and I won't have to go yellow in 30 copies.

CHAIRMAN COUFAL: If that is what the parties have agreed on, it is all right with the Board.

MR. RENFROW: Mr. Chairman, it was my understanding that if this was the way it was done, there would be no questioning unless the Board has some. Then we would be ready to go to Mr. Heins, or what ever the parties have decided. It is up to them.

CHAIRMAN COUFAL: Is that part of the stipulation, that there is to be no cross on behalf of the parties?

MR. CHERRY: I don't have any cross, anyway.

MR. HOEFLING: The Staff doesn't have any?

CHAIRMAN COUFAL: Mr. Nute?

MR. NUTE: No, sir.

CHAIRMAN COUFAL: All right. You are home free.

MR. RENFROW: All right.

We will provide to the court reporter that copy.

Our next witness is Mr. Heins. We have Mr. Heins sitting outside. I will go get him right now.

(Pause.)

MR. RENFROW: Dr. Leeds, I brought, because I wasn't sure I communicated to you on this computer question, the outputs of the program itself, I brought Mr. Bayless back over with me, if you had any questions of him, to clarify them while we are waiting for Mr. Heins. I would be glad for you to ask him.

MR. CHERRY: Dr. Leads, I don't mean to cut off your communication with Mr. Renfrow, but I will object. It seems to me to ask the Applicant -- to have the Applicant ask for an advisory opinion from the Board, if it believes that it doesn't have enough on Mr. Bayless, when it is its obligation to put more in.

I don't think that the Board should be put in a position of saying: I want more; I want less. That upsets the burden of proof in the nature of these proceedings.

MR. RENFROW: It is not a question of burden of proof. It is a question as to Dr. Leads' question on a proprietary motion. The man who signed the affidavit is here and we would be happy to have him answer the Board's questions. It is not a matter of burden of proof.

CHAIRMAN COUFAL: Are you ready to go with Mr. Heins, Mr. Renfrow?

MS. BARTELMAN: I have a preliminary matter.

CHAIRMAN COUFAL: I am sorry.

MS. BARTELMAN: I have a preliminary matter on documents. Our witnesses said that Dr. Timm represented that he was going to send some work papers and two studies to them and they should have been here, I think, yesterday. I just wondered what the status of those was.

MR. CHERRY: He didn't mail them yesterday. They probably will be delivered some time this afternoon.

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MR. REMFROW: One other item. I have passed out to the parties and the Board proposed testimony of Mr. Brosinski and Mr. Wilkenson. It was my representation that as soon as it was done, I would hand it out. I have done that. I make no offer or proffer of that, other than the fact that it has been distributed to the parties and the Board.

Whereupon,

GORDON L. HEINS

was recalled as a witness on behalf of the Licensees and, having been previously sworn, was examined and testified further as follows:

CHAIRMAN COUFAL: Yes, Mr. Hoefling? You are sitting there like you have got something to say.

MR. HOEFLING: Yes.

I think when Mr. Heins originally took the stand, Mr. Cherry made his motion for sequestration, and I believe that at that point the Board upheld his motion that the Staff could only have one expert in the room while Mr. Heins was being questioned.

I don't know where we stand on sequestration at this point, but the Staff has two individuals it would like to have in the room while the examination of Mr. Heins goes forward at this time.

CHAIRMAN COUFAL: All right.

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The Staff people can stay.

Are you renouncing your exclusion or your sequestration motion, Mr. Cherry?

MR. CHERRY: Well, I didn't think I had to.

CHAIRMAN COWTAL: Well, how does it stand? How do you want it? What is your pleasure?

MR. CHERRY: I would like it to apply throughout the Heins' testimony unless there is some reason is shown why it shouldn't. The Board has already ruled on that and I think Mr. Hoefling's motion is out of order. If he will identify the two people and state the reasons, I will be glad to listen to them, if he wants to solicit my agreement to it.

But other than that, I would like to enforce my original order.

MR. HOEFLING: Mr. Chairman, the two individuals are Dr. Feld and Mr. Gunderson, each of which have expertise in the area of need for power. And the reason we want these gentlemen here is so that they can review Mr. Heins' testimony as it comes in for accuracy.

MR. CHERRY: What is Mr. Gunderson's -- can you tell me a little bit more about Mr. Gunderson?

MR. BRENNER: Mr. Chairman, this is just a lot of hogwash at this point. We have had representations of counsel with no problem before. We represent that Mr. Gunderson is an expert in the area of -- involving the substance of

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Mr. Heins' testimony. If we have to go further because the Board wants us to, we will.

We don't have to sit here and respond to this implication. Mr. Hoefling has made the statement as it stands.

In addition, I haven't heard a good reason as to why any Staff witnesses should have to leave the room when Mr. Heins is on the stand. The other people who don't have any credentials in the area are not necessary to us as experts. Nevertheless, we have people such as the Project Managers that now have to stay up and review the transcript, anyway, so they can communicate back to the Staff. It is not impossible for us, but -- you know -- it hinders us. It gets involved, and there are no good reasons.

Certainly the rationale of the Board's letter to the Appeal Board would not apply here. I can't think of any earthly reason not having Staff witnesses here, now having them here would limit Mr. Heins in his testimony.

CHAIRMAN COUFAL: Who is Mr. Gunderson.

MR. BRENNER: Mr. Gunderson is a member as an employee of the Federal Power Commission. He has been advising the Staff on this case. He has reviewed the testimony that has been in the case already. I am not representing that has reviewed all of it. He has reviewed certainly all of the direct.

I have had several discussions involving the

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testimony and we are considering using Mr. Gunderson as a rebuttal witness, especially after reviewing the Timm testimony, I might add.

MR. CHERRY: Mr. Chairman, I would object to Mr. Gunderson. He is not a member of the Regulatory Staff, so he was not within the framework. And I have some other reasons that I would give if you want; they are sort of cumulative. But I would prefer to state them to the Board outside the presence of Mr. Gunderson. I don't mind other counsel being here.

But particularly if Mr. Gunderson is going to be a prospective witness, I think the rule should apply. We are dealing here with a credibility case. And it is an important part of my cross-examination with respect to prospective witnesses as to the impact of that cross-examination as it is occurring.

I don't mind Mr. Gunderson getting the information. He can get the information from reading the transcript. But I am concerned about Mr. Gunderson having foreknowledge about the method of cross-examination in terms of candor with Mr. Heins.

Time and time again I have made that assertion, and I believe I have supported it on all occasions, substantially all occasions.

Secondly, or finally, Mr. Gunderson it is not

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asserted, has any knowledge which exceeds that of Mr. Feld. Mr. Feld has been tendered here as an expert witness on range of Heins' testimony, even broader than Mr. Heins'.

So I don't think that the implication that Mr. Feld now can't understand Mr. Heins' testimony and that he needs Mr. Gunderson -- there would be no other reason why the Staff would need Mr. Gunderson, it seems to me flies in the face of the earlier statement that Mr. Feld was sufficient.

When Mr. Heins was originally on the stand, the Regulatory Staff did not reveal the name of Mr. Gunderson. Mr. Gunderson has been going around the country supporting nuclear power for a long time. So they knew who he was and they could have disclosed it at that point and said it was a need for him to do that.

This is redirect on that testimony.

MR. BRENNER: Mr. Chairman, just -- I would like to point out that Mr. Cherry's comment that this is a credibility case, a point that he is making time and time again is just the same bare statement he keeps making. He hasn't made a showing with respect to Staff people. I don't understand what he means when he says this involves credibility.

CHAIRMAN COUFAL: All right. We will permit Mr. Feld and Mr. Gunderson to stay.

MR. BRENNER: Thank you, Mr. Chairman.

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CHAIRMAN COUFAL: I wish you wouldn't thank me. It sounds like I have just given you a Christmas present or something. I just ruled. I don't mean to be unhuman, but I just don't think it is appropriate to be thanking the Board for rulings.

MR. RENFROW: Mr. Chairman, we have Mr. Lapinski at the table. Mr. Lapinski sat with us through the first part of the testimony of Mr. Heins' testimony. I cannot represent to this Board, indeed, as I told you then, that he may not be a witness. He's one of the people that provides input to Mr. Heins and indeed has talked with Dr. Timm on the phone.

He sat at the table last time and we will have him at the table again and ask any other prospective witness to leave the room pursuant to the Board's order.

CHAIRMAN COUFAL: All right.

Mr. Lapinski you can stay in.

Now where were we? Is it time for redirect? Is the cross over with or what?

MR. RENFROW: Yes, sir.

Ms. Bartelman will handle the redirect.

CHAIRMAN COUFAL: All right.

Ms. Bartelman?

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DIRECT EXAMINATION

BY MS. BARTELMAN:

Q Mr. Heins, in order to meet the Consumers Power Company loss of load probability criteria, what is the projected reserve requirement for Consumers Power Company system in the 1980s?

MR. CHERRY: I am sorry; I can't hear you, Ms. Bartelman.

BY MS. BARTELMAN:

Q Mr. Heins, in order to meet the Consumers Power Company loss of load probability criteria, what is the projected reserve requirement for Consumers Power Company's system in the early to mid-1980s?

A We require 50 to 60 percent total reserve for Consumer Power Company's system.

Q In calculating that reserve requirement, did you use current availability figures?

A Yes.

Q Then, Mr. Heins, what basic assumption did you have to make in order to determine that only a 30 percent installed reserve would be required by Consumers Power Company?

A The major assumption in determining that a 30 percent installed generation reserve would be adequate that -- is that we will be able to buy the difference between 30 and 50 and 60 percent, that we will be able to buy 30 to 60

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percent of those reserves over the ties from other systems.

DR. LEEDS: Ms. Bartelman, may I interrupt for one second?

MS. BARTELMAN: Yes.

DR. LEEDS: Percent of what, in both instances?

THE WITNESS: Peak load.

DR. LEEDS: Thank you.

BY MS. BARTELMAN:

Q In determining that you needed 20 percent installed reserve, Mr. Hains, do you consider economics; that is, do you consider the cost of achieving that installed reserve when you make a determination?

A The cost associated with that with determining the reserves helps to determine the mix of the 50 to 50 percent, how much shall be installed generation and how much shall be anticipated to be purchased over the ties, if available.

MR. CHERRY: I move to strike on the grounds that that question -- that answer is nonresponsive. It was asked whether or not cost was included and he didn't answer the question.

MS. BARTELMAN: I think I can determine that. I think --

CHAIRMAN COUFAL: Tie up, if you will.

BY MS. BARTELMAN:

Q Mr. Heins, could you elaborate a little bit on how that mix is determined?

A Normally the cost of installing generation is more than the cost of building transmission. However, you cannot depend entirely on the ties and purchases of capacity and energy from other systems. There must be some installed generation reserve on the system in question.

There are economics concerning both cost of building facilities and the cost of purchasing capacity and energy that enter into determining the mix as to how the 50 to 60 percent will be satisfied.

Q Do you consider the cost of building base load units as opposed to the cost of building, say, an intermediate or a peaker unit, in that determination?

MR. CHERRY: I am sorry; I cannot hear, Ms. Bartelman.

MS. BARTELMAN: I asked him if he considered the cost of building base load units as different from the cost of building intermediate or peaker units in making that determination.

MR. CHERRY: I don't understand the question.

BY MS. BARTELMAN:

Q Do you understand the question, Mr. Heins?

A Yes.

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MR. CHERRY: Mr. Chairman, I don't understand the question.

CHAIRMAN COUFAL: Well, it seemed pretty clear. However --

MR. CHERRY: Is the question whether or not he considered different costs for different things in arriving at his conclusion? Or is she soliciting whether there are differences in the cost?

If I could have that cleared up, then I can understand it.

BY MS. BARTELMAN:

Q Could you answer that?

A We do indeed consider the cost as it differs in building base load, intermediate, peaking type generation.

Q Could you explain again how you determined the mix?

MR. CHERRY: Excuse me, Mr. Chairman. I would like a showing as to why this is redirect. I never inquired into any of these matters on cross-examination. And I think that Mr. Heins is being tendered as redirect as a charade to put in rebuttal testimony.

CHAIRMAN COUFAL: Can you relate it --

MR. CHERRY: And I will tell you something, one thing: That what Mr. Heins is covering right now is subject matters of Dr. Finn's testimony. And what the purpose of this

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testimony is, is to rebut testimony that is not even in the record. That is precisely what these questions are being asked for.

I think that that is unfair and I think it is an intentional violation of your order.

MS. BARBELMAN: Mr. Chairman, Mr. Cherry can call the redirect what ever he wants, but it nevertheless is re-direct. Mr. Hains was asked on cross-examination whether he considered economics in determining what reserve requirement would be required by Consumers Power Company.

This is redirect on that cross-examination. I do not have the exact transcription citation, but I will represent that that is included in Mr. Cherry's cross-examination.

MR. HOEPLING: Mr. Chairman, I recall the line of questioning of that substance, also, while Mr. Hains was on the stand.

MR. CHERRY: And he answered no. And that was the inquiry. And now what she is trying to do is impeach her own witness by rebuttal testimony.

MR. RENFROW: Do you have the citation there, Mr. Renfrow?

MR. RENFROW: She made a representation to you and I thought I would try to find it and the Staff says they remember the inquiries. remember the inquiries, also.

(Philip Bickel's testimony follows.)

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The 1976 confirmatory study used what I will call the traditional Consumer Power sales forecasting methodology. This consists of a detailed class-by-class analysis of electric sales. That is, total electric sales are separated into the following major classes: residential, commercial, industrial, and others. Future sales to each class of service are then forecasted separately.

Sales forecasting is an ongoing, continuous process. Therefore, in order to give a relatively complete description of how the 1976 confirmatory forecast was calculated, I will briefly review the major inputs and analysis from late 1975 through the completion of the confirmatory study in November of 1976. I will review the method used to forecast each class of sales separately.

The underlined portions of this outline are highlighted in yellow in the original.

A. RESIDENTIAL SALES

BASIC APPROACH: $(\text{AVG \# CUSTOMERS}) \times (\text{AVG A/W/CUSTOMER})$

CUSTOMERS

1. Adult Population Projections -- 1975 Study

- a. based upon "Population Projections of the Counties of Michigan;"
- b. break down by county;
- c. state wide population converted to CP service area population by PB;

2. Adult Population Projections -- 1976 Confirmatory Study

- a. no change.

HAVING PROJECTED THE FUTURE ADULTS IN THE CP SERVICE AREA

3. Adults Per Meter -- 1975 Study

RATIO HAS HISTORICALLY DECLINED

- a. this consists of the ratio of adult population per year-end customer;

- b. 1975 study contained 3 alternative projections:

1. the first projection assumes the decline in that ratio as projected in 1973 (before energy crisis widely observed);

2. the second projection assumes that the rate of decline in the ratio would continue as projected in 2-75; the second projection assumes some improvement in relatively high cost of land and construction, the lower growth of first and second homes and the apparent reduction in the growth of adults living alone;

3. the third projection assumes a very small decline in the ratio of population to meter. This assumes severe cut back in the rate of construction of new homes, second homes and adults living alone.

