

Regulatory Docket File



NUCLEAR REGULATORY COMMISSION



IN THE MATTER OF:

TOLEDO EDISON COMPANY AND
CLEVELAND ELECTRIC ILLUMINATING CO.

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

and

CLEVELAND ELECTRIC ILLUMINATING CO.,
et. al.

(Perry Nuclear Power Plant, Units
1 and 2)

Docket Nos.

50-346A

50-500A

50-501A

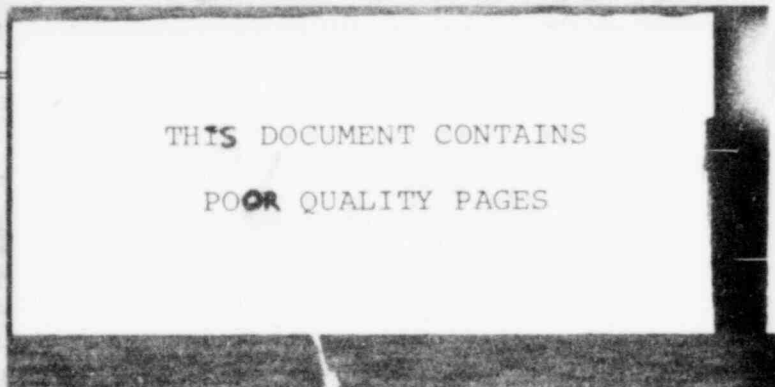
50-440A

50-441A

Place - Silver Spring, Maryland

Date - 10 December 1975

Pages 1813 - 1960



THIS DOCUMENT CONTAINS

POOR QUALITY PAGES

Telephone:
(Code 202) 547-6222

ACE - FEDERAL REPORTERS, INC.

Official Reporters

8002 260 811

415 Second Street, N.E.
Washington, D. C. 20002

NATIONWIDE COVERAGE

13799

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-----X	
In the Matter of:	:
	:
	: Bucket Nos.
TOLEDO EDISON COMPANY and	:
CLEVELAND ELECTRIC ILLUMINATING CO.	: 50-342H
	: 50-500A
(Davis-Besse Nuclear Power Station,	: 50-601A
Units 1, 2 and 3)	:
	:
and	:
	:
CLEVELAND ELECTRIC ILLUMINATING CO.	: 50-440A
et. al.	: 50-441A
	:
(Perry Nuclear Power Plant, Units	:
1 and 2)	:
-----X	

First Floor Hearing Room
7915 Eastern Avenue
Silver Spring, Maryland

Wednesday, 10 December 1975

Hearing in the above-entitled matter was convened,
pursuant to adjournment, at 9:35 a.m.,

BEFORE:

MR. DOUGLAS RIGLER, Chairman

MR. JOHN FRYSLAK, Member

MR. IVAN SMITH, Member

APPEARANCES:

(As heretofore noted.)

C O N T E N T S

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>
Robert McCabe, Jr.		1818
William J. Lyran	1878	
<u>EXHIBITS:</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
Applicants Exhibit 3 (DL) - Document No. D3985	1842	1842
Applicants Exhibit 4 (DL) - Document No. D3989	1842	1856
Applicants Exhibit 5 (DL) - Document No. D3990	1843	1856
NRC Staff Exhibit 30 - NRC Document No. 400	1887	1387
NRC Staff Exhibit 31 - NRC Document No. 456	1893	1905
NRC Staff Exhibit 32 - NRC Document No. 457	1893	1905
NRC Staff Exhibit 33 - NRC Document No. 401	1905	1912
NRC Staff Exhibit 34 - NRC Document No. 402	1912	1913
NRC Staff Exhibit 35 - NRC Document No. 403	1918	
NRC Staff Exhibit 36 - NRC Document No. 404	1927	1929
NRC Staff Exhibit 37 - NRC Document No. 409	1930	1933
NRC Staff Exhibit 38 - NRC Document No. 406	1934	
NRC Staff Exhibit 39 - NRC Document No. 429	1941	1942

C O N T E N T S (Continued.)

<u>EXHIBITS:</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
NRC Staff Exhibit 40 - NRC Document No. 443	1950	1950
NRC Staff Exhibit 41 - NRC Document No. 438	1952	1952
NRC Staff Exhibit 42 - NRC Document No. 444	1952	<i>23</i>
NRC Staff Exhibit 43 - NRC Document No. 445	1952	

CONFIDENTIAL

CONFIDENTIAL - SECURITY INFORMATION

...the evidence.

...Mr. Chairman, I have a ...

...Mr. Lenny was kind ...

...to take to Ohio Edison and Penn Power the documents ...

...with Mr. Lyren ... said at the time that ...

...he said there was one document not included ...

...the list, designated on Staff's ...

...list as NRC-107, which is a letter ...

...from a Joseph Hearst to Mr. C. O. Stapp.

...he said he wouldn't be able to tell us whether or ...

...until he had a chance ...

...with Mr. Lyren.

...I received a call for me ...

...that Mr. Lenny does not intend to use the document.

...the document to be of great significance to this ...

...the Board's knowledge of the entire situation ...

...the wholesale customer of Ohio Edison. I have ...

...Mr. Lenny off the record if he would give us the ...

...document. He said he would not, and make your application to ...

...the Board. And I'm doing so now. I have never seen the ...

...document. I have no access to it. I believe it is important ...

...preparation of our cross-examination of Mr. Lyren.

bw2

MR. LESSY: The facts that Mr. Berger recounts are essentially accurate. When we turned over a pile of documents to Mr. Berger yesterday morning, we indicated that this might not be complete with the exception of one document we were thinking of including.

When Mr. Lyren arrived late last night, I met with him and looked at the document in detail for the first time and decided that the use of the document for his testimony was not proper for a number of reasons, and that we would use it in all likelihood later on in the proceeding.

I called Mr. Berger then. The issue is whether or not we have an obligation to turn over to Counsel for Ohio Edison a document that will not be used in the direct examination ahead of time. Inasmuch as the Board has -- and our position is we do not desire to do this, unless we are required to do so.

MR. STEVEN BERGER: Just one further comment, your Honor. The Board has indicated on several occasions that they don't want this case tried by surprise. The absence of discovery of Ohio Edison and Penn Power has made problems for us. I know this document is important to our case, and I urge the Board to have Mr. Lessy turn the document over to us.

CHAIRMAN RIGLER: Turn the document over, please, Mr. Lessy.

b73 We have one other preliminary matter to raise on the record with Counsel. That is, yesterday after the Board had made a ruling with respect to the receipt of some evidence, sometimes Counsel attempted to re-argue two and three times, the same ruling, raising different arguments.

Make all of your arguments the first time. When the Board has ruled, if you have an objection or exception, it has been preserved on the record. Go on to something else. Don't continue to argue the same point.

Mr. Lerach, you can proceed.

XX Whereupon,

ROBERT MC CABE, JR.

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

MR. REYNOLDS: Can we go off the record for a minute?

(Discussion off the record.)

MR. LERACH: Mr. Chairman, I have had a document distributed. I would like it marked -- there is a stamp on it to assist people in marking it. It is Applicant's No. 3(DL.) Document number 3965. I suggest we put a "D" in front of that. If we don't, this number will not be unique. I understand documents of the various Applicants, when numbered, were under individually and not consecutively. To keep 3965 unique to the proceeding, I ask that the document number be D-3965.

CHAIWMAN RIGLER: That is acceptable.

CROSS-EXAMINATION (Contd)

BY MR. LERACH:

Q Could you tell the Board who W. M. Lewis and Associates are?

A W. M. Lewis and Associates is a consulting electrical engineering firm from Portsmouth, Ohio, which has been retained by the Borough of Pitcairn as a consulting engineer.

Q They are currently retained?

A They are currently retained.

Q Were they first retained by way of resolution of the Borough Council of Pitcairn, which is produced on page 5 of the document in front of you?

A They were first retained in about 1967, and it was by resolution. I presume that Mr. Lewis' copy of the resolution is correct.

Q Do you recall that Mr. Lewis was retained to do a survey of the Borough's electrical system and assist the Borough in solving whatever problem the Borough believed it had in the area of power supply?

A Mr. Lewis was retained to make a survey of the light system, to point out any problems and make suggestions.

Q Do you recognize Applicant's Exhibit No. 3 (DL) to be a copy of the report that Mr. Lewis submitted to the

Borough of Pitcairn in October of 1967?

A. Yes. This would appear to be the report. It has been sometime since I have had opportunity to review the report itself, but this appears to be that report.

Esl

lmil

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Can you point to anything in the report that could make it appear it is not a copy of the report as actually submitted?

A No, I cannot. There seems to be some marginal notes that I'm sure did not appear in the original report as submitted. On page 9 someone made some notations. I don't know who made those notations, although it looks as though it may have been in the handwriting of George Meyers, who is our borough secretary.

Q Excluding handwritten notations and directing yourself, please, to the typewritten portion of the report, is there anything in it that makes you doubt its authenticity?

A No.

Q Would you please direct your attention to page 19 and tell me whether or not the copy of the document you have is signed?

A Yes, it is.

Q Do you recognize that to be Mr. Lewis' signature?

A It is signed. I'm not really familiar with Mr. Lewis' signature.

Q I would like to direct your attention to certain aspects of the report which we will then put into the record and I want to ask you a series of questions as to what action the Borough of Pitcairn took on the basis of those statements in the report.

2mil 1 Could I direct your attention to page 2 of the
2 report, Mr. McCabe; the first sentence of the penultimate
3 paragraph on page 2 is underlined and reads, "From Table 1 there
4 is prima facie evidence that Pitcairn's generation costs are
5 excessive."

6 A I'm sorry. I was looking at the wrong page.

7 Q Are you with me on page 2?

8 A I'm with you now.

9 Q Do you see the sentence that reads, "From Table 1
10 there is prima facie evidence that Pitcairn's generation
11 costs are excessive"?

12 A Yes.

13 Q I would like you to look at page 5 of the report.
14 I direct your attention to the last paragraph on that page,
15 which reads as follows: "Analyzing Pitcairn's operations
16 indicates that obtaining credit for Pitcairn's installed generat-
17 ing capacity, as part of any purchase-interchange type
18 agreement, is the most feasible method to effect a reduction
19 in bulk power supply costs. This does not render moot the
20 matter of excessive generating costs. The more efficient
21 Pitcairn's generation, the better its bargaining position in
22 negotiating a purchase-interchange type agreement. Without
23 generation Pitcairn would have no status in an interconnection
24 agreement or in holding direct or indirect membership in a
25 power pool, unless it became a party to a joint municipal

3mil 1 generation-transmission system permitting participation by
2 a non-generating member."

3 Subsequent to receipt of this report, Mr. McCabe,
4 did the Borough of Pitcairn have a detailed study of its
5 generating cost performed?

6 A I'm not really sure that I know what you are
7 asking about. Mr. Lewis did additional work for us. There
8 was some analysis in connection with this other
9 generating cost. I do not recall any additional generating
10 cost survey after this survey was made.

11 Q Do you have with you now any additional reports
12 or written material prepared by Mr. Lewis directed to the
13 question of Pitcairn's generating costs?

14 A I do not.

15 Q Are you aware that any are currently in existence
16 in the borough's files or your files?

17 A I'm not.

18 Q Would you please direct your attention to page 14.
19 The paragraph begins, "The first conclusion reached rather
20 quickly is that Pitcairn's generating costs are excessive
21 and should be reduced. There is prima facie indication
22 that these costs can be reduced, but an intelligent evalua-
23 tion cannot be made without further engineering study."

24 Was such a further engineering study made?

25 A I don't remember. It is possible it was. It is
possible it was not. I do not have independent recollection

4mil

1 of that. We had a great deal of work done by Mr. Lewis.
2 I don't recall at that time.

3 Q Can you tell us who at the Borough of Pittsburgh
4 currently would be in a position to tell us whether such a
5 quote "further engineering study" was performed?

6 A Mr. Meyers has custody of the borough's records,
7 including any records in connection with the light plant
8 operation.

9 Q I believe it was shortly after the borough's
10 receipt of the Lewis study that you wrote letters to the
11 various CAPCO companies on December 5, and subsequently had
12 discussions with Duquesne Light regarding purchase of whole-
13 sale power from Duquesne Light.

14 Am I correct about my timing?

15 A You are correct with this exception: We had at
16 least orally, informally discussed the possibility of purchase
17 power with Mr. Merriman to this report. I wrote the letters
18 to the members of the CAPCO pool after this report, which was
19 about the time that the article on the CAPCO pool appeared
20 in the Pittsburgh Press and in the shareholders' quarterly
21 report.

22 Q Do you recall November 20, 1967, writing a letter
23 to Duquesne Light requesting, I think the language you used
24 was an emergency interconnection?

25 A Yes, I do.

5mil

1 Q Let me ask you what you meant by interconnection in
2 that letter. Were you speaking merely of a physical connection
3 to permit the purchase of power, or did you have in mind an
4 arrangement that would involve coordination in terms of
5 economy energy, and maintenance energy exchange between
6 Pitcairn and Duquesne Light?

7 A Let me try to explain what I had in mind. The
8 Borough of Pitcairn was attempting to resolve the problems
9 as it saw its situation as an isolated generating system.
10 One of the major problems which we had was protecting
11 ourselves against the possibility of a double contingency
12 outage. This was a very real and serious problem. We
13 subsequently had difficulties in this area. We
14 were faced with either obtaining some source of wholesale
15 power to help result against this problem or we were faced
16 with adding additional generation, which we
17 did not feel and on the basis of Mr. Lewis' recommendation
18 did not seem to be the most economically logical thing to do.
19 Duquesne Light had indicated to us they would not sell us
20 power. Therefore, we were attempting to resolve this, if
21 possible, by some other route. Duquesne did say they would
22 sell us emergency power.

23 Now if we could make some reasonable arrangement
24 with Duquesne Light whereby we could take power from them
25 on an emergency situation and I understood that in some

6mil 1 utilities this was done on an informal basis where there
2 was just a cut in between the lines, if a real emergency exist-
3 ed, that we could do our planning without the necessity of
4 buying additional generation at that immediate time, which
5 seemed to be economically unwise. For that reason, I wrote
6 the letter November 20, 1967, to Duquesne Light to see what
7 their response would be, and to see what possible arrangement
8 could be made so that my thoughts were very flexible.

9 Q The reason I asked you the question, Mr. McCabe,
10 is, as I have tried to learn about the electric utility
11 industry to prepare for the case, the term interconnection
12 to some people is a term of art that, if you will, includes
13 the concept of not merely a physical connection between the
14 systems, but coordination in the operation of the systems.

15 What I'm trying to understand is what you had in
16 your mind on November 20. Did it extend to the point of
17 coordination between the two systems?

18 A Our desire, and I was not using these words in
19 1967 as words of art. I don't use them today as words of art.
20 My purpose was to attempt to resolve Fitzgairn's problem. In
21 talking with the engineers, they suggested a great many
22 possibilities or at least several possibilities, one of which
23 was interconnection wherein we would take power from Duquesne
24 Light and they would take power from us if the need arose or
25 they had any purpose in doing that. They do do that or they

7mil

1 did it at that time with the Westinghouse Electric operation
2 a few miles down the valley in East Pittsburgh. They do it
3 in Stratford. Our site was not greatly different than
4 theirs. That was one possible alternative which we had in
5 mind.

6 The other alternatives were that we just buy a
7 base load power from them or we make some reasonable arrange-
8 ment for emergency back-up.

9 Q Am I correct that Duquesne did, throughout your
10 negotiations with them, make it clear to you that service
11 under their published tariff known as rate M would be avail-
12 able to you?

13 A I would say that that is a correct statement,
14 but I must say that in my opinion, and in the opinion of
15 those I consulted with, a three-cent kilowatt hourly -- kilo-
16 watt hour rate in 1967 was an absurd rate.

17 Q It was too expensive for you?

18 A I think it was too expensive for anyone. It was
19 substantially higher than their general service rate. It
20 was approximately 10 times their cost of production.

21 Q I understand that. Maybe so. I want to understand
22 your objection to rate M was the price of the service. But
23 there was no doubt in your mind that the service itself would
24 be made available to you?

25 A That's correct.

8mil

1 Q You made a statement --

2 A Let me clarify that. The service would be made
3 available, but they made it perfectly clear that that was to
4 be an emergency service. That was not -- it was never
5 indicated to us, even at that exorbitant rate, that that was
6 for resale. That was on an emergency basis.

7 Q Did you read Duquesne's published tariff rate M in
8 connection with your negotiation with Duquesne?

9 A I'm sure that I did.

10 Q Are you testifying, Mr. McCabe, that you were
11 unaware that you were permitted to resell rate M power,
12 that the borough of Pitcairn was unable to resell power --
13 rate M power to its customers?

14 A It was my understanding that rate M power was not to
15 be used on regular continuing basis, but was an emergency
16 service. We would have the right to resell power if we did
17 take it under rate M.

18 Q Were you aware that other boroughs you mentioned
19 in your direct testimony for long periods of years purchased
20 rate M power from Duquesne Light and resold it to their cus-
21 tomers?

22 A I was aware that some of the boroughs which Duquesne
23 Light purchased had taken power under rate M. It was also
24 my understanding that they couldn't pay the bill under rate M
25 and that the bill was negotiated as part of the purchase

9mil 1 price of their system.

2 Q How do you mean that? That the bill was lowered?
3 Is that your understanding?

4 A That it was adjusted in the purchase price.
5 The purchase price Duquesne Light Company took credit --
6 Duquesne Light Company took credit for the amounts due under
7 rate M at the time of the acquisition.

8 Q Do you have any personal knowledge as to why those
9 boroughs found themselves unable to pay for the power?

10 A No, I do not.

11 Q Incidentally, so the record is clear, we are
12 talking about the boroughs of Etna, Aspinwall, and
13 Sharpsburg generally?

14 A I'm not sure that all three of them took rate M
15 power.

16 Q Those were the three you had generally in mind
17 when responding to my questions where I used the terms
18 boroughs?

19 A That's correct.

20 Q In explaining your activities in the last part
21 of 1967 on behalf of the borough, you made a statement that --
22 and I'm paraphrasing, I hope, accurately, that one of the
23 alternatives would have been adding additional generation,
24 but that based on Mr. Lewis' report, you found that to be
25 undesirable. Is that a fair summary of what you said?

10mil

1 A That's correct.

2 Q It was based on the Lewis report was the reason
3 why you were reluctant to increase Pitcairn's existing genera-
4 tion?

5 A In part. I won't say that that was the only
6 reason. But that certainly was a major consideration.

7 Q You understood the Lewis report to be taking you
8 away from the direction of adding additional generation and
9 pointing you more in the direction of negotiations with other
10 utilities?

11 A That's correct.

12 Q Can you tell me specifically what steps the
13 Borough of Pitcairn took after October 24, 1967, to reduce the
14 generating costs which Mr. Lewis had described as excessive?

