
City of Cleveland v. The Cleveland Illuminating
Company, 1980

Transcripts

9-23-1980

Volume 04 (Part 1)

District Court of the United States for the Northern District of Ohio, Eastern Division

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

City of Cleveland v. C.E.I., et al.
Civil Action No. C75-560

Transcript

Tuesday, September 23, 1980

Lindseth

court room



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1 TUESDAY, SEPTEMBER 23, 1980, 9:15 A.M.

2
3 THE COURT: Bring in the jury.

4 MR. NORRIS: Your Honor, I would
5 like to report that the brief that we will file
6 this morning is being copied at the moment and it
7 will be brought over in probably 30 minutes or so.

8 THE COURT: Very good.

9 {Thereupon the jury entered the courtroom and
10 the following proceedings were had in their
11 hearing and presence.}

12 THE COURT: Good morning, ladies
13 and gentlemen.

14 THE JURORS: Good morning, your
15 Honor.

16 THE COURT: You may proceed,
17 gentlemen.

18
19
20 E L M E R L I N D S E T H,
21 resumed the stand and testified further
22 as follows:

23
24 MR. NORRIS: Would the court
25 attache hand Mr. Lindseth Plaintiff's Exhibit 404?

1 {The clerk complies.}

2 - - - - -

3
4 CROSS-EXAMINATION OF ELMER LINDSETH {Resumed}

5
6 BY MR. NORRIS:

7 Q Mr. Lindseth, I hand you what has been marked for
8 identification Plaintiff's Exhibit 404. Do you have
9 that in front of you?

10 A Yes.

11 Q Now, that exhibit represents minutes of the meeting
12 held on May 11, 1966 in Cleveland among representatives
13 of some 17 different private utility companies, is this
14 correct?

15 {Pause.}

16 Q Is this correct?

17 A Yes.

18 Q And you presided over that meeting, did you, Mr.
19 Lindseth?

20 A Yes.

21 Q The purpose of the meeting was to discuss how the
22 privately-owned utility companies could improve their
23 operations through coordination with each other, is
24 this correct?

25 A Yes.

Lindseth - cross

1

2 Q And discussions took place at that time whether all
3 17 companies should be coordinated in a single power
4 pool or whether fewer than 17 should be involved, is
5 this correct?

6 A Well, that may be an oversimplification.

7 This was a meeting of --

8 Q Excuse me.

9 A -- CAPCO I companies, the predecessor of what is
10 today termed "CAPCO".

11 Q Yes; I do understand that.

12 A And it was among that group of companies that
13 reliability and planning was being considered and
14 discussed.

15 Q Yes; and there were 17 companies present there, and
16 there are only five companies in the present CAPCO;
17 is that right?

18 A Yes.

19 Q And it was about a year or so after this meeting that
20 the present CAPCO was formed; right?

21 A Yes.

22 Q Now, at this meeting on May 11, 1966, there was a
23 consensus that membership in the organization being
24 discussed should be contractually limited to exclude
25 municipal electric systems like Muny Light; is this

Lindseth - cross

1 correct?

2
3 A If the memo says that, the Secretary would have
4 recorded what he understood to have happened. I don't
5 know.

6 Q Well, addressing your attention, please, to page 4 of
7 Plaintiff's Exhibit 404.

8 I will read to you the fourth paragraph on that
9 page:

10 "The concensus was that the CAPCO group should be
11 philosophically as well as geographically delimited in
12 that the group in spite of its individual contracts with
13 non-private utilities such as municipal and REA's ought
14 to contractually limit its membership to investor-owned
15 utilities."

16 So would you agree with the earlier question that I
17 put to you?

18 A This was a concensus among the group that became ECAR.

19 Q I understand, but it was a concensus among all 17
20 companies that were there represented?

21 A That I don't believe the secretary would say was the
22 case, because it doesn't say they took a vote.

23 They had a discussion. Maybe half a dozen people
24 spoke, and maybe fewer, and he reported what you have
25 got here.

1 Lindseth - cross

2 Q What do you find as the second word of the fourth
3 paragraph on that page?

4 A "Consensus."

5 Q And you agreed with that consensus, didn't you, Mr.
6 Lindseth?

7 A Well, I was the chairman. I don't suppose I expressed
8 an opinion.

9 Q That is not my question. Let me ask the question
10 again:

11 You agreed with that consensus, didn't you?

12 A Well, I didn't disagree; that is certain.

13 Q You didn't disagree. Does that mean that you agreed
14 with that consensus?

15 A Yes.

16 MR. NORRIS: Mr. Leo, would you
17 kindly put Plaintiff's Exhibit 2062 on the easel
18 for Mr. Lindseth.

19 {After an interval.}

20 Q Mr. Lindseth, handing you what has been marked for
21 identification as Plaintiff's Exhibit -- we can move it
22 closer to you if you wish. Are you okay, Mr. Lindseth?
23 All right.

24 I am handing you what has been marked for
25 identification as Plaintiff's Exhibit 2062, which is a

Lindseth - cross

1
2 page from CEI's 1977 annual report, containing a map
3 of the combined CAPCO service area; would you agree?

4 A Yes.

5 Q There is a sentence that appears in the upper left-hand
6 corner of that exhibit which states:

7 "CAPCO power pool is an agreement among regional
8 utility companies to insure greater reliability of
9 interconnection, back up in case of emergencies,
10 and better economies of operation."

11 Did I read that sentence correctly?

12 A Yes.

13 Q And you would agree, would you not, that the CAPCO
14 power pool contributes to greater reliability of
15 interconnection?

16 A I was neither a director of the company nor an employee
17 of the company when the sentence was written, nor when
18 the CAPCO was organized.

19 I was a Director when it was organized, but not
20 an employee, and this is 10 years after I retired.

21 I wonder if I have competence to answer what you
22 are asking me.

23 MR. NORRIS:

I move that the

24 answer be stricken and the question reread and the
25 witness instructed to respond to the question.

Lindseth - cross

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2 THE COURT: Absent an objection,

3 you may answer.

4 A Would you repeat the question.

5 Q I will repeat the question:

6 I would ask you, Mr. Lindseth, whether the CAPCO
7 power pool contributed to greater reliability of
8 interconnection, and that involves a yes or no answer.

9 A Yes, it does.

10 Q Thank you.

11 Would you kindly take your seat again.

12 Even though Plaintiff's Exhibit 2062 was part of
13 the 1976 CEI annual report, the CAPCO memorandum of
14 agreement was signed in 1967, wasn't it?

15 A That again is after my date when I had any familiarity
16 with CAPCO's organization, and I don't know.

17 THE COURT: Approach the bench.

18 MR. LANSDALE: Yes; I wish to approach

19 the bench.

20
21 {Bench conference ensued on the record as
22 follows:}

23 THE COURT: Yes.

24 MR. LANSDALE: I am trying to be
25 reasonable in my objections, but believe me, I

Lindseth - cross

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2 object to anything about membership in CAPCO.

3 There is no question but interconnection
4 promotes reliability, and we will agree to this,
5 and I object to any further testimony about CAPCO
6 and its ramifications.

7 MR. NORRIS: I don't think that I
8 have put any questions that are objectionable at
9 this point.

10 I recognize that the Court has the brief in
11 front of him, and we will have a reply brief in in
12 a few minutes, and I will turn to another area.
13 I am not trying to presume the Court's ruling, but
14 I don't think that there is any disability on the
15 part of the City to demonstrate what is alleged;
16 namely, denial of access, and the fact --

17 THE COURT: Well, that is the
18 issue.

19 MR. LANSDALE: That is the issue.

20 THE COURT: That is the issue in
21 the motion before the Court, and in light of the
22 releases that the City has executed here, and
23 there is a very serious question of law involved,
24 but apart from that, this is cross-examination, and
25 this witness certainly is required to testify to

Lindseth - cross

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2 matters within his knowledge.

3 Now, if you want to qualify him as to having
4 knowledge of these incidents, fine, but as far as
5 CAPCO is concerned, until there is a dispositive
6 ruling on the motion before the Court, and on
7 reviewing the plaintiff's brief when it is filed,
8 I would suggest, gentlemen, that you defer going
9 into that subject, and reserving your right to
10 recall whomever you are desirous of recalling as
11 it may relate to CAPCO.

12 MR. NORRIS: I wanted to just let
13 the record reflect that Mr. Lindseth remained a
14 Director until 1974.

15 THE COURT: I understand that.

16 MR. NORRIS: And he was totally --
17 he was a Director during this period.

18 THE COURT: I am not saying that
19 you can't go into these things. All I am saying is
20 you must lay a proper foundation.

21 For instance, this document you have asked him
22 to testify -- to testify to the document, and there
23 is nothing in the record at this point that he
24 ever saw the document before.

25 MR. NORRIS: All I asked him was

1 Lindseth - cross

2 whether he agreed with the proposition stated
3 thereon, and he agreed.

4 MR. LANSDALE: And I didn't object to
5 that question.

6 THE COURT: Don't interrupt me,
7 Mr. Lansdale. You make me lose my train of thought.

8 All I am saying is, please lay a proper
9 foundation, and I am sure that you are aware how to
10 do that, so shall we proceed accordingly.

11 {End of bench conference.}

12 - - - - -
13 THE COURT: You may proceed, Mr.
14 Norris.

15 BY MR. NORRIS:

16 Q Mr. Lindseth, are you aware of the fact that CEI has
17 admitted that it attempted to eliminate competition
18 with Munny Light?

19 A Yes.

20 Q You wouldn't have any reason to disagree with that
21 proposition, would you?

22 A No.

23 Q During your career with CEI, -- and when I use that
24 expression, I'm going to be referring to your period of
25 service with the company in the capacity either of an

Lindseth - cross

1 officer or a director -- during your career with CEI,
2 it attempted to eliminate this competition by lots of
3 different means, is that correct?
4

{Pause.}

5
6 Q Do you understand the question?

7 A Well, I don't understand the word "lots of different
8 means."

9 Could you be specific?

10 Q Let me rephrase the question.

11 During your career with CEI, it is a fact, isn't it,
12 that CEI attempted to eliminate competition between it and
13 Muny Light by several different means; you would agree
14 with that, wouldn't you?

15 A Yes.

16 Q For example, you would agree, wouldn't you, Mr. Lindseth,
17 that CEI's 1973 refusal to wheel PASNY power was one of
18 the means that it used to eliminate competition between
19 it and Muny Light; you would agree with that, wouldn't
20 you?

21 A Well, this is a period with which I have no familiarity
22 with the day-to-day thinking, and I don't think I have
23 a competent answer as to what happened in 1973.

24 Q You were on the Board of Directors, weren't you, in
25 1973?

Lindseth - cross

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2 A Yes.

3 Q The matter of wheeling PASNY power for Muny Light did
4 come to the Board of Directors on occasion, did it not?

5 A I believe discussions would have been reported to the
6 Board, I'm sure, in my period on the Board. I have no
7 recollection of any decision making by the Board
8 relating to PASNY power.

9 Q But this was an important subject for CEI, wasn't it?

10 A Yes.

11 Q And you were aware from time to time of reports coming
12 to the Board with respect to day-to-day operations, is
13 that correct?

14 A Yes.

15 Q ~~And how frequently were board meetings held, Mr.~~
16 Lindseth, during 1973, --

17 A Monthly.

18 Q -- if you know?

19 A Monthly.

20 Q And was your attendance record at those Board meetings
21 fairly good?

22 A Yes.

23 Q So that when reports were rendered by the executives of
24 the company to the Board, the chances are that you
25 would have heard those reports in 1973, is that a fair

Lindseth - cross

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statement?

A Yes.

Q And because wheeling of PASNY power was an important issue for CEI, now, I ask you again:

Wouldn't you agree that CEI's 1973 refusal to wheel PASNY power was one of those means used by CEI to eliminate competition between it and Muny Light?

A I have no recollection of the reports with regard to PASNY; but if they were made and I was there, I would have heard them.

Q I understand; but that is not an answer to my question.

MR. NORRIS: Would the court reporter kindly -- would your Honor ask the court reporter to read the question?

THE COURT: Approach the bench, gentlemen.

- - - - -
{Bench conference ensued on the record as follows:}

THE COURT: I've asked counsel not to have dialogue with the witness or among themselves or with the Court; this should be done by approaching the bench.

What's the problem?

Lindseth - cross

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2 MR. NORRIS: The answer was not
3 responsive.

4 I move it be stricken and your Honor ask him
5 to respond to the question.

6 THE COURT: Read the question back.

7 {The question and answer were read by the
8 reporter as follows:

9 "Q And because wheeling of PASNY power was
10 an important issue for CEI, now, I ask you again:

11 "Wouldn't you agree that CEI's 1973 refusal to
12 wheel PASNY power was one of those means used by
13 CEI to eliminate competition between it and Munny
14 Light?

15 "A I have no recollection of the reports
16 with regard to PASNY; but if they were made and I
17 was there, I would have heard them."}

18 MR. LANSDALE: I object on two grounds,
19 if your Honor please.

20 One, if he's asking him for a question of fact
21 as to what was a fact, he has reported to the best
22 of his knowledge.

23 If he's asking him for his judgment as to
24 whether there could have been such a thing, then
25 I submit it's not a proper question.

Lindseth - cross

1 This man has not been qualified.

2
3 THE COURT: That's a fair analysis
4 of it, Mr. Norris.

5 The essence of his answer, -- he's talking
6 about a 78-year-old man --

7 MR. NORRIS: I know, but he's a
8 very healthy 78-year-old man.

9 THE COURT: But you're saying, to
10 his recollection, and he doesn't know.

11 He's saying, if it was said, it's reflected.
12 That is responsive to your question.

13 Now, if you want to place your question
14 predicated upon his expertise, fine, then he has
15 answered the question. You are getting into --
16 I can't make him answer the question.

17 MR. NORRIS: Your Honor, I have
18 laid the proper foundation.

19 He said that he had good attendance at the
20 monthly board meetings.

21 He also said in the earlier question and answer
22 that reports did come on the subject and, if he was
23 there, he heard them.

24 Now, that is a sufficient foundation for me
25

Lindseth - cross

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to ask --

THE COURT: Mr. Norris, I don't disagree with what you're saying.

All I'm saying to you is, if the man says, "I have no recollection," what am I going to tell him, that he doesn't have a recollection?

MR. NORRIS: No, sir.

THE COURT: What?

MR. NORRIS: He is being evasive.

THE COURT: What do you want me to do about it?

MR. NORRIS: I want you to ask him to answer the question.

THE COURT: I didn't cut you off.

MR. NORRIS: Well then, Mr. Lansdale's objection is overruled?

THE COURT: No. He has answered the last question.

If you want to get argumentative with the witness, you are free to do so; but he has answered your question.

MR. NORRIS: Well, I will place the question again because --

THE COURT: If you don't know how to

Lindseth - cross

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2 ask the question; I can't help you there.

3 Let's proceed.

4 MR. NORRIS: I don't think I am
5 able to ask the proper question.

6 THE COURT: Let's proceed,
7 gentlemen.

8 {End of bench conference.}

9 - - - - -

10 THE COURT: The answer may stand.
11 You are free to pursue this line of questioning.

12 Mr. Norris.

13 BY MR. NORRIS:

14 Q During your service, Mr. Lindseth, as Chief Executive
15 Officer, which you told us continued until 1967, CEI
16 commenced a program which it called the "Mun्य Conversion
17 Program"; you are familiar with that, aren't you?

18 A Not by that name, but --

19 Q What name do you know it by; the displacement program?

20 A We had no so-called program, but we studied Mun्य and
21 our relationships with Mun्य continuously from the time
22 I became president.

23 Q Mr. Lindseth, do you want your testimony to be recorded
24 that CEI had no program to convert Mun्य Light customers
25 to CEI service through the payment of free wiring and

Lindseth - cross

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2 other service; do you really want your testimony to
3 remain that way?

4 A No.

5 Q So CEI did have a program to convert Muny Light
6 customers through the payment of free service and free
7 wiring, is that correct?

8 A Yes.

9 Q And that was started during your regime as Chief
10 Executive Officer?

11 A Yes.

12 Q Now, that program is what I understood was referred to
13 as the "Muny Conversion Program", which you say you did
14 not know it by that name, is that correct?

15 A Well, now that you have described your understanding of
16 it, I could see that that connotation would be all right.

17 Q So that when I use the expression "Muny Conversion
18 Program," you will know what I'm referring to?

19 A Yes.

20 Q Now, am I correct that this program continued throughout
21 the period of time that you were Chief Executive Officer?

22 A No.

23 Q Am I correct that it commenced in 1965, this particular --

24 A I just don't know the precise date when the particular
25 program to which you're referring did begin.

Lindseth - cross

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2 Certainly it was long after I became President in
3 1945.

4 Q I understand. Would it be a fair statement -- not
5 trying to pin you down to a month and a day -- but would
6 it be a fair statement that in the latter part of '65 -
7 early part of '66, somewhere in there, the Muny
8 Conversion Program really got going with a vengeance;
9 would that be a fair statement?

10 MR. LANSDALE: I object.

11 A Would you repeat that?

12 THE COURT: Approach the bench.

13 - - - - -
14 {Bench conference ensued on the record as
15 follows:}

16 MR. LANSDALE: I object on two
17 grounds, if your Honor please:

18 One, counsel keeps using what I think of in my
19 mind is swear words, "with a vengeance," lots of
20 them. How can the witness answer such a question?

21 Secondly, this is long prior to the period
22 related to the statute of limitations and the
23 plaintiff can claim damages on this count, and I
24 don't know what he's trying to prove by it.

25 I object on the substance ground, and I object

Lindseth -cross

1 on the ground of the form of the question.

2 MR. NORRIS: Your Honor, this is
3 cross-examination.
4

5 This is going to an element that it was
6 necessary to prove for the purpose of the
7 character of the transactions that took place
8 during the damage period.

9 This evidence will show that this program
10 carried throughout up until probably the end of
11 1973, which is well into the damage period.

12 The evidence will also show that this
13 particular program got going in late '65 and
14 early '66, and I think that's appropriate
15 cross-examination.

16 THE COURT: It certainly is
17 appropriate cross-examination, Mr. Norris.

18 However, the term "vengeance," "vengeance,"
19 "vengeance" is a conclusory statement.

20 What he is objecting to is not the substance
21 of the cross-examination but the method of
22 cross-examination. You certainly may finish.

23 MR. NORRIS: Well, I --

24 THE COURT: I don't interrupt you,
25 I don't want you interrupting me.

1 Lindseth - cross

2 MR. NORRIS: I apologize.

3 THE COURT: Certainly, on
4 cross-examination, while the Court intends to give
5 you broad latitude, certainly, on cross-examination,
6 you are entitled to lead the witness; but you are
7 getting -- you are getting into difficulty for
8 obvious reasons.

9 You are attempting to testify for the witness
10 and asking him to agree with your statements, and
11 you are characterizing your questions.

12 That is the basis for the objection, as I
13 understand it?

14 MR. LANSDALE: Yes.

15 THE COURT: You are still required
16 to ask questions, Mr. Norris, albeit you are
17 permitted a wide latitude as far as leading
18 questions, but it is not your testimony that the
19 jury is interested in, it's his testimony.

20 So shall we proceed?

21 MR. NORRIS: It is your understanding,
22 your Honor, that the process of leading, I may not be
23 able to distinguish in my mind what your Honor means
24 when the lawyer is testifying, because I want to put
25 questions that call for a yes or no answer to this

Lindseth - cross

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2 witness.

3 THE COURT: You are free to do so
4 if you phrase them properly, but using the word
5 "vengeance," you can't phrase a question that way.

6 And it's a part of the Court's charge in every
7 case, lawyers are not permitted to characterize
8 questions or to incorporate into questions
9 inuendos that are not supported by fact.

10 That's all I'm saying to you.

11 So you are free -- I'm giving you the broadest
12 possible latitude I can, --

13 MR. NORRIS: Thank you.

14 THE COURT: -- and you are free to
15 pursue this.

16 MR. NORRIS: Thank you.

17 THE COURT: So if you would refrain
18 from using characterizations and conclusory
19 statements, you probably won't have any problems.

20 MR. NORRIS: Your Honor, I can't
21 refrain from using conclusory statements. I will
22 do my best to refrain from characterizations, but I
23 cannot cross-examine if I don't --

24 THE COURT: The word "vengeance"
25 is a conclusion, is it not? That is your

Lindseth - cross

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2 conclusion or characterization of an act, which may
3 or may not be his characterization of these acts.
4 That is wherein we get into the difficulty.