- c. these projections were formulated with reference to the history of the ratio of the adult population to meter. The projections were the result of PB's professional judgment as to the varying extent of the impact of his 3 assumptions; (ie., new home construction costs, growth rate in first and second homes and growth rate in adults living alone;

- d. the final alternative projections were also influenced by the professional judgment of EVD and DC and BF;

- e. PB recommended projection No. 2 on the grounds that

the factors identified above which have dampened residential customer growth, such as the high cost of land and construction combined with the effect of the recession, will improve somewhat in the future but will not fully return to pre-1973 relative levels;

f. PB's recommendation was accepted by the committee on the grounds stated above; IN 1975

g. data input into PB's assessment of the impact of the 3 variables upon the population to customer ratio:

1. periodic written assessment by EVD reporting the Chicago Economist's Group meetings; at these meetings approximately 20 leading economists summarize their projections of short-term future economic growth; they analyze such factors as housing construction, fuel availability, etc;

2. in addition, EVD consulted with PB regarding long-term projections of economic growth;

3. it should be noted that these long-term projections are made by examining the long-term growth projections contained in several major econometric models;

4. consultations with JC with respect to data summarizing recent seasonal home customer increases;

5. specifically reviewed the testimony of Dr. Hasso C. Bhatia of the staff of the Michigan Public Service Commission (October 10, 1975); in his testimony Dr. Bhatia forecasted a greater residential customer growth rate than that projected by CP;

4. Adults Per Meter -- 1976 Confirmatory Study -- Total Customer Projections to 1985

a. The projected 1980 and 1985 ratios were revised slightly to reflect preliminary 1976 customer gains and 1977 customer gains as projected by DC; (the 1980 ratio was revised from 1.75 to 1.76 and the 1985 ratio was revised from 1.71 to 1.72);

1. partial returns of customer gain in 1976;

2. review of 1975 projections.

b. Consultations influencing the 1976 revisions

1. attempts to get DC's most current data for 1976 and 1977 (Nov. 1976);

2. summaries of the Chicago Economists Group meetings by EVD; as noted above these summarize the analysis of current economic conditions and short-term economic forecasts of approximately 20 economists of major financial and corporate institutions;

NOW -
$$\# \text{ CUSTOMERS} = \frac{(\# \text{ ADULTS})}{(\# \text{ ADULTS} / \text{METER})}$$

5. Residential Customer Mix

SEPARATE: RSH & RES DOM

a. 1975 Predictions -- Residential Space Heating (RSH) Marginal saturations

1. two projections for RSH were made. One projection assumed gas heating available for residential new construction through forecast period; (assumption 1); the second projection assumed gas would be available for new residential construction only through mid-1978 (assumption 2);

2. PB recommended 75 percent marginal saturation by 1990 based upon assumption 2 and 35 percent marginal saturation by 1990 based upon assumption 1;

3. PB calculated year by year projections of residential space heating customers through 1990 based on both assumptions;

4. Consultations

a. the 75 percent and 35 percent marginal saturation figures were developed after consultations over several months between PB, JC and Bob Casey;

b. the 75 percent and 35 percent figures were based primarily on the professional judgment of PB, JC and Bob Casey;

5. EFERC 1975 actions

a. The EFERC accepted the two projections of RSH marginal saturation; the EFERC determined to assume that gas would remain available for new residential construction as the official planning assumptions; (November 10, 1975 EFERC meeting);

b. 1976 confirmatory study -- RSH marginal saturation

1. the official CP planning assumption is that that gas will remain available for new residential construction;

2. consequently, PB projected 1990 RSH marginal saturation to be 35 percent as per 1975 forecast with corresponding yearly customer breakdowns;

3. a subsequent meeting with JC and Ken Baker confirmed their belief that this is a very reasonable, perhaps conservative, estimate of future RSH marginal saturations;

6. Residential Average Annual KWh per customer

a. 1975 Projections -- RSH

1. PB projected average use in KWh of approximately 20,000 by 1990; this projection for EFERC meeting on October 30, 1975;

2. Inputs

a. assumes a heat pump seasonal performance factor of 1.3; this figure obtained from JC and Ken Baker in consultations;

b. assume saturation of heat pumps from five percent in 1980 to 30 percent in 1990; obtained from JC and Bob Casey in consultations;

c. assume conservation of use and more efficient units leading to reduction of KWh equaling approximately 10 percent of demand by certain appliances as developed in meeting with JC and Ken Baker;

d. RSH customer mix by type dwelling (ie., year round residence, apartment house, mobile home, seasonal home or farms); percentage of the RSH market was projected for each type of dwelling through 1985; percentage valude obtained in a two hour meeting in September 1975 with JC and Ken Baker;

3. Modifications of Projections -- October 30, 1975 EFERC Meeting

a. EFERC requested PB and JC and Energy Consulting Services to develop a mutually agreeable seasonal performance factor for heat pumps;

4. November 10, 1975 Meeting

a. PB projected total market saturation of heat

pump to be 10 percent in 1980 and 30 percent by 1990; projection determined by PB in a meeting with Bob Casey and Bob Paul; projections approved by EFERC in the meeting;

b. the heat pump coefficient of performance (seasonal performance factor) was projected to be 1.6; this new projection was made in a meeting with JC, Ken Baker, Bob Casey, Miles Shadley, Gene Yehl and Glen Callison;

c. this meeting also confirmed the projection of RSH marginal saturation reaching 35% by 1990;

d. average RSH use by 1985 projected to be approximately 19,500 KWh; (reduction due to revised heat pump assumptions);

5. 1976 Confirmatory Study:

a. after reviewing the mix, the potential mix and averages by type of dwelling, PB concluded that 1975 projections were still realistic; this was confirmed in a subsequent meeting with JC and Ken Baker;

7. Residential Domestic Average Use Per Customer

a. 1975 Projections

1. FB projected an annual average growth rate of 2.2 percent if gas were not available for new residential construction and a 2.0 percent annual growth rate if gas were assumed to be available for new construction;

2. Basis for 2 percent growth rate

a. 4 percent historic growth rate during 1960's;

b. 1972 "Electric Appliance Saturations Projections to 1990" by JC; this was a projection of average use based upon appliance saturation historic data and projections; the projected long-term growth rate from this study was approximately 2.2 percent per year;

c. the 2 percent growth rate is believed by PB, JC and Ken Baker and the EFERC to ~~fully~~ reflect ^{adequately} con-
servations because: (i) the historic growth rate

(1960's) was about twice as high; (ii) the 2 percent figure is applied to a 1976 starting point which already reflected conservations based on the Rate Research Conservation Studies;

3. The 2 percent growth rate assuming gas available for new residential construction was accepted by the EFERC;

b. Study of November 1976

1. PB retained his 2 percent growth projection for domestic residential use through 1986;

c. Subsequent to Confirmatory Study of 1976

1. PB, JC and Ken Baker reviewed the 2 percent domestic growth projection in detail on January 26, 1977; and deemed this projection to be valid based on their professional judgment;

8. Residential KWh Sales Projection

a. the year-by-year projections of residential electric sales is now a mathematical calculation based on the factors discussed above;

B. COMMERCIAL

1. 1975 EFERC Meeting

a. PB projected commercial growth rate of 6% through 1990;

b. Inputs

1. 9 percent growth rate observed from 1952 through 1973;

2. decrease in sales observed in 1974 and decrease in growth rate thereafter;

3. note--decrease in sales observed in 1974 was the first such decrease observed since 1942;

4. PB analyzed 1974 and 1975 data to obtain a break down of commercial customer KWh sales by the Consumers Power Business Code (ie., by type of business); once a commercial customer mix had been obtained, PB projected future growth by class of commercial customer; in doing this he relied on the following:

a. professional judgment;

b. historical data of sales to class of commercial customer because of accounting system at CP, only about 70 percent of the commercial customers for any given year could be analyzed by business class prior to 12/74;

c. PB's projections by class were reviewed by EVD and DC in a meeting held in early October, 1975;

5. On the basis of his projected growth by class on commercial customers, PB calculated a composite growth for total commercial sales through 1985; PB projected 6 to 8.8 percent growth in all commercial sales for that period;

6. PB also performed regression analysis on the historical sales data (kwh) with commercial sales as the dependent variable and residential and industrial sales as the independent variables; this regression analysis yielded a projected growth rate in total commercial sales of approximately 5 percent;

7. PB reviewed the testimony of Hasso C. Bhatia before the Michigan Public Service Commission; (October 1975); Bhatia projected commercial growth rate of 6.7 percent per year through 1980;

8. reviewed documentations of Paul Weimer (PB's predecessor with respect to:

- a. commercial construction appeared to be catching up with the growth of new households;
- b. electric commercial air-conditioning had reached a high saturation level;
- c. upgrading of commercial lighting had reached a high saturation level;

EFERC HAD CONCURRED

9. 1974 Projections by EFERC of 7 percent commercial growth rate through 1990;

10. Consultations with Bob Atwater and John Duane with respect to the future availability of gas and oil. Duane and Atwater indicated:

a. residential users would tend to have priority over commercial and industrial users;

b. not inconceivable that fuel oil may be rationed in the late 20th century;

c. consultations occurred -- September or October, 1975;

11. As a result of consultations with Duane and Atwater, PB concluded that the decreased availability of alternate fuels would tend to increase the number of commercial space heating customers somewhat over the next 10 years. This would cause commercial growth to be higher than it might otherwise be.

12. PB received memorandum from Ken Baker concerning the effect of conservation during the 1974-1975 heating season; on the basis of that data, Ken Baker noted that the data "tends to support the general contention that energy conservation is a one-time phenomena." PB concluded that conservation would not depress annual growth rate below 6 to 6.5 percent in commercial sales through 1985. Note: This assumes that conservation is reflected in the take-off point and therefore in all subsequent years.

13. PB reviewed a forecast of long-term annual commercial growth rate for U.S. of 5 percent contained in a study done by Electrical World; note--CP's commercial growth rate has consistently been higher than the U.S. average; PB took this into consideration in reviewing Electric World projections;

2. EFERC Adopted PB's Projections That Commercial Sales Would Grow at 6 percent annually Through 1990

a. EFERC concluded that PB's projections would be reasonable in light of assumed scarcity of gas for new commercial construction

b. EFERC stated that should gas become available for new commercial construction, the annual growth rate in commercial sales would decline after 1977;

3. Confirmatory Study -- 1976

a. PB projected 5.5 percent annual growth rate;

1. Inputs

a. PB reviewed commercial customer study by Business Code completion in December, 1975; he concluded that the commercial customer mix as projected in the 1975 study was valid and could be relied upon for 1976;

b. PB obtained DC's preliminary projections for 1976 sales

c. PB obtained DC's projected 1977 commercial sales;

d. DC's 1976 and 1977 projections showed a reduced growth rate for those years; therefore, PB concluded that the long-term annual commercial growth rate should be reduced to 5.5 percent through 1985. This reflected the 1975 detailed analysis and also the latest short term projections.

(COULD WELL BE CONSERVATIVE)

5. Inputs Subsequent to 1976 Confirmatory Study

a. PB contacted John Duane concerning availability of alternate fuels;

b. John Duane concluded that his earlier forecast concerning the availability of alternate fuels were being supported by the most recent data.

C. INDUSTRIAL

a. Dow Chemical -- Midland Complex

1. Bob Gillette has sole responsibility for analysis of sales to Dow in KWh and in MW through the forecast period.

NOTE IF DOW MW PER EXH 23 (170 MW) IS CORRECT &
OURS (190 MW) IS WRONG
AND IF WE ASSUME KWH ALSO DROPS PROPORTIONATELY,
1985 M.S. SALES WILL BE DECREASED BY 0.4%

b. General Motors (GM) October 20, 1976 EFERC Meeting

1. PB projected an average annual growth rate of 5.4 percent through 1986 (and 5 percent annual growth rate from 1976 to 1990)

2. Inputs

a. PB performed a regression analysis with sales to GM as the dependent variable and vehicle production and time as the independent variables; that regression analysis yielded an average annual growth rate of 5.4 percent through 1986; the projected 15 year growth rate based upon the regression analysis was 5.0 percent; EVD furnished the figures on GM vehicle production for the 10 and 15 year study periods (dated 11/20/75);

b. PB considered the impact of the following:

1. trend toward smaller cars;

2. conservation;

3. the potential reduction of Michigan's share of GM vehicle production.

c. the above three factors derived primarily from consultations with Bill McClelland and EVD.

d. Bill McClelland indicated that GM planned to expand primarily outside of Michigan over the next 10 years.

e. EVD commented in the EFERC meeting that production of smaller cars would increase and that GM small car facilities were located basically outside of Michigan.

3. PB's calculations of projected GM sales

a. on the basis of the above data, PB concluded that sales to GM as projected by the regression model were ~~understated~~ by approximately 10 percent;

OVERSTATED

b. in arriving at this conclusion, PB said particular attention to the fact that DC's projected sales for 1975 and 1976 were 12 to 13 percent below the KWh sales projected by the regression model

c. the EFERC concluded that rather than reduce GM regression model sales by 10 percent they would utilize DC's 1976 budget projections as the starting point for the long-term GM sales forecasts and apply the regression model growth rates after 1976.

d. the assumptions approved by the FFERC (ie., adopting DC's projections as the starting point for application of regression model growth rates) resulted in a reduction in the projected GM sales growth rate of 5.2 percent through 1986 and 4.9 percent through 1990.

c. 1976 Confirmatory Study

1. PB altered his projections from an average annual growth rate of 4.9 percent to 4.2 percent through 1990.

2. Inputs

a. DC's revised 1976 and 1977 GM sales projections;

b. PB reran GM regression model utilizing DC's preliminary 1976 data;

c. EVD's October, 1976 projections of total GM vehicle production;

3. PB obtained total GM growth rates on the basis of the new regression model data.

4. PB applied regression model growth rates to DC's projections of KWh sales to GM FOR 1977

5. note--PB applied same methodology used in November 1975 projections; the difference in growth rates resulted from the additional data;

D. OTHER INDUSTRIAL

1. 1975 EFERC Meeting

a. Inputs

1. FRB index from EVD; this is the Federal Reserve Board measure of industrial output with base year of 1967 equaling 100 and output for each preceding and subsequent year calculated as a percentage of that base;

2. FRB index was used in a regression model with FRB index the independent variable and other industrial sales the dependent variable;

3. DC's 1976 projections were used as a starting point by PB for his projections of total KWh sales to other industrial customers through 1990;

4. Note--the FRB index, provided by EVD, incorporating among other factors, input from the Chicago Economists Group and leading econometric models.

Note: COMMENT RE CHERRY, GM
Kwh/Car, 87643.
also note 75/72 m/s 2

5. Using the above data and procedures, PB projected a growth rate for other industrial sales at 5.6 percent from 1976 through 1986, and 4.8 percent from 1987 through 1990;

6. EFERC adopted PB's recommendations

2. Confirmatory study -- 1976

a. PB projected annual growth rate of total other industrial sales of 5.6 percent in the period from 1977 to 1987; (~SAME AS 75 /

b. Inputs

1. EVD projections of FRB index;

2. Utilization of the traditional model with updated 1976 data FROM DFC

3. In November of 1976, PB was concerned that the results of the regression model run might not be valid because the FRB index had been revised by the Fed back only to 1970; the pre-1970 revisions to the index were not available as of 11-76. Thus, even though the long range projection of KWh sales were relatively close to those projected in 1975, PB preferred not to use the regression model output due to the inconsistency in the data series. In late 1-77, however, the revised FRB index became available with revisions back to 1961; the pre-1970 revisions were quite small. Thus, PB now believes that the results from the 1976 confirmatory regression run are relatively good.

4. In November of 1976, PB had determined that the 1975 forecast of industrial sales to other accounts was the best available forecast due to the discontinuity of the FRB series. As noted in point 3 above, however, the discontinuity was not the problem that had been feared. Thus, the traditional regression model lends additional support to the 1976 confirmatory study forecast.

5. In early 1976, the Energy Planning Task Force investigated the potential impact on future CP electric sales as a result of actual or feared shortages of alternate forms of energy. Approximately 500 man-hours was spent by the Energy Consulting Services Department and PB addressing this possibility. The results of this study indicate that the CP total main system long term

growth rate may be approximately 6 percent per year if the feared natural gas shortages continue. CP will conduct a detailed Energy End-Use Study in 1977 to investigate energy trade-offs in more detail.

6. Recent consultations between PB and an energy expert within CP (John Duane) indicate that fuel shortages are expected to become continually worse over the next 15 to 20 years.

E. TOTAL INDUSTRIAL

1. In late 1975, PB conducted a study of industrial sales by CP business code. Regression models were developed for the major industrial business codes using KWh sales by business code as the dependent variables and such factors as GM vehicle production, the FRB index, and time as the independent or causal variables. This method served as a double-check on the traditional methods and arrived at an industrial sales forecast that was approximately equal to, although slightly higher than, the forecast developed through traditional techniques.

F. STREETLIGHTING

1. The forecast of streetlighting sales is made by PB by applying the 3% growth rate projected by R. Paul of Energy Consulting Services to the budget year projection of DC. This is true of both the 1975 forecast and the confirmatory study.

G. OTHER SALES

1. Interdepartmental

a. The EFERC's position regarding these sales is to assume no growth after the budget year projection. Using this approach, interdepartment sales after 1977 are held at 56 million KWh per year. (This is only 0.2% of the projected 1977 KWh sales.)

2. Sales to Other Utilities

a. The EFERC's position regarding sales to other utilities is to assume that their sales will grow at the same rate as will CP's sales. Thus, sales to other utilities are projected to grow at 5.2% per year after 1977.

3. Total Other

a. The result of the above methods of projecting Other Sales is a composite annual growth rate of 4.9% after 1977.

H. TOTAL

1. Based on the above analysis, CP total main system sales are projected to grow at an average annual rate of 5.2% after 1977.

I. PROJECTIONS OF FUTURE CP SALES MADE BY OTHER AGENCIES

1. Michigan Public Service Commission

a. MPSC Staff Study 1975-1; Evaluation of the Consumers Power and Detroit Edison 1974 Load Growth Forecasts.

(1) Report deemed CP forecasting methodology reasonable and consistent with generally accepted approaches used by utilities.

(2) MPSC reforecast range: 5.3% to 6.0% per year growth rate.

b. October 10, 1975 testimony of Hasso C. Bhatia

(1) Projected annual growth rate of 5.4%

2. Governors Advisory Commission on Electric Power Alternatives

a. Recommended annual growth rate of 5.26% as the medium forecast.

J. CONCLUSION

1. The 5.2% annual growth rate of main system electric sales is believed by the EFERC to be the best estimate of future electric sales growth.

2. The MPSC and GACEPA studies have all concluded that the CP electric sales growth rate should be in the range of 5.26% to 5.4% per year.

3. The official CP forecast of the electric sales growth rate is very close to, and slightly below, the CP growth rates projected by the other knowledgeable agencies that have projected future CP electric sales.