15 A To the best of my recollection we took several
16 steps. One of the problems we felt that the plant personnel
17 was not running our equipment in the most economical
18 fashion. We attempted to have better control over the plant
19 operations so that the, in the machines that they should run
20 at the appropriate time to be most beneficial. We had three
21 dual fuel machines that ran on gas and two machines that ran
22 only on fuel oil. It was cheaper to operate the gas engines
23 and we tried to arrange this so that the operators would
24 turn on and off the machines which would help. I, in
25 conjunction with Mr. Pales and Mr. Meyers, contacted the

llmil

1 Equitable Gas Company to see if it were possible to obtain
2 a more favorable gas rate. We had some negotiations with them
3 on that and discussions about the possibility of an
4 interruptible rate or something which would produce a more
5 advantageous gas rate for us; while Equitable Gas was
6 encouraging in this respect, I do not believe we had any
7 positive results from this area. These are the two areas that
8 come to my mind immediately.

9 I know that we continued to make efforts in our
10 plant operation to make it more economical. Most of these
11 steps would be matters that I wouldn't be as directly familiar
12 with as the operating personnel.

13 Q Was Mr. Lewis involved in helping you to reduce
14 the generating costs?

15 A I can't truthfully answer that. I know that we
16 consulted with him. He was not a regular consultant at that
17 time as he is now. But it is quite possible that he made
18 some recommendations to the operating personnel. I don't
19 know that of my own knowledge.

20 Q Do you recall being present at the deposition of
21 Mr. Lewis January 22, 1969, when he was asked what if anything
22 Pitcairn had done to reduce its generating costs since 1967
23 and he replied under oath, "I know of nothing except one
24 thing. That is based on our recommendation they did go
25 to the gas supplier"?

12mil

1 A I was present at his deposition. And I would
2 presume that his statement is true from his knowledge.

3 Q When you met with Mr. Munsch subsequent to October,
4 1967, and with other representatives of Duquesne Light
5 Company subsequent to 1967, did you inform them that your --
6 that Pitcairn's electrical engineering consultant had informed
7 them that their generating costs were excessive?

8 MR. LESSY: Excuse me. I think if you read the
9 question back, you will see there is a "them" in there instead
10 of "you." If the reporter will read it back.

11 MR. LERACH: I will rephrase it.

12 BY MR. LERACH:

13 Q Subsequent to October, 1967, in your meetings with
14 any of the representatives from Duquesne Light Company, did
15 you ever inform any of those representatives that Pitcairn's
16 electrical engineering consultant had informed Pitcairn
17 that Pitcairn's generating costs were excessive?

18 A I did not, to the best of my recollection, inform
19 any representatives of the Duquesne Light Company of Mr.
20 Lewis' statement in his report that he felt our generating
21 costs were excessive. I do specifically recall in my meeting
22 with Mr. Munsch that Mr. Munsch indicated that we had a
23 different quality of power than the Duquesne Light Company
24 and when I pressed Mr. Munsch as to what he meant, he
25 indicated that our cost of production was greatly in excess

13mil

1 of theirs and it would, therefore, seem to me it was not
2 anything that I could tell them that they were not generally
3 aware of.

4 Q Your impression was that Duquesne Light knew that
5 your costs of generation were in excess of theirs?

6 A They gave me that impression.

7 Q Did you ever tell any of the representatives of
8 Duquesne Light that you met with that Mr. Lewis' report had
9 concluded that generating costs of this magnitude render
10 moot the proverbial argument for interchange agreements
11 and, in our opinion, would preclude Pittcairn's participation
12 in one of the area power pools, which conclusion appears
13 on page 14 of Mr. Lewis' report?

14 A I did not tell any of the representatives of the
15 Duquesne Light Company that Mr. Lewis had made that statement.
16 Let me go on with that because I think that the question left
17 there is misleading. There was no question in my mind that our
18 generating expenses were in excess of Duquesne Light's.
19 There is no question in my mind that under normal circum-
20 stances Duquesne Light would not desire to buy power from us.
21 We are interested in buying power from them. It did appear
22 to me, being a layman in this field, that there might be
23 some advantages to Duquesne Light to take power from us
24 under extreme emergency situations or to give an alternate
25 source of power to facilities in the Monroeville area, which

14mil

1 had to have alternate sources of power. With respect to the
2 area power pool or CAPCO, the information which I had
3 available to me about that pool was from newspaper articles
4 which only discussed building future generation. I was aware
5 that Duquesne Light had interconnection agreements with all
6 of its surrounding utilities and that pooling or interconnec-
7 tion, therefore, did not appear to be the primary purpose of
8 CAPCO pool. When we made application to the CAPCO pool, it
9 was for the purpose of obtaining power. The thought did occur
10 to me if we had a number of units in the CAPCO pool, say
11 2,000 kilowatts, there would be most of the time when we would
12 not require that total amount from -- amount of power which
13 would be available to interchange with the other members
14 of the pool at a price which they would find acceptable.

e2

15
16
17
18
19
20
21
22
23
24
25

EAK:BWL

Q You will excuse me if I probe some of the things there. It was a rather long statement. I want to be sure we understand them. I would assume, based on your awareness that Pitcairn's generating costs were higher than Duquesne's, that you realize there could under no conceivable circumstances be an exchange of economy energy between Duquesne and Pitcairn?

A I'm not absolutely sure what you mean by economy energy. I assumed, and I will have to put it in language I understand, that Duquesne Light would not desire to take power from the Borough of Pitcairn on a regular basis, even if the systems were interconnected, ^{SO} that we could operate our systems in parallel.

Q Were you aware that Mr. Lewis shared that conclusion?

A Yes.

Q I think you have mentioned that one advantage you potentially saw for Duquesne was that the Borough of Pitcairn could use its equipment to start up the Duquesne system from, I think you used the term, "dead start," dead end?

A That is correct.

Q You had in mind the Duquesne system being completely down, generating no electricity and it needs someone to crack the system to get it going?

A That is correct.

Q You are aware that the Duquesne Light system did not

fail in the great northern power blackout?

A Yes, I am.

bw2

Q Can you tell the Board when, in your knowledge, Duquesne Light system has ever had a dead-out?

A The Duquesne system, their total system, to my knowledge, has never had a dead-out. I certainly hope they don't have.

Q So does the company. Were you aware the company had auxiliary equipment on land to provide for just this contingency, to start its system in the case of a dead-out?

A My recollection from the interrogatories answered by the Duquesne Light Company in connection with the anti-trust action was that they had no diesel equipment whatsoever.

Q You do not believe my statement to be an accurate one?

A On the basis of the information supplied to me by the Duquesne Light Company at the time of that lawsuit, I would say your statement was not in accordance with what their answers were at that time.

Q Do you know whether diesel equipment is the only equipment that can start up a system from a dead-out?

A I would assume that it is not the only equipment. My recollection was that they had nothing but steam generation.

Q Did Duquesne ever indicate to you that they felt they believed they were having difficulty serving their

bw3 Monroeville customers?

A They didn't indicate to us that they had difficulty serving their Monroeville customers. I was aware that certain schools and public buildings in Monroeville required an alternate source of power in the event of a power failure. We supplied the school system in Pitcairn. Duquesne Light had an emergency line into that school. It seemed to me the same type of arrangement could be made for the Monroeville School system, where they were the primary source of supply.

Q Are you aware in detail of precisely what kind of emergency power school systems and school buildings, generally need?

A No, I'm not.

Q Subsequent to the receipt of Mr. Lewis' report, in your dealings and discussions with representatives of Duquesne Light Company, did you ever inform him that the Borough of Pitcairn planned to build additional generating capacity on its own system?

A I don't recall informing the Duquesne Light Company that we planned to build additional generation. I don't recall that Duquesne Light Company informed the Borough of Pitcairn about their plans to build additional generation. We did go so far as to take bids for an additional emergency, after the date of this report, when we were making very little apparent progress at any

bw5

interconnection.

Q That was in late 1970, was it not?

A I would say that that is correct.

Q I'm sorry --

A I would say the date was correct. It would be in the Fall of 1970.

Q Do you recall that the Borough Council rejected the bids?

A Yes, I do.

Q That is right about the time that you had a brown-out in the Borough, isn't it?

A That is correct.

Q Why did they reject the bids?

A They rejected the bids, because they thought the prices were too high, and it was not economically feasible to accept them.

MR. LESSY: I wonder if the record could be clarified, if we had explanation by Counsel of what he meant by brown-out? It is a general term. I wonder when you stated your question, when you say the Borough had a brown-out, could you explain what you meant?

MR. LERACH: I thought Mr. McCabe testified on direct that there was a brown-out or difficulty serving the system. Did you have trouble in understanding what I meant by brown-out?

bw6

THE WITNESS: No, we had a double contingency outage in November of 1970 which reduced our generating capacity to somewhere in the neighborhood of 1,000 to 1,100 kw. That was the maximum load we could carry. We asked people to turn the lights off, as a result and turned street lights off.

Did everything we could to save power

MR. LERACH: Thank you. One moment, please.

BY MR. LERACH:

Q What size units was the Borough considering acquiring in terms of kilowatts in November 1970? Do you remember?

A I think it was 2,000 kilowatts. It may have been 2,500. I'm pretty sure it wasn't less than 2,000.

Q During your direct examination by Mr. Lessy he showed you Staff Document Number 44, Staff Exhibit Number 17, which was a memorandum by Mr. Munsch dated February 21, 1968, which summarized a meeting which you had with Mr. Munsch and Mr. Dempler on that day. Do you remember seeing that document?

A Yes, I do.

Q I believe you looked over that document at that time, and I don't recall your having any quarrel with its contents, as far as being an accurate presentation of what was said at that meeting?

UFRPNLG

MR. LESSY: Excuse me. Would the Witness like a copy of the document or not?

bw7

THE WITNESS: It doesn't matter. Mr. Munsch's notes on it appeared to be reasonably accurate. I think at the time of my direct testimony I made some other comment on it. I felt his report was generally accurate.

BY MR. LERACH:

Q During that meeting the name Beaver Valley was apparently mentioned. Do I understand that you simply cited that as an example of a generating facility that perhaps Pitcairn could share in, and you could have used any other name of a generating facility to make the point you were making?

A No. That is not my recollection of the way that matter came up. My recollection is that the Beaver Valley was the part of CAPCO to be built in the Duquesne Light's service area and since the Duquesne Light service area is the closest area to us, that Beaver Valley was obviously the only generating facility that the Borough of Pitcairn would have any direct interest in. Because of the wheeling problems and so on. And my recollection is that CAPCO, Duquesne Light took most of that and took part of another plant which is close to them, so that my thoughts were similar, as I assumed CAPCO's members were to take a portion of the facility located as physically close to

bw8

their operations as possible.

Q I understood from your direct examination that it was not significant in your mind at all in your reference to Beaver Valley that it was a nuclear unit?

A That is correct.

Q Our interest was in obtaining power.

Q You were aware, were you not, of the general terms of the CAPCO memorandum of understanding prior to the time it was delivered to you by Mr. John Kramer of Reid, Smith, Shaw & Clay as evidenced by your testimony in answer to Mr. Berger of the Justice?

A I was aware of the newspaper article which, I believe, appeared in the Pittsburgh Press and the notation or write-up which appeared in, I believe, a quarterly Duquesne report. I believe that might have also been somewhat further amplified in Duquesne's year-end annual report. To the best of my present recollection those were the only sources of information which I had as to CAPCO.

Q Don't you remember Mr. Munsch summarizing the terms of the agreement for you at your February 21, 1968, meeting?

A I recall Mr. Munsch commenting on it. I don't recall, with one possible exception, I didn't recall that he gave any information which had not appeared in the news releases. The only additional piece of information that I recall was

bw9

that he had indicated that the CAPCO companies would be taking the voltage at 345,000 kva and pointed out to me the Borough of Pitcairn didn't have that capability of taking power at 345,000 kva. Not all the CAPCO members had that capacity at that time, it was pointed out, as I recall.

Q Do you recall that subsequent to the February 21 meeting indeed the next day that you wrote a letter to Mr. Munsch, purporting to summarize the meeting?

A I believe that I wrote a letter to him commenting on the meeting. I would not say that my letter purported to summarize in detail. It was a letter commenting on things which were said at the meeting.

ES3

lml 1

MR. LERACH: At this time, I would like to offer into evidence on behalf of Duquesne Light Company, Applicant's Exhibit 3 (DL), the Lewis report.

2

CHAIRMAN RIGLER: Hearing no objection, it will be admitted as Applicant's Exhibit 3 (DL).

3

(The document referred to, heretofore marked Applicant's Exhibit 3 (DL), for identification, was received in evidence.)

4

5

CHAIRMAN RIGLER: I am going to have to take an important telephone call. The Board may continue in my absence. Mr. Smith and Mr. Frysjar will make rulings.

6

7

MR. LERACH: There are now two additional documents that have been distributed. I would like to have those marked now: a February 22, '68, letter from Mr. McCabe to Mr. Munsch. It is document D3989. Its exhibit designation for identification purposes is Applicant's No. 4 (DL).

8

9

(The document referred to was marked Applicant's Exhibit 4 (DL), for identification.)

10

11

MR. LERACH: I would also like to mark Mr. Munsch's letter to Mr. McCabe dated March 4, 1968. That will be document D3990. It would be Applicant's No. 5 (DL).

12

13

XXXX

XXXX

2mil

1

(The document referred to was

2

marked Applicant's Exhibit

3

5 (DL), for identification.)

4

BY MR. LERACH:

5

Q Mr. McCabe, do you recognize Applicant's No. 4 to

6

be the letter you sent to Mr. Munsch on the date indicated

7

and Applicant's No. 5 to be the reply you received on the date

8

indicated?

9

A With the exception of the circulating carbon

10

copiss. I did not send letters to Mr. Flegar, Arthur,

11

Shaffer, et cetera, et cetera. That apparently was an addi-

12

tion to the letter I sent. I'm sure the copy I received

13

from Mr. Munsch did not include the copies to Mr. Flegar,

14

et cetera.

15

Q With the exception of the designation of carbon

16

copies, then, the text of the letters you recognize as being

17

what you sent and what you received?

18

A That's correct.

19

Q Now the February 22 letter, Applicant's No. 4,

20

was sent the day after the meeting you had with Mr. Munsch

21

and Mr. Dempler, which has been memorialized in Mr. Munsch's

22

letter in evidence as Staff Exhibit 15?

23

A That's correct.

24

Q The purpose of the meeting on February 21 was

25

to discuss Pitcairn's request for discussions concerning

3mil 1 potential CAPCO participation by Pitcairn?

2 A That's correct.

3 Q I wish now to distinguish that from your request
4 for things directly from Duquesne Light?

5 A Yes, that's correct.

6 Q You understood during that meeting that
7 Duquesne Light was speaking only for itself and not on
8 behalf of the other participants in CAPCO?

9 A I'm sure Mr. Munsch said that specifically and I
10 have reiterated it in my letter summarizing what I understood
11 he said.

12 Q You have reference to that sentence in the first
13 paragraph reading, "It is my understanding that while you
14 did not speak for all of the members of the power pool that
15 you did speak for Duquesne Light and for Duquesne Light's
16 voice in any decision that the pool would make."

17 A That was my understanding.

18 Q Subsequent to this letter, am I correct that you
19 had no further discussions with Duquesne Light concerning
20 your potential CAPCO participation or concerning any direct
21 relief which might or might not be available from Duquesne
22 Light prior to the filing of the antitrust suit in July, 1968?

23 A That is not correct.

24 Q I'm sorry. Please correct me.

25 A On March 6, 1968, I met with Mr. William F.

4mil 1 Gilfillin and subsequently had correspondence with him in
2 March and April of 1968.

3 Q I stand corrected. That interchange was
4 directed solely to the Duquesne Light Pittcairn dealings
5 and did not deal with CAPCO participation?

6 A That's correct.

7 Q Then it would be correct that subsequent to the
8 February 22, '68, letter there were no more contacts with
9 Duquesne Light directed to the question of Pittcairn's
10 participation in CAPCO?

11 A I would say after their letter of March 4, 1968,
12 I do not at the present recall corresponding or discussing
13 CAPCO with Duquesne Light.

14 Q Subsequent to the February 22 letter on the March
15 4, 1968, letter, you did not write to any of the other CAPCO
16 companies, to determine whether or not they shared Mr.
17 Munsch's views on behalf of Duquesne Light?

18 A That's correct. I think I did write to them on
19 February 22. At least I wrote to them at or about the time
20 I was going to meet with Mr. Munsch and told them I would not
21 pursue any discussions with the other members until I had
22 pursued it with Duquesne Light. After meeting with Mr.
23 Munsch, even though he assured me he didn't speak for the
24 other CAPCO members, I felt that the response was such that
25 contact with the other CAPCO members would be fruitless

Smil 1 and just a useless thing. So I did not pursue it.

2 Q That was your decision?

3 A That was my decision.

4 Q Duquesne Light never said to you, did they, flatly
5 that you -- that Pitcairn under no circumstances could have
6 participation in the CAPCO arrangements?

7 A I don't know that they used your exact verbiage.
8 My impression was crystal clear that Pitcairn was not
9 eligible and would not be admitted to CAPCO.

10 Q Is it not a fact that Mr. Meech and Mr. Dimpler
11 at the February 21 meeting pointed out to you a number of
12 areas that concerned them as to the question of whether
13 or not Pitcairn could contribute anything to the operation of
14 CAPCO?

15 A That's correct.

16 Q And that on the basis of those concerns, they
17 advised you that they still believes it to be an impractical
18 arrangement?

19 A They may have used the language "impractical."

20 Q It was your discussion, though, based on their
21 concerns and saying it was impractical, that you considered
22 that to render further discussion fruitless?

23 A My discussions with them were on the basis that
24 everything I said was responded to in a completely negative
25 response and they made no suggestions as to any way that

6mil

1 problems could be resolved. Their position and attitude
2 was completely negative. I assumed on the basis of that
3 meeting that it would be foolhardy for me to attempt to pursue
4 the matter.

5 Q Well, do you recall that one of the concerns
6 that Mr. Dempler and Mr. Munsch expressed to you was the
7 small size of the Pitcairn generating capability?

8 A Yes.

9 Q And do you recall that during your discussions
10 it was evident that Pitcairn had installed reserves available
11 of approximately 1.3 megawatts?

12 A That would be approximately correct.

13 Q You had about three megawatts of capacity?

14 A That's correct.

15 Q Are you familiar with the FPC reports that the
16 Borough of Pitcairn has filed over a period of years?

17 A I am really not. I'm aware we do file
18 reports with the FPC.

19 Q You have no reason to doubt the accuracy of those
20 reports?

21 A None whatsoever.

22 MR. LERACH: I don't know which Board member to
23 address.

24 MR. FRYSIAK: Address your comments to Mr. Smith.

25 MR. LERACH: Mr. Smith, we had problems with

7mil 1 admissibility of evidence yesterday and I don't want to
2 provoke any further problems other than to ask this question:
3 Will documents that have been filed with regulatory agencies
4 be admitted into evidence without independent verification or
5 authentication?