5 MR. NORRIS: My understanding,
6 your Honor, -- I could have said "with extreme
7 earnestness" or something like that.

8 I think if your Honor would object to that
9 kind.

10 THE COURT: I'm not telling you
11 what to say.

12 There is an objection to the form of your
13 question and I have sustained that.

14 Now, let's proceed.

15 MR. NORRIS: Okay.

16 {End of bench conference.}

17 - - - - -

18 THE COURT: I will sustain the
19 objection as to form only.

20 You are free to pursue this line of
21 questioning, Mr. Norris.

22 BY MR. NORRIS:

23 Q Mr. Lindseth, the Muni Conversion Program involved the
24 use of outside electrical contractors to some extent;
25 is this correct?

Lindseth - cross

1

2 A Yes.

3 Q And it also involved direct payments to Muny Light
4 customers to switch over to some extent; is that a
5 fair statement?

6 A Well, my understanding is the direct payment for
7 wiring done on customers' premises, and if the
8 customer did it, we would have reimbursed him.

9 Q Yes; and my question is:

10 Isn't it a fact that this Muny Conversion Program
11 was one of the means that CEI used in an effort to
12 eliminate the competition between CEI and Muny Light,
13 just one of the means?

14 A Not to eliminate the competition, but to defend
15 itself against the conduct of the Municipal Light
16 Plant, which during the late 1950's until the early
17 1960's the conduct of the Municipal Light Plant
18 marketwise and saleswise and solicitationwise was
19 to take more Cleveland Electric Illuminating customers
20 than CEI was successful in transferring from Muny; so
21 this was a defense mechanism to protect itself against
22 the tactics of the Municipal Light Plant in transferring
23 customers from CEI to Muny.

24 These statistics are clear, that Muny transferred
25 more customers from CEI than the reverse during the

Lindseth - cross

period from the late 1950's to 1963.

Q Are you through?

A Yes.

MR. NORRIS: Your Honor, I would move that the answer be stricken and that the reporter be instructed to read back the question and that you ask the witness to kindly respond to the question.

{The pending question was read by the court reporter as follows:

"Q Isn't it a fact that this Muny Conversion Program was one of the means that CEI used in an effort to eliminate the competition between CEI and Muny Light, just one of the means?"

THE COURT: The answer may be stricken, and Mr. Lindseth, the Court would direct you to respond to the question, and please do not go beyond the question.

A My answer is no.

Q Was there any change in the Muny Conversion Program that occurred during 1965 or 1966, to your knowledge?

A Not that I am familiar with.

Q When did Muny Light, when did its 85 megawatt unit go into service?

Lindseth - cross

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2 A 1967.

3 Q During 1966, do you know whether Muny Light was
4 serving approximately the maximum load that its then
5 capacity would permit?

6 A No, I do not.

7 Q You don't know that?

8 A No.

9 Q And is it your testimony that in late 1965 and early
10 1966, there was no change in CEI's policy with respect
11 to the Muny Conversion Program; is that your testimony?

12 A Not that I am aware of, is my testimony.

13 Q I see.

14 Now, if CEI were successful in causing, say,
15 3,000 Muny Light customers to switch to CEI service,
16 would that have any tendency to affect competition in
17 your opinion between CEI and Muny Light?18 Q Well, that is a hypothetical question, and I will give
19 you a hypothetical answer:20 3,000 out of 60,000 is 5 percent, and that is
21 significant.22 MR. NORRIS: I request, your Honor,
23 that the answer be stricken. I do think the
24 question can be answered with a yes or no.

25 THE COURT: Overruled. He answered

Lindseth - cross

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the question.

Q Mr. Lindseth, in your opinion did CEI render superior service to that rendered by Muny Light?

A Yes.

Q Muny Light, that is, traditionally had lower rates than CEI; is that correct?

A Yes.

Q And those lower rates were an important element in the competition between the two companies; is that correct?

A Yes.

Q Had the rate differential between CEI and Muny Light been eliminated, that would have a significant impact on the competition between CEI and Muny Light; is that correct?

A Yes.

Q And the elimination of this rate differential would have been made, would have made it more difficult for Muny Light to compete against CEI, is that a fact?

Do you understand the question?

A Yes.

Q And what is your answer?

A The answer is yes.

Q Now, the elimination of this rate differential might even have made it impossible for Muny Light to continue

Lindseth - cross

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competing against CEI; is that a fair statement?

A No.

Q It is a fact, is it, that CEI tried from time to time to eliminate this rate differential?

A Yes.

Q And CEI's attempts to eliminate this rate differential were directed really at the private customers as distinguished from the public customers; would you agree with that?

A Yes.

Q And CEI's attempts to eliminate this rate differential was designed to assist CEI in a competitive struggle with Muny Light?

A No.

Q You say the answer is no?

A The answer is no.

Q I see.

That is what you want your testimony to remain?

A Yes.

Q Now, during the 1960's CEI offered to interconnect with Muny Light provided Muny Light would raise the level of its private rates to the level of CEI's private rates; that is a correct statement, isn't it?

THE COURT:

Is that a correct

1 Lindseth - cross

2 statement? You may answer yes or no.

3 A Would you read that question to me again.

4 {The pending question was read by the court
5 reporter.}

6 A The position of CEI was --

7 THE COURT: No, Mr. Lindseth.

8 A The answer is no, and may I explain?

9 THE COURT: I counsel is
10 desirous of having you make an explanation, you
11 may; however, if he is not, your counsel will
12 bring it out at the appropriate time.

13 Q Just to make sure --

14 THE COURT: Mr. Norris, he answered
15 the question. Don't paraphrase his answer. That
16 is why we run into difficulties.

17 Ask another question, please.

18 BY MR. NORRIS:

19 Q Are you aware of any occasion where CEI refused a
20 request to interconnect with Munny Light?

21 A Never in my term as an employee of the Illuminating
22 Company did this matter emanate from the City seeking
23 an interconnection.

24 Q What about during the period of time that you were a
25 Director?

1 Lindseth - cross

2 Are you aware of any time when CEI refused a
3 request from Muny Light for an interconnection?

4 A Yes.

5 Q That refusal would be one of the means that CEI used to
6 try to eliminate the competition between CEI and Muny
7 Light; is that a correct statement?

8 A No.

9 Q Well, let's strike that.

10 Whatever CEI's intention was with respect to the
11 competition between it and Muny Light, I take it that
12 that intention stayed fairly uniform over the period
13 of time of your career with CEI; is that a fair
14 statement?

15 A No.

16 Q It did not stay uniform?

17 A No.

18 Q The intention changed or just the way of implementing
19 the intention changed; which is your testimony?

20 A We are talking about a period of 22 years.

21 Q That is right.

22 A And when you ask whether something changed in 22
23 years, the answer is yes.

24 Q All right.

25 Well, let's come back.

Lindseth - cross

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2 Well, let's start in 1959. We will reduce the
3 number of years, from 1959 to 1974, when you left the
4 Board of Directors, and that is a 15-year period.

5 Now, I understood you to say earlier that you
6 agreed with the statement that CEI's intention and its
7 attempt was to eliminate competition between CEI and
8 Muny Light.

9 Do I remember your testimony correctly?

10 A Yes, but I may have not adequately spoken.

11 It was to reduce and eliminate, because the
12 prospect of eliminating it was quite remote, and
13 "reduce" was more properly, would more properly
14 characterize what our hopes were.

15 MR. NORRIS: I request that the
16 answer be stricken and the witness be asked to
17 respond just to the question.

18 THE COURT: Yes. The answer may
19 be stricken.

20 Please respond to the question.

21 THE WITNESS: Will you read the
22 question, please.

23 {The pending question was read by the court
24 reporter.}

25 THE COURT: The question is, does

Lindseth - cross

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2 he remember your testimony correctly; not the
3 substance of the question.

4 A Well, my response was that I might have misspoken if it
5 was confined solely to eliminate.

6 Our effort was to reduce or eliminate, and to
7 reduce competition took much greater portions of our
8 effort than to eliminate.

9 To eliminate it was a rather remote hope.

10 MR. NORRIS: The same objection,
11 and I ask to strike the answer and request that a
12 yes or no answer be given to my question.

13 THE COURT: Can you answer the
14 question yes or no?

15 THE WITNESS: No.

16 Q CEI wanted Munny Light out of business, didn't it?

17 A No, not in the sense that you seem to phrase the
18 question.

19 Q Well, Mr. Lindseth, if Munny Light were eliminated, it
20 would be out of business, wouldn't it?

21 A Yes.

22 Q And if competition between CEI and Munny Light were
23 eliminated, either CEI would be out of business or
24 Munny Light would be out of business; is that a fair
25 statement?

Lindseth - cross

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A No, because our hopes --

MR. NORRIS:

Objection, your Honor.

THE COURT:

Mr. Lindseth, you have

answered the question.

A The answer is no.

THE COURT:

Please do not go beyond

the question.

If counsel is desirous of having you explain the answer, he will request that you explain the answer, and if not, your lawyer will bring it out.

Q So, your testimony -- strike that.

CEI has admitted an attempt to eliminate competition between it and Muncy Light, and from your experience as the Chief Executive Officer and as a member of the Board of Directors of CEI, that intention and that attempt was in effect for a long period of time.

Would you agree with that expression, "a long period of time"?

A Yes.

Q And that long period of time included the period from 1959 to 1974, would you agree with that?

A Yes.

Q And there were at least some means that CEI has already admitted it was going to use in an effort to carry out

Lindseth - cross

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2 that intention, to carry out that attempt.

3 For example, one of the means that has been
4 admitted is by agreement.

5 You have no reason to disagree with that, do you?

6 A No.

7 Q And another means that was admitted by CEI was by
8 acquisition, and that would be a way of carrying out
9 the intent, and you would not disagree with that?

10 A No.

11 Q And a third way that CEI has admitted it attempted to
12 carry out this elimination of competition was through
13 vigorous competition with Munny Light.

14 You wouldn't have any reason to object to that?

15 A Yes.

16 Q You would have reason to object to that?

17 A "Vigorously competing" doesn't eliminate competition.
18 It fosters competition.

19 MR. NORRIS: May I get my file,
20 your Honor?

21 THE COURT: Certainly.

22 {After an interval.}

23 Q Mr. Lindseth, let me read that portion of CEI's
24 admission so we both have it clearly in our mind as
25 we carry on this question and answer period:

Lindseth - cross

"CEI has in the past intended and attempted to reduce or eliminate competition between it and Muny Light by one or more of the following means:

"The first is acquisition," to which you have already agreed.

The second is, "Agreement," which you have already agreed to, and the third is as follows:

"When competition could not be peacefully reduced or eliminated, CEI competed as vigorously as it could in the area in which there is duplication of service with Muny Light, and still intends to do so.

"In furtherance of this, CEI sometimes sought to avoid doing, and in any event did not wish to do things which would help Muny Light to compete more effectively."

You don't agree with that portion of CEI's admission, do you?

A No.

Q In addition to those three means used to carry out CEI's intention to eliminate competition between CEI and Muny Light, were there any other means that CEI used to carry out that intention?

A The admission used the phrase "reduce and eliminate."

Q I am not sure my question is clear.

My question calls for a yes or no answer, and I

Lindseth - cross

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2 request the court reporter read it back.

3 THE COURT: Just a moment.

4 I keep telling you to please refrain from a
5 dialogue. If you have got something to say, you
6 are free to come up to the bench.

7 Now, read the question.

8 {The pending question was read by the court
9 reporter.}

10 MR. LANSDALE: Objection.

11 THE COURT: Approach the bench.

12 - - - - -
13 {Bench conference ensued on the record as
14 follows:}

15 MR. LANSDALE: The basis for my
16 objection is that it is obvious from his previous
17 answer --

18 THE COURT: Yes. Read the
19 question.

20 {Pending question reread by the court
21 reporter at the bench.}

22 THE COURT: He says it was to
23 foster competition, so eliminate the conclusory
24 section.

25 MR. NORRIS: I am using the

Lindseth - cross

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2 language of CEI's admissions, and this is
3 permissible on cross-examination.

4 THE COURT: No question about it.

5 MR. NORRIS: That is not a
6 conclusory statement.

7 THE COURT: You are paraphrasing.
8 He answered yes, he agrees with the statement that
9 they have admitted.

10 MR. NORRIS: I will withdraw the
11 question.

12 THE COURT: If we would try to use
13 this as a forum for gathering facts rather than
14 trying to phrase questions as to create inferences,
15 I think we would get along a lot better, but you are
16 free to pursue any method you are desirous of doing.

17 MR. LANSDALE: The statement that
18 counsel read, your second question that asked for
19 a yes or no answer, eliminated the word "reduce"
20 and I object to it.

21 MR. NORRIS: Are you suggesting
22 that these terms are not in the disjunctive, that
23 they are only in the conjunctive?

24 MR. LANSDALE: I am saying that the
25 witness in the statement agreed to was "reduce and

1 Lindseth - cross

2 eliminate," and your question eliminated part of
3 it.

4 THE COURT: Mr. Lansdale, you will
5 be permitted to go into this on your direct
6 examination, and I will sustain the objection as to
7 the form of this question, not as to substance, if
8 you wish to pursue it.

9 MR. LANSDALE: I request that Mr.
10 Lansdale hand Mr. Lindseth a copy of the admission
11 that was read into the record.

12 THE COURT: He is under no
13 obligation of handing it to him.

14 If you are desirous of handing it to him, you
15 may.

16 MR. NORRIS: All right, thank you.

17 THE COURT: You are free to do so.

18 {End of bench conference.}

19
20 THE COURT: Ladies and gentlemen,
21 I have sustained the objection as to form, not as to
22 substance.

23 You are free to pursue this line of questioning.

24 {Document handed to the witness.}

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Lindseth - cross

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BY MR. NORRIS:

Q Mr. Lindseth, I ask you -- I have asked Mr. Leo to hand you a copy of the admissions made by CEI at the beginning of this trial.

I will give you a moment to read that.

THE COURT: My recollection is, Mr. Norris, that he testified to this, and he has admitted that he agrees with each one of the three items.

MR. NORRIS: I wanted the witness to have an opportunity, your Honor, to have that in front of him, because I am going to ask the following questions:

Q Mr. Lindseth, are you aware of any means other than Items 1, 2 and 3 contained in that admission by means of which CEI sought to carry out the intention and attempt to reduce or eliminate competition between it and Munny Light?

A No.

Q Thank you.

The intention that we have been discussing that is recorded on the admission that you were holding in your hand was attempted to be carried out at different times in different ways; is that a fair statement?

Lindseth - cross

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2 A Yes.

3 Q And that as conditions would change and as time would
4 pass, it would be necessary for CEI to likewise
5 change its business practices in an attempt to continue
6 to carry out that intention; is that a fair summary?

7 A Not its business practices.

8 Q Well, its conduct -- how about that?

9 A Its action with regard to this matter, yes.

10 Q Okay.

11 Well, I accept that expression

12 So that the record is clear, then, the actions
13 of CEI could change from time to time as necessary to
14 continue to carry out the intention that we are
15 discussing; is that a fair summary?

16 A Yes.

17 Q CEI honestly felt that it could eliminate Muny Light
18 one way or the other; isn't that a fair statement?

19 A No.

20 Q CEI honestly felt that Muny Light would be eliminated
21 at some point; is that a fair statement?

22 A No. They hoped so, but they didn't feel it in the sense
23 that you are using the word.

24 Q I the period of 1960, the 1960's, when you were making
25 your offers to interconnect based on rate equalization,

Lindseth - cross

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2 did you ever dream, in 1980, Muny Light might still be
3 a competitor of CEI?

4 A Did I "dream"?

5 Q I will be glad to rephrase that.

6 Let's put it a different way:

7 In the mid '60's, when you were making your offer
8 of interconnection, based upon rate equalization, did
9 you have an expectation that 15 years later Muny Light
10 would still be around to compete with CEI?

11 A Yes, I had that expectation.

12 Rate equalization would not eliminate Muny Light.

13 THE COURT: Mr. Lindseth, do not
14 go beyond the question.

15 THE WITNESS: Excuse me.

16 Q Is it a fair statement that CEI vigorously competed
17 with Muny Light?

18 A At times, yes.

19 Q And that continued as long as you were on the Board of
20 Directors, from time to time; is that a fair statement?

21 A Well, I really can only speak to 1967, when I was
22 familiar with it, and the answer is, yes, during my
23 period as an employee.

24 Q Did you from time to time at Board meetings hear
25 operating reports from the operating officers of CEI?

Lindseth - cross

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2 A Yes.

3 Q And did the subject of Muny Light competition ever come
4 into those operating reports?

5 A Yes.

6 Q Isn't it a fair statement that at least through this
7 device of regular reports at Board meetings you were
8 kept generally aware of the competitive situation
9 between CEI and Muny Light; is that a fair statement?

10 A Yes.

11 Q Isn't it also a fair statement that CEI was using
12 various kinds of tactics in order to bring about the
13 realization of the intentions that we were talking
14 about; isn't that a fair statement?

15 A I don't understand the word "tactics."

16 Q Well, what about business pressure?

17 Was CEI attempting to use any kind of business
18 pressure to bring about the accomplishment of the
19 intention?

20 A I don't understand "business pressure."

21 Q Well, what about in your experience as a businessman,
22 Mr. Lindseth, are you familiar with the term
23 "price cutting"?

24 A Yes.

25 Q Would price cutting qualify in your opinion as a

Lindseth - cross

1 business pressure?

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3 A No.

4 Q Supposing there are two competitors in a market and one
5 decides to undercut the price, would that not result in
6 business pressure being applied to the other
7 competitor?

8 A Well, that is normal day-to-day competition.

9 Q Well, I understand, but my question is:

10 Would that not result in business pressure being
11 applied to the other competitor?

12 MR. LANSDALE: I object.

13 THE COURT: Approach the bench.

14 - - - - -
15 {Bench conference ensued on the record as
16 follows:}

17 MR. LANSDALE: I object to the form.

18 Counsel persist in trying to impose on the
19 witness his own characterization and argumentative
20 statements as to what things mean and as to how
21 they should be called.

22 If he would ask for facts in his questions, he
23 would get fact answers. I object.

24 MR. NORRIS: When counsel has his
25 own witness on direct, this is an appropriate

1 Lindseth - cross

2 comment, but I think it is a totally inappropriate
3 comment at this time.

4 THE COURT: There is a distinction.
5 He did not frame his questions to elicit yes or no
6 answers in the main.

7 I can understand where yes or no answers are
8 required, but you cannot -- you are basing your
9 examination on yes or no answers, and you can see
10 the difficulties you are running into, and as I
11 say, I am not about to tell you how to proceed.
12 That is your election, and you certainly are
13 permitted to do it; but if the witness cannot
14 respond to your questions, that is his prerogative.

15 MR. NORRIS: Your Honor, I have
16 never understood that counsel on cross-examination
17 was permitted to seek admissions and to attempt to
18 frame questions that require yes or no answers in
19 an attempt to elicit those admissions.

20 THE COURT: Am I denying you that?

21 MR. NORRIS: I don't understand what
22 you are saying.

23 THE COURT: I can't help it if you
24 don't understand what I am saying. I can't be
25 more explicit. I tell you that every time you come

Lindseth - cross

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2 up here, and you keep running into the same
3 difficulties.

4 MR. NORRIS: I don't think there is
5 any problem with counsel on cross-examination
6 seeking yes or no answers.

7 THE COURT: I wish you would stop
8 repeating that. I said you can do it. Now, go
9 ahead.

10 MR. NORRIS: That is what I am doing.

11 THE COURT: But you are going to be
12 bound by your answers. All right, go ahead and do
13 it.

14 You are phrasing questions that he can't
15 answer, and it is obvious that he can't answer them,
16 and it is all going to be brought out eventually.
17 He is going to go into it on direct.

18 MR. NORRIS: There were several
19 times this morning where this witness took a long
20 time to respond, and one of the purposes of
21 cross-examination is to let the jury see the
22 demeanor of the witness.

23 THE COURT: Absolutely.

24 MR. NORRIS: And I think that this
25 record needs to have that statement made, because

Lindseth - cross

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2 one of my purposes is to permit the jury to make a
3 judgment whether the witness is lying.

4 THE COURT: Well, you are absolutely
5 right. I agree with you.

6 MR. NORRIS: All right.

7 THE COURT: Well, go ahead.

8 {End of bench conference.}

9 - - - - -
10 THE COURT: Read the question.

11 {The pending question was read by the court
12 reporter as follows:

13 "Q Well, I understand, but my question is:

14 "Would that not result in business pressure
15 being applied to the other competitor?"}

16 THE COURT: You may answer that if
17 you can from the form of the question, Mr. Lindseth,
18 and if you can't, then have the lawyer rephrase it.