EFERC: Energy Forecast Executive Review Committee
PB: Philip L. Bickel, Supervisory Analyst - Energy Planning
JC: James H. Climer, Director of Rates and Rate Research
DC: David F. Carter, Senior Planning Analyst
EVD: Elwood V. Denton, Corporate Economist
BF: Blake O. Fisher, Director of Special Corporate Projects
CP: Consumers Power Company

MS. BARTELMAN: Mr. Hains testified on page 1688 of the transcript that --

CHAIRMAN COUFAL: Miss Bartelmann, just hand it up here, please, and we won't burden the Reporter with putting it in the record.

(Transcript handed to the Board.)

MS. BARTELMAN: At 1688 and 1689.

CHAIRMAN COUFAL: All right. I think it's proper redirect.

BY MS. BARTELMAN:

Q Do you remember the question, Mr. Hains?

A I remember the general sense of it. I believe the question went to could I explain a little further how the mix was determined.

The cost of generation of various types, baseload, intermediate, are considered as opposed to the cost of building transmission and the cost of purchasing capacity and energy that would be delivered.

Q Did you consider, then, the economics and the efficiency of building intermediate and peaking units?

MR. CHERRY: Objection. Leading question.

CHAIRMAN COUFAL: Yes, that was pretty blatantly leading, Miss Bartelmann.

BY MS. BARTELMAN:

Q Mr. Hains, do you consider the variable costs of

intermediate and peaking units?

MR. CHERRY: Same objection.

CHAIRMAN COWAL: Overruled.

THE WITNESS: We do consider the difference in costs of baseload generation and intermediate and peaking generation. Cost of baseload generation is, of course, higher.

MR. CHERRY: Excuse me, Mr. Chairman. I'd like to explain one thing:

A leading question which says, "Isn't it a fact that you consider "x" variables," is not cured by saying, "Did you consider "x" variables" in the next question, because clearly the witness knows what he's supposed to answer. The force of an objection to a leading question is to force the witness to tell us what the variables are, and not have the variables in the question. Ergo, if the variables are in the question, even with a "Did you consider," it is still a leading question. It is not cured by a "Did you consider."

I'd like you just to consider that.

CHAIRMAN COWAL: I can't argue with your general proposition, Mr. Cherry, but I overrule the objection.

Go ahead, Miss Bartelman.

BY MS. BARTELMAN:

Q Mr. Hains, is Consumers Power Company a member

of any reliability group?

A Consumers Power Company is a member of the East Central Area Reliability Group, commonly called ECAR.

Q And does Consumers Power Company's participation in ECAR affect its determination of what reserve level it would require?

MR. CHERRY: Objection. Leading question.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: ECAR requires that its members maintain a daily operating reserve which runs in the order of 6 percent of the projected peak hour load for that day.

BY MS. BARTELMAN:

Q Who are Consumers Power Company's major suppliers of purchased power at this time?

A The major suppliers are Ontario Hydro and the ECAR companies. Our neighbors, the next system to us, always, of course, transmit that energy to the Consumers Power Company system.

Q You mentioned Ontario Hydro. Has Consumers Power Company been negotiating with the Ontario Hydro for the future years for purchasing power?

A Consumers Power Company did contact Ontario Hydro regarding the availability of capacity and energy for the future.

Ontario Hydro informed us, both Detroit Edison

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and Consumers Power Company, that they had capacity and energy to sell in the years '78, '79 and '80. It ranged from 500 to 1000 megawatts, and is available in the summer only.

Q What about beyond 1980, Mr. Heins?

A The Chairman of the Board of Ontario Hydro sent a letter to Mr. Meese of Detroit Edison as representative for Detroit Edison and Consumers Power Company, asking if the Michigan companies had any --

MR. CHERRY: Mr. Chairman, I will object to that testimony of a letter that has gone from a person who is not here, to another person who is not here. This is not a letter to Consumers Power Company. If it's a letter they want to rely on, then they ought to produce the letter.

This is simply not the way to get in that kind of . . . I mean there are three vices in this:

We don't know whether or not the man who wrote the letter was truthful.

We don't know whether or not the man who received the letter, who may have explained it to another man, was truthful;

And we don't know whether Mr. Heins read the letter properly.

And I have real doubts about the letter.

MS. BARTHELMAN: I think I can ask a foundation

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question:

BY MS. BARTELMAN:

Q Mr. Heins, was this letter also -- was a copy of this letter sent specifically to anybody at Consumers Power Company?

A Yes.

Q To whom?

A Mr. Aymond, Chairman of the Board.

Q Okay. Could you describe this letter to us, please?

MR. CHERRY: Mr. Chairman, I'm going to object unless the letter is produced. I don't think we have a witness here who is going to describe some written document. That makes absolutely no sense.

MR. RENFROW: We can produce the letter, Mr. Chairman. I will represent that the letter was asked for in discovery and has been made available to all the parties, and has been available since the time that we began to give all the parties documents.

And I can provide you with a copy of that letter.

CHAIRMAN COUFAL: We can short-cut that. Go ahead and answer, subject to a motion to strike on review of the letter.

THE WITNESS: In the letter, Mr. Taylor asked if the Michigan companies would have any capacity and energy to sell in the early to mid 1980's to Ontario Hydro.

BY MS. BARTELMAN:

Q So you, is that an indication that they would not have the power to sell in that period?

MR. CHERRY: Objection, Mr. Chairman.

CHAIRMAN COUFAL: Sustained.

BY MS. BARTELMAN:

Q If Ontario Hydro in fact had power to sell during the 1930's, do you know of any other restrictions on their selling it to Consumers Power Company?

MR. CHERRY: Mr. Chairman, this is direct, and you cannot posit an assumption on direct, unless it's in evidence. That's --

CHAIRMAN COUFAL: She's asking if he knows of a reason. The first part of the question doesn't make any difference, does he know of any other reason.

MS. BARTELMAN: I included no assumptions.

THE WITNESS: The Ontario Hydro transmission system has an internal bottleneck. This transmission is being utilized in furnishing loads by Ontario Hydro themselves to the western part of their system, furnishing of energy to the loads in the western part of their system.

This bottleneck is of such a nature that if the Michigan companies bought 1000 megawatts in the summer of 1980 there would be approximately 3 to 4 hundred megawatts of transmission capability left to provide emergency capacity

wal 7

if it were needed.

MR. CHERRY: Mr. Chairman, I move to strike that as having absolutely no foundation. This witness has not been asked, nor has he testified that he is familiar with the Ontario Hydro system. He has not defined what bottleneck is. He has not testified that he knows anything at all about the Ontario Hydro system. And now he's giving us judgments on the emergency capability of their generation capacity, et cetera.

I simply don't think that this is fair, let alone reliable evidence. And if they want to put in information that they've got a difficulty buying power in the 80's, and they really believe that they need that one way or another in a suspension proceeding, we are interested in the true facts.

Now, they called General Motors up on the phone and asked them do you have power available. They haven't yet said that Mr. Heins called anyone at Ontario Hydro and said do you have power. So why are we getting all these crazy little inferences? It suggests to me that if they asked that question of Ontario Hydro, it could not truthfully say no, I do not have power.

But, to have this man testify on Ontario Hydro's system without a foundation that he knows it in detail, is simply outrageous.

CHAIRMAN COUFAL: Can you give us some foundation, Miss Bartelman?

MS. BARTELMAN: I believe that Mr. Heins was asked on cross-examination about the availability of purchased power, and I believe he specifically -- Mr. Cherry specifically inquired about Ontario Hydro. And I'm trying to make that clear for the record now.

I also have a letter here which I'd like to have marked.

MR. CHERRY: Mr. Chairman, there's a difference between being proper redirect and having a foundation to ask the witness a question.

May I have that motion to strike ruled upon, subject to her putting in foundation?

CHAIRMAN COUFAL: The answer can stand, subject to her putting in foundation. We'll strike it if there's no support for it.

MR. CHERRY: Support for his knowledge of Ontario Hydro's system?

CHAIRMAN COUFAL: Yes.

MR. CHERRY: Okay.

BY MS. BARTELMAN:

Q Are you familiar with the Ontario Hydro system, Mr. Heins?

A Yes.

Q Have you been in contact with people from the Ontario Hydro system regarding purchase and sale of power?

A I, myself, have not.

Q Have people under your supervision been in contact with them?

A Yes.

Q Who has been?

A Mr. Kaiser.

Q Anyone else?

A Under my supervision?

Q Yes.

A No.

MS. BARTELMAN: I would like to have this letter marked as Licensee's Exhibit 34. We don't have copies of it now, but we will provide them.

(The document referred to was marked for identification as Licensee's Exhibit 34.)

MR. CHERRY: Mr. Chairman, if that is the extent of the questions on the familiarity of this witness with Ontario Hydro, I renew my motion to strike that answer.

CHAIRMAN COUFAL: Your motion is pending, Mr. Cherry. I don't know if that's the extent of it or not.

(Document handed to Mr. Cherry.)

CHAIRMAN COUFAL: Give us just a second, will you

please, Miss Bartelman?

(The Board conferring.)

MR. CHERRY: Who was this signed by, Miss Bartelman?

MR. BARTELMAN: I believe it was Mr. Macosa.

MR. CHERRY: No, it's to Mr. Macosa.

Can you identify who wrote the letter? I'd like to know who wrote the letter.

BY MS. BARTELMAN:

Q Who wrote the letter, Mr. Hains?

A I believe it was Mr. Taylor, of Ontario Hydro.

CHAIRMAN COUFAL: Would you identify the letter by Exhibit number of something?

MR. CHERRY: It's 34. I'd like to show this to the Board, Mr. Chairman. This is a letter from someone at Ontario Hydro, although that's not clear, but it is on Ontario Hydro stationery, to someone at Detroit Edison.

And I will object to that document coming into evidence.

MS. BARTELMAN: If you'll look at the top of the first page, I believe it says "cc: Mr. Aymond." Or on the second page. It's on one of the pages.

(Board reviewing document.)

MR. CHERRY: Mr. Chairman, there's no testimony as to why that letter was prepared, who prepared that letter, for what purpose, et cetera. And it is not a proper

foundation, that someone at Consumers happened to receive a copy. We don't even know why a copy was sent.

CHAIRMAN COUFAL: The letter is written on the letterhead of Ontario Hydro, and on the stationery of Robert B. Taylor, Chairman, and signed Bob.

There's an internal reference to the fact that the writer is sending a copy of this letter to Mr. A. H. Aymond "in order that he will be prepared for any contact you make with him on this matter."

MR. CHERRY: Mr. Chairman, I would object to any questioning on that letter. I think it's entirely unfair. And I renew my motion, once again, as to this witness' qualifications to testify about the Ontario Hydro system based on the question, "Are you familiar with the Ontario Hydro system."

I might also add that Miss Bartelman has also asked the question whether or not Consumers Power Company contacted Ontario Hydro, and that testimony is already in. So I don't understand what the offer of the letter is except to have this Board believe or not believe the reasons that may be asserted in that letter.

Mr. Chairman, utilities buy and sell power for a lot of reasons. There are a lot of various terms of art. When utilities say they have no firm power arrangements with somebody, that doesn't mean they don't have any power

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arrangements. That just means they don't have a particular formal contract, as a term of art. And utilities for a long time went around and said, "I have no 'firm power' in 1930," which had nothing to do with whether it had power at all.

These are very delicate questions about interchanges, and without all the information about the system, if it's relevant, we can't make hide nor hair out of any of this information, and it's extremely prejudicial and doesn't prove anything into the record.

I am entitled, if Consumers Power Company believes that there is a relationship between Ontario Hydro and Consumers Power's system that warrants an inquiry here, then we need to see Ontario Hydro's information just as we have asked for Consumers Power's information.

MS. BARTELMAN: I submitted the letter because Mr. Cherry asked for the letter. I think we've established foundation for Mr. Heins' testimony, and if Mr. Cherry wants to ask questions that he's now submitting evidence on, he can ask them on cross.

CHAIRMAN COUFAL: As far as I know, there's nothing pending for the Board to rule on.

MR. CHERRY: Yes, there is. She says she's finished with her foundation questions with respect to --

MS. BARTELMAN: No, I did not say that.

MR. CHERRY: I beg your pardon.

BY MS. BARTELMAN:

Q Mr. Heins, you said that Mr. Kaiser has been involved in discussions with people from Ontario Hydro.

Has Mr. Kaiser talked to you about this Ontario Hydro purchase or sale of power issue?

A Yes, indeed, he has.

Q And can you tell me, if you know, where that letter came from? Did you get that from a file at Consumers Power Company?

A That letter there, or a copy of it, was furnished to Mr. Youngdahl, who is my boss, from Mr. Aymond.

Q I see. And Mr. Youngdahl gave that letter to you?

A Yes.

Q Is this the letter you're referring to?

A Yes.

CHAIRMAN COUFAL: Would you please identify for the record what the document is you handed the witness?

MS. BARTELMAN: It's Licenses's Exhibit number 34, two pages, letter from Robert Taylor to W. G. Meese, Chairman of the Board of Detroit Edison Company.

BY MS. BARTELMAN:

Q You mentioned a bottleneck on the Ontario Hydro system, Mr. Heins?

A Yes.

Q Do you know if that bottleneck will be remedied by 1981?

MR. CHERRY: Mr. Chairman, I will object unless a foundation is laid for the previous question.

CHAIRMAN COUFAL: Yes. Can you ask him what he knows about the bottleneck and what the bottleneck is, Miss Bartelman?

MR. CHERRY: Mr. Chairman, I would prefer to know what he knows about the Ontario Hydro system, rather than what he knows about the bottleneck, because it's the system that may give rise to the conclusion of the bottleneck, and if he's not intimately with the Ontario Hydro system, he cannot give us an opinion. What he is doing is giving us an expert opinion on distribution of electricity within the Ontario Hydro system, and my --

CHAIRMAN COUFAL: Well, let's see how she approaches it, Mr. Cherry, and if she asks some objectionable questions, you object to them and we'll rule on them. Or you can object to them whether they're objectionable or not, and we'll rule on them.

BY MS. BARTELMAN:

Q Mr. Hoins, how do you know about the status of the Ontario Hydro system?

MR. CHERRY: I object to that, because we don't even know that he does know about the status of the Ontario

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Hydro system.

CHERRYMAN CONTROL: Overruled.

THE WITNESS: My job previous to this one was as head of transmission system planning for Consumers Power Company. In doing that we coordinated our transmission system planning with Detroit Edison and with Ontario Hydro.

The running of studies for this group of companies, and others in the ECLR area, requires that these systems be set up and the cases run on those actual systems.

The Ontario Hydro system has primarily generation in the eastern portion, and considerable load in the western portion of that system.

Ontario has been attempting to --

MR. CHERRY: Mr. Chairman, I will object to substantive questioning on this until the foundation has been made. He is now going into questions about what Ontario Hydro's system is.

What I want is for you to rule on the question as to whether he can ever talk about that by dealing with my motion as to whether this witness is competent to discuss Ontario Hydro matters. And if you don't sustain my motion on foundation, I want an opportunity to voir dire Mr. Heine on his knowledge of the Ontario Hydro system before he gives us any opinions about that system.

I'm entitled to that.

CHAIRMAN COUFAL: Yes, I think he is jumping ahead with regard to what he knows about Ontario Hydro.

BY MS. BEBEL AN:

Q All right. That is the basis of your familiarity with the Ontario Hydro system, what you have just described, is your previous duties?

A That, and the continuing information that I get from Mr. Kaiser on the subject.

Q Are you familiar with a bottleneck in the Ontario Hydro transmission line system?

CHAIRMAN COUFAL: Let's find out where he got his familiarity from, Miss Bartelman. Before you ask him about where the bottleneck is, or why it is, and so on, ask him how he arrived at his familiarity with the bottleneck, if he has a familiarity.

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BY MS. BARTELMAN:

Q Mr. Heins, how did you achieve a familiarity with the Ontario Hydro bottleneck, as you call it?

A The results of the system studies were explained and described to me.

Q By whom were they described?

A By the people who work for Mr. Kaiser.

Q I see.

And they are under your supervision?

A That is correct.

Q Based on those discussions, Mr. Heins, is it your belief that the bottleneck will be remedied by 1981?

MR. CHERRY: Objection.

No foundation.

CHAIRMAN COUFAL: I think he is right, Ms. Bartelman.

You are going to have to get into what the discussions were and what information he got.

BY MS. BARTELMAN:

Q Mr. Heins, in the discussions you had with those people who work under you, what did they tell you about the Ontario Hydro system?

MR. CHERRY: Mr. Chairman, I am going to object to that because there is no testimony that these people, unnamed, have any familiarity with the Ontario Hydro systems sufficient themselves to make a judgment on the bottleneck.

I mean, this isn't a game. Because someone told

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Mr. Heins there is a bottleneck --

CHAIRMAN COUFAL: All right, Mr. Cherry.

We've got it.

(Board conferring.)

CHAIRMAN COUFAL: Do you have questions, Ms. Bartelman, to provide a little more foundation with regard to -- proper foundation, I should say, rather than a little more with regard to --

MS. BARTELMAN: I will come back to it, Mr. Chairman.