6 MR. SMITH: Are they "receive" authenticating?

7 MR. LERACH: The documents I had in mind are the
8 yearly reports that the Pitcairn municipal electric system
9 files with the Federal Power Commission. It is known as
10 a power system statement and most, if not all, copies that
11 I have bear a Federal Power Commission "received" stamp.

12 MR. SMITH: I would regard that as "receive"
13 authentication, but I would like to hear from other counsel on
14 that.

15 MR. LESSY: We have no objection to that procedure.

16 MR. MELVIN BERGER: The department would have no
17 objection to that procedure either.

18 MR. HJELMFELT: The city would have no objection
19 to that procedure, although I'm not certain that the
20 statements contained therein are always accurate from the way
21 small cities tend to fill out these forms. As far as it
22 being filed with the FPC and, therefore, authentic, in that
23 regard, I have no objection.

24 MR. LESSY: As long as it is a complete report,
25 I don't think it would be necessary to have the FPC stamp on

Smil 1 it if we had opportunity to look at it. If a stamp were
2 missing, if it were a complete EPC report, I don't think we
3 would object.

4 MR. SMITH: At least stamp and receive
5 authenticating documents are acceptable.

6 MR. LERACH: For a current line of questioning,
7 I think we can agree in early 1968 Pitcairn's installed
8 reserve capacity was approximately 1.3 megawatts?

9 THE WITNESS: Yes, that's correct.

10 BY MR. LERACH:

11 Q Were you informed that at the time you were having
12 these discussions, and this is early 1968, now, that the CAPCO
13 companies had installed capacity of approximately 1,968
14 megawatts?

15 A I don't recall being informed as to the exact
16 size. I was informed that their size was infinitely larger
17 than ours.

18 Q Were you informed that it was Mr. Dempler and Mr.
19 Munsch's view that they did not see how such a very small
20 reserve capacity as Pitcairn's could possibly add to the
21 available installed reserves of the CAPCO companies?

22 A They did take that position, yes.

23 Q Did you ever write to them after that time
24 expressing an intention on the part of the Borough of
25 Pitcairn to add generating capacity to its system?

9mil

1 A No, I did not.

2 Q When I use the figure 1,988 for the CAPCO
3 capacity, I meant to say the reserve capacity. Did you under-
4 stand it that way?

5 A I didn't understand it that way, no. In fact,
6 I believe that '67 and '68 Duquesne Light's peak exceeded
7 their reserves and it was only through interconnection that
8 they were able to meet their peaks. So I wasn't aware that
9 the total CAPCO system had that type of reserve.

10 Q I want to see whether I understand it. It was
11 your understanding that Duquesne was in a deficit generation
12 position, then, at the time you were talking with them?

13 A In certain annual reports that I had read from
14 Duquesne Light, it indicated that their peak generating
15 capacity at that time until they got some of their --
16 until they got Fort Martin on the line, exceeded their
17 production capacity.

18 Q So at the time you were having these discussions
19 you were asking Duquesne to sell power to Pitcairn when it
20 itself was under a deficit generation position?

21 A But it had no difficulty acquiring power from
22 other sources through its interconnection agreements.

23 Q But at the time you were asking Duquesne to sell
24 power to Pitcairn, you were aware that Duquesne was in a
25 deficit generation system in regard to its own system?

10mil

1 A What's correct.

2 Q Did Mr. Deaplow, during your February 21
3 meeting, explain to you difficulties that he saw because
4 of the voltage differentials between the Pittsain Borough's
5 distribution system and the CAPCO company's transmission
6 voltage?

7 A My recollection of that is embraced in my letter.
8 They advised me they weren't interested in having any members
9 of CAPCO who would take power below 345,000 kva. They
10 attempted to clarify that in their letter, but their letter
11 did not represent my recollection of the discussion.

12 Q Did you write back to Mr. Wunsch after his March
13 4, '68, letter to you explaining that his presentation of
14 that item in his letter was incorrect?

15 A I did not feel the difference in understanding
16 had any significant.

17 Q I'm not sure I understand that. You don't feel
18 that his recollection was significantly different from your
19 recollection?

20 A No. No. I felt my recollection of the discussion
21 was correct and in his letter, he has made a slight
22 clarification as to what I said. I didn't notice any point
23 of tremendous significance to the Borough of Pittsain.
24 For that reason, I didn't feel impelled to respond to his
25 letter.

11mil

1 Q I wonder if we could look at Applicant's No. 5 (DL),
2 March 4, 1968, and the second paragraph of that letter.
3 It reads, "In your point two, you state that Mr. Dampier
4 and I said that the pool is only interested in companies
5 that have the capacity to supply "bulk power" at "345,000
6 kva⁴ (volts). Mr. Dampier and I pointed out that the
7 borough has no transmission facilities and that the
8 maximum voltage on the borough system is 2,300 volts
9 and that the disparity between the voltage at which the borough
10 generates and transmits its energy -- generates and
11 distributes its energy and the 345,000 volt transmission
12 facilities of the companies comprising the pool is so
13 great that the joinder of the borough to make available its
14 extremely small reserve would be impracticable.

15 You did not consider that to be of significance,
16 that statement that I read?

17 A I think the difference between saying they weren't
18 interested in people that couldn't take a 345,000 kva and
19 saying that they thought the difference between our system
20 and that transmission voltage made it impractical, I didn't
21 feel it was a significant difference.

22 Q Did you understand the point that was being
23 made in this sentence?

24 A I think I did, Mr. Lerach.

25 Q I'm not sure I do.

12mil 1

2 A My recollection of this correspondence and
3 that meeting was that they told us they weren't interested
4 in anyone who didn't have 345,000 kva ability. Then they
5 attempted, in my opinion, to reduce or nullify the language
6 and say we didn't really say that. I think when they realized
7 that some of the members of CAPCO didn't have 345,000 kva
8 capable and they clarified it by saying what we are really
9 saying is the cost of transforming the power between your
10 system and the 34,000 kva would be too great. Now that
11 was not my understanding at the meeting. They made a
12 clarification on it. In either event it was a great big
13 no as far as I was concerned.

14 Q Were you aware that significant transforming equip-
15 ment would be required to put your system together with the
16 345,000 kva transmission system?

17 A I'm aware that it takes significant transforming
18 equipment to transform 345,000 kva to a line voltage which would
19 be acceptable to the Borough of Pitcairn. I'm also aware
20 that these problems are capable of solution and are not
21 insurmountable.

22 Q I don't see in your letter of February 22, 1968,
23 an offer to pay for such facilities.

24 A How could I offer to pay when I had no idea
25 what the CAPCO arrangement really was and nobody would tell
me or let me see a copy of it.

13mil

1 Q You didn't need to see a copy of it to ask what the
2 cost transforming equipment would be, did you?

3 A I had no knowledge as to who would exactly pay
4 what because I didn't have any access to see the memorandum
5 of understanding.

6 Q Did you write a letter asking who
7 in Duquesne's view would be expected to pay for the
8 transforming equipment. I wrote a letter asking for a copy
9 of memorandum of understanding so we could have our
10 engineers review it and make a reasonable response. That
11 memorandum of understanding was not forthcoming.

12 Q You did not write a letter asking Duquesne to
13 explain to you what type of transforming equipment would be
14 needed or who in Duquesne's view should properly bear the
15 cost of it?

16 A No, I did not.

17 MR. LERACH: May I have just a moment to review
18 a document.

19 MR. SMITZ: I want to remind you it is seven minutes
20 after 11:00.

21 MR. LERACH: In all candor, I don't think it
22 matters when we quit, I'm so far from being finished.
23 I think we ought to let him go because I'm worried he will
24 miss his limousine and I don't want to be blamed for it.

25 Let us do one final thing.

14mil 1

MR. SMITH: How much more time do you think you will need? Half hour?

2

3

MR. LERACH: No, a half hour will clearly not do it.

4

5

MR. SMITH: An hour?

6

7

8

9

MR. LERACH: I honestly doubt it. I'm reacting to what has been done here. With advanced planning over the next couple of weeks or months or before Mr. McCabe comes back, I can shorten it, hopefully.

10

11

12

13

MR. SMITH: We have an offer from an employee of the Board to drive Mr. McCabe to the airport if it becomes necessary. If there is no possibility of you winding up there is no use --

14

15

16

17

18

19

20

21

22

23

24

25

MR. LERACH: I can't possibly finish, sir.

MR. SMITH: I would ask at this time, in releasing Mr. McCabe, that you state what you intend to establish by the balance of your cross-examination if Mr. McCabe returns.

e4

joni

5 1 MR. LERACH: I would be happy to do that outside
2 the hearing with the witness.

3 I would like to offer on behalf of Duquesne Light
4 Company Applicant's Number 4 and Applicant's Number 5 into
5 evidence.

6 MR. LESSY: No objection on behalf of the Staff.

7 MR. MELVIN BERGER: The Department has no
8 objection with the understanding that the copies listed in
9 both of these documents were not on the documents
10 Mr. McCabe sent or received.

11 MR. LERACH: So understood.

12 MR. SMITH: Any other objections?

13 (No response.)

14 It may be received.

xxxxx 15 (Applicant's Exhibits Numbers 4 (DL)
16 and 5 (DL), previously marked for
17 identification, were received
18 into evidence.)

19 MR. SMITH: Can Mr. McCabe be excused now,
20 subject to his later return?

21 Okay, Mr. McCabe, thank you very much. We will
22 see you later.

23 MR. LERACH: Thank you, Mr. McCabe.

24 (Witness temporarily excused.)

25 MR. LERACH: Mr. Smith, my understanding is you

1 wish me to state for the record the areas I intend to
2 examine with the witness.

3 MR. SMITH: Do you understand my purpose for this?
4 You are having an opportunity now of quite an interlude for
5 your cross-examination.

6 MR. LERACH: Yes, sir.

7 MR. SMITH: Normally had it not been for
8 Mr. McCabe's time problem you would have been required to
9 complete your cross-examination. For that reason I want you
10 to state now what you would have done on cross-examination.

11 MR. LERACH: I think I can with the understanding
12 that cross-examination feeds on itself. But I will give you as
13 complete a summary as I can.

14 MR. SMITH: You would be expected to stay within
15 those areas generally.

16 MR. LERACH: I expect to explore in detail with
17 Mr. McCabe the Borough of Pitcairn generating system
18 configuration, the age of the equipment, the capacity of the
19 equipment and some of the difficulties they had with certain
20 of the equipment.

21 MR. SMITH: Let me interrupt for a moment.

22 We will also require counsel to be under
23 protective order and not to communicate to Mr. McCabe this
24 aspect of the hearing.

25 Is that understood?

jon3

1 MR. MELVIN BERGER: Yes, it is.

2 MR. LESSY: Yes, it is, Mr. Chairman.

3 MR. LERACH: There are some assistant counsel
4 not present. I assume counsel that are here will inform them.

5 MR. SMITH: Yes.

6 MR. LERACH: I want to explore with Mr. McCabe
7 in detail the current situation within the Borough of
8 Pitcairn especially as it relates to the lack of generation
9 facilities and how that would affect some of the requests
10 they have made in the past.

11 I want to explore the circumstances under which
12 Pitcairn disregarded its generating equipment.

13 There are still additional statements in areas of
14 the Lewis Report which I wish to cover relating more to
15 potential pool membership than the point that I have already
16 covered.

17 I have to cover with Mr. McCabe the whole question
18 of Duquesne Light's offers to sell rate M, circumstances
19 under which it is available, how the borough could
20 have used it and the cost of the service and the fact that
21 it was offered to them.

22 I want to compare their rates in Pitcairn to
23 our rates in Duquesne's area. This has an impact on that.

24 I have to cover the circumstances under which
25 the borough went to the Federal Power Commission to request

jon4

1 an interconnection, Duquesne's response to that, and what
2 was done.

3 I want to explore additionally that the reason
4 that the borough has a borough electric plant is to generate
5 revenues to keep the real estate taxes low even today, to
6 keep their political officials in office.

7 I want to demonstrate for the record that when
8 Duquesne began to sell low cost power to the Borough of
9 Pitcairn under the FPC tariff that the Borough of Pitcairn
10 did not reduce its rates to its residential consumers.

11 I want to establish that the borough did not keep
12 any records that would enable one to determine the reliability
13 of their generating equipment.

14 They were unable to determine the hours per year
15 of maintenance on any particular unit, how many times one
16 particular unit had an outage.

17 I have to explore in great detail with him the
18 whole question of parallel operation which he raised,
19 technical difficulties, financial difficulties, and what
20 the true facts were on how it was offered and declined.

21 I want to explore in more detail with him the
22 financial condition of the borough's financial capability
23 and its tax base of participation in construction
24 and ownership of generating facilities; as I had begun to
25 do with him this morning exploring the technical problems of

jon5

1 CAPCO membership which I have not completed, I want to
2 explore the technical problems of coordination or inter-
3 connection with Duquesne Light individually.

4 I want to ask him a series of questions designed
5 to show that he was aware that there was no concerted action
6 by the Appli-ants in dealing with his CAPCO request.

7 I want to ask him some questions to show that some
8 concerns he expressed in a late 1972 letter to the Justice
9 Department apparently related to this proceeding have not
10 come to fruition.

11 I have to discuss with him Pitcairn's illegal
12 service outside its area in the Monroeville Borough area,
13 how that came to be terminated and certain opinion letters
14 that were written by his employer and our acquisition of their
15 distribution system in that area.

16 I want to ask him questions designed to show that
17 not only is there no legal basis for competition, but that
18 the Borough of Pitcairn has never had any intention of
19 attempting to provide service competition with Duquesne
20 Light in either a retail or wholesale level.

21 I want to demonstrate there was significant
22 political support within the Borough of Pitcairn for the sale
23 of the system.

24 I have to explore with him the basis of
25 his knowledge for the remarks he made today that Duquesne

jon6

1 had some sort of interchange arrangement with private
2 industrial customers.

3 I will have to talk with him about the -- question
4 him regarding their access to other sources of bulk power or
5 baseload power.

6 I may or may not, subject to future decision,
7 wish to ask questions designed to -- Mr. Government Berger,
8 I know you are taking notes, but it makes me nervous in
9 light of the protective order.

10 MR. SMITH: I believe the only purpose of
11 requiring him to do this now is to put him on a basis that
12 he would have been had he been required to continue his
13 cross-examination.

14 I don't believe notes are appropriate. You will
15 have the transcript, anyway.

16 MR. MELVIN BERGER: The note I have written is
17 just outline of remainder of cross. That's all I have
18 put on my note. That is all I have written here.

19 MR. REYNOLDS: Could we ask for a limited
20 distribution of the transcript? Some of that transcript
21 will have Mr. McCabe's testimony.

22 MR. SMITH: Mr. McCabe is an attorney. I think
23 he could be requested or admonished not to make effort on
24 his own to determine what the statements are.

25 Advise Mr. McCabe not to determine from any

jon7

1 source what has happened during his absence here.

2 MR. LESSY: I will be happy to, sir.

3 MR. LERACH: I may or may not want to go into the
4 question of whether or not the Borough of Pitcairn was plotting
5 litigation against the Applicants at the time these 1968
6 discussions occurred -- '67 and '68 discussions occurred to
7 demonstrate that they were the ones that wanted the negotia-
8 tions to fail.

9 MR. SMITH: Mr. Lerach, I am sure had Mr. McCabe
10 had remained he would have been here after the lunch break.
11 You seem to be slowing down. If you would like to take the
12 lunch break and add to the items or are you about done?

13 MR. LERACH: I think there was one other tablet
14 of testimony at the end of the day yesterday that I had
15 marginal notes on.

16 I will be glad to do it after lunch if you want
17 to move along now. Whatever the Board's pleasure.

18 MR. SMITH: We will continue with what you are
19 doing.

20 MR. LERACH: In the event Mr. McCabe would order
21 a copy of the transcript which he has not done to date, would
22 the Board direct the recording service to be concerned that
23 in his copy of the transcript these pages are omitted?

24 MR. SMITH: That is not possible. I don't think
25 that is feasible.

jon8

1 MR. LESSY: Suppose Staff sends a letter to
2 Mr. McCabe at the first opportunity and set forth what
3 Mr. Smith has requested and what the parties have discussed
4 with respect to this and copy to all parties on it and have a
5 record of the request and send a copy to Ace Reporters.

6 I will try to get Mr. McCabe back as soon as
7 we can. He has indicated he probably won't have time to
8 review it. If he indicates he does, we will provide it and
9 we will rip out all pages after the time he left.

10 But I am not certain that that will happen.

11 I think he does have a right to look at the
12 transcript if he so desires. But we will say he has no
13 right to look at anything that occurred with respect to his
14 testimony past the time he left the room.

15 There is a sealed part of the transcript as far
16 as he is concerned.

17 MR. LERACH: I would also intend to ask Mr. McCabe
18 questions to demonstrate that the effect of his system not
19 being able to get into CAPCO or an interconnection with
20 Duquesne Light did not change the status quo.

21 I will talk about the settlement of the antitrust
22 case against Duquesne Light to show that not one cent was
23 paid by the light company in settlement of that.

24 I have to ask questions about load growth in his
25 system because he has made the statement about 5 percent

1 growth.

2 I have to go over his testimony about the vents
3 of the fall of 1970 which reportedly led him to go to the
4 FPC.

5 I have another version of the fact I want to put
6 in. I have to talk to him about the feasibility of what he
7 wanted and what he called a standby interconnection with
8 Duquesne Light as opposed to rate M service.

9 I have already mentioned parallel operation.

10 There will be questions on the alleged benefits
11 to Duquesne Light Company of a proposed Pitcairn
12 interconnection.

13 That is what my notes presently show.

14 I would like to request I be given the opportunity
15 offered by Mr. Smith to review another tablet that I had
16 which is the testimony of yesterday afternoon where I made
17 some marginal notations that might suggest an additional area
18 or two.

19 MR. LESSY: Naturally Staff, of course, would
20 have the right to object to any of these lines for various
21 reasons at the time they are offered.

22 MR. REYNOLDS: Mr. Chairman, in order that the
23 Board is fully apprised, the counsel for the other Applicants
24 will have limited cross-examination of Mr. McCabe directed
25 to the areas on his direct examination that relate to his

1 correspondence to those separate Applicants concerning his
2 request for membership. That would probably follow
3 Mr. Lerach's examination.

4 I believe that each of the other attorneys will
5 be able to limit this to a very short time. At present we
6 do not anticipate any one of them taking very much time
7 at all.

8 CHAIRMAN RIGLER: The next thing I want to
9 cover with you is scheduling in January.

10 Mr. Vogler inquired yesterday about when we
11 would resume. I indicated that we had in mind January 5.
12 That is for purposes of allowing him to subpoena his
13 witnesses and get them lined up in advance.