19 THE WITNESS: Would you please
20 rephrase that question, with a clear understanding
21 of what is meant by "business pressure" in a
22 competitive situation.

23 BY MR. NORRIS:

24 Q I will rephrase the question in a different way, Mr.

25 Lindseth:

1 Lindseth - cross

2 The goal of competition where CEI is concerned was
3 for CEI to prevail; is that a fair statement?

4 A I don't understand the connotation of "prevail."

5 You mean to get one customer; is that the purpose?

6 Q No, Mr. Lindseth, to succeed in its purposes and
7 objectives as a profit-making organization; isn't that
8 a fair statement of CEI's intention, when it is in a
9 competitive struggle, that it wants to succeed?

10 A Yes, it wants to succeed.

11 Q Right; and had the CEI company succeeded in carrying
12 out the intention that is written on that piece of
13 paper:--

14 A No.

15 Q -- it would have had all of the business in this market;
16 isn't that a fact?

17 A No, no.

18 Q Let's say it this way, Mr. Lindseth -- and listen to my
19 question, please:

20 If CEI's intention to the extent that it embraced
21 the elimination of competition, were to have succeeded,
22 CEI would have then enjoyed all the business in this
23 market; isn't that a fair statement?

24 A No.

25 Q At any time in your career with CEI did CEI's attempts

Lindseth - cross

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2 to compete in the marketplace and succeed in the
3 marketplace go beyond what you would characterize as
4 the practices of normal competition?

5 A No.

6 Q Mr. Lindseth, in the 1960's when you were Chief
7 Executive Officer, your company was part of the
8 Interconnected Systems Group; is that a correct
9 statement?

10 A Yes.

11 Q And through participation in this Interconnected
12 Systems Group, there were some 120 companies spread
13 over 32 states; is that approximately accurate?

14 A Yes.

15 Q And the members of the Interconnected Systems Group
16 could call upon the resources of the Interconnected
17 System to meet emergency and peak load requirements;
18 is that a fair statement?

19 A Yes.

20 Q How much of the United States was covered by the
21 Interconnected Systems Group?

22 A The eastern two thirds.

23 Q And what is the PJM group?

24 A The PJM group is the Pennsylvania, New Jersey,
25 Maryland interconnection; a subgroup within the

Lindseth - cross

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2 Interconnected Systems Group, embracing perhaps a dozen
3 companies located by the name of the group in the area
4 of Pennsylvania and New Jersey and Maryland.

5 Q And what is the Canada, United States, Eastern
6 Interconnection? Is that another similar group?

7 A I don't know whether it is a group.

8 An interconnection doesn't necessarily constitute
9 a group, but it certainly might be an interconnection.

10 MR. NORRIS:

Would you hand Mr.

11 Lindseth PTX 2381, please.

12 {After an interval.}

13 Q Mr. Lindseth, I am handing you what has been marked as
14 Plaintiff's Exhibit 2381, and that is a copy of the
15 speech that you made on June 4, 1963, at the Edison
16 Electric Institute annual convention in Denver; is that
17 correct?

18 A Yes.

19 Q Would you kindly turn to page 206, and I think that
20 happens to be the second page of the exhibit, and in
21 the upper left-hand corner there is a representation
22 of the Interconnected Systems Group; is that an
23 accurate statement?

24 A It is called a grid.

25 Q But if you will address your attention to Figure 1, is

Lindseth - cross

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2 there not also a representation in the figure itself,
3 and I quote, "Interconnected Systems Group"?

4 A Yes.

5 Q And on that same Figure 1, is there a representation of
6 the other two interconnections that I have just asked
7 you about, the Canada-U.S.-Eastern, and the Pennsylvania
8 New Jersey-Maryland?

9 A They were described as interconnections.

10 Q Yes.

11 Now, it is a fact, isn't it, that there were more --
12 I am talking about only now about the Interconnected
13 Systems Group that CEI was a part of .

14 It is a fact that there were more than 1,800
-15 municipally owned and cooperatively owned electrical
16 systems operated and interconnected with the 120
17 electrical systems comprising the Interconnected
18 Systems Group; is that a correct statement?

19 A Yes.

20 Q But Muny Light was not one of those 1,800 municipally
21 owned or cooperatively owned cooperative systems, was
22 it?

23 A No, it was not.

24 Q It is correct, isn't it, that in November of 1962
25 certain transmission ties located in the State of

Lindseth - cross

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2 Pennsylvania were closed that resulted in tying together
3 these three groups, the Interconnected Systems Group,
4 the Canadian-U.S.-Eastern, and the PJM Interconnection;
5 is that a correct statement?

6 A I am not familiar with it. It might be entirely
7 possible.

8 Q Well, I would address your attention to the first
9 paragraph in the left column of the same page that you
10 are looking at, and permit me to read this, and I will
11 ask you to follow along:

12 "On the first of November, last year, seven
13 transmission ties were closed in Pennsylvania, thus
14 putting into operation the largest interconnected
15 electric utility grid in the world.

16 "Closing these interconnections permitted the
17 so-called Interconnected Systems Group, which
18 extended from Canada to the Gulf, and from the
19 Rockies to the Atlantic seaboard, the Pennsylvania -
20 New Jersey - Maryland interconnection, a highly
21 integrated group of 12 investor-owned systems, and
22 the Canada - U.S. - Eastern interconnection as its name
23 implies, an international utility group, to operate
24 continuously in parallel."

25 Is that a correct statement?

Lindseth - cross

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A I wrote it, and I stand by it.

Q You also pointed out in the next paragraph that this grid, following the closing of the seven transmission ties in the State of Pennsylvania, had more generating capability than Russia's entire electric power capability; that's a fact, isn't it, Mr. Lindseth?

A It was then.

Q So that as early as November, 1972, CEI was operating continuously in parallel in all of these electric utility systems that we have identified, is this correct?

A Yes.

Q And in many of these groups that were comprised in the overall system, privately-owned utility companies like CEI operated on an interconnected basis and in parallel with smaller municipal systems like Muny Light; that's a fact, isn't it?

A Not like Muny Light in most cases. They were, in most cases, customers and did not generate power at all.

Q Mr. Lindseth, would you kindly turn to page 209 of this same exhibit and address your attention to the left-hand column starting the fourth line from the top of the page, and let me read the two sentences that are

Lindseth - cross

there set forth:

"Within these groups, systems have pooled their operations and facilities with their neighbors for mutual benefit. In many of these groups, investor owned Federal, state, municipal and cooperative systems operate interconnected in parallel and derive corresponding benefits."

That's a true statement, isn't it?

A Yes.

Q And among the municipal systems that you were describing in this sentence, there were certainly some that were generating municipal systems; is that not a correct statement?

A Yes.

Q And these smaller systems relied on the larger systems to assist them in meeting their reserve requirements, isn't that a fact?

A Generally, yes.

Q And these smaller systems were assured of power supply during both normal and emergency situations as well as other interconnection benefits, is that a true statement?

A If the contract said that, it would be true; but there would have been many, many contracts, and we mustn't

Lindseth - cross

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overgeneralize.

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Q Would you turn back to page 206, please?

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{The witness complies.}

5

Q In the right-hand column, the last portion of the right-hand column, let me read that to you:

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"Thus, these smaller systems are assured of frequency, stability, supply during normal and emergency situations, and other interconnection benefits. They rely on the larger systems to assist them in meeting their reserve requirements."

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So that's a correct statement, is it not?

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A Yes.

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Q And isn't it a fact that there were a growing number of examples of pooling among privately-owned electric systems and publicly-owned electric systems, isn't that a true statement?

18

A Probably, yes.

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Q And isn't it also a fair statement that you felt that the complexities of regulation and contractual agreement should not be permitted to hinder the joint efforts of individual utility management, isn't that a correct statement?

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A Yes.

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Q And, above all, you felt that individual managements

Lindseth - cross

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should avoid provincialism, didn't you, Mr. Lindseth?

A You mean, every individual management?

Q Mr. Lindseth, would you kindly turn to page 221 of your speech?

That happens to be the last page of this exhibit, and if you would kindly follow me as I read the first full paragraph in the left column:

"The expanding technology brought about by this cooperative approach to R&D --" what would "R&D" stand for, Mr. Lindseth?

A Research and development.

Q All right. If I may then paraphrase that, I will read it again:

"The expanding technology brought about by this cooperative approach to research and development certainly will bring further opportunities to our industry and the nation. But it will also bring new challenges which will require our special attention. As interconnections and pools expand in both members and capacity, so will the complexities of regulation and contractual agreements. But we must strive not to let legal, accounting and regulatory requirements hinder our joint efforts nor hamstring individual managements in the flexibility they need to serve

Lindseth - cross

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2 their customers. And, above all, among such
3 individual managements, we must avoid provincialism."

4 Did I read that correctly?

5 A Yes.

6 Q Now, this speech was delivered in 1963; and do you
7 know when the interconnection finally -- permanent
8 interconnection was finally put in place between CEI
9 and Muny Light; do you happen to know that year?

10 A Yes.

11 Q What was that year?

12 A 1975.

13 Q And no parallel interconnection between CEI and Muny
14 Light took place between 1959 and 1975, is that
15 correct?

16 A Due to the provincialism of Muny Light, that is
17 correct.

18 Q Would you tell me what the answer to the question --
19 I'm sorry. Strike that, please.

20 May I have an answer to my question?

21 THE COURT:

Read the question

22 and read the answer.

23 {The question and answer were read by the
24 reporter.}

25 Q Are you quite finished with your answer?

Lindseth - cross

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2 A Yes.

3 Q Good. I had missed the fact that you --

4 MR. NORRIS: I'm sorry, your Honor.

5 I had missed the part that the witness said

6 "That is correct."

7 I appreciate the reporter reading it back.

8 Q Could we talk about your various offers of interconnection
9 that you made --

10 THE COURT: Mr. Norris, let's just
11 ask questions and stop the dialogue.

12 MR. NORRIS: Yes.

13 THE COURT: You can talk about that.
14 Let's ask questions.

15 Q You offered a parallel interconnection to Muny Light in
16 the mid-'60's, didn't you?

17 A Yes.

18 Q And you pointed out the many benefits that would flow
19 to Muny Light as a result of such a parallel
20 interconnection, is that not correct?

21 A Yes.

22 Q And these benefits would have included stand-by
23 emergency service?

24 A Yes.

25 Q And they would have included firm power and maintenance

Lindseth - cross

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2 power?

3 A Yes.

4 Q They would have included economy power?

5 A Yes.

6 Q They would have included the sale of bulk power?

7 A They might have had Muny wanted it.

8 Q Well, Mr. Lindseth --

9 A The offer included that.

10 Q The offer included that, didn't it?

11 A Yes.

12 Q And that would be one of the benefits that was there
13 to be picked up by Muny Light if it wanted to?

14 A Yes.

15 Q But CEI said to Muny Light that there would be no
16 parallel interconnection with CEI unless Muny Light
17 first agreed to raise its rates to private customers
18 to the level of the rates that CEI charged its
19 private customers; is that a correct statement?

20 A Yes.

21 Q And unless Muny Light agreed to CEI's condition of
22 rate equalization, Muny Light could not avail
23 itself of these various benefits that would have gone
24 along with interconnection, is that correct?

25 A Yes.

Lindseth - cross

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2 MR. NORRIS: Would Mr. Leo kindly
3 hand Mr. Lindseth Plaintiff's Exhibit 486 and
4 Plaintiff's Exhibit 693?

5 THE COURT: What are they?

6 MR. LEO: 486 and 693.

7 {Exhibits handed to the witness by the Clerk.}

8 Q Mr. Lindseth, would you address your attention first,
9 please, to Plaintiff's Exhibit 486?

10 Do you have that in front of you?

11 A Yes.

12 Q Now, this letter, which you wrote to Mayor Locher,
13 dated September 17, 1962, in which you offered to
14 interconnect if Muny Light -- provided Muny Light
15 would raise its rates to its private customers to CEI's
16 level, is that correct?

17 A Yes.

18 Q And you wrote this letter shortly after Mayor Locher
19 had announced a \$12 million plant expansion for Muny
20 Light, is that correct?

21 A Well, I don't know that.

22 {The witness examining the exhibit.}

23 A Yes. Yes; it appears, yes.

24 Q And in this letter, you pointed out that the kind of
25 an arrangement that you were proposing, namely,

Lindseth - cross

1 interconnection based on rate equalization would make
2 that proposed \$12 million plant expansion both
3 uneconomical and unnecessary, is that correct?
4

5 A Yes.

6 Q Would you now address your attention to Plaintiff's
7 Exhibit 693?

{The witness complies.}

8 Q Now, this is another letter from you to Mayor Locher,
9 this time dated June 27, 1963, offering the same kind
10 of an interconnection to Muny Light, as offered in the
11 previous letter, is that a correct statement?
12

13 MR. LANSDALE: I object, your Honor
14 please.

15 May I approach the bench?

16 THE COURT: Approach the bench.

17
18 {Bench conference ensued on the record as
19 follows:}

20 MR. LANSDALE: This is covered by
21 Stipulation No. 35 which has already been read to
22 the jury.

23 THE COURT: Mr. Norris?

24 MR. NORRIS: Your Honor, I want
25 to -- I'm not trying to prove the facts that are

Lindseth - cross

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2 in these, but I want to cross-examine the witness
3 with respect to these facts.

4 I think that it's important that the plaintiff
5 have an opportunity to elicit from the witness
6 testimony with respect to the offers of any
7 interconnection on the antitrust issues that are
8 here in the case.

9 THE COURT:

Well, --

10 MR. LANSDALE:

The stipulation seems

11 to cover that.

12 MR. NORRIS:

May I complete my

13 statement?

14 THE COURT:

Certainly.

15 MR. NORRIS:

16 I am well aware of the
17 Court's instruction that the Court will not permit
18 protracted examination or protracted testimony to
19 simply prove the facts that have been stipulated;
20 but I submit to your Honor that this very short
21 Stipulation No. 35 does not impose any undue
22 burden on the record, and I am not intending to
23 attempt protracted testimony to prove these
24 facts; I want to get the witness to testify about
25 the facts.

THE COURT:

I will overrule the

Lindseth - cross

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2 objection, although it being the subject of
3 stipulation.

4 You can proceed.

5 {End of bench conference.}

6 - - - - -

7 THE COURT: Overrule the objection.

8 BY MR. NORRIS:

9 Q Address your attention, again, Mr. Lindseth, to this
10 1963 letter, Plaintiff's exhibit for identification 693.

11 This letter offered the same kind of an
12 interconnection to Muny Light as was offered in the
13 September, 1962 letter; is that a correct statement?

14 A Yes.

15 Q And the reason you wrote this particular letter was in
16 response to Mayor Locher's statement that the city
17 intended to go forward with an interconnection of
18 Muny Light with the municipal electric systems in
19 Painesville and Orrville, is that correct?

20 A He was quoted in the Press as saying that.

21 Q And my question, Mr. Lindseth is, that really is what
22 prompted your writing this letter at that particular
23 time, isn't that correct?

24 A Yes.

25 Q But, of course, you thought that that

Lindseth - cross

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2 Cleveland-Orrville-Painesville proposal was an
3 isolated tie-in which was unsound both economically
4 and engineeringwise, is that correct?

5 A Yes.

6 Q You were telling Mr. Locher that if Muny Light were
7 interconnected with CEI on the rate equalization basis
8 that CEI was proposing, that that would make unnecessary
9 the Cleveland-Orrville-Painesville isolated tie-in, is
10 that a correct statement?

11 A Yes.

12 Q You were also telling Mr. Locher that that kind of an
13 interconnection would make the \$12 million planned
14 expansion unnecessary, is that correct?

15 A If they utilized the interconnection for the purchase
16 of power.

17 Q And you similarly were making this offer in the letter
18 of June 27, 1963, in the hope that the City would drop
19 its plan for the \$12 million expansion, is that correct?

20 {The witness shook his head in the negative.}

21 THE COURT: Don't shake your head,

22 Mr. Lindseth.

23 Q So this gentleman can record an answer.

24 A This was a forthright business offer that, if they
25 accepted it, they would find unnecessary the building

Lindseth - cross

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2 of the plant.

3 Q I understand that; but I'll rephrase my question.

4 Weren't you making the offer in the June 27,
5 1963 letter in the hope that the City would drop its
6 \$12 million expansion plan for Muny Light; wasn't that
7 one of your hopes?

8 A Yes.

9 Q And if the City would drop its \$12 million expansion
10 plan for Muny Light, that would tend to strengthen and
11 enhance CEI's market position, isn't that a fact?

12 A Not necessarily.

13 Q It might, though, correct?

14 A No; I believe it would hinder it in view of the fact
15 that this was a colossal blunder, and the
16 interconnection would have relieved them of that
17 terrible burden.

18 Q But the \$12 million planned expansion, you are saying,
19 was a colossal blunder, is that correct?

20 A Yes.

21 Q And that colossal blunder, that would have enhanced
22 CEI's market position to have your competitor engaged
23 in a colossal blunder; is that a fair statement?

24 A No. If they had not built the plant and had purchased
25 energy from CEI, they would have been vastly better off

Lindseth - cross

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2 than it turned out they were.

3 Q Maybe I didn't make my question --

4 A The blunder was the failure to embrace the offer.

5 Q But what about -- I might have misunderstood your
6 testimony.

7 Is it your testimony that it was a good idea for
8 Muny Light to build its \$12 million planned expansion?

9 A No; that was their colossal blunder.

10 Q And you were trying to forestall that expansion, weren't
11 you?

12 A We were looking for an opportunity to provide an
13 interconnection with Muny Light under conditions of
14 rate equalization to eliminate the -- reduce and
15 eliminate the discrimination growing out of the tax
16 subsidy.

17 Q And the offer that you hold in your hand was one of the
18 means that you used for that purpose, is that correct?

19 A Correct.

20 Q And in making that offer, you were hoping to forestall
21 Muny Light's expansion, isn't that a correct statement?

22 A Well, the action was not to be ours; it was to be
23 theirs.

24 Our hope was that they would see what was sound
25 economics and they would forestall the building of the

Lindseth - cross

unit.

MR. NORRIS: I would request the Court to strike that response, and I would request that the witness respond to the question as asked.

THE COURT: I think he has responded, Mr. Norris.

Shall we proceed?

Q Is it your testimony, Mr. Lindseth, that in making this 1963 offer, you were -- you didn't care whether Mundy Light went ahead with the \$12 million planned expansion, is that your testimony?

A No.

Q You wanted that planned expansion not to go forward, isn't that a fair statement?

A We offered the City the choice:

It would be their choice whether they wanted to build it or not; but we offered the opportunity to make unnecessary the building of that plant. That's what the letter says.

Q I'm asking you, Mr. Lindseth, about your intention to make that offer, not the City's intention, or not the City's choice. I'm simply asking a question:

Wasn't it your intention in making that offer -- one of your intentions in making that offer, to

Lindseth - cross

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2 forestall the planned expansion of Muny Light?

3 A "Intention" is a positive word.

4 The answer to that is no, we did not so intend it.
5 We offered them an opportunity to avoid the so-called
6 colossal blunder.

7 Q If you don't embrace the word "intention," could I
8 rephrase it?

9 I making the 1963 offer, was it your hope that
10 Muny Light would not go forward with the \$12 million
11 plant expansion?

12 A Our hope was that they would embrace rate equalization
13 making unnecessary the bulding of the plant and the
14 other mistakes.

15 Q Do you recall that your deposition was taken in a
16 different proceeding on July 16th, 1975?

17 A What was the date?

18 THE COURT: July 16th.

19 Q July 16, 1975.

20 A Yes.

21 Q And do you recall that that deposition involved some
22 of the same subject matter as we're here discussing
23 today?

24 A Yes.

25 Q I'm turning to page 60 of the transcript of that

Lindseth - cross

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2 deposition held on June 16, 1975, and I will ask you,
3 Mr. Lindseth, whether you recall this question being
4 asked and your having given this answer:

5 "Question: In making this offer, the 1963 offer,
6 that you say was made in good faith in the hope that
7 the City would accept an interconnection with CEI in
8 terms which would require the City to increase its
9 rates to the level of CEI's rates, was it also the
10 hope that in accepting CEI's offer, the City would
11 drop its plan to make a \$12 million addition to its
12 plant?

13 "Answer: Yes."

14 Do you recall that question having been asked and
15 your having given that answer?

16 A Now that you read it, yes.

17 Q Isn't it a fair statement that the reason CEI was
18 hopeful that the City would drop its planned expansion --
19 \$12 million expansion, was to strengthen CEI's position
20 in the marketplace vis-a-vis its only competitor, isn't
21 that a fair statement?