CHAIRMAN COUFAL: All right.

MR. CHERRY: Mr. Chairman, what I would like to do, just so the record is clear, I take it this question, the objection to which has been sustained, and if she is now going to go to some other question, I want a ruling on my motion to strike his testimony with respect to the bottleneck. And if she wants to come back to it, she can ask him the questions again. That is only fair.

Now she says she will go on to another subject.

CHAIRMAN COUFAL: Okay, okay.

If, Ms. Bartelman, you don't come back and tie this up, the line of inquiry stands stricken.

MS. BARTELMAN: Okay.

MR. CHERRY: Thank you.

BY MS. BARTELMAN:

Q Mr. Heins, are you familiar with the Detroit Edison Company power system?

A Yes.

Q How are you familiar with that?

A By being in charge of systems planning for Consumers Power Company, having worked with them over the years, and continuing to do so with planning for our system and being aware of what is their planning for theirs, through their explanations to me.

Q Okay.

Does Detroit Edison Company supply power to Consumers Power Company?

A Yes, indeed.

The two companies are operated on a day-to-day basis as one company, so that loads in the Consumers Power Company service area may have generation among the Detroit Edison Company system dispatch service line.

Q Mr. Heins, do you know what the Detroit Edison Company's projected reserve levels are for the 1980s?

MR. CHERRY: Mr. Chairman, I am going to object to that.

If we are going to get into another company's reserve levels, the only fair way is to produce that information.

Now I have made the argument time and time again

and

at these proceedings, that if a company relies upon another company for part of its need for power, then the only way that it is fair for inquiry, is to have the information available with respect to that inquiry, and direct testimony at Detroit Edison.

You know if -- I can build all the power plants I want and get all the licenses by saying that 95 percent of the power I want I am going to sell to somebody who is in desperate need for it. Only if we never get that kind of information, how do we know it is in desperate need.

It is the kind of stuff that has gone on in WRC and WRC hearings for a long time and it seems to me that it is totally unfair for this witness now to talk about anything else than Consumers Power Company's system, which is precisely what this Applicant has got.

This Applicant has not made any argument, nor has there been any case here made whatsoever, either in the ER, the Environmental Impact Statement, or no evidence has been analyzed other than Consumers Power Company's own franchise system.

That is the purpose of the Midland plant. This is not a cooperated plant by Detroit Edison. And even if they are dispatched as a system, that evidence is not relevant to this particular license because Consumers has got to prove that it needs it for its own system.

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Now if it wants to prove that it needs it for its system plus another one, then it has got to make that proof, and it hasn't come in by asking this witness what he knows about Detroit Edison.

CHAIRMAN COUFAL: Overruled.

BY MS. BARTELMAN:

Q Okay.

What are Detroit Edison Company's reserves for the 1930s, as you remember?

MR. CHERRY: Same objection.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: As I recall the Detroit Edison Company reserves for 1930 is 5 percent.

DR. LEEDS: Excuse me, Mr. Heins.

Did you say in 1930 it is 5 percent, or in 1930s it is 5 percent?

THE WITNESS: In 1930 it is 5 percent.

In 1931 it is 11 percent.

In 1932, 13 percent.

BY MS. BARTELMAN:

Q Okay.

Do you recall any other years?

A No, I don't.

Q Now you mentioned --

MR. CHERRY: Excuse me, Ms. Bartelman.

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I want to show you the vice of this. Do we know if that reserve includes sales to cooperatives for contracts that have not been made?

Do we know if that reserve includes a prospective sale of something that isn't even built yet?

Do we know if that reserve includes -- I mean, what do we know about that figure?

Absolutely nothing. Yet it will be asserted by the Applicant that they now got a makeup of that reserve to, I assume, the adequate level of 20 percent.

But we don't know how they have computed the reserve, we don't know what production runs it has been made on, we don't know what the cost of it is, we don't know whether it is cost effective.

We have no idea even of the standard that is used in connection with that. Yet we have got that figure in the record.

CHAIRMAN COUFAL: I assure, Mr. Cherry, with regard to that objection, that she is going to make a record of it. If she doesn't, why we have got another problem.

I have got a little problem about whether or not this is proper redirect.

MR. CHERRY: And I assert that objection as well, Mr. Chairman.

MS. BARRELLMAN: Mr. Chairman, I am trying to

establish the availability of purchase in interchange power, the Consumers Power Company system, which was inquired into on cross-examination.

In addition, the document that contains the numbers for Detroit Edison reserves has been furnished to the parties and used before, I think, by Mr. Cherry.

The witness has testified to his familiarity with it and I really don't see the problem.

MR. CHERRY: Mr. Chairman, that is not a correct representation. I have not used the document about Detroit Edison's reserves.

But there is a section in Richard Timm's testimony that deals precisely with this subject. And what we are getting into now is rebuttal testimony, and I simply think that the Board is being taken advantage of.

I never asked any questions about this in my cross-examination.

BY MS. BARTELMAN:

Q Mr. Heins, you previously mentioned that Consumers Power Company is --

MR. CHERRY: There is a question pending, there is an objection.

Is the question being withdrawn now --

MR. RENNOROW: There is no objection pending.

He made a speech after the witness got through

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answering the question.

Now can we go ahead and go on so we can get somewhere.

MR. CHERRY: Mr. Chairman, I have a motion to strike outstanding on the Ontario Hydro testimony.

And I now have a motion to strike outstanding on the testimony that you just --

CHAIRMAN COUFAL: You didn't make a motion to strike, Mr. Cherry.

If that is what you intend to do, I will treat it that way.

MR. CHERRY: Yes, sir, I am making a motion to strike that Detroit Edison, unless there is a foundation tied up.

And I am also now making a motion that that inquiry is beyond the scope of the cross-examination and is rebuttal testimony and not redirect.

CHAIRMAN COUFAL: If you are waiting for me to say something, we will hold the motion to strike.

If she does not -- if she is not able to provide whatever foundation she needs for this or go wherever she should be going with it, it will be stricken.

(Applicant counsel conferring.)

BY MS. BARTELMAN:

Q Mr. Heins, do you recall seeing this document?

It is marked Midland Intervenor's Exhibit 13.

(Handing document to witness.)

A Yes, I recall.

Q Were you asked questions regarding this document on cross-examination?

A Yes.

Q And does this document contain information on Detroit Edison flows and capabilities?

A Yes.

Q And also on its reserve levels?

A Yes.

CHAIRMAN COUFAL: May I see it Ms. Bartelman, just out of an old man's curiosity?

(Ms. Bartelman handing document to the Board.)

MR. CHERRY: I would like to respond at some point, Mr. Chairman, before you rule on it, because I will tell you exactly what I used Exhibit 13 for.

I used Exhibit 13 to show, to ask Mr. Heins if the cooperatives could buy excess capacity from Fermi.

And he said he didn't know.

And then I showed him and I asked him if this refreshed his recollection that the cooperatives could buy whatever they needed from Fermi.

He then put it aside and he said, yes.

That is all I used this exhibit for. That was the

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limited nature of my inquiry, and I did not offer this exhibit into evidence. I used it merely to refresh his recollection as to whether or not the cooperatives could buy whatever capacity they needed from Fermi.

And I really think it is a blatant misrepresentation to suggest this is redirect.

I would like to see a reference in the transcript where I talked to him about Detroit Edison's reserve levels on the basis of Exhibit 13.

MS. BARTELMAN: Okay, Mr. Chairman. I think you requested, or someone requested a reference to questions on Ontario Hydro's purchase power availability on cross.

I have that if you want to see it. It is on page 1848:

"How much did Ontario tell you was available between '78 and '80, roughly."

MR. CHERRY: And the witness has already told us about '78 to '80. I have no objection to that.

What I object to is this witness testifying about, as an expert, about the Ontario Hydro systems, such that it can either dispatch or not dispatch with difficulty.

CHAIRMAN COUFAL: Is there a question pending?

MS. BARTELMAN: Pardon me?

CHAIRMAN COUFAL: Is there a question pending?

MS. BARTELMAN: I don't believe so.

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(Pause.)

MS. BARTELMAN: We might be here all day, but here is the reference to the Detroit Edison and Michigan coordinated electric system reserve generation, and the relevance of the Detroit Edison reserves.

MR. BRENNER: What transcript page is that?

(Ms. Bartelman handing transcript to Board.)

CHAIRMAN COUFAL: 1660.

MR. CHERRY: Mr. Chairman, I don't have mine with me. When you are finished, may I look at that?

DR. LEEDS: Do you want to see this while you are waiting?

MR. CHERRY: You mean on the Ontario Hydro?

DR. LEEDS: Yes.

MR. CHERRY: Thank you.

(Dr. Leeds handing transcript to Mr. Cherry.)

CHAIRMAN COUFAL: Did you see this reference, Mr. Cherry, the 1661?

MR. CHERRY: No, I have not.

(Chairman Coufal handing transcript to Mr. Cherry.)

MR. CHERRY: Mr. Chairman, I would just like to point out about that transcript reference, there is a discussion by me of what the 20 percent reserve meant in his testimony.

And he said the 20 percent reserve is computed in such a way, and what is important is Consumers Power 20 percent

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reserve.

Now it is true the Michigan coordinated system was mentioned in his answer, but I never inquired about that. I never went into the reserve requirements of these other electric utilities.

That is really not fair to take a subject that has really not been inquired into and suggest that it has been. He testified and he wrote how he computed his 20 percent reserve. He said he could buy something and therefore it was on the basis of 20 percent. That was an identification and I haven't asked him anything about the reserve requirements of the interconnected utilities. Not one single question.

MS. BARTELMAN: Mr. Chairman, the question that Mr. Cherry put to Mr. Heins was:

"The crucial consideration is the reserve generation of the Michigan coordinated electric systems, is that correct?"

I think that is sufficient.

MR. CHERRY: Well you may think it is sufficient. I asked one question in order to understand what he meant by the 20 percent.

I did not inquire into -- there is nothing to rebut. What she is trying to do is put in new information. Redirect is to clear up or explain away or add to an inquiry.

I asked a simple question. That doesn't mean that

the whole area is wide open. That is incredible.

Where this testimony deals with is Dr. Timm's testimony. That is precisely what is going on there. And you have ruled that that rebuttal is to be filed, if at all, with a show-cause order on February 20th. And what we are doing here is going beyond that.

CHAIRMAN COUFAL: I don't think there is a question pending.

MS. BARTELMAN: I don't think so either.

BY MS. BARTELMAN:

Q Mr. Heins, are you familiar with the ECAR system?

A Yes.

MR. CHERRY: Mr. Chairman, you know we have got a confusing record. I have got two motions to strike pending and I would like Ms. Bartelman to be asked simply to tie it up now or rule on it, because I don't want it ruled on tomorrow.

I have got a motion on Ontario Hydro bottleneck, she has gone off to another subject.

I am entitled to a ruling.

CHAIRMAN COUFAL: She represented she is going to return to Ontario Hydro and we are going to give her a chance to do that, Mr. Cherry. And we will rule on it.

I accept her representation and I accept that she is going to try to tie this up. And we will let the objections pend until she either does that or fails to do it.

the problem to survive, that is.

BY MS. BARTELMAN:

Q Mr. Heins, how are you familiar with the ECAR system?

MR. CHERRY: Mr. Chairman, I want on this point that this has nothing to do with my cross-examination. I asked no questions about the ECAR system.

CHAIRMAN COUTAL: Mr. Cherry, I don't know what she is doing. You may very well be right, but let's give her a chance to tell us.

MR. CHERRY: Well, can we have an argument on how this relates to the cross-examination?

CHAIRMAN COUTAL: I suspect we will listen to a couple of questions, it will either become evident or it won't. Then we will rule.

THE WITNESS: I am familiar with the ECAR system company by virtue of being a member of ECAR, reading the reports that have been prepared on behalf of ECAR and by ECAR Company.

BY MS. BARTELMAN:

Q Do you know, based on that, Mr. Heins, what the projected recovery levels are for the total ECAR system for the 1980s?

MR. CHERRY: Mr. Chairman, that goes far beyond what I covered. I never even mentioned ECAR in cross-examination

of Mr. Heins.

CHAIRMAN COUFAL: Let's see where we go.

THE WITNESS: Yes, I am.

BY MS. BARTELMAN:

Q Could you tell me what those reserve levels are, to the best of your knowledge?

MR. CHERNY: Add the objection of foundation, besides being beyond redirect.

CHAIRMAN COUFAL: Overruled on that.

Go ahead.

THE WITNESS: The reserves for the total ECAR companies, as I recall them in 1980 is 20 percent.

In 1981 it is 19 percent.

In 1982 it is 18 percent.

In 1983 it is 16 percent.

BY MS. BARTELMAN:

Q Mr. Heins, does Consumers Power Company purchase power from the ECAR systems?

A Yes.

Q In your opinion as a planner at Consumers Power Company, does the reserve level of these systems affect the availability of this purchase power?

A Very definitely.

Q Besides the reserve levels, Mr. Heins, are there other general factors that, in your judgment, might affect

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the availability of purchase power to Consumers Power Company
in the 1980s?

CHAIRMAN COOPER: From where, Ms. Bartelmann?

BY MS. BARTELMANN:

Q From wherever Consumers Power Company purchases
power.

A Yes.

There have been a number of projects, generating
plant projects cancelled and deferred among the power companies.

In addition, the declining reserve levels causes me
grave concern.

The possible slippage of construction that is
continuing is a potential problem.

The availability of fuel, especially for oil and
gas-fired generation is a concern to me.

The availability, capacity of energy for these
companies, also the uncertainties associated with meeting the
environmental requirements that all of these companies are
faced with is giving me serious concern regarding the
availability of purchase capacity and energy in the 1980s.

MR. CHERRY: Mr. Chairman, I would like to add a
third level to my motion to strike.

I did not inquire into the basis of purchase power.
This is part of Mr. Hains -- he made a statement on his
direct testimony that he can purchase a certain amount.

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Dr. Timm made an analysis of what in his testimony and this is precisely what this goes to.

Now if this is going to be the rest of the afternoon, sir, I will just take off, because if I can't get a ruling on whether or not this is rebuttal or redirect -- and I would appreciate it --

CHAIRMAN COUFAL: Mr. Cherry, Ms. Bartelman is desperately trying to tie this up, and I am going to give her a chance to tie this up.

And then I am going to rule. And if you don't want to sit here through it, that is your option.

MR. CHERRY: I did that as just an emphasis to my statement. I obviously didn't mean that I was going to walk out. I just meant to suggest how I regard what is going on in terms of wasting time.

Just so the record is clear, I want to add to my motion to strike, the statements with respect to the ECAR reserve because there is no method by which they are computed. It is a meaningless figure in the testimony, just like the Detroit Edison reserve was.

There is no foundation that this gentleman knows how they were computed, what the basis of it is or anything else. So he cannot be subjected to cross-examination on it.

And lastly, I say that that is also beyond the scope of my cross examination and directly tied to Dr. Timm's

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testimony.

CHAIRMAN COUFAL: I understand your objection.

MS. BARTELMAN: Mr. Chairman, I don't know if this is relevant, but since Mr. Cherry is making speeches, I might as well add this; that I can represent that I haven't even read Dr. Timm's testimony. I haven't had time to read it.

So when he says that I am pulling things out of Dr. Timm's testimony to give to Mr. Heins, it is just not true.

I am trying to establish, and I think I have said this, what the availability of purchase and interchange of power is in the 1980s. That was inquired into on cross-examination. This is perfectly correct redirect. And that is all.

MR. CHERRY: Mr. Chairman, this is the last time I am going to put it into the record.

Ms. Bartelman spent almost two and a half hours in conversation with Dr. Timm going through his testimony to make sure that Dr. Timm supplied the documents she wanted.

Now if she is now suggesting that she didn't read the testimony in connection with making the request for documents, then Dr. Timm was truly burdened with the conversation.

CHAIRMAN COUFAL: Go ahead, Ms. Bartelman.

You don't have a question pending?

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MS. BARTELMAN: I would like to respond. I don't think it is fair to me to just sit here and listen to that.

The fact of the matter was that my witnesses read the testimony and decided what they needed and represented it to me.

MR. CHERRY: Right.

So Mr. Heins read the testimony and told her what he ought to say with respect to rebuttal.

CHAIRMAN COUFAL: Okay. Enough said on that subject.

BY MS. BARTELMAN:

Q In your opinion, Mr. Heins, if Consumers Power Company obligated to maintain a certain reserve level --

MR. CHERRY: Objection.

No foundation.

CHAIRMAN COUFAL: Overruled.

MR. CHERRY: Calls for a conclusion.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: The only reserve level that Consumers Power Company is obligated to maintain is the operating reserve level required by ECAR of its member companies, which amounts to approximately 5 percent of the predicted peak load for the day in question.

In addition, the interconnection agreements with

Detroit Edison, the City of Lansing, the City of Pontiac and the cooperative systems, we plan to include the 1978 operating reserve criteria.