14 MR. LERACH: Is now an appropriate time to
15 mention some other housekeeping details we might want to
16 discuss or do you want to wait until we finish with the
17 scheduling discussion.

18 CHAIRMAN RIGLER: That ended the scheduling
19 question.

20 The next item I want to take up is with respect
21 to Mr. Hjelmfelt and his option statement.

22 This is a good time for other housekeeping items.

23 MR. LERACH: It is with respect to the document
24 that Mr. Lessy wanted to examine Mr. McCabe on and the
25 whole question of where we stand on that. I am prepared to

1 respond.

2 This is the 1937 document filed with the FCC.

3 I am prepared to respond on it if Mr. Lessy is.

4 CHAIRMAN RIGLER: Mr. Lessy, I believe the
5 question which we had addressed to you was which discovery
6 request, if any, do you contend the document was producible
7 under?

8 MR. LESSY: May I in my answer add an additional
9 two or three minutes with respect to the background of this
10 in addition to answering that question?

11 MR. LERACH: We have no objection.

12 MR. LESSY: The first time that -- I am
13 sitting because there are a number of documents in front
14 of me -- the first time the Staff became aware of this
15 document is -- was yesterday, when Mr. McCabe indicated that
16 he had such a document during the course of questioning.

end5

17

18

19

20

21

22

23

24

25

EAK:bwl

S6

MR. LESSY: This is so, notwithstanding the fact we reviewed Mr. McCabe's files on two occasions at his office in Pittsburgh. The reason we did not come upon the document was because he had said that in addition to the bulk of his files in his office, he had some at home in Pitcairn. This was one of the documents. There were three that he had at home, of which we had no knowledge. I can honestly say, if there was a surprise here, it was a surprise to us, as much as any other party.

The question becomes whether or not that document would be admissible into evidence. It could be admissible into evidence on a number of grounds. One, and I don't want to refer to the document too much, except let's assume for the purposes of discussion, if there is no objection, that it is a rate schedule and that it is entitled borderline interchange agreement, and that it is FPC Number 5.

Now, as a document of which we had no knowledge, it would appear on its face to be authenticated. It's a signed and executed agreement, and it indicates on its face that it was filed with the Federal Power Commission.

CHAIRMAN RIGLER: Let's skip the problems of authenticity. Our question really goes to its relationship to the issues in controversy here.

MR. LESSY: The matter in issue number 5 of the matters in controversy under broad issues A and B, states --

assuming the answer to 4 is yes, whether Applicants have, do or could use their ability to preclude any other electric entities within the CCCT, from obtaining sources of bulk power from other electric entities outside the CCCT.

Now, applying that matter to the facts at hand, this issue precisely would be whether or not Duquesne Light has the ability to preclude the Borough of Pitcairn, which is within the CCCT from obtaining sources of the bulk power from electric entities outside the CCCT, which is the West Penn Power Company. This document goes directly to that matter. With respect to the September 5 filing, the nature of the case to be presented by NRC Staff, on page 12 thereof in small paragraph "d" the -- I would like to read that. It is the sentence -- "Only one electric entity Borough of Pitcairn, Pennsylvania, currently exists in the geographic submarket dominated by Duquesne Light Company. The dominance of Duquesne gives it the ability, in the absence of appropriate licensing conditions, to preclude that entity from obtaining sources of bulk power from other electric entities outside the CCCT."

That document would fall within that statement in the September 5 pleading.

Now, irrespective of those considerations, the Board also directed us to review the joint discovery request, whether or not this document is admissible into

bw3

evidence. One ground would be that it would be produced in addition to the fact it is authenticated on its face, whether or not it was or should have been produced by Applicants on discovery.

To the best of my recollection, it was not produced on discovery. The question becomes whether it should have been.

The answer to that is it depends on interpretation of language in the joint request. It is of the Duquesne request number 14, page 6. And that addresses itself to, or the the joint request requests, if I might be permitted, all documents relating to agreements among CAPCO members to allocate service territories or to serve or refrain from serving particular customers. The key word there, in terms of the joint requests, is the word "among." If the word "among" means CAPCO vis-a-vis CAPCO, then this would not have been producible under that item. If this means service allocation agreement between CAPCO and other entities, then this would have been produced.

So our position with respect to this document is this: we have no additional questions to ask with respect to it. We would like to move it into evidence for what weight the Board deems appropriate.

Whether or not it was produced by Duquesne or should have been the issues become moot, in light of what appears to

bw4

be a self-authenticating aspect of the document. Generally, I can see, with the exception of one map, Duquesne Light has been responsive during the discovery phase of this proceeding.

MR. LERACH: Because Duquesne Light gave a very broad reading to the government's discovery request, we agree that this document should have been produced. As a matter of fact, we produced it. Discovery document 4307 was produced in Pittsburgh, was sent to Washington, D. C., and was copied by the NRC Staff.

I think that gives us a substantial problem with good cause to amend their document list. That is really all I want to say right now. That is the issue the Board has to face. The document has nothing to do with the substance of the case. But I feel I want to preserve this good cause question right at this time. The document was produced and copied.

MR. LESSY: I would mention our records, and they are subject to inaccuracy, do not indicate that we copied this document. This document is not in our files now. Last night I went through all of the Duquesne files and did not find it. I have no reason to doubt Mr. Lerach's statement. I will let the Board decide the matter.

CHAIRMAN RIGLER: In order for the document to have been shipped in Washington, it would have been picked

up in an initial screen for further screening here.

MR. LESSY: The process Mr. Lerach described
yesterday, when people are designating filing cabinets,
we went through the initial rough screen and then fine-
screened at the central depository; that is correct.

MR. LERACH: I will bring forward the copy that
was produced and copied with the copy I had numbered on it.

(The Board conferring.)

lmil 1 CHAIRMAN RIGLER: The Board will consider
2 documents not on the list on an individual basis with the
3 good cause requirement in effect for each one so that our
4 ruling with respect to this document should not be taken as
5 an indication that good cause may not be established for other
6 documents.

7 With respect to this particular document, we
8 find that Staff has not sustained the burden of demonstrating
9 good cause. We will not proceed on that.

10 MR. HJELMFELT: Mr. Chairman, may I ask if that
11 good cause showing, does that apply to documents used
12 in cross-examination in rebuttal?

13 CHAIRMAN RIGLER: No, it doesn't. I think we
14 indicated that yesterday, Mr. Hjelmfelt.

15 Are we ready to proceed, Mr. Hjelmfelt?

16 MR. HJELMFELT: Yes, sir. The Board has
17 inquired as to whether certain items of evidence I
18 indicated that we would be offering during our case in
19 direct fit in with our statement of the nature of the case
20 which we filed on September 5. Of course, our September
21 5 pleading was not a statement of all of the evidence we
22 intended to present, but was rather a statement of the nature
23 of the case we intended to present. Indeed, objections to
24 those statements made by Applicants which indicated that we
25 hadn't given all of our evidence in effect in those

2mil 1 statements was perruled.

2 Directing my attention now to the matters in our
3 statement wh^h I believe cover this form of evidence, I
4 would invit the Board's attention first to page 4 where we
5 state that we will offer evidence discussing the nature
6 and extent of retail competition between CEI and the City of
7 Cleveland.

8 On page 8 --

9 MR. SMITH: Excuse me. Page 4.

10 MR. HOELMFELT: Page 4.

11 MR. SMITH: Could you be more specific?

12 MR. HOELMFELT: I'm sorry, I can't. I think it is
13 in the upper half of the page, as I recall. I don't have a
14 line number.

15 CHAIRMAN RIGLER: All right. We have it now.

16 MR. HOELMFELT: On page 8, again I'm sorry
17 I don't have line numbers. I'm not giving direct quotations,
18 but on page 8 we indicated we would offer evidence showing
19 the relationship of Cleveland's exclusion from the Regional
20 Exchange Market and generation for competition at retail
21 and CEI efforts to monopolize the market in and around
22 Cleveland. We indicated we would show that CEI refused the
23 city membership in CAPCO and used the fact that Cleveland
24 was not in CAPCO in its efforts to attract customers.

25 We also noted that we would offer evidence sh

3mil

1 that CEI relied upon its superior reliability in its efforts
2 to acquire the city's customers. At page 16 we noted that
3 CEI in its efforts to attract the city's customers, relied
4 upon its reliability stemming from its interconnections with
5 other utilities and its participation in CAPCO. We also
6 noted on page 16, I believe, that after each outage on the
7 city's system, that CEI sales personnel would descend
8 upon the affected city customers and urge them to change to
9 CEI service.

10 I believe the evidence I referred to in my
11 opening statement would fall within the matters I just
12 referenced.

13 Thank you.

14 CHAIRMAN RIGLER: Is there any response?

15 MR. REYNOLDS: I would respond, Mr. Rigler and
16 members of the board, that we went through, at the time of
17 the September 5 filings, an extensive prehearing conference.
18 At that prehearing conference Applicants made the point on
19 several occasions that we believe the whole purpose for the
20 September 5 filings was to try to narrow and not broaden
21 the issues.

22 I believe the Board itself had indicated that
23 prior to the filing and that we were afraid that the very broad
24 generalized statements in the September 5 filing, if not
25 limited to the specifics that were in that filing, would

4mil

1 accomplish no purpose at all. We would be right back to
2 today one that we were in in this hearing and we, therefore,
3 ask that this Board consider the generalities that are made
4 as being limited by the specifics of the September 5 filing.
5 The transcript of that hearing indicates that while the
6 Board did not rule on that specifically, that the -- at
7 pages 1198 and 1199 of the transcript of September 18, '75,
8 Mr. Chairman, you made the statement that in general I think
9 the Board will agree with you.

10 That was in response to my statement which was
11 similar. I can read it, if you wish. It is not verbatim, but
12 I paraphrased what I have said here.

13 I agree with you that we will confine ourselves
14 in the evidentiary stage to the matters set forth in
15 the September 5 filings.

16 One exception would be good cause for expansion.
17 I'm thinking of possibilities -- I suppose it is remotely
18 possible that privileged documents may appear that would permit
19 some of the parties to extend their allegations. Our
20 position hasn't changed. We feel that the focus of this
21 proceeding has become the September 5 filings to the extent
22 that they have expanded allegations as to other applicants,
23 we feel simply that the same focus should be given by this
24 Board to the September 5 filing when it is framing the
25 allegations of the City of Cleveland. To the extent we

5mil 1 don't have specificity in the September 5 filing, we
2 should not now allow the City to sweep in everything under
3 broad statements anything and everything that they think of
4 after the fact.

5 Mr. Hauser reminded me there is a relevancy
6 objection we would make to this kind of matter. It is
7 irrelevant. I understand you are addressing specifically
8 the September 5 filing.

9 CHAIRMAN RIGLER: That's correct. We were
10 interested in the question of whether Mr. Hjalmsfelt should be
11 allowed to present evidence by passing the relevancy question.
12 However, there is little question that he has sustained the
13 burden we put upon him. His reference particularly to page 8
14 indicates clearly that at least one of the subject matters
15 was specifically covered by that filing. I think our
16 question has been satisfactorily answered.

17 Do you want to continue with your next witness?

18 MR. REYNOLDS: You caution not to continue to
19 argue the point. I want to make reference to page 8. My
20 reading is obviously different than yours.

21 CHAIRMAN RIGLER: We have ruled and it seems
22 clear to us. So we will continue. You have any exception
23 you wish to preserve.

24 You may raise relevance at the time of the
25 evidence coming in if indeed Mr. Hjalmsfelt presents that

6mil 1 evidence, but he has satisfactorily answered the question
2 posed by the Board.

3 MR. REYNOLDS: Thank you, sir.

4 I will reserve my rights on the relevancy
5 question.

6 MR. LESSY: Mr. Chairman, I would like to take a
7 true five-minute break and take a whole bunch of Pitcairn
8 papers back and bring other materials up.

9 CHAIRMAN REGLER: Fine.

10 Off the record.

11 (Discussion off the record.)

e7

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. LESSY: The next Staff witness, Mr. Chairman,
is Mr. William Lyren.

Whereupon,

WILLIAM LYREN

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

DIRECT EXAMINATION

BY MR. LESSY:

Q Please state your name.

A William James Lyren.

Q By whom are you employed, sir?

A City of Wadsworth, Ohio.

Q What position do you hold with the City of Wadsworth,
Ohio?

A I'm the Director of Public Service, City Engineer.

Q How long have you been employed by the City of
Wadsworth in that capacity?

A Since December 1966..

Q Please outline for us your biographical and
professional background.

A I was born in Cleveland, Ohio, in 1946. I received
my secondary, primary education in the Wadsworth school
system. I graduated from Duquesne University in 1962 with
a bachelor of science degree in civil engineering. I have
been employed by the City of Durham, North Carolina, City

bw2

of Wadsworth, Ohio, City of Southgate, California, and my current position with the City of Wadsworth, Ohio.

Q ARE you a member of any professional society?

A Yes. I'm a member of the American Society of Civil Engineers, National Society of Professional Engineers and Ohio Society of Professional Engineers.

I'm a registered professional engineer in the State of Ohio and in the State of California.

Q I wonder if you could please describe for us the existing electrical system of the City of Wadsworth?

A The Wadsworth municipal electric system is wholly-owned and operated by the City of Wadsworth. The City of Wadsworth has a population of approximately 14,500 people. The service area has a population of approximately 18,000 people. We receive our total power supply from the Ohio Edison Company through one metered source of 69,000 volt wholesale service. The electric department then using this 69,000 kv transmission voltage feeds five substations with a total transformer capacity of approximately 40,000 kva.

Three of the substations are located close to the residential population density and are metal-clad open door type with a feeder voltage of 4161 V. Two other substations on opposite sides of the city serve basically the 140 miles of rural distribution at 12470 volts. the 12,470 volt system has the capability of du

bw3

voltage system has the capability of doubling its capacity by adding in-door metal-clad switch gear in the brick building provided for housing this equipment. All other physical equipment is installed and operating. The system is monitored 24 hours a day by plant personnel by means of supervisory control systems. These systems give us indication of any bulk system on any feeder.

MR. STEVEN BERGER: Mr. Chairman, I would like the record to reflect that Mr. Lyren apparently is reading from a document. He is an affirmative witness. I would like to have a copy of that document, if I may.

THE WITNESS: These documents are my notes on this.

CHAIRMAN RIGLER: Is there any objection to that, Mr. Lessy.

MR. LESSY: No, there isn't. We don't have a copy these, but we will be happy to make copies available.

BY MR. LESSY:

Q Are you in a position to continue?

A Sure.

Q Please do.

A The supervisor control system also allows us the opportunity to open and close feeders by the plant personnel upon demand from field personnel. The electric system services approximately 6,900 meters with a peak demand of

bw4

18,800 kva with a total kilowatt hours purchased in 1974 of 82,791,000 kilowatt hours.

All our substations are well landscaped and maintained and certainly contribute to the aesthetics of the properties.

A general description of our system probably would be that it is a model system for its size anywhere.

Q Does the City of Wadsworth serve any industrial customers?

A Yes, we serve approximately 18 industrial customers within the city. I believe that represents approximately 11 percent of our total kilowatt hour consumption.

Q Does the City of Wadsworth serve any customers outside the corporate limits of the City?

A Yes. Outside the corporate limits we serve approximately 22 percent of our customers, and the kilowatt hour consumption of the customers probably represents 20 percent of the kilowatt hours sold.

Q Under the present system, how many persons does the electric system of the City of Wadsworth employ?

A There are approximately 24 full-time employees of the electric system, counting myself as the administrative head. We have superintendent of electrical distribution and assistant superintendent, lineman, groundman, serviceman, meterman, meter readers. Full-time dispatchers, secretarial

help and employ consulting firms for technical assistance.

b75

Q Does the system have a round-the-clock watch on it?

A Yes, our dispatchers are 24 hours a day in their duties. There are four of those men that work, I believe it's eight-hour shifts, six days a week, and we have four men.

Q What generally has been the reliability of the Wadsworth system, to your knowledge?

A The reliability has been excellent. Through a carefully maintained and operated system, we have minimized down-time and outages.. Outages we do have are usually due to severe weather conditions. I would say the system reliability is excellent.

Q In your position as director of service, are you involved also in financial and budgetary matters pertaining to the electric system?

A Yes, I am.

Q I wonder if, in general terms, you could describe the current financial aspect pertaining to the operation of the electric system and the budgetary matters.

A In general, our basic source of revenue is the rate structure that has been developed to provide sufficient operating maintenance and capital improvement funds to the system.

The rate structure is set up on a cost to service

bw6

basis, allocating to various classes of customers a cost which relates to our cost of service. We maintain an emergency reserve fund of \$200,000 and currently have approximately \$200,000 in operating and maintenance reserve and also for planned capital improvements. The system is 100 percent debt-free.

There is no outstanding bonds or notes obligating the system. The current operating budget is approximately \$2.5 million.

Q Who are the wholesale consumers of Ohio Edison?

A The wholesale consumers of Ohio Edison are the cities and villages in Ohio Edison's service area which purchase wholesale power from the Ohio Edison Company. There are 21 cities and villages in this category of which two are not total requirement purchasers.

The City of Oberlin is a partial requirement customer and the City of Newton Falls is a total generating utility request an interconnection from the Edison Company.

Q The phrase "wholesale consumers" of Ohio Edison then refers to -- does it refer to a group?

A Yes, it does. It's these 21 communities that have banded together with a mutual concern.

MR. REYNOLDS: Mr. Chairman, could I note for the record the continuing objection that was raised both yesterday and the day before with respect to the following

bw7

testimony, as it relates to CEI or Duquesne Light or the Ohio Edison Company.

CHAIRMAN RIGLER: All right.

ES3

1 BY MR. LESBY:

2 Q When did the Wholesale Consumers Group come
3 into being?

4 A The first time that I am familiar with was in
5 1972, I believe. The first time that I am familiar with
6 was in 1972, I believe.

7 The Ohio Edison Company had filed for a rate
8 increase before the Federal Power Commission and the Wholesale
9 Consumers got together and decided to fight the rate increase
10 and to organize themselves by selecting a committee to
11 represent them in the rate fight matter.

12 Subsequent to that -- I don't know if I have
13 my dates right. I believe it was in 1973 the Wholesale
14 Consumers of Ohio Edison, as a result of the settlement
15 agreement that was reached in the earlier rate case, formed
16 a new committee to address themselves to the matter of the
17 settlement agreement.

18 Then most recently in 1975 the Wholesale
19 Consumers of Ohio Edison formed a committee to address them-
20 selves to the pending rate increase requests by the Ohio
21 Edison Company before the Federal Power Commission.

22 Q You mentioned the proceeding, the Annual 1972
23 proceeding before the Federal Power Commission. Please
24 describe in general terms the nature and outcome of the
25 proceeding for us.

jon2

1 A The case was not taken to full hearing because
2 the Federal Power Commission. It resulted in a settlement
3 with the company prior to hearing.