22 A No. The hope was that rate equalization would be
23 achieved.

24 Q Thank you, Mr. Lindseth.

25 At any rate, it's a fair statement that CEI was

Lindseth - cross

1 hopeful that the plant expansion would not go forward;
2 that you would agree to, wouldn't you?

3
4 A The hope was that we would achieve the rate equalization
5 and the interconnection.

6 Q I understand that, but I'm asking you about a different
7 hope.

8 Isn't it a fair summary of your position at that
9 time that you were hopeful that the plant expansion
10 wouldn't go forward.

11 That's a different hope.

12 A Yes; that probably was in our mind.

13 Q Sure. And isn't it also a fair statement that it was
14 your hope that Muny Light would not be able to effect
15 any kind of a tie-in with Painesville and Orrville;
16 wasn't that also one of your hopes?

17 A Our hope was that we would present them with a better
18 plan than the one they had produced, in the interests
19 of achieving the objective of reducing and eliminating
20 the tax discrimination.

21 Q And then, as a means for achieving what your ultimate
22 goal was, all I'm suggesting to you is that you were
23 hopeful that Muny Light would not have a tie-in with
24 Painesville and Orrville; isn't that a fair summary
25 of the situation?

Lindseth - cross

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2 A Our hope was that they would embrace rate equalization,
3 making unnecessary a tie-in with Painesville and
4 Orrville and interconnect with CEI.

5 Q Maybe I -- strike that.

6 It would not have pleased you to see Muny Light
7 have an interconnection with Painesville and Orrville,
8 isn't that a fair statement?

9 A We don't like to see people make mistakes, and that
10 would have been a mistake.

11 Q But wouldn't there have been some benefit to Muny Light
12 from such a tie-in?

13 A Not at the cost proposed; it would have been another
14 blunder.

15 Q You even referred to it as an uneconomic phanthom
16 once, didn't you?

17 A Yes.

18 Q And are you suggesting that had that been built, there
19 would have been no benefit to Muny Light from that?

20 A Not commensurate with the cost.

21 Q But there would have been some benefit?

22 A Yes.

23 Q And wouldn't those benefits have enhanced Muny Light's
24 ability to compete against CEI?

25 A Not at the cost they proposed to invest in it.

Lindseth - cross

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Q Mr. Lindseth, I am correct that during your career, you were the President of Edicson Electric Institute?

A Yes.

Q as it the policy of Edison Electric Institute to assist its members in the acquisition or elimination of municipal systems within their service territories?

A Well, it was the policy and the practice of Edison Electric Institute to provide information to members. They took no part in any negotiations.

Q But the purpose of providing such information was to assist its members in either acquiring or eliminating municipal systems in their respective service areas; is that a fair statement?

A If the members used the information that way, yes.

MR. NORRIS: Mr. Leo, would you hand Mr. Lindseth Plaintiff's Exhibit 50??

THE COURT: Perhaps this would be an opportune time for us to take our morning recess.

Please, ladies and gentlemen, during the recess, adhere to my admonition: Don't discuss the case until it is presented to you upon the instructions of the Court and all the evidence for your deliberation and judgment.

1 Lindseth - cross

2 With that, we will take a short recess.

3 MR. NORRIS: May I approach the
4 bench?

5 I don't mean to hold the jury.

6 THE COURT: The jury may go.

7 - - - - -

8 {The jury left the courtroom and the following
9 proceedings were had at the bench:}

10 MR. NORRIS: Your Honor, in view
11 of Mr. Lindseth's age, I do have a lot more
12 cross-examination, but I would like to suggest
13 that we adjourn somewhat early so as not to give
14 him too long a period of testimony.

15 THE COURT: We're going to adjourn
16 at 4:00 o'clock, the same time --

17 MR. NORRIS: I mean, this morning.

18 THE COURT: Pardon me?

19 MR. NORRIS: I didn't know whether
20 it would be appropriate to give him a shorter
21 period on the stand this morning, your Honor.

22 THE COURT: No. We're going to
23 go, we are running behind time now.

24 MR. NORRIS: Okay.

25 THE COURT: Gentlemen, I

Lindseth - cross

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2 inadvertently last night set 9:15 as the time
3 that we would commence, and that's my fault.

4 I assumed that we would commence at 9:45
5 and, to my surprise, there was no one here at
6 9:45 but myself, so --

7 MR. NORRIS: Did you mean 8:45?

8 THE COURT: 8:45.

9 MR. NORRIS: We would be quite
10 willing to commence earlier.

11 THE COURT: Fine. So starting
12 from now on, whatever time I say, it means 8:45.

13 MR. NORRIS: Then you are
14 adjourning at 4:00?

15 THE COURT: 4:00. And then we
16 will turn the exhibits over to the jurors at 4:00
17 o'clock so that they can view them.

18 {End of bench conference.}

19 - - - - -
20 {Short recess had.}

21 THE COURT: Please be seated.

22 Bring in the jury.

23 MR. NORRIS: Your Honor, we have
24 filed the responsive brief with respect to the
25 settlement issue.

Lindseth - cross

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THE COURT: Very well.

Please submit it to my clerk.

Have you given it to him?

MR. LEO: He has given it to me.

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{The jury entered the courtroom and the following proceedings were had in their hearing and presence.}

THE COURT: You may proceed, Mr.

Norris.

BY MR. NORRIS:

Q Mr. Lindseth, I have asked you to look at Plaintiff's Exhibit 507.

Is that handy for you?

{Exhibit handed to the witness by the clerk.}

Q Now, the Edison Electric Institute was an institute comprised of private utility systems, is that correct?

A Yes.

Q And was it the policy of the Edison Electric Institute to keep tabs on the survival and the discontinuance of the municipal electric systems in the United States?

A Well, its policy is to provide member companies with

Lindseth - cross

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2 Q As distinguished from a privately-owned utility company,
3 is that a fair statement?

4 A Yes.

5 Q So that this third attachment lists REA-financed
6 cooperatives acquired by privately-owned utility
7 companies, is that correct?

8 And then the last attachment sets forth year by year
9 from 1882 forward, does it not, with respect to how
10 many municipal electric systems exist in the United
11 States?

12 A Yes.

13 Q And it also shows, does it not, from 1933 onward, the
14 number of municipal electric systems in the United
15 States that were discontinued, is that correct?

16 A Yes.

17 MR. NORRIS: I would request that
18 the Court read Joint Stipulation 50 and 51.

19 THE COURT: Joint Stipulation 50
20 reads as follows, ladies and gentlemen:

21 "CEI is interconnected directly or
22 indirectly with other electric utility systems in
23 a substantial part of the United States. CEI
24 regularly engages in acts in the Interstate
25 Commerce of the United States."

Lindseth - cross

1 statistical information on the subject you refer to.

2
3 Q And this letter, Plaintiff's Exhibit 507, is dated
4 February 3, 1966, and CEI would have received a copy
5 of that; is that an accurate statement?

6 A Yes.

7 Q Addressing your attention kindly to the attachments
8 that are attached to this exhibit, there is an
9 attachment consisting of a list of elections in which
10 proposals to establish municipal electric systems or
11 public utility districts were defeated; is that an
12 accurate statement?

13 A Yes.

14 Q And then there is another attachment that sets forth
15 five pages of information identifying municipal
16 electric systems that were abandoned during the
17 15-year-period from 1950 to 1965, is that correct?

18 A Yes.

19 Q And the third attachment lists REA -- may I interrupt?

20 What do you understand by the term "REA"?

21 A My understanding that an "REA" is a rural electric
22 association.

23 Q These would typically be cooperative associations, is
24 that correct?

25 A Typically, yes.

Lindseth - cross

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2 Joint Stipulation No. 51 reads in part as
3 follows -- I should say, reads in its entirety as
4 follows:

5 "For a period of at least the past 10 years:
6 {a} CEI has owned almost all the facilities in the
7 area it serves for transmitting and distributing
8 power to all its customers; {b} CEI has had
9 interconnections with Ohio Edison, Ohio Power
10 Company and Pennsylvania Electric Company
11 '{Penelec}'; {c} CEI's interconnections with Ohio
12 Edison and its participation in CAPCO
13 transmission facilities permit interchange of
14 electric power with the other members of CAPCO
15 and transmission of power from the CAPCO group
16 generating units owned in part by CEI; {d} CEI's
17 interconnection with Penelec has provided for
18 transmission of power to and from CEI's 80%
19 owned Seneca pumped storage power plant located
20 in Pennsylvania; and {e} interconnections of CEI
21 have provided the means for the interchange of
22 electric power with other utilities in Ohio,
23 Pennsylvania and in other states."
24
25

Lindseth - cross

MR. NORRIS: Thank you, your

Honor.

BY MR. NORRIS:

Q Would Mr. Leo please hand the witness or put on the easel Plaintiff's Exhibit 2493?

It is the large systems interconnection map in the back that shows the distribution systems of both companies -- all the way in the back -- no, I am in error. I am sorry.

It is the one that has the acetate grid on top of it. Thank you.

{After an interval.}

Q Mr. Lindseth, would you kindly step to Plaintiff's Exhibit 2493 and just indicate for the jury the location of the various interconnections that CEI has as shown on that exhibit.

A Well, as shown by the map, these three points are interconnections with Ohio Edison {indicating} as of whatever date of preparation of this map was.

This is a point of interconnection {indicating} with Ohio Edison.

These {indicating} are points of interconnection with the Ohio Power Company.

This is a point of interconnection {indicating}

Lindseth - cross

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2 with Pennsylvania Electric Company.

3 Q In total, Mr. Lindseth, how many interconnections are
4 shown on that exhibit with Ohio Edison?

5 A Five.

6 Q Thank you.

7 You may resume your seat, please.

8 Now, I take it that you -- over the years, the
9 interconnection arrangement between Ohio Edison and
10 CEI involved transactions for various types of power,
11 firm power, maintenance power, emergency power, and
12 economy power; is that a fair statement?

13 A Yes.

14 Q Why was it to CEI's advantage to have the ability to
15 purchase firm power from Ohio Edison?

16 A Well, in planning power capacity for the future, a
17 utility has the alternative of either constructing a
18 plant or purchasing the power, and with the economy
19 of scale resulting in very large units being
20 installed, there are distinct advantages in being
21 able to purchase or sell firm power in order that a
22 reasonable amount of capacity be owned or committed
23 for on the system.

24 Q Why was it important for CEI to have maintenance
25 power available from Ohio Edison?

Lindseth - cross

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Q Why was it important for CEI to have maintenance power available from Ohio Edison?

A With the economy of scale resulting in extremely large units being installed on a system compared with the load on the system, it was in the interest of a utility that during periods of outages of units, that -- especially very large units, that they be enabled to purchase economy power -- or rather, maintenance power, excuse me.

Q Now, do you recall approximately -- strike that.

Would you accept the date 1950 as approximately when you had your first interconnection with Ohio Edison; is that approximately correct?

A No.

Q When did you have your first interconnection with Ohio Edison?

A In the early 1920's.

Q Before you joined the company?

A Yes, I think so.

Q So that, if I understand your testimony -- strike that.

If CEI wanted to take out of service or for repair or rehabilitation some of its equipment, it would utilize the purchase of maintenance power to cover the load during such down time; is that a fair

Lindseth - cross

statement?

A Well, not until recent years was the size of units in relation to the load such as to require what you are now alluding to.

Prior to that a system was relatively contained for its own reserve.

Q When did CEI first purchase maintenance power from Ohio Edison, just in the recent few years?

A That I just don't know.

Q Certainly maintenance power is an important element of any interconnection, isn't it?

A Today, but not in the early years of the business.

Q Not in 1926 when you joined the company; is that what you are saying?

A That would be correct.

Q What about early 1950's, when the CEI Lake Shore plant was short of reserve, wouldn't maintenance power have been important to CEI by 1950, for example?

A I am not familiar with the details, but if we entered into a contract to do so, I am sure it was because of the importance of it.

Q And isn't it a fair assumption, Mr. Lindseth, that if you entered into a contract with Ohio Edison in 1950, which I believe you did, and then renewed it again in

Lindseth - cross

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2 1964, that your purpose was to be able to purchase
3 maintenance power as you felt the need; is that a fair
4 statement?

5 A Yes.

6 Q Purchasing maintenance power from an interconnected
7 partner is a fairly customary matter in the industry,
8 wouldn't you agree with that?

9 A Yes.

10 Q Would you kindly tell the jury why it was important to
11 CEI to be able to buy emergency power from Ohio
12 Edison?

13 A Well, emergencies are of many kinds, but in the event
14 of multiple outages of major generating units, an
15 emergency would be said to exist, and the ability to
16 replace the capacity of generators with purchased power
17 was important.

18 Q Why was it important to CEI to be able to purchase
19 economy power from Ohio Edison?

20 A This was an opportunity to make dollar savings in the
21 cost of generational power.

22 Q Did you purchase economy power from Ohio Edison on a
23 split savings basis for the most part?

24 A Yes.

25 Q Would you explain what is meant by a "split savings

Lindseth - cross

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2 basis."

3 A The principle of split savings of prices of economy
4 power is this:

5 If the power system represented by my left hand
6 is incurring a cost of three units to generate a
7 kilowatt, and my right hand is experience a cost of 4
8 units, and there is power available to be sold by the
9 left hand to the right, the saving as between the cost
10 of the left hand and the right hand is one unit.

11 If the left-hand unit sells it for 3-1/2 and the
12 right hand buys it for 3-1/2, each makes half the
13 saving, the so-called "split saving."

14 Q Would you kindly define from your experience the term
15 "coordinated operation" between electrical utility
16 systems.

17 MR. LANSDALE: May I approach the
18 bench, please..

19 THE COURT: Yes.

20 - - - - -
21 {Bench conference ensued on the record as
22 follows:}

23 MR. LANSDALE: Don't we have a
24 definition?

25 MR. NORRIS: We couldn't agree on it.

Lindseth - cross

We had "coordinated development."

MR. LANSDALE: I apologize. I thought we had a definition. I apologize.

{End of bench conference.}

- - - - -

THE COURT: Read the question.

{The pending question was read by the court reporter.}

A The meaning of the words would suggest that its operation, it is an operation between two systems which are coordinated.

And I presume that it would embrace the spectrum of economy power, interchange, and emergency power sale, and firm power transactions.

Q Would it also include maintenance power transactions?

A Probably so.

Q Are you aware, Mr. Lindseth, and now I am restricting my question to your period of time, either as an officer or director, and if you know, from up to 1974, how many municipal systems in the United States are you aware of that were operating in isolation through that period of time?

A I have no knowledge.

Q Are you able to state that with confidence that there

Lindseth - cross

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2 was some other systems other than Muny Light that was
3 operating in isolation, if you know?

4 MR. LANSDALE: I object.

5 THE COURT: Overruled, if he
6 knows.

7 A I know of one.

8 Q What is that one?

9 A Painesville.

10 Q Do you know of any systems up through 1974 other than
11 Cleveland and other than Painesville that were operating
12 on an isolated basis?

13 A Not that I recall.

14 Q Is it accurate to state, Mr. Lindseth, that during your
15 entire year with CEI, CEI was at all times interconnected
16 with at least one other electric utility system?

17 A Yes.

18 Q Am I correct that you therefore have never worked for a
19 utility company at any time in your career that was
20 operating totally in isolation without a parallel
21 interconnection with some other electric utility system;
22 is that correct?

23 A Yes.

24 Q In running an electric utility company, as you have done,
25 if you had your choice, would your preference be to have

Lindseth - cross

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2 one or more parallel connection with some other system?

3 A Yes.

4 Q You would prefer to have at least one parallel
5 interconnection so you wouldn't have to operate in
6 isolation; is that correct?

7 A Yes.

8 MR. NORRIS: Mr. Leo, would you

9 kindly hand the witness Plaintiff's Exhibit 459.

10 {After an interval.}

11 Q Mr. Lindseth, a moment ago you were talking about
12 building on a shared basis very large generating
13 equipment that perhaps two companies could coordinate
14 on the construction of.

15 Could you identify Plaintiff's Exhibit 459?

16 MR. LANSDALE: I object. May I
17 approach the bench?

18 THE COURT: Yes.

19 - - - - -

20 {Bench conference ensued on the record as
21 follows:}

22 MR. LANSDALE: If your Honor please,
23 I object to a continuation of this substantially
24 repetitious interrogation concerning the benefits
25 of interconnection as to which there is no dispute.

Lindseth - cross

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2 and it is repetitious, and a repetitious reference
3 to various interconnections, and now he is going into
4 an agreement of some kind.

5 This is all remote from the time period that we
6 are dealing with, and surely we have enough testimony
7 about the benefits of interconnection, and its
8 extent in the United States.

9 THE COURT: Well, it is cross-
10 examination.

11 MR. NORRIS: I have a specific
12 purpose, your Honor.

13 THE COURT: He always says that,
14 but in most instances it is never connected up.

15 MR. NORRIS: Well --

16 THE COURT: Well, you are free to
17 go ahead. Fix your time period.

18 {End of bench conference.}

19 - - - - -

20 THE COURT: The objection is
21 overruled. Fix a time period.

22 You may answer -- you may proceed with this
23 line of questioning, and fix a time period within
24 which you are talking about.

Lindseth - cross

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BY MR. NORRIS:

Q What is the date of Plaintiff's Exhibit 459?

A February, 1965.

Q Can you identify that document for the jury?

A This is a contract between Ohio Edison Company and Cleveland Electric Illuminating Company to construct large steam-generating units on the systems of both parties, and strengthen transmission interties, and provide for the purchase and sale of capacity and energy and provide for mutual back-up.

Q Who executed that document on behalf of CEI?

A I did.

Q And just very briefly, what was the purpose of entering into that contract? Wasn't it to build two systems, two large generating systems?

MR. LANSDALE: Objection.

THE COURT: Overruled. He just answered the last question, but go ahead.

Q I will rephrase the question:

Isn't it a fact that CEI and Ohio Edison had decided to build two large generating units on a staggered basis, and that the companies, neither one of the companies could have feasibly built such a large unit on its own without the cooperation of the

Lindseth - cross

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2 other; is that a fair statement?

3 A Yes.

4 Q However, by cooperating and coordinating with each
5 other, both companies were able to benefit
6 economically for sharing this construction; is that
7 correct?

8 A Yes.

9 Q And is this sometimes called "coordinated development,"
10 this kind of process?

11 A Well, I am not familiar with it, but it very well might
12 be.

13 Q Is it sometimes called staggered construction?

14 A Yes.

15 Q And was the ability to engage in this kind of
16 staggered construction, would that be a benefit
17 flowing from a parallel interconnection?

18 A Yes.

19 Q And the ability to engage in staggered construction
20 like this would produce economic benefits for the
21 systems who were interconnected; is that a correct
22 statement?

23 A Yes.

24 Q And these economic benefits would result from the
25 systems being able to construct a generating unit

Lindseth - cross

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larger than would be justified by the system's incremental load growth over a one or two year period, is that correct?

A Yes.

Q Mr. Lindseth, prior to the entering into the interconnection agreement between CEI and Ohio Edison, did either company demand that there be rate equalization before signing the agreement?

A I was not a party to those agreements, and I wouldn't have any information.

Q Well, addressing your attention to the document that you have just testified about; didn't you sign that agreement to CEI, for CEI?

A I may have misspoken.

Are we speaking about the staggered construction contract?

Q Would you get --

MR. NORRIS:

Mr. Leo, would you

kindly hand the witness both 459 and 460, and place them in front of him, please.

{After an interval.}

Q Mr. Lindseth, kindly identify Plaintiff's Exhibit 460.

A This is a contract entered into in July of 1964 between CEI company and Ohio Edison Company.

Lindseth - cross

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- 2 Q And is that an interconnection agreement?
- 3 A Yes.
- 4 Q And addressing your attention to the second page of
- 5 the exhibit, does it include as part of the
- 6 interconnection benefits, does it include firm power?
- 7 Do you see that on the second page?
- 8 A I see firm power defined.
- 9 Q Well, can you tell me whether the agreement covers
- 10 transactions that could take place between the two
- 11 companies with respect to firm power?
- 12 A Well, without examining the contract, my only answer
- 13 would be that I would presume so.
- 14 Q Well, I would be willing to let you take the time to
- 15 examine.
- 16 Could I direct your attention to the fourth
- 17 "Whereas" cause; and isn't it a fact that this 1964
- 18 agreement took the place of the 1950 interconnection
- 19 agreement between the two companies?
- 20 A Yes.
- 21 Q And subject to your right to differ with this, would
- 22 you accept the proposition that this is the 1964
- 23 interconnection agreement between CEI and Ohio
- 24 Edison that covers transactions such as you have been
- 25 testifying to, firm power, maintenance power, economy

Lindseth - cross

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2 power and so forth; would you be willing to accept that?