Q Mr. Hines, you have testified on cross-examination as to Consumers Power Company load factors and as to their comparison with other companies' load factors.

Do you remember that?

A Yes.

Q Could you explain to me what the effect on system reliability is of high load factor?

A The 67 percent load factor that Consumers Power is anticipating in the period 1979 and beyond, is a fairly high load factor for an electric system.

This load factor has been on the Consumers Power Company system, high enough that it has required Consumers Power Company to schedule maintenance over the summer months on the electric system.

Q Then what effect does scheduling maintenance over the summer months have?

A Scheduling generator maintenance over the summer months requires that additional reserves over the nominal target of 20 percent be available to cover this scheduled maintenance.

23 percent is intended to cover within our regulation, load forecast error and forced outages. If maintenance is

scheduled, it requires obtaining a reserve to cover that capacity scheduled out for maintenance.

In the last several years, while we have been doing this, we have purchased capacity in energy in order to cover this reserve requirement.

Q Mr. Hains, as part of your planning responsibilities, are you projecting sales of interest in the Midland plant?

A Yes, we are.

Q To whom?

A We are anticipating the sale of an undivided interest in the Midland Units 1 and 2 to the cooperatives, Northern Michigan Electric Cooperative, Wolverine Electric Cooperative and the Cities of Lansing and Holland.

Q Are you familiar -- strike that.

Have there been negotiations between Consumers Power Company and the cooperatives regarding the sale?

A Yes, we've have.

Q Are you familiar with those negotiations?

A Yes.

Q Have you been involved in those negotiations?

A Yes.

Q Can you tell me your understanding of the status of those negotiations?

MR. CHERRY: Objection, unless we know what "involved in negotiations" means.

CHAIRMAN COUFAL: Yes, that's the next question. How is he involved in the negotiations?

THE WITNESS: I have participated in the meetings --

CHAIRMAN COUFAL: She may not choose to ask you that, Mr. Heins. Just let Miss Bartleson make that decision.

BY MS. BARTLEMAN:

Q How are you involved in the negotiations, Mr. Heins?

A I participated in the meetings with the cooperatives.

Q Based on that, Mr. Heins, could you explain your understanding of the status of negotiations between the cooperatives and Consumers Power Company?

MR. CHERRY: Objection to relevancy in a suspension

proceeding. There is no contract. I cannot believe that any commission would authorize construction in order to maintain a schedule to meet a contract that hasn't been signed. It simply isn't relevant to the suspension proceedings.

MS. BARTLEMAN: I didn't say anything about a contract, and I don't believe that Mr. Heins did.

This has been gone into a lot on cross-examination. We're trying to put it on the record.

CHAIRMAN COUFAL: Yes, I think it's been inquired into.

Overruled.

BY MS. BARTLEMAN:

Q Mr. Heins, could you explain or describe the status of the negotiations between Consumers Power Company and the cooperatives?

A These negotiations reached the point where the parties prepared a proposal listing a series of points that they had reached agreement on.

This proposal is the basis of a draft document that is being prepared, which will be submitted to the cooperatives when it is completed.

Q Did both cooperatives then join in that proposal you've described?

A Both Northern Michigan and Wolverine Electric

Cooperative did.

Q And for which units did you say that proposal covered?

A This proposal covers Midland 1 and 2 and the sale of an undivided interest in Campbell 3, which is under construction.

Q Can you tell me whether a commitment to sell to the cooperatives in accordance with a proposal and negotiations will result in a full sale of the undivided interest in the first year that Midland comes on line?

MR. CHERRY: Mr. Chairman, that's sheer speculation. It calls for a legal conclusion. We're now going further and asking Mr. Heins to speculate on the final terms of that contract, which we're now told is in negotiation.

CHAIRMAN COUFAL: I don't understand, Miss Bartleman, what you mean by "full sale."

MS. BARTELEMAN: I'll restate the question.

BY MS. BARTELEMAN:

Q Mr. Heins, what is the nature of the interest that has been proposed to be sold to the cooperatives by Consumers Power Company?

MR. CHERRY: Object to the form of the question. There's no testimony that there is any proposal to sell.

There is testimony that the people propose to

talk about getting a proposal to call.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: I have a sheet which would refresh my memory on this point. May I have that sheet?

BY MS. BARTLEMAN:

Q. What I'm asking you, Mr. Heins, is what type of interest the cooperatives may buy as a result of this proposal?

A. The cooperatives --

MR. CHERRY: Objection. What type of interest they may buy as a result of what proposal?

CHAIRMAN COUFAL: The question, Miss Bartleman, is what they're negotiating to buy or sell.

MS. BARTLEMAN: The question really is what type of interest are they going to buy if they bought in accordance with the negotiations that have been going on.

BY MS. BARTLEMAN:

Q. Mr. Heins, would they buy an amount of power?

MR. CHERRY: Excuse me, Mr. Heins.

Mr. Chairman, that is not the appropriate way to ask the question. The negotiations aren't described. For this gentleman now to speculate on what a cooperative might buy as the result of the negotiations is asking him to speculate on the cooperative's attitude.

CHAIRMAN COUFAL: No, I think this goes to what

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they're negotiating to buy. If he knows, he can answer that.

What's the subject of negotiation? What sort of interest?

THE WITNESS: The cooperatives are attempting to buy an undivided interest in those units.

BY MS. BARTLEMAN:

Q What is the amount of the undivided interest?

A I have a paper that will refresh my memory. May I have it?

MS. BARTLEMAN: This is a page out of the Environmental Report Supplement, Amendment 1.

(Documents distributed.)

BY MS. BARTLEMAN:

Q Does that refresh your memory, Mr. Heins?

A Yes.

The amount of the undivided interest that the cooperatives expect to buy in Midland 1 amounts to 100 megawatts.

Q And the Midland 2?

A Midland 2 would be 57 megawatts, for a total of 157 megawatts.

Q If the cooperatives in fact buy this undivided interest in a total of 157 megawatts, Mr. Heins, will they take their full share of the 157 megawatts in the first year that Midland goes on line?

MR. CHAIRMAN: His name is Mr. Chairman.
 He was now really speaking about a matter that was
 was been decided on.

CHAIRMAN: His question is whether
 it, Miss Barkman, is are there negotiations for what you're
 asking?

MS. BARKMAN: Yes, there are.

CHAIRMAN: With the understanding that
 that's the question, you may answer.

THE WITNESS: The amount in the negotiations,
 discussed in the negotiations, for Midland 3, which came
 in service in 1981, is 100 megawatts.

Of this, the cooperatives have said that they do
 not require all of that the first year and indeed are willing
 to roll back to Consumers Power Company 50 megawatts in 1981.

BY MS. BARKMAN:

Q Can you describe the situation as to Midland 2?

A That was Midland 2.

When the second unit comes on line in 1983,
 Midland 1 and 2 will be present and operating, and the
 cooperatives will be rolling back to Consumers Power Company
 50 megawatts of the total interest of 100 megawatts.

Q Mr. Hains, are the same data figures that would
 come out of this page out of the Environmental Report
 Supplement amend the basis of your planning as to reserve

levels for the future?

A. Yes.

Q. And are these the contents of this that were used in the preparation of the exhibits to your testimony?

A. Yes.

Q. If the agreement as executed is similar in substance to the negotiations that have been going on, is it your understanding that Consumers Power Company will be able to cut off power to the cooperatives in order to serve the rest of its customers?

A. No.

MR. CHERRY: Mr. Chairman, is this really meaningful, to have a man testify about terms or conditions of a contract which hasn't been drafted? Is that really meaningful? Do you really want to sit here today and listen to it?

CHAIRMAN COOPER: I don't know what the point of it is. I think it's proper to draft so far. I don't know what point the licensee is intending to make, but I'm assuming they're going to make a point.

You may answer.

DR. LEIDS: It's already answered, I think.

BY MR. BARRETTMAN:

Q. Mr. Heins, do you know if the cooperatives have been negotiating with other parties regarding the sale -- regarding the purchase of interest in other power plants?

Q Yes, they have been.

MR. CHERRY: Just a moment. If you go beyond that, I'm going to have an objection unless she asks you how you know.

If you say you know, that's the answer to that question.

If you're going to ask him, solicit it, I'm going to object on the basis of foundation.

MS. BARTLEMAN: Mr. Cherry, I would appreciate it if you would talk to the Board rather than to my witness and to me.

CHAIRMAN COUFAL: Mr. Cherry, that is the proper way to do it, as you very well know.

But he's right about the point he's making, Miss Bartleman. The witness has answered. Now ask another question.

BY MS. BARTLEMAN:

Q How are you familiar, Mr. Heins?

A In our negotiations with Wolverine and Northern Michigan, they have informed us -- Mr. Keene and Mr. Johnson, the managers of those cooperatives, have informed us that they are in the process of negotiating with Detroit Edison Company for the purchase of a portion, an undivided interest of a portion, of Farm 2.

Q To your knowledge, based on your conversations

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with the people from the cooperatives, has an arrangement between Detroit Edison Company and the cooperatives been finalized?

MR. CHERNY: Objection. It calls for a conclusion. It's the grossest form of hearsay I have ever encountered.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: It is my understanding that all of the arrangements for that purchase of an undivided interest are not concluded yet.

BY MS. BARLEMAN:

Q Mr. Heins, have the cooperatives -- you mentioned that the cooperatives had discussed the possibility of the sale with you during the negotiations with Consumers Power Company.

Have they represented to you that their energy requirements are such that they will need both power from Detroit Edison and Consumers Power Company?

MR. CHERNY: Objection, Mr. Chairman. How can I possibly meet that kind of evidence if we are realistically going to get into this, that somebody in a negotiation represented that he needs the energy in addition to Perm?

Can you base a decision on that if you're really talking about need for power, Mr. Chairman?

CHAIRMAN COUFAL: It's pretty thin, Miss Bartleman.

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MR. CHERRY: This is the most gross imposition in this hearing.

CHAIRMAN COUFAL: There have been so many gross things going on in this hearing that this is just kind of a ripple on the pond.

(Laughter.)

But it's awfully thin, Miss Bartleman -- awfully, awfully thin.

MS. BARTLEMAN: Mr. Chairman, I'm trying to establish upon what Mr. Heins can rely in his role as a planner for Consumers Power Company. That is why I'm asking these questions.

I'm not asking them to represent that they are true, that this is in fact what is going to happen in the future. I'm representing that Mr. Heins can rely on those conversations.

CHAIRMAN COUFAL: You're representing that he did rely on these things, these items?

MS. BARTLEMAN: Yes.

CHAIRMAN COUFAL: You could ask the question that way, what he did rely on, Miss Bartleman.

MR. CHERRY: But it's clear that this is not being offered for the truth of those statements, i.e., that he relied upon true statements, because that's what my objection goes to.

CHAIRMAN COUFAL: I understand that, Mr. Cherry.

MR. CHERRY: If you want to rely upon something without any statement as to whether it's true or false, that to be is consistent with my cross of Mr. Heins. She can ask those all day long.

BY MS. BARTLEMAN:

Q Based on your knowledge of the negotiations between Detroit Edison and the cooperatives, Mr. Heins, is it your understanding that the sale from Detroit Edison to the cooperatives in accordance with the negotiations that have been going on between them could supply all of the cooperatives' needs for power in the 1980s?

MR. CHERRY: Objection.

This witness has not participated in those negotiations.

CHAIRMAN COUFAL: Miss Bartleman, your point is well taken that you're trying to establish assumptions that he relied on in doing his planning, and there's nothing objectionable about that.

But that's not the way you have asked the questions.

BY MS. BARTLEMAN:

Q Mr. Heins --

MR. CHERRY: You're sustaining my objection, Mr. Chairman?

CHAIRMAN COWLEY: Yes.

As this is going to come, it appears to me that Miss Bartleson, that you're trying to establish the truth or falsity of these things and that you're trying to establish that there are newspapers that have written this for planning purposes.

BY MS. BARTLESON:

Q Mr. Reine, did they tell you that -- that did they tell you regarding their needs for power for the 1940s?

Did they tell you that the sale from Detroit Edison could supply all of their needs?

CHAIRMAN COWLEY: Wait a minute.

Miss Bartleson, we're just going to get into it all over again. Let's take 10 minutes so you can have a little conference with Mr. Reine, or whoever you want to have a conference with, and get your questions lined up so that you're asking him what are the bases of his assumptions for planning, if you will.

You can ask three or four questions and establish that, I'm sure, and then we can go forward with this and maybe expedite it a little.

MISS BARTLESON: Fine.

CHAIRMAN COWLEY: I'm sure you both got the point of what I'm saying.

(Recess.)

CHAIRMAN COUNSEL: You may proceed, Mr. Barbelman.
in his statement:

Q Mr. Chair, these were negotiations with you regarding
the effect of their negotiations with Detroit Union on
their negotiations with International Union of Carpenters?

MR. CHERRY: Mr. Chairman, I will object to that
statement. It calls for the truth of the matter stated.
And this gentleman cannot testify with respect to the impact
of negotiations which he is not party to.

I also think it is really stretching the relevance
for this suspension proceeding.

It would be real simple. Why don't they say, and
then I will be quiet and let the Board make their ruling.
We are told that the cooperatives are dying to buy this.
Why doesn't she ask him: Why haven't you told us so much?
Is that the question that someone ought to ask him?

CHAIRMAN COUNSEL: To your point again, Ms.
Barbelman, with regard to assumptions he is making with re-
gard to --

MS. BARBELMAN: Yes, it is, Mr. Chairman.

MR. CHERRY: Let's have the question asked that
way. You told her to take a break.

CHAIRMAN COUNSEL: I am going to suggest that, Mr.
Cherry, if you will let me do that.

MR. CHERRY: Sorry.

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CHARTERED COUPON: Can you tell him what assumption he is making with regard to load planning as it relates to what ever it is; the point you are trying to make?

MS. BARTELMAN: Sure.

MR. CHERRY: The question is either withdrawn or the objection is sustained?

CHAIRMAN COUFAL: Sustained.

MS. BARTELMAN:

Q Mr. Keins, what assumption have you made in planning in connection with the cooperatives' representations to you regarding the effect of their negotiations with Detroit Edison on the negotiations with Consumers Power Company?

MR. CHERRY: Mr. Chairman, I am going to object to that, because implicit in that statement is what the cooperatives told him and he can't testify as to what the cooperatives told him.

CHAIRMAN COUFAL: With regard to the other negotiations?

MR. CHERRY: That's right.

CHAIRMAN COUFAL: I understand.

MS. BARTELMAN: Mr. Chairman, I believe he can testify as to what the cooperatives told him in order to form a basis for his reasonable assumptions as a planner.

And I think that is what I have represented.

CHAIRMAN COUFAL: Why don't you ask him what

assumption he made with regard to that and so; just start there, just what assumption did you make with regard to --

MR. CHERRY: Mr. Chairman, look: the case is out of the bag. Ms. Bartelman says: I believe I can ask him what the assumptions were so that he can testify as to what reasonable basis he made as a planner.

Now does this Board want to sit here any longer and have Ms. Bartelman finally get the question into the record, at least, on the basis that she has now told you that she wants to argue that that is a reasonable basis when she has also stated that she is not offering it for the truth of the matter stated?

CHAIRMAN COUFAL: Go ahead and restate the question, Ms. Bartelman.

BY MS. BARTELMAN:

Q Mr. Heins, in planning, in your responsibilities as a planner, what assumptions have you made regarding the cooperatives' need for power from Consumers Power Company?

A I have made the --

MR. CHERRY: Excuse me. I object to that question unless there is a foundation to establish what he knows about the need for power of the cooperatives and how it was arrived at.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: I have made the assumption that the

cooperatives require the amount of the capacity, the portion of the capacity of Fernal that they are buying from Detroit Edison and the portion of the capacity of Milstead and Campbell that we are discussing with them.

BY MS. BARTELMAN:

Q And on what do you base that assumption, Mr. Heins?

A That assumption is based upon statements made to me by the managers and their consultant of Northern Michigan Electric Cooperative and Wolverine Electric Cooperative.

MR. CHERRY: I move to strike that answer unless it is asserted affirmatively that that testimony was not offered for truth of those statements.

If Ms. Bartelman will state that she is not offering that in order to prove the truth of the underlying assumptions that Mr. Heins testified to, then I will withdraw it. But it doesn't get any further if now he is permitted to testify without it being very clearly in the record that it is not going in as a truthful statement.

There is no way that I can cross-examine as to the veracity of that statement at all with this witness in connection with negotiations that he hasn't been in or not.

Now if she wants to say that he relied upon an assumption but she's not offering that for the truth or falsity of that assumption; okay. But let's be up front about it.

CHAIRMAN COUFAL: It is not the truth or falsity of the assumption but the truth or falsity of the underlying data.

MR. CHERRY: That's right. And the assumption; he can testify he heard it, but testimony doesn't go in that that assumption was truth or that it is based on any reliable or probative data.

MR. RENFROW: Mr. Chairman, she asked the question and the question was proper: What were your assumptions; what did you base it on and he stated that, stated what his assumption was and what he based it on. And that indeed is proper. There was nothing said about whether or not, truth falsity or what ever it was. It was just his assumption made in planning. That is a proper question.