4 The elements of the settlement agreement I will
5 give you as close as I can recall them.

6 First of all there was the inclusion of a fuel
7 adjustment clause in the tariff. There was an agreed-upon
8 increase in wholesale electric rates which resulted
9 in a modified tariff to the Wholesale Consumers.

10 There was an agreement on the part of the company
11 to delete a mandatory load shedding program that had been
12 requested in the filing in lieu of a joint study of an
13 alternate load shedding plan.

14 There was also an agreement to study the
15 engineering, legal and financial feasibility of a new
16 bulk power supply arrangement between the Wholesale Consumers
17 of Ohio Edison and the company.

18 I believe those were the major elements of the
19 case.

20 Q Were the Wholesale Consumers -- did the Wholesale
21 Consumers receive a refund or anything of that nature with
22 respect to that proceeding?

23 A Yes. There was a refund representing the
24 difference between the settled rate and the proposed rate
25 which was refunded from the time at which the proposed rate

jor3

1 had gone into effect plus 6 percent interest.

2 Q Mr. Lyren, do you hold an elected position with
3 the Wholesale Consumers of Ohio Edison?

4 A Yes. With all three groups I have attended to
5 previously, I have been elected to the committee involved
6 in the various rate fights and studies.

7 My current position is that of Chairman of the
8 Committee in the current rate dispute.

9 MR. IESSY: I would like to offer into evidence at
10 this time a document dated August 11, 1972 and as an
11 unsponsored exhibit containing Staff Document Number 400.

12 This would be Staff Exhibit Number 30, I believe.

13 CHAIRMAN RIGLER: What is the NRC document number?

14 MR. IESSY: 400. It would be Staff Exhibit 30.

15 CHAIRMAN RIGLER: We will mark NRC Document 400
16 as Exhibit 30 for identification.

17 (The document referred to was marked

18 NRC Staff Exhibit Number 30 for

19 identification.)

20 MR. IESSY: I now ask that this document be
21 received into evidence, or move that the document be received
22 into evidence at this time as an unsponsored exhibit.

23 MR. STEVEN BERGER: I would like to have an
24 offer of proof of an unsponsored exhibit.

25 MR. REYNOLDS: I join in that.

XXXXXX

1 MR. LESSY: This document relates to the outcome
2 of the -- relates to the Federal Power Commission proceedings
3 that Mr. Lyran just described, and it talks about the desires
4 or the moving forward of the group of the Wholesale
5 Consumers of Ohio Edison which he just described.

6 It poses to the Ohio Edison Company four questions
7 about the future relationship and the relationships between
8 the individual systems with the Ohio Edison Company in the
9 last paragraph of the first page.

10 Mr. Lyran is not the writer of this document, but
11 he, as his testimony will indicate, is familiar with it.

12 I thought this would be the preferable method of
13 approach at this time.

14 We will pursue the matters relating to the
15 letter. Specifically we will focus on in detail the last
16 paragraph on the first page.

17 MR. STEVEN BERGER: Could I have it included in
18 the offer of proof, a statement of relevancy from Mr. Lessy?

19 MR. LESSY: The relevancy of this document goes
20 to the relationship between the Wholesale Consumers and
21 Ohio Edison in terms of access to power supply, access
22 to bulk power, access to alternative sources of bulk power,
23 the general nature of the relationship between the Wholesale
24 Consumers and the Ohio Edison Company, and it attempts to
25 refine and develop that relationship.

jon5

1 MR. STEVEN BEMER: I have no objections.

2 MR. REYNOLDS: On the basis of the offer of proof
3 I have heard Mr. Leszy state nothing that would indicate that
4 the document has any relevancy to the other Applicant and I
5 will continue the objection we have with regard to that
6 situation.

7 CHAIRMAN RIGLER: Excuse me, Mr. Leszy. I have
8 not ruled.

9 Mr. Reynolds, with reference to the third
10 question in the final paragraph --

11 MR. REYNOLDS: Pardon me. I didn't hear you.

12 CHAIRMAN RIGLER: The third question in the final
13 paragraph on the first page of this document which asks
14 would Ohio Edison be willing to wheel power from generating
15 resources outside its control area to each of the municipal
16 wholesale customers connected to the Ohio Edison System.

17 If some of those alternate generating sources
18 were among the other CAPCO companies, would that change your
19 position with respect to relevancy?

20 MR. REYNOLDS: If the controlled area were
21 what -- if Ohio Edison had a generating --

22 CHAIRMAN RIGLER: The question focuses on the
23 attempt by Cuyahoga Falls to find alternate generating sources
24 outside the OE area. If the alternate generating sources
25 included other members of the CAPCO pool, would that change

jon6

1 your answer with respect to relevancy?

2 MR. REYNOLDS: No.

3 CHAIRMAN RIGLER: He has answered my question.

4 MR. LESSY: I would like to add one point with
5 respect to the offer of proof.

6 Looking at alternative sources of generating, the
7 wholesale consumers are going to be looking at CLECO
8 generating, the testimony will develop, not just
9 generation solely within the parameters of Ohio Edison.

10 Because of that, we think it should be entered
11 into evidence without restriction at this time as to the
12 ultimate user.

13 CHAIRMAN RIGLER: We had indicated earlier we were
14 not imposing restrictions on any of the documents. The
15 objection is overruled. The document may be admitted and will
16 be admitted as NRC Exhibit 30.

17 (NRC Staff Exhibit Number 30, previously
18 marked for identification, was
19 received into evidence.)

20 BY MR. LESSY:

21 Q Mr. Lyren, are you familiar with the letter now
22 marked as Staff Exhibit 30 dated August 11, 1972 written on
23 behalf of the Wholesale Consumers of Ohio Edison to
24 Mr. John White, Esq., of the Ohio Edison Company?

25 A Yes, I am.

XXXXXX

1 Q I wonder if you could explain to us in general
2 terms under what conditions the letter was sent.

3 A The letter is sent by Mr. G. O. Stout who at
4 this time was serving as Chairman of the WCOE Negotiating
5 Committee. He was instructed by the committee to send a
6 letter to the company and this is that letter.

7 CHAIRMAN RIGLER: Do you know what position
8 Mr. White held in the company in August of 1977?

9 THE WITNESS: He was chief counsel, I believe,
10 general counsel.

11 BY MR. LESBY:

12 Q At the time the letter was sent did Mr. Stout
13 hold a position with the Wholesale Customers of Ohio Edison?

14 A Yes, he was Chairman of the five-man Negotiating
15 Committee that is elected by the members of the group to
16 represent them in the matter at that time before the Federal
17 Power Commission.

18 Q Focusing on the last two questions of the last
19 paragraph of page 1 which were asked of Ohio Edison, if I
20 might just paraphrase, that is, would Ohio Edison be willing
21 to wheel power from generating sources outside of its control
22 area to each of the municipal wholesale customers connected
23 with Ohio Edison and would Ohio Edison be willing to wheel
24 power from one or more of its municipal wholesale customers to
25 other of its municipal customers, would you state the context

1 where the wholesale customers decided to study access to
2 alternative sources of bulk power supply?

3 A Our desire was to study all available sources of
4 bulk power supply that might be relevant to our position
5 geographically as well as size-wise.

6 So at the time this letter was written, we were
7 interested in a vast number of possibilities.

8 Ohio Edison owned and operated generating
9 facilities, generating facilities of CAPCO, bulk power
10 supplies that may be available from our utility companies,
11 bulk power supply that -- or hydro power that may be available
12 from the Niagara facility. So it was certainly wide in scope
13 at this point in time.

14 We felt all of these areas needed study and
15 needed some determination as to their feasibility.

16
17
18
19
20
21
22
23
24
25

lml 1 MR. LESSY: I show you a letter dated June 18,
2 1974, from V. Emerson Duncan, II, to John R. White,
3 Esquire, Executive Vice President of Ohio Edison Company at
4 that time. I ask it be marked as Staff Exhibit 31. It has
5 the Staff document No. 456. Attached to that document is
6 an enclosure which is separately marked. We ask it be
7 marked as Staff Exhibit 32 and the Staff document number is
8 457.

(Staff's Exhibits 31 and 32
were marked for identifica-
tion.)

XXXX 11
12 MR. LESSY: With respect to the letter, does V.
13 Emerson Duncan, II, have any relationship with the wholesale
14 consumers of Ohio Edison?

15 THE WITNESS: Yes. Mr. Duncan was retained by the
16 wholesale consumers of Ohio Edison to represent them in the
17 matters before the Federal Power Commission, as well as
18 matters relating to the settlement agreement.

19 BY MR. LESSY:

20 Q Was this letter sent by Mr. Duncan at your
21 direction, or is this a copy of the letter as it was sent?

22 A This letter was sent at the direction of the com-
23 mittee to the company through Mr. John R. White, to follow up
24 on the approved settlement agreement between Ohio Edison
25 and the WCOE group. We wanted to outline the areas of mutual

2mil

1 study. We wanted to engage in a discussion of these issues
2 at our initial meeting on the subject of feasibility of a
3 different bulk power supply arrangement. I'm familiar
4 with the document, having previously read it, and I instructed
5 it to be sent.

6 Q Was the desire to study alternative sources of bulk
7 power supply communicated to Ohio Edison a second time in
8 addition to NRC No. 30 in writing?

9 MR. BERGER: I'm not quite clear on the question
10 or the time frame Mr. Lessy is talking about. We are now
11 talking about a specific document.

12 CHAIRMAN REGLER: Rephrase the question.

13 BY MR. LESSY:

14 Q Did the documents identified as NRC Exhibit No.
15 30 and 31, or 31 and 32, which you have just
16 been handed, indicate -- have any bearing on a desire to
17 study -- an additional desire to study alternative sources
18 of bulk power supply by the wholesale consumers, in addition
19 to Mr. Stout's letter of 1972?

20 MR. S. BERGER: I think the documents speak for them-
21 selves, your Honor. If he wants to ask beyond the documents
22 what the witness knows from a factual standpoint, I think
23 he is permitted to do that. Beyond that, I don't see the
24 necessity for him to ask the witness, say, what the
25 document says for itself.

3mil

1 CHAIRMAN RIGLER: I will permit him to answer the
2 question as posed.

3 THE WITNESS: Basically the last document here,
4 Exhibit 31 and Exhibit 32, are a more detailed request for the
5 same things that occurred, that appeared in the letter of
6 August 11, 1972. I think the document does speak for
7 itself. It is a much more detailed proposal or study,
8 so that is the basis for this document to put down before
9 the company a very detailed program for study and it
10 relates somewhat to the August 11 questions that were
11 asked thereto.

12 BY MR. LESSY:

13 Q With respect to consideration of alternative
14 sources of bulk power supply transmission, could you point to
15 us in the document, since it is long, with the enclosure,
16 exactly where that is referred to?

17 A On page 3 --

18 Q Of the enclosure, sir.

19 A Yes, of the enclosure, on page 3, items B, F. Those
20 are items that we are -- that we asked that our power supply
21 development accommodate and make arrangements for these
22 items or these features. Item F was transmission service
23 for various forms of coordinating power service, including
24 wheeling third party power introduced into the Ohio Edison
25 control area on behalf of the municipals.

4mil

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN RIGLER: Mr. Reynolds.

MR. REYNOLDS: If we are going to go through the attachment, I do not have a complete copy. I'm missing page 6. I believe some of the other counsel are missing that page, too.

CHAIRMAN RIGLER: I am, too, as a matter of fact.

MR. REYNOLDS: If we get the complete document, it would be helpful.

MR. LESSY: We are not going to refer to page 6 today, but I will be happy to provide it subsequently. I don't know that I have the original with me. Let me check if I have the original and if it does have a 6.

CHAIRMAN RIGLER: Maybe this would be a good break point. Before we break, I have a question or two I would like to clear up before I forget about it.

Do you have any industrial customers out of the city limits of Wadsworth?

THE WITNESS: Not to my knowledge. I can't think of any.

CHAIRMAN RIGLER: You spoke of the fact that 20 percent of your customers were outside of the city limits. Is there any limitation on your authority to offer service outside of your city limits?

THE WITNESS: There is some statutory limitation that I'm not totally familiar with, but it is 50 percent of

5mil

1 our -- I think we are limited to 50 percent of our total
2 loads outside the city.

3 CHAIRMAN RIGLER: You may even today compete for
4 additional customers outside your city limits?

5 THE WITNESS: Right.

6 CHAIRMAN RIGLER: Are you the exclusive provider of
7 electrical service in any area outside your city limits?

8 THE WITNESS: No. We compete in the area with
9 the Ohio Edison Company.

10 CHAIRMAN RIGLER: So in the area where you have
11 22 percent of the customers, you are competing with Ohio
12 Edison?

13 THE WITNESS: Exactly.

14 CHAIRMAN RIGLER: Do they have industrial customers
15 in the area where you have 22 percent of the customers?

16 THE WITNESS: Yes.

17 CHAIRMAN RIGLER: Who owns the transmission lines
18 with which you furnish service to the 22 percent of the
19 customers outside the city?

20 THE WITNESS: The City of Wadsworth.

21 CHAIRMAN RIGLER: Do you have an exclusive fran-
22 chise within your city limits?

23 THE WITNESS: In Ohio by home rule we have the
24 exclusive right to provide utility service.

25 CHAIRMAN RIGLER: Ohio Edison has no customers

Smil 1 within the City of Wadsworth?

2 THE WITNESS: They do.

3 CHAIRMAN RIGLER: Under a grandfather clause pro-
4 vision, were they pre-existing customers or what?

5 THE WITNESS: This is covered in our contract with
6 the company for their providing us with wholesale power.
7 It is contained in the contract, the stipulation that they be
8 permitted to serve these customers in an uninhibited manner.

9 CHAIRMAN RIGLER: Are these customers identified by
10 name or is it a class of customers?

11 THE WITNESS: No, identified by name. They are
12 industrial customers.

13 CHAIRMAN RIGLER: Can Ohio Edison be permitted
14 to compete for additional customers within the city?

15 THE WITNESS: No.

16 CHAIRMAN RIGLER: Does Ohio Edison own transmission
17 lines extending into the City of Wadsworth?

18 THE WITNESS: Yes.

19 CHAIRMAN RIGLER: We will recess until 2:00 this
20 afternoon.

21 (Whereupon, at 12:40 p.m., the hearing was
22 recessed, to reconvene at 2:00 p.m., this same day.)

23

24

25

1m11

AFTERNOON SESSION

(2:05 p.m.)

MR. STEVEN BERGER: The time frame we are talking about is that we ask for it of June 18, 1974. That is what we are talking about.

MR. LESSY: This line of questions will now establish a relationship between NRC 30, 31, 32, in terms of that time frame.

Whereupon,

WILLIAM LYREN

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

DIRECT EXAMINATION (continued)

BY MR. LESSY:

Q Mr. Lyren, with respect to the document admitted as NRC Staff Exhibit 30, which is the letter dated August 11, 1972, signed by Mr. Stout, to Mr. White, did the wholesale customers of Ohio Edison or Mr. Stout, to your knowledge, receive a reply to that letter from Ohio Edison Company?

A Not to my knowledge.

Q Describe for us the context in which the letter dated June 18, 1974, written by Mr. Duncan at your request, as you testified earlier, and the enclosure thereto; describe the context with respect to which that letter was written

2mil

1 and sent.

2 CHAIRMAN RIGLER: Mr. Reynolds?

3 MR. REYNOLDS: I would like the record to reflect
4 the continuing objection of the Applicants other than Ohio
5 Edison with respect to this line of questioning as having no
6 relationship whatsoever to the other Applicants in this
7 proceeding.

8 CHAIRMAN RIGLER: All right.

9 You do not have to continue to do so on that particular
10 ground. You can have a continuing objection. Do it one for
11 each witness, if you wish.

12 MR. REYNOLDS: I will proceed that way. The only
13 reason it may be necessary to do it more than once for a
14 witness would be in those situations where the witness'
15 testimony goes into an area where the objection might not
16 be appropriate. That is all I'm suggesting. But I will try
17 to keep it to a minimum.

18 CHAIRMAN RIGLER: All right.

19 MR. SMITH: Mr. Lessy, your question was on
20 Exhibit No. 30 and the answer was not to my knowledge.

21 MR. LESSY: Yes, sir.

22 MR. SMITH: Could you take a moment now and pursue
23 with your witness as to his opportunity to have known if
24 there was a response?

25 MR. LESSY: I will be happy to.

3mil 1

BY MR. LESSY:

2 Q If there was a response to that letter, do you
3 feel it would have come to your attention?

4 A As a member of the committee of NCCF and since
5 the letter was sent on behalf of the City of Cayahoga Falls,
6 I think I should have gotten a copy of any response
7 directed directly to Mr. Stout. I have gotten copies of all
8 other correspondence. If there was a direct written
9 response, I feel rather confident I would have had it.
10 I do not have any recollection at our meetings of NCCF
11 hearing of a verbal or written response.

12 Q My question was with respect to documents
13 identified as NRC Staff Exhibits 31 and 32, June 18, 1974,
14 letter by Mr. Duncan sent at your direction to Mr. White,
15 to explain to us the context in which that letter was sent
16 at your direction.

17 A Well, the letter is probably self-explanatory.
18 It opens up following Federal Power Commission approval last
19 August of the settlement agreement. This is the reason the
20 letter was written because of the settlement agreement.
21 The subject of bulk power supply and providing transmission
22 service or purchase of partial requirements was brought up
23 in negotiations with the company. It was a result of these
24 negotiations with the company that the settlement agreement
25 contained an element of study of this matter. In other words,

4ml1

1 it was a result of negotiations that we and the company
2 agreed to a joint power feasibility study for bulk power
3 facilities and this June 18, 1974, letter was our attempt
4 to get the first meeting organized for discussion purposes
5 on the subject.

6 MR. LESSY: Mr. Chairman, based on the fact
7 that NRC documents identified as NRC 31 and 32 were,
8 according to the testimony of the witness, prepared by the
9 counsel, the wholesale consumers, at his request, the Staff
10 moves for admission of the two documents into evidence.
11 We note that during the break, we circulated document No. --
12 page No. 6 of the document identified as NRC 32. It had been
13 inadvertently admitted from the copies previously distributed.

14 MR. STEVEN BERGER: I have no objection, your
15 Honor.

16 And as to the marginal notations on page 3 and page
17 4 to the exhibit, Staff Exhibit 32 --

18 CHAIRMAN RIGLER: I had a question about those
19 myself. I wonder if you would explore that before we make our
20 ruling.

21 MR. LESSY: I have a few questions with respect to
22 that.

23 BY MR. LESSY:

24 Q Mr. Lyren, with respect to the document identified
25 as NRC 32, I direct your attention to the bottom of page 3.

5mil 1 There is some handwritten language there, or notations in the
2 margin. My question is, are you aware of the source of that
3 and are you aware -- if you are the writer and the time --
4 the source and time when the notation was placed?