3 A Yes.

4 Q Who signed Plaintiff's Exhibit 460 on behalf of CEI?

5 MR. LANSDALE: May I approach the
6 bench?

7 A I did.

8 THE COURT: Yes.

9
10 {Bench conference ensued on the record as
11 follows:}

12 MR. LANSDALE: The contract expressly
13 says that firm power may be separately negotiated
14 and contracted for at any time by the request of one
15 party to the other.

16 It does not contain arrangements for firm
17 power, and if your Honor please, we repeat and
18 repeat and repeat and beat the subject to death,
19 and I object additionally for that reason.

20 THE COURT: He said he is going to
21 tie it in to something new, and I am waiting for
22 that.

23 MR. LANSDALE: Apparently he wants to
24 ask him if he asked for rate equalization -- we
25 agreed to it.

1 Lindseth - cross

2 MR. NORRIS: I would like to ask
3 the witness questions so the jury may hear the
4 responses.

5 THE COURT: Well, we keep repeating
6 and repeating. There comes a point in time when the
7 Court has the privilege of cutting you off on
8 repetitious testimony, and we seem to be going
9 over the same subjects with innumerable witnesses.

10 I am just giving you a free rein, but there is
11 just going to come a time when I am going to cut it
12 off, so you are on notice.

13 MR. NORRIS: May I state to the Court
14 my purpose?

15 THE COURT: Yes. Look at the
16 jurors, they are asleep.

17 MR. NORRIS: I am sorry. I don't
18 like to have the jury asleep.

19 THE COURT: I am saying that
20 figuratively.

21 MR. NORRIS: I would like to be
22 able to demonstrate that they dealt differently
23 with Munny Light on the same issues than they did
24 with others.

25 THE COURT: You have asked that

Lindseth - cross

1 question and there was no objection, and that was
2 whether or not -- what was the question?

3 MR. NORRIS: Whether or not --

4 THE COURT: Whether or not there was
5 a requirement.

6 MR. NORRIS: -- by either company.

7 Now, that is relevant.

8 THE COURT: It is relevant only if
9 you can show the conditions were identical.

10 MR. NORRIS: It is relevant.

11 We have a stipulation, your Honor, that
12 service reliability is just as important to a public
13 system as a private system.

14 And they were being selective in the way that
15 they dealt with Muny Light, and the service
16 reliability is just as important for us as it is for
17 them.

18 THE COURT: I think that is in the
19 record at least 10 times.

20 MR. NORRIS: This is the first
21 senior executive of CEI that the jury has had a
22 chance to listen to, and I think the City has the
23 right to let the jury learn from their own testimony
24 that in the face of competitive, in the face of a
25

1 Lindseth - cross

2 competitive situation, that I am going to develop,
3 between Ohio Edison and CEI, and that hasn't been
4 brought out yet, and that is a direct parallel to
5 the competitive situation --

6 THE COURT: Once the facts are in,
7 Mr. Norris, how many times does it have to be
8 repeated; irrespective of what witness that you use.
9 Once the facts are in, really they should be
10 permitted in only once, and I have permitted these
11 in at least four, five or ten times.

12 MR. NORRIS: What we are talking
13 about --

14 THE COURT: What difference does it
15 make? If the facts are in, and not only that, but
16 they have admitted it. This is just a waste of time.

17 MR. NORRIS: But your Honor, I
18 resist that suggestion, because I have a right to
19 show that there was competition on the boiler, and
20 I am just questioning about that. I am questioning
21 about that now, and I think that the competitive
22 situation --

23 THE COURT: Well, let's not --
24 don't try to divert me. That has been tried before
25 by more sophisticated means than you are using.

Lindseth - cross

You are going from one subject to another, and you switch gears, and you get into another subject, and we are talking about repetition of testimony, and I am saying that we have been over this at least 10 times.

Now, I am going to permit you to exhaust it with this witness, but we are not going to go into it again.

Please proceed.

{End of bench conference.}

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THE COURT: You may proceed with this line of questioning although it is quite repetitious of what we have been over before.

BY MR. NORRIS:

Q Do you recall having a conversation in 1960 with top executives of Ohio Edison with respect to competition along the common border between Ohio Edison and CEI?

A Related to facilities, I do recall that, yes.

Q My question was, do you recall a meeting in 1960 with respect to competition between the two companies? Do you understand the question?

A {No reply.}

Q Well, I will withdraw that.

Lindseth - cross

Mr. Leo, kindly hand the witness Plaintiff's Exhibit 632.

Can you identify Plaintiff's Exhibit 632?

A It is a memorandum that I wrote to three people in the company with regard to facilities on Route 8 north of Sagamore Road.

Q And the first paragraph indicates that you met with Mr. Samouth and Mr. Mansfield for about three hours June 14, 1968.

Would you kindly identify for the jury who Mr. Samouth and Mr. Mansfield are?

A Mr. Samouth at that time was probably Chairman of Ohio Edison Company, and Mr. Mansfield was probably President of Ohio Edison.

Q Now, at that point in time, CEI's rates were about 8 percent lower than Ohio Edison's rates; is that correct?

A Well, if the memorandum says that, I would rely on the memorandum. I have no recollection.

Q I address your attention, Mr. Lindseth, to the last sentence of the second paragraph, and it reads:

"This rate given initially under the rates presently requested by Ohio Edison is of the order of 8 percent after 300 kwh use per month."

Lindseth -cross

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2 Would you accept the proposition that CEI's rates
3 were some 8 percent lower than Ohio Edison's rates at
4 that time?

5 A That would relate to the residential customer, and for
6 a use prescribed in the memorandum.

7 For those conditions, it is stated here as 8
8 percent.

9 Q And addressing your attention to the first paragraph,
10 do you see reference to the term "Bailey Company on
11 Route 8"?

12 A Yes, I do.

13 Q Isn't it a fact that the reason that your meeting with
14 Ohio Edison in June of 1960 was taking place was that
15 CEI had taken a customer away from Ohio Edison, namely,
16 the Bailey Company?

17 A Well, I don't remember that particular situation, but I
18 do remember that we each had facilities with which to
19 service on a portion of Route 8 in this area north of
20 Sagamore Road. We each had facilities.

21 Q Would you address your attention, please, to the first
22 paragraph and the first statement:

23 "Following my recent conversation with Walter
24 Samouth about his letter of May 31 relative to our
25 serving the Bailey Company on Route 8, I met with him

Lindseth - cross

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2 and Mr. Mansfield for about three hours in Akron
3 today."

4 Does that serve to refresh your recollection that
5 the CEI company had taken the Bailey Company as a
6 customer away from Ohio Edison?

7 MR. LANSDALE: Objection. May I
8 approach the bench?

9 THE COURT: Yes.

10 - - - - -
11 {Bench conference ensued on the record as
12 follows:}

13 MR. LANSDALE: I object on the ground
14 that counsel is suggesting that we took a customer
15 away from the Ohio Edison Company, and that Ohio
16 Edison was serving -- and I don't believe that that
17 is factual.

18 Under Ohio law I don't believe that that would
19 be possible, and if counsel will tell me that he
20 has information to that effect, I will
21 reluctantly accept it subject to a check.

22 MR. NORRIS: My information is
23 that it was the Lindseth memorandum, and I
24 understand in 1960 that the utility corporations
25 that were adjoining others were not required to

1 Lindseth - cross

2 stay in their certified territory, and I
3 understand that there was no prohibition against
4 competing.

5 Now, if the other company complained, then
6 that triggered a process that was covered in the
7 regulations, but if there was no complaint, the two
8 companies were free to go ahead, and that is my
9 understanding of the Ohio law.

10 MR. LANSDALE: I repeat that I have
11 serious objections to the suggestion. I know it
12 is not the fact.

13 THE COURT: I am going to sustain
14 the objection to the form of the question.

15 If you want to lay a proper foundation to show
16 exactly what the law was, and to show --

17 MR. LANSDALE: We had a stipulation on
18 what the law was.

19 MR. NORRIS: Let me get into the
20 foundation on the facts.

21 THE COURT: You keep saying that,
22 but you never do it.

23 MR. NORRIS: Oh, your Honor.

24 THE COURT: You go back to that
25 stand and you start right over again and ask the

1 Lindseth - cross

2 same questions all over again.

3 MR. NORRIS: Please, this is the
4 situation that I didn't create.

5 THE COURT: I am permitting you to
6 go ahead, but he is objecting to this.

7 Do you intend to put on proof to show it is
8 contrary to the inferences you are creating?

9 MR. NORRIS: I am not interested in
10 inferences with respect to the -- I am not going to
11 try -- what I am doing is a very limited factual
12 dissertation of what happened here. I think I am
13 entitled to show --

14 THE COURT: Well, you are. Go
15 ahead and do it. I will sustain the objection as
16 to form.

17 MR. NORRIS: Your Honor, --

18 THE COURT: I am going to take it
19 on a one-on-one basis, Mr. Lansdale, if you have
20 objections, you stand up.

21 The objection is sustained as to form.

22 Read the question again.

23 {The pending question was read by the court
24 reporter.}

25 THE COURT: There is nothing in the

1 Lindseth - cross

2 record to show the Bailey Company was taken away.
3 That is your insertion, and that is your
4 interpretation into a set of facts which has no
5 basis. It is conclusory, a conclusory statement
6 that has no basis in fact, the purpose of inferring
7 that the jury -- that CEI took the customer away.

8 Now, if you can prove it, you are free to go
9 ahead and do it. That is all I am telling you.

10 I will sustain the objection as to form, and
11 you are free to pursue this line of questioning if
12 you lay a proper foundation.

13 {End of bench conference.}

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15 BY MR. NORRIS:

16 Q Mr. Lindseth, addressing your attention to the
17 next-to-the-last paragraph on page 2 of your June 13,
18 1960 memorandum, Plaintiff's Exhibit 632, and you
19 stated, and I read:

20 "Mr. Samouth pointed out several times that what
21 he regards as our overzealous approach to boundary
22 matters appears to be confined largely to Cuyahoga
23 County."

24 Could you kindly explain to the jury what CEI's
25 "overzealous approach to boundary matters" consisted of

Lindseth - cross

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2 that Mr. Samouth was referring to?

3 A I just don't have a recollection, unless it be the
4 situation prevailing on Route 8 north of Sagamore
5 Road, which is what this meeting was about.

6 Q What was that situation?

7 A We each had duplicate facilities running north and
8 south on Route 8.

9 This is in the vicinity of the Ford plant.

10 The service there of which is provided -- was provided
11 by CEI Company, and Ohio Edison Company had a line,
12 and we had a line, and therein lay the subject of the
13 discussion.

14 Q Now addressing your attention, please, to that same
15 paragraph, the last sentence, he said that he had issued
16 an order to his people against doing such things, and as
17 he had pointed out, "that we were guilty of."

18 What do you mean -- what did it mean by Mr.
19 Samouth when he said "pointed out that CEI was guilty
20 of"?

21 A Well, I have no clear recollection, but I presume that
22 it was about certain customers from the facility that
23 we had on Route 8.

24 Q Is it a fact that during this time there would be
25 customer switches from Ohio Edison to CEI in the Route 8

Lindseth - cross

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2 area?

3 A Well, I am not familiar with it.

4 Q Would you address your attention to the fifth paragraph
5 on this same page, to the first two sentences:

6 "We also discussed as a possible basis for fixing
7 principles with the PUCO a possible token trade, say,
8 pair of line portions a half mile or so long, each
9 with the same number of customers.

10 "We also discussed such extreme cases as Bagley
11 Road and Case Road, but the disparity in the number of
12 customers seemed just too great to make it practical."

13 Do you have any recollection what you meant when
14 you wrote the language, "such extreme cases as Bagley
15 Road and Case Road"?

16 A Well, on one of those, Ohio Edison has a line running
17 and extending into the territory served on both sides
18 by CEI in the southwesterly portion of our system, and
19 the distance is pretty substantial, half a mile or more,
20 and it is uneconomical for them to have just a single
21 line sliver going up into our territory, and we
22 obviously talked, is there a basis on which this kind
23 of an uneconomic situation can be fixed.

24 Q Well, is it a fair statement that Ohio Edison Company
25 had complained as a result of customer switch-overs

Lindseth - cross

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2 from Ohio Edison service to CEI service?

3 A I don't have that recollection, no.

4 Q Would you say that you were in direct competition with
5 Ohio Edison on your border area where the two systems
6 interface?

7 A Where the customer had a choice of being served by
8 either one or the other?

9 Q Yes.

10 A That would be a competitive situation.

11 Q And is it fair to say that both were companies seeking
12 to serve such customers as they were able to serve in
13 that area?

14 A I don't believe that there were very many situations,
15 in view of the fact that as of the date of this letter,
16 such situations were reasonably ironed out.

17 Q One last question:

18 Would you be willing to characterize the
19 competition with Ohio Edison along your common border
20 as vigorous competition?

21 A No.

22 Q Just as competition; is that what your testimony is?

23 A Yes.

24 Q Mr. Lindseth, am I correct that CEI was interested in
25 the elimination of Muny Light because CEI had the

Lindseth - cross

1 welfare of the City of Cleveland at heart?

2
3 A CEI was interested in the eliminating of price
4 competition with Muny Light, but not in eliminating
5 Muny Light per se, except as it would result from
6 such elimination of price competition or might result
7 from.

8 Q My question really goes to what your motivation was.

9 Your motivation was because you had the welfare
10 of the City of Cleveland at heart; is that correct?

11 A The motivation was to bring about the elimination,
12 to reduce and eliminate the discrimination, the
13 tax discrimination resulting from the fact that 20
14 percent of the customers in Cleveland were receiving
15 electric power free of a tax component, and 80 percent
16 of the customers in Cleveland paid in their electric
17 rates a full component of taxes.

18 Q Do you have any recollection of having stated the
19 reason that I have just asked you about in the
20 deposition that was taken July 16, 1975?

21 A I don't recall it.

22 Q Would you deny that this was your testimony -- strike
23 that.

24 Mr. Lindseth, addressing your attention to page
25 32, line 24 to page 33, line 8 of your deposition,

Lindseth - cross

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2 taken July 16th, 1975, I will read to you a question
3 and answer, and then ask you a question about it:

4 "Q Do you know whether CEI was interested in
5 the elimination of the City light system?

6 "A Interested in the sense that the company
7 believed that the Municipal Light System was not a
8 sound economic entity and hence the territory would be
9 served better by a single system.

10 "To that extent we were clearly interested because
11 we had the welfare of the City of Cleveland at heart.
12 It was where we did business."

13 Do you recall being asked that question and giving
14 that answer?

15 A Y s.

16 Q Mr. Lindseth, you stated earlier that your interest was
17 not just in eliminating Muny Light, but in reducing
18 and eliminating -- you used both terms; is that a fair
19 summary of your statement?

20 A Reducing and eliminating the competition.

21 Q Now, to what level, when you were chief executive
22 officer, to what level did you want to reduce that
23 competition?

24 A Well, we would have been willing to settle for the
25 status quo.

Lindseth - cross

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2 We had operated for a long time, after roughly the
3 late 1930's on a live-and-let-live basis.

4 We were willing to continue that.

5 Muny resumed a very aggressive posture in the late
6 1950's, and our defense was to have to compete
7 competitively to maintain our position.

8 Q Isn't it a fact that CEI had concluded, in 1957, that
9 Muny Light if its then present policies continued,
10 that Muny Light would just decline and fall of its
11 own weight?

12 A Well, I don't know whether we concluded that, but it
13 wasn't a very business-like operation, and this was
14 one of the possibilities.

15 Q Is it also a fact, it is a fact, is it not, Mr.
16 Lindseth, that after Mr. Bronus Klementowicz was
17 appointed Director of Public Utilities, through his
18 policies through the period of 1958 and 1960 and that
19 period, that CEI became concerned that Muny Light
20 would not fall of its own weight; is that a fair
21 statement?

22 A Mr. Klementowicz declared that they were out to grab
23 business wherever they could, and he initiated a very
24 vigorous competitive posture over at the Municipal
25 Light System.

Lindseth - cross

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Q My question goes to CEI's perception about the competitive situation at that time.

Isn't it a fair statement that when Muny Light had this resurgence under Mr. Klementowicz in the late '50's, that CEI no longer felt that Muny Light was going to fall of its own weight; isn't that a fair statement?

A Muny Light showed fairly decent, for them, financial results, and the conclusion probably is the one that you state; to-wit, that it was not imminent that Muny Light would fall of its own weight, to use your words.

Q And do you recall that this was your viewpoint as Chief Executive Officer at the time this was taking place, that probably Muny Light would not fall of its own weight; is that a fair statement?

A They were very vigorously competing for customers with us, and they achieved success in the degree that they transferred more of our customers to their system than we were able to transfer from their system to our system, and that is good, vigorous competition.

Q I know that, and I just want to see if you can respond to my question; that you yourself, as Chief Executive Officer, when that was taking place, it was your

Lindseth - cross

1 judgment that Muny Light would not fall of its own
2 weight, given the circumstances; is that a fair
3 statement?
4

5 MR. LANSDALE: Objection.

6 THE COURT: Overruled. He may
7 answer.

8 A Probably for that time.

9 Q Now, did you have any specific goal set out as to how
10 much you wanted to reduce the competition, to what
11 level? Do you have any numbers or percentages or any
12 specifics that you can recall?

13 A Well, I used the phrase "status quo."

14 If we were to achieve rate equalization, which we
15 had urged for a long time, private competition would
16 have been eliminated, and Muny Light would have a set
17 of customers, and their public load, and the status quo
18 would have been maintained, and there would be no
19 incentive for the customers to change from our side to
20 theirs or probably vice versa.

21 Q Under those circumstances, because of CEI's superior
22 service reliability, wasn't it your conviction that
23 with price equality, that CEI would win the competitive
24 struggle; wasn't that really your conviction?

25 A This would depend on a date, because if such action

Lindseth - cross

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2 took place after a time of interconnection, then
3 presumably Muny could have maintained reasonably good
4 service reliability.

5 Q Because of the interconnection?

6 A Because of the interconnection.

7 Q But prior to the interconnection, and absent
8 interconnection, if the two companies were selling
9 private customers at the same rate, Muny would bite
10 the dust ultimately?

11 A During the period when Klementowicz was Director of
12 Public Utilities, they had a reasonably dependable power
13 system, and they gave reasonably dependable service.

14 Q And that continued up through the mid '60's, at the
15 time you were making your proposal to Mayor Locher
16 about interconnection, given rate equalization, and
17 didn't they at that time have a good system, up to that
18 point?

19 A I believe so.

20 Q That is the period of time I am asking my questions
21 about, and isn't it a fair statement, given that period
22 of time, absent an interconnection now, that rate
23 equality would really mean the end of Muny Light
24 ultimately?

25 A No, it would only eliminate price competition, and those

Lindseth - cross

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2 customers were emotionally or biased in their thinking
3 to a point that they wanted to continue with Muny, as
4 Muny customers, and they would continue with the
5 system of Cleveland, which provided a 30 percent
6 captive load.

7 They had 60,000 customers, and there was no reason
8 for them to change. It would have been the maintenance
9 of the status quo.

10 Q Do you think that Muny Light would be able to sustain a
11 marginal portion of its private customer load given
12 rate equalization or would a major portion have
13 switched to CEI?

14 A I don't think there would be much switching going on.

15 Q You think, given price equality, both Muny Light and
16 CEI would have been maintained, would have maintained the
17 status quo on the private customers; is that correct?

18 THE COURT: Approach the bench.

19 Ladies and gentlemen, perhaps this would be
20 a good time to take our luncheon break. We will
21 recess and return at 1:30, and please during the
22 recess, do not talk to anyone, not even among
23 yourselves, about this case, and keep an open mind
24 until such time as all of the evidence has been
25 presented to you and it has been presented for

1 Lindseth -cross

2 your deliberation and judgment upon the
3 instruction of the Court. You are free to go.

4 {The jury recessed for lunch.}

5 - - - - -

6 {Bench conference ensued on the record as
7 follows:

8 MR. LANSDALE: The objection is that
9 this is the third or fourth time. It is a repetition
10 of the same question and the answer was "No.
11 They would have price equality," and they would
12 also have reliability, and there would be no reason
13 for the customer to change. I object to this
14 continued repetition.

15 THE COURT: He answered it. You
16 put the question three or four different ways, and
17 he comes up with the same answer each time.