CHAIRMAN COUFAL: All right.

I think you are both right.

I am going to let the question stand and the answer stand.

I am informing Ms. Bartelman the Board isn't going to take -- isn't going to consider that the -- any probative value in the truth or falsity of the assumption, the truth or falsity of the underlying data upon which he based his assumption.

MS. BARTELMAN: That's what I am offering it for, Mr. Chairman. I think that's what I represented before.

CHAIRMAN COUFAL: Thank you.

BY MS. BARTIMAN:

Q In Exhibits 11 and 12 attached to your testimony, Mr. Heins, do you recall those exhibits?

A Yes.

Q What have you assumed regarding sales to the cooperatives?

A I have assumed that a portion of their undivided interest is sold back to Consumers Power Company in the years 1981, '83, and '84.

Q In all cases.

A In those cases where Midland was built. In those cases where Midland is delayed or not added and the not added cases, we did not assume -- I did not assume a sale to the cooperatives from Midland. And the Midland delay cases, I assumed that their take and sell back to us was delayed with the end -- the unit.

MR. CHERRY: I didn't hear the end of that answer. Miss Reporter, would you repeat it please?

(Whereupon, the reporter read the previous answer as requested.)

BY MR. HEINS:

Q Mr. Heins, in Exhibits 11 and 12, again, what have you assumed regarding sales, possible sales, to the municipals of Lansing and Holland that you mentioned earlier?

MR. CHERRY: I object on the basis of the question on the grounds that it is leading and seeks to establish testimony as opposed to evidence.

CHURCHMAN COURTNEY: Overruled.

MR. WATKINS: The assumption made regarding the purchase by the municipals Lansing and Holland was that Consumers Power Company would in some way have to supply that capacity and energy to those systems.

BY MS. DANIELSON:

Q Do you mean in all cases?

A In those cases -- yes; in all cases.

Q Why did you assume that, Mr. Hoins?

A I made that assumption because I felt that the alternatives open to those smaller systems were not as great as the alternatives that might be open to the cooperatives that, indeed, in order for those municipal systems to serve their loads, they might have to have capacity and energy supplied by Consumers Power Company that --

Q Are there currently any --

MR. CHERRY: Mr. Chairman, I move to strike that answer on the grounds that there is absolutely no foundation for this witness testifying about someone else's load unless the same rules apply if this goes in; that the Board isn't giving any probative value to Mr. Hoins' testimony; that he made that assumption based upon his view that they had the

wasn't illustrative, at least, because I don't want to cross-examine him on that unless it is clear that that was not offered for the validity of that statement; that that was is what he assumed. And if that is clear, I don't have very much across of Mr. Fein, at all.

CHAIRMAN COUFAL: I assume it is still the point, is it not; Ms. Bartelman?

MS. BARTELMAN: That's right.

MR. CHERRY: So this is not being offered for the truth of the underlying assumptions.

MS. BARTELMAN: It is a different thing to speak about the truth of the assumptions and the truth of the sale.

I am offering for the truth of the assumption but not for the truth of the sale.

MR. CHERRY: Then I move to strike. I don't understand that and that sounds a little bit like trying to come in the side door.

CHAIRMAN COUFAL: I think maybe you are talking at cross purposes.

You say that it is true that he made this assumption that?

MS. BARTELMAN: Right.

CHAIRMAN COUFAL: But it is not necessarily true that the underlying basis is fact?

DR. LEEDS: Or the assumption is true.

CHAIRMAN JOUFAL: Is it true what he made the assumption?

MS. BARTELMAN: Right.

CHAIRMAN JOUFAL: All right.

DR. LEEDS: But it is not necessarily true that the assumption is true?

MS. BARTELMAN: Okay.

DR. LEEDS: I am not trying to force you, Ms. Bartelman.

MS. BARTELMAN: No, I understand.

DR. LEEDS: I could assume A, and he is testifying that that indeed correct; he assumed A. But whether A is correct or not is what we are worried about.

MS. BARTELMAN: Right.

DR. LEEDS: And you are not alleging that A is correct?

MS. BARTELMAN: That is correct.

BY MS. BARTELMAN:

Q Mr. Heins, are there any agreements currently between the municipalities and Consumers Power Company?

MR. CHERRY: It calls for a legal conclusion.

CHAIRMAN JOUFAL: Overruled.

THE WITNESS: There are existing interconnection agreements in effect between Consumers Power Company and the

titles of Holland and Lansing.

BY MS. BARTELMAN:

Q In your opinion, what is the effect of those interconnection agreements?

MR. CHERRY: Mr. Chairman, I will object to that question. It calls for this witness to give us a legal opinion on the effect of contracts that hasn't even been identified let alone, this witness can't tell us what the effect is. You and I will argue about that, if they are ever offered, but from Mr. Heins. He is not in that league yet.

CHAIRMAN COUFAL: If you want to ask him a question, ask him what is his understanding of the -- what ever the agreements might be.

BY MS. BARTELMAN:

Q Mr. Heins, as a planner, what is your understanding of this interconnection agreement between the municipals and Consumers Power Company.

MR. CHERRY: Objection until the document is identified, he is asked if he has read it, he is asked if he understands it. We don't even know if he read it.

CHAIRMAN COUFAL: Overruled.

MR. CHERRY: Okay.

THE WITNESS: Those interconnection agreements provide for the sale by either party to the other of various types of capacity and energy, such as short-term emergency

1 economy which is available.

Q Mr. Heins, you previously testified on cross-examination that the projected capacity reserve figure for 1979 is 16.3 percent. Have you reviewed your data since that time?

A I have reviewed my data since that time. That was an incorrect statement.

The reserve that I anticipate in 1989 is 30.2.

Q Did you mean 1979.

A '79; yes.

MR. CHERRY: Just another error.

MS. BARTELMAN: I move to strike that, Mr. Chairman.

CHAIRMAN COUFAL: It will be stricken, Mr. Cherry.

BY MS. BARTELMAN:

Q Mr. Heins, who is Consumers Power Company's major supplier of oil?

MR. CHERRY: I will object unless major is defined. Does that mean they choose to buy from them only, available 51 percent, et cetera?

CHAIRMAN COUFAL: Overruled.

THE WITNESS: Imperial Oil Company of Canada supplies the oil for approximately 70 percent of our oil-fired generation on the Consumers Power Company system.

Q Do you have any reason to believe, Mr. Heins, as a planner, that that oil may not be available in the future?

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A The Canadian government --

MR. CHERRY: Just a moment now; the basis for that reason. I mean, Mr. Chairman, I object. There is no foundation laid for -- it is just his speculation. Has he talked to the government of Canada? Has he read the agreements, and please, sir?

CHAIRMAN COUFAL: Well, I am going to agree with you, Mr. Cherry. He has answered the question you.

Now, Ms. Bartelman, you may ask him what the basis for his understanding is.

BY MS. BARTELMAN:

Q Mr. Heins, what is the basis of your understanding regarding that fuel supply?

A The fuel supply department director at Consumers Power Company has informed me that the Canadian government has --

MR. CHERRY: Mr. Chairman, I object to the substance. He has just got to describe how he got the information. That's all.

I am going to object to his opinion on the substance, because I don't want him to get into the merits of it.

CHAIRMAN COUFAL: Overruled.

BY MS. BARTELMAN:

Q Go ahead.

A -- has informed me that the Canadian government has given notice to my company that this oil supply will be gradually reduced and that no Canadian Oil will be exported to us by 1981.

Q Mr. Heins, has this communication to you on what you relied, been disclosed to the SEC in connection with any prospectus.

A Yes. In a statement S-7 filed, the date of June 30, 1976, this information was contained therein.

Q Mr. Heins, I am going to hand you a multipage document and ask you to review it.

(Handing document to witness.)

MS. BARTELMAN: I would like to have this marked as Licensee's Exhibit 35.

(Whereupon, the above-mentioned document was marked Licensee's Exhibit 35 for identification; "Agreement for Sale of Portion of Generating Capability of Ludington Pumped Storage Plant."

(Distributing copies.)

BY MS. BARTELMAN:

Q What is that document, Mr. Heins?

A This document is an "Agreement for Sale of Portion of Generating Capability of Ludington Pumped Storage Plant,"

by Consumers Power Company to Commonwealth Edison Company.

Q What is your understanding of Consumers Power Company's responsibility under that contract?

A Under this contract, in Section 3.1, it is my understanding as stated, that

"Consumers shall not take Commonwealth's share of the plant's generating capability (or any water stored in the upper reservoir for Commonwealth's account) available to anyone other than Commonwealth at any time."

This means to me that we cannot provide capacity or energy from that plant to any other company than Commonwealth Edison Company.

Q Under that contract, Mr. Hains, what amount of Consumers Power Company's share of the Ludington capacity is to be sold to Commonwealth Edison Company?

MR. CHAPMAN: I object to the form of the question. It calls for a conclusion.

CHIEFMAN CONFEE: As what his understanding is, Ms. Bartelman.

BY MS. BARTELMAN:

Q What is your understanding regarding the amount of the sale in that contract?

A I understand that for 10 years concluding in mid-year approximately 1963, that one-third of Consumers Power

basis

Company ownership in this plant is sold to Commonwealth Edison, that for an additional five years concluding near mid-year 1989, that one-sixth of the Consumers Power Company's ownership is sold to Commonwealth Edison.

Q Could you refer to those reserves in megawatts?

A The one-third amounts to 319 megawatts. The one-sixth is 159 megawatts.

MS. BARBELMAN: Mr. Chairman, that concludes the redirect.

And in order to expedite the proceeding, I will remove my objection regarding Mr. Cherry's motion to strike on the Ontario Hydro bottleneck situation.

So I am finished.

CHAIRMAN COUFAL: There being no objection to the motion to strike from the witness' testimony with regard to the bottleneck on the Ontario Hydro system; it is sustained.

MR. CHERRY: Will you now sustain my other two that she didn't connect up, the Detroit Edison reserve and the BCAR system reserve?

CHAIRMAN COUFAL: No, I am going to overrule those. I think that there is enough foundation in the record for him to state what those reserves are.

You may cross-examine now, on them.

MR. CHERRY: He hasn't even stated what the basis is.

RECORDS-SIMULATIONS

BY MR. HUBBARD:

Q Mr. Heins, can I correct, the municipalities who have expressed an interest in purchasing a portion of Midland are the City of Holland and the City of Lansing?

A Yes.

Q Is that the extent?

A Is that all?

Q Is that all?

A Yes. Those are the only ones.

Q Now if the Midland plant -- if they don't purchase a portion of the Midland plant, do you know where they are going to get their power from?

A No, I don't.

Q Mr. Heins, for the case without Midland in the 1981-1983 time period, is Consumers Power forecasting a net purchase of electricity from Detroit Edison?

A In the 1981-83 period, in the simulation of those years, we would anticipate some emergency capacity and energy sales and perhaps economy capacity -- purchases by Consumers or economy purchases and sales, if they have it available.

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Q This is without Midland?

A Yes.

Q Would these be off-peak purchases or peak purchases?

A These would tend to be off-peak purchases. At least off the Detroit Edison peak. They have a summer peaking system. We would anticipate that during the hot weather months they would have very little, if anything, to sell.

But in off-peak periods of the year we would anticipate they might have capacity and energy to sell.

Q So you are forecasting off-peak purchases from Detroit Edison in that time period?

A Yes.

Q Without the Midland facility?

A Yes.

Q With the Midland facility in service as expected, would you be a net purchaser from Detroit Edison?

A That's difficult to predict. We would expect at times to buy capacity energy from them. We would buy on an economy basis if they had it to sell when the dispatch center indicated that their generation was less expensive than ours. If we had a pile-up of emergency contingencies, we would hope to be able to purchase emergency capacity and energy from Detroit Edison.

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Q All right, Mr. Hains. For the period 1981-1983, with Midland available, would you be a net purchaser or net seller from Detroit Edison?

MR. CHERRY: Objection. Asked and answered. He said that they would buy on an economy basis, and they might very well be a net purchaser.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: I would expect during that period that we would, under the anticipated conditions in preparation of my testimony, I would anticipate that we could be a net purchaser.

MR. HOEFLING:

Q Was that your simulation in your production cost runs?

A Yes.

Q Now, in your redirect testimony, I believe you stated that a 20 percent reserve for Consumers is adequate assuming that you can get between 30 and 40 percent from your interties, is that correct?

A Yes.

Q Can you specify which utilities you're referring to when you say interties?

A Our ties are with -- directly with Indiana Michigan, Toledo Edison, Detroit Edison, Wolverine and Northern Michigan Cooperatives, Lansing and Holland.

Q Are these companies summer-peaking utilities?

A Detroit Edison is a summer-peaking company.

Wolverine and Northern Michigan have a cool-weather peak.

Holland has a cool-weather peak. Lansing has a warm-weather peak.

Q And Toledo?

A Toledo Edison, as I recall, has a warm-weather peak.

Q Do you have any reason to believe that from the summer-peaking systems you could expect any assistance to meet your reserve requirements?

MR. CHERRY: Objection. No foundation.

CHAIRMAN COUFAL: Overruled.

THE WITNESS: Based upon the anticipated installed reserve in the years involved, I am quite concerned about the availability of capacity and energy during the warm weather months.

CHAIRMAN COUFAL: I take it that means no, you can't rely on assistance from the summer peaking systems?

THE WITNESS: No, we can't rely upon those summer peaking systems to be available to provide capacity and energy to us.

BY MR. HOEFLING:

Q The two systems you identified as having cool weather peaks, Wolverine and Holland, how large are those systems?

Q And Northern Michigan.

Q And Northern Michigan. Now large size power control system?

A The Holland system is about 50 megawatts peak demand.

Wolverine and Northern Michigan together are at this time about 230 megawatts size, total, maximum.

MR. COMPTON: That's all we have, Mr. Chairman.

CHAIRMAN COMPTON: Mr. Cherry?

BY MR. CHERRY:

Q Mr. Heins, what computer runs have you looked at to determine the validity of Detroit Edison's reserve requirement that you testified to?

A I have not looked at any of Detroit Edison's computer runs.

Q What computations have you looked at which deal with reserve requirements prepared by Detroit Edison upon which you rely for that reserve -- for your statement as to Detroit Edison's reserve?

A I do not recall testifying to what Detroit Edison requires.

Q You will state to us right here and now that if there was any testimony as to Detroit Edison's reserve, you will hereby disavow it?

A My memory is now that clear of my previous cross-examination.

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Q No, I want just now, what does Detroit do when you asked you questions, you mentioned as to what Detroit Edison's reserves were at various periods of time.

A Yes, I did. I did not mention as to what the requirements were.

Q Well, what I want to know is what documents did you look at to determine the validity of Detroit Edison's reserves which you state at a given point in a given year?

A The numbers that I stated earlier concerning the installed reserves anticipated for Detroit Edison in those years was a printed sheet listing the loads, capacity, and expected reserves for the two systems covering the period involved.

Q Prepared by Detroit Edison?

A The information was furnished to us by Detroit Edison. The sheet was prepared by Consultants Power Company.

Q Okay.

Can you tell me how Detroit Edison computed that figure so I can determine whether it has any validity or not?

A Detroit Edison calculates that figure by taking the anticipated sum of their installed generation for the year in question, subtracting from that any known reductions that will occur that year, subtracting from that remainder any summer deratings that will occur, then subtracting from that remainder the projected peak load for that year, then

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CHAIRMAN COUFAL: No, I think it's a good question.
Overruled.

THE WITNESS: My statement a moment ago concerning having checked the arithmetic on some of those calculations on the sheet, I have not reviewed and checked the calculations regarding, for example, summer deratings.

BY MR. CHERRY:

Q Well, you may have checked the arithmetic, but that sheet that you're talking about contains a lot of assumptions, correct?

A Yes.

Q Now, what I want to know is: Did you personally investigate the underlying data in those assumptions to determine whether they were true or false?

A Some of those assumptions --

Q Excuse me. I'm asking you if you did that procedure. Did you check the underlying data yourself to determine whether those underlying assumptions were true or false? Did you follow that procedure? That's all I want to know.

MS. BARZELMAN: Mr. Chairman, I'll move to strike that. The witness was interrupted.

CHAIRMAN COUFAL: I think counsel has a good question there, and I'm going to let that stand.

You may answer that, Mr. Hains.

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dividing the remainder at that point by the projected peak load.

Q You've just defined for me how my utility does it.

I want to know, Mr. Hains, what are those numbers?

A I cannot recall all of those numbers.

Q Well, have you gone through the calculation yourself in order to determine the validity of those numbers?

A I have indeed reviewed some of those calculations on that sheet.

Q The underlying data? In other words, when Detroit Edison says that they plan to have a derating for a particular purpose, have you gone and identified whether or not that derating is a real derating, or something other than a real derating, and what its impact will be on Detroit Edison's system, et cetera? And can you give me those figures?

A Beyond questioning their planners when the deratings were of a magnitude that aroused my interest, I have not.