5 A The source is Mr. Emerson Dunson, the attorney for
6 WCOB. The place, I believe, is meeting with Ohio Edison
7 officials dated 10-7-74.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
all

12

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q With respect to page 4 of that same document there is a handwritten notation. Are you also familiar with that?

A That is the same circumstances. The author is Mr. Duncan and the time and place is 10/7/74 at his joint meeting with Ohio Edison.

Q Do you have personal knowledge that they are his notations?

A Yes, I do.

CHAIRMAN RIGLER: Do you intend to explore further with the witness the meaning?

MR. LESSY: Yes. That is the next question.

MR. STEVEN BERGER: I had the further problem of exploring further the question of the circumstances under which the witness acquired personal knowledge of this.

CHAIRMAN RIGLER: Were you at that meeting?

THE WITNESS: Yes, I was present at the meeting.

MR. STEVEN BERGER: I was more concerned with the question of whether or not he saw the notation made.

CHAIRMAN RIGLER: He said he recognized the handwriting as that of Mr. Emerson Duncan. We will receive it into evidence.

Were you moving the admission of NRC 31 and 32?

MR. LESSY: 31 and 32, the letter and enclosure.

1 CHAIRMAN RIGLER: They are being received into
2 evidence without objection from Ohio Edison and overruling
3 the continuing objection made by Mr. Reynolds on the behalf
4 of the other Applicants.

5 (NRC Staff Exhibits Numbers 31 and 32,
6 previously marked for identification,
7 were received into evidence.)

8 BY MR. LESSY:

9 Q Mr. Lyren, with respect to the request for
10 transmission services as noted in subparagraph 3(d) of
11 Exhibit NRC 32, what was the response of Ohio Edison to the
12 request for transmission services?

13 A Their response was that this item must be deleted
14 from the elements of the study for the reason that they had
15 not agreed to it in the settlement agreement.

16 Q When did that response and how did that response
17 occur?

18 A Well, the response was made at the meeting of
19 10/7/74 with the Ohio Edison Company in Akron, Ohio.

20 Q I show you a document identified as NRC Document
21 Number 401 and ask that that be identified as NRC Exhibit 33
22 and ask you to review the document and if you can identify
23 it for us.

24 (The document referred to was marked
25 NRC Staff Exhibit Number 33 for
identification.)

jon3

1 CHAIRMAN RIGLER: Before you got there, were you
2 going to explore the handwritten notation on page 4?

3 MR. LESSY: Yes, that will be done in a
4 subsequent line, Mr. Chairman.

5 MR. STEVEN BERGER: Excuse me, Mr. Chairman. It
6 was my understanding that he testified that the same source
7 and his personal knowledge was the same with regard to the
8 notation on page 4 as it was on page 3.

9 CHAIRMAN RIGLER: Yes. But I was asking about
10 the substantive effect of the comment now and not the
11 authenticity.

12 The Board had a question about what these
13 notations mean, if anything.

14 MR. STEVEN BERGER: Okay.

15 MR. LESSY: Mr. Chairman, would you prefer
16 before we go into the question as to this document that we
17 ask Mr. Lyren in brief form as to what the meaning of that
18 handwritten comment was?

19 I would be happy to, if you desire.

20 CHAIRMAN RIGLER: I think that might be
21 preferable. You are leaving us up in the air on the document.

22 I have another question which is was the conference
23 and the agenda at the conference limited to those items
24 covered by the settlement agreement?

25 MR. LESSY: I can't answer that. Perhaps the

1 witness can.

2 MR. LESSY: Do you want me to ask the witness?

3 CHAIRMAN RICLER: I think it is something you
4 should take up with him. I am not getting a very clear
5 understanding of what it is you think is significant about
6 this document that you would call it to the Board's attention.

7 MR. LESSY: All right.

8 BY MR. LESSY:

9 Q With respect to the handwritten notes in
10 Document NRC 32, on page 4 thereof in the margin there
11 appears to be outside of Number 6 "Development of plan of
12 financing municipal obligations or power supply source
13 additions estimated in 5 above."

14 The comment reads OB is not to be a banker.

15 Could you explain the circumstances to your
16 knowledge pursuant to which that marginal notation appeared?

17 A That notation was made as a matter of clarification
18 by Ohio Edison to try to inject at this point of our meeting
19 a comment which would in effect say that they did not feel
20 that they were going to lend their credit or act in any other
21 way as a banker in the ultimate plan that is developed.

22 That is the best explanation I can give to my
23 recollection.

24 Q Was the scope of the meeting on -- that you
25 testified to on October 7, 1974 strictly limited to discussion

of the settlement agreement?

A There was no specific agenda prepared for the meeting. However, the meeting was called as a result of the writing of the letter. The letter was written requesting a meeting to go over the items that were in our proposal of what we thought should be studied.

So in a sense it was the purpose of this meeting to try to come to some general agreement as to what should be studied and begin that task.

Q The purpose of the meeting was to focus and to shape the purpose of the study?

A That's right. The purpose of the meeting was to shape the parameters that were to be studied and we were hopeful of including all the elements applicable to come to the proper conclusion or best conclusion in the matter.

Q Did Ohio Edison -- did the Wholesale Consumers of Ohio Edison regard the insertion of the provision as to transmission services in NRC 31 as a request for transmission services or a request for a study of transmission services or both?

MR. STEVEN BERGER: NRC 31 you are questioning about now.

MR. LESSY: That would be 32; 31 and 32 go together. 32 is the document. 31 is the enclosure.

MR. STEVEN BERGER: Can I have the question

read back?

(The reporter read from the record as requested.)

THE WITNESS: I think predominantly the overriding factor here was that we felt that the transmission services for various forms of coordinating power services, including wheeling third party power, was absolutely necessary to examine the gamut of bulk power supply alternatives that were available. So we put it in here.

We weren't asking for a specific -- asking for something specifically. We were asking for the study of it and felt it was applicable in the context of our general purpose and the purpose that was agreed upon in the settlement agreement.

CHAIRMAN RIGLER: Did the settlement agreement restrict the municipalities in any way with respect to what could be covered in subsequent negotiations?

THE WITNESS: The settlement agreement set forth first of all a purpose and then tried to set forth elements of study.

CHAIRMAN RIGLER: But did you agree not to at some subsequent time make additional requests of Ohio Edison?

THE WITNESS: No, we did not agree not to make any additional requests. No.

EAK:bwl

BY MR. LESSY:

13 Q So that at the 10-7-74 meeting, when the subject of -- when that specific part of NRC-32 came up, transmission service, I wonder if you could repeat for us what the response on behalf of Ohio Edison was?

A Their response was that that item must be deleted. They refused to have that considered as part of our joint studies.

Q Do you recall who spoke on behalf of Ohio Edison at that time?

A To the best of my recollection it was Mr. John White speaking on behalf of Ohio Edison.

Q Now with respect to the document we have asked to be identified as NRC-32, which has the Staff Document Number 401 on it, I wonder if you could -- 33, I'm sorry. I wonder if you could identify for us what this document is?

A This is a roster of those present at the meeting, signature sheet, which was signed by all of the parties present at the meeting of 10-7-74 with Ohio Edison. It is a copy made following the meeting and then inscribed upon by someone. The notations and what have you, and the heading was not part of the original document. The part of the original document is all of the signatures and their respective communities.

bw2

Q Who received copies of the document and at what point in time did they receive them?

A All people present at the meeting received a copy of the roster a short time after it was completed, the signatures were completed, on the same day.

Q The document indicates that you are an attendee at that meeting.

A Yes, it does.

Q Review the rest of the names on the list, and I ask you if that is your recollection as to who was present at the October 7, 1974 meeting.

A Yes, I'm sure that all of those people were present.

Q This is the attendance sheet you got at the meeting?

A Yes.

MR. LESSY: Staff moves for introduction into evidence as NRC Staff Exhibit 33, the document identified as the 10-7-74 attendance sheet.

MR. STEVEN BERGER: No objection, otherwise. I would like clarification of the asterisk next to Mr. Mr. Frederickson's name and the statement at the bottom with the asterisk, he got copies of Section IV, and its authenticity.

bw3

BY MR. LESSY:

Q Mr. Lyren, are you aware of the asterisk and the notation at the bottom of the page as to what that might refer to?

A There was a request made for some information at that meeting and the notation says he got copies of Section IV. I'm not familiar with what that was. I don't have a recollection of what it was he got.

CHAIRMAN RIGLER: We will receive it into evidence as Exhibit 33.

(NRC Staff Exhibit No. 33 for identification, was received in evidence.)

BY MR. LESSY:

Q Was there a meeting held between the wholesale consumers of Ohio Edison and representatives of Ohio Edison on August 1, 1975?

A Yes, there was.

Q I show you a document with Staff Document 402 on it. This would be offered for marking as NRC Staff Exhibit 34 and ask you if this is a copy of similar attendance sheet for that meeting?

A Yes, it is.

(The document referred to was marked NRC Staff Exhibit 34 for identification.)

bw4

MR. LESSY: Staff moves for adoption into evidence as Exhibit NRC Staff Exhibit 34, the attendance sheet Mr. Lyren has just identified.

MR. STEVEN BERGER: Point of clarification. Does that bring in the attachment, as well, your Honor?

CHAIRMAN RIGLER: Mr. Lessy?

BY MR. LESSY:

Q On the copy you have, is there a typed listing?

A Yes.

Q Could you explain what that is?

A The typing is my secretary's attempt to transcribe the attendance roster into a typed sheet.

MR. LESSY: Staff doesn't propose to offer that, or it is not marked as formal exhibit or document. It is a typed explanation of document number 34. If the Board want to exclude the typed list, we would be happy to. If any party does, we would be happy to. If not, we think it helps clarify the written names.

CHAIRMAN RIGLER: It will be received into evidence as Staff Exhibit 34.

(NRC Staff Exhibit No. 34 for identification was received in evidence.)

MR. REYNOLDS: If I may for clarification, Mr. Chairman.

pw5 I notice that my copy, and it may be just my copy, of Staff Exhibit 34 is cut off at the top. I assume what was cut off has been typed on the second page. The only reason I raise a question, because I know that the typing on the second page, as to certain individuals, seems to differ from the handwritten material. For purposes of clarification, I would like some indication in the record that we are talking about transcription of a list that is handwritten.

CHAIRMAN RIGLER: We would rely upon the handwritten document, rather than the typed list.

MR. REYNOLDS: Might it be possible to get a better copy, so we can have it? Mine is cut off at the top. If we are relying on the handwritten, I would like a copy of the full document.

lm11 1 BY MR. LESSE:

2 Q Mr. Lyren, at the meeting of August 1, 1975, was
3 wheeling discussed at that time?

4 A Yes, it was.

5 Q Can you tell us what -- in what context the
6 discussion occurred, first?

7 A At the meeting, the -- one of the members of the
8 WCOE group, or I believe it was Mr. Edward Metzzenbaum, who
9 is an attorney accompanying Mr. Quirk of Cuyahoga Falls,
10 asked a question about wheeling power from third party
11 sources. He was responded to by officials from the company
12 that they were not in a position to discuss that. It was
13 not part of the study and they did not wish to discuss it.

14 Q To your recollection, Mr. Lyren, which repre-
15 sentatives of Ohio Edison Company, if you know, responded
16 to that request from Mr. Metzzenbaum? Is this former Senator
17 Metzzenbaum?

18 A Yes. I'm sorry. I know it was either Mr. White
19 or Mr. Spetrenco, but I'm not sure which.

20 Q Other than those discussions on August 1, 1975,
21 and October 7, 1974, has there been, to your knowledge, any
22 response or any discussion of third party wheeling or
23 transmission services in response to either Mr. Stout's
24 letter, as we identified it previously, or any other letter
25 including documents numbered 30 -- previously offered into

2mil 1 evidence, 31 and 32?

2 A. Not to my knowledge.

3 MR. STEVEN BERGER: I take it the question was in
4 regard to discussions with representatives of Ohio Edison?

5 MR. LESSY: Yes, thank you for the clarification.

6 MR. STEVEN BERGER: You are more than welcome.

7 BY MR. LESSY:

8 Q Mr. Lyren, do you regard the position taken by the
9 Ohio Edison Company at the August 1, '75, meeting, and the
10 October 7, '74, meeting in which wheeling was discussed, as
11 responsive both to Mr. Duncan's letter, and to Mr. Stout's
12 letter?

13 MR. STEVEN BERGER: I think that calls for a
14 conclusion, your Honor.

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

17 CHAIRMAN RIGLER: I will permit it.

18 THE WITNESS: There was no question in my mind that
19 they were responding to these questions in a negative
20 fashion. They had no desire to discuss wheeling. In
21 fact, they intimated they didn't like the word. Or at
22 least their definition of wheeling would not encompass our
23 definition of wheeling if a third party source of power
24 was involved.

25

3mil 1 CHAIRMAN REGLER: Do any of these municipalities
2 have their own generating capacity?

3 THE WITNESS: There are two. One is Oberlin
4 that has partial generation, and they take part of their re-
5 quirements from Ohio Edison.

6 The other municipality is total generation and
7 going through the process of seeking an interconnection with
8 Ohio Edison. They have asked to become a member of our
9 group as a result of their interest in becoming involved
10 with Ohio Edison. There are two small generating facilities
11 in the group.

12 BY MR. LESSY:

13 Q Why do you view access to alternative sources
14 of bulk power supply through wheeling as desirable for
15 either Wadsworth or for the wholesale consumers of Ohio
16 Edison?

17 A Presently, with the exception of Oberlin and
18 Newton Falls, the consumers of Ohio Edison are captive
19 customers. They have no other available source of power other
20 than developing their own self-generation. So, obviously,
21 having other sources of power available would eliminate some
22 of the problems that are associated with a captive supplier.
23 It would inject, perhaps, some element of competition into
24 the process of securing power. Also, there are perhaps
25 some areas that need to be studied in depth with regard to

4mil

1 off-peak power that is potentially available in Ohio or
 2 in areas close by. I'm thinking particularly of the rural
 3 electric co-op where they have a high winter load and
 4 they have off-peak available in the summer. It would be very
 5 advantageous if we could gain access to that power through
 6 wheeling by Ohio Edison. There is a potential source of
 7 power in high flow power in the Niagara project that might
 8 be able to be injected into the Ohio municipal system.

9 These are some of the reasons where alternative
 10 sources of access would be extremely beneficial to the City of
 11 Wadsworth, as well as most of WOOD.

12 Q Mr. Lyren, I will show you a document identified
 13 as Staff document No. 600.

14 MR. LESSY: I ask it be marked for identification
 15 as Staff Exhibit No. 35. (MR. STAFF EXHIBIT 35 WAS MARKED
 FOR IDENTIFICATION.)

16 CHAIRMAN RIGLER: Are you finished with the
 17 subject of the August, 1975, meeting and the October, '74,
 18 meeting?

19 MR. LESSY: Yes, for the time being, I am, sir.

20 CHAIRMAN RIGLER: Was a reason given by Ohio
 21 Edison with respect to why it did not want to wheel power or
 22 discuss wheeling power?

23 THE WITNESS: The only reason I heard in the
 24 discussion we had was the reason I stated earlier -- was
 25 that they did not have to discuss it with us as part of their

1 settlement agreement and did not wish to pursue it. That
2 is the only reason that has been transmitted to me.

3 CHAIRMAN RIGLER: Would you hold up one minute,
4 Mr. Lessy.

5 (The Board conferring.)

6 BY MR. LESSY:

7 Q Mr. Lyren, will you describe for us what this
8 document is?

9 A This is a copy of the original contract dated
10 the 21st day of December, 1965. It is signed by officials
11 of the City of Wadsworth and the Ohio Edison Company on
12 that date.

13 Q Do you recognize the signatures of the representa-
14 tives of the City of Wadsworth?

15 A Yes, I do.

16 Q Could you state for us who they are and their
17 capacity? The Xerox copy is not clear as to the signatures.

18 A Sterling G. Sechrist, President of the council.
19 Jack Sumner is the Mayor. James P. Rice is the Service
20 Director.

21 Q Is this the contract pursuant to which Wadsworth
22 is presently taking service of Ohio Edison as of this time?

23 A Most of this contract is still in effect.
24 However, it has been amended by amendments approved by the
25 Federal Power Commission in the rate matter of 1972 and '73.

6mil

1 Not '72. The last rate decision, I think, was made in '73,
2 not '72.

3 Q I call your attention to paragraph 4-C of the
4 body of the contract and ask you to describe that language
5 as you understand it as a director of service operating under
6 that contractual language.

7 A Well, 4-C sets forth conditions under which the
8 company can serve inside the corporate limits. In other
9 words, it says that the municipality has the right to serve
10 all customers inside the corporate limits that were not
11 served -- that they served as -- that were not served by the
12 company as of October 1, 1975.

13 Q Could you also briefly do the same for 4-A and B.

14 CHAIRMAN RIGLER: Are you asking him to interpret
15 the meaning of 4-A and B?

16 MR. LESSY: I'm asking him to describe -- this
17 language is not crystal clear to us. I'm asking him to
18 describe the use of this language as someone who has to
19 operate, or has operated under it.

20 THE WITNESS: Well, 4-A simply states that the
21 company will not bother any premises that are presently being
22 served electrical power by the municipality. B sets
23 out the corporate limits of the municipality. The city may
24 serve outside the municipality as long as they can do so
25 with secondary distribution facilities. In other words, it

7:11

1 prohibits the extension of primary distribution facilities
2 outside the city. I have already covered C.

3 BY MR. LESSY:

4 Q To your knowledge, were similar provisions contained
5 in other contracts between Ohio Edison and other members of
6 the Wholesale Consumers of Ohio Edison?

7 A To my knowledge, there were similar provisions in
8 all of the wholesale customer's contracts.

9 Q Can you testify as to the effect of the
10 paragraph 4 as implemented by Ohio Edison Company in the
11 past?

12 MR. REYNOLDS: If I could have clarification. I'm
13 not sure if the question is addressed to the effect on the
14 City of Wadsworth or effect on all members of WCOE. It is
15 unclear exactly what the question is addressed to.

16 MR. STEVEN BERGER: I object on the basis that the
17 question was couched in terms of implemented by Ohio Edison
18 Company. It is a contract signed by both parties, I believe.