18 Now, what you are doing is you are reducing
19 your questioning to argumentation.

20 I don't know if you intend to break him down
21 and make him admit something, but there comes a
22 point --

23 MR. NORRIS: I have no intention
24 of trying to break the witness down.

25 THE COURT: He answered the

Lindseth - cross

question. Go back and read the record.

{Record read by the court reporter.}

THE COURT: Mr. Norris, it is the same question, and you continue to ask the same question each time, and he gives the same answer.

MR. NORRIS: May I have the reporter please read the last question back?

THE COURT: We will have it read when the witness comes back from lunch, and we will let the witness answer it.

MR. NORRIS: I would like the reporter to read back the last question, because I don't think it was repetitious.

{The last question was read back for the record as follows:

"Q You think, given price equality, both Munny Light and CEI would have maintained the status quo on the private customers; is that correct?"}

{Court was adjourned for the luncheon recess.}

- - - - -

1 TUESDAY, SEPTEMBER 23, 1980, 1:45 P.M.

2
3 THE COURT: Bring in the jury.

4 {The jurors resumed their places in the jury
5 box.}

6 THE COURT: You may proceed.

7 Please read the last question back.

8 MR. NORRIS: If the Court please,
9 I'm going to withdraw that question.

10 THE COURT: Very well.

11 - - - - -

12
13 CROSS-EXAMINATION OF ELMER LINDSETH {Cont'd}

14
15 BY MR. NORRIS:

16 Q Mr. Lindseth, prior to the entering into of the
17 interconnection agreement between Ohio Edison and CEI,
18 did either company demand that there be equalization of
19 rates as a condition before signing the agreement?

20 A You are speaking of the most recent agreement now?

21 Q Well, I'm speaking of -- Let's take that, yes, the
22 1964 agreement. Was there any such request?

23 A No.

24 Q And did CEI make any request of any kind to Ohio
25 Edison to change its business practices in any respect

Lindseth - cross

1 before signing an interconnection agreement?

2 A Not to my knowledge.

3 Q And did Ohio Edison make any such request of CEI?

4 A Not to my knowledge.

5 Q Mr. Lindseth, is it your view that because of the
6 decision of our forefathers to have a Muny Light plant,
7 that it is going to be with us for a long time, and in
8 the vernacular, we are stuck with it?
9

10 A Well, not necessarily.

11 Q Do you recall making such a statement at any time in
12 the past?

13 A Well, there were recent efforts which came almost to
14 fruition to purchase the plant, which would have in
15 effect eliminated the Municipal Light Plant.

16 This conceivably could happen again.

17 Q Do you recall testifying at a committee hearing in
18 the Cleveland City Council on April 4, 1957?

19 A Would you describe it a little bit.

20 Q A hearing in front of the, I think it was the Public
21 Utilities Committee of the City Council on April 4,
22 1957.

23 Do you have any recollection of that?

24 A Yes.

25 Q And let me ask you, do you recall stating the

Lindseth - cross

1
2 following -- and there were no questions, but let me
3 read from page 100 of the transcript of that City
4 Council hearing, and let me ask you if you recall
5 making the following statements:

6 "Now, the problem is one of longstanding. It
7 didn't start today, and it didn't start with the
8 introduction of this ordinance.

9 "This problem is going to be with us a long time in
10 the future. None of us here had any part, or I don't
11 think we did, in the decision of our forefathers that
12 Cleveland was going to have a Municipal Light Plant,
13 but we have got it, and in the vernacular, we are stuck
14 with it."

15 Do you recall making that statement?

16 A Yes.

17 Q Do you know, Mr. Lindseth -- strike that.

18 Is it correct that CEI has some facilities
19 duplicating Muni Light and Muni Light has some
20 facilities duplicating CEI in the City of Cleveland?

21 A Yes.

22 Q In your view this is wasteful; is that correct?

23 A Yes.

24 Q Is it also your view that the Cleveland community
25 would be better off economically and socially if there

Lindseth -cross

1
2 were no Municipal Electric Light Plant?

3 A Yes.

4 Q Even though you feel this way, is it also your view
5 that it is our job to do the best we can to utilize
6 the Municipal Light Plant for the community?

7 A CEI has studied this problem for a long time and
8 believed it, and I believe it.

9 Q Let me be sure I understand your answer. I am not
10 sure that I quite understand. May I ask the question
11 again?

12 THE COURT: Read the question
13 back and we will get the answer, and if you
14 understand it, fine, and then you can -- you keep
15 repeating the same questions, Mr. Norris. I have
16 asked you time and again, please don't be
17 repetitious.

18 Read the question and the answer.

19 {The last question and answer were read by
20 the court reporter.}

21 THE COURT: Now, I understand it.

22 Don't you understand the answer?

23 Q Is that a yes answer? That is my question; is that a
24 yes answer to my question?

25 A Yes.

Lindseth - cross

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Q Thank you.

Would you agree that competition in the electric utility business in Cleveland is like the automobile business?

A No.

Q Would you agree that electric utility business in Cleveland is like the oil business?

A No.

Q Addressing your attention to that same City Council hearing on April 4, 1957, and let me ask you if you recall making the following statement, and I am reading from page, from page 135 and 136:

"The technological advance in your business has been more rapid in the last five years, ten years, than ever before in our history.

"And it should be said that the credit of the people must go to the Municipal Light Plant, that they have done a good job in the light of these very difficult burdens that they face of operating a small system when the economics is so much in favor of a large system.

"It is like the automobile business, the costs of making automobiles in small numbers is so great compared to large numbers that the small companies can't

Lindseth - cross

survive.

"It is true also in the oil business. It would be unthinkable if the City of Cleveland, which uses a lot of gasoline and oil, were to attempt an oil refinery. They would lose their shirts because it is a highly technological type of business."

Do you recall making that statement?

A I don't recall it, but if it is in the transcript, I made it.

THE COURT: Approach the bench.

- - - - -

{Bench conference ensued on the record as follows:}

MR. LANSDALE: I object again to what I regard as unfair cross-examination, if this is cross-examination. If it's a hostile witness, he is not in the employ of the company. The context in which that statement was made is perfectly plain and for you to suggest to the witness --

THE COURT: What is the purpose of it? What is the purpose of this? I have been trying to follow this line of questioning before.

MR. NORRIS: It goes to the question of natural monopoly, your Honor.

Lindseth - cross

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2 THE COURT: That's a general term.
3 Would you answer my question now? What is the
4 probative nature as to whether he said or didn't
5 say the electrical business is like the automobile
6 business?

7 Are you going to show -- Is there some issue
8 before us that somebody is contesting that fact?

9 MR. NORRIS: Well, I think that in
10 order to meet the challenge that the defendant is
11 asserting here on natural monopoly, I know that
12 his defense goes to this and I've got --

13 THE COURT: You tell me how it
14 goes to that. You made the generalization. You
15 tell me how.

16 MR. NORRIS: The Chairman of the
17 Board of CEI likening the utility business in this
18 city between his company and my client to the
19 automobile business and the oil business.

20 THE COURT: And my question to you
21 is, so what? How is that an issue here?

22 MR. NORRIS: That is an admission,
23 it seems to me.

24 THE COURT: Of what? How is it
25 probative of the issues before us is what I am

Lindseth - cross

1
2 trying to determine.

3 MR. NORRIS: It is probative, your
4 Honor, in that it demonstrates what the Chairman
5 of the Board of CEI regarded at a time before this
6 lawsuit was filed with respect to the likelihood of
7 the natural evolutionary forces.

8 THE COURT: Of what, the automobile
9 business or the electrical business?

10 MR. NORRIS: The electrical business
11 in this city.

12 THE COURT: Well, please direct your
13 questions so that they are material to the issues
14 here and let's stop this departure because I am
15 going to cut you off.

16 MR. NORRIS: Your Honor, --

17 THE COURT: Will you please do what
18 I ask you to do? I do not wish to discuss the
19 question further.

20 You are not responding to my questions. When I
21 ask you, you keep talking in generalities that don't
22 make sense.

23 MR. NORRIS: I am trying to respond.

24 THE COURT: Well, you are not.
25 Let's proceed.

Lindseth - cross

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2 MR. NORRIS: I cannot respond then?

3 THE COURT: Let's proceed.

4 {End of bench conference.}

5 - - - - -

6 THE COURT: You may proceed, Mr.
7 Norris.

8 The witness has answered the question and,
9 again, I would request that you direct your attention
10 to the issues that are before us.

11 MR. NORRIS: Mr. Leo, would you hand
12 the witness Plaintiff's Exhibit 2084, 2506, 2086,
13 2085, 2081 and 2088?

14 {The documents were handed to the witness by
15 the law clerk.}

16 MR. NORRIS: Mr. Leo, would you also
17 hand the witness Plaintiff's Exhibit 2376? I
18 neglected to ask for that.

19 Your Honor, I would request that the Court read
20 to the jury Joint Stipulations 98 and 99.

21 THE COURT: Stipulation No. 98.

22 "Plaintiff's Exhibit 2376 is a copy of the
23 1967 MELP Factbook {with certain later editions}
24 prepared by CEI containing information describing
25 the operations of Munny Light as well as information

Lindseth - cross

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2 which CEI used in various ways. Mr. Lindseth
3 originally asked Mr. Loshing to put the MELP
4 Factbook together. This project commenced in
5 1964 and from time to time information in the
6 MELP Factbook would be updated until the early
7 1970's."

8 Joint Stipulation No. 99.

9 "The facts relating to sales and revenues of
10 Muny Light and CEI referred to in the following
11 documents prepared by CEI are true as to the CEI
12 figures and as to the Muny Light figures were
13 correctly copied by CEI from Muny Light's
14 submissions to the FPC.

15 "PTX 2084 for years 1965 and 1966, PTX" --

16 PTX is Plaintiff's Exhibit, ladies and
17 gentlemen.

18 "Plaintiff's Exhibit 2506 for the years 1967
19 and 1968 and Plaintiff's Exhibit 2508 for the years
20 1969 and 1970."

21 MR. NORRIS: Thank you, your Honor.

22 BY MR. NORRIS:

23 Q Mr. Lindseth, if you would address your attention,
24 please, to Plaintiff's Exhibit 2084 and 2506, is it a
25 fact that the revenue trends for Muny Light during those

Lindseth - cross

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2 four years were on the increase each year, 1965 through
3 1966, 1967 to 1968?

4 A Yes.

5 Q And during that same period of time is it true that
6 CEI's revenues went from \$165 million, approximately,
7 up to \$200 million?

8 A Yes.

9 Q Mr. Lindseth, would you kindly get Plaintiff's Exhibit
10 2081 in front of you?

11 This exhibit, entitled "Rate Comparison 1965 Data,"
12 I would ask you to look at the first four lines
13 entitled, "Total Private Customer," and isn't it a fact
14 that Muny Light rates were approximately 13.3 percent
15 lower than CEI's rates according to this data?

16 A Yes.

17 Q And the street light cost rates were some 55 percent
18 below CEI rates in that year; is that correct?

19 A Yes.

20 MR. NORRIS: I would request that
21 the Court read to the jury Joint Stipulation 103.

22 THE COURT: Stipulation 103,
23 ladies and gentlemen, reads as follows:

24 "CEI prepared the documents marked Plaintiff's
25 Exhibit 2082 and Plaintiff's Exhibit 2086 from data

1 Lindseth - cross

2 contained on Muny Light's annual report filed with
3 the Federal Power Commission."

4 MR. NORRIS: And, your Honor, if I
5 could ask you kindly to go back and pick up the
6 three intervening stipulations, 100, 101 and 102,
7 I would appreciate it.

8 THE COURT: Joint Stipulation 101
9 reads as follows:

10 MR. NORRIS: 100, your Honor. I'm
11 sorry.

12 THE COURT: Joint Stipulation 100.

13 "The facts relating to operating expenses of
14 Muny Light and CEI referred to in the following
15 documents prepared by CEI are true as to the CEI
16 figures and as to the Muny Light figures were
17 correctly copied by CEI from Muny Light's submissions
18 to the Federal Power Commission: Plaintiff's Exhibit
19 2083 {for the year 1965}; Plaintiff's Exhibit 2087
20 {for the year 1966}; Plaintiff's Exhibit 2507
21 {for the year 1968}; and Plaintiff's Exhibit
22 2509 {for the year 1970}."

23 101 reads as follows:

24 "The facts relating to the rate comparisons
25 for Muny Light and CEI referred to in the document

1 Lindseth - cross

2 prepared by CEI entitled "Rate Comparison 1965
3 data," Plaintiff's Exhibit 2081, are true as to the
4 CEI figures and as to Muny Light figures were
5 correctly copied by CEI from Muny Light's
6 submissions to the Federal Power Commission. The
7 second column under the column "CEI Rates,"
8 reflects what Muny Light's revenues would have been
9 by class for the year 1965 had the business done
10 by Muny Light for those customers been supplied at
11 CEI's rates in effect at that time for such
12 customers."

13 Am I to read 102 also?

14 MR. NORRIS: Yes, your Honor, if

15 ---you please.

16 THE COURT: "The facts relating to
17 rates and rate comparisons for Muny Light and CEI
18 referred to in the document prepared by CEI
19 entitled "Rate Comparison - 1967 Level"
20 {Plaintiff's Exhibit 2088} are true as to the CEI
21 figures and as to the Muny Light figures they were
22 correctly copied by CEI from Muny Light's submissions
23 to the FPC."

24 Am I to proceed with 103 and 104?

25 MR. NORRIS: 103 has been read, your

Lindseth - cross

Honor, and it would be helpful if your Honor would read 104, also. That's the only other one relating to MELP.

THE COURT: 104 reads as follows:

"CEI prepared Plaintiff's Exhibit 2085 as a part of its MELP Factbook and facts therein stated were true and the comments valid according to the best belief of CEI."

MR. NORRIS: Thank you, your Honor.

Mr. Leon, if you would please hand the witness Plaintiff's Exhibit 607 and 628.

{The documents were handed to the witness by the law clerk.}

BY MR. NORRIS:

Q I am handing you what has been marked for identification as Plaintiff's Exhibit 607. Can you identify that?

A It bears the name of Mr. Hauser having prepared it, and it is entitled, "Law Notes on the Purchase of MELP."

Q I think there must be some mistake.

I think, Mr. Leo, it is the wrong number. I am sorry.

THE COURT: I have 627.

THE CLERK: No; 607 is not.

MR. NORRIS: Maybe it is 2375.

1 Lindseth - cross

2 There were two exhibits put together, and we had
3 to pull them apart -- yes, it is my mistake. It
4 is Exhibit 2375.

5 {Plaintiff's Exhibit 2375 placed before the
6 witness.}

7 BY MR. NORRIS:

8 Q Can you identify that exhibit, Mr. Lindseth?

9 A It is a memorandum from Mr. Ginn, and the date is
10 obscured on my copy, and it is to myself and Mr.
11 Besse.

12 THE COURT: I is dated 8-13-1960
13 something --

14 MR. NORRIS: It is 1960. We have
15 stipulated that the date is April 13, 1960, and if
16 the Court would kindly read the Stipulation 187 at
17 this time, but substituting the accurate number,
18 because the stipulation states 607, and if it
19 please the Court, it should be changed to 2375 in
20 the stipulation.

21 THE COURT: All right. Stipulation
22 No. 187, ladies and gentlemen, reads as follows:

23 "In the early part of 1960, officials of CEI,
24 including the President and the Chairman of the
25 Board, were giving consideration to a new Plan D

Lindseth -cross

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2 for the purchase of Muny Light's facilities as
3 discussed in PTX 2375, for an amount determined
4 through attractiveness to Muny Light rather than
5 worth to CEI."

6 MR. NORRIS: Thank you, your Honor.

7 BY MR. NORRIS:

8 Q Mr. Lindseth, now would you take Plaintiff's Exhibit 628
9 and tell me if you can identify that.

10 A This is a memroandum prepared by Mr. R. C. Horning in
11 July of 1960, and transmitted to Mr. F. M. Ferry.

12 MR. NORRIS: If the Court please,
13 would you kindly read Stipulation 186.

14 THE COURT: The Stipulation 186
15 reads as follows:

16 "In 1960, CEI management instructed R. C.
17 Horning to make a study of the practices of other
18 investor-owned utility companies in acquiring
19 municipal electric systems. Some of the results of
20 Mr. Horning's study are set forth in memoranda
21 dated July 22, 1960, and July 29, 1960,
22 Plaintiff's Exhibit 628."

23 MR. NORRIS: Thank you, your Honor.

24 Q Mr. Lindseth, in the early 1960's, where privately
25 owned utility company, where it was successful in

Lindseth - cross

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2 acquiring a municipal electric system, is it accurate
3 that the rates of that municipal system were usually
4 equal to or greater than the rates charged by the
5 privately owned company?

6 Q Well, I am really not that familiar with all the
7 municipal transactions that took place, but I believe
8 this memorandum says that.

9 MR. NORRIS: Could I ask Mr. Leo
10 to get the large exhibit, 2617, and Exhibit 2619,
11 and 2620 over by the window leaning against the
12 chair.

13 THE COURT: What is the last one?

14 MR. NORRIS: 2617, 2619, and 2620.

15 Take 2617 first, if you please.

16 Q Mr. Lindseth, showing you what is marked for identification
17 as Plaintiff's Exhibit 2617, an excerpt from page 2 of
18 Mr. Horning's memorandum, dated July 22, 1962, that
19 the Court just read a stipulation with respect to, and
20 if you would follow me, I would ask you to let me read
21 the first three lines, and then I would like to ask you
22 a question:

23 "Circumstances leading to the success for
24 municipal system accusation, certain conditions
25 usually exist where the company has been successful

Lindseth - cross

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2 in acquiring a municipal electric system.

3 "These conditions include municipal rates that are
4 equal to or higher than the rates that would be charged
5 by the company."

6 Would you, from your own experience in the business,
7 think that that is an accurate statement?

8 MR. LANSDALE: Objection

9 THE COURT: Overruled. You may

10 answer.

11 A Yes.

12 Q Addressing your attention now to the next exhibit,
13 2619, please, Mr. Leo.

14 {After an interval.}

15 Q Mr. Lindseth, handing you what has been marked for
16 identification as Plaintiff's Exhibit 2619, which is
17 a blow-up and an excerpt from page 11 of Mr.
18 Horning's July 22, 1960, memorandum, and addressing
19 your attention to the first four sentences of the third
20 paragraph, would you kindly follow me:

21 "The existence of higher municipal rates for
22 residential customers has contributed to the success of
23 other acquisitions.

24 "The situation in Cleveland and Painesville is
25 quite different, but the municipal systems have rates

Lindseth - cross

1
2 for residential customers that are substantially below
3 those of the Illuminating Company.

4 "This is a real stumbling block, and adds materially
5 to the system's value to the community."

6 Do you have any reason to disagree with the
7 statement contained therein?

8 A No, sir.

9 Q Addressing your attention now, if you please, to
10 Plaintiff's Exhibit 2620, which is the next exhibit,
11 Mr. Leo.

12 {After an interval.}

13 Q Is that exhibit on the board now?

14 THE CLERK:

Yes.

15 Q Handing you Plaintiff's Exhibit 2620, which is an
16 excerpt from page 12 of Mr. Horning's memorandum of
17 July 22, 1960, and addressing your attention to the
18 first two sentences in that third paragraph of this
19 exhibit, which states:

20 "It seems apparent that the company is faced with
21 a problem of buying either the Painesville or the
22 Cleveland system under very unfavorable conditions;
23 therefore, it will be necessary to use extreme
24 measures if successful acquisitions are to be
25 accomplished."

Lindseth - cross

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2 Do you have any reason to disagree with that
3 statement?

4 A This is the opinion of a staff man, and I don't know
5 what he intended by "extreme measures," so I don't
6 think I would be quite competent to know what he
7 intended.

8 Q All right.

9 If you would resume your seat, I would appreciate it.

10 The offer of the interconnection based upon
11 equalization rates that you made to Mayor Locher in
12 September of 1962, had an element in it with respect to
13 the wheeling of public load over CEI's lines.

14 Perhaps I would ask Mr. Leo to give you Plaintiff's
15 Exhibit 48B again, so you may have that in front of you.

16 Mr. Lindseth, if you would kindly turn to the
17 second page of the outline which was attached to that
18 letter and the bottom paragraph on that page the paragraph
19 number 6, do you have that in front of you?

20 A What page?

21 Q It is actually the fourth page of the exhibit, and it is
22 the very bottom of the paragraph on that page.

23 It has a number 6 in front of it.

24 A I have it.

25 Q It states:

Lindseth - cross

"The Illuminating Company would deliver power from the Municipal Light Plant to any public load of the City of Cleveland located on Illuminating Company lines at an appropriate charge."