Q So, what you have done is talked to some of their planners about it, but you are not stating that you, of your own personal knowledge, have computed the Detroit Edison figures and you vouch for them?

MS. BARTELMAN: Objection. That question is argumentative.

THE WITNESS: Not beyond reviewing some of these matters with those planners at Detroit Edison with whom we are in continuing communication.

BY MR. CHERRY:

Q When you say "not beyond," it is true that you did not review any of the underlying data by going to the actual documents and satisfying yourself that the assumptions that someone told you were in fact correct? What I have just said is true, isn't it, Mr. Heins?

A I did not go to the underlying documents to verify the information given to me by Detroit Edison planners.

Q Now, if I asked you the same questions about the ECAR reserves you would give me the same answers that you did not review any of the underlying data to determine the validity of the assumptions?

A I did not review or check any underlying documents concerning the assumptions made in preparing the ECAR reserves.

Q Now, some of the assumptions made by ECAR and Detroit Edison are complex, are they not?

A Yes.

Q -- and involve projected conditions?

A They do involve projected conditions.

Q -- which may or may not occur?

A True, as with any projected conditions.

Q And you didn't look at any of those underlying data?

A Beyond the figures that were furnished to me, I did not review any underlying documents to determine the validity of any assumptions made in the preparation of those.

Q Now, have you ruled out, in your planning, Mr. Heins, the purchase of any power from any warm-weather utility during the period 1981 to 1983? Have you just ruled that out completely in your planning?

MS. BARTELMAN: Objection. I don't understand the warm-weather utility.

MR. CHERRY: He just testified in answer to a question by Mr. Hoefling, cleared up by the Chairman, that he cannot rely in his plan on purchasing from warm-weather utilities.

CHAIRMAN COUFAL: Warm-weather peaking utilities?

MR. CHERRY: Yes, warm-weather peaking utilities, any power in 1981-1983. What I want to know, Mr. Heins, is have you ruled out in your planning purchase of any capacity during the warm weather from warm-weather peaking utilities during 1981-83?

THE WITNESS: I have not ruled that out.

BY MR. CHERRY:

Q So there's a possibility that you might be able to rely on capacity from those utilities?

A I do, indeed, hope that some capacity and energy

will be available from those utilities at some time of the day during the warm-weather months.

Q And you're relying on that in your plan?

A Yes, I'm relying on the purchase of capacity and energy in determining the 20-percent reserve limit.

Q Now, you said that the Canadian Government had informed the director of your fuel department, who in turn told you, that at the beginning of 1981 there was going to be a gradual slowdown of oil from Canada?

A No.

Q What were you informed by your fuel man that the Canadian Government informed him?

A That the supply of oil that we are currently obtaining from Imperial would be gradually reduced and terminated by 1981.

Q When will the gradual reduction start?

A They have commenced.

Q Are you presently planning not to replace that oil supply?

A I indeed have depended upon and do hope that that oil supply will be, in some manner, replaced. I have serious concerns about it. I talk to the fuel supply people quite often concerning their efforts to replace it.

Q Now, are you stating right now that you will be unable to replace that oil supply.

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A No.

Q And is that, in your planning process, and planning being done to replace that oil supply?

A I have testified that capacity in the production available in my exhibits.

Q And Imperial Oil Company is not the only oil company from whom you are capable of purchasing, isn't that right?

A That is correct.

Q And Canada is not the only place you can get oil?

A (Pause.)

Q Isn't that right, Mr. Heins?

A I hope that's correct.

Q Well, you'd agree with me, wouldn't you?

A I hope that's correct.

Q You hope that's correct. Okay.

Q Mr. Heins, you testified with respect to a couple of exhibits -- I believe it was 11 and 12 -- that the reliability factors used were the actual or projected reliability factors?

A No. I testified regarding the preparation of my testimony that the availability figures used in the calculations were historic availability numbers.

Q Which calculations, Mr. Heins? Which exhibits used the historic numbers? All of them?

A In all cases where the operation of generation has an effect on the historic -- the current record of availability for generation.

Q That wasn't my question.

In each exhibit that's appended to your testimony, if a computer run was used regarding reliability, was it always the historic?

MS. BARCELMAN: Objection. That question is argumentative. It's already been asked and answered.

CHAIRMAN COURT: Overruled.

THE WITNESS: In those exhibits where the operation of generation goes into the numbers, we did use the current availability.

BY MR. CHERRY:

Q Have you finished your answer, Mr. Heins?

A I think so.

MR. CHERRY: Mr. Chairman, I move to direct the witness to answer my question. My question was:

In each exhibit where reliability or availability figures were used, whatever the purpose of the exhibit, was Mr. Heins always consistent in using historic figures?

That's my question.

MS. BARCELMAN: Would you like a copy of your testimony, Mr. Heins?

THE WITNESS: Yes, that might help.

MS. BARTLEMAN
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MS. BARTLEMAN: I am handing you exhibits 11, 12, 13, and 14 as reviewed, and 15.

(Handing documents to the Witness.)

CHAIRMAN COUFAL: Do you understand, or do you remember the question now, Mr. Cherry?

THE WITNESS: Yes, Mr. Chairman.

CHAIRMAN COUFAL: All right.

Will you answer it, please?

THE WITNESS: Mr. Cherry, in response to your question, the answer is yes.

BY MR. CHERRY:

Q So that it is your testimony in the production cost exhibit, that in the production cost computer runs one of the inputs to that, to the extent of its reliability, was historic reliability figures, and not projected reliability figures.

Is that correct?

A The current -- yes, the current historic figures are used in those.

Q And you never used in your production cost runs any projected reliability figures?

MS. BARTLEMAN: Objection.

Mr. Cherry is talking about projected reliability figures. I think the witness has testified to something else.

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CHESTERMAN COUFRE: Are you confused about historical projected reliability?

MS. BARTHELMAN: I don't mean historical, I mean projected.

THE WITNESS: I may have slipped into reliability. We started out talking about availability. I judged current historic availabilities in these exhibits where appropriate.

We have done computer runs with what we have described, projected availabilities. They were not used in the preparation, in the facts behind my testimony.

BY MR. CHERRY:

Q Any of the exhibits?

In other words you are telling us that the production cost information in your testimony -- you know which exhibits I am talking about, don't you?

A Yes.

Q Would you identify those that deal with --

A Those exhibits that you are talking about I believe are 13, 14 and 15.

To the very best of my memory, we used current availabilities in the preparation of the data in those exhibits.

Q And if we examine the computer runs, if the input to those computer runs were other than what you said, what would

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your answer be than, Mr. Heins?

A If the input to those computer runs that backup those documents were other than the current availabilities, I would have to say I didn't remember correctly.

Q Okay.

Now, Mr. Heins, is it your testimony based upon your experience as a planner, that if Consumers Power Company does not get unit 2 on line in March 1981, it will have serious adverse consequences to serving customers on its own system?

MS. BARBELMAN: Objection, Mr. Chairman.

There is no redirect on that issue.

CHAIRMAN COUFAL: Yes, that is right.

I think that is right, Mr. Cherry.

MR. CHERRY: Well he testified about the need for the Midland plant in '81. That they are going to sell them to the cooperatives, that they are going to sell them to Detroit Edison, et cetera.

Now I want to deal with that '81, '83 position with respect to his system.

CHAIRMAN COUFAL: Dr. Leads just overruled me.

Go ahead, Mr. Cherry.

BY MR. CHERRY:

Q Mr. Heins?

A Would you repeat the question, please?

Q Yes.

Is it your testimony based upon your experience, that with respect to the servicing of Consumers system for its customers, that if the Midland Plant No. 2 is not on line by March 1981, those customers -- and I am talking about your customers in your territory and service system -- you know who I mean now, the ones that pay you residential, commercial and other classes of customers in your service system, that your system will suffer serious adverse consequences?

MS. BARTELMAN: Objection.

MR. CHERRY: It has already been overruled.

MS. BARTELMAN: You asked a different question.

Mr. Heins has not testified regarding the customers in the system, and particularly, certainly he hasn't talked about this on redirect.

MR. CHERRY: Mr. Chairman, we are dealing with Consumers Power Company needs in the 1981-83 period. This man is their energy planner.

I am asking him if he believes --

CHAIRMAN COUFAL: That's all right.

But address the question whether or not it was addressed on redirect.

MR. CHERRY: Yes it was because he is talking about Consumers' Power Company's needs in '81, '82. Part of those needs have to do with their own service system.

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Clearly he isn't saying he is going to sell to the coops if he doesn't have enough in his own service system. He is not going to sell to the coops if he doesn't need it in the service system.

CHAIRMAN COUFAL: All right, you may answer, Mr. Heins.

Do you remember the question?

BY MR. CHERRY:

Q Mr. Heins, the question is very simple.

Looking at your own customers in your own service systems territory, where you are obligated to provide electricity, is it your testimony that that system and those customers will suffer serious consequences in your judgment, if the Midland No. 2 unit is not on line by March 1981?

A I have very serious concern that my customers will suffer extreme consequences in those periods if we do not get Midland on line.

Q Now you are not talking about the coops now, are you?

A I was responding.

I have concern for them also.

Q No, no.

But I am not talking about them.

A In response to your question, I have very serious concern about the electric service that we will be able to

our needs of energy in our electric system.

Q Is it in your testimony then, that if you just look at your reserve requirements for your own system, the ones that you have a serious concern for in June of '68, without Midland, all of your reserves fall below your adequate 20 percent?

MS. BARTELMAN: Objection, Mr. Chairman.

Mr. Heins never said anything about that.

MR. CHERRY: Well I assume if he tells me that adequacy is 20 percent reserve, and he now has serious question that that reserve level will fall below 20 percent --

CHAIRMAN COUFAL: The testimony with regard to 20 percent reserve, of course, comes from days ago, Ms. Bartelman.

MS. BARTELMAN: Well he is varying the questions a lot, Mr. Chairman. This is not what Mr. Heins has testified to in any event.

CHAIRMAN COUFAL: Do you have any problem with the question, Mr. Heins?

THE WITNESS: I think I understand the question.

CHAIRMAN COUFAL: Do you have any problem with making any assumption that you feel is not proper?

THE WITNESS: No, if I am allowed to state my answer fully.

CHAIRMAN COUFAL: All right.

Go ahead.

THE WITNESS: In 1961, based upon my testimony we have 23.7 percent reserve if Palisades is in service.

I have stated today that the difference between our installed reserves and 50 to 60 percent required reserve to achieve our reliability criteria must be made up of purchased capacity and energy. I have stated today that in light of the uncertainties that appear for the future, and in light of the declining reserve levels we anticipate on the SCAR systems, that I have serious concern about the availability of purchase capacity and energy.

At this point in time, I am not ready to recommend to my management that we change our target for reserve planning from 30 percent.

BY MR. CHERRY:

Q Okay.

Mr. Hains, if we assume that Palisades will be available to operate at 728 megawatts electrical, and we assume that there will be no sales to cooperatives, and we assume that Dow Chemical's demand for electricity in 1971 is 175 megawatts, if all those are true, would you still have serious concern for the customers in your territory?

MR. HANFROW: I have to object to that question for the inclusion of Palisades. And I make a technical objection.

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You can overrule us, Mr. Chairman, but in view of your comments this morning, I am going to have to object to the inclusion of Palisades.

CHAIRMAN COOPER: Overruled.

THE WITNESS: Mr. Cherry, with those assumptions, what was your question?

BY MR. CHERRY:

Q . Would you then have serious concern for your customers in your service territory?

That is, the residential, commercial, industrial customers in that territory, if Midland were not on line by March 1981, Midland Unit 2, given the assumptions I have just made.

A If those assumptions were true, that which I calculate to be approximately a net additional capacity of -- and Dow, you meant to assume the Dow load was not served by us?

Q Was only served to the extent of 175 megawatts.

A Oh, that was only served to the extent of 175 megawatts.

Okay. I would make that sum of additional capacity that would be available in my system, 269 megawatts in 1981. That would amount to about 5 percent of my anticipated peak load in 1981.

That would increase my reserve level by about

ms 5 percent, making 27.7 percent reserve if my addition is correct. And I think it is very close.

The loss of an oil supply, of the oil supply to 1586 megawatts of our oil-fired capacity Kuhn and Wheelock, would wipe out my reserve completely.

Q Do you seriously believe that you are not going to replace that oil?

A I don't know, Mr. Chakry.

Q Okay.

But your testimony is with those assumptions, and at 27 percent reserve, that you are seriously concerned because of the oil problem, about serving your customers.

Is that your testimony?

A With 27 percent reserve I am still concerned.

Remember, I have to get the 50 to 55 percent over the ties, after having installed reserve at some level. I am seriously concerned about the availability of my ability to purchase capacity and energy.

My confidence in being able to serve the load would increase somewhat with this additional 5 percent reserve, because I have pointed out before, I am concerned about the fuel supply, the problems we are encountering in meeting environmental regulations. There are several things that do not enable me to say we will meet our load in those years.

10 Q Well if that were true, Mr. Heins, why didn't you, in your original testimony, say that you would like to have higher than the 20 percent reserve. You knew about the oil problems in it.

A With the uncertainties existing, as I told you before, I am still not ready to recommend to my management that we exceed the 20 percent reserve level.

Q Mr. Heins, if Midland goes on line in 1981, and your 1500 megawatt plant is wiped out with oil, what is your reserve?

A My reserve with Midland on and losing 1586 megawatts?

Q Yes.

A It is very low.

The reserve would be approximately 6 percent installed generation reserve.

Q Well why did you testify that you are concerned about the 20 percent reserve with Midland on line because the oil will wipe out 14 percent of that reserve?

MS. BARTELMAN: Objection, Mr. Chairman.

He didn't testify that anything was wiping out 14 percent of the reserve.

BY MR. CHERRY:

Q Mr. Heins, as I understand your testimony that with Midland on line, but with no oil, they will have a net 6 percent reserve of peak on your whole system. Is that your

testimony?

A If I made the calculation correctly here, it looks like 6 percent reserve to me.

Q And what percent would you have with Midland on line and the oil companies on line?

A With Midland on line, as stated in my testimony, it is 22.7 percent, and Kern Wheedock running.

Q And that makes you feel comfortable?

A 22.7 percent is the target that I had deemed satisfactory to plan for at this time for that year.

Q Okay.

So if I understand your testimony, if Midland is on line and you have 22.7 percent, you are not concerned about the wipeout of Kern Wheedock since you have testified that you would like to have that 22.7 with Midland --

A I am concerned --

Q -- but if Midland isn't on line and Palisades is at 786 and you don't sell to the Coops and you don't sell to Dow any more than 175 megawatts, and you have a 27 percent reserve, then your concern about the oil come into play, right?

The higher reserve, the more concerned you are about the oil, does that make sense?

MS. BARTELMAN: Objection, Mr. Chairman.

He has asked about four questions on there.

He also cut off the witness from answering.

CHIEFMAN COURTAL: Actually, I think the witness interrupted him.

But you do have a lot of -- that is a complicated question to respond to.

MR. GIBSON: I don't think I have anything else, Mr. Chairman.

CHIEFMAN COURTAL: All right.

Dr. Leeds has some questions.

EXAMINATION BY THE BOARD

BY DR. LEIDS:

Q Let me ask you a couple of questions about the Luddington comments you made. I don't completely understand everything I think I need to understand about Luddington.

Is Luddington on the eastern side or the western side of the peninsula?

Isn't it on one of the lakes?

A Luddington is on the western side of the state on Lake Michigan, near Luddington, Michigan.

Q About halfway up or something like that?

A Yes.

Q And how is it tied into your system?

A There are five 345 kv lines that connect Luddington, integrate it into the system.

Q So Luddington's power is integrated into the system?

A Yes.

Q Is electricity a fungible quantity?

You can't tell whether it came from Luddington or anywhere else once it is in the system?

A No, sir.

Q And how do you control the sale of energy and capacity sales from Luddington to some other utility?

A The load frequency control system permits this.

The Consumers system is set to generate X megawatts more than its load requires, and X being the amount of the sale.

The Commonwealth Edison Company system in Chicago will establish a setting on their control system that is deficient by that amount.

The exact kilowatts that we produce in Michigan probably aren't the ones that come to Commonwealth Edison. But the integrated system rearrange their flows to accommodate that sale from Michigan to Illinois.

Q I have no problem with the fact that there is a flow of energy between your system and Commonwealth Edison. But I have -- I don't see how you can assure me that it is not energy saved from Cambell No. 1 instead of energy from Luddington. When you say capacity of -- I thought you said -- excuse me. Let me explain what my concern is.

I thought you said the contract prevented you

from selling some of the capacity of Luddington, and it had to be delivered to Toledo Edison -- not Toledo -- Consolidated Edison.

3 Commonwealth Edison.

6 Commonwealth. I got all these Edisons mixed up.

2 I read from this to avoid making an error.

I will read again.

"Consumers shall not make Commonwealth's share of the plant generating capability or any water stored in the upper reservoir for Commonwealth's account, available to anyone other than Commonwealth at any time."