19 CHAIRMAN RIGLER: You want to rephrase it?

20 BY MR. LESSY:

21 Q Operating under paragraph 4, what was the effect
22 on the City of Wadsworth?

23 A The major effect, of course, is the prohibition
24 for extension of primary distribution facilities outside
25 the city. The most obvious effect that this had was that it

Smil

1 would not allow growth of the system outside the city
2 beyond secondary service extensions from existing transmission
3 lines. There was initially almost immediately following the
4 signing of this contract an interpretation problem that I con-
5 sider to be more in line with -- more in the line of a harass-
6 ment than anything else. There was a question as to whether
7 or not the City of Wadsworth could hang a transformer on their
8 primary distribution system outside the city, that this was
9 an extension of their primary system and was not in line with
10 the contract permitted. This was the company's contention.
11 We were dealing at the time for an industrial load and the
12 city felt that they were entitled to serve it, but the
13 company interpretation of the contract was different from that.
14 The net result, however, was that the city went ahead and
15 served it and nothing happened beyond that.

e14

16

17

18

19

20

21

22

23

24

25

joni

15 1 A But the major problem with this provision was our
2 2 limited growth potential outside our existing -- area that
3 3 existed in 1965.

4 CHAIRMAN RIGLER: You are saying Provision 4 in
5 5 the contract of December 31, 1965 between Wadsworth and Ohio
6 6 Edison prevented the municipality from expanding its service
7 7 area?

8 THE WITNESS: Exactly.

9 CHAIRMAN RIGLER: It seems to me it says
10 10 except upon written consent of the municipality.

11 I am not getting what you said out of paragraph 4.
12 12 It begins except on the written consent of the municipality.
13 13 That would be Wadsworth or upon the order of a public
14 14 authority having jurisdiction over the company and I suppose
15 15 the company refers back to Ohio Edison will provide no
16 16 direct service.

17 I don't see how this limits the municipality
18 18 from providing direct service.

19 Have I missed something?

20 THE WITNESS: Read C.

21 CHAIRMAN RIGLER: Yes. But don't they all flow back
22 22 back to the preamble clause?

23 This places limitations upon Ohio Edison's ability
24 24 to compete with Wadsworth instead of vice versa, doesn't it?

25 THE WITNESS: The interpretation of the document

1 was that the City of Wadsworth and those that entered into
2 similar contracts couldn't extend primary distribution
3 facilities outside the city limits. That was the
4 interpretation of our legal staff and the Ohio Edison legal
5 staff.

6 CHAIRMAN RIGLER: I might get that out of Exhibit
7 A to this contract in the phrases marked other on page 3 which
8 has been red-lined for us, but I can't follow that from
9 paragraph 4 which was Mr. Lessy's reference here.

10 Mr. Berger, do you want to help us out at this
11 point or not?

12 MR. STEVEN BERGER: I think you are moving in
13 the right direction, your Honor.

14 MR. REYNOLDS: We could take a minute. I don't
15 have anything red-lined on my copy or black-lined or any
16 other lined. That doesn't have anything to do with the point
17 I'm driving at.

18 If we could stop for a minute and get an indication
19 of what is red-lined.

20 CHAIRMAN RIGLER: I would like to stop. During
21 that interval you might re-think your questioning, Mr. Lessy.
22 You might read paragraph 4 and then read what is contained
23 in other and see if you want to pursue this line of
24 questioning or turn to another portion of the contract.

25 Okay.

(Recess.)

joni

1 CHAIRMAN RIGLER: You may resume, Mr. Lessy.

2 MR. LESSY: Is the Board -- as the Chairman
3 properly indicated, I called the witness' attention to
4 the wrong section of this contract and would like to
5 go over it again.

6 BY MR. LESSY:

7 Q With specific attention to Exhibit A of the
8 contract entitled Municipal Resale Service Primary
9 Voltage, specifically with respect to the provision on page 3
10 of that schedule entitled "Other," and I would direct the
11 witness' attention to that section.

12 My Lyren, I call your attention to, on page 3
13 of Exhibit A, to the contract which we have identified, and
14 request your attention initially to Section C in the portion
15 of that schedule entitled "Other" and ask you to read that
16 language and ask that you explain operation -- explain that
17 language as it comes into -- or as it has come into use
18 between the City of Wadsworth and Ohio Edison Company.

19 CHAIRMAN RIGLER: Isn't the language self-
20 explanatory, Mr. Lessy? I don't have any trouble understanding
21 it. I don't think the rest of the Board does.

22 Does it mean something other than what it says?

23 MR. LESSY: We will pursue that in some
24 subsequent questions.

25 Thank you.

1 BY MR. LESSY:

2 Q What was the effect of this contractual
3 provision contained in paragraph C as to operating there-
4 under, Mr. Lyren?

5 A Well, the effect was the same as I explained to
6 the Board earlier. Prohibiting the city to extend primary
7 distribution facilities outside the city. It inhibited the
8 growth of the system from that standpoint.

9 There also is a provision here whereby the
10 city can request, could request of the company permission to
11 serve or to extend primary.

12 This procedure was followed on a number of
13 occasions whereby we felt that we were in the best position
14 to serve the customers at the extremities of our system and
15 we asked the company's permission to do so.

16 The procedure was then for the company to
17 decide and in writing give us permission or conditionable
18 permission to extend our primary and serve additional
19 customers.

20 The company on a number of instances conditioned
21 their approval of our extension of primary upon paying back
22 in the future the customers that we so acquired.

23 Q Is there a term to describe this paying back
24 relationship that you just testified to?

25 A I believe the term that was used was banking of

1 customers. We owed so many customers to Edison in lieu of
2 their permission to serve customers that were acquired through
3 the extension of primary outside the city.

4 Q Are you aware of a letter dated April 18, 1936
5 from the City of Wadsworth to Mr. William Haury of Ohio
6 Edison?

7 MR. SMITH: Is that 4047

8 MR. LESSY: This is Staff Document Number 404
9 and we would ask that it be marked for identification as
10 Exhibit Number NRC Staff Exhibit 36.

11 (The document referred to was marked
12 NRC Staff Exhibit Number 36 for
13 identification.)

14 THE WITNESS: This is a copy of the letter sent
15 by our Superintendent of Distribution, Mr. Clevidence on
16 behalf of the city requesting permission to serve a portion
17 of Weltzine Sky Park which involved the extension of primary
18 and the addition of services off of that primary extension.

19 BY MR. LESSY:

20 Q Is Mr. Clevidence still with the City of Wa Yh

21 A Yes, he is.

22 Q Does he report to you?

23 A Yes, he does. But at the time this letter was
24 written Mr. Crabb was his superior.

25 MR. LESSY: Staff moves for receipt into evidence

xxxxxx

jon

1 of this document as NRC Staff Exhibit 36 that Mr. Lyren
2 just described.

3 MR. STEVEN BERGER: It is unsponsored. It is
4 clear from Mr. Lyren's earlier testimony that he was not even
5 with the City of Wadsworth at the time this document was
6 written.

7 I would like to have an offer of proof from
8 Mr. Lessy as to the truth of this document.

9 MR. LESSY: The offer is that this is a document
10 describing the request for extension of primary that
11 Mr. Lyren described to us and in his position as Director of
12 Services he is familiar with this arrangement.

13 MR. REYNOLDS: On behalf of the other Applicants
14 I would like to note a continuing objection and also I would
15 like to note a second objection as to relevance of this
16 document in any event as to any of the Applicants in view
17 of the fact that under the offer of proof I see no indication
18 that it is related in any way to activities under the license.

19 MR. LESSY: This goes to the situation
20 alleged to be inconsistent with the antitrust laws
21 concerning existing contractual relationships between one
22 of the Applicants in this instance and one of the other
23 electric entities in its service area.

24 CHAIRMAN RIGLER: The objection will be overruled.
25 It will be admitted into evidence as NRC Exhibit

1 Number 36.

2 (NRC Staff Exhibit Number 36, previously
3 marked for identification, was
4 received into evidence.)

5 CHAIRMAN RIGLER: What do you intend to do with
6 Number 35, Mr. Lessey.

7 MR. LESSY: We still have questions relating to
8 the contract. I was planning on not moving for admission
9 of the contract until we are finished with that line
10 relating to the contract.

end

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. LESSY:

317
b61

Q Could you repeat briefly, Mr. Lyren --

CHAIRMAN RIGLER: Wait a minute, Mr. Lessy.

(Discussion off the record.)

CHAIRMAN RIGLER: You may proceed.

BY MR. LESSY:

Q Could you briefly state for us why, in your view, the April 18, 1966 letter from Mr. Clevidence to Mr. Haury, admitted as Staff Exhibit 36, was necessary?

A It was the interpretation of the contractual provisions which we covered here just a few minutes ago, whereby the City had to request in writing consent for service or extention of primary service, in taking on additional customers. This was one of a number of instances where we sent letters to the company requesting same.

Q Mr. Lyren, I direct your attention to a document which is Staff Document 409, which we would request be marked as Staff Exhibit Number 37 and ask you to review the document initially.

(The document referred to was marked NRC Staff Exhibit No. 37 for identification.)

BY MR. LESSY:

Q Could you briefly describe what this document represents?

XXX

lw2 A. This is in response to a letter of April 18, 1966, from Mr. Clevidence. The response is from Mr. Henry that permission is granted for the City to extend their supply and supply certain customers outside of the area we were permitted to do so under contract.

MR. LESSY: Staff moves for admission of the document identified as Staff Exhibit 37 as the response to the document identified as NRC Staff Exhibit 36.

MR. SMITH: Was that document 409?

MR. LESSY: Yes, it is.

MR. STEVEN BERGER: Your Honor, I have no objection, as long as it is understood that it is an unsponsored exhibit and it is based on the same offer of proof that Mr. Lesse made with regard to NRC Number 35 in evidence at the present time.

CHAIRMAN RIGLER: It is a request for permission under --

MR. STEVEN BERGER: This is the response.

CHAIRMAN RIGLER: It is a response to a request for permission to obtain customers outside the city limits, pursuant to Exhibit A of NRC Document for Identification Number 35, NRC Exhibit 35. .

MR. STEVEN BERGER: Right. It is being admitted on the basis of the offer of proof that Mr. Lessy made to Number 36.

CHAIRMAN RIGLER: Are you contesting the authenticity of this document?

MR. STEVEN BERGER: No, I'm not. I'm not contesting authenticity at all.

MR. SMITH: What do you mean by "unsponsored"?

MR. STEVEN BERGER: What I mean by unsponsored is, if something is sought to be introduced into evidence, and it can't be introduced through the testimony of a witness, then a document offered for evidence must have its basis for issuance into the record. It must have a statement of relevance. Mr. Lessy made that statement in regard to Number 36. On the basis of that, I have no objection. As to 37, as long as it is based on the same offer of proof, I have no objection to that document, as well. No current objection.

I may at some time be moving to strike on the basis of that offer of proof.

MR. CHARNO: The Department has been proceeding on the assumption that once a document is in the record that we are not limited by the arguments of relevance made by other counsel with respect to that document. I think that Mr. Berger's comments tend to imply at least that he is relying on some restricted admission of this document, so that its utilization by the Department of Justice which is not introducing it and is not making an offer of proof with

bw4

respect to that would be limited in the utilization of this document as evidence.

Could the Board clarify its ruling with respect to the scope of admission of the document and the availability of the document for subsequent use as evidence.

MR. LESSY: I want to comment with respect to 37, when I made the motion, I moved it as a response to 36. That was the offer of proof, if one is indeed required.

CHAIRMAN RIGLER: Mr. Charno, I would suspect that you are on the right track with Mr. Berger's having some limitation in mind. I suggest if you intend to use it for purposes other than those identified by Mr. Lessy, it might behoove you to make your own offer of proof or introduce it independently to protect your position.

MR. CHARNO: Thank you, sir.

MR. REYNOLDS: If I may, Mr. Chairman, I would like to note the continuing objection of the other applicants with respect to the admission into evidence at this time.

CHAIRMAN RIGLER: It is overruled. We will receive it into evidence as NRC Exhibit 37.

(NRC Staff Exhibit No. 37

for identification was

received in evidence.)

BY MR. LESSY:

Q Mr. Lyren, I direct your attention to a

bw5

document which bears Staff identification 106, which we would request be identified as Staff Exhibit Number 38. It is a memorandum dated April 6, 1968.

XX

(The document referred to was marked NRC Staff Exhibit No. 38 for identification.)

BY MR. LESSY:

Q With respect to this document identified as NRC-38, what does this document indicate to you in terms of the nature of the previous exchanges that we just discussing.

MR. STEVEN BERGER: I think the document speaks for itself, your Honor.

MR. REYNOLDS: I object to that.

MR. STEVEN BERGER: I don't know that the Witness, especially in light of the fact he was not serving as director at the time, could possibly shed any light on this document beyond its contents.

CHAIRMAN RIGLER: I would agree.

MR. LESSY: Staff would move for entrance as an unsponsored exhibit, the document identified as Exhibit Number 38. The offer of proof would be that this would be indicative of the customer exchanges which were required under the applicable provisions of the contract.

CHAIRMAN RIGLER: Customer exchanges were not required. Do you want to rephrase that, I think?

b7d

MR. LESSY: That which was required pursuant to the request for extension of service.

MR. STEVEN BERGER: I don't think that gets it done either, your Honor.

MR. REYNOLDS: I object to that. I'm not sure of what was said, in view of the interruptions and half sentences before and after.

MR. STEVEN BERGER: I might note, your Honor, the date of this document predates NRC Staff Exhibits 35 and 36 -- 36 and 37, excuse me.

MR. LESSY: Perhaps we can go about it another way.

2 CHAIRMAN RIGLER: Just make your proffer of proof,
3 but be precise as to what you are wishing to prove to us.

4 MR. LESSY: The offer of proof with respect to this
5 document is when a municipality such as Wadsworth requested
6 an extension of service pursuant to the documents that have
7 been introduced into evidence -- before that extension would
8 occur there had to be -- before the consent of Ohio Edison
9 Company occurred, there apparently had to be something else.
10 This document goes to the something else. This indicates
11 that a customer exchange occurred prior to the time of the
12 approval by Ohio Edison of the request for extension of service.

13 MR. STEVEN BERGER: I would like to have some
14 definition of what Mr. Lessy is talking about when he says
15 something else.

16 CHAIRMAN RIGLER: Yes, I agree it is still too
17 vague.

18 MR. CHARNO: I thought I would make an offer
19 on behalf of the department.

20 CHAIRMAN RIGLER: Well, listen to your offer.

21 MR. STEVEN BERGER: Excuse me. I don't know that
22 the way we are proceeding now in having the department
23 proffer the document is what was contemplated. Certainly
24 the department is sponsoring Mr. Lyren and will have
25 opportunity at the later time to proffer whatever documents

2ail

1 they want through him on unsponsored, but now we are dealing
2 with Mr. Lessy's case.

3 CHAIRMAN RIGLER: I agreed with you earlier. I
4 saw you nod as I informed Mr. Charno that when I said he
5 would have to protect his rights independently. Mr. Charno
6 should make his proffer at the time we are discussing it.
7 It seems the record will flow more smoothly and we will all
8 understand what goes on better if I allow him to make his
9 proffer now. I don't think it prejudices you and I do think
10 it straightens out the record.

11 MR. STEVEN BERGER: Okay, your Honor.

12 MR. REYNOLDS: Just a point of clarification.
13 In that light, would we then anticipate that we would still
14 get a proffer from Mr. Lessy so we know what his proffer is
15 for purposes of this document?

16 CHAIRMAN RIGLER: That's correct. We have
17 rejected Mr. Lessy's last proffer because I didn't think it
18 comported with the language of the exhibit. While he is
19 reframing his proffer, I will give Mr. Charno opportunity to
20 get his proffer on the record.

21 MR. CHARNO: The Department of Justice would
22 offer NRC Exhibit 36 for identification as evidence of the
23 carrying out of an allocation of customers between horizontal
24 competitors.

25 CHAIRMAN RIGLER: Mr. Lessy, do you want to try to

3mil 1 rephrase your proffer?

2 MR. LESSY: I would defer to Mr. Charno's offer
3 except to add it was required between the City of Wadsworth
4 and Ohio Edison Company. This was required.

5 CHAIRMAN RIGLER: Your witness testified this
6 occurred on occasion. He did not testify it was required.
7 He referred to the practice of hooking customers. I did not
8 understand his testimony to be that that was a requirement.

9 MR. LESSY: Maybe I should go -- withdraw the
10 motion for entrance into evidence of that particular document
11 and just go directly to the witness with another question.

12 CHAIRMAN RIGLER: It is up to you, Mr. Lessy.

13 MR. REYNOLDS: I'm just a little confused.
14 Mr. Charno did move to have it introduced into evidence with
15 a proffer of proof.

16 CHAIRMAN RIGLER: That was in connection with Mr.
17 Lessy's offers. It seems Mr. Charno is going to have to
18 re-introduce it now. If Mr. Lessy withdraws his offer, it
19 is withdrawn temporarily. It is not in evidence.

20 BY MR. LESSY:

21 Q Mr. Lyren, with respect to MEC Exhibit No. 37,
22 the May 26, 1966, letter from Mr. Harry to Mr. Clevidence,
23 to your knowledge prior to or at the time of the letter
24 identified as exhibit -- Staff Exhibit 37, did anything else
25 occur between Wadsworth and Ohio Edison relating to the

4mil

1 request set forth in WRC Exhibit 36?

2 A. You are asking me whether or not, after this
3 letter of May 26, 1966, was written, whether anything else
4 happened?

5 Q. In connection with this letter. Is there anything
6 else with which you are aware that bears on this question?

7 MR. STEVEN BERGER: Excuse me, your Honor. Could
8 I have the question read back? I don't know what he is
9 driving at right now.

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

12 CHAIRMAN RIGLER: I think he is asking if there
13 are collateral events associated with the writing of this
14 letter. Is that right, Mr. Lessey?

15 MR. LESSY: That's correct.

16 CHAIRMAN RIGLER: Proceed.

17 THE WITNESS: I believe I understand the question.
18 My answer is that the approval of the primary extension in
19 the Sky Park Development resulted at a future date when I was
20 employed with the City of Wadsworth in a transaction or
21 agreement that was drawn between the city and the company to
22 compensate the company for customers that were in the bank.
23 This agreement and trade of customers occurred in 1976, but
24 we added to this particular development with additional
25 customers that came on line in a similar manner.

Smil 1

BY MR. LESSY:

2 Q Could you describe the practice that you have
3 termed banking of customers for us as practiced between
4 Wadsworth and Ohio Edison in more detail?

5 A When the City of Wadsworth had the opportunity to
6 reasonably extend their primary and serve a potential customer,
7 one that was involved in the building of a new home, we made
8 a request in writing to the company for permission to serve.
9 The company would grant us that permission under the condition
10 that at some future date, we pay back to the company the
11 value of that customer. This practice usually on a single
12 customer basis proceeded until the customers in the bank
13 became five, six, seven, eight customers. The Sky Park
14 Development was one of an underground construction and one
15 of our concerns was as we started to extend this primary
16 underground for just one phase of the development that really
17 we should be talking about the entire undeveloped area.
18 Eventually the company requested verbally to sit down with
19 the city and discuss this matter and try to equalize the
20 credits that had been accrued and we had some in 1970.
21 We traded some existing customers that we had on our system,
22 sold inventory, sold the inventory associated with those
23 customers in consideration for the customers that were
24 in the bank as well as some other areas that were not
25 presently served.