I have a couple questions about that:

That in essence would be wheeling the power from the Muny Light plant to the public load centers; is that correct?

A Yes.

Q And this was one of the additional benefits that CEI was willing to make available to Muny Light in the late '60's, providing Muny Light would equalize rates; is that correct?

A Yes.

Q And would the Cleveland Hopkins Airport, for example, be an example of public load?

A Yes.

Q In 1963, if you know, did Muny Light have any lines that were permitted to serve the Cleveland Hopkins Airport?

A I don't know.

Q You don't know?

A No.

Q On the assumption that Muny Light did not have lines to

Lindseth - cross

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2 serve the Cleveland Hopkins Airport, am I correct that
3 the meaning of the offer is that were the
4 interconnection to be effected on the terms proposed by
5 CEI, that Muny Light Power would serve the airport, not
6 over Muny Light lines but over the CEI lines; is that a
7 fair summary?

8 A Interconnection is not necessarily rate equalization
9 without interconnection.

10 Rate equalization is the essence of the philosophy.

11 Q How would the power get from Muny Light Lake Road
12 generating station onto CEI's lines unless there was an
13 interconnection?

14 A I probably misspoke. It would require that, yes.

15 Q But is the example that I have given consistent with
16 what you intended in your Paragraph 6?

17 A Yes; that would be typical.

18 Q And I take it that CEI is willing to do that with
19 respect to, not just that example, but any public load
20 in the city; is that correct?

21 A Yes, located on the Illuminating Company lines.

22 Q Yes.

23 Did that also mean that CEI would stop selling power
24 to the Cleveland Hopkins Airport?

25 A Well, I have no information about that.

Lindseth - cross

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2 You mean would CEI transfer a customer already
3 supplied and sought to be supplied by this wheeling
4 arrangement by the Muny Light Plant?

5 Q Let me rephrase the question:

6 Looking at your Paragraph B, where you stated:

7 "The Illuminating Company would deliver power in
8 the Municipal Light Plant over the Illuminating
9 Company to any public load in the City of Cleveland
10 located on Illuminating Company lines at an
11 appropriate charge."

12 Perhaps it speaks for itself, that you were saying
13 that any public load, and you would render that service;
14 is that right?

15 A Yes.

16 Q Mr. Lindseth, over the years it is a fact, isn't it,
17 that CEI has wheeled power for the benefit of other
18 privately owned utility companies?

19 A What period are we speaking of?

20 Q Well, starting in 1959, if that is an appropriate
21 period, and from 1959 forward, was CEI, from time to
22 time, wheeling power for other privately owned
23 utility companies?

24 A Yes, in effect.

25 I believe the arrangement was a purchase and sale

Lindseth - cross

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2 arrangement rather than wheeling in the sense that it
3 was called wheeling under a wheeling schedule --
4 certainly in the earlier years.

5 Q Would there be -- well, what do you call that arrangement
6 if it is not "wheeling"?

7 A Purchase and sale.

8 Q But from an engineering standpoint, is there any
9 engineering difference between that kind of purchase and
10 sale arrangement and a wheeling arrangement?

11 A I do not believe so.

12 MR. NORRIS: Mr. Leo, would you hand
13 the witness Plaintiff's Exhibit 3054.

14 {After an interval.}

15 Q Mr. Lindseth, handing you what has been marked for
16 identification as Plaintiff's Exhibit 3054, a CEI
17 memorandum dated December 9, 1959, can you further
18 identify that exhibit?

19 A This is a memorandum from Messrs. Fitzgerald and
20 Greenslade to Mr. Howley on the subject of utilization
21 of Mundy Light's plant in the best interests of the
22 citizens of Cleveland, 1959 and 1960.

23 Q The subject of the memorandum is given as, "Final
24 Report, Planning Project, PI-71-A."

25 Can you tell me what PI-71-A means?

Lindseth - cross

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2 A PI-71-A would be a number assigned to this planning
3 project.

4 The PI indicating that it was done in a group or
5 an organization group in the company called "Public
6 Information and Legal." It bore the number 71 in a
7 sequential series, and "A" indicates -- well, I am not
8 clear what the "A" indicates.

9 Q How frequently were planning projects of this kind
10 undertaken?

11 A Well, if you are talking about company-wide, the
12 frequency was probably a dozen or several dozen a
13 year.

14 Q Addressing your attention to the third paragraph
15 entitled, "Objective," isn't it a fact that a similar
16 planning project had been completed approximately two
17 years prior to that time in November, 1957?

18 A This memorandum so states.

19 Q With respect to the 1957 planning project that is
20 mentioned there in the third paragraph, I would ask
21 you to turn the page to page 2 and at the bottom of
22 that page there is a reference to "Planning Project
23 PI-24-A," and my question at this moment is, is that
24 the proper designation of the planning project
25 completed two years earlier in 1957?

Lindseth - cross

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2 A I have no information on that.

3 Q Well, then perhaps we should have stayed on the first
4 page.

5 Flip back to the first page and in the same
6 paragraph identified as "objective," would you accept
7 the statement that PI-24-A was the planning project
8 revised as of November 15, 1957?

9 A Yes, the memorandum so states.

10 Q Now coming back to the bottom of page 2, the last
11 paragraph on that page referring to this 1957 plan
12 states: "As to this review the stated principle which
13 presented the most difficulty was, first, that under
14 normal circumstances continuation of the present
15 operation of the municipal plant would cause it to fall
16 of its own weight."

17 Would you accept the statement that that was one of
18 the principles enunciated in the 1957 planning project?

19 A I can accept that it might have been stated there
20 withough accepting the validity. If this document
21 says it was stated there, I will accept that.

22 Q Would you kindly turn to page 4 of this document, Mr.
23 Lindseth, and about the middle of the page -- it's
24 the fourth full paragraph on that page, the second
25 principle is described, and if you will follow me as I

Lindseth - cross

1 read the first sentence:

2
3 "These conditions can result in application of a
4 second principle of PI-24-A, recognition of the fact
5 that conditions can arise which either compel or permit
6 the company to take positive action to hasten the
7 municipal plant's decline."

8 Would you accept the proposition that that is a
9 statement of the second principle that was contained
10 in the 1957 planning project report?

11 A This memorandum so states.

12 Q If you would turn to page 5, in the last paragraph on
13 that page, starting the sixth line down from the top of
14 that paragraph, if you would kindly follow me as I
15 read starting in the middle of the line:

16 "We did, however, recognize in Principle B that
17 conditions could change that would justify our
18 company taking another look and possibly reviving its
19 position to the extent that some activity would be
20 desirable to hasten the decline of the Municipal Plant.
21 Principle C indicated that caution would have to be
22 exercised in any efforts we might make to ascertain
23 the financial and service decline of the municipal
24 operation and this was so in order not to alert
25 municipal management and their many friends of the

Lindseth - cross

1 extent of the financial difficulty Muny was getting into."

2
3 Would you accept the proposition that that is the
4 third principle stated in the 1957 planning project?

5 A I accept that the memorandum states that.

6 Q Now, this morning the name of Mr. Bronus Klémentowicz
7 was mentioned in connection with your testimony, and do
8 you happen to recall when Mr. Klementowicz became
9 Director of Public Utilities?

10 MR. LANSDALE: If your Honor please --

11 THE COURT: Approach the bench.

12 - - - - -

13 {Bench conference ensued on the record as
14 follows:}

15 MR. LANSDALE: This is stipulated. Is
16 it really important that he remembers that? This
17 is years ago.

18 MR. NORRIS: I apologize. I had
19 forgotten we had stipulated it.

20 MR. LANSDALE: May I make a further
21 request? I am in serious need of a recess.

22 MR. NORRIS: I do not object.

23 {End of bench conference.}

24 - - - - -

25 THE COURT: Ladies and gentlemen

Lindseth - cross

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2 of the jury, perhaps this would be an opportune
3 time for our afternoon recess. I see everyone
4 shaking their heads. Fine.

5 Please, during the recess, do not discuss the
6 case and keep in mind that you are to keep an open
7 mind until all the evidence is submitted to you,
8 until the matter is presented on the evidence and
9 the instructions of the law for your judgment.

10 With that, we will take a short recess.

11 {Recess taken.}

12 THE COURT: Please be seated.

13 Call in the jury.

14 {The jury was reseated in the jury box and
15 the trial was continued as follows:}

16 THE COURT: Proceed.

17 BY MR. NORRIS:

18 Q Mr. Lindseth, if you would kindly address your attention
19 to the first page of Plaintiff's Exhibit 3054, and
20 would you please identify who Mr. Howley is, to whom
21 this memorandum was sent.

22 A In 1959 when this memorandum was prepared, Mr. Howley
23 was Vice President of the company.

24 Q You have made reference to a group called the "Public
25 Information and Legal Group."

Lindseth - cross

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Was Mr. Howley the head of that group?

A That is correct.

Q And addressing your attention again to page 5 of this document, is it a fact that CEI recognized that the only real basis upon which a private company takes over a municipal operation is in those instances where the municipal operation gets so far involved in the economics of the business as to make it impossible for them to extricate themselves; is that a correct statement?

A No, I don't believe so.

Q Addressing your attention then to the third full paragraph on page 5, do you see where the language is there set forth that I have just read?

A Yes.

This says, "Almost without exception," and I was trying to say that there could be exceptions.

Q I see.

Is it a fact that CEI also recognized that: "The downward trend of Muny Light's economic condition had been halted and a sincere and aggressive attempt is being made to put Muny Light back on a good financial basis"?

Is that a correct statement?

Lindseth - cross

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2 A Would you indicate where that appears?

3 Q Yes, Mr. Lindseth. The second paragraph on page 6 of
4 this document.

5 A And which sentence is it I am to consider?

6 Q The last sentence: "However, one thing is sure.
7 The downward trend of the economic conditions has been
8 halted and a sincere and aggressive attempt is being
9 made to put the Muny Plant back on a good financial
10 basis."

11 Is that correct?

12 A The memorandum states that.

13 Q Would you have any reason to disagree with that?

14 A No, I do not believe so.

15 Q Directing your attention to the fourth paragraph of
16 page 6, isn't it a fact that CEI also recognized that:

17 "The mere elimination of the rate differential
18 would result in no material gained to CEI unless
19 Muny Light's additional revenues realized from
20 utilization of rates were siphoned off."

21 Is that a correct statement?

22 A The objective of equalization of rates was to benefit
23 all of the people of the City of Cleveland and
24 eliminate the tax discrimination and without
25 corresponding reduction in street lighting and other

Lindseth - cross

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2 public loads the benefits to the public from rate
3 equalization would not be realized.

4 Q Well, perhaps we should just read rather than
5 paraphrasing.

6 Would you follow me as I read the fourth paragraph
7 on that page?

8 "And further it should be recognized that the
9 mere elimination of the rate differential would result
10 in no material gain to us unless the additional
11 revenues realized from the equalization of Muny's rates
12 to the level of our rates are siphoned off into
13 additional costs, additional financial burdens by way
14 of increased interest and the like or the payment to
15 the City fund in lieu of taxes or by an increase in
16 non-remunerative services such as low-paying street
17 lighting, et cetera. Should the additional revenues
18 be used to better MELP services and increase its
19 capacity, any benefit to us from rate equalization
20 would be nullified."

21 Do you have any reason to disagree with that
22 paragraph?

23 A No.

24 Q Addressing your attention to the seventh page of this
25 memorandum, at the top of the page where it is stated

Lindseth - cross

1 "Specific Recommendations":

2
3 "Our course of action should be based on the
4 following principles.

5 "1. Recognition of the fact that because of
6 changed conditions subsequent to the final report
7 of PI-24-A, the concept previously adhered to that
8 MELP, from economic pressure, would fall of its own
9 weight would no longer be valid."

10 Do you have any reason to disagree with that?

11 A No, I do not.

12 Q Paragraph 2: "Recognition of the fact that curtailment
13 of further development and expansion of MELP would
14 require positive action."

15 Do you have any reason to disagree with that?

16 A No, I don't believe so.

17 Q Paragraph 3: "Recognition of the fact that the longer
18 MELP continues, the more difficult and costly will be
19 the solution to us."

20 Do you have any reason to disagree with that?

21 A No, I do not.

22 Q Paragraph 4: "Recognition of the fact that any positive
23 action on our part to curtail further development and
24 expansion of MELP entails the assumption of certain
25 risks and a willingness to compromise."

Lindseth - cross

2 Do you have any reason to disagree with that?

3 A Except as I am not familiar with what is meant by
4 "positive action."

5 Q Other than that, would you have any reason to disagree
6 with that paragraph?

7 A No, I think not.

8 Q Skipping 5 and 6 and going to Paragraph 7: "Recognition
9 of the fact that an equalization of the rates between
10 the two operations is desirable and central but further
11 recognizing that, if there is an equalization of the rate
12 differential, any additional monies received by MELP
13 must be siphoned off in additional costs, taxes and
14 low revenue-producing loans before any material
15 advantages to us can be realized."

16 Do you have any reason to disagree with that?

17 A Yes, I disagree with that one.

18 Q What portion of that do you disagree with, Mr. Lindseth?

19 A Oh, I guess I might have misspoken because I had
20 assumed that the revenues resulting from the
21 equalization of rates would be utilized in the
22 reduction of charges for street lighting and public
23 load, and that would be an advantage to us in view of
24 the fact that it would be an advantage to the
25 community.

Lindseth - cross

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2 Q But then do I take it that you have no reason to
3 disagree with Paragraph 7 on page 7 of PTX 3054; is
4 that correct?

5 A That is correct; by interpreting what here appears as
6 "non-revenue-producing loads" to mean reduction in
7 charges for street lighting and other public loads.

8 Q The next heading states:

9 "Specifically our activity should include" --
10 and skipping Paragraph 1 and going to Paragraph 2 --
11 "Our activities should include a continued active
12 solicitation of any industrial, commercial, or residential
13 customer.

14 "A municipal system whose acquisition by the
15 company would serve to weaken MELP's financial
16 condition {it is recognized that this is the objective
17 of the recently approved planning project, M32-A}"

18 Do you have any reason to disagree with that
19 statement of the specific activity to be included?

20 A Well, I don't disagree with the recommendation of the
21 activity, but I don't concur in the reasoning.

22 Q This recommendation nevertheless you would concur in
23 as stated; is that correct, even though for a
24 different reason?

25 MR. LANSDALE: Objection.

Lindseth - cross

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2 THE COURT: Sustained. He just
3 answered that question.

4 @ Looking at the third paragraph, Mr. Lindseth, let me
5 ask you a question about that -- well, strike that.

6 MR. NORRIS: If your Honor please,
7 I have not been able to see the planning committee
8 project that is mentioned here. May I ask Mr.
9 Lansdale to produce that for the plaintiffs,
10 planning project M32-A.

11 THE COURT: Gentlemen, I told you
12 if you have got something to say, approach the bench.
13 I don't know how many times I have to make those
14 explanations.

15 Please approach the bench, gentlemen.

16 - - - - -

17 {Bench conference ensued on the record as
18 follows:}

19 THE COURT: Do I have a problem
20 articulating so that you understand what I mean?

21 MR. LANSDALE: No, sir.

22 THE COURT: Do I have a problem
23 when I say I don't want any dialogue?

24 MR. NORRIS: No.

25 THE COURT: Why don't you fellows

1 Lindseth - cross

2 do it then?

3 MR. NORRIS: I stand corrected.

4 THE COURT: But then you go and do
5 the same thing over again.

6 I keep telling you that if you want stipulations
7 read, to approach the bench, and it is like talking
8 to a wall.

9 MR. NORRIS: Well, we are both
10 guilty. I am sorry.

11 THE COURT: That is not an answer to
12 it.

13 MR. NORRIS: I am sorry.

14 THE COURT: Now, what is your
15 problem, Mr. Lansdale?

16 MR. LANSDALE: I don't recognize
17 the specific thing. We have been looking for a
18 number of things that Mr. Norris has asked for,
19 some of which we cannot find, and this may be one
20 of them. I don't know. I would have to consult
21 my records.

22 THE COURT: I would suggest that
23 you get it and make the decision as quickly as
24 possible, and either tell him that you have it or
25 you don't have it.

Lindseth - cross

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2 MR. LANSDALE: Yes. This may be
3 one of the ones we already told him that we don't
4 have it.

5 MR. NORRIS: When I saw it it was
6 new to me, and I have checked our records, so I
7 would like that.

8 {End of bench conference.}

9 - - - - -

10 THE COURT: Mr. Lansdale, please
11 make a search of the records and see if it is
12 available, and then make it available to Mr. Norris
13 at the earliest possible time.

14 MR. NORRIS: Mr. Leo, would you
15 kindly make available to Mr. Lindseth Exhibit 2372
16 and 2373, and then the first group of three exhibits,
17 2644, 2645, and 2646, which are the blow-ups.

18 If it please the Court, I request that
19 Joint Stipulation 68, 69 and 70 be read at this
20 time.

21 THE COURT: Mr. Norris, what did I
22 just tell you. Come forward.

23 - - - - -

24 {Bench conference ensued on the record as
25 follows:}

Lindseth - cross

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THE COURT: Now, read back what I just told you.

{Record read by the court reporter.}

THE COURT: Now, what is your response to that?

MR. NORRIS: It has been our practice, both of us, to ask the Joint Stipulation be read from the podium.

THE COURT: Is that a response to my admonition? I have told you and Mr. Weiner and I told you Mr. Lansdale, and just because you have been doing it and I haven't been bringing it up doesn't mean I am condoning it.

MR. NORRIS: I didn't realize it.

THE COURT: What does that language mean to you?

MR. NORRIS: It means that you said a moment ago that if you want stipulations read, we should approach the bench and ask for it.

THE COURT: All right. What does that mean?

MR. NORRIS: That means I was in error in asking to have Mr. Lansdale produce the M32-A, and I accept that, but I did not understand --

1 Lindseth - cross

2 THE COURT: That is what it means
3 to me.

4 When I say "Approach the bench," that means
5 precisely what it says, and if you have difficulty
6 understanding, I don't know how I can articulate it
7 to you.

8 MR. NORRIS: Well, you have
9 articulated it to me.

10 THE COURT: Then why don't you do
11 what I tell you? Do you want me to hold you in
12 contempt? Please, let's proceed.

13 MR. NORRIS: I would like 68, 69 and
14 70 read.

15 THE COURT: All right.

16 {End of bench conference.}

17 ---
18 ---

19 THE COURT: Ladies and gentlemen
20 of the jury, Stipulation 68 reads as follows:

21 "Most of the time since 1960, CEI has had
22 six groups headed by a Group Vice President.

23 "However, from June, 1975 to May, 1977 there
24 were only five such groups, and since February,
25 1979 there have been seven such groups.

"From time to time the names and functions of

Lindseth - cross

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2 these groups have changed. Some of the group
3 titles have included Marketing, Public Information
4 and Legal, Engineering, Operations, Finance, and
5 General Services."

6 Joint Stipulation No. 69 reads as follows:

7 "In the fall of 1963, 1964, and 1965, each
8 Group Vice President prepared a five-year
9 general plan report covering those subjects of
10 major importance to his group.

11 "The report was divided into several sections,
12 including the group's progress toward meeting the
13 objectives contained in the prior report, the
14 group's long-term planning assumptions, and the
15 group's restated objectives, measures, standards
16 and implementation procedures for the next five
17 years.

18 "In 1966 and in subsequent years, the long-
19 range planning efforts were merged with each
20 group's one-year budget planning process."

21 Joint Stipulation 70 reads as follows:

22 "In 1963, 1964, and 1965, Group General
23 Planning Reports were combined with the company
24 basic premises and assumptions and circulated
25 among the group heads, the committee on planning

Lindseth - cross

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2 and policy, and the President of the company for
3 their information.

4 "PTX-2372 is a copy of this volume which was
5 titled 1964 Five Year General Planning Report.

6 "PTX-2373 is a similar volume prepared in the
7 following year titled 1965 Five Year General
8 Planning Report.

9 "A staff person assigned to coordinate
10 company-wide planning, presented to the committee
11 on planning and policy a general statistical
12 overview stating how many individual group
13 objectives had been achieved, whether there appeared
14 to be any under or overlap among the many
15 individual group objectives, and so forth.

16 "Neither the individual group planning
17 reports nor the combined reports shown in PTX
18 2372 or PTX 2373 had the formal approval of the
19 committee on planning and policy or the President.

20 "In fact, verbally suggested revisions and
21 changes may never have been committed through
22 writing.

23 "In any event, however, the President would
24 have objected to any specific objective to which
25 he had serious objection as an expression of

Lindseth - cross

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2 company policy.

3 "The then President does not now recall
4 specifically disapproving; of any of the
5 objectives set out in such exhibits.