The meaning of that under the technique today of control of electric systems is that the capability of Luddington -- and there is a cost associated with the generation of energy of Luddington -- before the transfer of energy from our system to the Commonwealth Edison system, that will be the charges utilized in that transaction.

Energy of Campbell at that time -- Campbell 1 and 2 would have a different price.

Now indeed, I don't know where the energy comes from that goes to Commonwealth Edison, but we do generate on the system more than we need to serve our load. So that our system is exporting at its boundaries, an amount equivalent to the take that is specified for Commonwealth Edison.

Q And you just charge them Commonwealth Edison prices -- Luddington prices?

A Indeed, in this case, since they in effect have a temporary, 10, 15 year undivided interest in the plant, and they provide the energy for operating that plant up.

We do not have to charge them for that energy. They are paying us for their share of the ownership of that plant.

The example I used would indicate in a transaction where they bought a particular unit -- output from a particular unit. In this case we sent to them an amount equal in megawatts to their buy. It really may not come from Luddington.

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Q So you give them the losses free?

A No, the losses -- we charge for the losses, that's correct.

DR. LEBBS: That's all I have. Thank you.

CHAIRMAN COUFAL: Miss Bartleman?

MS. BARTLEMAN: I need just one more, please.

MR. CHERRY: Mr. Chairman, I don't know that there's any provision for redirect, recross, re-redirect, and I don't think it's fair.

I ask that it be cut off now. I ask the Applicant who his next witness is.

CHAIRMAN COUFAL: There isn't any provision either for or against it, Mr. Cherry. I customarily allow it for a while.

MR. RENFROW: We have a question. It will only be to clarify the record, Mr. Chairman. Could we have a few minutes?

CHAIRMAN COUFAL: Go ahead and figure out what you need to do.

MR. CHERRY: Mr. Renfrow, could I just ask you this? Is this your last witness?

MR. RENFROW: That's a difficult question, Mr. Cherry. I'm not sure.

MR. CHERRY: You've tendered some testimony that I'm going to argue is rebuttal. But in connection with the

prepared testimony of people who have already testified, do you have any other people who have already testified earlier on Christian testimony that you're going to put on for testimony?

MR. HOFFMAN: No. I think there's nobody else that we've indicated before who's going to come back for redirect.

MR. CHERRY: I take it we can start with the Staff tomorrow morning.

MR. HOFFMAN: Mr. Chairman, we'd like to know where we stand in the proceeding. We'd like to go with the Staff witnesses now. We've got our people here, we've had them here all week.

MR. CHERRY: I have no objection to that.

MR. HOFFMAN: If at all possible, we can have Mr. Croshaw come in and put him on the stand now.

We also have another problem. Perhaps Mr. Cherry can assist us with this.

We have a number of people here to testify. As I understand it, we're going to go tomorrow, and then we're going to stop and we're coming back on Tuesday.

If we can have some idea from Mr. Cherry of how much cross-examination he's going to have, we can let some of those people go now and not hold them over sitting around here tomorrow.

CHIEF CLERK: We're going to stop at noon.

tomorrow, if that helps.

MR. HOEFLING: That helps me.

(Laughter.)

MR. CHERBY: Mr. Chairman, if I don't have any cross-examination, will we then reach the question of Dr. Timm's testimony next week? You mean you'll just adjourn next week?

CHAIRMAN COUFAL: Yes.

MR. CHERBY: Why, if you're going to have the week available? Why would you just take a week out? That just lets this plant get built more and more. I don't understand that at all.

CHAIRMAN COUFAL: Because the planning was to give them five clear days to prepare. If you do that, you don't get him until the tail end of the week and you can't finish him.

We've got to take the next two weeks off, anyway.

MR. HOEFLING: Mr. Chairman, I think I mentioned yesterday that one possible scenario is, if we finish today, and Applicant has indicated he needs five days, we've indicated we need five days --

DR. LEEDS: Let's not rehash that, sir.

MR. HOEFLING: Okay.

DR. LEEDS: We've talked about that so many hours.

We've made a ruling, and as far as this Board member is

concerned it's ruled. That's it.

MR. HOEFFLING: I was just responding to what was said.

DR. REEDS: You don't need to as far as I'm concerned.

MR. CHERRY: Mr. Chairman, if that's true, and there's no possibility of picking up any time, I was up pretty late last night and I'd like to adjourn. As a matter of fact, I didn't have any sleep at all.

CHAIRMAN COUFAL: I know that's true. I sympathize with you. I think that's a reasonable request.

Do you have one question?

MR. REMFROW: I'll tell you what: It is to clarify something. I can understand Mr. Cherry's request. If we just have the opportunity to ask only one clarifying question -- it will only be to correct the record if we do that.

But before we go, since I've got witnesses here, Mr. Chairman, I've got from the legal point of view at this time to make a proffer of the rest of my direct testimony.

CHAIRMAN COUFAL: Okay, you can make your offer of proof whenever you want.

MR. REMFROW: I'd like to do it now.

CHAIRMAN COUFAL: That's fine, but there's no point in the rest of us sitting here listening to you dictate

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in the record.

MR. RENFROW: There is, because I need a ruling from this Board as to the witnesses. I can do it very shortly.

I would like to proffer the witnesses that I've already tendered for testimony on steam generator tubes, the questions asked by Mr. Cherry and those appearing in the transcript.

CHAIRMAN COUFAL: What's the second one? Steam generator tubes?

MR. RENFROW: Steam generator tubes.

CHAIRMAN COUFAL: And then what?

MR. RENFROW: That's where I am right now.

We proffer to you what we would supply as a technical basis for Mr. Heins' decision on degradation and the possibility of taking the unit out in '81 and '82 and the construction schedule for that unit.

I have not proffered it for the safety of the Palisades Plant, only to provide the technical assumptions that were used by Mr. Heins. Those questions were brought up by Mr. Cherry in his cross-examination of Mr. Heins.

They were allowed in over my objections; therefore, in response to redirect I would like to offer those people who can supply the technical basis for Mr. Heins' planning.

CHAIRMAN COUFAL: All right. We're going to

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handle it like we said this morning, Mr. Renfrow. You can make your offer of proof right now, and we'll overrule it with regard to those witnesses.

Now, on the magic day, which is now February 28, you can do what you like; but with regard to offering that again, we'll handle that then.

MR. RENFROW: Fine.

CHAIRMAN COUFAL: If you want to make an offer of proof right now, have at it; but we're going to overrule it.

MR. RENFROW: Fine. I'll just proffer to you what their testimony would show. It's already done. I take you that you overruled it.

In that regard, then -- and I'll hurry, Mr. Cherry -- I'd like you to strike pages 1671 to 1674, 1696 to 1700, 1749 to 1754, 1829 to 1835, 1848 to 1854, and 1857, because those are all areas in which cross-examination was had in this matter. Therefore, if your ruling on my proffer is held, I move that you strike those from the transcript.

CHAIRMAN COUFAL: We'll take the motion under advisement.

MR. RENFROW: Thank you, Mr. Chairman.

MR. CHERRY: I oppose that motion.

CHAIRMAN COUFAL: I'm sure you do, Mr. Cherry, and I understand it.

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MR. RENFROW: I have two other proffers to make.

In the course of cross-examining Mr. Keeley, those questions raised financial qualifications. I'm prepared at this time to put on Mr. Borris. Mr. Borris will testify as to the company's ability to finance the construction set out by Mr. Keeley for the remainder of this year and through 1982 and -- 1981 and 1982, which were the target dates of the project.

That subject was raised by Mr. Cherry in cross-examination. This Board overruled my objections to it and allowed the questions to go in. I would tender Mr. Borris on that issue to discuss financial qualifications.

CHAIRMAN COUFAL: All right.

We overrule your offer of proof as of now. Re-submit it on February 28, if you want to.

MR. RENFROW: Fine.

My last offer of proof goes to the testimony of the Dow alternative and the backup material on the coal cost prices.

Mr. Chairman, that material was passed out to the parties and to the Board right after the luncheon break. It will establish the actual cost of the Dow alternative and the support for the coal prices used by the Applicant in its alternative cases.

I would proffer that testimony at this time by

Mr. Remondini and Mr. Williams.

CHAIRMAN COUNSEL: The same ruling will apply to each, and the same invitation, Mr. Remondini.

MR. REMONDI: Thank you, Mr. Chairman.

MR. CHERRY: Mr. Chairman, I'd just like to state for the record that your ruling this morning was not contingent upon any testimony being produced, so I take with some reservation why the Board would even be moving on that motion to strike cross-examination.

I think it's only fair you deny it now, because you made your ruling this morning with respect to rebuttal. That was your ruling. I think it was a good one. But you didn't condition it upon any cross-examination. I don't think it's fair that you should now suggest on the record that your decision had some condition to it.

CHAIRMAN COUNSEL: I want to look at the pages that he mentioned, Mr. Cherry.

MR. CHERRY: Okay.

CHAIRMAN COUNSEL: As I said, we're going to quit at noon tomorrow -- oh, I'm sorry. Do you have a question, Mr. Remondini?

MR. REMONDI: No. We were going to quit that and let everybody get out of here. I said if we did it would be one clarifying matter and we could take care of it.

MR. CHERRY: No, just a minute. I would like to

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conclude the Applicant's case today.

CHAIRMAN COURAL: Is there is a question of this witness?

MR. CHERRY: That's concluded it today.

CHAIRMAN COURAL: I agree with that. If it's a question of this witness, let's take the time to do it.

MR. RENFROW: Give me a minute, then.

(Pause.)

MR. CHERRY: Mr. Chairman, I'm going to object to any conferences for this one clarifying question. If there is a question, I don't think there has to be a conference between the witness and Mr. Renfrow.

Let him ask the question. If he can't get an answer, let's go home. If he can, he can. But let it be the witness' answer, not Mr. Renfrow saying, "Look, I'm going to ask you this and you say this."

We've had enough of that with Miss Barthman. We didn't get very far, either.

CHAIRMAN COURAL: I think that's a fair request. If you've got a question, Mr. Renfrow, put it.

MR. RENFROW: Mr. Chairman, with that ruling, fine; we'll leave the record as it is.

CHAIRMAN COURAL: All right.

MR. CHERRY: Do I understand that outside of the offer of proof that the Applicant is now resting its case?

Mr. Chairman, I'd like to know that.

MR. HENDE: You mean the direct case rather than the complete case?

MR. CHERRY: Right, the direct case; that's right.

CHAIRMAN COWLEY: Do we understand you've rested or not?

MR. RENNISON: With the Court's rulings on my proffer of proof, we have no other witnesses to offer at this time, Mr. Chairman.

MR. CHERRY: And your direct case other than the ones that you've just mentioned? In other words, you've now rested in your direct case?

MR. RENNISON: The proffer of proof. Mr. Cherry, we have no other witnesses to offer. We've made our proffer of proof; we've put our witnesses up; we have no other witnesses to proffer for our direct case at this time.

MR. CHERRY: Mr. Chairman, he says for his direct case at this time.

CHAIRMAN COWLEY: We've put him in this trap, Mr. Cherry. We've offered him a chance to have some of these people get in on this February 23rd arrangement.

MR. CHERRY: With good cause shown. That was your ruling as well.

CHAIRMAN COWLEY: He obviously is reluctant to

Mr. Chairman, I'd like to know that.

MR. LEBDS: You mean the direct case rather than the complete case?

MR. CHERRY: Right, the direct case; that's right.

CHAIRMAN COWPAL: Do we understand you've rested or not?

MR. REMFROW: With the Board's rulings on my proffer of proof, we have no other witnesses to offer at this time, Mr. Chairman.

MR. CHERRY: And your direct case other than the ones that you've just mentioned? In other words, you've now rested in your direct case?

MR. REMFROW: The proffer of proof, Mr. Cherry, we have no other witnesses to offer. We've made our proffer of proof; we've put our witnesses up; we have no other witnesses to proffer for our direct case at this time.

MR. CHERRY: Mr. Chairman, he says for his direct case at this time.

CHAIRMAN COWPAL: We've put him in this trap, Mr. Cherry. We've offered him a chance to have some of these people get in on this February 23rd arrangement.

MR. CHERRY: With good cause shown. That was your ruling as well.

CHAIRMAN COWPAL: He obviously is reluctant to

say he rests for that reason, I presume.

MR. CHERRY: No, no. I appreciate that.

Aside from the offer he has made, I take it he has concluded his direct case, period, not "at this time."

I'm not trying to trick you. I just want to know if what you say is you're going to think about it over the evening and you may come up with another witness tomorrow.

MR. REMFROW: As far as I know, Mr. Cherry, I have no other witnesses.

MR. CHERRY: So you have rested, other than your desire to get in the information that the Board overruled?

MR. REMFROW: I have not stated, Mr. Cherry, that I've rested, nor will I waive any rights that I have to this Board's rulings, which I feel are incorrect at this time.

I have no more witnesses to offer on this portion of the case.

MR. CHERRY: It's important. I don't want to stay around. I want to make a motion at the close of the Applicant's case. I'm going to file a brief with findings I've prepared, and I intend it to be seriously taken by the Board.

All I want to know is whether or not he's rested. He's now said he's rested, although --

MR. REMFROW: I've not said I've rested, Mr. Chairman. I have not.

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MR. CHERRY: I'll just inform the Board that tomorrow morning before the beginning of the Staff's case I want to deal with the Applicant's burden of proof.

MR. BRENNER: Mr. Chairman, I'd like to address that at this time. The proceeding keeps getting sidetracked with motions that get argued in between evidence that's taken. I think that if Mr. Cherry has a motion he can file it in writing.

We've got Staff people who have been losing time and have been sitting around here, and the impact on the Staff workload is getting serious. I'm not saying it's so serious that they shouldn't be here for the proceeding. They're going to be here. But they've been here, and we'd like to get on with those witnesses first thing in the morning and keep going.

CHAIRMAN COUFAL: Mr. Cherry said -- and I'm relying on what he said -- that he was going to make a motion and file a brief.

MR. CHERRY: But I'm going to argue, too.

CHAIRMAN COUFAL: You're not going to argue very long in the morning, Mr. Cherry.

MR. CHERRY: When I would like some time, because, Mr. Chairman, I have the right, because the Applicant has the burden of proof, to stand on this record and get a ruling on it before I go to the expense or the trouble of

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putting in any case.

If the Applicant has not carried its burden of proof as of this juncture, and the Board is not convinced that it is, whether you'd like to see him have it or not you've got to suspend the license. It seems to me that that's the record you have now. You've got the Applicant's burden of proof, and we have to deal with it.

DR. LEEDS: Mr. Cherry, if you're going to file a brief tomorrow, I don't think we can read it in a couple of hours and give it the careful consideration that I want to give it or that you want us to give it.

MR. CHERRY: Okay. I'll take that into consideration.

DR. LEEDS: I just don't see how we can.

MR. CHERRY: I'll take it into consideration,

Dr. Leeds.

DR. LEEDS: Thank you.

CHAIRMAN COUFAL: We'll consider your motion when you make it as of the end of the day today.

MR. CHERRY: Very well.

MR. RENFROW: It's clear on the record as to our position with regard to this Board's ruling.

CHAIRMAN COUFAL: I didn't hear that, Mr. Renfrow.

MR. RENFROW: It's clear on the record

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CHAIRMAN COUFAL: I didn't hear that, Mr. Renfrow.

MR. RENFROW: It's clear on the record

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what is the Licensee's position with regard to the Board's ruling.

CHAIRMAN COUFAL: If we start at 9:00 o'clock -- and I'm asking you particularly, Mr. Cherry -- are you going to be available at 9:00?

MR. CHERRY: I'll try very hard.

CHAIRMAN COUFAL: All right.

Is that agreeable with everybody else? Does anyone else have a reason not to be here at that time?

MR. BRENNER: No, sir. The earlier the better in the Staff's view. We're quite concerned with getting on with our case.

CHAIRMAN COUFAL: All right. 9:00 o'clock.

(Whereupon, at 5:45 p.m., the hearing in the above-entitled matter was recessed, to reconvene on Friday, 11 February 1977, at 9:00 a.m.)

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Q No, I want just now, when Miss Merrill was asked the kind you questioned, you mentioned as to what Detroit Edison's reserves were at various periods of time.

A Yes, I did. I did not mention as to what the requirements were.

Q Well, what I want to know is what documents did you look at to determine the validity of Detroit Edison's reserves which you state at a given point in a given year?

A The numbers that I stated earlier concerning the installed reserves anticipated for Detroit Edison in those years was a printed sheet listing the loads, any additions, and expected reserves for the two systems covering the period involved.

Q Prepared by Detroit Edison?

A The information was furnished to us by Detroit Edison. The sheet was prepared by Consumers Power Company.

Q Okay.

Can you tell me how Detroit Edison computed that figure so I can determine whether it has any validity or not?

A Detroit Edison calculates that figure by taking the anticipated sum of their installed generation for the year in question, subtracting from that any known reductions that will occur that year, subtracting from that remainder any summer peakings that will occur, then subtracting from that remainder the projected peak load for that year, then