1 Q I show you document identified as Staff Document
6mil 2 No. 429, which should be marked for identification as Staff
3 Exhibit No. 39.

4 (The document referred to was
5 marked Staff Exhibit No. 39,
6 for identification.)

7 BY MR. LESSY:

8 Q It is dated February 17, 1970. It is a letter
9 signed by yourself. It is directed to Mr. William Haury
10 of Ohio Edison Company.

11 Mr. Lyren, with respect to this letter of yours,
12 other than the express provisions contained therein, can
13 you explain how this relates to the concept of banking of
14 customers?

15 A The customers listed as one, two, three, four,
16 five were customers that had been previously served by
17 the City of Wadsworth after written permission from the
18 Ohio Edison Company. Also, you recall the request for
19 an extension of service in the Sky Park Development.
20 That was also part of this letter and the eventual agreement
21 which followed.

22 MR. LESSY: Staff moves for introduction into
23 evidence as Staff Exhibit No. 39, this February 17, 1970,
24 letter of Mr. Lyren.

25 CHAIRMAN RIGLER: Mr. Charno?

7mil 1 MR. CHARNO: Could either the witness or counsel
2 indicate the nature and source of the handwritten notations
3 after the entries one, two, three, four, five? They are not
4 quite legible on this copy.

5 BY MR. LESSY:

6 Q Can you respond to that request?

7 A I can't read it on my copy.

8 MR. LESSY: We would suggest that the Board and
9 parties disregard those handwritten notes because they
10 are illegible on our copy also. This is a letter you sent,
11 right?

12 THE WITNESS: Exactly.

13 MR. REYNOLDS: I would like to note the continuing
14 objection of the other Applicants to the admission of this
15 document into evidence, and also the objection that I voiced
16 earlier on the basis of relevance, in that I see no way that
17 this -- I see no way that this document and the matters
18 discussed herein relate at all to any activities under the
19 license.

20 CHAIRMAN RIGLER: I can see how it impacts upon
21 those activities. The objection -- could impact, let me say,
22 not does impact. The objection will be overruled. It will
23 be received as NRC Exhibit 39.

24 (The document referred to, heretofore
25 marked Staff Exhibit 39, for identifi-
cation, was received in evidence.)

Smil

1 CHAIRMAN RIGLER: I have a question or two before
2 you leave this area. Do any of these customers have any
3 choice with respect to who serves them?

4 THE WITNESS: No.

5 CHAIRMAN RIGLER: Are these primarily customers
6 located outside of the city?

7 THE WITNESS: They are all customers located
8 outside of the city.

9 CHAIRMAN RIGLER: In order to serve those
10 customers, is it necessary for you to have on file an
11 approved tariff with the State of Ohio Public Utilities
12 Commission.

13 THE WITNESS: No. If there are customers, it re-
14 quires rate on file with the Federal Power Commission.

15 CHAIRMAN RIGLER: No state agency has jurisdiction?

16 THE WITNESS: Right.

17 CHAIRMAN RIGLER: Is the same true with respect
18 to Ohio Edison with respect to serving its customers outside
19 the city?

20 THE WITNESS: Their requirements are with respect
21 to the Public Utilities Commission of Ohio with respect
22 to retail customers. With the Federal Power Commission
23 with respect to industrial customers. The City of Wadsworth
24 is not regulated by the Federal Power Commission or Public
25 Utilities Commission in regard to its retail rates. We do

mail

1 file them, report them to the Federal Power Commission, but we
2 don't come under their regulations per se. The City Council
3 must approve the rates. That is all the regulations.

all

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CHAIRMAN RIGLER: Have you made comparison of your
2 rates outside the city limits of Wadsworth and those of the
3 Ohio Edison Company for similar type customers?

4 THE WITNESS: Yes. You would like the results
5 of that?

6 CHAIRMAN RIGLER: Yes, please.

7 THE WITNESS: The last review of rates made
8 between the Wadsworth rate and the Edison rate showed a
9 difference in rate of about 15 percent. The City of
10 Wadsworth being 15 percent less than the Ohio Edison Company.

11 Now, this is going to bounce around a little
12 bit depending on when rate increases are approved. The
13 Ohio Edison Company recently gained approval of a rate
14 increase. That rate increase approval is not contained in
15 the figures that I presented to you.

16 CHAIRMAN RIGLER: If that rate increase application
17 is approved, then the rate Ohio Edison charges its customers
18 outside of Wadsworth would go up; is that correct?

19 THE WITNESS: That's right.

20 CHAIRMAN RIGLER: Would there also be an increase
21 in the cost of electric power supplied by Ohio Edison to
22 Wadsworth itself?

23 THE WITNESS: The present adjustment proposed by
24 the company and pending final determination by the Federal
25 Power Commission has been put into effect on a temporary basis.

jon2

1 If you are familiar with the Federal Power
2 Commission proceduzes, the rate was approved temporarily
3 and pending final determination by the Commission.

4 This new rate has been incorporated in our retail
5 rates so the figures that I gave you already included the
6 latest proposed rate increase by the City of Wadsworth for
7 their retail customers.

8 CHAIRMAN RIGLER: Thank you.

9 Have you ever had customers shop rates between
10 you and Ohio Edison or potential successors?

11 THE WITNESS: Normally what happens nowadays,
12 there is more development on an allotment basis. You are
13 talking about developers seeking the best arrangement with
14 the company and the city. By the time the electric lines
15 are in and it is decided who will serve the area, it is too
16 late for the customer to go shopping. The lines are already
17 there and it is a matter of hooking up the service.

18 In that area we have had some interesting
19 experiences. Even though our rates are considerably lower
20 than that of the company, there are other policies in effect
21 with regard to developmant and contribution to developers by
22 the company that entice the developer to request the
23 company's service in that area.

24 For example, in the construction of underground
25 the City of Wadsworth does not contribute to the extent that

1 the Edison will and so the developer is enticed to allow them
2 to provide service to the development. But the customer,
3 ultimate customer, is beyond the point of picking and choosing
4 by the time he gets there.

5 CHAIRMAN RIGLER: You are talking primarily of
6 residential customers, are you not?

7 THE WITNESS: Our experience and all the
8 documents introduced relating to this customer exchange
9 and in fact to the best of my knowledge the only customers
10 that have been exchanged or considered in primary extension
11 have been residential customers.

12 CHAIRMAN RIGLER: How about customers
13 whose usage of electricity would be substantially greater
14 than that of a residential customer but still less than that
15 of a heavy industrial user?

16 Let's call it medium commercial or light
17 commercial. Do you have customers of that nature out of
18 the city?

19 THE WITNESS: We have not added any customers
20 like that outside the city since 1965. We do have a few
21 in one section of our system, but it was already served by
22 primary and secondary service before the contract was entered
23 into.

24 CHAIRMAN RIGLER: Have you ever competed with
25 Ohio Edison to obtain additional customers of that nature?

1 THE WITNESS: The only example that I can give you
2 is the Chic Brass Reserve Center was built outside the City
3 of Wadsworth and the company secured the service of that.

4 There wasn't really any choice in the matter.
5 The only way we could request to serve a customer or normally
6 the way the request came about was that the customer came to
7 us either inadvertently where the customer came to us and
8 we offered to serve him.

9 CHAIRMAN RIGLER: What happened then?

10 THE WITNESS: We got into the banking arrange-
11 ment. At no time has a heavy industrial customer come to us
12 saying we would like you to serve us, we are outside the city,
13 it would require a primary extension.

14 I haven't had that situation occur.

15 BY MR. LESSY:

16 Q I show you a document which is Staff
17 Document 443 dated August 2, 1971 and ask it be marked for
18 identification as NRC Exhibit 40.

19 (The document referred to was marked
20 NRC Staff Exhibit Number 40 for
21 identification.)

22 BY MR. LESSY:

23 Q Is this letter in response to NRC 397

24 A Yes, it is part of the response. I believe there
25 was an agreement prepared and this -- the language in the

jon5

1 agreement did not contain all of the language that was
2 requested in my February 17, '70 letter so this letter
3 accompanied the agreement to make it perfectly clear that we
4 had permission to serve these people and the Sky Park
5 Development both to serve the existing and future customers
6 in Sky Park Development.

7 Q I will get to the agreement in a moment

8 MR. LESSY: Staff hereby moves for introduction
9 into evidence of Document NBC 40, the letter dated August 2,
10 1971 from R. J. Zimmerman to Mr. Lyren and to the Honorable
11 L. Gotwald.

12 MR. LERACH: Could we have the Staff document
13 number? We are unable to locate the document.

14 MR. LESSY: 443.

15 MR. LERACH: Thank you.

end

16

17

18

19

20

21

22

23

24

25

hw1
821 MR. REYNOLD: Mr. Chairman, I would like to continue
both of my earlier objections to the prior documents --
with respect to this document.

CHAIRMAN RICLER: Both objections are overruled.
We will receive it into evidence as NRC Number 40.

XIX
(NRC Staff Exhibit No. 40 for
identification was received in
evidence.)

CHAIRMAN RICLER: Let me ask one other question.
I'm sorry to interrupt, Mr. Lessy.

Are utility companies granted exclusive franchises
to serve a particular area in the state of Ohio or may they
compete with one another, let's say, outside of municipal
limits?

THE WITNESS: Right. To my knowledge the only
legal restrictions that are involved are laws that are
applicable to that question involving the Antipirating
Act which would prohibit one utility from going out and
taking the customers of another outside the corporate
limits now.

There is a waiting period before that can happen.
The customer can do it, but he has to wait 90 days before he
can hook up to the other customer. There is not territorial
legislation, as such to my knowledge.

MR. LESSY: With respect to the agreement, we have

bw2

not redlined it and would request ten minutes to do so.

CHAIRMAN RIGLER: What agreements?

MR. LESSY: Mr. Lyren mentioned an agreement that supplemented NRC-40. We have not redlined it. I would request time to do that.

CHAIRMAN RIGLER: All right. Recess.

(Recess.)

BY MR. LESSY:

Q Mr. Lyren, with respect to Staff Exhibit Number 41, entitled agreement, is this the agreement you referred to in response to your last question?

A Yes, it is.

Q Do you have collateral matters with respect to the agreement or transaction, you would like to add to, in response to your last question?

A The agreement is self-explanatory. It's a sales agreement. It doesn't cite the other terms and conditions that were referred to earlier. We requested a letter to accompany the agreement and that is the letter that was just previous to this matter discussed, but this is the sales agreement I referred to you.

Q Mr. Lyren, do you recall -- Staff moves for introduction of sales agreement as NRC Exhibit 41.

CHAIRMAN RIGLER: NRC-438 is identified as NRC Exhibit 41 and now you are moving the admission into

bw3 evidence of that document.

MR. REYNOLDS: I would like to note the continuing objection of the other Applicants.

CHAIRMAN RIGLER: Fine. Overruled. It will be admitted into evidence as Exhibit 41.

xx

(The document referred to was marked NRC Staff Exhibit No. 41 for identification and received in evidence.)

BY MR. IESSY:

Q Do you recall a letter with an attached list of customers, dated February 14, 1972 from W. R. Haury to yourself? For purposes of inspection by the Board and other parties, this is Staff Documents 444 and 445.

CHAIRMAN RIGLER: Are you asking they be identified at this time?

xx NRC Document Number 444 will be identified as NRC Exhibit Number 42 and NRC Document Number 445 will be identified as NRC Exhibit 43.

(The documents referred to were marked NRC Staff Exhibits 42 and 43 for identification.

Jonl
22

BY MR. LESSY:

Q Mr. Lyren, do you recall receiving this letter?

A Yes, I do.

Q Identified as Exhibit 42?

A Yes, I do.

Q Could you describe the transfer of customers
which are listed in Exhibit Number 43?

A This document refers to an inventory that was
taken --

MR. REYNOLDS: Could I have the question back
before the answer?

(The reporter read from the record as requested.)

MR. LESSY: The first question was did the
witness recall receiving a letter. That is 42. The attach-
ment shown on the letter itself is also noted as Exhibit 43
with the one sentence line customers to be transferred from
Ohio Edison to Wadsworth service on August 1, 1972.

I was asking the witness to describe the
transfer.

MR. REYNOLDS: I don't understand why they are
clipped and what the relationship is. That's why I wanted
the question read back. I don't see that they fit together
at all.

Maybe we can ask the witness if they do. The way
the question is framed, it assumes there is some relationship.

I am lost on the basis of the documents as to what it is.

CHAIRMAN RIGLER: Mr. Lynn, Exhibit 42 says attachment. Is Exhibit 43 the attachment to Exhibit 42?

THE WITNESS: I am sorry these numbers don't appear on my exhibits.

CHAIRMAN RIGLER: Look at NRC Staff Document 444 which says it has attachment. Is NRC 445 the attachment?

THE WITNESS: Yes.

MR. STEVEN BERGER: It really doesn't clear it up for me -- I am sorry.

MR. REYNOLDS: I guess my problem is that there is eleven customers listed on the attachment. There are nine that are referred to in the letter and the dates August 1, '71 is following February 14, '72 I am not clear.

CHAIRMAN RIGLER: You could cover that on cross-examination if you had to.

BY MR. LESSY:

Q I believe the question is -- and I will restate it -- can you describe the transfer of customers referred to -- scratch that.

Is NRC 43 which in the copy you have would have the Document Number 445 the attachment to the letter dated February 14, 1972 to your recollection?

A Yes, it is.

jon3

1 Q Inasmuch as that is the attachment, could
2 you describe the transfer of customers referred to in
3 Exhibit 437

4 A Yes. This transfer of customers is not related
5 to the sales agreement and letter accompanying that agreement
6 but is another transfer matter. It deals with a situation
7 where the municipality extends its corporate limits into an
8 area of service by the company. Since under Ohio law the
9 city has the home rule right to provide utility service
10 within the corporate limits, we exercised our right by request-
11 ing the company to sell us the inventory and to give us the
12 customers contained within the annexed area.

13 This letter was written after the completion of
14 an inventory and evaluation of the facilities contained in
15 that area.

16 The customers indicated on the attachment are the
17 customers involved in the transaction.

18 The City of Wadsworth proceeded to file
19 appropriation proceedings to secure the property for the
20 value, the inventory and evaluation amount. It resulted in
21 transfer of those customers and inventory to the City of
22 Wadsworth.

erd22

23

24

25

1 MR. LESSY: We would like to move into evidence
2 as Exhibits NRC Exhibits 42 and 43, the letter and the attach-
3 ment.

4 MR. STEVEN BERGER: Your Honor, I don't regard
5 it as a big matter. It is a restatement of what Mr. Reynolds
6 said. On their face, the documents don't measure. The
7 attachment has 11 customers listed and the document 43,
8 Staff Exhibit 43, has only nine customers. Where are the two
9 customers?

10 CHAIRMAN RICLER: Mr. Lyren, referring you to
11 Exhibit 43, which is Staff document 445, what is the
12 significance of this customer list? Are these customers
13 living in the annexed area?

14 THE WITNESS: That's right. From the time the
15 inventory was taken and the number of customers expanded
16 because that area had building going on at the time the
17 actual number of customers changed from the two dates.
18 That is all I can say.

19 CHAIRMAN RICLER: Mr. Reynolds?

20 MR. REYNOLDS: I would like to note the continuing
21 objection of Applicants, the other Applicants in the proceed-
22 ing. I note an objection as to the relevancy of this docu-
23 ment as I stated before.

24 CHAIRMAN RICLER: That objection will be sustained
25 on grounds of relevance. It will be rejected. The customer

2mil

1 transfer occurred pursuant to Ohio law relating to municipal
2 annexation. I don't see how that has anything to do with the
3 conditions under the license.

4 MR. LESSY: We are going to leave the contract
5 for a while and then come back to it a little later. Before
6 we do, Staff would like to move into evidence Exhibit No. 35
7 which is the contract we have been referring to. It is the
8 Staff's own internal document numbered 403. It is
9 the contract entered into the 21st day of December, 1965,
10 between the City of Wadsworth and the Ohio Edison Company.

11 MR. REYNOLDS: I'm sorry. I was trying to find out
12 what we were relating to. I have the continuing objection
13 to that.

14 CHAIRMAN RIGLER: That objection will be over-
15 ruled. It will be admitted.

16 (The document referred to,
17 heretofore marked Staff Exhibit
18 35, for identification, was
19 received in evidence.)

20 MR. LESSY: Mr. Chairman, we are going into a new
21 line now.

22 CHAIRMAN RIGLER: I think this is a good time to
23 break today. We will resume in the morning at 9:30.

24 Wait a minute.

25 MR. LEPACH: I was requested to outline my

XXXX

Pm11

1 proposed cross-examination of Mr. McCabe when he returned.
2 Over the lunch hour, I do have additional items. I can give
3 them to the reporter. There is no need for everyone to sit
4 around. They are under protective order, anyway. We can give
5 them to the reporter.

6 CHAIRMAN RIGLER: We would like to hear them.

7 MR. LERACH: Other areas of cross-examination
8 of Mr. McCabe include the current operating condition of the
9 Pitcairn distribution system, finances of the borough,
10 his awareness of Duquesne Light Company's current policies
11 regarding sale of power for resale, discussion of potential
12 transmission losses in the sending of Pitcairn power to
13 Duquesne Light Company and the difficulties that would be
14 presented with it in the future if it was attempted, cross-
15 examination to make clear that it was Mr. McCabe's suggestion
16 that Duquesne Light Company met with him to discuss CAPUC
17 and that it was not the action of the company or the
18 Applicants, a series of questions into the area of Pitcairn's
19 intentions as to attempting to expand its service area,
20 longer series of questions designed to show the absence
21 of factual competition, or the legal possibility of competi-
22 tion. Put into evidence certain official borough of Pitcairn
23 approval of certain transactions or actions between the
24 borough and Duquesne Light. Questions relating to current
25 rate structure in Pitcairn as compared to Duquesne, future

mail

rate structure, and rate regulations.

I think that is all.

23
10.1
11.2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E13M11

1 CHAIRMAN RIGLER: All right.

2 MR. LERACH: Excuse me. I might have. To the
3 extent I didn't say it before. I want to make sure that I do
4 have to look at his testimony to be certain of this. But
5 this dead start up situation I want to be certain is clear
6 in the record.

7 CHAIRMAN RIGLER: I think you have covered that.
8 We may not grant you permission to go back into that. We
9 will see what your question is, if any.

10 MR. LESSY: Can we go off the record?

11 CHAIRMAN RIGLER: Yes.

12 (Discussion off the record.)

13 (Whereupon, at 4:35 p.m., hearing in the above-
14 entitled matter was adjourned, to reconvene at 9:30 a.m.,
15 Thursday, 11 December 1975.)

16

17

18

19

20

21

22

23

24

25