6 "In 1966 and in subsequent years, each group
7 had reviewed his group's planning report {containing
8 both progress and planning for the next one and
9 five year periods} with the Executive Vice President
10 or President.

11 "Changes which affected the manning levels or
12 functional budgets were formally revised and
13 approved, but text revisions were rarely made."

14 MR. NORRIS: Thank you, your Honor.

15 Mr. Leo, would you hand Mr. Lindseth -- or
16 put up on the easel -- Plaintiff's Exhibit 2644.

17 {After an interval.}

18 BY MR. NORRIS:

19 Q Mr. Lindseth, I am showing you Plaintiff's Exhibit 2644
20 which is a blow-up of an excerpt from CEI's 1964
21 five-year general planning report for the Public
22 Information and Legal Group, and addressing your
23 attention to Paragraphs 12 and 13, is it a fact that
24 Paragraph 12 of the Public Information and Legal Group,
25 that their long-term planning assumptions stated:

1 Lindseth - cross

2 "The forcing of the Illuminating Company by the
3 Federal Power Commission to interconnect with both the
4 Cleveland and Painesville Municipal Systems will be a
5 very real possibility."

6 Is that an accurate rendition of the Paragraph No.
7 12?

8 A Yes, it is.

9 Q In Paragraph 13, just below it:

10 "Both the Cleveland and Painesville Light
11 Systems will attempt to expand their territory into
12 the area now served by the Illuminating Company."

13 Is that an accurate rendition of that long-term
14 planning assumption?

15 A Yes, it is.

16 Q Turning to the third of those three exhibits,
17 Plaintiff's Exhibit 2646 --

18 MR. NORRIS: Mr. Leo, if I could
19 ask your assistance?

20 {An exhibit was placed on the easel.}

21 Q -- this is a blow-up of an excerpt of the same 1964
22 "Five-Year General Planning Report," referring to the
23 "Public Information of Legal Group, Restated Objectives,
24 Measures, Standards and Implementation Procedures,"
25 and I call your attention to the "Objective No. 1,"

Lindseth - cross

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2 which is stated, "Cleveland Municipal Electric
3 System."

4 Do you see that?

5 A Yes, I do.

6 Q And the objective is stated as: "To reduce and
7 ultimately eliminate this unfair tax-subsidized
8 facility and reestablish the plan of equality on
9 taxation in the City of Cleveland, {Rank 4}."

10 Skipping a paragraph, there is then the heading,
11 "Implementation and Target Date," and it states:
12 "Interconnection under appropriate conditions appears
13 to be the most promising way for obtaining this
14 objective. Personal contact with people and officials
15 who can influence such action on the part of the
16 municipal government will be most important."

17 Is that a proper rendition of this exhibit? To
18 the extent that I have read it, I mean.

19 A You have read what the words say, but the words do not
20 say what was intended in the phrase "facility."

21 Q Which phrase is it?

22 A The "tax-subsidized facility."

23 The reduction and elimination was to have been --
24 and it is stated elsewhere in the report -- the
25 discrimination, the tax subsidy discrimination. It is

Lindseth - cross

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2 the discrimination that is to be eliminated, not the
3 facility.

4 Q But you do agree that I read the report accurately?

5 A Yes, I do.

6 Q Would you tell me what was meant by the language
7 "interconnection under appropriate conditions"?

8 What were the appropriate conditions referred to?

9 A Well, that I do not know. That would require that I
10 know what went on in the minds of the persons writing it.

11 Q This report would have been written a year after your
12 1963 letter to Mayor Locher; is that about right?

13 A Yes. I wrote to Mr. Locher in 1962 and I wrote to Mr.
14 Locher in 1963. This report was written in the fall
15 of 1964.

16 Q The appropriate conditions mentioned in Plaintiff's
17 Exhibit 2646, would they be the conditions set forth
18 in your letters to Mayor Locher of 1962 and 1963?

19 A Well, I really only had a single condition, which was
20 the equalization of rates, as I recall it.

21 Q Well, then my question is: Do you believe that the
22 language of this exhibit, "Interconnection under
23 appropriate conditions," is referring to the condition
24 that you attached to your offer to Mayor Locher?

25 A Yes, I believe it can be so interpreted.

Lindseth - cross

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Q If you would address your attention, please, to Paragraph 2 in this exhibit, it is entitled, "Painesville Municipal Light Plant," and the objective set forth there is: "To plan and take action to acquire the government owned electric system. {Rank 5}."

MR. LANSDALE: Object.

Q Is that correct?

THE COURT: I don't know what the question is. Let him finish the question.

Q Is that correct?

THE COURT: I didn't hear the question. Would you read it back.

{The reporter read the pending question.}

THE COURT: Approach the bench.

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{Bench conference ensued on the record as follows:}

MR. LANSDALE: Counsel appears to be going into the question of activities in respect to the Painesville plant and possible attempts to acquire and purchase Painesville, and I object to that. I submit that has nothing to do with this case. At most, it can be a possible basis for a claim for intent or something of the kind, and I submit it

1 Lindseth - cross

2 has nothing to do with this case and I object to
3 introducing Painesville in here, requiring us to
4 try out this case as to Painesville.

5 MR. NORRIS: Two bases for my
6 response. The first is that I think that is
7 relevant to the Section 2 claim the City has made.
8 We believe that the attempt to eliminate all
9 municipal competition in their service area is what
10 the plan was really all about, and we think that it
11 is important to show what the evidence contains
12 with regard to not only the municipal system in
13 Cleveland but also the municipal system in
14 Painesville as well as the private industrial
15 generating system that exists in the service area.

16 Secondly, Mr. Lindseth did mention Painesville
17 in his response this morning to one of my questions,
18 and I submit that the Painesville evidence is --

19 THE COURT: Are you saying because
20 he mentioned it this morning that makes it valid
21 now in that there is an objection?

22 MR. NORRIS: No, I'm not saying
23 that.

24 THE COURT: Apart from that, Mr.
25 Lansdale, although I do not disagree entirely with

Lindseth - cross

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2 the argument of counsel concerning the question, it
3 certainly does go to an intent to monopolize or
4 an intent to monopolize, generally. Again, as it
5 relates to this particular case it is one of those
6 additional facts that have already been stipulated
7 here, namely, that there was intent on the part of
8 CEI to eliminate competition in this area and to
9 monopolize the electric -- or the sale of electric
10 power in this area. It's another of the
11 characterizations of the attempt, I take it, from
12 your argument.

13 MR. NORRIS: I have to ask, your
14 Honor, if you properly stated Mr. Lansdale's
15 admission that he has admitted an attempt to
16 monopolize, then I think that that might put a
17 different light on it. I wasn't aware that he had
18 made that admission.

19 MR. LANSDALE: That's a code word
20 and I have not admitted an attempt to monopolize as
21 those terms are used in Section 2.

22 THE COURT: I am not going to get
23 involved in your issues. If that's a question of
24 proof, all I am saying is that this is testimony
25 that goes to intent of the nature that I have already

Lindseth - cross

1 ruled upon, Mr. Lansdale, and I have said that it
2 is permitted, within limitation, and one time I am
3 going to cut this line of questioning off if it gets
4 overly repetitious. I said that in my written
5 opinion and I stand on my written opinion.
6

7 But apart from that, gentlemen, there was
8 extensive cross-examination on PTX 3054 which was
9 a memorandum written by Lee C. Howley -- I'm sorry --
10 from Fitzgerald, Greenslade to Lee C. Howley.

11 I don't recollect anything in the testimony
12 that said that the witness was privy to this document.
13 And, similarly, we are referring to another document
14 that is -- What is that exhibit?

15 MR. NORRIS: That's the General
16 Planning Report, but it is subject to stipulations --

17 THE COURT: Let me finish.

18 MR. NORRIS: I'm sorry.

19 LAW CLERK LEO: 2646 is the one on the
20 easel now.

21 MR. NORRIS: Here it is, your Honor.
22 It's an excerpt, you know.

23 THE COURT: Yes, but all I am
24 saying to you is, again, I am at a loss. I do not
25 know if this man was privy to it. If he was, that's

Lindseth - cross

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2 one thing. If he was not privy to it, you
3 certainly are permitted to cross-examine him as to
4 any conclusion set forth in the report, and you
5 are permitted to ask an opinion as to whether or not
6 the conclusion, in his mind, are correct.

7 But the form of your questions and the form of
8 his answers have been not probative of what we are
9 seeking, I think, to establish because each one of
10 his responses, as I recollect, says, "That's what
11 this report says," and "I agree that that is what
12 this report says."

13 MR. NORRIS: Well, except that I had
14 a whole series of questions where I asked him, "Do
15 you have any reason to disagree?" And he said no
16 on almost every one of those.

17 Is that what your Honor is referring to?

18 THE COURT: No, I am not. I am
19 referring to something more basic than that.

20 What I am saying to you is the form of your
21 questioning is improper.

22 MR. NORRIS: Well, when I asked him,
23 "Do you have any reason to disagree," he was
24 Chairman of the Board and Chief Executive
25 Officer at the time this high-level planning

Lindseth - cross

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2 project was completed and if he says no, he had
3 no reason to disagree with it --

4 THE COURT: But you can't use the
5 document to, in effect, impeach him when he has not
6 made a statement to the contrary is what I am saying
7 to you. You are permitted to ask him the contents of
8 any conclusions set forth in this report --

9 MR. NORRIS: Um-hmm.

10 THE COURT: -- but you haven't been
11 doing that. But if there is no objection, I don't
12 care.

13 But many of the questions and responses are
14 inconclusive and one day we are going to have to face
15 that when you are going to say, "He said so and so,"
16 when, in fact, he didn't say what you think he said.

17 MR. NORRIS: Well, in every instance
18 where I asked him, "Do you have any reason to
19 disagree," that, to my mind is testimony from the
20 Chief Executive Officer that is usable by the
21 plaintiff.

22 THE COURT: I am not saying you
23 didn't ask certain questions where he said that.
24 There are certain questions where it is not. And
25 I don't care what you do, Mr. Norris. All I am

1 Lindseth - cross

2 telling you is you are not in each instance
3 attempting to accomplish what I think you want to
4 accomplish and it may come back and become an
5 issue in this case.

6 So you use your own judgment as to how you are
7 desirous of proceeding.

8 MR. NORRIS: We do have a stipulation
9 even without testimony that it's a business record,
10 so that is at least of some probative value.

11 THE COURT: He hasn't said he was
12 privy to it. He's qualified many of his answers.

13 MR. NORRIS: He's qualified some
14 of them.

15 THE COURT: Take it for what it's
16 worth. I don't care.

17 Let's proceed, gentlemen. Okay.

18 {End of bench conference.}

19 - - - - -
20 THE COURT: Read the question
21 back.

22 {The reporter read as follows:

23 "Q If you would address your attention,
24 please, to Paragraph 2 on this exhibit, it is
25 entitled, 'Painesville Municipal Light Plant,'

Lindseth - cross

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2 and the objective set forth there is: 'To plan
3 and take actions to acquire this Government-owned
4 electric system [Rank 5]. Is that correct?"]

5 THE COURT: This is a typical
6 question of what I just discussed with you. All
7 you are asking him to do is read it.

8 BY MR. NORRIS:

9 Q Can you answer the question? Did I read that correctly?

10 A Yes, you did.

11 Q In your capacity as chief executive officer, Mr.
12 Lindseth, in 1964 did you have occasion to see in the
13 regular course of your business the five-year general
14 planning reports that were put together by the various
15 group vice presidents?

16 A Well, in general, no.

17 Mr. Besse, as President, was Chairman of the
18 Committee on planning. He oversaw the preparation
19 of the report, he reviewed them with the group vice
20 president and, in general, I was not involved in this
21 aspect of the planning process.

22 Q Can you state, Mr. Lindseth, that the objectives that
23 are set forth in these five-year general planning
24 reports would represent the objectives of CEI?

25 A If we confine ourselves to broad objectives, such as

Lindseth - cross

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2 the objective of the planning effort in 1964 for the
3 company is: "To earn an adequate rate of return with a
4 constant improvement in service and at the lowest
5 possible rate. This must be done while maintaining a
6 dynamic organization and recognizing that the long-
7 term interests of the enterprise are of" -- some
8 adjective -- "continuing importance."

9 Now, this is the broad objective of the company,
10 to run a good business, and in that I heartily
11 concurred then and now and would know about the broad
12 aspects of the assumptions. But on details of what a
13 department manager told his vice president his
14 department was going to do, I was certainly not very
15 close to that.

16 Q But there were officials of the company who made it
17 their business to monitor those objectives and how they
18 were articulated and how progress was being made towards
19 achieving those objectives; is that correct?

20 A Well, the planning process was from the bottom up. A
21 department manager -- and we had 30 or more of them --
22 said, here is what I think I see as my planning
23 objectives." A half a dozen departments comprised a
24 group. The half a dozen department managers then
25 submitted to the group vice president their plans which

Lindseth - cross

1
2 are incorporated in the group plan. The group plans
3 then are incorporated by a staff man and we get a
4 volume of 100 pages as the sum total of what 30
5 department managers say, "This is my idea of what my
6 department's plan should be for the year ahead."

7 Q And then am I correct that the group vice president
8 puts all of those together for his group in these
9 three-part annual reports, the first part being the
10 long-term planning assumption to guide that group, is
11 that correct, as being the first part; the second being
12 the progress towards objectives from the last year's
13 plan and then, thirdly, the restated objectives,
14 measures and standards and implementation procedures?

15 A What page am I referred to?

16 Q I am looking -- The simplest thing, if I may ask you,
17 is if you would look at the exhibit that is on the
18 easel -- I believe that's 2646 -- and that would be in
19 the terms of the question I have just asked, the third
20 part of the Group Vice President's compilation,
21 namely, the restated objectives.

22 The exhibit that you have on the floor, which is
23 PTX 644 and 2645, 2644 would be the first of these
24 three, the long-term planning assumption, and then the
25 second one, which is 2645, would be progress towards

Lindseth - cross

1 objectives in last year's plan.

2 Now, that's a long question. Did you follow my
3 question?
4

5 A No, I did not.

6 MR. NORRIS: Mr. Leo, could you
7 please let Mr. Lindseth see all three exhibits at
8 the same time so he could look at the headings of
9 2644, 2645 and 2646?

10 MR. LANSDALE: May I approach the bench,
11 if your Honor please.

12 - - - - -
13 {Bench conference ensued on the record as
14 follows:}

15 MR. LANSDALE: If the exhibits
16 themselves have the numbers of the pages from which
17 they were taken, may I suggest that you invite the
18 witness' attention to the page numbers and let him
19 look at the exhibits in his hand rather than
20 fumbling around with all this stuff?

21 MR. NORRIS: Be glad to.

22 THE COURT: We are right back where
23 we were, gentlemen.

24 Are you asking him to read these things?

25 MR. NORRIS: No, your Honor. I was

1 Lindseth - cross

2 taking the Court's lead and trying to get the
3 witness to tell us what his knowledge is, and he's
4 described how the process worked from the bottom up.

5 I now want to see if he can't clarify that
6 process and determine to what extent he has
7 personal knowledge of it. That is my purpose.

8 THE COURT: Well, you are free to
9 do it, but as I told you before, you are not doing
10 it properly, and I tried to tell you how the proper
11 method of doing it is.

12 MR. NORRIS: Simply to ask him what
13 relationship he has --

14 THE COURT: The first step you have
15 to do is you have to ask him if he's familiar with
16 that document, if he's ever seen it before, and if
17 he says no, that's the end of your examination as
18 far as that document is concerned.

19 If you are desirous of having him express an
20 opinion as to the conclusions contained in that
21 document, you are free to do so, but you cannot
22 use the document unless you can identify the
23 document and lay the foundation.

24 You certainly are free to examine him as to
25 any conclusion contained in the document and

Lindseth -cross

1 attempt to or actually elicit a conclusion.

2
3 If you are desirous of impeaching him, you
4 bring in the person who is familiar with the
5 document and impeach him that way.

6 This entire procedure this afternoon has
7 been improper, and you sit there and there is no
8 objection.

9 MR. LANSDALE: Yes, sir.

10 THE COURT: I don't care.

11 MR. NORRIS: I appreciate your
12 suggestions, your Honor.

13 THE COURT: We keep going round and
14 round and the witness doesn't respond to your
15 question, and I can understand why he doesn't
16 respond to your question. But go ahead, fellows.

17 {End of bench conference.}

18 - - - - -
19 THE COURT: Proceed.

20 BY MR. NORRIS:

21 Q Mr. Lindseth, in an effort to clarify the question I
22 have just put, do you have Plaintiff's Exhibit 2372
23 there at your disposal?

24 A Yes, I do.

25 Q The three exhibits that are on the easel, 2644, 2645

Lindseth - cross

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2 and 2646 are from this document, and I would ask you to --

3 MR. NORRIS: Withdraw that.

4 Q Have you ever seen Plaintiff's Exhibit 2372 before?

5 A Yes, I have.

6 Q What were the circumstances under which you saw that
7 document?

8 A I looked at it last night when you told me I was to talk
9 about it today.

10 Q Had you ever seen it during the time you were employed
11 at CEI?

12 A I have no specific recollection but it is entirely
13 likely.

14 Q Is it likely that you did see the five-year general
15 planning reports prepared by the groups as you have
16 described each year of your tenure as chief
17 executive officer?

18 A It is very likely.

19 Q Plaintiff's Exhibit 2644 represents the 99th and the
20 100th pages of Plaintiff's Exhibit 2372.

21 If I could trouble you to find those pages in this
22 document, then I will put my question to you.

23 A By this document? --

24 Q 2372, Mr. Linseth.

25 A My pages are not numbered.

Lindseth - cross

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2 Q That is right, they are not, and I will be glad to
3 hand this to you -- if Mr. Leo would kindly hand
4 this -- I happen to have the page open, and this
5 might save some time.

6 Now, Mr. Lindseth, I have handed you the 99th page
7 of Plaintiff's Exhibit 2372, and if you will notice on
8 that page at Paragraph 9 to 13, those paragraphs are
9 set forth on the blown-up exhibit that you have just
10 looked at on the easel, Plaintiff's Exhibit 2644.

11 A Okay.

12 Q And I had asked you earlier to follow my reading of
13 Paragraphs 12 and 13, and you now have the basic
14 document in your hand from which that is taken.

15 My question is: With respect to Paragraph 13,
16 do you have any reason to disagree that that was as
17 written there, Paragraph 13, that that was one of
18 CEI's corporate long-term planning assumption in
19 1964 when the report was prepared?

20 A No. This would have been an assumption of the person
21 writing this segment of the report.

22 I don't believe it could be characterized as a
23 corporate report. It was a departmental group
24 assumption.

25 This is an assumption by a person writing a

Lindseth - cross

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2 report.

3 Q Would that in this case be the vice president in charge
4 of public information and legal group?

5 A No. It would be the preparation by a staff man down the
6 line who prepared a report and sent it up the line to be
7 incorporated in the group's planning report.

8 It is a staff man's assumption primarily.

9 Whether it was concurred in specifically, I
10 wouldn't have any information.

11 Q If the assumption had not been concurred in, is it
12 likely that it would have been either removed or
13 amended in the final report?

14 A Not usually, or certainly not always.

15 Q Were these assumptions guidelines that would guide the
16 work of that particular group in the next 12-month
17 period?

18 A Well, from the assumption would evolve a plan, and the
19 plan would be worked on by the department or the group;
20 and depending on the degree to which the Group vice
21 president or the department manager concurred and
22 approved in the objective and the plan, and it would
23 evolve -- that would determine the energy with which
24 it would be pursued.

25 Q Was there any other corporate planning document other

Lindseth - cross

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2 than the kind of exhibit that you are holding in your
3 hand, Plaintiff's Exhibit 2372, were there any other
4 planning documents that the corporation made available
5 to the different groups to guide the day-to-day
6 conduct?

7 A Not that I readily recall, no.

8 Q Isn't it a fact that this compilation that you hold in
9 your hand was essentially the guidelines for the
10 operation of the groups as they went through their
11 year; isn't that essentially the case?

12 A Well, I would be pretty sure that an engineering
13 manager wouldn't pay much attention to what you are
14 discussing, and I don't believe an operating manager
15 would pay much attention to what you are discussing.

16 I would think a marketing man would. A finance
17 manager might, and a general service manager would not;
18 so it depends on who it is that we are speaking of, and
19 the answer depends on whether he had any interest in the
20 work.

21 Q What about a Public Information and Legal Vice
22 President, would that person be like the marketing
23 vice president who would be interested in what is
24 contained in Plaintiff's Exhibit 2372?
25